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Thursday
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Briefings on How To Use the Federal Register—
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WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

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

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: July 11; at 9 am.

WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: Abram Primus 202-523-3419
Ina Masters 202-523-3419

SEATTLE, WA

WHEN: July 22; at 1:30 pm.

WHERE: North Auditorium, Fourth Floor, Federal Building, 915 2nd Avenue, Seattle, WA.

RESERVATIONS: Call the Portland Federal Information Center on the following local numbers:

Seattle 206-442-0570
Tacoma 206-383-5230
Portland 503-221-2222

SAN FRANCISCO, CA

WHEN: July 24; at 1:30 pm.

WHERE: Room 2007, Federal Building, 450 Golden Gate Avenue, San Francisco, CA.

RESERVATIONS: Call the San Francisco Federal Information Center, 415-556-6600

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 86-319]

Oriental Fruit Fly; Removal of Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document removes the Oriental Fruit Fly regulations which designated as quarantined areas portions of Los Angeles, Orange, and Santa Clara Counties in California and imposed restrictions on the interstate movement of regulated articles from the quarantined areas. The regulations were established for the purpose of preventing the artificial spread of the Oriental fruit fly into noninfested areas of the United States. It has been determined that the Oriental fruit fly has been eradicated from the previously infested areas in California and that the regulations are no longer necessary. The effect of this action is to delete restrictions on the interstate movement of previously regulated articles from the previously quarantined areas in Los Angeles, Orange, and Santa Clara Counties.

DATES: Effective date of this interim rule is June 14, 1986. Written comments concerning this interm rule must be received on or before August 18, 1986.

ADDRESSES: Written comments should be submited to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 86-319. Written comments received may be inspected at Room 728, Federal Building, between 8 a.m. an 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Robert G. Spaide, Assistant Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 6505 Belcrest Road, Room 663, Federal Building, Hyattsville, MD 20782, (301) 436-8295.

SUPPLEMENTARY INFORMATION:

Background

A document published in the **Federal Register** on October 24, 1985 (50 FR 43117-43125), set forth an inerim rule amending the Domestic Quarantine Notices in 7 CFR Part 301 by adding Subpart—Oriental Fruit Fly (contained in 7 CFR 301.93 *et seq.*). The interim rule of October 24 quarantined portions of Los Angeles and Orange Counties in California because of the Oriental fruit fly, *Dacus dorsalis* (Hendel), and restricted the interstate movement of regulated articles from the quarantined portions of Los Angeles and Orange Counties. The interim rule of October 24 designated a large number of fruits, nuts, vegetables, berries, and soil as regulated articles. Subsequently, an interim rule was published in the **Federal Register** on November 22, 1985 (50 FR 48161-48162), which added a portion of Santa Clara County in California to the list of areas designated as quarantined areas and thereby imposed restrictions on the interstate movement of regulated articles from the quarantined portion of Santa Clara County. No other areas in California or elsewhere in the conterminous United States were designated as quarantined areas.

Based on trapping surveys conducted by inspectors of the United States Department of Agriculture and State agencies of California, it has now been determined that the Oriental fruit fly has been eradicated from the previously infested areas of Los Angeles, Orange, and Santa Clara Counties. The last finding of Oriental fruit flies was made on January 15, 1986. Since then no other Oriental fruit flies or other evidence of an infestation has been found. Based on departmental expertise, it has been determined that sufficient time has passed without finding additional fruit flies or other evidence of an infestation to conclude that an infestation no longer exists in Los Angeles, Orange, or Santa Clara Counties. Further, trapping surveys indicate that the Oriental fruit fly does not exist in any place in the conterminous United States.

Under these circumstances there is no longer a basis for imposing restictions on the movement of articles from any area in California or elsewhere in the conterminous United State because of the Oriental fruit fly. Therefore, in order to relieve unnecessary restrictions on the interstate movement of certain articles, it is necessary to amend 7 CFR Part 301 by removing Subpart—Oriental Fruit Fly from the Domestic Quarantine Notices.

Emergency Action

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for a public comment period because otherwise there would be unnecessary restrictions imposed on the interstate movement of certain articles. This situation requires immediate action to delete such unnecessary restrictions.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register**. Comments will be solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the **Federal Register** as soon as possible.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will have an effect on the economy of less than 100 million dollars; will not cause a major increase in costs

or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This amendment removes restrictions on the interstate movement of regulated articles from portions of Los Angeles, Orange, and Santa Clara Counties in California. The regulated articles that are affected by this interim rule represent significantly less than one percent of such articles in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.)*.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Oriental Fruit Fly.

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for Part 301 is revised to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, 371.2(c).

§§ 301.93 through 301.93–10 [Subpart Removed]

2. Subpart—Oriental Fruit Fly (7 CFR 301.93 through 301.93–10) is removed.

Done at Washington, DC, this 13th day of June, 1986.

W.F. Helms,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 86–13838 Filed 6–18–86; 8:45 am]
BILLING CODE 3410–34–M

Agricultural Stabilization and Conservation Service

7 CFR Parts 724, 725, and 726

Tobacco Acreage Allotment and Marketing Quota Regulations

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule amends the regulations at 7 CFR Parts 724, 725, and 726 to: provide that acreage converted from the production of tobacco due to the participation of the owner or operator of a farm in the Conservation Reserve Program shall be considered planted to tobacco for purposes of determing future acreage allotments and marketing quotas; authorize county ASC committees to approve certain agreements to lease and transfer burley tobacco quotas when such agreements are filed after July 1; extend from April 15 to May 30 the date for filing agreements to lease and transfer flue-cured tobacco acreage allotments and marketing quotas; reduce from 110 percent to 103 percent of the effective farm marketing quota the quantity of burley and flue-cured tobacco that may be marketed without incurring a marketing quota penalty; and make minor corrections for clarity.

DATES: Effective June 19, 1986. Comments must be received on or before July 21, 1986, in order to be assured on consideration.

ADDRESS: Send comments to the Director, Tobacco and Peanuts Division, ASCS, Department of Agriculture, P.O. Box 2415, Washington, DC 20013. All written submissions made pursuant to this notice will be made available for public inspection in room 5750-South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jack S. Forlines, Agricultural Program Specialist, Tobacco and Peanuts Division, USDA–ASCS, P.O. Box 2415, Washington, DC 20013, (202) 382–0200.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified as "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises, to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loan and Purchases; 10.051, as found in the catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of Law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 29, 1983).

The Food Security Act of 1985 provides that the Secretary of Agriculture shall implement a Conservation Reserve Program for the 1986 through 1990 crop years with the Secretary entering into contracts of not less than 10 or more than 15 years to assist owners and operators of highly erodible cropland in conserving and improving the soil and water resources of their farms. Section 1236 of the Food Security Act of 1985 requires a reduction in the aggregate of the crop bases, quotas, and allotments on farms participating in the Conservation Reserve Program. This interim rule amends the regulations at 7 CFR Parts 724, 725, and 726 to provide that acreage converted from the production of tobacco due to the participation of the owner or operator of a farm in the Conservation Reserve Program shall be considered planted to tobacco for purposes of preserving acreage allotment and marketing quota history for use in determining future acreage allotments and marketing quotas.

The Consolidated Omnibus Budget Reconciliation Act of 1985 (the "1985 Act") amended section 319(g) of the Agricultural Adjustment Act of 1938, as amended, (the "1938 Act") to authorize the approval of certain burley tobacco lease and transfer agreements that are

filed after July 1 of a crop year and also amended sections 317(g) and 319(i) of the 1938 Act to reduce from 110 percent to 103 percent of the effective farm marketing quota, the quantity of burley and flue-cured tobacco, respectively, that may be marketed without incurring a marketing quota penalty. This interim rule amends the regulations at 7 CFR Parts 725 and 726 to incorporate these changes.

Currently the regulations at 7 CFR 725.72(e)(4) generally provide that an agreement to lease and transfer a flue-cured tobacco acreage allotment and marketing quota must be filed by April 15 in order to be approved by the county ASC committee. The 1985 Act, approved April 7, 1986, changed the method of determining the national acreage allotment and marketing quota for flue-cured tobacco. Accordingly, this change has delayed the establishment of farm acreage allotments and marketing quotas. Therefore, flue-cured tobacco farmers did not receive notices of their acreage allotments and marketing quotas in time to file their lease and transfer agreements by April 15. In order to alleviate this problem, this interim rule extends from April 15 to May 30 the final date for filing an agreement to lease and transfer flue-cured tobacco acreage allotments and marketing quotas.

This interim rule makes other minor corrections in the regulations set forth at 7 CFR Parts 724, 725, and 726. However, none of these changes are considered substantive but are being made only for purposes of accuracy and clarity.

Since flue-cured tobacco producers are in the process of planting their 1986 crop of tobacco and producers of other kinds of tobacco will soon be planting their 1986 crop of tobacco, it has been determined that this interim rule shall become effective on June 19, 1986. However, comments from interested persons are requested. Comments must be received by July 21, 1986, in order to be assured of consideration. After the comments have been received and reviewed, a final rule will be published setting forth any amendments which may be necessary to the interim rule.

List of Subjects in 7 CFR Parts 724, 725, and 726

Acreage allotment, Marketing quota, Reporting and recordkeeping requirements.

Final rule

For the reasons set forth in the preamble, Chapter VII, Title 7 of the CFR is amended as follows:

PART 724—[AMENDED]

1. In Part 724:

a. The authority citation is revised to read:

Authority: Secs. 301, 313, 314, 316, 318, 363, 372–375, 377 and 378 of the Agricultural Adjustment Act of 1938, as amended, 52 Stat. 38, as amended, 47, as amended, 48, as amended, 75 Stat. 469, as amended, 81 Stat. 120, as amended, 52 Stat. 63, as amended, 65, as amended, 66, as amended, 70 Stat. 206, as amended, 72 Stat. 995, as amended (7 U.S.C. 1301, 1313, 1314, 1314b, 1314d, 1363, 1372–1375, 1377, 1378); sec. 401 of the Agricultural Act of 1949, as amended, 63 Stat. 1054, as amended (7 U.S.C. 1421).

§ 724.36 [Removed]

b. Section 724.36 is removed.

§ 724.57 [Amended]

c. Section 724.57 is amended by revising paragraphs (b)(1)(i)(*b*) and (b)(1)(i)(*c*) and by adding paragraphs (b)(1)(i)(*d*) and (b)(2)(ii) to read:

* * * * *

(b) * * *

(1) * * *

(i) * * *

(b) The acreage leased and transferred from the farm, (c) the acreage temporarily released to the State committee under the provisions of § 724.72, and (d) the acreage converted from production of the kind of tobacco in accordance with Part 704 of this title is not less than 75 percent of the basic allotment after any reduction in the allotment for a program violation,

* * * * *

(2) * * *

(ii) Acreage converted from the production of the kind of tobacco in accordance with 7 CFR Part 704 of this title.

* * * * *

§ 724.62 [Amended]

d. Section 724.62 is amended by removing paragraphs (c)(7) and (c)(9); and by redesignating paragraph (c)(8) as (c)(7); by removing from the first sentence of the introductory paragraph the words "The acreage allotment, other than an allotment made under § 724.67(a)," and inserting in their place the words "The acreage allotment established in any crop year for all new farms of a kind of tobacco shall not exceed the national acreage reserved for new farms for such kind of tobacco. Within such reserve, the acreage allotment".

§ 724.69 [Amended]

e. Section 724.69 is amended by removing the words "or by the owner" from the first sentence in paragraph (n).

f. Section 724.70 is amended by revising paragraph (w) to read:

§ 724.70 Transfer of Fire-Cured, Dark air-cured, and Virginia sun-cured tobacco allotments by lease, sale, or by owner under section 318 of the Act.

* * * * *

(w) *Claim for tobacco marketing quota penalty.* A transfer of acreage allotment from a farm by lease, sale, or by the owner shall not be approved if a claim has been filed against the lessor, seller, or transferring owner for a tobacco marketing quota penalty and the claim remains unpaid unless the entire proceeds of the lease or sale of the allotment are applied against the claim and the county committee determines that the amount paid for the lease or sale represents a reasonable price for the acres of allotment being transferred.

* * * * *

§ 724.72 [Amended]

g. Section 724.72 is amended in paragraph (b) by inserting, "including a farm receiving a new farm allotment" before the period at the end of the first sentence, and removing the second sentence.

h. Section 724.81 is amended by removing paragraph (f) and by revising paragraphs (d) and (e) to read:

§ 724.81 Issuance of producer marketing cards.

* * * * *

(d) *Issuance of within quota marketing card.* A within quota marketing card, MQ–76 (eligible for price support), shall be issued for use in identifying a kind of tobacco that is available for marketing from a farm when such tobacco:

(1) Is eligible for price support according to the provisions in Part 1464 of this title.

(2) Was grown for experimental purposes only by a publicly owned argicultural experiment station.

(e) *Issuance of excess marketing card*—(1) *MQ–77.* An MQ–77 indicating that the tobacco available for marketing from a farm is ineligible for price support and indicating the rate of any penalty that is to be deducted from the proceeds from any marketing of tobacco identified by such marketing care shall be issued for each farm for each kind of tobacco for which:

(i) There is excess tobacco available for marketing from the farm;

(ii) The producer is not an eligible producer or the tobacco is not eligible tobacco as determined in accordance with Part 1464 of this title; or

(iii) Excess tobacco was produced on the farm and the acreage of tobacco reported by the farm operator differed from the determined acreage by more than the measurement variance specified in Part 718 of this chapter but the excess tobacco has been disposed in accordance with § 724.80.

(2) *Full penalty rate.* The full penalty rate shall be entered on each MQ–77 issued to identify tobacco produced on a farm for which:

(i) An acreage allotment was not established;

(ii) The farm operator or another producer on the farm prevents the county committee from obtaining information necessary to determine the correct acreage of tobacco on the farm;

(iii) The farm operator fails in accordance with Part 718 of this chapter to provide a certification of acreage planted to tobacco, or

(iv) The farm operator or another producer on the farm has not agreed to make contributions to the No Net Cost Fund or pay assessments to the No Net Cost Account, as applicable, in accordance with Part 1464 of this title.

(3) *Converted penalty rate.* Except as provided in paragraph (e)(2) of this section, the converted penalty rate provided in § 724.82 shall be entered on each MQ–77 issued to identify tobacco produced on a farm from which there is excess tobacco available for marketing and the percentage of excess is less than 100 percent.

(4) *Zero penalty.* Except as provided in paragraph (e)(2) and (e)(3) of this section, a zero penalty rate shall be entered on any MQ–77 issued in accordance with this section.

PART 725—[AMENDED]

2. In Part 725:

a. The authority citation is revised to read:

Authority: Secs. 301, 313, 314, 314A, 316, 316A, 317, 363, 372–375, 377 and 378 of the Agricultural Adjustment Act of 1938, as amend, 52 Stat. 38, as amended, 47, as amended, 48, as amended, 96 Stat. 215, 75 Stat. 469, as amended, 96 Stat. 205, 79 Stat. 66, as amended, 52 Stat. 63, as amended, 65, as amended, 66, as amended, 70 Stat. 206, as amended, 72 Stat. 995, as amended (7 U.S.C. 1301, 1313, 1314, 1314–1, 1314b, 1314b–1, 1314c, 1363, 1372–1375, 1377, 1378); sec. 401 of the Argicultural Act of 1949, as amended, 63 Stat. 1054, as amended (7 U.S.C. 1421).

b. Section 725.51 is amended by revising paragraph (e-1)(2)(iv) and (v), and adding (vi) to read:

§ 725.51 Definitions.

* * * * *

(e-1) * * *

(2) * * *

(iv) Reduced for overmarketing,

(v) Reduced for violation of marketing quota regulations, and

(vi) Converted from the production of flue-cured tobacco during the respective crop year in accordance with Part 704 of this title.

* * * * *

c. Section 725.60 is amended by revising paragraph (b)(3) and (4), and adding (5) to read:

§ 725.60 Determination of effective farm marketing quotas.

* * * * *

(b) * * *

(3) The pounds of quota which are transferred from the farm by lease in the current year;

(4) The pounds of quota which are reduced in the current year as a result of a violation in a prior year as provided for in § 725.98; and

(5) The pounds of quota determined by multiplying the farm yield by the acres reduced from the flue-cured tobacco acreage allotment during the current year in accordance with Part 704 of this title.

§ 725.72 [Amended]

d. Section 725.72 is amended by removing the words "April 15" and inserting, their place, the words "May 30" each place that they appear in paragraphs (d)(3)(viii) and (e)(4)(i).

e. Section 725.73 is amended by revising paragraph (a) to read:

§ 725.73 Determining tobacco history acreages.

* * * * *

(a) *Farm acreage allotment fully preserved.* The farm acreage allotment is fully preserved as tobacco history acreage for the current year if in the current year or either of the two preceding years the sum of the planted and considered planted acreage was as much as 75 percent of the farm acreage allotment.

* * * * *

f. Section 725.87 is amended by revising paragraph (f)(3) to read:

§ 725.87 Issuance of marketing cards.

* * * * *

(f) * * *

(3) Upon written request of the farm operator, two or more marketing cards may be issued for a farm if the farm operator specifies the number of pounds of quota to be assigned to each marketing card. In such case, the total pounds of quota specified in the entry, "103 percent of quota", on all marketing cards issued for the farm may not exceed 103 percent of the effective farm marketing quota.

* * * * *

g. Section 725.95 is amended by revising paragraph (f) to read:

§ 725.95 Producers penalties, false identifications; failure to account; canceled allotments; overmarketing proportionate share.

* * * * *

(f) *Ineligible for price support.* A penalty at the rate announced for flue-cured tobacco for the current marketing year shall be assessed on any marketing of flue-cured tobacco by any producer on a farm if such producer is ineligible for price support because the farm operator or other producer on the farm has not agreed to make a contribution to the No Net Cost Fund or pay an assessment to the No Net Cost Account, as applicable, in accordance with Part 1464 of this title.

§ 725.100 [Amended]

h. Section 725.100 is amended in paragraph (a)(1)(viii) by inserting the words "or Account" before the period at the end of the sentence; in paragraph (b)(3) by inserting the words "or producer assessment to the No Net Cost Tobacco Account, as applicable," after the word "Fund" each place the word "Fund" appears; in paragraph (c)(7) by inserting the words "or assessment to the No Net Cost Tobacco Account, as applicable," following the word "Fund"; and in paragraph (c)(7) by removing the words "Flue-Cured Stabilization Corporation" and inserting in their place the words "Commodity Credit Corporation".

§§ 725.51, 725.87, 725.91, 725.95, 725.99, 725.100, 725.103, 725.104, 725.107, and 725.115 [Amended]

i. In addition to the amendments to Part 725 that are set forth above, 7 CFR Part 725 is amended by removing the number "110" wherever it appears in the following paragraphs and inserting in its place the number "103":

(1) 7 CFR 725.51(k);

(2) 7 CFR 725.87 (a)(2) and (f);

(3) 7 CFR 725.91(a);

(4) 7 CFR 725.95 (a), (b), (d), and (e);

(5) 7 CFR 725.99(a)(4)(x), (b), and (c)(1) through (3);

(6) 7 CFR 725.100(b)(1) and (3);

(7) 7 CFR 725.103(a) and (h);

(8) 7 CFR 725.104(a);

(9) 7 CFR 725.107(b); and

(10) 7 CFR 725.115 (a)(2)(iv) and (b)(4)

PART 726—[AMENDED]

3. In Part 726:

a. The authority citation is revised to read:

Authority: Secs. 301, 313, 314, 314A, 316B, 317, 363, 372–375, 377 and 378 of the Agricultural Adjustment Act of 1938, as amended, 52 Stat. 38, as amended, 47, as amended, 48, as amended, 96 Stat. 210, 215, 75 Stat. 469, as amended, 79 Stat. 66, as amended, 52 Stat. 63, as amended, 65, as amended, 66, as amended, 70 Stat. 206, as amended, 72 Stat. 995, as amended (7 U.S.C. 1301, 1313, 1314, 1314–1, 1314b–2, 1314c, 1363, 1372–1375, 1377, 1378); sec. 401 of the Agricultural Act of 1949, as amended, 63 Stat. 1054, as amended (7 U.S.C. 1421).

b. The table of contents and the text are corrected by removing the subheading "Restrictions on Use of DDT and TDE, Toxaphene, or Endrin".

c. Section 726.51 is amended by revising paragraphs (aa) (3) and (4) and (ff)(1)(vi); and adding paragraph (aa)(5), to read:

§ 726.51 Definitions.

* * * * *

(aa) * * *

(3) A restrictive lease on federally owned land is in effect prohibiting tobacco production.

(4) Effective quota is zero because of overmarketings or a violation of regulations, or

(5) Acreage is converted from production of burley tobacco in accordance with Part 704 of this title.

* * * * *

(ff) * * *

(1) * * *

(vi) Pounds reduced from the burley tobacco quota during the current year in accordance with Part 704 of this title.

* * * * *

d. Section 726.68 is amended by revising paragraph (e)(4) to read:

§ 726.68 Transfer of tobacco marketing quotas by lease, by sale, or by the owner.

* * * * *

(e) * * *

(4) *When to file.* Filed on or before July 1 of the current year: *Provided,* That when an agreement to transfer quota by lease is filed not later than the end of the marketing year that begins during the current year such transfer agreement may be considered to have been filed on July 1 of the current year if the county committee, with the concurrence of the State committee, determines that on or before July 1 of the current year the lessee and lessor agreed to such lease and transfer of quota and the failure to file such transfer agreement did not result from gross negligence on the part of any party to such lease and transfer.

* * * * *

e. Section 726.81 is amended in paragraph (f)(1) by removing from the first proviso the words "and the quota is not eligible to be transferred from the farm under the provisions of § 726.68"; and by revising paragraph (f)(3) to read:

§ 726.81 Issuance of marketing cards.

* * * * *

(f) * * *

(3) Upon written request of the farm operator, two or more marketing cards may be issued for a farm if the farm operator specifies the number of pounds of quota to be assigned to each marketing card. In such case, the total pounds of quota specified in the entry, "103 percent of quota", on all marketing cards issued for the farm may not exceed 103 percent of the effective farm marketing quota.

* * * * *

§ 726.89 [Amended]

f. Section 726.89 is amended in paragraph (f) by removing the words "make a contribution" and inserting in their place the words "pay marketing assessments".

§ 726.94 [Amended]

g. Section 726.94 is amended in paragraph (b)(3) by removing the words "contributions" or "contribution" and inserting in their place the words "marketing assessments"; in paragraph (c)(5) by removing the word "March" and inserting in its place the word "April"; and in paragraph (c)(7) by removing the word "contribution" and inserting in its place the words "marketing assessment".

§§ 726.51, 726.81, 726.85, 726.89, 726.93, 726.94, 726.98, 726.105, 726.106, and 726.107 [Amended]

h. In addition to the amendments to Part 726 that are set forth above, 7 CFR Part 726 is amended by removing the number "110" whenever its appears in the following paragraph and inserting in its place the number "103":

(1) 7 CFR 726.51(i);

(2) 7 CFR 726.81 (a)(2) and (f);

(3) 7 CFR 726.85(a);

(4) 7 CFR 726.89 (a), (b), (d), and (e);

(5) 7 CFR 726.93 (a)(4)(vii), (b)(1), and (c) (1) through (3);

(6) 7 CFR 726.94(b) (1) and (3);

(7) 7 CFR 726.98(b);

(8) 7 CFR 726.105(h);

(9) 7 CFR 726.106(a); and

(10) 7 CFR 726.107 (a)(2)(iv) and (b)(4).

Signed in Washington, DC, on June 16, 1986.

William C. Bailey,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 86–13913 Filed 6–18–86; 8:45 am]

BILLING CODE 3410–05–M

Agricultural Marketing Service

7 CFR Part 1065

Milk in the Nebraska-Western Iowa Marketing Area; Temporary Revision of Diversion Limitation Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Temporary revision of rules.

SUMMARY: This action temporarily relaxes for the months of June through August 1986 the limit on how much milk not needed for fluid (bottling) use may be moved directly from farms to nonpool manufacturing plants and still be priced under the Nebraska-Western Iowa order. The revision is made in response to a request by a cooperative association representing a substantial number of producers supplying the market in order to prevent uneconomic movements of milk.

EFFECTIVE DATE: June 19, 1986.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, 202–447–7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Temporary Revision of Diversion Limitation Percentage: Issued May 22, 1986; published May 29, 1986 (51 FR 19353).

The Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This temporary revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the provisions of § 1065.13(d)(4) of the Nebraska-Western Iowa order.

Notice of proposed rulemaking was published in the **Federal Register** (51 FR 19353) concerning a proposed increase in the amount of milk that may be moved directly from producer farms to nonpool manufacturing plants for the months of May through August 1986. Because of the late receipt of the request and the length of time required to process the proposed temporary revision, however, the temporary revision of diversion limits will be

effective for the months of June through August 1986, rather than for May through August. The public was afforded the opportunity to comment on the proposed notice by submitting written data, views and arguments by June 5, 1986.

Statement of Consideration

After consideration of all relevant material, data, views and arguments filed and other available information, it is hereby found and determined that the diversion limitation percentage set forth in § 1065.13(d) should be increased from the present 50 percent to 60 percent for the months of June through August 1986.

Pursuant to the provisions of § 1065.13(d), the diversion limitation percentages set forth in § 1065.13(d) (2) and (3), respectively, may be increased or decreased up to 20 percentage points during any month. Such changes may be made to encourage additional needed milk shipments to pool distributing plants or to prevent uneconomic shipments merely for the purpose of assuring that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Associated Milk Producers, Inc. (AMPI), a cooperative association which represents producers supplying the Nebraska-Western Iowa market, requested that for the months of May through August 1986, the percentage of allowable diversions be increased 10 percentage points. AMPI's request was received May 15, 1986. Due to the time required to issue the notice of proposed temporary revision and allow a 7-day comment period, there was not enough time to include May 1986 in the period during which the order's diversion limits are to be temporarily relaxed.

The basis of the cooperative's request is that for the period in question, the order provisions require more milk to move through pool plants than is necessary to meet the fluid, or bottling, requirements of the market. The cooperative cited improved milk quality as a result of less pumping and more economic hauling as the benefits to be gained from the proposed temporary relaxation.

AMPI stated that milk production in the market increased more than 13 percent for the period January through April 1986 over the same period of 1985. At the same time, according to the cooperative, Class I needs increased less than 1 percent. AMPI stated that producer milk was diverted to nonpool plants in excess of the 50 percent limit during April 1986 and that as a result, milk of dairy farmers historically associated with the market failed to share in the marketwide pool. The cooperative expressed the belief that a temporary relaxation of diversion limits would have no effect on the ability of distributing plants to obtain needed supplies of milk for Class I use.

The temporary revision was supported in comments filed by the National Farmers' Organization, Inc., a dairy farmer cooperative that also represents producers.

Without the temporary revision, milk of some dairy farmers would first have to be received at a pool plant to qualify it for pooling rather than being shipped directly from the farm to nonpool manufacturing plants for surplus use. These requirements would result in costly and inefficient movements of milk. It is concluded that the relaxation of the diversion limits by 10 percentage points for the months of June through August 1986 will prevent uneconomic movements of milk through pool plants merely for the purpose of qualifying it as producer milk under the order.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This temporary revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area for the months of June through August 1986;

(b) This temporary revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed temporary revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this temporary revision.

Therefore, good cause exists for making this temporary revision effective upon publication of this notice in the Federal Register.

List of Subjects in 7 CFR Part 1065

Milk marketing orders, Milk, Dairy products.

PART 1065—[AMENDED]

§1065.13 [Amended]

It is therefore ordered, that in paragraphs (d)(2) and (3) of § 1065.13, the provision "50 percent" is revised to "60 percent" for the months of June through August 1986.

The authority citation for 7 CFR Part 1065 continues to read as follows:

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

Effective date: Upon publication in the Federal Register.

Signed at Washington, DC, on June 13, 1986.

Edward T. Coughlin,

Director, Dairy Division.

[FR Doc. 86–13912 Filed 6–18–86; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Parts 1941, 1943, and 1980

Restriction of Insured and Guaranteed Operating and Farm Ownership Loans for Financing the Expansion of the Production of Surplus Agricultural Commodities

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Farmers Home Administration (FmHA) amends its insured and guaranteed Operating and Farm Ownership Loan regulations to allow the Administrator to restrict loans for purposes which finance the expansion of the production of agricultural commodities that are in surplus. This action is being taken to support other United States Department of Agriculture (USDA) actions to reduce the expansion of production and strengthen depressed prices. The intended effect is to reduce the expansion of the production of surplus commodities.

DATE: Interim rule effective on June 19, 1986. Comments must be submitted on or before July 21, 1986.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Edward R. Yaxley, Jr., Senior Loan Officer, Farm Real Estate Production Division, Farmers Home Administration, USDA, Room 5449–S, Washington, D.C. 20250, telephone (202) 447–4572.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1, which implements Executive Order 12291, and it has been determined to be non-major because there is no annual effect on the economy of $100 million or more; or a

major increase in cost or prices for consumer, individual industries, Federal, State or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Program Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance: 10.406—Farm Operating Loans, 10.407—Farm Ownership Loans.

Intergovernmental Consultation

For the reasons set forth in the final rule related Notice to 7 CFR 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans, Farm Operating Loans, Farm Ownership Loans and Low Income Housing Loans are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Evironmental Impact Statement

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

Subpart A of Parts 1941 and 1943 and Subpart B of Part 1980 contain the policies, procedures and authorizations for making and guaranteeing operating and farm ownership loans.

On December 2, 1985 (50 FR 49395) FmHA published a proposed rule to provide the Administrator with the authority to restrict loans for such periods as necessary if the loans would be used to finance the expansion of the production of agricultural commodities which are in surplus, and/or the supply of which is depressing prices and/or other United States Department of Agriculture (USDA) action is being taken to reduce production and/or support prices. The comment period closed January 31, 1986.

Discussion of Comments Received

In response to the proposed rule, 70 written comments were received. Comments received were from individuals, bankers, farmers' unions, a church, interest groups, members of the United States Congress, State government officials and an FmHA employee. All comments received were reviewed. Most of the respondents are concerded that the majority of agricultural commodities are in surplus and that the enactment of the proposed rule across the board would eliminate FmHA credit for a great many farmers, hurt rural communities, and put some farmers out of business. Many repondents indicated that production should be controlled through agencies of USDA such as the Commodity Credit Corporation. Some respondents questioned the statutory authority for such a restriction and that it would discriminate against the family sized farm. One respondent stated that FmHA had a long term contractual commitment to continue the financing of a borrower. Most of the respondents indicated that the surpluses are a problem but had no immediate solution for solving the problem.

Respondents in favor of adopting the proposed rule are people that did not have FmHA credit. They indicated that the agency should not make loans to produce surplus crops for another agency to purchase.

The major concern of those opposed to adopting the proposed rule seemed to be that FmHA would stop making loans for the production of all agricultural commodities which are in surplus and many farmers who produce these commodities have no other source of credit. There were some miscellaneous comments that were not pertinent to the subject.

After careful consideration of the comments, the agency modifies and amends the proposed rule so that the Administrator may restrict loans used for financing the expansion of the production of certain agricultural commodities that are in surplus rather than completely restricting loans used for the production of surplus commodities. This change should alleviate the concerns caused by the proposed rule and still assist in controlling expansion of the surplus and reduce costs to the taxpayers. The general criteria for selecting such surplus agricultural commodities is set out in the regulations. A notice will be published in the **Federal Register** indicating the selected commodity, the length of the restriction, and the reason for the restriction.

List of Subjects

7 CFR Part 1941

Crops, Livestock, Loan programs—Agriculture, Rural areas, Youth.

7 CFR Part 1943

Credit, Loan programs—Agriculture, Recreation, Water resources.

7 CFR Part 1980

Agriculture, Loan programs—Agriculture.

Therefore, Chapter XVIII, Title 7 Code of Federal Regulations is amended as follows:

PART 1941—OPERATING LOANS

1. The authority citation for Part 1941 is revised to read as follows:

Authority: 7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Operating Loan Policies, Procedures, and Authorizations

2. Section 1941.17 is amended by designating the existing paragraph as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 1941.17 Loan limitations.

* * * * *

(b) The Administrator will restrict the making of loans that will be used to increase the production of selected agricultural commodities such as crops, livestock, or livestock products, for such periods as are necessary, when the United States Department of Agriculture is taking action to reduce production and/or has a program for supporting prices and/or has some other subsidy program for the selected agricultural commodity.

(1) In selecting the agricultural commodity, the Administrator will consider such facts as:

(i) The cost of the Government subsidy.

(ii) The amount of surplus of the commodity the Government has in storage or is paying storage on.

(iii) Any indication of restrictions that processors may place upon producers of such commodities.

(iv) The adverse effect of overproduction of the commodity in certain areas and the adverse effect the increased production of the commodity would have on farmers in the area.

(v) Shortages of a commodity in certain areas.

(2) An increase in the production of an agricultural commodity is an increase in the average number of acres, average number of birds, average number of animal units, average number of fish

above the established base for the farming operation. The base will be established by calculating the average annual production units of the commodity for the farming operation for the last 5 years and the last 2 years, and using the lower of those 2 figures. Minor variations that do not exceed a 5 percent increase in production for the year above the base will be considered normal. However, such increases will not be used to increase the base by gradually increasing the numbers year after year.

(3) For crops grown in a farmer's normal crop rotation program, the base will be established by calculating the average production of the commodity for the number of years the crop was grown in the normal rotation cycle or 5 year period, whichever is less.

(4) The County Supervisor will use either ASCS records or, if these are not available, the actual farm records for calculating the farming operation's established base. If no production records are available for the commodity, any production will be considered an increase.

(5) Financing an *increase* in production of a selected agricultural commodity is prohibited. Financing an increase means using loan funds for:

(i) The purchase or renting of additional land and/or buildings for the surplus commodity.

(ii) A new facility for expansion or expansion of an existing facility for the surplus commodity.

(iii) Items for the direct input for the production of additional acres or units of a surplus commodity such as feed, seed and fertilizer, harvesting costs and etc.

(iv) Starting up or re-establishing a farming operation for the production of a surplus commodity.

(v) Converting a farming operation to the production of the surplus commodity.

(6) The provisions of this section are not intended to restrict the use of better management practices, improved varieties of seed, new technology, etc., or prevent the financing of the sale of an existing farming operation to another operator as long as there is no increase in the average number of acres, birds, animal units or fish above an operation's established base.

(7) A Notice will be published in the **Federal Register** which will state the commodity which is in surplus, the length of the restriction, and the reason for the restriction. A copy of the Notice will be distributed to FmHA offices and will be available to the public at those offices.

(8) If Form FmHA 1940–1 "Request for Obligation of Funds," has been signed for approving a loan before the date a restriction is imposed, the restriction cannot be used as a reason for failing to close the loan.

PART 1943—FARM OWNERSHIP, SOIL AND WATER RECREATION

3. The authority citation for Part 1943 is revised to read as follows:

Authority: 7 USC 1989; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Insured Farm Ownership Loan Policies, Procedures, and Authorizations

4. § 1943.17 is amended by adding paragraph (d) to read as follows:

§ 1943.17 Loan limitations.

* * * * *

(d) The Administrator will restrict the making of FO loans that will be used to increase the production of selected agricultural commodities such as crops, livestock, or livestock products, for such periods as are necessary, when the United States Department of Agriculture is taking action to reduce production and/or has a program for supporting prices and/or has some other subsidy program for the selected agricultural commodity.

(1) In selecting the agricultural commodity, the Administrator will consider such factors as:

(i) The cost of the Government subsidy.

(ii) The amount of surplus of the commodity the Government has in storage or is paying storage on.

(iii) Any indication of restrictions that processors may place upon producers of such commodities.

(iv) The adverse effect of overproduction of the commodity in certain areas and the adverse effect the increased production of the commodity would have on farmers in the area.

(v) Shortage of a commodity in certain areas.

(2) An increase in the production of an agricultural commodity is an increase in the average number of acres, average number of birds, average number of animal units, average number of fish above the established base for the farming operation. The base will be established by calculating the average annual production units of the commodity for the farming operation for the last 5 years and the last 2 years, and using the lower of those two figures. Minor variations that do not exceed a 5 percent increase in production for the year above the base will be considered normal. However, such increases will not be used to increase the base by gradually increasing the numbers year after year.

(3) For crops grown in a farmer's normal crop rotation program, the base will be established by calculating the average production of the commodity for the number of years the crop was grown in the normal rotation cycle or 5 year period, whichever is less.

(4) The County Supervisor will use either ASCS records or, if these are not available, the actual farm records for calculating the farming operation's established base. If no production records are available for the commodity, any production will be considered an increase.

(5) Financing an *increase* in production of a selected agricultural commodity is prohibited. Financing an increase means using loan funds for:

(i) The purchase or renting of additional land and/or buildings for the surplus commodity.

(ii) A new facility for expansion or expansion of an existing facility for the surplus commodity.

(iii) Items for the direct input for the production of additional acres or units of a surplus commodity such as feed, seed and fertilizer, harvesting costs and etc.

(6) The provisions of this section are not intended to restrict the use of better management practices, improved varieties of seed, new technology, etc., or prevent the financing of the sale of an existing farming operation to another operator as long as there is no increase in the average number or acres, birds, animal units or fish above an operation's established base.

(7) A Notice will be published in the **Federal Register** which will state the commodity which is in surplus, the length of the restriction, and the reason for the restriction. A copy of the Notice will be distributed to FmHA offices and will be available to the public at those offices.

(8) If Form FmHA 1940–1, "Request for Obligation of Funds," has been signed for approving a loan before the date a restriction is imposed, the restriction *cannot* be used as a reason for failing to close the loan.

PART 1980—GENERAL

5. The authority citation for Part 1980 is revised to read as follows:

Authority: 7 CFR 1989; 42 USC 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Farmer Program Loans

6. Section 1980.101 is amended by adding paragraph (f) to read as follows:

§ 1980.101 Introduction.

* * * * *

(f) *Restrictions.* The Administrator will restrict the issuing of OL or FO guarantees if the loans will be used to increase the production of agricultural commodities such as crops, livestock, or livestock products, for such periods as are necessary, when the United States Department of Agriculture is taking action to reduce production and/or has a program for supporting prices and/or has some other subsidy program for the selected agricultural commodity.

(1) In selecting the agricultural commodity, the Administrator will consider such factors as:

(i) The cost of the Government subsidy.

(ii) The amount of surplus of the commodity the Government has in storage or is paying storage on.

(iii) Any indication of restrictions that processors may place upon producers of such commodities.

(iv) The adverse effect of overproduction of the commodity in certain areas and the adverse effect the increased production of the commodity would have on farmers in the area.

(v) Shortage of a commodity in certain areas.

(2) An increase in the production of an agricultural commodity is an increase in the average number of acres, average number of birds, average number of animal units, average number of fish above the established base for the farming operation. The base will be established by calculating the average annual production units of the commodity for the farming operation for the last 5 years and the last 2 years, and using the lower of those two figures. Minor variations that do not exceed a 5 percent increase in production for the year above the base will be considered normal. However, such increases will not be used to increase the base by gradually increasing the numbers year after year.

(3) For crops grown in a farmer's normal crop rotation program, the base will be established by calculating the average production of the commodity for the number of years the crop was grown in the normal rotation cycle or 5 year period, whichever is less.

(4) The County Supervisor will use ASCS records or, if those are not available, the actual farm records for calculating the farming operation's established base. If no production records are available for the commodity, any production will be considered an increase.

(5) Issuing an FO or OL guarantee is prohibited if the loan will be used for financing an *increase* in production of a selected agricultural commodity. Financing an increase means using loan funds for:

(i) The purchase or renting of additional land and/or buildings for the surplus commodity.

(ii) A new facility for expansion or expansion of an existing facility for the surplus commodity.

(iii) Items for the direct input for the production of additional acres or units of a surplus commodity such as feed, seed and fertilizer, harvesting costs and etc.

(iv) Starting up or re-establishing a farming operation for the production of a surplus commodity.

(v) Converting a farming operation to the production of the surplus commodity.

(6) The provisions of this section are not intended to restrict the use of better management practices, improved varieties of seed, new technology, etc., or prevent the financing of the sale of an existing farming operation to another operator as long as there is no increase in the average number of acres, birds, animal units or fish above an operation's estalished base.

(7) A Notice will be published in the **Federal Register** which will state the commodity which is in surplus, the length of the restriction, and the reason for the restriction. A copy of the Notice will be distributed to FmHA offices and will be available to the public at those offices.

(8) If a Loan Note Guarantee or Contract of Guarantee has been issued before the date a restriction is imposed, the restriction *cannot* be used as a reason for failing to issue the guarantee.

Dated: May 28, 1986.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 86-13914 Filed 6-18-86; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 441

[Docket No. 86N-0070]

Antibiotic Drugs; Imipenem Monohydrate-Cilastatin Sodium for Injection; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the document that provided for standards for the antibiotic drug, imipenem monohydrate-cilastatin sodium for injection. This document corrects an editorial error.

FOR FURTHER INFORMATION CONTACT: Richard Norton, Center for Drugs and Biologics (HFN-815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION:

§ 441.220 [Corrected]

In FR Doc. 86-7369 appearing on page 11571 in the issue of Friday, April 4, 1986, the following correction is made on page 11575: In the third column under § 441.220 *Imipenem monohydrate-cilastatin sodium for injection* in paragraph (b)(1)(ii)(*a*), fourth line, "molar" is corrected to read "*M*".

Dated: June 11, 1986.

Sammie R. Young,

Deputy Director, Office of Compliance.

[FR Doc. 86-13817 Filed 6-18-86; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Estradiol

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Products Co., providing for use of an estradiol ear implant for increased rate of weight gain and improved feed efficiency in confined heifers as well as steers.

EFFECTIVE DATE: June 19, 1986.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Center for Veterinary Medicine (HFV-126), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5247.

SUPPLEMENTARY INFORMATION: Elanco Products Co., a Division of Eli Lilly & Co., 740 South Alabama St., Indianapolis, IN 46206, has filed a supplemental application to NADA 118-123 providing for use of an ear implant containing 24 or 45 milligrams of estradiol for increased rate of weight gain and improved feed efficiency in confined heifers. The supplemental

NADA is approved and the regulations are amended to reflect this approval. The basis for approval is discussed in the freedom of information summary.

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

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25) that was published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. By revising § 522.840 to read as follows:

§ 522.840 Estradiol.

(a) *Specifications.* Each silicone rubber implant contains 24 or 45 milligrams of estradiol.

(b) *Sponsor.* See 000986 in § 510.600(c) of this chapter.

(c) *Conditions of use.* It is used for implantation in steers and heifers as follows:

(1) *Amount.* Insert one 24-milligram implant every 200 days; insert one 45-milligram implant every 400 days.

(2) *Indications for use.* For increased rate of weight gain in suckling and pastured growing steers; for improved feed efficiency and increased rate of weight gain in confined steers and heifers.

(3) *Limitations.* For subcutaneous ear implantation in steers and heifers only. A second implant may be used if desired. No additional effectiveness may be expected from reimplanting in less than 200 days for the 24-milligram implant or 400 days for the 45-milligram implant. Increased sexual activity (bulling, riding, and excitability) has been reported in implanted animals.

Dated: June 12, 1986.

Richard A. Carnevale,

Acting Associate Director for Scientific Evaluation, Center for Veterinary Medicine.

[FR Doc. 86–13816 Filed 6–18–86; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1309

[Docket No. 82–18; Notice 8]

Incentive Grant Criteria for Alcohol Traffic Safety Programs

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends the rule for the Alcohol Traffic Safety Incentive Grant Program, which was established to encourage states to adopt effective programs to reduce crashes resulting from persons driving while under the influence of alcohol. This amendment implements Pub. L. 98–363 by expanding the scope of the supplemental grant criteria to include programs to reduce traffic safety problems resulting from persons driving under the influence of controlled substances and by establishing a special grant for states that adopt strict minimum sentencing standards for persons convicted of drunk driving.

EFFECTIVE DATE: This rule becomes effective June 19, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. George Reagle, Associate Administrator for Traffic Safety Programs, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202) 426–0837.

SUPPLEMENTARY INFORMATION: On July 17, 1984, the President signed Pub. L. 98–363, which amended the Incentive Grant Criteria for Alcohol Traffic Safety Programs (23 U.S.C. 408, hereinafter called the 408 program). The 408 program was enacted in 1982 as a two-tier grant program, providing Federal funds to states that implement certain projects designed to reduce the drunk driving problem. The July 1984 legislation expanded the scope of the 408 program to include not only drunk driving but also drugged driving and to establish a third tier (special grant) to encourage states to enact tough minimum sentencing standards.

On May 16, 1985, NHTSA issued a Notice of Proposed Rulemaking (50 FR 20438) proposing amendments to the existing regulation (23 CFR Part 1309) so that it would conform to the July 1984 legislation. The Agency has analyzed the comments received on the proposal and has decided to adopt the amendments as proposed in that notice. The amendments and the comments on those amendments are discussed below.

Drugged Driving

As noted above, the original 408 program was a two-tier grant program. The first tier is a basic grant for which a state is eligible if it meets four criteria specified by Congress in 23 U.S.C. 408(e)(1). The second tier is a supplemental grant for which a state is eligible if it qualifies for the basic grant and implements its choice of eight additional alcohol traffic safety program elements which are identified in the regulation (23 CFR 1309.6).

The July 1984 legislation amended the supplemental grant by adding one additional criterion from which a state can select in order to qualify for a supplemental grant. That criterion is the establishment of rehabilitation and treatment programs for persons arrested and convicted of driving under the influence of a controlled substance or for research programs to develop effective means of detecting the use of controlled substances by drivers.

All commenters addressing this revision supported it. One commenter suggested that in order to qualify for this criterion that both rehabilitation and treatment programs *and* research programs be required. The Agency believes that the regulation as it was proposed is more consistent with the statute, which clearly states that either rehabilitation/treatment programs *or* research programs would qualify under the new criterion. Therefore, the Agency is retaining the optional language. The same commenter also suggested that the controlled substance criterion be mandated in order to qualify for a supplement grant. First, the structure of

the supplemental grant program has always permitted a State to select the eight criteria it wished to meet from the list of eligible criteria. The commenter did not provide any compelling reason why this structure should be altered for this one criterion. Second, NHTSA notes that research regarding driving under the influence of controlled substances is in a more preliminary stage than the research which documents the hazards created by drunk drivers. Consequently, the Agency is not mandating this criterion in order to qualify for a supplemental grant.

One commenter suggested that the Agency define the scope or elements of an acceptable research program and research plan. That commenter stated that guidelines were necessary in order for the states to ascertain whether or not they could satisfy this criterion. Although the Agency appreciates the desire on the part of some for guidance as to what must be shown to demonstrate compliance, we do not want to adopt guidelines that are unduly restrictive and not suited to an individual state. For this reason, NHTSA is not adopting this comment; however, NHTSA would be pleased to answer individual State's questions regarding the adequacy of their programs.

One commenter suggested that the definition of "controlled substance" be expanded to include other intoxicants or combinations of intoxicants which render a person incapable of driving safely. The July 1984 legislation did not define "controlled substance" and, consequently, NHTSA announced in the proposed rule that the definition of controlled substance found at 21 U.S.C. 802 (the definitional section of the Controlled Substance Act, the Federal statute pertaining to drug abuse prevention and control) would be utilized in this regulation.

The definition was chosen because it represented the single definition commonly recognized by the Federal government in its drug-related statutes. While there may be valid interest in the effects of other drugs on drivers, we do not believe it is necessary to expand the definition. Congress' intent in expanding the scope of the 408 program to include drugged driving was to permit states that have or wish to establish programs that focus on the drugged driver to be able to utilize those programs in order to qualify for a 408 supplemental grant. Additionally, the incorporation of this criterion into the 408 program might serve as a catalyst for other states to implement drugged driving rehabilitation and treatment programs or research programs. Under the final rule, each state may define "controlled substance" as it wishes for purpose of its driving while impaired statutes, a state need not adopt the definition in 21 U.S.C. 802. Any state that establishes a treatment, rehabilitation or research program into controlled substances and their effect on drivers will certainly focus on some, if not most, of those substances identified in 21 U.S.C. 802. If the state wishes to conduct research into or treatment of individuals who have also used other impairing drugs, the definition in 21 U.S.C. 802 will not prevent if from doing so.

Minimum Sentencing

As noted above, the July 1984 legislation created a third tier to the 408 program. This third tier, referred to as a special grant, can be awarded to states that have adopted tough minimum sentencing standards specified by Congress for persons convicted of drunk driving. As proposed and as adopted in this rule, the grant will amount to five percent of the amount apportioned to the state for fiscal year 1984 under sections 402 and 408 of Title 23. If a state continues to satisfy the requirements for the special grant, it may receive the full five percent for up to three fiscal years. Additionally, unlike the supplemental grant, a state can receive a special grant without being eligible for a basic grant.

The minimum requirements that a state must meet in order to be eligible for a special grant are as follows: First offenders must have their drivers' licenses suspended for 90 days and either be imprisoned for 48 consecutive hours or perform 100 hours of community service; second offenders within a five-year period must have their licenses revoked for one year and be imprisoned for ten days; third offenders within a five-year period must have their licenses revoked for three years and be imprisoned for 120 days; and persons driving in violation of any license restrictions imposed as a result of convictions for driving while under the influence (including suspensions or revocations) must be imprisoned for 30 days and, upon release, receive an additional period of license suspension or revocation.

In addressing the special grant, one commenter stressed that the certainty of punishment and license action is more effective than imprisonment or long license suspensions. That commenter indicated greater costs would be incurred if first offenders were required to be imprisoned or perform community service. The commenter further stated that programs which have attempted "extreme penalties and sanctions have not experienced success and acceptance by [the] public. . . ."

The Agency agrees that certainty of punishment and license action is an effective tool in deterring drunk driving, and notes that the basic 408 program already provides for such sanctions. The requirements for the special grant are prescribed by statute. See 23 U.S.C. 408(e)(3). In enacting the July 1984 legislation, Congress evidently believed that the certainty of punishment and license action alone was not sufficient to permit a state to qualify for the third tier of the 408 program. Congress chose to require severe penalties as well, presumably for their additional deterrent effect.

One commenter indicated that the required 100 hours of community service to be completed within a three-month period for first offenders was unduly restrictive and did not take into account scheduling problems that a jurisdiction may encounter. NHISA believes that the three-month period is reasonable. To allow offenders to extend their community service over a lengthy period of time would serve only to decrease its effectiveness as a deterrent. Additionally, the community service requirement is not mandatory, but an option to imprisonment for 48 hours. States are, therefore, provided the opportunity to review their resources and utilize the option that is not only more effective in terms of deterrent, but also more workable in terms of administrative burdens.

Two commenters objected to the mandatory 120-day imprisonment required for third or subsequent offenders, stating that more would be accomplished if the individuals were placed in residential treatment and rehabilitation programs. Crowding in the jails was cited as additional support for a shorter period of imprisonment. The 120 days imprisonment provision is mandated by statute and is not subject to change by the Agency. NHTSA reminds commenters that "imprisonment" is not limited to confinement in jail but is also defined in the regulation (23 CFR 1309.3(c)) to include confinement in a minimum security facility or in-patient rehabilitation or treatment center. This definition should help to alleviate the concerns of those jurisdictions that are experiencing crowded jails or believe that residential treatment is more effective as a deterrent than incarceration of offenders.

One commenter suggested that the three-year license revocation for third or subsequent offenders would be just as effective if the offender were permitted

to receive a restrictive license for the second and third years. By regulation, the Agency has defined "suspension" for purposes of the 408 program to permit first offenders in limited instances to receive restricted licenses for the final 60 days of the 90-day suspension period. See 23 CFR 1309.3(d). However, the agency is not adopting the suggestion to permit a two-year restrictive license for third and subsequent offenders following one year of "hard" suspension. To permit the use of such a license would substantially undermine the statutory scheme of progressively harsher penalties for multiple offenders. Given the number of prior warnings that a third or subsequent offender will have received, the agency does not believe it appropriate to permit any driving privileges during the period of revocation.

Miscellaneous Provisions

One suggestion was received that the definition of "alcohol concentration" found in §§ 1309.5(c)(1) and 1309.6(b)(13) of the regulation be revised in accordance with that found in the Uniform Vehicle Code which defines it in terms of grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. That definition is reflected in § 1309.3(b) of the regulation, which defines "driving while intoxicated."

It was recommended that supplemental criterion 17, § 1309.6(b)(17), which addresses victim assistance and victim restitution programs, be required as a prerequisite to receiving a special grant. As noted above, the 1984 legislation provides that special grants be awarded to states that enact tough minimum sentencing requirements, and the statute specifies the provisions that must be met. Victim assistance and restitution programs were not listed among those statutory provisions, and the Agency is not authorized to include additional requirements for those grants. The victim assistance criterion is, however, being retained as one of the supplemental criteria which a state may use to meet the requirements of the supplemental grant.

Some of the other comments included proposed amendments to the basic and supplemental grant provisions. One commenter proposed to redefine "prompt" for the purpose of license suspension action so that it is less restrictive and will enable additional states to qualify for grants. This suggestion is outside the scope of this rulemaking and is not being adopted. Other commenters recommended changes to the basic grant provisions to permit restrictive licenses for the entire suspension period for first offenders and to permit restrictive licenses for second offenders after a delayed eligibility period. Again, those comments are outside the scope of this rulemaking, which did not propose any revision to the criteria set forth in the basic grant. Furthermore, it is the opinion of the Agency that the denial of driving privileges is one of the most effective deterrents to drunk driving. Consequently, the minimum periods of license suspension will be retained.

Another commenter suggested that NHTSA define "imprisonment" to exclude in-patient rehabilitation or treatment centers. That comment, too, is outside the scope of this rulemaking. Moreover, as noted earlier, in-patient rehabilitation and treatment centers serve a twofold purpose: they alleviate crowding in jails and they satisfy the concerns of those who believe that rehabilitation is more effective than incarceration.

Another suggestion was to provide for the prompt suspension of a driver's license of any individual who a law enforcement officer has probable cause to believe has committed an "intoxicated-related" offense, as opposed to the current requirement that it be an alcohol-related offense. Although NHTSA considers driving while under the influence of drugs to be a serious matter, the statute does not permit expanding the criteria for basic grants to include offenses other than alcohol-related driving offenses. See 23 U.S.C. 408(e)(1). Thus, no change will be made to the existing basic grant criteria to include license suspensions based on driving while under the influence of drugs.

One commenter sought clarification of the requirement for second and third year supplemental grants that increased performance be demonstrated for each requirement adopted in the prior year. That commenter expressed concern over the phrase "increased performance" and asked that the phrase be interpreted to mean improvement in the majority of supplementary requirements. NHTSA recognizes that increases in some program components could result in decreases in other specific components, but still result in overall improvement in curbing the drunk driving problem. For example, a more comprehensive evaluation system could pinpoint the most effective sites for sobriety checkpoints, resulting in fewer sobriety checkpoints but overall increased effectiveness. Therefore, in evaluating the increased performance requirements for second and third year supplemental grants NHTSA will consider the overall program and how each of the supplemental criteria adopted supports the goal of reducing drunk driving.

One final comment addressed the Agency's use of the phrase "driving while intoxicated" in the rule, in lieu of the phrase "driving under the influence" used in the statute (23 U.S.C. 408(e)(3)). That commenter expressed concern that this may technically disqualify some states from receiving a grant. "Driving while intoxicated" is defined in § 1309.3(b) of the regulation in terms of an alcohol concentration of 0.10 or more grams of alcohol per 100 milliliters of blood or 0.10 or more grams of alcohol per 210 liters of breath. As noted in the preamble to the proposed rule, the Agency believes that Congress intended that the minimum sentencing provisions required for the special grant shall apply to any person found to have a blood alcohol concentration (BAC) level of 0.10 percent or greater. An interpretation which permitted a state to qualify for a special grant based on the "driving under the influence" phrase (which may include a state-established BAC level higher than 0.10 percent) could result in the anomaly of creating a special grant for minimum sentencing that contains weaker provisions than those required for the basic grant. The Agency does not believe that any state will be disqualified because of the use of this phrase. Any state that has a "driving under the influence" statute established at a BAC level of 0.10 percent or lower would meet the requirements of the regulation despite the use of a different phrase. For example, "driving while under the influence" statute of 0.08 would fall within the definition of "driving while intoxicated" and would permit the state to qualify for the special grant (assuming the other requirements were met).

Paperwork Reduction

Information required to be provided by the states to determine state eligibility for a grant is considered to be an information collection requirement, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. The information collection requirements have been approved by OMB, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements have been approved through June 30, 1987 (OMB approval number 2127-0501).

Economic and Other Effects

NHTSA has analyzed the effect of this action and has determined that it is not

"major" within the meaning of Executive Order 12291. Neither is it "significant" within the meaning of Department of Transportation regulatory policies and procedures. The agency is not imposing any mandatory requirements on the states because participation in the grant program is voluntary.

Because there will be virtually no economic effect from this rule, a full regulatory evaluation is not necessary. As discussed above, state participation in the 408 grant program is voluntary. Although states choosing to participate may have to expend funds to fulfill the requirements of the grants, these changes to state laws or procedures may be for purposes broader than their participation in the 408 program.

In accordance with the Regulatory Flexibility Act, the Agency has evaluated the effects of this rule on small entities. Based on the evaluation, I certify that this rule will not have a significant economic impact on a substantial number of small entities. States will be recipients of any funds awarded under the regulation and, accordingly, no regulatory flexibility analysis is necessary.

The Agency has also analyzed this action for the purpose of the National Environmental Policy Act. The Agency has determined that this action will not have any effect on the human environment.

List of Subjects in 23 CFR Part 1309

Alcohol Drugs, Grant programs, Transportation, Highway safety.

In accordance with the foregoing, Part 1309 of Title 23 of the Code of Federal Regulations is revised as follows:

PART 1309—INCENTIVE GRANT CRITERIA FOR ALCOHOL TRAFFIC SAFETY PROGRAMS

Sec.

1309.1 Scope.
1309.2 Purpose.
1309.3 Definitions.
1309.4 General requirements.
1309.5 Requirements for a basic grant.
1309.6 Requirements for supplemental grant.
1309.7 Requirements for a special grant.
1309.8 Award of procedures.
1309.9 OMB approval.

Authority: 23 U.S.C. 408 delegation of authority at 49 CFR 1.50.

§ 1309.1 Scope.

This part establishes criteria, in accordance with 23 U.S.C. 408, for awarding incentive grants to States that implement effective programs to reduce drunk driving and driving under the influence of a controlled substance.

§ 1309.2 Purpose.

The purpose of this part is to encourage States to adopt and implement alcohol traffic safety programs by legislation or regulations which will significantly reduce crashes resulting from persons driving while under the influence of alcohol or controlled substances. The criteria established are intended to ensure that the State alcohol traffic safety programs for which incentive grants are awarded meet or exceed minimum levels designed to reduce drunk driving, or driving under the influence of a controlled substance.

§ 1309.3 Definitions.

(a) "Controlled substance" has the meaning given such term in section 102(6) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802(6));

(b) "Driving while intoxicated" means operating or being in actual physical control of a vehicle while the alcohol concentration in the blood or breath is 0.10 or more grams of alcohol per 100 milliliters of blood or 0.10 or more grams of alcohol per 210 liters of breath, as determined by chemical or other tests,

(c) "Imprisonment" means confinement in a jail, minimum security facility or in-patient rehabilitation or treatment center.

(d) "Prompt" means that the overall average time from arrest to suspension of a driver's license either cannot exceed an average of 45 days or cannot exceed an average of 90 days and a State must submit a plan showing how it intends to achieve a 45 day average.

(e) "Repeat offender" means any person convicted of an alcohol-related traffic offense more than once in five years.

(f) "Suspension" or "revocation" means:

(1) For first offenses, the temporary debarring of all driving privileges for a minimum of 30 days and then the use for a minimum of 60 days of a restricted, provisional or conditional license permitting a person to drive only for the purposes of going from a residence to or from a place of employment or to and from a mandated alcohol education or treatment program. A restricted, provisional or conditional license can only be issued in accordance with Statewide published guidelines and in exceptional circumstances specific to the offender.

(2) For refusal to take a chemical test for first offenses, the temporary debarring of all driving privileges for 90 days.

(3) For second and subsequent offenses, including the refusal to take a chemical test, the temporary debarring of all driving privileges for one year or longer, subject to the requirements of § 1309.5, or § 1309.7 as appropriate.

§ 1309.4 General requirements.

(a) *Certification requirements.* To qualify for a grant under 23 U.S.C. 408, a State must, for each year it seeks to qualify:

(1) Meet the requirements of § 1309.7 and/or § 1309.5 and, if applicable, the requirements of § 1309.6.

(2) Submit a certification to the Director, Office of Alcohol Countermeasures, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 that:

(i) It has an alcohol traffic safety program that meets those requirements. If the certification is based upon prior adoption of a criterion, a State must provide information showing that it has been actively implementing that criterion during the four years prior to application for a grant,

(ii) It will use the funds awarded under 23 U.S.C. 408 only for the implementation and enforcement of alcohol traffic safety programs, and

(iii) It will maintain its aggregate expenditures from all other sources for its existing alcohol traffic safety programs at or above the average level of such expenditures in fiscal years 1981 and 1982 (either State of Federal fiscal year 1981 and 1982 can be used): and

(3) After being informed by NHTSA that it is eligible for a grant, submit, within 120 days, to the agency an alcohol safety plan for one, two or three years, as applicable, that describes the programs the State is and will be implementing in order to be eligible for the grant and that provides the necessary information, identified in § 1309.5 and § 1309.6 to demonstrate that the programs comply with the applicable criteria. The plan must also describe how the specific supplemental criteria adopted by a State are related to the State's overall alcohol traffic safety program.

(b) *Limitations on grants.* A State may receive a grant for up to three fiscal years subject to the following limitations:

(1) The amount received as a basic grant shall not exceed 30 percent of a State's 23 U.S.C. 402 apportionment for fiscal year 1983.

(2) The amount received as a supplemental grant shall not exceed 20 percent of a State's 23 U.S.C. 402 apportionment for fiscal year 1983.

(3) The amount received as a special grant shall not exceed 5 percent of a State's 23 U.S.C. 402 and 408 apportionment for fiscal year 1984.

(4) In the first fiscal year the State receives a basic or supplemental grant, it shall be reimbursed for up to 75 percent of the cost of its alcohol traffic safety program adopted pursuant to 23 U.S.C. 408;

(5) In the second fiscal year the State receives a basic or supplemental grant, it shall be reimbursed for up to 50 percent of the cost of its alcohol traffic safety program adopted pursuant to 23 U.S.C. 408; and

(6) In the third fiscal year the State receives a basic or supplemental grant, it shall be reimbursed for up to 25 percent of the cost of its alcohol traffic safety program adopted pursuant to 23 U.S.C. 408.

§ 1309.5 Requirements for a basic grant.

To qualify for a basic incentive grant of 30 percent of its 23 U.S.C. 402 apportionment for fiscal year 1983, a State must have in place and implement or adopt and implement the following requirements:

(a) (1) The prompt suspension, for a period not less than 90 days in the case of a first offender and not less than one year in the case of a repeat offender, of the driver's license of any individual who a law enforcement officer has probable cause under State law to believe has committed an alcohol-related traffic offense, and

(i) To whom is administered one or more chemical tests to determine whether the individual was intoxicated while operating the motor vehicle and who is determined, as a result of such tests, to be intoxicated, or

(ii) Who refuses to submit to such a test as proposed by the office.

(2) To demonstrate compliance, a State shall submit a copy of the law or regulation implementing the mandatory license suspension, information on the number of licenses suspended, the length of the suspension for first-time and repeat offenders and for refusals to take chemical tests and the average number of days it took to suspend the licenses from date of arrest. A State can provide the necessary data based on a statistically valid sample.

(b)(1) A mandatory sentence, which shall not be subject to suspension or probation, or imprisonment for not less than 48 consecutive hours, or not less than 10 days of community service for any person convicted of driving while intoxicated more than once in any five year period.

(2) To demonstrate compliance a State shall submit a copy of its law adopting this requirement and data on the number of people convicted of DWI more than once in any five years, what general types of confinement are being used, and the sentences for those persons. A State can provide the necessary data based on a statistically valid sample.

(c)(1) Provide that any person with a blood alcohol concentration of 0.10 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated.

(2) To demonstrate compliance, a State shall submit a copy of its law adopting this requirement.

(d)(1) Increased efforts or resources dedicated to the enforcement of alcohol-related traffic laws and increased efforts to inform the public of such enforcement.

(2) To demonstrate compliance, a State shall submit data showing that it has increased its enforcement and public information efforts.

§ 1309.6 Requirements for a supplemental grant.

(a) To qualify for a supplemental grant of 20 percent of its 23 U.S.C. 402 apportionment for fiscal year 1983, a State must have in place and implement or adopt and implement a license suspension system in which the average time from date of arrest to suspension of a license does not exceed an average of 45 days, and

(b) Have in place and implement or adopt and implement eight of the following twenty-two requirements.

(1) Enactment of a law that raises, either immediately or over a period of three years, the minimum age for drinking any alcholic beverage to 21. To demonstrate compliance, a State shall submit a copy of its law adopting this requirement.

(2) Coordination of State alcohol highway safety programs. To demonstrate compliance, a State shall submit information explaining how the work of the different State agencies involved in alcohol traffic safety programs is coordinated.

(3) Rehabilitation and treatment programs for persons arrested and convicted of alcohol-related traffic offenses. To demonstrate compliance, a State shall submit a copy of its law or regulation adopting this requirement, and a copy of the minimum standards set for rehabilitation and treatment programs by the State.

(4) Establishment of State Task Forces of governmental and non-governmental leaders to increase awareness of the problems, to apply more effectively drunk driving laws and to involve governmental and private sector leaders in programs attacking the drunk driving problem. To demonstrate compliance a State shall submit a copy of the executive order, regulation, or law setting up the task force and a description of how the interests of local communities are represented on the task force.

(5) A Statewide driver record system readily accessible to the courts and the public which can identify drivers repeatedly convicted of drunk driving. Conviction information must be recorded in the system within 30 days of a conviction, license sanction or the completion of the appeals process. Information in the record system must be retained for at least five years. The public shall have access to those portions of a driver's record that are not protected by Federal or State confidentiality or privacy regulations. To demonstrate compliance, a State shall submit a description of its record system discussing its accessibility to prosecutors, the courts and the public and providing data showing that the time required to enter alcohol-related convictions into the system is not greater than 30 days. A State shall also submit information showing that the data is retained in the system for at least 5 years.

(6) Establishment in each major political subdivision of a locally coordinated alcohol traffic safety program, which involves enforcement, adjudication, licensing, public information, education, prevention, rehabilitation and treatment and management and program evaluation. In small States, local coordination may be demonstrated by showing that the interests of the local communities are recognized and coordinated by the State program. To demonstrate compliance, a State shall submit a description of the number of programs, type of programs and percentage of the State population covered by such local programs.

(7) Prevention and long-term educational programs on drunk driving. To demonstrate compliance, a State shall submit a description of its prevention and education program, discussing how it is related to changing societal attitudes and norms against drunk driving with particular attention to the implementation of a comprehensive youth alcohol traffic safety program, and the involvement of private sector groups and parents.

(8) Authorization for courts to conduct pre-or post-sentence screenings of convicted drunk drivers. To demonstrate compliance, a State shall submit a copy of its law adopting this requirement and a brief description of is screening process.

(9) Development and implementation of State-wide evaluation system to assure program quality and

effectiveness. To demonstrate compliance, a State shall provide a copy of the executive order, regulation or law setting up the evaluation program and a copy of the evaluation plan.

(10) Establishment of a plan for achieving self-sufficiency for the State's total alcohol traffic safety program. To demonstrate compliance, a State shall provide a copy of the plan. Specific progress toward achieving financial self-sufficiency must be shown in subsequent years.

(11) Use of roadside sobriety checks as part of a comprehensive alcohol safety enforcement program. To demonstrate compliance, a State shall submit information showing that it is systematically using roadside sobriety checks. In addition, a State shall provide a copy of its regulation or policy authorizing the use of roadside checks.

(12) Establishment of programs to encourage citizen reporting of alcohol-related traffic offenses to the police. To demonstrate compliance, a State shall submit a copy of its citizen reporting guidelines or policy and data on the degree of citizen participation, e.g., number of citizen reports and the number of related arrests. A State can provide the necessary data based on a statistically valid sample.

(13) Establishment of a 0.08 percent blood alcohol concentration as presumptive evidence of driving while under the influence of alcohol. To demonstrate compliance, a State shall submit a copy of its law adopting this requirement.

(14) Adoption of a one-license/one-record policy. In addition, the State shall fully participate in the National Driver Register and the Driver License Compact. To demonstrate compliance, a State shall submit a copy of the order, regulation or law showing the State is a member of the Driver License Compact and has adopted a one-license/one-record policy, and is participating in the National Driver Register.

(15) Authorization for the use of a preliminary breath test where there is probable cause to suspect a driver is impaired. To demonstrate compliance, a State shall submit a copy of its law adopting this requirement.

(16) Limitations on plea-bargaining in alcohol-related offenses. To demonstrate compliance, a State shall submit a copy of its law or court guidelines requiring that no alcohol-related charge be reduced to a non-alcohol-related charge or probation without judgment be entered without a written declaration of why the action is in the interest of justice. If a charge is reduced, the defendant's driving record must reflect that the reduced charge is alcohol-related.

(17) Provide victim assistance and victim restitution programs and require the use of a victim impact statement prior to sentencing in all cases where death or serious injury results from an alcohol-related traffic offense. To demonstrate compliance, a State shall submit a description of its victim assistance and restitution programs, and its use of victim impact statements.

(18) Mandatory impoundment or confiscation of license plate/tags of any vehicle operated by an individual whose license has been suspended or revoked for an alcohol-related offense. Any such impoundment or confiscation shall be subject to the lien or ownership right of third parties without actual knowledge of the suspension or revocation. To demonstrate compliance a State shall submit a copy of its law adopting this requirement.

(19) Enactment of legislation or regulations authorizing the arresting officer to determine the type of chemical test to be used to measure intoxication and to authorize the arresting officer to require more than one chemical test. To demonstrate compliance, a State shall submit a copy of its law adopting this requirement.

(20) Establishment of liability against any person who serves alcoholic beverages to an individual who is visibly intoxicated. To demonstrate compliance, a State shall submit a copy of the law or court decision of a State's highest court establishing that liability.

(21) Use of innovative programs. To demonstrate compliance a State shall submit a description of its program and an explanation showing that the program will be as effective as any of the programs adopted to comply with the other supplemental criteria.

(22) Rehabilitation and treatment programs for those arrested and convicted of driving under the influence of a controlled substance or research programs to develop effective means of detecting use of controlled substances by drivers. To demonstrate compliance with the rehabilitation and treatment portion of this criterion, a State shall submit a copy of its law or regulation adopting the requirement and a copy of the minimum standards set for these programs by the State. To demonstrate compliance with the research portion of this criterion, a State shall submit a description of its drugged driving research program and the research plan.

(c) To qualify for a supplemental grant of 10 percent of its 23 U.S.C. 402 apportionment for fiscal year 1983, a State must (1) Have in place and implement or adopt and implement a license suspension system in which the average time from date of arrest to suspension of a license does not exceed 45 days; and (2) have in place and implement or adopt and implement four of the twenty-two requirements specified in paragraph (b) of this section.

(d) To qualify for a supplemental grant for a second and a third year, a State must:

(1) Show that it has increased its performance of each of the requirements it adopted in the prior year, and

(2) Adopt two more requirements from section (b) for each subsequent year, except that a State does not have to implement more than a total of fifteen criteria.

§ 1309.7 Requirements for a special grant

To qualify for a special grant of five percent of its 23 U.S.C. 402 and 408 apportionment for fiscal year 1984, a State must have in place and implement or adopt and implement a statute which provides that:

(a) Any person convicted of a first violation of driving while intoxicated shall receive:

(1) A mandatory license suspension for a period of not less than ninety days; and

(2)(i) An assignment of one hundred hours of community service to be completed within three months; or

(ii) A mandatory minimum sentence of imprisonment for forty-eight consecutive hours;

(b) Any person convicted of a second violation of driving while intoxicated within five years after a conviction for the same offense shall receive:

(1) A mandatory minimum sentence of imprisonment for ten days to be served in no less than 48 consecutive hour segments within a ninety day period from conviction; and

(2) A mandatory license revocation for not less than one year;

(c) Any person convicted of a third or subsequent violation of driving while intoxicated within five years after a prior conviction for the same offense shall receive:

(1) A mandatory minimum sentence of imprisonment for one hundred and twenty consecutive days; and

(2) A mandatory license revocation of not less than three years; and

(d) Any person convicted of driving with a suspended or revoked license or in violation of a restriction due to a driving while intoxicated conviction shall receive:

(1) A mandatory sentence of imprisonment for thirty consecutive days; and

(2) Upon release from imprisonment, and an additional period of license suspension or revocation for not less than the period of suspension or revocation remaining in effect at the time of commission of the offense of driving with a suspended or revoked license.

§ 1309.8 Award procedures.

For each Federal fiscal year, grants under 23 U.S.C. 408 shall be made to eligible States upon submission of the alcohol safety plan and certification required by § 1309.4 Such grants shall be made until all eligible States have received a grant or until there are insufficient funds to award a grant to a State. Time of submission shall be determined by the postmark for certifications delivered through the mail and by stamped receipt for certifications delivered in person.

§ 1309.9 OMB approval.

The information collection requirements have been approved by the Office of Management and Budget pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). These requirements have been approved under control number 2127–0501.

Issued on June 16, 1986.

Diane K. Steed,

Administrator.

[FR Doc. 86–13824 Filed 6–16–86; 11:37 am]

BILLING CODE 4910–59–M

DEPARTMENT OF JUSTICE

28 CFR Part 60

[Order No. 1137–86]

Authorization of Federal Law Enforcement Officers To Request the Issuance of a Search Warrant

AGENCY: U.S. Department of Justice.

ACTION: Final rule.

SUMMARY: Rule 41 (h) of the Federal Rules of Criminal Procedure authorizes the Attorney General to designate categories of federal law enforcement officers who may request issuance of search warrants. Previous authorizations were made by Order No. 510–73 (38 FR 7244, March 19, 1973), as amended by Order No. 521–73 (38 FR 18389, July 10, 1973), Order No. 826–79 (44 FR 21785, April 12, 1979), Order No. 844–79 (44 FR 46459, August 8, 1979), Order No. 960–81 (46 FR 52360, October 27, 1981), and Order No. 1026–83 (48 FR 37377, August 18, 1983). This Order amends 28 CFR Part 60 by adding the Office of Export Enforcement of the Department of Commerce to the government organizations listed in § 60.3(a) which have law enforcement officers who are authorized to request the issuance of search warrants under Rule 41, Federal Rules of Criminal Procedure.

EFFECTIVE DATE: June 4, 1986.

FOR FURTHER INFORMATION CONTACT: Roger B. Cubbage, Deputy Chief for Legal Advice, and Stanley A. Rothstein, Attorney, General Litigation and Legal Advice Section, Criminal Division, Department of Justice, Washington, DC 20530 (202–724–7144).

SUPPLEMENTARY INFORMATION: This Order adds a new § 60.3(a)(9) to 28 CFR Part 60 to include the Office of Export Enforcement of the Department of Commerce. Because the material contained herein is a matter of Department of Justice practice and procedure, the provision of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date is inapplicable.

The Department of Justice has determined that this Order is not a major rule for purposes of either Executive Order 12291, or the Regulatory Flexibility Act, 5 U.S.C. 601, et seq.

List of Subjects in 28 CFR Part 60

Search warrants.

PART 60—[AMENDED]

By virtue of the authority vested in me by Rule 41(h) of the Federal Rules of Criminal Procedure, Part 69 of Chapter I of Title 28, Code of Federal Regulations, is hereby amended as follows:

1. The authority citation for Part 60 continues to read as follows:

Authority: Rule 41(h), Fed. R. Crim. P.

§ 60.3 [Amended]

2. A new paragraph (a)(9) is added to § 60.3 as follows:

(a) * * *

(9) Department of Commerce: Office of Export Enforcement

* * * * *

Dated: June 4, 1986.

Edwin Meese III,

Attorney General.

[FR Doc. 86–13588 Filed 6–18–86; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 955

General Requirements for Surface Coal Mining and Reclamation Operations on Indian Lands; Permanent Regulatory Program—Use of Explosives: General Requirements; Programs for the Conduct of Surface Mining Operations Within Each State; Certification of Blasters in Federal Program States and on Indian Lands

Correction

In FR Doc. 86–11835, beginning on page 19444 in the issue of Thursday, May 29, 1986, make the following correction:

§ 955.17 [Corrected]

On page 19465, second column in § 955.17(d), in the fifth line, the words "was suspended" should be removed.

BILLING CODE 1505–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 737

Navy Procurement Directives, 1974 Edition; Removal of CFR Part

AGENCY: Department of the Navy, DOD.

ACTION: Removal of part from CFR.

SUMMARY: This document removes Part 737 from Title 32 of the Code of Federal Regulations. This action is being taken because the underlying regulation, NAVMAT P–4202, Navy Procurement Directives, 1974 Edition, has been cancelled.

EFFECTIVE DATE: June 19, 1986.

FOR FURTHER INFORMATION CONTACT: Richard Moye, (202) 692–3558.

PART 737—[REMOVED]

Accordingly, Part 737 is removed from Title 32, CFR.

Dated: June 16, 1986.

Harold L. Stoller, Jr.,

CDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 86–13868 Filed 6–18–86; 8:45 am]

BILLING CODE 3810–AE–M

32 CFR Part 762

Midway Islands Code; Billet Title Change

AGENCY: Department of the Navy, Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending the Midway Islands Code, codified in 32 CFR Part 762, to reflect a change of the billet title of the head of Naval Air Facility, Midway Islands. The billet of "Commanding Officer, Naval Air Facility, Midway Islands," has been replaced with the billet of "Officer-in-Charge, Naval Air Facility, Midway Islands."

EFFECTIVE DATE: June 19, 1986.

FOR FURTHER INFORMATION CONTACT: Staff Judge Advocate, Commander Naval Base, Pearl Harbor, HI 96860-5020, (808) 471-0284.

SUPPLEMENTARY INFORMATION: This amendment is made solely to conform the language of the Midway Islands Code to a change in the billet title of the head of Naval Air Facility, Midway Islands. It does not originate any requirement of general applicability and future effect for implementing, interpreting, or prescribing law or policy, or practice and procedure requirements constituting authority for prospective actions having substantial and direct impact on the public, or a significant portion of the public. Publishing this amendment for public comment is unnecessary since it would serve no purpose, and significant and legitimate interests of the Department of the Navy and the public (cost savings) will be served by omitting such publication for public comment.

List of Subjects in 32 CFR Part 762

Claims, Courts, Law enforcement, Midway Islands, Military law, Penalties.

PART 762—[AMENDED]

For the reasons set out in the preamble, 32 CFR Part 762 is amended as follows:

1. The authority citation for 32 CFR Part 762 is revised to read as follows:

Authority: Sec. 48, Pub. L. 86-624, 74 Stat. 424; 3 U.S.C. 301; E.O. 11048, 3 CFR 1959-1963 Comp., p. 632 (1962).

§§ 762.4, 762.6, 762.8, 762.10, 762.34, 762.50, 762.58, 762.80, 762.84, 762.86, 762.90, 762.92, 762.94, 762.96 [Amended]

2. 32 CFR Part 762 is amended by removing the words "Commanding Officer" and inserting, in their place, the words "Officer-in-Charge" in the following places:

a. 32 CFR 762.4(b).
b. 32 CFR 762.6, lines 3-4.
c. 32 CFR 762.6, lines 8-9.
d. 32 CFR 762.6, lines 15-16.
e. 32 CFR 762.6 line 19.
f. 32 CFR 762.6 lines 21-22.
g. 32 CFR 762.8.
h. 32 CFR 762.10.
i. 32 CFR 762.34(a).
j. 32 CFR 762.50(a).
k. 32 CFR 762.58(b).
l. 32 CFR 762.80(a)(2).
m. 32 CFR 762.84, line 6.
n. 32 CFR 762.84, lines 8-9.
o. 32 CFR 762.86, line 1.
p. 32 CFR 762.86, line 11.
q. 32 CFR 762.90(a).
r. 32 CFR 762.92.
s. 32 CFR 762.92(g).
t. 32 CFR 762.92(h).
u. 32 CFR 762.94(a)(4).
v. 32 CFR 762.94(b).
w. 32 CFR 762.96(a).
x. 32 CFR 762.96(b).

Dated: June 16, 1986.

Harold L. Stoller, Jr.,

Commander, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 86-13871 Filed 6-18-86; 8:45 am]

BILLING CODE 3810-AE-M

32 CFR Part 765

Rules Applicable to the Public; Rewards and Expenses for Return of Absentees and Deserters

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: This document increases the amounts of rewards and expenses offered for the return of absentees and deserters and changes the form used to make claims for such rewards and expenses. This is necessary to compensate for the effects of inflation. The intended effect is to encourage people to cooperate in the return of absentees and deserters to military control.

EFFECTIVE DATE: June 19, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Frank N. Sadar, (202) 695-2708, 695-2883.

List of Subjects in 32 CFR Part 765

Federal buildings and facilities, Military law, National defense, Seals and insignia, Security measures.

PART 765—[AMENDED]

Accordingly, 32 CFR Part 765 is amended as follows:

1. The authority citation for Part 765 is revised to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 133, 5031, 6011, unless otherwise noted.

§ 765.12 - [Amended]

2. In § 765.12 all references to "Standard Form 1034" are changed to read "NAVCOMPT Form 2277".

3. In § 765.12(a)(1), the fifth sentence is revised to read as follows: "If two or more persons or agencies join in performing these services, payment may be made jointly or severally but the total payment or payments will not exceed $50 or $75 as applicable."

4. In § 765.12(a)(1)(i), change "$15" to "$50".

5. In § 765.12(a)(1)(ii) and § 765.12(b)(1), all references to "$25" are changed to read "$75".

6. In § 765.12(b)(1)(i), the reference to "$0.07" is changed to read "20.5 cents".

Dated: June 16, 1986.

Harold L. Stoller, Jr.,

CDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 86-13869 Filed 6-18-86; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CCGD13 86-03]

Seattle Seafair Unlimited Hydroplane Race; Establishment of Permanent Area of Controlled Navigation

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This regulation establishes a permanent area of controlled navigation upon the waters of Lake Washington, Seattle, Washington, from 31 July through 3 August 1986. This is necessary due to the unlimited hydroplane races scheduled for this time period each year as part of Seattle Seafair. The Coast Guard, through this action, intends to promote the safety of spectators and participants in this event.

EFFECTIVE DATES: July 21, 1986.

FOR FURTHER INFORMATION CONTACT: Capt. D.H. Hagen, Chief, Search and Rescue Branch, Thirteenth Coast Guard District, (206) 442-5880.

SUPPLEMENTARY INFORMATION: On April 4, 1986, the Coast Guard published a Notice of Proposed Rulemaking in the **Federal Register** for these regulations (51 FR 11590). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of these regulations are Capt. D.H. Hagen, USCGR, Project Officer, Thirteenth Coast Guard District Search and Rescue Branch and LCDR J.M. Hammond, USCG, Project Attorney,

Thirteenth Coast Guard District Legal Office.

Discussion of Comments

No comments were received. Minor editorial changes were made in the final rule by the drafters to improve the overall clarity of the rule.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Rule 12291 on Federal Regulation and nonsignificant under Department of Transportation Regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that full regulatory evaluation is unnecessary. The regulation affects only spectators and participants to the race, and a small number of recreational boaters, and applies to a small area of Lake Washington. In addition the actual race will be in effect for only four (4) days, two (2) of those days being Saturday and Sunday, with a log boom being set up three (3) days prior to the actual race. There is no commercial traffic in this area of the lake. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended to read as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46; and 33 CFR 100.35.

2. Part 100 of Title 33, Code of Federal Regulations, is amended by adding § 100.1301 to read as follows:

§ 100.1301 Seattle seafair unlimited hydroplane race.

(a) This regulation will be in effect on July 31 through August 2, 1986 from 8:00 A.M. until 5:00 P.M. Pacific Daylight Time, and on August 3, 1986 from 8:00 A.M. until one hour after the conclusion of the last race. This regulation will be in effect thereafter annually during the last week of July and the first week of August, as published in the Local Notice of Mariners.

(b) The area where the Coast Guard will restrict general navigation by this regulation during the hours it is in effect is:

(1) The waters of Lake Washington bounded by Mercer Island (Lacey V. Murrow) Bridge, the western shore of Lake Washington, and the east/west line drawn tangent to Bailey Peninsula and along the shoreline of Mercer Island.

(c) The area described in paragraph (b) has been divided into two zones. The zones are separated by a log boom and a line from the southeast corner of the boom to the northeast tip of Bailey Peninsula. The western zone is designated Zone I, the eastern zone, Zone II. (Refer to NOAA Chart 18447).

(d) The Coast Guard will maintain a patrol consisting of active and Auxiliary Coast Guard vessels in Zone II. The Coast Guard patrol of this area is under the direction of the Coast Guard Patrol Commander (the "Patrol Commander"). The Patrol Commander is empowered to control the movement of vessels on the race course and in the adjoining waters during the periods this regulation is in effect.

(e) Only authorized vessels may be allowed to enter Zone I during the hours this regulation is in effect. Vessels in the vicinity of Zone I shall maneuver and anchor as directed by Coast Guard Officers or Petty Officers.

(f) During the times in which the regulation is in effect, swimming, wading, or otherwise entering the water in Zone I by any person is prohibited.

(g) Vessels proceeding in either Zone I or Zone II during the hours this regulation is in effect shall do so only at speeds which will create minimum wake, seven (07) miles per hour or less. This maximum speed may be reduced at the discretion of the Patrol Commander.

(h) Upon completion of the daily racing activities, all vessels leaving either Zone I or Zone II shall proceed at speeds of seven (07) miles per hour or less. The maximum speed may be reduced at the discretion of the Patrol Commander.

(i) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the Patrol Commander shall serve as signal to stop. Vessels signaled shall stop and shall comply with the orders of the patrol vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

Dated: June 12, 1986.

T.J. Wojnar,

Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 86-13874 Filed 6-18-86; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6617

[I-4410]

Withdrawal for Musselshell Camas Historical Site; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 242.5 acres of national forest land for 20 years in order to protect the only known land the Nez Perce Indians still use to dig camas. This action will close the land to mining, but not to surface entry or mineral leasing.

EFFECTIVE DATE: June 19, 1986.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208–334–1735.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described national forest lands, which are under the jurisdiction of the Secretary of Agriculture, are hereby withdrawn from appropriation under the general mining laws, 30 U.S.C. Ch. 2, but not from leasing under the mineral leasing laws:

Boise Meridian

T. 35 N., R. 6 E.,
Sec. 19, S½SE¼, E½SE¼SW¼, E½SW¼ SE¼SW¼;
Sec. 20, SW¼SW¼;
Sec. 29, NW¼NW¼;
Sec. 30, NE¼NE¼, N½N½NW¼NE¼, N½NE¼NE¼NW¼, NE¼NW¼ NE¼NW¼.

The area described contains 242.5 acres in Clearwater County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date, pursuant to section 204(f), of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: June 5, 1986.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 86–13906 Filed 6–18–86; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84–718; RM–4602; 3866]

Radio Broadcasting Services; Rutland and West Rutland, VT, and Plattsburgh, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document imposes a 4.6 kilometer west site restriction on the use of Channel 233A at Rutland, Vt., to correct an oversight in the *Report and Order,* published on October 9, 1985, 50 FR 41155, at the request of Killington Community Broadcasting Corporation. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 84–718, adopted May 15, 1986, and released June 4, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Ralph Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

Summary: This document imposes a 4.6 kilometer west site restriction on the use of Channel 233A at Rutland, Vermont to correct an oversight in the *Report and Order* published on October 9, 1985, 50 FR 41155, at the request of Killington Community Broadcasting Corporation. Paragraph 6 is amended to read:

We believe that Rutland could benefit from the provision of an additional FM service. Likewise, we believe that West Rutland deserves its first local FM service. Therefore, in an effort to provide new service to both communities, the Commission staff has performed a channel search and found that there are alternate channels available to both communities. Additionally, neither channel requires any change in the status of Station WGFB at Plattsburgh, New York. Channel 233A can be allocated to Rutland with a site restriction of 4.6 kilometers west to allow applicants for Channel 287C2 at Killington, Vermont, to specify antenna sites on Killington Peak. Channel 298A can be allocated to West Rutland without the imposition of a site restriction. Canadian concurrence in these allotments has been obtained as both communities are located within 320 kilometers (200 miles) of the U.S.-Canadian border.

The addition of the site restriction will not require any change in site by any of the Rutland or Killington applicants. With this action, this proceeding is terminated.

[FR Doc. 86–13137 Filed 6–18–86; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 78–5; Notice 5]

Federal Motor Vehicle Safety Standards for Lamps, Reflective Devices, and Associated Equipment; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; correction.

SUMMARY: This notice corrects an oversight in an amendment published in 1978 which changed a reference to Figure 3 in paragraph S4.1.1.22 without making a corresponding change in paragraph S4.3.1.1. At that time, Figure 2 was deleted and the existing Figure 3 was renumbered Figure 2.

EFFECTIVE DATE: The amendment is effective June 19, 1986.

FOR FURTHER INFORMATION CONTACT: Kevin Cavey, Office of Rulemaking, National Highway Traffic Safety Administration, Washington, DC 20590 (202–426–1834).

SUPPLEMENTARY INFORMATION: On July 27, 1987, NHTSA amended 49 CFR 571.108 Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* (43 FR 32416). The third amendment adopted (p. 32419) was: "3. Figure 2 is deleted. Figure 3 is revised to be 'Figure 2' and the reference in S4.1.1.22 to 'Figure 3' is changed to 'Figure 2' ". Standard No. 108 also contained a reference to Figure 3 in S4.3.1.1 which should have been changed to Figure 2 at the same time but was not, due to an oversight. The amendment was effective upon publication in the **Federal Register** because it was administrative in nature and made no change in existing requirements. The error has recently come to the agency's attention, and it is therefore publishing a corrective amendment.

Because the amendment corrects an oversight and makes no change in existing requirements, it is hereby found for good cause shown that an effective date earlier than 180 days after issuance of the rule is in the public interest, and the amendment is effective upon publication in the **Federal Register.**

In consideration of the foregoing, Part 571 is amended as follows:

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.108 [Corrected]

2. In § 571.108, paragraph S4.3.1.1 is amended by changing "Figures 1c and 3" to read "Figures 1c and 2".

Issued on June 12, 1986.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86–13704 Filed 6–18–86; 8:45 am]

BILLING CODE 4910–59–M

Urban Mass Transportation Administration

49 CFR Part 661

Buy America Requirements

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Final rule; amendment.

SUMMARY: This document amends the regulations implementing the "Buy America" provision of the Surface Transportation Assistance Act of 1982 by specifying the actual certificates that must be submitted by each bidder to indicate compliance or non-compliance with the applicable statutory and regulatory requirements.

EFFECTIVE DATE: The regulations are effective July 21, 1986.

FOR FURTHER INFORMATION CONTACT: Edward J. Gill, Jr., Office of the Chief Counsel, Room 9228, 400 Seventh Street, SW., Washington, DC 20590, (202) 426–4063.

SUPPLEMENTARY INFORMATION:

Introduction

Section 165 of the Surface Transportation Assistance Act of 1982

sets out domestic preference requirements that must be met when Federal mass transportation funds are being used for purchasing transit related products and equipment. UMTA regulations implementing this provision (49 CFR Part 661) provide that each bidder on a federally funded contract certify that it will be able to comply with the statutory provision.

The statutory provision distinguishes between the procurement of rolling stock and some associated equipment (section 165(b)(3)) and all other procurements (i.e., steel and manufactured products (section 165(a)). The regulations also provide that separate certificates be submitted depending on what is being procured.

Under the existing regulations, each bidder must submit a certificate indicating compliance. However, the regulations do not set forth the actual certificate to be submitted, and there have been several instances where this has caused confusion on the part of bidders. To eliminate this confusion, UMTA has determined that the regulation should be amended. Therefore, this amendment sets forth the actual wording of the certificate that must be used and describes the circumstances under which each specific certificate must be submitted.

Certification Description

This amendment creates two new sections, 49 CFR 661.6 and 49 CFR 661.12 and amends present section 49 CFR 661.13. Sections 661.6 and 661.2 require that separate certificates be used for certifying compliance with either section 165(a) or section 165(b)(3). UMTA believes that the separate certificates will eliminate confusion. If rolling stock (or the associated equipment listed in the statute and the regulations) is being procured, the bidder who can comply will certify that it will comply with section 165(b)(3) and its implementing regulations, and use the certificate at § 661.12. If steel or manufactured products are being procured, the certificate at § 661.6 will be used and reference section 165(a) and its implementing regulations.

Having two separate certificates eliminates confusion on the part of bidders because compliance with section 1645(b)(3) is actually an expectation to section 165(a).

The second part of § 661.6 requires that a separate certificate be used when a bidder will not be able to comply with the applicable Buy America requirements but that it may be able to comply under exceptions set forth in sections 165(b)(2) or 165(b)(4).

Similarly, the second part of § 661.12 requires a certificate requirement, which is very general in nature, when a bidder anticipates noncompliance. Since a bidder may not know at the time of bid submittal whether the grounds for an exception will exist, it is unnecessary to require a bidder to detail grounds for the exception—a statement that it *may* qualify for an exception is considered sufficient.

Section 661.13 changes the grantee responsibility to require the bidder to submit to the grantee the certificate as set forth in either § 661.6 or § 661.12 instead of the bidder merely *indicating* it will comply with section 165(a) and the regulation as § 661.13 formerly provided.

Pursuant to an exception under the Administrative Procedure Act, 5 U.S.C. 553(b)(B), UMTA finds that notice and public comment are unnecessary to the public interest in this instance. The existing regulations already call for certification, and this amendment merely provides a standard form for certification.

Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act of 1980

This action has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. This regulation is not significant under the Department's Regulatory Policies and Procedures. We find that the economic impact of this regulation is so minimal that a full regulatory evaluation is not required.

In accordance with 5 U.S.C. 6–05(b), as added by the Regulatory Flexibility Act, Pub. L. 96–354, the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Act.

The collection of information requirements in this rule are subject to the Paperwork Reduction Act, Pub. L. 96–511, 44 U.S.C. Chapter 35. These requirements are being submitted to the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) for review.

List of Subjects in 49 CFR Part 661

Buy America, Domestic preference, Contracts, Grants programs, Transportation, Mass transportation.

PART 661—[AMENDED]

Accordingly, Part 661 of Title 49 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 661 continues to read as follows:

Authority: Sec. 165, Pub. L. 97–424; 49 CFR 1.51.

2. By adding a new § 661.6 to read as follows:

§ 661.6 Certification requirement for procurement of steel or manufactured products.

If steel or manufactured products (as defined in §§ 661.3 and 661.5 of this Part) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder in accordance with the requirement contained in § 661.13(b) of this part.

Certificate of Compliance With Section 165(a)

The bidder hereby certifies that it will comply with the requirements of section 165(a) of the Surface Transportation Assistance Act of 1982 and the applicable regulations in 49 CFR Part 661.

Date _____
Signature _____
Title _____

Certificate for Non-Compliance With Section 165(a)

The bidder hereby certifies that it cannot comply with the requirements of section 165(a) of the Surface Transportation Assistance Act of 1982, but it may qualify for an exception to the requirement pursuant to section 165 (b)(2) or (b)(4) of the Surface Transportation Assistance Act and regulations in 49 CFR Part 661.7.

Date _____
Signature _____
Title _____

3. By adding a new § 661.12 to read as follows:

§ 661.12 Certification requirement for procurement of buses, other rolling stock and associated equipment.

If buses, or other rolling stock (including train control, communication, and traction power equipment) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder in accordance with the requirement contained in § 661.13(b) of this Part.

Certificate of Compliance With Section 165(b)(3)

The bidder hereby certifies that it will comply with the requirements of section 165(b)(3) of the Surface Transportation Assistance Act of 1982 and the regulations in 49 CFR Part 661.11.

Date _____

Signature _____
Title _____

Certificate for Non-Compliance With Section 165(b)(3)

The bidder hereby certifies that it cannot comply with the requirements of section 165(b)(3) of the Surface Transportation Assistance Act of 1982, but may qualify for an exception to the requirement pursuant to section 165 (b)(2) or (b)(4) of the Surface Transportation Assistance Act and regulations in 49 CFR Part 661.7.

Date _____
Signature _____
Title _____

4. Revising § 661.13(b) to read as follows:

§ 661.13 Grantee responsibility.

* * * * *

(b) The grantee shall include in its bid specification for procurement within the scope of these regulations an appropriate notice of the Buy America provision. Such specifications shall require, as a condition of responsiveness, that the bidder or offeror submit with the bid a completed Buy America certificate in accordance with § 661.6 or § 661.12 of this Part, as appropriate.

Dated: June 11, 1986.

Ralph L. Stanley,

Administrator.

[FR Doc. 86-13716 Filed 6-18-86; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 60597-6097]

Groundfish of the Gulf of Alaska; Correction

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

ACTION: Emergency interim rule; correction.

SUMMARY: This document corrects § 672.24(b)(4) in the emergency interim rule published June 6, 1986, at 51 FR 20659. The rule authorizes closure of a regulatory area or district of the Gulf of Alaska to directed fishing for sablefish by any legal gear type. This action is necessary to correct an inadvertent omission and a typographical error in the regulatory text.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Biologist, NMFS), 907-586-7230.

Dated: June 16, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

§ 672.24 [Corrected]

The following correction is made in FR Doc. 86-12726, page 20663, in the issue of June 6, 1986:

In § 672.24(b)(4), column two, the first sentence is corrected to read, "During 1986 in the Central Area, and during 1986, 1987, and 1988 in the Western Area, hook-and-line gear may be used to take up to 55 percent of the OY for sablefish; pot gear may be used to take up to 25 percent of the OY; and trawl-gear may be used to take up to 20 percent of that OY."

[FR Doc. 86-13930 Filed 6-18-86; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 118
Thursday, June 19, 1986

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

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

Powers and Duties of Service Officers; Availability of Service Records

Correction

In FR Doc. 86-12144 beginning on page 19559 in the issue of Friday, May 30, 1986, make the following correction:

On page 19560, first column, in amendatory instruction 2, third line, "(b)(3)" should have read "(b)(2)".

BILLING CODE 1505-01-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 60

Disposal of High-Level Radioactive Wastes in Geologic Repositories; Conforming Amendments

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations for disposal of high-level radioactive wastes in geologic repositories. The amendments are necessary to conform existing NRC regulations to the environmental standards for management and disposal of high-level radioactive wastes promulgated by the Environmetal Protection Agency (EPA) on September 19, 1985. The proposed rule would incorporate all the substantive requirements of the environmental standards and make several changes in the wording used by EPA in order to maintain consistency with the current wording of the NRC regulations.

DATE: Comment period expires August 18, 1986. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Written comments may be submitted to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch. Comments may also be delivered to Room 1121, 1717 H Street NW., Washington, DC, from 8:15 a.m. to 5:00 p.m. weekdays. Copies of the documents referred to in this notice and comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Daniel J. Fehringer, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 427-4796.

SUPPLEMENTARY INFORMATION:

Background

Section 121 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10141, directs the Environmental Protection Agency (EPA) to "promulgate generally applicable standards for protection of the general environment from offsite releases from radioactive material in repositories." EPA published its final high-level radioactive waste (HLW) standards in the Federal Register on September 19, 1985 (50 FR 38066). Section 121 of the NWPA further specifies that the regulations of the NRC "shall not be inconsistent with any comparable standards promulgated by [EPA]."

The Nuclear Regulatory Commission has previously published rules (10 CFR Part 60, 46 FR 13980, February 25, 1981, 48 FR 28204, June 21, 1983) which established procedures and technical criteria for disposal of HLW in a geologic repository by the U.S. Department of Energy (DOE). This notice describes the interpretations and analyses which the Commission considers to be appropriate for implementation of the EPA standards, and identifies modifications to the Commission's regulations which are considered appropriate to maintain consistency with the standards promulgated by EPA.

It should be noted that "working draft" versions of the EPA standards were available to the Commission when Part 60 was being developed, and the Commission structured its regulations to be compatible with those draft standards. (See, for example, 48 FR 28195-28205, June 21, 1983, where the Commission discussed its final technical criteria, and NUREG-0804, the staff's analysis of public comments on the proposed technical criteria. NUREG-0804 is available in the NRC Public Document Room.) Since many of the general features of the "working drafts" remain present in the final standards, Part 60 is largely consistent with those standards. EPA has, however, sometimes used different terminology to describe concepts already present in Part 60. To maintain the overall structure of Part 60, and to avoid introduction of duplicative terminology which could prove confusing in a licensing review, the Commission prefers to retain its own established terms. Most of the amendments to Part 60 proposed in this notice involve direct incorporation within Part 60 of the substantive requirements of the EPA standards, reworded as necessary to conform to the terminology of Part 60. (Additional proposed amendments derive from EPA's "assurance requirements," as discussed in Section III of this notice. One further amendment, unrelated to the EPA standards, is proposed for clarification of existing wording in Part 60.) With the issuance of this rule, no substantive changes are intended in the requirements of the EPA standards or in the environmental protection they afford.

The EPA standards specify certain limits on radiation exposures and releases of radioactive material during two principal stages: First, the period of management and storage operations at a repository and, second, the long-term period after waste disposal has been completed. These standards, and the proposed rules to implement them during operations and after closure, are discussed in section I below, while section II provides some further observations regarding the manner in which the Commission intends to apply the EPA standards in its licensing proceedintgs. Section III describes additional proposed rules related to certain "assurance requirements" which are present in EPA's standards but which are not applicable to NRC-licensed facilities. In order to avoid potential jurisdictional problems which might arise if this section of the EPA

standards were applied to NRC-licensed facilities, the NRC is proposing to add substantially equivalent provisions to its regulations. Finally, this notice presents a section-by-section analysis of the proposed rule (section IV), followed by the specific text of the proposed amendments to Part 60. (The organization of section IV follows that of Part 60 while the text of section I is organized to present a section-by-section discussion of the EPA standards. Parts of section IV are therefore repetitions of information presented in section I.)

I. Limits on Exposures and Releases

The limits established by EPA for the period of repository operations appear at 40 CFR 191.03. The limits applicable to the period after disposal include "containment requirements" (limits on cumulative releases of radionuclides to the environment for 10,000 years) in § 191.13, "individual protection requirements" in § 191.15, and "ground water protection requirements" in § 191.16. Implementation of each of these sections is discussed in the following paragraphs.

Standards for repository operations (§ 191.03). The standards for repository operations are virtually identical to the standards previously promulgated by EPA for the uranium fuel cycle (42 FR 2860, January 13, 1977), and will be implemented in the same manner.[1] DOE will be expected to demonstrate, through analyses of anticipated facility performance, that the dose limits of these standards, as well as the standards for protection against radiation set out in 10 CFR Part 20, will not be exceeded. Releases of radionuclides and resulting doses during operations are amenable to monitoring, and DOE will be required to conduct a monitoring program to confirm that the limits are complied with. Section 60.111(a) would be amended to includes the EPA dose limits. Section 60.101(a)(2) already includes a provision requiring "reasonable assurance" that the release limits be achieved, and it is not necessary to repeat this language in the release limits of § 60.111. It is also not necessary to employ the terms "management" and "storage," as EPA has done, since all preclosure repository operations are already subject to the provisions of § 60.111.

Postclosure standards. The EPA postclosure standards are all expressed in terms of a "reasonable expectation" of meeting specified levels of performance. EPA explained that it selected this term because " 'reasonable assurance' has come to be associated with a level of confidence that may not be appropriate for the very long-term analytical projections that are called for by 191.13." The Commission is sensitive to the need to account for the uncertainties involved in predicting performance over 10,000 years, and the difficulties as well as the importance of doing so. The Commission has attempted to address this concern in the existing language of § 60.101(a)(2). That section requires a finding of reasonable assurance, "making allowance for the time period, hazards, and uncertainties involved, that the outcome will be in conformance" with the relevant criteria. Rather than adopt an additional concept such as "reasonable expectation," the Commission proposes to add additional explanatory text, derived from EPA's wording, to its existing discussion of resonable assurance. This text will make clear the Commission's belief that its concept of reasonable assurance, although somewhat different from previous usage in reactor licensing, is appropriate for evaluations of repository performance where long-term issues and substantial uncertainties are inherent in projections of repository performance. The Commission considers that the level of confidence associated with its concept of reasonable assurance is the same as that sought by EPA in the use of the term "reasonable expectation."

In the case of the *individual protection requirements* (40 CFR 191.15), the standards limit the annual dose equivalent to any member of the public in the accessible environment. A new provision in § 60.112(b) is proposed that would include the dose limits established by EPA as well as the additional specifications, which the Commission finds to be reasonable, with regard to consideration of all pathways including consumption of drinking water from a "significant source of ground water," as defined by EPA.

The EPA standards require that the individual protection requirements be achieved only for "undisturbed performance" of a geologic repository ("disposal system" in EPA's terminology). The proposed amendment to Part 60 makes no reference to "undisturbed performance." Instead, it provides that the standard is to be met "in the absence of unanticipated processes and events." The Commission considers the concepts of undisturbed performance and the absence of unanticipated processes and events to be identical. As used by EPA (40 CFR 191.12(p)), "undisturbed performance" refers to the predicted behavior of a disposal system if it is "not disrupted by human intrusion or the occurrence of unlikely natural events. "Since human intrusion and unlikely natural processes and events are precisely the types of "unanticipated processes and events" defined in § 60.2, the two concepts are the same. Thus, the Commission considers that the phrase "in the absence of unanticipated processes and events" has the same meaning as "undisturbed performance" in the EPA standards. To maintain the overall structure of Part 60, and to avoid introduction of duplicative language, the Commision prefers to retain its own established terms.

The engineered barriers of a repository will, in many cases, be instrumental in achieving compliance with both the individual protection requirements and the groundwater protection requirements discussed below. The Commission notes that the existing provisions of Part 60 require the engineered barriers of a repository to achieve their containment and release rate performance objectives "assuming anticipated processes and events." Thus, equating "undisturbed performance" with "anticipated processes and events" causes no change in the types of conditions for which the engineered barriers must be designed.

The *ground water protection requirements* (40 CFR 191.16) focus on the quality of any "special source of ground water," which is defined, generally, as a source of drinking water in an area that includes and surrounds the geologic repository. This area extends for five kilometers beyond the controlled area. The standard applies to water "withdrawn" from such a special source. The Commission is proposing to include the EPA standard as a new performance objective (§ 60.112(c)). Once again the rule applies in the absence of unanticipated processes and events instead of "undisturbed performance."

The *containment requirements* (40 CFR 191.13) restrict the total amount of radioactive material released to the environment for 10,000 years following permanent closure of a repository. EPA provides a table listing release limits for

[1] It should be noted that a potential ambiguity exists in this section of EPA's HLW standards and in EPA's uranium fuel cycle standards. Both standards limits the annual dose equivalent to any member of the public to "25 millirems to the whole body, 75 millirems to the thyroid, *and* 25 millirems to any other critical organ" (emphasis added). The Commission has always interpreted these limits as if the word "and" were replaced by "or." Thus, the Commission would *not* consider it acceptable to allow an annual dose equivalent of 25 millirems to the whole body and an additional 25 millirems to any other organ. The Commission will continue to implement these limits as it has in the past, but will encourage EPA to clarify the wording quoted above.

the significant radionuclides present in HLW or spent fuel. The values in this table were derived, based on environmental transport and dosimetry considerations, so that the amount of each radionuclide listed in the table will, if released to the environment, produce approximately the same number of population health effects. The standard further specifies different release limits for releases with differing likelihoods of occurrence. The Commission is proposing to incorporate these requirements as a new performance objective (§ 60.112(a)), along with a new § 60.115 containing EPA's table of release limits.

The regulation goes on to state that the disposal systems shall be designed to provide a reasonable expectation—"based on performance assessments"—that the release limits are satisfied. While the proposed amendments incorporate most of the EPA standard in its precise terms, they omit the reference to performance assessments. Part 60 already requires analyses virtually identical to those contemplated by EPA, but the Commission proposes to add additional wording to § 60.21(c)(1)(ii)(C) to emphasize consistency with the EPA standards.

The Commission notes, in this connection, that EPA's reference to estimating the cumulative releases caused by all significant processes and events, to be incorporated in an overall probability distribution of cumulative release to the extent practicable, does not modify the principles underlying Part 60. As was observed when NRC's final technical criteria were published in 1983 (48 FR 28204), the Commission expects that the information considered in a licensing proceeding will include probability distribution functions for the consequences from anticipated and unanticipated processes and events. Further information concerning the Commission's plans for assessing repository performance is contained in Section II of this notice.

II. Additional Comments on Implementation of the EPA Standards

Four sections of the EPA standards contain numerial requirements for which compliance must be demonstrated—standards for repository operations, post-closure individual and groundwater protection requirements and containment requirements restricting the total amount of radionuclides projected to be released to the environment after repository closure. The discussion of section I of this notice articulates the Commission's interpretation of the standards that have been issued by EPA. Additional comments related to implementation of each of these sections are presented in the following paragraphs.

Standards for repository operations. As discussed previously, the standards for repository operations are virtually identical to the standards previously promulgated by EPA for the uranium fuel cycle, and will be implemented in the same manner. A license applicant will be expected to demonstrate, through analyses of anticipated facility performance, that the dose limits of these standards will not be exceeded. Doses during operations are amenable to monitoring, and the applicant will be required to conduct a monitoring program to confirm that the dose limits are complied with.

Individual and groundwater protection requirements. The individual and groundwater protection requirements are applicable for the first 1,000 years after permanent closure of a repository. Monitoring is not practical for this period of time and the applicant will therefore be required to demonstrate compliance with these requirements through analyses of projected repository performance. Two general approaches might be pursued by DOE. First, DOE might choose to calculate the expected concentrations of radionuclides in certain groundwaters potentially useable by humans in the future. Such calculations would include projections of waste package and engineered barrier performance (to provide a source term) as well as evaluations of the direction, velocity and volumetric flow rates of groundwaters near the repository. The EPA standards specify the types of groundwaters to be considered in such analyses (through the definitions of the terms "significant" and "special" sources of groundwater), and these concepts will be incorporated directly into Part 60. Alternatively, DOE might choose to show compliance with these requirements by demonstrating that other barriers, such as the waste packages or the emplacement medium (e.g., salt), will provide substantially complete containment for the first 1,000 years after permanent closure thereby preventing contamination of the groundwaters of concern.

If DOE chooses to calculate the expected concentrations of radionuclides in groundwaters, rather than to rely on containment by engineered barriers, it will also be necessary to calculate potential doses to individuals in the future. The individual protection requirements limit the annual dose equivalent to any member of the public in the accessible environment. If a "significant source of groundwater" (as defined) is present, the Commission will assume that a hypothetical individual resides at the boundary of the controlled area and obtains his domestic water supply from a well at that location. If no such source of groundwater is present, the location of the maximally exposed individual and the pathways by which he might be exposed to radionuclides released from a repository must be examined on a site-specific basis.

The individual protection requirements also necessitate assumptions about the dietary patterns and other potential modes of ingestion of radionuclides during the next 1,000 years. The Commission will assume that current patterns remain unchanged, unless it can be convincingly demonstrated that a change is likely to occur (e.g., reduced groundwater consumption due to depletion of an aquifer).

Both the individual and groundwater protection requirements are applicable only for "undisturbed performance" of a repository system. As discussed in Section I, this term is considered to be equivalent to "anticipated processes and events," as currently defined in Part 60. The Commission will therefore require a demonstration of compliance with these requirements assuming the occurrence of anticipated processes and events, but will not require a demonstration of compliance in the event of unanticipated processes and events.

Containment requirements. The containment requirements are applicable for 10,000 years after repository closure. Therefore, compliance with these requirements must also be evaluated by analyses of projected repository performance rather than by monitoring. The containment requirements call for significantly different analyses than those discussed above. This section of the EPA standards restricts the total amount of radioactive material released to the environment for 10,000 years following permanent closure of a repository. This section further specifies different release limits for releases with differing likelihoods of occurrence. Notwithstanding the quantitative probabilistic form of the EPA containment requirements (40 CFR 191.13), the Commission finds that there is adequate flexibility therein to allow them to be implemented using the licensing procedures of 10 CFR Parts 2 and 60. A further discussion of these matters is appropriate in order to avoid ambiguity in the application of the probabilistic conditions.

As the Commission emphasized when the technical criteria for geologic repositories were promulgated in final form (48 FR 28204), there are two distinct elements underlying a finding that a proposed facility satisfies the desired performance objective for long-term isolation of radioactive waste. There is, first, a standard of performance—some statement regarding the quantity of radioactive material that may be released to the accessible environment. This standard can be expressed in quantitative terms, and may include numerical requirements for the probabilities of exceeding certain levels of release.

The second element of a finding relates to the confidence that is needed by the factfinder in order to be able to conclude that the standard of performance has been met. The Commission has insisted, and the EPA has agreed, that this level of confidence must be expressed qualitatively. The licensing decisions that must be made in connection with a repository involve substantial uncertainties, many of which are not quantifiable (e.g., those pertaining to the correctness of the models used to describe physical systems). Such uncertainties can be accommodated within the licensing process only if a qualitative test is applied for the level of confidence that the numerical performance objective will be achieved.

The essential point to be kept in mind is that findings regarding long-term repository performance must be made with "reasonable assurance." The Commission attempted to explain this concept in the existing wording of § 60.101(a) where it noted that allowance must be made for the time period, hazards, and uncertainties involved. Additional language is being proposed at this time, in the same section of Part 60, to further emphasize that qualitative judgments will need to be made including, for example, consideration of the degree of diversity or redundancy among the multiple barriers of a special repository.

Application of a qualitative test in no way diminishes the level of safety required by a numerical standard. The applicant will be required to submit a systematic and thorough analysis of potential releases and the Commission will issue a license only if it finds a substantial, though unquantified, level of confidence that compliance with the release limits will be achieved. As we have stated previously (48 FR 28201), in order to make a finding with "reasonable assurance," the performance assessment which has been performed in the course of the licensing review must indicate that the likelihood of exceeding the EPA standard is low and, further, the Commission must be satisfied that the performance assessment is sufficiently conservative, and its limitations are sufficiently well understood, that the actual performance of the geologic repository will be within predicted limits.

The Commission will evaluate compliance with the containment requirements based on a performance assessment. Such an assessment will: (1) Identify all significant processes and events which could affect the repository (2) evaluate the likelihood of each process or event and the effect of each on release of radionuclides to the environment, and (3) to the extent practicable, combine these estimates into an overall probability distribution displaying the likelihood that the amount of radioactive material released to the environment will exceed specified values. The Commission anticipates that the overall probability distribution will be displayed in the format shown below.

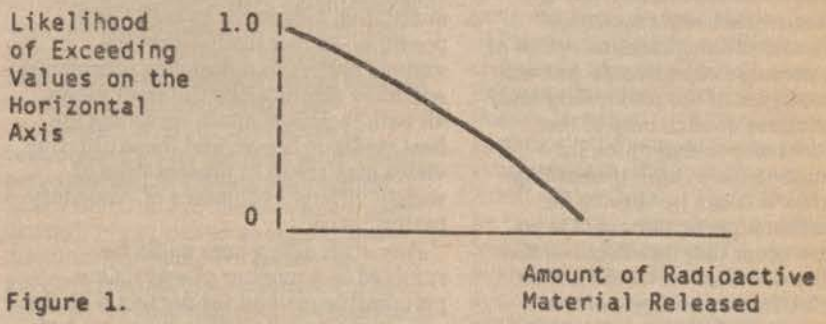


Figure 1.

Illustrative "Complementary Cumulative Distribution Function."

When the results of analyses are displayed in this format, the limits of EPA's containment requirements take the form of "step functions," as shown in Figure 2.

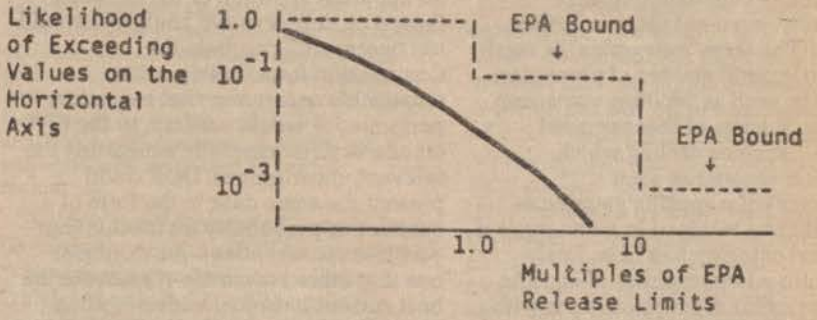


Figure 2. Graphic Representation of EPA Containment Requirements.

In Figure 2, releases which exceed the value specified in the EPA containment requirements (Table 1) must have a likelihood less than one chance in ten (over 10,000 years), and releases which exceed ten times that value must have a likelihood less than one chance in one thousand (over 10,000 years). Thus, in order to demonstrate compliance with EPA's containment requirements, the entire probability distribution must lie below the "stair-step" constraints illustrated in Figure 2.

In constructing a probability distribution of the type illustrated above, it is necessary to consider, in EPA's terms, all "significant processes and events that may affect the disposal system." This is equivalent, as we interpret the EPA standard, to all "anticipated" and unanticipated" processes and events in the terminology of Part 60. (By the definition of "unanticipated processes and events" in Part 60, processes and events less likely than "unanticipated" are not sufficiently credible to warrant consideration.) For

purposes of the proposed § 60.112(a) only, which incorporates EPA's containment requirements, no distinction is to be made between "anticipated" and "unanticipated" processes and events; all such processes and events must be factored into the evaluation, including determination of such probabilities of occurrence as may be found to be appropriate. (For purposes of the proposed § 60.112 (b) and (c), which incorporate EPA's individual and groundwater protection requirements, only "anticipated" processes and events need be considered as discussed previously.)

The Commission will require an extensive and thorough identification of relevant processes and events, but will require analyses of the probability and/or consequence of each only to the extent necessary to determine its contribution to the overall probability distribution. If it can be shown, for example, that a particular event is so unlikely to occur that its effects on the probability distribution would not be meaningful, further analysis of the consequences of that event would not be required. Generally, categories of processes and events which can be shown to have a likelihood less than one chance in 10,000 over 10,000 years, along with categories of processes and events which otherwise can be shown not to change the remaining probability distribution of cumulative release significantly, need not receive further analysis. (The term "categories" is used to refer to general classes of processes and events, such as faulting, volcanism, or drilling. subsets of these general categories, such as drilling which intersects a canister or fault displacement of a specific magnitude, may need to be retained in an analysis if the general category has been finely divided into a large number of specific process or event description, each with reduced probabilities of occurrence.)

Treatment of uncertainties. As discussed previously, substantial uncertainties will be involved in analyses of long-term repository performance. These uncertainties may include (1) identification of basic phenomena and their potential effects on repository performance, (2) development and validation of models to describe these phenomena, (3) accuracy of available data, and (4) calculational uncertainties. Various methods may be used to accommodate such uncertainties including, for example, numerical estimates of uncertainties (expressed as probability distributions) or conservative, "bounding" models or data. Treatment of uncertainties will rely heavily on expert judgment, both for selection of an appropriate method and for application of that technique. EPA recognzied the importance of uncertainties when its standards wee promulgated. In Appendix B of 40 CFR Part 191 (50 FR 38088, September 19, 1985), EPA stated "substantial uncertainties are likely to be encountered in making (numerical) predictions (of repository performance). In fact, sole reliance on these numerical predictions to determine compliance may not be appropriate; the implementing agencies may choose to supplement such predictions with qualitative judgments as well." It is possible—in fact likely—that the various parties to a licensing proceeding will have significantly different views, all with technical merit, regarding the best methods to use, and these differing views may result in presentation of widely different estimates of repository performance.

Any such differences could be resolved in a number of ways. One permissible method for dealing with the uncertainties reflected in the record of the proceeding would be to rely heavily upon conservative, "bounding" analyses. Perhaps it could be shown that even if this approach were employed, the predicted performance would still satisfy the containment requirements established by EPA. On the other hand, an apparent violation of the standard (based on conservative analyses) would not necessarily preclude the Commission from finding, with reasonable assurance, that repository performance would conform to the EPA standard. After carefully evaluating the relevant uncertainties, DOE could present the same data in the form of a cumulative probability distribtion that was less conservative—for example, one that more accurately represents the best current technical understanding. Thus, alternative methods are available to DOE for treatment of uncertainties when making its demonstration of reasonable assurance of compliance with the provisions of Part 60.

It should be noted, however, that analyses based on "best estiamtes" of repository performance might be found to be inadequate if substantial uncertainties are present. In that case, notwithstanding the apparent conformity with the EPA standard, the Commission might ultimately conclude that it lacked the necessary reasonable assurance, considering the uncertainties involved, that the performance would meet the containment requirements.

Because uncertainties are so important in analyses of repository performance and will play such a major role in a licensing proceeding, the Commission emphasizes the importance of efforts being undertaken to foster a common technical understanding and to resolve issues, where it is practicable to do so, prior to receipt of a license application. Many of the provisions of the Nuclear Waste Policy Act are directed toward this goal. One especially important opportunity, in this regard, is DOE's preparation of site characterization plans and the review and comment process to be carried out by the Commission and other interested parties. Additionally, NRC and DOE are engaged, under an interagency procedural agreement, in ongoing technical discussions on matters that pertain to licensing requirements; these discussions are in the form of open meetings, affording other persons an opportunity to identify pertinent considerations that might also need to be addressed. The staff is also issuing staff technical positions on specific methods of analysis that would be acceptable for evaluating compliance with Part 60 technical criteria and performance objectives. As issues mature, the Commission will, where appropriate, use the rulemaking process to seek resolution of issues where a licensing proceeding might otherwise encounter difficulties due to ambiguity regarding acceptable assessment methods. Nevertheless, the data available at the time of licensing will inevitably be imperfect. It is therefore essential that every effort be made by DOE—and by any other party that develops data which it may propound at a hearing—to use careful methods to enhance, and document, the trustworthiness of the evidence which it may submit.

III. EPA Assurance Requirements

EPA's regulations (40 CFR 191.14) include certain "assurance requirements" designed, according to the rule, to provide the confidence needed for long-term compliance with the containment requirements. As noted by EPA in its preamble, the Commission took exception to the inclusion of these provisions in the regulations. The Commission viewed the assurance requirements as matters of implementation that were not properly part of the EPA's authorities assigned by Reorganization Plan No. 3 of 1970. In response to this concern, the two agencies have agreed to resolve this issue by NRC's making appropriate modifications to Part 60, reflecting the matters addressed by the assurance requirements, and by EPA's declaration

that those requirements would not apply to facilities regulated by the Commission. The following discussion sets forth the Commission's views with respect to each of the EPA assurance requirements and identifies the proposed rule changes that are deemed to be appropriate under the circumstances.

EPA Assurance Requirement 40 CFR 191.14(a). Active institutional controls over disposal sites should be maintained for as long a period of time as is practicable after disposal; however, performance assessments that assess isolation of the wastes from the accessible environment shall not consider any contributions from active institutional controls for more than 100 years after disposal.

Analysis and Proposed Changes. The Commission's existing provisions (§ 60.52) related to license termination will determine the length of time for which institutional controls should be maintained, and there is therefore no need to alter Part 60 to reflect this part of the assurance requirement.

The second part of this assurance requirement would require that "active" institutional controls be excluded from consideration (after 100 years) when the isolation characteristics of a respository are assessed. It has always been the intent of Part 60 not to rely on remedial actions (or other active institutional controls) to compensate for a poor site or inadequate engineered barriers. However, in the definition of "unanticipated processes and events," Part 60 expressly contemplates that, in assessing human intrusion scenarios, the Commission would assume that "institutions are able to assess risk *and to take remedial action* at a level of social organization and technological competence equivalent to, or superior to, that which was applied in initiating the processes or events concerned" (emphasis added). Therefore, it might appear at first examination that Part 60 is at odds with the EPA assurance requirements.

Although both the EPA regulation and Part 60 refer to "remedial action," the action being considered is not the same. The EPA assurance requirement deals with a planned capability to maintain a site and, if necessary, to take remedial action at a site in order to assure that isolation is achieved. The Commission agrees that such capability should not be relied upon. The extent to which corrective action may be taken after an unanticipated intrusion occurs is an entirely different matter. The Commission may wish to consider, for example, the extent to which the application of the limited societal response capability assumed by the rule (e.g., sealing boreholes consistent with current petroleum industry practice) could reduce the likelihood of releases exceeding the values specified in the containment requirements or could eliminate certain hypothetical scenarios such as systematic and persistent intrusions into a site.

Subject to the comments above, the Commission concurs with the EPA's definitions of "active" and "passive" institutional controls, as well as the principle that ongoing, planned, active protective measures should not be relied upon for more than 100 years after permanent closure. We are therefore proposing to include EPA's definitions, together with a new section (§ 60.114) which would expressly provide that active (or passive) institutional controls shall not be deemed to assure compliance with the containment requirements over the long term. Some activities which arguably fall within EPA's definition of "active institutional controls" (e.g., remedial actions and monitoring parameters related to geologic respository performance) are relevant to assessing the likelihood and consequences of processes and events affecting the geologic setting. We are proposing, also in § 60.114, to allow such activites to be considered for this purpose. We regard this as being fully consistent with the thrust of the EPA position.

EPA Assurance Requirement 40 CFR 191.14(b). Disposal systems shall be monitored after disposal to detect substantial and detrimental deviations from expected-performance. This monitoring shall be done with techniques that do not jeopardize the isolation of the wastes and shall be conducted until there are no significant concerns to be addressed by further monitoring.

Analysis and Proposed Changes. Part 60 currently requires DOE to carry out a performance confirmation program which is to continue until repository closure. Part 60 does not now require monitoring after repository closure because of the likelihood that post-closure monitoring of the underground facility would degrade repository performance. The Commission recognizes, however, that monitoring such parameters as regional ground water flow characteristics may, in some cases, provide desirable information beyond that which would be obtained in the performance confirmation program, and the Commission is proposing to require such monitoring when it can be accomplished without adversely affecting repository performance.

The proposed requirement for post-permanent closure monitoring requires that such monitoring be continued until termination of a license. The Commission intends that a repository license not be terminated until such time as the Commission is convinced that there is no significant additional information to be obtained from such monitoring which would be material to a finding of reasonable assurance that long-term repository performance would be in accordance with the established performance objectives.

A number of changes in Part 60 are proposed to reflect these views with respect to post-closure monitoring. First, a new section (§ 60.144) would provide for the performance confirmation program, already required by Subpart F of Part 60, to include a program of post-closure monitoring. Second, the licensing findings required at the time of license termination (§ 60.52(c)) would specifically be related to the results available from the post-closure monitoring program. Third, DOE would be required to provide more detailed information concerning its plans for post-closure monitoring in its original application (§ 60.21(c)) and when it applies to amend its license prior to permanent closure (§ 60.51(a)).

EPA Assurance Requirement 40 CFR 191.14(c). Disposal sites shall be designated by the most permanent markers, records, and other passive institutional controls practicable to indicate the dangers of the wastes and their location.

Analysis and Proposed Changes. The existing provisions of 10 CFR Part 60 already required that DOE take the measures set out in this assurance requirement. For further information, refer to § 60.21(c)(8) (requirement that license application describe controls to regulate land use), § 60.51(a)(2) (information to be submitted, prior to permanent closure, with respect to land use controls, construction of monuments, preservation of records, etc.), and § 60.121 (requirements for ownership and control of interests in land).

EPA Assurance Requirement 40 CFR 191.14(d). Disposal systems shall use different types of barriers to isolate the wastes from the accessible environment. Both engineered and natural barriers shall be included.

Analysis and Proposed Changes. This is another provision that is already inherent in Part 60. Nevertheless, in order to avoid any possible doubt in this regard, a new paragraph (§ 60.113(d)) would be added to state explicitly that the geologic repository shall incorporate a system of multiple barriers, both engineered and natural.

Questions might arise regarding the types of engineered or natural materials

or structures which would be considered to constitute "barriers," as required by this new language. In this connection, the Commission notes that § 60.2 now contains this definition: " 'Barrier' means any material or structure that *prevents or substantially delays* movement of water or radionuclides" (emphasis added). Thus, consistent with the approach endorsed by EPA, the Commission considers that the new paragraph to be added to § 60.113 will confirm its commitment to a multiple barrier approach as contemplated by section 121(b)(1)(B) of the Nuclear Waste Policy Act.

EPA Assurance Requirement 40 CFR 191.14(e). Places where there has been mining for resources, or where there is reasonable expectation of exploration for scarce or easily accessible resources, or where there is a significant concentration of any material that is not widely available from other sources, should be avoided in selecting disposal sites. Resources to be considered shall include minerals, petroleum or natural gas, valuable geologic formations, and ground waters that are either irreplaceable because there is not reasonable alternative source of drinking water available for substantial populations or that are vital to the preservation of unique and sensitive ecosystems. Such places shall not be used for disposal of the wastes covered by this Part [40 CFR Part 191] unless the favorable charcteristics of such places compensate for their greater likelihood of being distrubed in the future.

Analysis and Proposed Changes. Part 60 contains provisions that, in large part, are equivalent to this assurance requirement. See § 60.122(c)(17), (18), and (19). The existing regulation does not, however, address "a significant concentration of any material that is not widely available from other sources."

The Commission believes that there is merit in having the presence of such concentrated materials evaluated in the context of the licensing proceeding. It is, after all, quite possible that the economic value of materials could change in the future in a way which might attract future exploration or development detrimental to repository performance. By adding an additional "potentially adverse condition" to those already set out in the regulation, DOE would be required to identify the presence of the materials in question and evaluate the effect thereof on repository performance, as specified in § 60.122(a)(2)(ii). It should be noted that the presence of potentially adverse conditions does not preclude the selection and use of a site for a geologic repository, provided that the conditions have been evaluated and demonstrated not to compromise performance.

EPA Assurance Requirement 40 CFR 191.14(f). Disposal systems shall be selected so that removal of most of the wastes is not precluded for a reasonable period of time after disposal.

Analysis and Proposed Changes. The Commission understands that the purpose of this assurance requirement is to discourage or preclude the use of disposal concepts such as deep well injection for which it would be virtually impossible to remove or recover wastes regardless of the time and resources employed. (This provision is thus significantly different from the Commission's retrievability requirement.) For a mined geologic repository—which is the only type of facility subject to licensing under 10 CFR Part 60—wastes could be located and recovered (i.e. "removed," in the sense that EPA is using the term), albeit at high cost, even after repository closure. A repository would therefore meet this assurance requirement, and no further statements on the subject in Part 60 are indicated.

Petition for Rulemaking. The Commission calls to the attention of all interested parties a pending petition for rulemaking submitted by the States of Nevada and Minnesota which deals, in large part, with the matters addressed by section III of this notice. All relevant comments received by the Commission in response to the notice of receipt of the petition for rulemaking (published in the **Federal Register** on December 19, 1985, 50 FR 51701) will be considered along with comments received in response to this notice. It should be noted that the Commission's present proposal conforms to the approach which was discussed with EPA during the course of its rulemaking. The petition for rulemaking follows the same language very closely, but does suggest certain modifications. The Commission would be particularly interested in comments addressed to the respective merits of the language proposed herein and that proposed by the States of Nevada and Minnesota.

The Commission further notes that EPA has provided it with copies of comments regarding the assurance requirements that were received during the 40 CFR Part 191 rulemaking. These comments are available for inspection in the Commission's public document room.

IV. Section by Section Analysis of Proposed Conforming Amendments

The Commission considers that the simplest and most useful way to amend Part 60 for consistency with the EPA standards would be to incorporate directly within Part 60 all the substantive requirements of the environmental standards promulgated by EPA, modified as necessary to conform to the terminology currently used in Part 60. The following paragraphs present a section-by-section analysis of the NRC's proposed conforming amendments to Part 60.

Section 60.1 Purpose and scope.

This paragraph is analogous to EPA's 40 CFR 191.01 and 191.11 which state the applicability of the EPA standards. Part 60 is, however, a more specific regulation than the EPA standards in that it addresses only deep geologic repositories used for disposal of high-level radioactive wastes, while the EPA standards apply to other disposal methods and certain other types of radioactive wastes. No changes are proposed for § 60.1, but the Commission notes that any regulations developed in the future for alternative disposal methods or for other types of wastes will incorporate any applicable provisions of the EPA standards.

Section 60.2 Definitions.

New definitions of several terms are proposed for incorporation within § 60.2. These are taken directly from the EPA standards (or from 40 CFR Part 190) and are needed for purposes of implementation. These added terms are:

(1) Active institutional control
(2) Community water system
(3) Passive institutional control
(4) Significant source of groundwater
(5) Special source of groundwater
(6) Transmissivity
(7) Uranium fuel cycle

In addition, the definition of "controlled area" and the related definition of "accessible environment" in the EPA standards are different from those currently in Part 60. The Commission proposed to revise its current definitions to conform to EPA's wording. In the case of "accessible environment," the change is merely editorial. The amendments to the definition of "controlled area" are also largely editorial, except for the specification of extent—i.e., that the controlled area is to encompass "no more than 100 square kilometers" and to extend "horizontally no more than five kilometers in any direction from the outer boundary of the original location of the radioactive wastes."

The Commission has reviewed this aspect of the EPA definition in the light of the policies which it articulated when the final technical criteria of 10 CFR Part 60 were adopted. One of these policies was that the controlled area "must be small enough to justify confidence that

the monuments will effectively discourage subsurface disturbances." The prior rule would have authorized the establishment of a controlled area well over 300 square kilometers (about 75,000 acres) in size. While we would not deny the abstract possibility that effective controls could be instituted even over an area of that magnitude, we have much greater confidence that DOE would be able to demonstrate an ability to discourage subsurface disturbances over an area of more limited extent. It is our judgment that the 100 square kilometers that EPA has adopted, after consultation with the NRC staff, represents an appropriate limitation.

The other policy related to the definition of the "controlled area" is that it must allow the isolation capability of the rock surrounding the underground facility to be given appropriate weight in licensing reviews. This isolation capability is measured in two ways. First, it is to be taken into account in determining whether releases of radionuclides to the accessible environment are within the limits specified in the "containment requirements" (40 CFR 191.13). Second, under § 60.113(a)(2), the isolation capability of the geologic setting must be such that the pre-waste-emplacement groundwater travel time along the fastest path of likely radionuclide travel from the disturbed zone to the accessible environment shall be a specified period (generally, 1000 years).

The Commission anticipates that adoption of the EPA terminology will have little effect on achievement of the containment requirements inasmuch as the controlled area is allowed a horizontal extent as large as five kilometers (presumably in the direction of radionuclide travel). Nor does the Commission anticipate that the limitation will make it impracticable to achieve a demonstration of compliance with the groundwater travel time performance objective. When the Commission adopted Part 60, it observed that the "accessible environment" might be larger (and, of course, the "controlled area" might therefore be smaller) than would be the case under the EPA standards then being considered (48 FR 28202). EPA has not moved in the direction of eliminating this difference, and the Commission's amendment, for this reason, represents no important change.

The proposed reduction in the maximum allowable extent of the controlled area (i.e., distance to the accessible environment) requires additional discussion to clarify the Commission's concepts of "disturbed zone" and "groundwater travel time." Groundwater travel time from the edge of the disturbed zone to the accessible environment is one of the criteria which the Commission identified, at the time of proposed rulemaking, as providing confidence that the wastes will be isolated for at least as long as they are most hazardous (46 FR 35280, 35281, July 8, 1981). As noted above, this objective concerns travel time from the edge of the disturbed zone rather than from the edge of the underground facility. The Commission selected the disturbed zone for the purpose of determining the groundwater travel time since the physical and chemical processes which isolate the wastes are "especially difficult to understand in the area close to the emplaced wastes because that area is physically and chemically disturbed by the heat generated by those wastes." *Ibid.*

One potential type of effect which could alter local groundwater flow conditions is thermal buoyancy of groundwater. Because buoyancy effects could extend over significant distances (see, e.g., M. Gordon and M. Weber, "Non-isothermal Flow Modeling of the Hanford Site," available in the NRC Public document room) and because the Commission is proposing to reduce the maximum allowable distance to the accessible environment, it is particularly important to emphasize that the Commission did not intend such effects to serve as the basis for defining the extent of the disturbed zone. The Commission recognizes that such effects can be modeled with well developed assessment methods, and therefore were not the type of effects for which the disturbed zone concept was developed. Any contrary implication in our statement of considerations at the time the technical criteria were issued in final form (see 48 FR 28210) should be disregarded. (The staff is currently developing Generic Technical Positions discussing the disturbed zone and groundwater travel time. These technical positions will be publicly available prior to promulgation of these proposed amendments in final form, and will illustrate how the staff intends to approach these two concepts.)

Four other terms defined by EPA deserve additional discussion here.

The EPA standards contain a definition of the term "transuranic radioactive waste." The Commission does not use this term in Part 60 and thus has no need to define it there. All radioactive waste stored or disposed of at a geologic repository licensed under Part 60—including transuranic radioactive waste—would be subject to the requirements of the EPA standards as applied by the rules proposed herein.

EPA defines the terms "storage" and "disposal" to mean retrievable storage and permanent isolation, respectively. Under Part 60, on the other hand, the term "storage" is used in the sense of section 202 of the Energy Reorganization Act of 1974 (42 U.S.C. 5842) to refer to both long-term storage and disposal of wastes. The difference in EPA and NRC usage has no effect upon application of the EPA standards at NRC-licensed geologic repositories.

The Commission has recently defined "groundwater," for purposes of Part 60, to include all water which occurs below the land surface (50 FR 29641, July 22, 1985), while the EPA standards use the term to mean water below the land surface *in a zone of saturation* (emphasis added). The EPA standards use the term only in connection with the more specifically defined terms "significant source of groundwater" and "special source of groundwater." Thus, it is possible to identify "significant" or "special" sources of groundwater unambiguously with either definition of the term "groundwater," and the Commission therefore proposes to retain its current definition of the term.

Section 60.21 Content of application.

Paragraph (c)(1)(ii)(C) now requires a license application to include certain evaluations of the performance of a proposed geologic repository for the period after permanent closure. The Commission proposes to add an additional sentence to this paragraph requiring that the results of these analyses be incorporated into an overall probability distribution of cumulative releases to the extent practicable. This reflects the language of EPA's definition of "performance assessment."

The Commission also proposes to add a new paragraph to § 60.21 requiring submittal of a general description of the program for post-permanent closure monitoring of the geologic repository. (See the discussion (section III) regarding the EPA assurance requirements—specifically 40 CFR 191.14(b).)

Section 60. 51 License amendment for permanent closure.

Paragraph (a)(1) currently requires that an application to amend a license for permanent closure must include a description of the program for post-permanent closure monitoring of the geologic repository. The Commission proposes to revise this paragraph to specify in more detail the information to be submitted, including descriptions of

the parameters to be monitored and the length of time for which the monitoring is to be continued. (See also the preceding discussion regarding 40 CFR 191.14(b).)

Section 60.52 Termination of license.

The Commission proposes to add a new condition for license termination which would explicitly require that the results available from post-permanent closure monitoring confirm the expectation that the repository will comply with the performance objectives of Part 60. (See also the preceding discussion regarding 40 CFR 191.14(b).)

Section 60.101 Purpose and nature of findings.

The EPA standards use the phrase "reasonable expectation" to describe the required level of confidence that compliance will be achieved with the provisions of the standards. The Supplementary Information accompanying the EPA standards contrasts the concept of "reasonable expectation" with the reasonable assurance standard that is used by the Commission in dealing with other licensing actions. The Commission has considered adopting EPA's "reasonable expectation" concept, but has decided that doing so would result in a needless, and potentially confusing, proliferation of terms. Instead, the Commission proposes to expand the current discussion of "reasonable assurance" in § 60.101 to make clear its belief that the level of confidence associated with the term, when used in connection with the long-term issues involved in repository licensing, is the same as that sought by EPA in its use of the term "reasonable expectation."

Section 60.111 Performance of the geologic repository operations area through permanent closure.

Paragrah (a) currently requires compliance with "such generally applicable environmental standards for radioactivity as may have been established by the Environmental Protection Agency." The Commission proposes to replace this wording with the specific does limits promulgated by EPA in 40 CFR 191.03(a) of its standards. The proposed wording would apply the dose limits to any member of the public outside the geologic repository operations area, consistent with EPA's phrase "any member of the public in the general environment."

The EPA provision includes wording that requires reasonable assurance of compliance with the dose limits. In Part 60, Subpart B now specifies the findings that must be made by the Commission for issuance of a license, including a finding of reasonable assurance of compliance with the performance objective of § 60.111. Because Part 60 already requires that findings be made with reasonable assurance, it is unnecessary to repeat such a requirement within this proposed performance objective.

One additional amendment, unrelated to the EPA standards, is being proposed for § 60.111. The current wording of this section now requires that the geologic repository operations area be designed so that radiation exposures, radiation levels, and releases of radioactive materials "will *at all times* be maintained within the limits specified in Part 20 . . ." (emphasis added). The words "at all times" were intended to emphasize the need to design the geologic repository operations area so that any waste retrieval found to be necessary in the future cound be carried out in conformance with the radiation protection requirements of 10 CFR Part 20. In order to clarify the meaning of the phrase "at all times," the Commission is proposing to revise this wording to read "will at all times, including the retrievability period of § 60.111(b), be maintained within the limits specified in Part 20 . . . ."

Section 60.112 Overall system performance objective for the geologic repository after permanent closure.

The current wording of this section now refers to "such generally applicable environmental standards for radioactivity as may have been established by the Environmental Protection Agency." The Commission proposes to replace this wording with the specific provisions promulgated by EPA in 40 CFR 191.13, 191.15 and 191.16 of its standards, reworded as appropriate for incorporation into Part 60.

As discussed previously, the Commission proposes to revise the language of § 60.101 to make clear that its concept of the phrase "reasonable assurance" in Part 60 closely parallels the meaning intended by "reasonable expectation" in the EPA standards. Inasmuch as the findings to be made by the Commission must be made with "reasonable assurance," there is no need to use the term "reasonable expectation" in the specific standards.

EPA requires that cumulative releases of radioactivity to the environment be evaluated on the basis of "performance assessments." This concept already is built into the structure of Part 60. As discussed previously, however, the Commission is proposing an addition to § 60.21 which would specifically require a license application to incorporate the results of analyses, as stated by EPA, in an overall probability distribution of cumulative releases to the extent practicable.

The individual and groundwater protection requirements of the ERA standards refer to "undisturbed performance" of a disposal system, where "undisturbed performance" is defined to mean "the predicted behavior of a disposal system, including consideration of the uncertainties in prodicted behavior, if the disposal system is not disrupted by human intrusion or the occurrence of unlikely natural events." The Commission considers undisturbed performance, as defined by EPA, to be equivalent to performance in the absence of "unanticipated processes and events," as currently defined in Part 60. The Commission is proposing to use the current Part 60 terminology rather than introduce a new term from the EPA standards.

Section 60.113 Performance of particular barriers after permanent closure.

Section 60.113 specifies performance objectives for individual barriers of a geologic repository, and permits the Commission to approve or specify specific numerical requirements on a case-by-case basis. The Commission considers that § 60.113 clearly requires use of both engineered and natural barriers. Nevertheless, in order to avoid any possible confusion regarding the provisions of § 60.113(b), the Commission proposes to add additional clarifying language to this section making it clear that a repository must incorporate a system of multiple barriers, both engineered and natural. (See the preceding discussion in section III regarding the EPA assurance requirements—specifically 40 CFR 191.14(d).)

Paragraph (b)(1) of § 60.113 now refers to "any generally applicable environmental standard for radioactivity established by the Environmental Protection Agency." The Commission proposes to replace this wording with a direct reference to the overall system performance objectives of § 60.112.

Section 60.114 Institutional control.

The Commission proposes to add a new § 60.114 to Part 60 to clarify its views regarding reliance on institutional controls. (See the preceding discussion in Section III regarding 40 CFR 191.14(a).)

Section 60.115 Release limits for overall system performance objectives.

The Commission proposes that the table of release limits (and accompanying notes) in Appendix A of the EPA standards be added to Part 60 in a new § 60.115.

Section 60.122 Siting criteria.

Part 60 contains provisions related to the presence of economically valuable mineral resources at a repository site. Part 60 does not, however, address deposits of materials which, though of limited economic value, are not reasonably available from other sources. Because the economic value of materials could change in the future, the Commissin proposes to add an additional potentially adverse condition to Part 60 related to significant concentrations of material that is not reasonably available from other sources.

EPA used the term "widely available." The Commission believes that an additional consideration—the practicality of obtaining materials from alternative sources—is also germane, and the Commission is therefore proposing the phrase "reasonably available" for this potentially adverse condition. (See also the preceding discussion in section III regarding 40 CFR 191.14(e).)

Section 60.144 Monitoring after permanent closure.

Part 60 currently requires DOE to carry out a performance confirmation program which is to continue until repository closure. Part 60 does not now require monitoring after repository closure because of the likelihood that post-closure monitoring of the underground facility would degrade repository performance. The Commission proposes to add a new § 60.144 to Part 60 which would require post-closure monitoring of repository characteristics provided that such monitoring can be expected to provide material confirmatory information regarding long-term repository performance and provided that the means for conducting such monitoring will not degrade repository performance. (See the preceding discussion in section III regarding 40 CFR 191.14(b).)

Environmental Impact

Pursuant to section 121(c) of the Nuclear Waste Policy Act of 1982, this proposed rule does not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 or any environmental review under subparagraph (E) or (F) of section 102(2) of this Act.

Paperwork Reduction Act Statement

The information collection requirements contained in this proposed rule are of limited applicability and affect fewer than ten respondents. Therefore, Office of Management and Budget clearance is not required pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The only entity subject to regulation under this rule is the U.S. Department of Energy, which does not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act.

List of Subjects in 10 CFR Part 60

High-level waste, Nuclear power plants and reactors, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Waste treatment and disposal.

Backfitting Requirements

The provisions of 10 CFR 50.109 on backfitting do not apply to this rulemaking because the rule is not applicable to production and utilization facilities licensed under 10 CFR Part 50.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the Nuclear Waste Policy Act of 1982, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 60.

PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

1. The authority citation for Part 60 continues to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); sec. 121, Pub. L. 97–425, 96 Stat. 2228 (42 U.S.C. 10141).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 60.71 to 60.75 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 60.2 is amended by revising the definitions of "accessible environment" and "controlled area" and by adding seven new definitions in alphabetical order as follows:

§ 60.2 Definitions.

* * * * *

"Accessible environment" means: (1) The atmosphere, (2) land surfaces, (3) surface waters, (4) oceans, and (5) all of the lithosphere that is beyond the controlled area.

* * * * *

"Active institutional control" means: (1) Controlling access to a disposal site by any means other than passive institutional control, (2) performing maintenance operations or remedial actions at a site, (3) controlling or cleaning up releases from a site, or (4) monitoring parameters related to disposal system performance.

* * * * *

"Community water system" means a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections used by year—round residents or regularly serves at least 25 year-round residents.

* * * * *

"Controlled area" means: (1) A surface location, to be identified by passive institutional controls, that encompasses no more than 100 square kilometers and extends horizontally no more than five kilometers in any direction form the outer boundary of the underground facility, and (2) the subsurface underlying such a surface location.

* * * * *

"Passive institutional control" means: (1) Permanent markers placed at a disposal site, (2) public records and archives, (3) government ownership and regulations regarding land or resource use, and (4) other methods of preserving knowledge about the location, design, and contents of a disposal system.

* * * * *

"Significant source of groundwater" means: (1) An aquifer that: (i) is saturated with water having less than 10,000 milligrams per liter of total dissolved solids; (ii) is within 2,500 feet of the land surface; (iii) has a transmissivity greater than 200 gallons per day per foot, provided that any formation or part of formation included within the source of groundwater has a hydraulic conductivity greater than 2 gallons per day per square foot; and (iv) is capable of continuously yielding at least 10,000 gallons per day to a pumped or flowing well for a period of at least a year; or (2) and aquifer that provides the primary source of water for a

community water system as of November 18, 1985.

* * * * *

"Special source of groundwater" means those Class I groundwaters identified in accordance with the Environmental Protection Agency's Ground-Water Protection Strategy published in August 1984 that: (1) Are within the controlled area encompassing a disposal system or are less than five kilometers beyond the controlled area; (2) are supplying drinking water for thousands of persons as of the date that the Department chooses a location within the area for detailed characterization as a potential site for a disposal system (e.g., in accordance with section 112(b)(1)(B)(of the NWPA); and (3) are irreplaceable in that no reasonable alternative source of drinking water is available to that population.

* * * * *

"Transmissivity" means the hydraulic conductivity intergrated over the saturated thickness or an underground formation. The transmissivity of a series of formations is the sum of the individual transmissivities of each formation comprising the series.

* * * * *

"Uranium fuel cycle" means the operations of milling of uranium ore, chemical conversion of uranium, isotopic enrichment of uranium, fabrication of uranium fuel, generation of electricity by a light-water-cooled nuclear power plant using uranium fuel, and reprocessing of spent uranium fuel, to the extent that these directly support the production of electrical power for public use utilizing nuclear energy, but excludes mining operations, operations at waste disposal sites, transportation of any radioactive material in support of these operations, and the reuse of recovered non-uranium speical nuclear and by-product materials from the cycle.

* * * * *

3. Section 60.21 is amended by revising paragraph (c)(1)(ii)(C), redesignating the existing paragraphs (c)(9) through (c)(15) as paragraphs (c)(10) through (c)(16) and adding a new paragraph (c)(9).

§ 60.21 Content of application

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(C) An evaluation of the performance of the proposed geologic repository for the period after permanent closure, assuming anticipated processes and events, giving the rates and quantities of releases of radionuclides to the accessible environment as a function of time; and a similar evaluation which assumes the occurrence of unanticipated processes and events. In making such evaluations, estimated values shall be incorporated into an overall probability distribution of cumulative release to the extent practicable.

* * * * *

(9) A general description of the program for post-permanent closure monitoring of the geologic repository.

* * * * *

4. Section 60.51 is amended by revising paragraph (a)(1) to read as follows:

§ 60.51 License amendment for permanent closure.

(a) * * *

(1) A detailed description of the program for post-permanent closure monitoring of the geologic repository in accordance with § 60.144. As a minimum, this description shall:

(i) Identify those parameters that will be monitored;

(ii) Indicate how each parameter will be used to evaluate the expected performance of the repository; and

(iii) Discuss the length of time over which each parameter should be monitored to adequately confirm the expected performance of the repository.

* * * * *

5. Section 60.52 is amended by designating current paragraph (c)(3) as paragraph (c)(4) and by adding a new paragraph (c)(3) as follows:

§ 60.52 Termination of license.

* * * * *

(c) * * *

(3) That the results available from the post-permanent closure monitoring program confirm the expectation that the repository will comply with the performance objectives set out at § 60.112 and § 60.113; and

* * * * *

6. Section 60.101 is amended by revising paragraph (a)(2) to read as follows:

§ 60.101 Purpose and nature of findings.

(a) * * *

(2) While these performance objectives and criteria are generally stated in unqualified terms, it is not expected that complete assurance that they will be met can be presented. A reasonable assurance, on the basis of the record before the Commission, that the objectives and criteria will be met is the general standard that is required. For § 60.112, and other portions of this subpart that impose objectives and criteria for repository performance over long times into the future, there will inevitably be greater uncertainties. Proof of the future performance of engineered barrier systems and the geologic setting over time periods of may hundreds of many thousands of years is not to be had in the ordinary sense of the word. For such long-term objectives and criteria, what is required is reasonable assurance, making allowances for the time period, hazards, and uncertainties involved, that the outcome will be in conformance with those objectives and criteria. Demonstration of compliance with such objectives and criteria will involve the use of data from accelerated tests and predictive models that are supported by such measures as field and laboratory tests, monitoring data and natural analog studies. Demonstration of compliance with the performance objectives of § 60.112 will also involve predicting the likelihood and consequences of events and processes that may disturb the repository. Such predictions may involve complex computational models, analytical theories and prevalent expert judgment. Substantial uncertainties are likely to be encountered and sole reliance on numerical predictions to determine compliance may not be appropriate. In reaching a determination of reasonable assurance, the Commission may supplement numerical analyses with qualitative judgments including, for example, consideration of the degree of diversity or redundancy among the multiple barriers of a specific repository.

* * * * *

7. In § 60.111, paragraph (a) is revised to read as follows:

§ 60.111 Performance of the geologic repository operations area through permanent closure.

(a) *Protection against radiation exposures and releases of radioactive material.* The geologic respository operations area shall be designated so that until permanent closure has been completed:

(1) The annual dose equivalent to any member of the public outside the geologic repository operations area, resulting from the combination of (i) discharges of radioactive material and direct radiation from activities at the geologic repository operations area and (ii) uranium fuel cycle operations, shall not exceed 25 millirems to the whole body, 75 millirems to the thyroid, and 25 millirems to any other critical organ.

(2) Radiation exposures and radiation levels, and releases of radioactive materials to unrestricted areas, will at all times, including the retrievability period of § 60.111(b), be maintained

within the limits specified in Part 20 of this chapter.

* * * * *

8. Section 60.112 is revised to read as follows:

§ 60.112. Overall system performance objective for the geologic repository after permanent closure.

The geologic setting shall be selected and the engineered barrier system and the shafts, boreholes and their seals shall be designed:

(a) So that, for 10,000 years following permanent closure, cumulative releases of radionuclides to the accessible environment, from all anticipated and unanticipated processes and events, shall:

(1) Have a likelihood of less than one chance in 10 of exceeding the quantities calculated in accordance with § 60.115.

(2) Have a likelihood of less than one chance in 1,000 of exceeding ten times the quantities calculated in accordance with §60.115.

(b) So that for 1,000 years after permanent closure, and in the absence of unanticipated processes and events, the annual dose equivalent to any member of the public in the accessible environment does not exceed 25 millirems to the whole body or 75 millirems to any critical organ. For the purpose of applying this paragraph, all potential pathways from the geologic repository to people shall be considered, including the assumption that individuals consume 2 liters per day of drinking water from any significant source of groundwater outside of the controlled area.

(c) So that for 1,000 year after permanent closure, and in the absence of unanticipated processes and events:

(1) Except as provided in paragraph (c)(2) of this section, the radionuclide concentrations averaged over any year in water withdrawn from any portion of a special source of groundwater do not exceed:

(i) 5 picocuries per liter of radium-226 and radium-228;

(ii) 15 picouries per liter of alpha-emitting radionuclides (including radium-226, and radium-228 but excluding radon); or

(iii) The combined concentrations of radionuclides that emit either beta or gamma radiation that would produce an annual dose equivalent to the total body or any internal organ greater than 4 millirems per year if an individual consumed 2 liters per day of drinking water from such a source of groundwater.

(2) If any of the average annual radionuclide concentrations existing in a special source of groundwater before construction of the geologic repository operations area already exceed the limits in paragraph (c)(1) of this section, the increase, caused by the geologic repository, in the existing average annual radionuclide concentrations in water withdrawn from that special source of groundwater does not exceed the limits specified in paragraph (c)(1) of this section.

9. In § 60.113, paragraph (b)(1) is revised and a new paragraph (d) is added to read as follows:

§ 60.113 Performance of particular barriers after permanent closure.

* * * * *

(b) * * *

(1) The overall system performance objectives of § 60.112.

* * * * *

(d) Notwithstanding the provisions of paragraph (b) of this section, the geologic repository shall incorporate a system of multiple barriers, both engineered and natural.

10. A new § 60.114 is added to read as follows:

§ 60.114 Institutional control.

Neither active nor passive institutional control shall be deemed to assure compliance with the overall system performance objectives set out at § 60.112 for more than 100 years after permanent closure. However, the effects of institutional control may be considered in assessing, for purposes of that section, the likelihood and consequences of processes and events affecting th geologic setting.

11. A new § 60.115 is added to read as follows:

§ 60.115 Release limits for overall system performance objective.

The following table shall be used to make the calculations referred to in paragraph (a) of § 60.112.

TABLE 1.—RELEASE LIMITS FOR OVERALL SYSTEM PERFORMANCE OBJECTIVE

[Cumulative Releases to the Accessible Environment for 10,000 Years After Disposal]

Radionuclide	Release limit per 1,000 MTHM or other unit of waste (see notes) (curies)
Americium-241 or 243	100
Carbon-14	100
Cesium-135 or 137	1,000
Iodine-129	100
Neptunium-237	100
Plutonium-238, 239, 240 or 242	100
Radium-226	100
Strontium-90	1,000
Technetium-99	10,000
Thorium-230 or 232	10
Tin-126	1,000
Uranium-233, 234, 235, 236 or 238	100
Any other alpha-emitting radionuclide with a half-life greater than 20 years	100
Any other radionuclide with a half-life greater than 20 years that does not emit alpha particles	1,000

Application of Table 1

Note.—*Units of Waste.* The Release Limits in Table 1 apply to the amount of wastes in any one of the following:

(a) an amount of spent nuclear fuel containing 1,000 metric tons of heavy metal (MTHM) exposed to a burnup between 25,000 megawatt-days per metric ton of heavy metal (MWd/MTHM) and 40,000 MWd/MTHM;

(b) the high-level radioactive wastes generated from reprocessing each 1,000 MTHM exposed to a burnup between 25,000 MWd/MTHM; and 40,000 MWd/MTHM;

(c) each 100,000,000 curies of gama or beta-emitting radionuclides with half-lives greater than 20 years but less than 100 years (for use as discussed in Note 5 or with materials that are identified by the Commission as high-level radioactive waste in accordance with part (B) of the definition of high-level waste in the Nuclear Waste Policy Act (NWPA));

(d) each 1,000,000 curies of other radionuclides (i.e., gamma or beta-emitters with half-lives greater than 100 years or any alpha-emitters with half-lives greater than 20 years) (for use as discussed in Note 5 or with materials that are identified by the Commission as high-level waste in accordance with part (B) of the definition of high-level waste in the NWPA); or

(e) an amount of transuranic (TRU) wastes containing one million curies of alpha-emitting transuranic radionuclides with half-lives greater than 20 years.

Note 2.—*Release Limits for Specific Disposal Systems.* To develop Release Limits for a particular disposal system, the quantities in Table 1 shall be adjusted for the amount of waste included in the disposal system compared to the various units of waste defined in Note 1. For example:

(a) If a particular disposal system contained the high-level wastes from 50,000 MTHM, the Release Limits for that system would be the quantities in Table 1 multiplied by 50 (50,000 MTHM divided by 1,000 MTHM).

(b) If a particular disposal system contained three million curies of alpha-emitting transuranic wastes, the Release Limits for that system would be the quantities in Table 1 multiplied by three (three million curies divided by one million curies).

(c) If a particular disposal system contained both the high-level wastes from 50,000 MTHM *and* 5 million curies of alpha-emitting transuranic wastes, the Release Limits for that system would be the quantities in Table 1 multiplied by 55:

$$\frac{50{,}000\ \text{MTHM}}{1{,}000\ \text{MTHM}} + \frac{5{,}000{,}000\ \text{curies TRU}}{1{,}000{,}000\ \text{curies TRU}} = 55$$

Note 3.—*Adjustments for Reactor Fuels with Different Burnup.* For disposal systems containing reactor fuels (or the high-level wastes from reactor fuels) exposed to an average burnup of less than 25,000 MWd/MTHM or greater than 40,000 MWd/MTHM, the units of waste defined in (a) and (b) of Note 1 shall be adjusted. The unit shall be multiplied by the ratio of 30,000 MWd/MTHM divided by the fuel's actual average burnup, except that a value of 5,000 MWd/MTHM may be used when the average fuel burnup is below 5,000 MWd/MTHM and a value of 100,000 MWd/MTHM shall be used when the average fuel burnup is above 100,000 MWd/MTHM. This adjusted unit of waste shall then be used in determining the Release Limits for the disposal system.

For example, if a particular disposal system contained only high-level wastes with an average burnup of 3,000 MWd/MTHM, the unit of waste for that disposal system would be:

$$1{,}000\ \text{MTHM} \times \frac{(30{,}000\ \text{MWd/MTHM})}{(5{,}000\ \text{MWd/MTHM})} = 6{,}000\ \text{MTHM}$$

If that disposal system contained the high-level wastes from 60,000 MTHM (with an average burnup of 3,000 MWd/MTHM), then the Release Limits for that system would be the quantities in Table 1 multiplied by ten:

$$\frac{60{,}000\ \text{MTHM}}{6{,}000\ \text{MTHM}} = 10$$

which is the same as:

$$\frac{60{,}000\ \text{MTHM}}{1{,}000\ \text{MTHM}} \times \frac{(5{,}000\ \text{MWd/MTHM})}{(30{,}000\ \text{MWd/MTHM})} = 10$$

Note 4.—Treatment of Fractionated High-Level Wastes. In some cases, a high-level waste stream from reprocessing spent nuclear fuel may have been (or will be) separated into to or more high-level waste components destined for different disposal systems. In such cases, the implementing agency may allocate the Release Limit multiplier (based upon the original MTHM and the average fuel burnup of the high-level waste stream) among the various disposal systems as it chooses, provided that the total Release Limit multiplier used for that waste stream at all of its disposal systems may not exceed the Release Limit multiplier that would be used if the entire waste stream were disposed of in one disposal system.

Note 5. Treatment of Wastes with Poorly Known Burnups or Original MTHM. In some cases, the records associated with particular high-level waste streams may not be adequate to accurately determine the original metric tons of heavy metal in the reactor fuel that created the waste, or to determine the average burnup that the fuel was exposed to. If the uncertainties are such that the original amount of heavy metal or the average fuel burnup for particular high-level waste streams cannot be quantified, the units of waste derived from (a) and (b) of Note 1 shall no longer be used. Instead, the units of waste defined in (c) and (d) of Note 1 shall be used for such high-level waste streams. If the uncertainties in such information allow a range of values to be associated with the original amount of heavy metal or the average fuel burnup, then the calculations described in previous Notes will be conducted using the values that result in the smallest Release Limits, except that the Release Limits need not be smaller than those that would be calculated using the units of waste defined in (c) and (d) of Note 1.

Note 6.—*Use of Release Limits to Determine Compliance with § 60.112(c).* Once release limits—for a particular system have been determined in accordance with Notes 1 through 5, these release limits shall be used to determine compliance with the requirements of § 60.122(a) as follows. In cases where a mixture of radionuclides is projected to be released to the accessible environment, the limiting values shall be determined as follows: For each radionuclide in the mixture, determine the ratio between the cumulative release quantity projected over 10,000 years and the limit for that radionuclide as determined from Table 1 and Notes 1 through 5. The sum of such ratios for all radionuclides in the mixture may not exceed one with regard to § 60.112(a)(1) and may not exceed ten with regard to § 60.112(a)(2).

For example, if radionuclides A, B and C are projected to be released in amounts Q_a, Q_b, Q_c, and if the applicable Release Limits are RL_a, RL_b, and RL_c, then the cumulative release over 10,000 years shall be limited so that the following relationship exists:

$$\frac{Q_a}{RL_a} + \frac{Q_b}{RL_b} + \frac{Q_c}{RL_c} < 1$$

12. In § 60.122, paragraph (c) is amended by redesignating the current pargraphs (c)(18) through (c)(24) as paragraphs (c)(19) through (c)(25) and by adding a new paragraph (c)(18) to read as follows:

§ 60.122 Siting criteria

* * * * *

(c) * * *

(18) The presence of significant concentrations of any naturally-occurring material that is not reasonably available from other sources.

* * * * *

13. A new § 60.144 is added to read as follows:

§ 60.144 Monitoring After permanent closure.

A program of monitoring shall be conducted after payment closure to monitor all repository characteristics which can reasonably be expected to provide material confirmatory information regarding long-term repository performance, provided that the means of conducting such monitoring will not degrade repository performance. This program shall be continued until termination of license.

Dated at Washington, DC this 13th day of June 1986.

For the Nuclear Regulatory Commission.
Samuel J. Chilk,
Secretary of the Commission.
[FR Doc. 86-13925 Filed 6-18-86; 8:45 am]
BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-AWA-26]

Proposed Alteration of VOR Federal Airways—MO

Correction

In FR Doc. 86-11994, beginning on page 19359 in the issue of Thursday, May 29, 1986, make the following correction:

§ 71.123 [Corrected]

On page 19360, in the first column, under the heading **V-504-[Revised]**, in the fourth line, "C24°" should read "042°".

BILLING CODE 1505-01-M

14 CFR Part 71

[Airspace Docket No. 86-AWA-16]

Proposed Alteration of VOR Federal Airways; Southeastern United States

Correction

In FR Doc. 86-11599 beginning on page 18896 in the issue of Friday, May 23, 1986, make the following correction:

§ 71.123 [Corrected]

On page 18897, in the second column, under the heading **V-54-[Amended]**, in the eighth line, after "including" insert "a N".

BILLING CODE 1505-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9174]

Warner Communications, Inc., et al. and Polygram Records, Inc.; Proposed Consent Agreements With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreements.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, these consent agreements, accepted subject to final Commission approval, would require, among other things, two New York City record companies to obtain prior FTC approval before acquiring any interest in major record companies and to notify the FTC about distribution agreements planned with those companies.

DATE: Comments must be received on or before August 18, 1986.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave. NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/L-501, James C. Egan, Jr., Washington, DC 20580. (202) 254-6024.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's rules of practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with §4.9(b)(14) of the Commission's rules of practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Major record companies, Trade practices.

[Docket No. 9174]

In the matter of Warner Communications Inc., a corporation, et al., Warner Bros. Records, Inc., a corporation, Chappell & Co., Inc., a corporation, and Polygram Records, Inc., a corporation.

Agreement Containing Consent Order

The agreement herein, by and between Warner Communications Inc. and Warner Bros. Records, Inc. by their duly authorized officers, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rules governing consent order procedures. In accordance with those rules the parties hereby agree that:

1. Respondents, Warner Communications Inc., and Warner Bros. Records, Inc. are corporations organized and existing under the laws of the State of Delaware with offices at 75 Rockefeller Plaza, New York, New York 10019.

2. Respondents admit all jurisdictional facts set forth in the Commission's complaint in this proceeding.

3. Respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondents, in which event it will take such action as it may consider appropriate, or issue and serve its decision in accordance with the terms of this agreement in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the complaint issued by the Commission.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 3.25(f) of the Commission's Rules, the Commission may without further notice to respondents: (1) Issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to-order to respondents' address as stated in this agreement shall constitute service. Respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

7. Respondents have read the complaint and the order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance

reports showing that they have fully complied with the order. Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

"Warner", as used herein, means Warner Communications Inc., Warner Bros. Records, Inc., as well as their officers, directors, employees, agents, divisions, subsidiaries, successors, assigns, and the officers, directors, or agents of their divisions, subsidiaries, successors and assigns.

"PolyGram", as used herein, means Chappell & Co., Inc., PolyGram Records, Inc., as well as their officers, directors, employees, agents, their parents, divisions, subsidiaries, successors, assigns and the officers, directors, employees or agents of their parents, divisions, subsidiaries, successors and assigns.

"Major record company", as used herein, means the following record companies that are vertically integrated into the creation and national distribution of prerecorded music: Warner, PolyGram, CBS Inc., Capitol Records Inc., RCA Corporation and MCA Corporation.

"Distribution Agreement", as used herein, means a contractual arrangement whereby one major record company undertakes to distribute nationally prerecorded music for another major record company, as defined herein, to prerecorded music retailers, one-stops, rack jobbers or other subdistributors for resale. "Distribution Agreement" shall not include an arrangement by which a major record company licenses particular tracks of an artist's music to another record for the purpose of making so-called "compilation albums".

"Effective date", as used herein, means the date on which this agreement is executed.

I

It is ordered, that Warner terminate immediately all agreements that provide for or contemplate the merger of, or a joint venture between, its prerecorded music operations and those of PolyGram in the United States, including but not limited to the Letter of Intent dated July 26, 1983, and Agreement of Merger and Plan of Reorganization dated December 29, 1983; and return or destroy all documents, if any, regarding confidential information provided to Warner by PolyGram in connection with merger or joint venture negotiations or agreements.

II

It is further ordered, that for a period of five (5) years from the effective date hereof, Warner cease and desist from acquiring, directly or indirectly, without the prior approval of the Federal Trade Commission, any interest in, or any stock, share capital or assets of any major record company; provided, however, that nothing in this order shall prohibit a director of Warner from acquiring, for investment purposes only, an interest of not more than one (1) percent of the stock, share capital or equity of any such concern.

III

It is further ordered, that for a period of five (5) years from the effective date hereof, Warner shall not, without providing written advance notification to the Federal Trade Commission, enter into a distribution agreement with a major record company, as defined herein. Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended (hereinafter referred to as "the Notification"). Warner shall provide the Notification to the Federal Trade Commission at least fifteen (15) days prior to entering into the distribution agreement (hereinafter referred to as the "first waiting period"). The Notification shall be given by Warner and not by any party whose records Warner seeks to distribute. At the time of the filing of the Notification, Warner shall provide to the Commission supplemental information, either in Warner's possession or reasonably available to Warner. Such supplemental information shall include a copy of the proposed agreement; the names of the principal representatives of Warner and the firm whose records are to be distributed who negotiated the proposed distribution agreement; and management or strategic plans discussing the proposed distribution agreement; and documents discussing market shares and competitive conditions in the prerecorded music industry. If within the first waiting period of fifteen (15) days, the Federal Trade Commission makes a written request for additional information, Warner shall comply with said request within an additional period of fifteen (15) days or sooner. Warner shall not enter into the proposed distribution agreement for fifteen (15) days after the submission of the additional information.

IV

It is further ordered, to the extent that it will affect Warner's compliance obligations arising out of this order, Warner shall notify the Commission at least thirty (30) days prior to any proposed corporate change such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or any other changes in the record operations of the corporation.

V

It is further ordered, that Warner shall, within sixty (60) days after service upon it of this order, and annually thereafter for five years, file with the Commission a written report setting forth in detail the manner and form in which it has complied with this order.

[Docket No. 9174]

In the matter of Warner Communications Inc., a corporation, et al., Warner Bros. Records, Inc., a corporation, Chappell & Co., Inc., a corporation, and PolyGram Records, Inc., a corporation.

Agreement Containing Consent Order

The agreement herein, by and between PolyGram Records, Inc, by their duly authorized officers, and counsel for the Federal Trade Commission is entered into in accordance with the Commission's Rules governing consent order procedures. In accordance with those rules the parties hereby agree that:

1. Respondent PolyGram Records, Inc. is a corporation organized and existing under the laws of the State of Delware with offices in New York, New York. Respondent Chappell & Co., Inc., formerly an affiliated company under common ownership, was merged with PolyGram Records, Inc., in January of 1984.

2. Respondent admits all jurisdictional facts set forth in the Commission's complaint in this proceeding.

3. Respondent waives;

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60)

days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision in accordance with the terms of this agreement in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the complaint issued by the Commission.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's rules, the Commission may without further notice to respondent: (1) Issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to-order to respondent's address as stated in this agreement shall constitute service. Respondent waives any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

7. Respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that they have fully complied with the order. Respondent further understands that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

"Warner", as used herein, means Warner Communicatins Inc., Warner Bros. Records, Inc., as well as their officers, directors, employees, agents, their parents, divisions, subsidiaries, successors, assigns, and the officers, directors, employees, or agents of their parents, divisions, subsidiaries, successors and assigns.

"PolyGram", as used herein, means PolyGram Records, Inc., as well as its officers, directors, employees, agents, its parents, divisions, subsidiaries, successors, assigns and the officers, directors, employees, or agents of its parents, divisions, subsidiaries, successors and assigns.

"Major record company", as used herein, means the following record companies that are vertically integrated into the creation and national distribution of prerecorded music: Warner, PolyGram, CBS Inc., and RCA Corporation.

"Distribution Agreement", as used herein, means a contractual arrangement whereby one major record company undertakes to distribute nationally prerecorded music for another major record company, as defined herein, to prerecorded music retailers, one-stops, rack jobbers or other subdistributors for resale.

"Prerecorded music" means recorded audio-only performances sold in the form of records (singles, LP's and compact discs) and tapes (cassettes, 8-track cartridges and reel-to-reel tapes).

"Effective date", as used herein, means the date on which this agreement is executed.

I

It is ordered, that PolyGram terminate immediately all agreements that provide for or comtemplate the merger of, or a joint venture between, its prerecorded music operations and those of Warner in the United States, including but not limited to the Letter of Intent dated July 26, 1983, and Agreement of Merger and Plan of Reorganization dated December 29, 1983; and return or destroy all documents, if any, regarding confidential information provided to PolyGram by Warner in connection with merger or joint venture negotiations or agreements.

II

It is further ordered, that for a period of five (5) years from the effective date hereof, PolyGram cease and desist from acquiring, directly or indirectly, without the prior approval of the Federal Trade Commission, any interest in, or any stock, share capital or assets of the United States operations of any other major record company.

III

It is further ordered, that for a period of five (5) years from the effective date hereof, PolyGram shall not, without providing written advance notification to the Federal Trade Commission, enter into a United States distribution agreement with any other major record company, as defined herein. Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended (hereinafter referred to as "the Notification"). PolyGram shall provide the Notification to the Federal Trade Commission at least fifteen (15) days prior to entering into the distribution agreement (hereinafter referred to as the "first waiting period"). At the time of the filing of the Notification, PolyGram shall provide to the Commission supplemental information, either in PolyGram's possession or reasonably available to PolyGram. Such supplemental information shall include a copy of the proposed agreement; the names of the principal representatives of PolyGram and the principal representatives of the firm whose records are to be distributed (or that intends to distribute PolyGram's records) who negotiated the proposed distribution agreement; and management or strategic plans discussing the proposed distribution agreement; and documents discussing market shares and competitive conditions in the prerecorded music industry. If within the first waiting period of fifteen (15) days, the Federal Trade Commission makes a written request for additional information, PolyGram shall comply with said request within an additional period of fifteen (15) days or sooner. PolyGram shall not enter into the proposed distribution agreement for fifteen (15) days after the submission of the additional information.

IV

It is further ordered, to the extent that it will affect PolyGram's compliance obligations arising out of this order, PolyGram shall notify the Commission at least thirty (30) days prior to any proposed corporate change such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or any other changes in the record operations of the corporation.

It is further ordered, that PolyGram shall, within sixty (60) days after service upon it of this order, and annually thereafter for five, file with the Commission a written report setting forth in detail the manner and form in which it has complied with this order.

Analysis of Proposed Consent Orders To Aid Public Comment

The Federal Trade Commission has accepted two agreements to proposed

consent orders from Warner Communications Inc. and its wholly-owned subsidiary Warner Bros. Records, Inc. (together hereinafter "Warner"), and from PolyGram. Records, Inc. ("PolyGram"), concerning Warner's proposed merger of its prerecorded music business with that of its competitor, PolyGram. The proposed orders require Warner and PolyGram to seek prior approval for any merger or acquisition of any major record company (as defined in the orders) for a period of five years. In addition, the orders require Warner and PolyGram for a period of five years to provide notice and information to the Commission regarding any distribution agreement planned with major record companies; and to wait for a specified time after submission of information to allow the Commission staff to review and analyze the submitted information. Finally, the proposed orders require the termination of the proposed merger, and the return or destruction of confidential documents.

The proposed consent orders have been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreements and the comments received and will decide whether it should withdraw from the agreements or make final the agreements' proposed orders.

Warner Communications Inc. is a worldwide entertainment firm with interests in prerecorded music, pay television and motion pictures. Its prerecorded music business is conducted through a number of wholly-owned and related entities including three domestic record companies (Warner, Bros. Records Inc., Atlantic Records and Elektra/Asylum/Nonesuch Records); a domestic distribution company (Warner-Elektra-Asylum Corp); a manufacturing arm (WEA Manufacturing Inc.) and Warner Special Products Inc. (a direct mail marketing company that sells compilation albums). Warner Communications Inc. had 1984 revenues of $3.4 billion.

PolyGram Records, Inc. is part of the "PolyGram Group", a collection of domestic and foreign corporations owned principally by N.V. Philips of the Netherlands. Philips is a multinational company that produces and sells a number of different products. In the United States, the PolyGram Group has been involved in film and television production in addition to its prerecorded music business.

In August of 1983, Warner proposed to merge its prerecorded music operations with those of PolyGram. In March of 1984, the Federal Trade Commission sought to enjoin the proposed merger in the District Court for the Central District of California and issued its own complaint initiating an administrative trial. Ultimately, the Commission won an injunction in the Ninth Circuit Court of Appeals and Warner and PolyGram publicly called off the proposed transaction.

The Commission's complaint alleged that the combination of Warner with PolyGram would, by combining two of only six national distributors of prerecorded music, eliminate substantial actual and potential competition between Warner and PolyGram in the production and distribution of prerecorded music, eliminate competition between other companies engaged in the distribution of prerecorded music, and increase significantly the level of concentration in the market. The complaint alleged both violations of Section 7 of the Clayton Act, as amened (15 U.S.C. 18) and section 5 of the FTC Act, as amended (15 U.S.C. 45).

The first paragraph of the proposed orders requires Warner and PolyGram to terminate all agreements between them contemplating a merger or joint venture, and to return or destroy all confidential documents provided to each other in connection with this proposed transaction.

Paragraph II of the Warner order requires Warner to obtain prior Commission approval before acquiring any interest in any major record company for a period of five years. In the case of PolyGram, prior Commission approval would be necessary for any acquisition of Warner, CBS Inc. and/or RCA Corp., but would not be required for an acquisition of MCA Corp. or Capitol-EMI. Acquisitions by PolyGram of MCA Corp. and/or Capitol-EMI would still be subject to normal Hart-Scott-Rodino premerger filing requirements, if otherwise applicable.

Paragraph III requires Warner and PolyGram to provide the Commission with information and 15 days prior written notice before entering into a distribution agreement with a major record company, as defined in each order. It also requires submission of additional information to the Commission, if asked, within 15 days or sooner. Warner and PolyGram are then obliged to wait for 15 days after submission of such additional information before they can enter into the proposed distribution agreement.

Paragraphs IV and V require Warner and PolyGram to notify the Commission if they change their corporate structure, and to file written reports for five years setting forth how they have compiled with this order.

These agreements are for purposes of settlement only; they do not constitute an admission by Warner or PolyGram that the law has been violated as alleged in the complaint.

The purpose of this analysis is to facilitate public comment on the proposed orders and it is not intended to constitute an official interpretation of the agreements and proposed orders or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 86-13823 Filed 6-18-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-233; West Virginia-5]

High-Cost Gas Produced from Tight Formations, West Virginia

Issued June 12, 1986.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Amended 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 (1982), 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 Office of Pipeline and Producer Regulation contains the recommendation of the State of West Virginia Office of Oil and Gas, as amended, that the "Maxton" zone, "Little Lime" zone, "Blue Monday" zone, "Big Lime" zone, "Keener" zone, "Big

Injun" zone, and "Squaw" zone be designated as tight formations under § 271.703(d).

DATES: Comments on the proposed rule are due on June 26, 1986.

Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on June 26, 1986.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street NE., Washington, 20426.

FOR FURTHER INFORMATION CONTACT: Frederick Peters, (202) 357-9115, or Walter W. Lawson, (202) 357-8556.

SUPPLEMENTARY INFORMATION:

I. Background

On July 24, 1984, the State of West Virginia Office of Oil and Gas (West Virginia) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (18 CFR 271.703 (1983)), that the "Maxton" zone, "Little Lime" zone, and "Blue Monday" zone of the Mauch Chunk Group, the "Big Lime" zone and "Keener" zone of the Greenbrier Group, and the "Big Injun" zone and "Squaw" zone of the Pocono Group in central West Virginia, be designated as tight formations. A Notice of Proposed Rulemaking was issued for this recommendation on September 14, 1984.

On November 21, 1985, and March 3, 1986, West Virginia submitted additional information for each zone covered by the recommendation. West Virginia's November 21, 1985, submittal revised the geographical area recommended for each zone. This Notice of Proposed Rulemaking is hereby issued inder § 271.703(c)(4) to determine whether West Virginia's recommendation, as amended, that the "Maxton" zone, "Little Lime" zone, "Blue Monday" zone, "Big Lime" zone, "Keener" zone, "Big Injun" zone, and "Squaw" zone be designated as tight formations should be adopted. West Virginia's recommendation (original and amended) and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

West Virginia recommends that the "Maxton" zone, "Little Lime" zone, and "Blue Monday" zone of the Mauch Chunk Group, the "Big Lime" zone and "Keener" zone of the Greenbrier Group, and the "Big Injun" zone and "Squaw" zone of the Pocono Group, all of Mississippian age and located in certain areas of Braxton and Clay Counties, West Virginia, be designated as tight formations. West Virginia's recommendation, as amended, excludes the "Big Injun" and "Squaw" zones in Clay County and increases the excluded areas in each of the remaining recommended zones. (A detailed description of the recommended area and the excluded areas is contained in the recommendation, as amended, on file with the Commission.)

III. Discussion of Recommendation

West Virginia claims in its submission that evidence gathered and presented in support of this recommendation, as amended, 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 atmosphere pressure, of wells completed for production from 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.

West Virginia further asserts that existing state law and established casing procedures assure protection of all fresh water zones.

Accordingly, under 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 West Virginia, as amended, that the "Maxton" zone, "Little Lime" zone "Blue Monday" zone, "Big Lime" zone, "Keener" zone, "Big Injun" zone, and "Squaw" zone, as described and delineated in West Virginia's amended recommendation filed with the Commission, be designated as tight formations 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, NE., Washington, D.C. 20426, on or before June 26, 1986. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79-76-233 (West Virginia-5), and should give reasons including supporting data for any recommendation. Comments should include the name, title, mailing address, and telephone number of one person to whom communications 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 Office of Public Information, Room 1000, 825 North Capitol Street NE., Washington, DC, 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 wish 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 June 26, 1986.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

Accordingly, 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 West Virginia's recommendation.[1]

Raymond A. Beirne,

Acting Director Office of Pipeline and Producer Regulations.

PART 271—[AMENDED]

Section 271.703 is amended as follows:

1. The authority citation for Part 271 continues to read 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) (205) to read as follows:

§271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(205) *The "Maxton", zone, "Little Lime" zone, and "Blue Monday" zone of the Mauch Chunk Group, the "Big Lime" zone and "Keener" zone of the Greenbrier Group, and the "Big Injun" zone and "Squaw" zone of the Pocono*

[1] West Virginia's amended recommendation requires no change in the previously proposed regulation (49 FR 36655, September 19, 1984), which is set forth below for the convenience of the reader.

Group in Portions of Braxton and Clay Counties, West Virginia. RM 79–76–233 (West Virginia—5)

(i) *"Maxton" zone of the Mauch Chunk Group.*—(A) *Delineation of formation.* The "Maxton" zone underlies the "Salt Sands" zone of the Pottsville Group of Pennsylvania age and overlies the "Little Lime" zone of the Mauch Chunk Group of Mississippian age.

(B) *Depth.* The average depth to the top of the "Maxton" zone is approximately 1,550 feet.

(ii) *"Little Lime" zone of the Mauch Chunk Group.*—(A) *Delineation of formation.* The "Little Lime" zone underlies the "Maxton" zone and overlies the "Blue Monday" zone of the Mauch Chunk Group.

(B) *Depth.* The average depth to the top of the "Little Lime" zone is approximately 1,650 feet.

(iii) *"Blue Monday" zone of the Mauch Chunk Group.*—(A) *Delineation of formation.* The "Blue Monday" zone underlies the "Little Lime" zone and overlies the "Big Lime" zone of the Greenbrier Group.

(B) *Depth.* The average depth to the top of the "Blue Monday" zone is approximately 1,685 feet.

(iv) *"Big Lime" zone of the Greenbrier Group.*—(A) *Delineation of formation.* The "Big Lime" zone underlies the "Blue Monday" zone and overlies the "Keener" zone of the Greenbrier Group.

(B) *Depth.* The average depth to the top of the "Big Lime" zone is approximately 1,735 feet.

(v) *"Keener" zone of the Greenbrier Group.*—(A) *Delineation of formation.* The "Keener" zone underlies the "Big Lime" zone and overlies the "Big Injun" zone of the Pocono Group.

(B) *Depth.* The average depth to the top of the "Keener" zone is approximately 1,845 feet.

(vi) *"Big Injun" zone of the Pocono Group.*—(A) *Delineation of formation.* "The Big Injun" zone underlies the "Keener" zone and overlies the "Squaw" zone of the Pocono Group.

(B) *Depth.* The average depth to the top of the "Big Injun" zone is approximately 1,865 feet.

(vii) *"Squaw" zone of the Pocono Group.*—(A) *Delineation of formation.* The "Squaw" zone underlies the "Big Injun" zone and overlies the "Weir" zone of the Pocono Group.

(B) *Depth.* The average depth to the top of the "Squaw" zone is approximately 2,025 feet.

[FR Doc. 86–13610 Filed 6–18–86; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Coverage of Employees of State and Local Governments

Correction

In FR Doc. 86–11808 beginning on page 19468 in the issue of Thursday, May 29, 1986, make the following correction:

1. On page 19471, in the third column, in the last line, the section reference should read "404.1255a(c)(2) (i) and (iii)".

2. On page 19473, in the first column, in the Redesignation Table, in the second column of the table, in the third line, the section reference should read "404.1292".

§ 404.1271 [Corrected]

3. On page 19483, in the third column, in § 404.1271(b)(2) (iv), in the second line, the section reference should read "404.1256(a)".

§ 404.1286 [Corrected]

4. On page 19485, in the third column, in § 404.1286, in the 10th line, "we paid" should read "were paid".

BILLING CODE 1505–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Public Comment Procedures and Opportunity for Public Hearing on Proposed Modifications to the Kansas Permanent Regulatory Program Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and for requesting a public hearing on the substantive adequacy of program amendments submitted by Kansas as amended to the State's permanent regulatory program (hereinafter referred to as the Kansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendments submitted consist of proposed amendments to Kansas' regulations to implement and administer the Kansas program. The proposed amendments are also intended to render Kansas' rules consistent with the revised Federal regulations contained in 30 CFR Chapter VII.

This notice sets forth the times and locations that the Kansas program and proposed amendments will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed for the public hearing.

DATES: Written comments from the public not received by 4:30 p.m. August 4, 1986 will not necessarily be considered in the decision of whether the proposed amendment should be approved and incorporated into the Kansas regulatory program. A public hearing on the proposed amendments has been scheduled for July 29, 1986. Any person interested in speaking at the hearing should contact Mr. William J. Kovacic, at the address or telephone number listed below by July 7, 1986. If no person has contacted Mr. Kovacic by that date to express an interest in the hearing, the hearing will not be held. If only one person requests an opportunity to speak at the public hearing, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: The public hearing is scheduled for 1:00 p.m. in the Kansas City Field Office, 1103 Grand Avenue, Kansas City, Missouri 64106.

Written comments and requests for an opportunity to speak at the hearing should be directed to Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106; Telephone (816) 374–5527.

Copies of the Kansas program, the proposed modification to the program, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the Kansas City Field Office listed above, OSMRE Headquarters Office, and the Office of the State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendments by contacting OSMRE's Kansas City Field Office.

Office of Surface Mining Reclamation and Enforcement, Room 5315A, 1100 L Street NW., Washington, DC 20240

Kansas Mined Land Conservation and Reclamation Board, 107 W. 11th Street, Pittsburg, Kansas 66762

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Kansas City, Missouri 64106; Telephone: (816) 374-5527.

SUPPLEMENTARY INFORMATION:

I. Background

The Kansas program was conditionally approved by the Secretary of the Interior on January 21, 1981. Information pertinent to the general background, revisions, modifications and amendments to the Kansas program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Kansas program can be found in the January 21, 1981 Federal Register (46 FR 5892). Subsequent actions taken with regard to Kansas' approved program amendments and required amendments can be found at 30 CFR 916.15 and 916.16.

II. Submission of Revisions

By letter dated April 23, 1986, Kansas submitted program amendments to State regulations contained in the Kansas program. The proposed regulations would amend the Kansas Administrative Regulations of the Kansas Mined Land Conservation and Reclamation Board.

The Kansas Mined Land Conservation and Reclamation Board has incorporated by reference the Federal regulations set out in 30 CFR Part 700 to end as they existed on May 1, 1985. The Kansas Legislature approved the regulation revisions.

The list of amendments proposed to OSMRE contains the following regulations: K.A.R. 47-1-4 Scheduling of Board Meetings, K.A.R. 47-2-53 Definitions, K.A.R. 47-2-53a Definitions, K.A.R. 47-2-75 Definitions, K.A.R. 47-3-2 Application for Mining Permit, K.A.R. 47-3-3a Color Coding Permit Maps, K.A.R. 47-3-42 Coal Mining Permit Requirements, K.A.R. 47-4-14 Rule of Procedure, K.A.R. 47-4-15 Rules of Procedure, K.A.R. 47-6-3 Permit Renewal, K.A.R. 47-6-4 Permit Transfers, Assignments and Sales Provisions, K.A.R. 47-6-6 Permit Conditions, K.A.R. 47-7-2 Coal Exploration, K.A.R. 47-8-9 Bonding Procedures, K.A.R. 47-9-1 Performance Standards, K.A.R. 47-9-4 Interim Performance Standards, K.A.R. 47-10-1 Underground Mining, K.A.R. 47-11-8 Small Operator Assistance Program (SOAP), K.A.R. 47-12-4 Lands Unsuitable for Surface Mining, and K.A.R. 47-15-1a Inspection and Enforcement.

Kansas has revoked the following regulations: K.A.R. 47-2-7, K.A.R. 47-3-3, K.A.R. 47-3-40, K.A.R. 47-8-9a, K.A.R. 47-2-17, K.A.R. 47-3-4, K.A.R. 47-6-5, K.A.R. 47-8-10, K.A.R. 47-2-44, K.A.R. 47-3-21, K.A.R. 47-8-2, K.A.R. 47-9-3.

These revisions are proposed by the State of Kansas in response to revisions made to Federal regulations contained in 30 CFR Chapter VII under SMCRA. By letter dated December 17, 1985, pursuant to 30 CFR 732.17 OSMRE informed Kansas of State regulations that must be amended in order to be consistent with the revised Federal regulations. By letter dated January 8, 1986, Kansas agreed to provide OSMRE a draft of proposed amendments to the Kansas regulations addressing concerns set forth in OSMRE's letter. The proposed amendments described above are the State's effort to address OSMRE's list of required program revisions. The amendments are proposed to render Kansas' regulations consistent with the Federal standards.

III. Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 916

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: June 13, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 86-13877 Filed 6-18-86; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 934

Public Comment and Opportunity for Public Hearing on Modified Portions of the North Dakota Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for the public comment period and for a public hearing on the adequacy of proposed amendments to the North Dakota permanent regulatory program which was approved by the Secretary of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments submitted by North Dakota for approval include modifications to the State's regulations concerning the following subject areas: Coal preparation and coal preparation plants; sedimentation pond removal prior to the end of the revegetation liability period; suitable plant growth material; and backfilling and grading.

DATES: Written comments not received on or before 4:00 p.m. on July 21, 1986 will not necessarily be considered. A public hearing on the proposal will be held, if requested, on July 14, 1986, at the address listed below under **"ADDRESSES"**. Any person interested in making an oral or written presentation at the hearing should contact Mr. Jerry R. Ennis at the OSMRE Casper Field Office by 4:00 p.m. on July 7, 1986. If no one has contacted Mr. Ennis to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person has so contacted Mr. Ennis, a public meeting, rather than a hearing may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: Written comments should be mailed or hand-delivered to Mr. Jerry R. Ennis, Director, Office of Surface Mining Reclamation and Enforcement,

Casper Field Office, 100 East "B" Street, Casper, Wyoming 82601–1918 .

The public hearing will be held at the North Dakota Capitol Building, Bismarck, North Dakota 58505.

See **"SUPPLEMENTARY INFORMATION"** for address where copies of the North Dakota program amendment and administrative record on the North Dakota program are available. Each requestor may receive, free of charge, one single copy of the proposed program amendment by contacting the OSMRE Casper Field Office listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry R. Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Casper, Wyoming 82601–1918, Telephone: (307) 261–5824.

SUPPLEMENTARY INFORMATION: Copies of the North Dakota program amendment, the North Dakota program and the administrative record on the North Dakota program are available for public review and copying at the OSMRE office and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5124, 1100 L Street N.W., Washington, DC 20240

Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Casper, Wyoming 82601–1918

North Dakota Public Service Commission, Reclamation Division, Capitol Building, Bismark, North Dakota 58505.

Background

The general background on the permanent program, the general background on the State program approval process, the general background on the North Dakota program, and the conditional approval can be found in the Secretary's Findings and conditional approval published in the December 15, 1980 **Federal Register** (45 FR 82214). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 934.11 and 934.15.

Proposed Amendment

On May 30, 1986, the State of North Dakota submitted to OSMRE, amendments to its approved permanent regulatory program. The amendment package consists of revisions to the approved North Dakota regulations. The amended sections of the regulations and brief description of the amended subject areas are as follows: Section 69–05.2–01–02—new definition of "coal preparation" and "coal preparation plant"; sections 69–05.2–.09–19 and 69–05.2–13–13—new performance standards for coal preparation plants; sections 69–05.2–16–04 and 69–05.2–16–09—criteria for allowing the removal of sedimentation ponds prior to the end of the revegetation responsibility period; section 69–05.2–15–01—proposed repeal of language governing suitable plant growth materials; sections 69–05.02–15–02, 03 and 04—revised regulations governing the removal, storage, protection and redistribution of suitable plant growth material; section 69–05.2–21–03—revised backfilling and grading reqluirements; and section 69–05.2–08–05—revised provisions for the removal of suitable plant growth material.

OSMRE is seeking comment on whether North Dakota's proposed revisions to its regulations are in accordance with SMCRA and no less effective than the requirements of the revised Federal regulations and satisfy the criteria for approval of State program amendments at 30 CFR 732.15 and 732.17.

The full text of the proposed program modifications submitted by North Dakota for OSMRE's consideration is available for public review at the addresses listed under **"SUPPLEMENTARY INFORMATION."**

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no evironmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On Agust 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 934

Coal mining, Intergovenmental relations, Surface mining, Underground mining.

Dated: June 13, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services Office of Surface Mining Reclamation and Enforcemnt.

[FR Doc. 86–13878 Filed 6–18–86; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 935

Public Comment Procedures and Opportunity for Public Hearing on Proposed Modification to the Ohio Permanent Regulatory Program Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and for requesting a public hearing on the substantive adequacy of program amendments submitted by Ohio as amendments to the State's permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The Amendments submitted consist of proposed amendments to Ohio's statute and regulations to implement and administer the Ohio program. The proposed amendments are also intended to render Ohio's rules consistent with the revised Federal regulations contained in 30 CFR Chapter VII.

This notice sets forth the times and locations that the Ohio program and proposed amendments will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed for the public hearing.

DATES: Written comments from the public not received by 4:30 p.m. August 4, 1986 will not necessarily be considered in the decision on whether the proposed amendments should be approved and incorporated into the Ohio regulatory program. A public hearing on the proposed amendments has been scheduled for July 29, 1986 Any person interested in speaking at the hearing should contact Ms. Nina Rose

Hatfield, at the address or telephone number listed below by July 7, 1986. If not person has contacted Mr. Hatfield by that date to express an interest in the hearing, the hearing will not be be held. If only one person requests an opportunity to speak at the public hearing, a public meeting, rather than a hearing, may be held and the results of the meeting including in the Administrative Record.

ADDRESSES: The public hearing is scheduled for 1:00 p.m. in the in the OSMRE Columbus Field Office, 2242 South Hamilton Road, Columbus, Ohio 43227.

Written comments and requests for an opportunity to speak at the hearing should be directed to Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866–0578.

Copies of the Ohio program, the proposed modifications to the program, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the Columbus Field Office listed above, OSMRE Headquarters Office, and the Office of the State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendments by contacting OSMRE's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Room 5315A, 1100 L Street NW., Washington, DC 20240

Ohio Division of Reclamation, Building B, Fountain Square, Columbus, Ohio 43224.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866–0578.

SUPPLEMENTARY INFORMATION

I. Background

The Ohio program was approved effective August 16, 1982, by notice published in the August 10, 1982 **Federal Register** (47 FR 34688). Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 **Federal Register**. Subsequent actions taken with regard to Ohio's conditions of approval and approved program amendments can be found at 30 CFR 935.11 and 935.15.

II. Submission of Revisions

By letter dated May 8, 1986, Ohio submitted program amendments to the State statute and regulations contained in the Ohio program. The proposed amendments would amend the Ohio Revised Code—Chapter 1513 and Ohio Administrative Code Regulations of the Ohio Division of Reclamation.

The proposed amendment package includes revisions to fifty-five regulations and two statutes. The amended rules include: Ohio Administrative Code sections 1501:13–1–01, 13–1–02, 13–1–07, 13–1–10, 13–1–13, 13–3–02, 13–3–03, 13–3–04, 13–3–05, 13–3–06, 13–3–07, 13–4–01, 13–4–02, 13–4–03, 13–4–04, 13–4–05, 13–4–06, 13–4–08, 13–4–12, 13–4–13, 13–4–14, 13–5–01, 13–6–03, 13–7–01, 13–7–02, 13–7–03, 13–7–04, 13–7–05, 13–7–06, 13–7–07, 13–7–08, 13–8–01, 13–9–01, 13–9–04, 13–9–07, 13–9–09, 13–9–10, 13–9–11, 13–9–13, 13–9–14, 13–9–15, 13–10–01, 13–13–02, 13–13–03, 13–13–04, 13–13–05, 13–13–06, 13–13–08, 13–14–01, 13–14–02, 13–14–03, 13–14–04, 13–14–05, 1513–3–03, and 1513–3–08. Ohio Revised Code sections 1513.16 and 1513.18. These sections include definitions, permit application contents and procedures, procedures and criteria for identifying lands unsuitable for coal mining, small operator assistance program, bonding, performance standards, inspection and enforcement, and the Reclamation Board of Review.

These revisions are proposed by the State of Ohio in response to revisions made to Federal regulations contained in 30 CFR Chapter VII under SMCRA. By letter dated November 6, 1985, pursuant to 30 CFF 732.17, OSMRE informed Ohio of State regulations that must be amended in order to be consistent with the revised Federal regulations. By letter dated January 13, 1986, Ohio agreed to provide OSMRE a draft of proposed amendments to the Ohio statute and regulations addressing concern set forth in OSMRE's letter. The proposed amendments described above are the State's effort to address OSMRE's list of required State program revisions. The amendments are proposed to render Ohio's regulations consistent with the Federal standards.

Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has detemined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from section 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining Underground mining.

Dated: June 13, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 86–13879 Filed 6–18–86; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 938

Reopening of Comment Period on Proposed Amendment to the Pennsylvania Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OISMRE), Interior.

ACTION: Reopening of comment period.

SUMMARY: OSMRE is announcing the reopening of the comment period on proposed regulatory provisions submitted by Pennsylvania as an amendment to the State's permanent regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to Pennsylvania's Inspection and Enforcement Policy and Civil Penalty Program for coal mining. Pennsylvania submitted the proposed program amendment on September 30, 1985

(Administrative Record No. PA 568). OSMRE published a notice in the **Federal Register** on October 29, 1985, announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (50 FR 43726). The public comment period ended November 29, 1985. In a letter dated February 4, 1986, OSMRE advised Pennsylvania of its concerns relating to the proposed amendment (Administrative Record No. PA 593). On May 22, 1986, Pennsylvania submitted additional material to address the concerns raised by OSMRE (Administrative Record No. 606). OSMRE is reopening the comment period to provide the public an opportunity to renew and comment on the proposed amendment in light of the additional material submitted by Pennsylvania on May 22, 1986.

DATES: Written comments from members of the public not received by 4:30 p.m. on July 7, 1986 will not necessarily be considered in the Director's decision on whether the proposed amendments satisfy the criteria for approval.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, 101 South 2nd Street, Suite L–4, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

Copies of the Pennsylvania program, the proposed modifications to the program, records of meetings and all written comments received in response to this notice will be available for public review at the OSMRE Field Office above and the OSMRE Headquarters office listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m. excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendments by contacting OSMRE's Harrisburg Field Office. Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, 101 South 2nd Street, Suite L–4, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background

On February 29, 1980, the Secretary of the Interior received a proposed regulatory program from the State of Pennsylvania. On October 22, 1980, following a review of that proposed program as outlined in 30 CFR Part 732, the Secretary of the Interior disapproved the program. The State resubmitted its program on January 25, 1982, and, subsequently the Secretary approved the program conditioned on the correction of minor deficiencies. Information pertinent to the general background of the permanent program submission, as well as the Secretary's findings, the disposition of comments and explanations of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982, **Federal Register** (47 FR 33050).

Subsequent actions concerning the conditions of approval and program amendments are listed at 30 CFR 938.11, 30 CFR 938.15 and 30 CFR 938.16.

II. Submission of Program Amendment

On September 30, 1985, Pennsylvania submitted for OSM's review and approval a proposed amendment to the State program (OSMRE Administrative Record PA 568). The amendment modifies the State's inspection and enforcement policy and civil penalty program.

On October 29, 1985, OSMRE announced receipt of the amendment in the **Federal Register** and invited comment on the adequacy of the proposed amendment in satisfying the criteria for approval of State program amendments set forth at 30 CFR 732.15 and 723.17 (50 FR 43726).

In a letter dated February 4, 1986, OSMRE advised Pennsylvania of its concerns relating to the proposed amendment (Administrative Record No. PA 593). On May 22, 1986, Pennsylvania submitted additional material to address the concerns raised by OSMRE (Administrative Record No PA 606). OSMRE is reopening the comment period for 15 days to provide the public an opportunity to review and comment on the proposed amendment in light of the additional material submitted by the State on May 22, 1986.

In its February 4, 1986 letter to Pennsylvania, OSMRE raised three concerns. First, OSMRE indicated that it was unclear whether the amendment, if adopted, would preclude the State from initiating alternative enforcement actions under the State's statutory counterparts to sections 518(e), 518(f), 521(a)(4), or 521(c) of SMCRA.

Second, OSMRE pointed out that the proposed Civil Penalty Program, section II, 2, did not establish a timeframe within which alternative enforcement actions(s) would be taken following termination of the penalty.

Finally, OSMRE advised Pennsylvania that its Civil Penalty Program must include provisions for assessing individual civil penalties for all violations, not just those that lead fo a failure-to-abate cessation order. Section 518 of SMCRA provides that whenever a corporate permittee violates a condition of permit or fails or refuses to comply with any order issued under section 521 of the Act, any director, officer or agent of such corporation who willfully and knowingly authorized, ordered or carried out such violation, failure or refusal shall be subject to the same civil and criminal penalties that may be imposed on a corporate permittee.

OSMRE specifically seeks comment on whether the additional material submitted by the State on May 22, 1986, addresses the concerns raised by OSMRE in its February 4, 1986 letter and whether the proposed amendment as modified and clarified by the State's May 22, 1986 submission satisfies the criteria for approval of State program amendments at 30 CFR 732.15 and 17.

If the Director determines the proposed modifications are consistent with SMCRA and no less effective than OSMRE's regulations, the amendments will be approved, and 30 CFR Part 938 modified accordingly.

List of Subjects in 30 CFR Part 938

Coal mining, Intergovernmental relations, Surface mining Underground mining.

Dated: June 12, 1986.

Arthur W. Abbs,

Acting Assistant Director, Program Operations.

[FR Doc. 86–13777 Filed 6–8–86; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 943

Permanent State Regulatory Program of Texas

AGENCY: Office of Surface Mining Reclamation and Enforcment (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period on a request submitted by the State of Texas to further extend the deadline for Texas to resubmit rules governing a blaster training, examination and certification program as required by the Federal regulations at 30 CFR Part 850.

On March 1, 1984, the State of Texas submitted to OSMRE an amendment to its approved regulatory program. OSMRE announced procedures for a public comment period and a public hearing on the amendment in the

Federal Register on March 23, 1984 (49 FR 10943). The proposed amendment concerned blaster training, examination and certification.

On June 25, 1984, Texas requested that OSMRE grant an extension of time for the development of a blaster training, examination and certification program and to suspend the current rulemaking on this subject. On September 21, 1984, OSMRE announced its decision to suspend rulemaking on the proposed rules and extend Texas' deadline to March 21, 1985 (49 FR 37062). Since then, Texas has requested and received two further extensions through May 15, 1986. (June 3, 1985, 50 FR 23299 and January 17, 1986, 51 FR 2489). In letters dated May 6, 1986, and June 9, 1986, Texas requested a twelve-month extension of its blaster certification program submission deadlines.

All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) are required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSMRE's regulations provides that the Director, OSMRE, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause. OSMRE is proposing to again modify the deadline for Texas to develop and adopt its blaster program. This notice sets forth the dates and locations for submission of written comments.

DATES: Comments not received by 4:00 p.m. July 21, 1986 will not necessarily be considered.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. James H. Moncrief, Director, Tulsa Field Office, Office of.Surface Mining Reclamation and Enforcement, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103; Telephone: (918) 581-7927.

SUPPLEMENTARY INFORMATION: On March 4, 1983, OSMRE issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Part 850 (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSMRE's rule at 30 CFR Part 850, whichever is later. In the case of Texas' program, the applicable date was 12 months after the publication date of OSMRE's rule, on March 4, 1984.

On March 1, 1984, Texas submitted an amendment to its approved program which was intended to implement the Federal requirements for a blaster training, examination and certification program. OSMRE published a notice of public comment period and opportunity for public hearing in the **Federal Register** on March 23, 1984 (49 FR 10943). In its subsequent review of the proposed amendment, OSMRE identified several deficiencies and pointed these out to the State.

On June 25, 1984, Texas advised OSMRE that it would require a six-month extension of the deadline of resubmission of a blaster program in order that Texas might adequately address and respond to the issues raised by OSM. Texas also requested suspension of the current rulemaking on this subject. In the September 21, 1984 **Federal Register** OSMRE announced its decision to suspend current rulemaking and extend Texas's deadline to March 21, 1985 (49 FR 37062).

On March 7, 1985, Texas requested an additional four months extension through July 15, 1985, to submit the State's blaster certification rules, training and certification program. In the June 3, 1985 **Federal Register**, OSMRE announced its decision to further extend Texas' deadline to July 15, 1985.

On October 15, 1985, Texas requested a further extension to May 15, 1986. In the January 17, 1986 **Federal Register**, OSMRE announced its decision to extend the deadline to May 15, 1986.

In letters dated May 6, 1986, and June 9, 1986, Texas requested an additional twelve months to submit its blaster certification program, citing "continuing regulatory program changes and an unusually high demand for staff time." Texas said in its letter than there is only one mine in Texas which conducts blasting and that mine conducts limited blasting only once a year. Texas said that as a result, "there has been a greater public expression of need for regulation in the areas of effluent limitations, lands, unsuitable for mining, prime farmland, and violation abatement periods." Therefore, these proposed rules were given priority attention. Also, Texas said that substantial amounts of staff time were spent preparing OSMRE action plan reports and special studies and in oversight activities.

OSMRE is seeking comment on the State's request for additional time to develop and adopt a blaster certification program. Section 850.12(b) of OSMRE's regulations provides that the Director, OSMRE, may approve an extension of time for State to develop and adopt a program upon a demonstration of good cause.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 943

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: June 13, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services.

[FR Doc. 86-13880 Filed 6-18-86; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8-86-02]

Drawbridge Operation Regulation; Bayou Petit Caillou, LA

AGENCY: U. S. Coast Guard, DOT.

ACTION: Propose rule.

SUMMARY: At the request of the Terrebonne Parish Consolidation Government, the Coast Guard is considering a change to the regulation governing the operation of the vertical lift span bridge (DuPlantis Bridge) over Bayou Petit Caillou, mile 29.9, near Bourg, Terrebonne Parish, Louisiana. This proposed change would require the draw of the bridge to open on at least four hours notice at all times. Presently, the draw is required to open on at least twelve hours notice from 9 p.m. to 5 a.m. and to open on signal from 5 a.m. to 9 p.m.

This proposal is being made because of infrequent requests to open the draw. This action should relieve the bridge owner of the burden of having a person constantly available at the bridge from 5 a.m. to 9 p.m., while still providing for the reasonable needs of navigation.

DATE: Comments must be received on or before August 4, 1986.

ADDRESS: Comments should be mailed to Commander (obr), Eighth Coast Guard District, 500 Camp Street, New Orleans, Louisiana 70130. The comments and other materials referenced in this notice will be available for inspection and copying in Room 1115 at this address. Normal office hours are between 8:00 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, at the address given above, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

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

Drafting Information

The drafters of this notice are Perry Haynes, project officer, and Lieutenant Commander James Vallone, project attorney.

Discussion of Proposed Regulation

The DuPlantis Bridge over Bayou Petit Caillou at mile 29.9 has a closed position vertical clearance of 3.57 feet above high water. Waterway traffic consists of an occasional commercial vessel (mainly fishing/shrimping boats) and recreational craft. Data submitted by Terrebonne Parish show that traffic is infrequent. The bridge had 229 openings during the year 1985, or a monthly average of 19.08 openings (0.6 openings per day).

Considering the few openings involved for the bridge, the Coast Guard feels that four hours advance notice can be adopted with only minimal economic impact. This arrangement will allow relief to the bridge owner, while still providing for the reasonable needs of navigation.

The advance notice for opening the draw would be given by placing a collect call at any time to the Terrebonne Parish Consolidated Government at (504) 868–3000, or to (504) 873–6734 between the hours of 7:00 a.m. and 4:30 p.m. From afloat, this contact may be made by radiotelephone through a public coast station.

The Terrebonne Parish Consolidated Government recognizes that there may be an unusual occasion when there may be a need to open the bridge on less than four hours notice for a bonafide emergency, or to operate the bridge on demand or an isolated but temporary surge in waterway traffic, and has committed to doing so if such an event should occur.

Economic Assessment and Certification

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

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that few vessels pass through the bridge as evidenced by the 1985 bridge opening statistics. The vessels that pass can reasonably give four hours notice for a bridge opening by placing a collect call to the bridge owner at any time from ashore or afloat. Mariners requiring the bridge openings are mainly repeat users of the waterway and scheduling their arrival at the bridge at the appointed time should involve little or no additional expense to them. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulation

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46[c][5]; 33 CFR 1.05–1[g].

2. Section 117.475 is revised to read as follows:

§ 117.475 Little (Petit) Caillou Bayou.

(a) The draws of the S58 bridge, mile 25.7 at Sarah, and the Terrebonne Parish (Smithridge) bridge, mile 26.6 near Montegut, shall open on signal; except that, from 9 p.m. to 5 a.m., the draws shall open on signal if at least 12 hours notice is given.

(b) The draws of the Terrebonne Parish (DuPlantis) bridge, mile 29.9 near Bourg, and the S24 bridge, mile 33.7 at Presquille, shall open on signal if at least four hours notice is given. The draws shall open on less than four hours notice for an emergency, and shall open on signal should a temporary surge in waterway traffic occur.

Dated: May 28, 1986.

E.B. Acklin,

Captain, U.S. Coast Guard Commander, 8th Coast Guard District Acting.

[FR Doc. 86–13875 Filed 6–18–86; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CCGD09 86–11]

Drawbridge Operation Regulations; Maumee River, OH

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the requests of the Ohio Department of Transportation and the City of Toledo, Ohio, the Coast Guard is considering a change to the operating regulations of the Craig Memorial highway bridge, mile 3.30 and Cherry Street bridge, mile 4.30 over the Maumee River in Toledo, Ohio, by permitting the number of openings for pleasure craft to be limited during certain times and by permitting the bridge owners to remove bridgetenders during certain times and only open the bridges for the passage of vessels, other than emergency vessels and vessels in distress, if at least a twelve hour advance notice is given. This change is being considered because of an increase in land traffic during the day and the lack of requests to open the draw during the winter months. Also, the Chessie System railroad bridge, mile 1.07, Norfolk and Western railroad bridge, mile 1.80 and Conrail railroad bridge, mile 5.76 will be included in this proposal for the removal of bridgetenders during the winter months in order to maintain consistency on the Maumee River for this period of time. This action should accommodate the needs of vehicle traffic, relieve the bridge owners of the burden of having a bridgetender in constant attendance, and still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before August 4, 1986.

ADDRESSES: Comments should be mailed to Commander (obr), Ninth Coast Guard District, 1240 East Ninth Street, Cleaveland, Ohio 44199. The comments and other materials referenced in this notice will be available for inspection and copying at 1240 East Ninth Street, Room 2083D, Cleveland, Ohio. Normal office hours are between the hours of 6:30 a.m. and 3:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Robert W. Bloom, Jr., Chief, Bridge Branch, telephone (216) 522-3993.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

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

Drafting Information: The drafters of this notice are Fred H. Mieser, project officer, and Lt R. A. Pelletier, project attorney.

Discussion of Proposed Regulations: Presently, the Cherry Street and Craig Memorial highway bridges open on signal at all times. Bridgetenders on the highway and railroad bridges over the Maumee River are required to be in constant attendance at all times of the year.

From April 1 through December 14, the proposed change to the operating regulations would allow the owners of the highway bridges to operate their bridges on a regulated schedule for pleasure craft between the hours of 7 a.m. and 11 p.m., seven days a week. The Craig memorial highway bridge would open for pleasure craft from three minutes before to three minutes after the hour and half-hour with no opening during the peak vehicular traffic times of 7:30 a.m. and 4:30 p.m. The Cherry Street highway bridge would open for pleasure craft from three minutes before to three minutes after the quarter and three-quarter hour with no opening during the peak vehicular traffic times of 7:45 a.m. and 4:45 p.m. These regulated periods do not apply to commercial vessels nor will they apply to the railroad bridges. From 11 p.m. to 7 a.m., the highway bridges will be required to open on signal for all vessels.

From December 15 through March 31, the highway and railroad bridges would not be required to have a bridgetender in constant attendance and the bridges would open on signal if at least a twelve hour advance notice is given.

At all times, the bridges would be required to open on signal as soon as possible for the passage of public vessels of the United States, state or local government vessels used for public safety and vessels in distress.

This change has been requested by the owners of the highway bridges because random bridge openings for the passage of pleasure craft cause land traffic tie-ups and because of the lack of requests to open the bridges during the winter months. Traffic counts show that both highway bridges have an average daily traffic volume of more than 20,000 vehicles crossing over the bridges. Bridgetender logs show that opening the draw for pleasure craft increased from 265 openings in 1983 to 684 openings in 1984. This increase in openings is due to an increase of pleasure craft using the Maumee River. An increase in water level is also causing the bridges to open for some pleasure craft that could otherwise pass through the draws without requiring the draws to open.

Requests for opening the draws of the highway and railroad bridges during the winter months are so minimal that removing the bridgetenders from the bridges during this priod of time and requiring a twelve hour advance notice to open the bridges should meet the reasonable needs of navigation.

Economic Assessment and Certification

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

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Commercial vessels would be unaffected except during the winter months when the bridges would be unattended and when commercial navigation is minimal. The periods of time when the highway bridges open for pleasure craft on a regulated schedule should relieve the problem of land traffic tie-ups due to random bridge openings while still allowing recreational boaters to navigate the river. Also, the periods of time when the bridges are unattended would relieve the bridge owners of having bridgetenders on duty when there is little or no navigation on the river. Since the impact of this proposal is expected to be so minimal, the Coast Guard certifies that if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

In consideration of the foregoing, it is proposed that part 117 of Title 33 of the Code of Federal Regulations be amended as follows:

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; and 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. It is proposed that Part 117 be amended by adding a new section, § 117.855, under the listing for the State of Ohio to read as follows:

§ 117.855 Maumee River

(a) The draw of the Craig Memorial

highway bridge, mile 3.30, at Toledo, shall operate as follows:

(1) From April 1 through December 14—

(i) Between the hours of 7 a.m. and 11 p.m., the draw need open only from three minutes before to three minutes after the hour and half-hour with no opening required at 7:30 a.m. and 4:30 p.m. for pleasure craft; for commercial vessels, during this period of time, the draw shall open on signal as soon as possible.

(ii) Between the hours of 11 p.m. and 7 a.m. the draw shall open on signal for commercial vessels and pleasure craft.

(2) From December 15 through March 31, no bridgetenders are required to be on duty at the bridge and the draw shall open on signal for commercial vessels and pleasure craft if at least a twelve hour advance notice is given.

(b) The draw of the Cherry Street highway bridge, mile 4.30, at Toledo, shall operate as follows:

(1) From April 1 through December 14—

(i) Between the hours of 7 a.m. and 11 p.m., the draw need open only from three minutes before to three minutes after the quarter and three-quarter hour with no opening required at 7:45 a.m. and 4:45 p.m. for pleasure craft; for commercial vessels, during this period of time, the draw shall open on signal as soon as possible.

(ii) Between the hours of 11 p.m. and 7 a.m., the draw shall open on signal for commercial vessels and plesure craft.

(2) From December 15 through March 31, no bridgetenders are required to be on duty at the bridge and the draw shall open on signal for commercial vessels and pleasure craft if at least a twelve hour advance notice is given.

(c) The draws of the Chessie system railroad bridge, mile 1.07, Norfolk and Western railroad bridge, mile 1.80 and Conrail railroad bridge, mile 5.76, all at Toledo, shall operate as follows:

(1) From April 1 through December 14, the draws shall open on signal for all vessels.

(2) From December 15 through March 31, no bridgetenders are required to be on duty at the bridges and the draws shall open on signal for commercial vessels and pleasure craft if at least a twelve hour advance notice is given.

(d) At all times, the birdges listed in this section shall open as soon as possible for public vessels of the United States, state or local government vessels used for public safety and vessels in distress.

Dated: June 6, 1986.

A.M. Danielsen,

Read Admiral, U.S. Coast Guard Commander, Ninth Coast Guard Disteict.

[FR Doc. 86-13876 Filed 6-18 86; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 111

Discontinuance of Post Offices and Emergency Suspension of Service

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This revision to existing rules is proposed to reflect the Postal Service's new management organizational structure, and to streamline internal procedures by reducing the number of management reviews required, eliminating excess paperwork (including superfluous forms and transmittal letters), and clarifying language.

Proposed modifications in current procedures include transferring final authority to approve a post office discontinuance from the Senior Assistant Postmaster General, Operations Group (now designated the Operations Support Group), to the Assistant Postmaster General, Delivery Services Department; eliminating the intermediate review of proposals at the regional level of management, changing the internal flow of documents to reflect the new management structure of the Postal Service (including the elimination of district offices), and modifying the language included in each proposal to discontinue an office to avoid confused premature appeals to the Postal Rate Commission. Other changes are proposed to clarify the language and intent of the current regulations, including provisions which indicate which types of actions are covered by the rules concerning discontinuance of post offices and which types of circumstances may justify the suspension of operations at an office.

DATE: Comments must be received on or before July 19, 1986.

ADDRESS: Written comments should be mailed or delivered to the Retail and Customer Services Clerical Operations Division, Room 7226, 475 L'Enfant Plaza West SW, Washington, DC 20260-7225. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in Room 7226, at the above address.

FOR FURTHER INFORMATION CONTACT: Mario Principe, (202) 268-3538.

SUPPLEMENTARY INFORMATION: A recent reorganization of the Postal Service's management structure eliminated district offices and changed the role of regional offices. The reorganized structure gives the 74 new field divisions the responsibility and authority to handle matters, including proposals for the discontinuance of post offices, which previously required district and regional approval. The proposed revision to existing rules would realign the discontinuance process to fit with divisional responsibilities.

The transfer of final reviewing authority to the Assistant Postmaster General, Delivery Services Department, is proposed because the Assistant Postmaster General is the officer most directly concerned with the retail and delivery operations of post offices. The proposed changes would also reduce the amount of paperwork generated by post office discontinuances by eliminating the review of proposals at intermediate levels and by channelling correspondence directly between the divisional offices and headquarters.

Existing rules require that the Postal Rate Commission's name and address appear on the proposal which is posted at the affected post office for 60 days. At this stage of the discontinuance process no final decision has been made, and this rule has led customers to make premature appeals to the Postal Rate Commission. The proposed change would revise the format of proposals to eliminate confusion on the part of postal customers.

Finally, the proposed changes would clarify the language and intent of the current regulations. When it adopted the current procedures for discontinuance of post offices (42 FR 59082; November 15, 1977), the Postal Service explained that these rules were intended to apply solely to any decision to close or consolidate an independent post office, not to actions regarding stations, branches, or contractor operated facilities such as Community Post Offices. The proposed changes would express this intent clearly in the rules themselves. The proposed changes would also list additional types of circumstances which may justify suspending operations at a post office, and clarify that the list is intended to be illustrative, not all-inclusive.

Although exempt by 39 U.S.C. 410(a) from the requirements of the Administrative Procedure Act regarding proposed rulemaking, 5 U.S.C. 553(b), (c), the Postal Service invites public comments on the following proposed revisions of Part 113 of the Domestic Mail Manual, which is incorporated by

reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 404, 407, 408, 3001–3011, 3201–3219, 3403–3405, 3621, 5001; 42 U.S.C. 1973cc–13, 1973cc–14.

2. Sections 113.2 and 113.3 of the Domestic Mail Manual are revised to read as follows:

113.2 Discontinuance of Post Offices.

.21 Introduction.

.211 Coverage. This part establishes the rule that govern the Postal Service's consideration of whether an existing independent post office should be discontinued. The rules cover any proposal to replace an independent post office with a station, branch, or contractor-operated community post office through consolidation with another independent post office, as well as any proposal to discontinue an independent post office without providing a replacement facility. These rules do not apply to the relocation of an independent post office, or to the discontinuance of a station, branch, or contractor-operated community post office administratively attached to an independent post office.

.212 Requirements of Law. Under 39 United States Code (U.S.C.) 404(b), any decision to close or consolidate a post office must be based on certain specific criteria. These include the effect on the community served; the effect on employees of the post office; compliance with Government policy established by law that the Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining; the economic savings to the Postal Service; and any other factors determined to be necessary by the Postal Service. In addition, certain mandatory procedures apply:

a. The public must be given 60 days notice of a proposed action in order to enable the persons served by a post office to evaluate the proposal and provide comments.

b. Any final determination to close or consolidate a post office, after public comments are received and taken into account, must be made in writing and must include findings covering all of the required considerations.

c. The written determination must be made available to the persons served by the office at least 60 days before the discontinuance takes effect.

d. Within the first 30 days after the written determination is made available, any person regularly served by the affected post office may appeal the decision to the Postal Rate Commission.

e. The Commission may affirm the determination of the Postal Service or return the matter for further consideration but may not modify the determination.

f. The Commission is required by 39 U.S.C. 404(b)(5) to make a determination on the appeal no later than 120 days after receiving the appeal.

g. A summary table of the notice and appeal periods under the statute or these regulations appears in Exhibit 113.212.

.213 Additional Requirements. Section 113.2 includes: (a) rules to ensure that the community's identity as a postal address will be preserved and (b) rules for consideration of a proposed discontinuance and for its implementation if approved. These rules are designed to ensure that the reasons which lead a Field Division General Manager/Postmaster, to propose the discontinuance of a particular post office are fully articulated and disclosed at a stage that will enable customer participation to make a helpful contribution toward the final decision.

.22 Preservation of Community Address.

.221 Policy. The Postal Service permits the use of a community's separate address to the extent practicable.

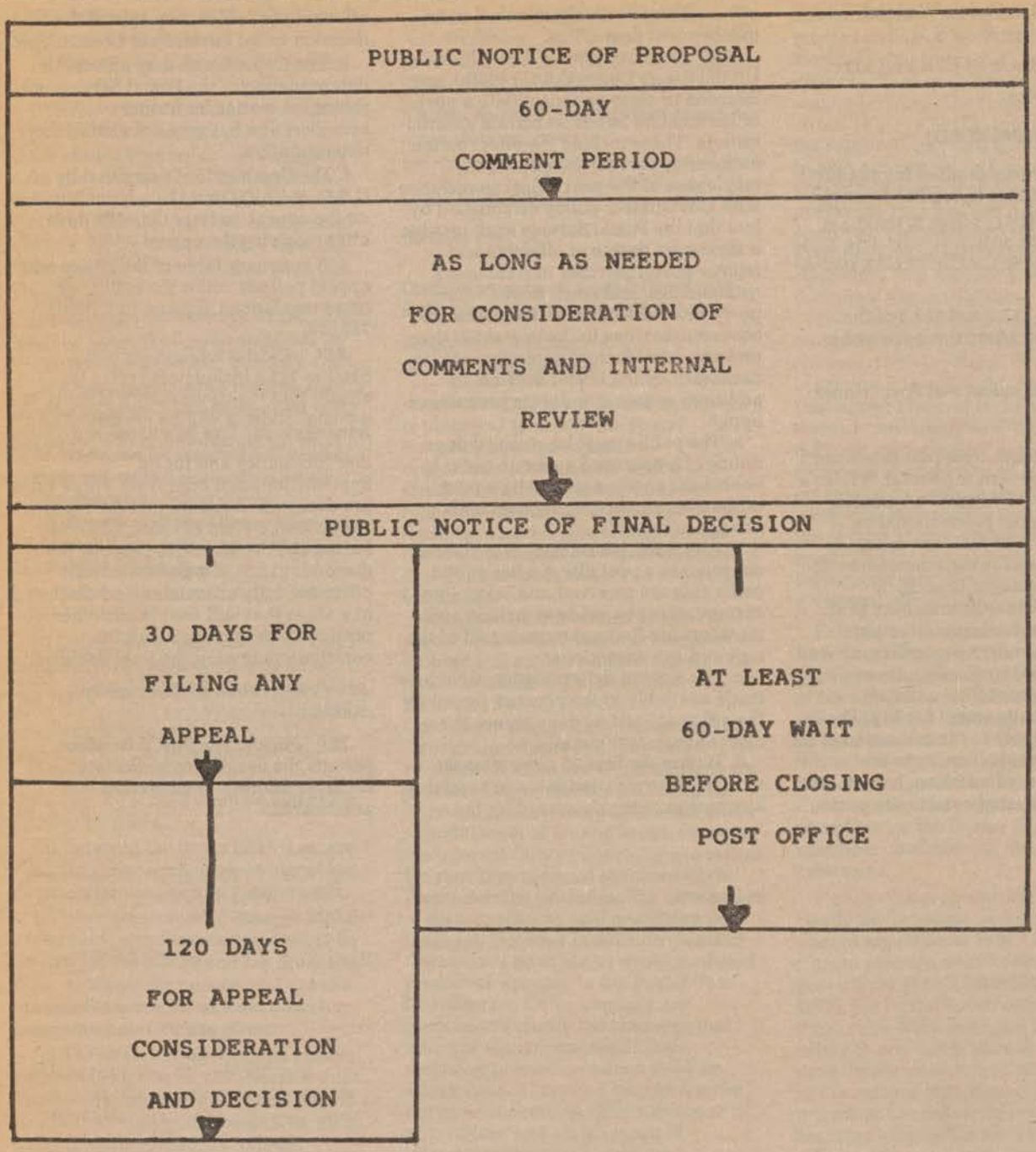


Exhibit 113.212

.222 Assignment of ZIP Code. The ZIP Code for each address formerly served from the discontinued post office ordinarily should be the ZIP Code of the facility providing replacement service to that address. In appropriate circumstances, the ZIP Code originally assigned to the discontinued post office may be retained if the responsible Field Division General Manager/Postmaster submits a request with justification to the Office of Address Information Systems, Headquarters, before the proposal to discontinue the post office is posted.

a. In the case of a consolidation, the ZIP Code provided for the replacement community post office, station, or branch will be (1) either the ZIP Code originally assigned to the discontinued post office or (2) the ZIP Code of the replacement facility's parent post office, whichever provides the most expeditious distribution and delivery of mail addressed to the customers of the replacement facility.

b. If the ZIP Code is changed and the parent post office is a multi-ZIP Coded office, the ZIP Code must be that of the

delivery area within which the facility is located.

.223 Post Office Name in Address. If all of the delivery addresses using the name of the post office to be discontinued are assigned the same ZIP Code, each customer may continue to use the name of the discontinued post office in his address, instead of changing to or adding the name of the post office from which delivery is provided after the discontinuance.

.224 Name of Facility Established By Consolidation. If a post office to be discontinued is to be consolidated with one or more other post offices, by establishing in the place of the discontinued post office, a community post office, classified or contract station, or branch affiliated with another post office involved in the consolidation, the name of the replacement until will be the same as the name of the discontinued post office.

.225 Listing of Discontinued Post Offices. The names of all post offices discontinued after March 14, 1977, are listed in an appropriate manner in Postal Service official directories, such as Publication 65, National Five-Digit ZIP Code and Post Office Directory, for mailing address purposes only. The ZIP Codes listed for discontinued offices will be those assigned in accordance with 113.2.

.23 Initial Proposal

.231 General. If Field Division General Management/Postmaster believes that the discontinuance of a post office within his or her responsibility may be warranted, the Field Division General Manager/Postmaster:

a. Must apply the standards and procedures in 113.23 and 113.24.

b. Must investigation the situation.

c. May propose that the post office be discontinued.

.232 Consolidation. The proposed action may include a consolidation of post offices to substitute a community post office or a classified or contract station of branch for the discontinued post office:

a. If the communities served by two or more post offices are being merged into a single incorporated village, town, or city; or

b. If providing a replacement facility is necessary to maintain regular and effective service to the area served by the post office being considered for discontinuance.

.233 Views of Postmasters. Whether the discontinuance under consideration involves a consolidation or not, the Field Division General Manager/Postmaster must:

a. Discuss the matter with the postmaster (or the officer-in-charge, if there is a vacancy in the postmaster position) of the post office being considered for discontinuance, and with the postmaster of any other post office that would be affected by the change: and

b. Encourage these officials to submit their comments and suggestions in writing to be made part of the record for further consideration and review of the proposal.

.234 Preparation of Written Proposal. The Field Division General Manager/Postmaster must gather and preserve for the record all documentation used to assess the proposed change. If the Field Division General Manager/Postmaster believes the proposed action is warranted, he or she must prepare a document entitled, "Proposal to [Close] [Consolidate] the [Name] Post Office." This document must provide a description and analysis of the proposal that is sufficient to disclose both to higher management and to the persons served by the affected post office the nature and justification of the proposed changes in service. The written proposal must address each of the following matters in separate sections:

a. *Responsiveness to Community Postal Needs.* The proposal must take into account the policy of the Government, as established by law, that the Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. The proposal should contrast the services available before and after the proposed change; should describe how the changes respond to the postal needs of the persons served by the post office; and should highlight any particular aspects of service that might be less advantageous to the persons served as well as those that would be more advantageous.

b. *Effect on Community.* The proposal must include an analysis of the effect that the proposed discontinuance might have on the community served by the affected post office. The application of the requirements in 113.22 must he discussed and taken into account.

c. *Effect on Employees.* The written proposal must include a summary of the contemplated effect of the proposed change on the postmaster and any supervisors and other employees of the post office proposed for discontinuance. (The Field Division General Manager/Postmaster must suggest measures to comply with personnel regulations related to the discontinuance and consolidation of post offices.)

d. *Economic Savings.* The proposal must include an analysis of the economic savings to be gained by the Postal Service from the proposed action, including the cost or savings expected from each of the major factors contributing to the overall estimate.

e. *Other Factors.* The proposal should include an analysis of any other factors that the Field Division General Manager/Postmaster determines are necessary to a complete evaluation of the proposed change, to be weighed in favor, or to be weighed in favor, or to be weighed against the proposed action.

f. *Summary.* The proposal must include a summary that explains why the proposed action is considered necessary, including an assessment of how those factors supporting the need for the proposed change outweigh any negative factors. In taking competing considerations into account, the need to provide regular and effective service must be paramount.

g. *Notice.* The proposal must include the following notice:

THIS IS A PROPOSAL. IT IS NOT A FINAL DETERMINATION TO [CLOSE] [CONSOLIDATE] THIS POST OFFICE.

If a final determination is made to [close] [consolidate] this post office, after public comments on this proposal are received and taken into account, a notice of that final determination will be posted in this post office.

The final determination will contain instructions on how affected customers may appeal that decision to the Postal Rate Commission.

.24 Notice, Public Comment, and Record.

.241 Posting Proposal and Comment Notice. A copy of the written proposal, together with a signed invitation for comments, must be prominently posted in each post office that would be affected. The invitation for comments must:

a. Include a request that interested persons provide written comments within 60 days, to a stated address, offering specific opinions and information, favorable or unfavorable, regarding the potential effect of the proposed change on postal services and on the community:

b. Indicate that copies of the proposal with attached optional comment forms are available upon request in the affected post offices; and

c. Provide a name and telephone number to call for further information and questions.

.242 Proposal and Comment Notice. The following is a sample format which may be used for the proposal and comment notice:

Proposal to [Close] [Consolidate] the [Name] Post Office and Optional Comment Form

Attached is a proposal that we are considering to attempt to provide your community's postal service more economically and efficiently, while also providing regular and effective service. Please read the proposal carefully and then let us have your comments and suggestions. If you choose, you may use the form provided below. Your comments will be carefully considered and will be made part of a public record. If you use the form provided below and need additional room, please attach additional sheets of paper. Return the completed form to——— by———.

In considering this proposal, if you have any questions you want to ask a postal official, you may call———whose telephone number is———.

I. Effect on Your Postal Services

Please describe any favorable or unfavorable effects which you believe the proposal would have on the regularity or effectiveness of your postal service.

II. Effect on Your Community

Please describe any favorable or unfavorable effects which you believe the proposal would have on your community.

III. Other Comments

Please provide any other views or information which you believe the Postal Service should consider in deciding whether to adopt the proposal.

(Date)———
(Signature of Postal Customer)———
(Mailing Address)———
(City) (State) (Zip Code)———

.243 Other Steps. In addition to providing notice and inviting comment, the Field Division General Manager/Postmaster will take any other steps considered necessary to ensure that the persons served by the post office affected understand the nature and implications of the proposed action (e.g., meeting with community groups and following up on comments received which seem to be based on incorrect assumptions or information). **Note.—**

a. If oral contacts develop views or information not previously documented, whether favorable or unfavorable to the proposal, the Field Division General Manager/Postmaster should encourage persons offering the views or information to provide written comments, in order to preserve them for the record.

b. The Field Division General Manager/Postmaster may not rely, as a factor in making his or her decision, upon communications received from anyone unless submitted in writing for the record.

.244 Record. The Field Division General Manager must maintain as part of the record for his consideration and for review by the Assistant Postmaster General, Delivery Services Department, all of the documentation gathered concerning the proposed change. **Note.—**

a. The record must include all information that the Field Division General Manger/Postmaster has considered, and the decision must stand on the record. No information or views submitted by customers may be excluded, whether or not it tends to support the proposal.

b. The docket number assigned to the proposal must be the ZIP Code of the office proposed for closing or consolidation.

c. The record must include a chronological index in which each document contained is identified and numbered as filed.

d. As written communications are received in response to the public notice and invitation for comments, they will be included in the record.

e. A complete copy of the record must be available for public inspection during normal office hours at the post office proposed for discontinuance or at the post office providing alternative service, if the office to be discontinued was temporarily suspended in accordance with 113.3, *Emergency Suspension of Service*, beginning no later than the date upon which notice is posted and extending through the comment period.

f. Copies of documents in the record shall be provided upon request and (except for the proposal and comment form) payment of fees prescribed by 352.6 of the Administrative Support Manual.

.25 Consideration of Public Comments and Final Local Recommendation.

.251 Analysis of Comments. After waiting not less than 60 days after notice has been posted in accordance with 113.241, the Field Division General Manager/Postmaster will prepare an analysis of the public comments received, to aid his or her consideration, and for inclusion in the record. If possible, comments subsequently received should also be included in the analysis. The analysis should list and briefly describe each of the points which appear favorable to the proposal and each of the points which appear unfavorable to the proposal, and should identify to the extent possible how many comments supported each point listed.

.252 Reevaluation of Proposal. Upon completion of the analysis, the Field Division General Manager/Postmaster will review the proposal and reevaluate all of the tentative conclusions previously made in light of the additional information and views received from the public and included in the record.

a. *Discontinuance not warranted.* If the Field Division General Manager/Postmaster decides not to proceed with the proposed discontinuance, the Field Division General Manager/Postmaster will post in the post office considered for discontinuance, a notice that the proposed closing or consolidation has been determined not to be warranted.

b. *Discontinuance warranted.* If the Field Division General Manager/Postmaster decides that the proposed discontinuance is justified, the appropriate sections of the proposal will be revised taking into account the comments received from the public. Upon completing the necessary revisions, the Field Division General Manager/Postmaster will:

(1) Forward the revised proposal together with the entire record to the Assistant Postmaster General, Delivery Services Department, for final review.

(2) Attach a certification that all documents included in the record are originals or true and correct copies.

.26 Postal Service Decision.

.261 *General.* The Assistant Postmaster General, Delivery Services Department or an authorized designee shall review the Field Division General Manager/Postmaster's proposal. This review, and the decision on the proposal, must be based on and supported by the record developed by the Field Division General Manager/Postmaster. At the discretion of the Assistant Postmaster General, the Field Division General Manager/Postmaster may be instructed to provide additional information to supplement the record. Each such instruction, and the response, shall be added to the record. The decision on the Field Division General Manager/Postmaster's proposal, which shall also be added to the record, may approve or disapprove the proposal, or return it for further action, as set forth below.

.262 Approval. The Assistant Postmaster General or an authorized designee may approve the Field Division General Manager/Postmaster's

proposal, with or without making further revisions. If approved, the term "Final Determination" is substituted for "Proposal" in the title. A copy of the Final Determination shall be provided to the Field Division General Manager/Postmaster. The Final Determination shall constitute the determination of the Postal Service for the purposes of 39 U.S.C. 404(b). Each Final Determination must include the following notices:

(1) *Supporting Materials.* Copies of all materials upon which this Final Determination is based are available for public inspection at the (Name) Post Office during normal office hours.

(2) *Appeal Rights.* This Final Determination to (close) (consolidate) the (Name) Post Office may be appealed by any person served by that office to the Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–0001. Any appeal must be *received* by the Commission within 30-days of the date this Final Determination was posted. If an appeal is filed, copies of appeal documents prepared by the Postal Rate Commission, or the parties to the appeal, will be made available for public inspection at the (name) Post Office during normal office hours.

.263 Disapproval. The Assistant Postmaster General or an authorized designee may disapprove the Field Division General Manager/Postmaster's proposal, and return it and the record to the Field Division General Manager/Postmaster with written reasons for disapproval. The Field Division General Manager/Postmaster will post a notice that the proposed closing or consolidation has been determined not warranted in each office where notices were posted under 113.2.

.264 Return for Further Action. The Assistant Postmaster General or an authorized designee may return the Field Division General Manager/Postmaster's proposal with written instructions to give additional consideration to specific matters in the record, or to obtain additional information. All such instructions shall be included in the record.

.665 Public File. A copy of each Final Determination, and a copy of each disapproval of a field Division General Manager/Postmaster's proposal shall be placed on file in the Postal Service Headquarters Library.

.27 Implementation of Final Determination.

.271 Notice of Final Determination to Discontinue Post Office.

a. The Field Division General Manager/Postmaster will provide notice of the Final Determination by posting a copy prominently in the affected post office or offices. The date of posting shall be noted on the first page of the posted copy as follows: "Date of posting ———, 19—". The Field Division General Manager/Postmaster will notify the Assistant Postmaster General, Delivery Services Department in writing of the date of posting.

b. The Field Division General Manager/Postmaster will ensure that a copy of the completed record is made available for public inspection during normal office hours at the post office or offices where the Final Determination is posted, beginning on the posting date and extending for a period of 30 days.

c. Copies of documents in the record must be provided upon request and payment of fees prescribed by 352.6 of the ASM.

.272 Implementation of Determination Not Appealed. If no appeal is filed pursuant to 39 U.S.C. 404(b)(5), the official closing date of the office will be published in the Postal Bulletin effective the first Saturday, 90 days after the Final Determination was posted. A Field Division General Manager/Postmaster may request approval of a different date for official discontinuance by including the request with the documents submitted to the Assistant Postmaster General. However, the post office may not be discontinued sooner than 60 days after the notice required by 113.271 is posted.

.273 Actions During Appeal.

a. *Implementation of Discontinuance.* If an appeal is filed, the affected post office may be discontinued, prior to final disposition of the appeal, only by direction of the Assistant Postmaster General, Delivery Services Department. However, the post office may not be discontinued sooner than 60 days after the notice required by 113.271 is posted.

b. *Display of Appeal Documents.* The Rate Application Division, Law Department, Headquarters will provide the Field Division General Manager/Postmaster with copies of the Postal Rate Commission's service list and all pleadings, notices, orders, briefs, and opinions filed in the appeal proceeding.

(1) The Field Division General Manager/Postmaster will assure that a copy of each of these documents is prominently displayed and made available for inspection by the public in the post office to be discontinued, or if it has been or is discontinued, in the post office or post offices serving the customers affected.

(2) All documents except the Commission's final order and opinion must be displayed until the final order and opinion are issued. The final order and opinion must be displayed for a period of 30 days.

.274 Actions Following Appeal Decision.

a. *Determination Affirmed.* If the Commission dismisses the appeal or affirms the Postal Service's determination, the official closing date of the office will be published in the Postal Bulletin effective the first Saturday, 90 days after the Commission renders its opinion if not previously implemented under .273a. However, the post office may not be discontinued sooner than 60 days after the notice required under 113.271 is posted.

b. *Determination Returned for Further Consideration.* If the Commission returns the matter for further consideration, the Assistant Postmaster General, Delivery Services Department, will direct either (1) that notice be provided in accordance with 113.262 that the proposed discontinuance has been determined not to be warranted, or (2) that the matter be returned to an appropriate stage under these regulations for further consideration according to such instructions as may be provided.

113.3 Emergency Suspension of Service.

.31 A Field Division General Manager/Postmaster may suspend the operations of any post office under his or her jurisdiction when an emergency or other condition requires such action. Circumstances which may justify a suspension include but are not limited to a natural disaster, the termination of a lease when other adequate quarters are not available, the lack of qualified personnel to operate the office, severe damage to or destruction of the office, and the lack of adequate measures to safeguard the office or its revenues. The Field Division General Manager/Postmaster shall provide notice of any suspension by telephone or TWX to the Assistant Postmaster General, Delivery Services Department.

.32 In any such case, if it is proposed to discontinue a suspended office rather than restore operations, the procedures of 113.2 must be followed. All notices and other documents required to be posted or maintained in the office to be discontinued shall be posted or maintained in the post office or offices temporarily serving the customers of the post office where operations have been suspended.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 86-13920 Filed 6-18-86; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

Natural Resource Damage Assessments; Extension of Comment Period

AGENCY: Department of the Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On May 5, 1986, the Department of the Interior (Department) proposed a rule establishing simplified procedures (type "A" procedures) for assessing damages to natural resources from a discharge of oil or a release of a hazardous substance and compensable under either the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.*, or under the Clean Water Act (CWA), 33 U.S.C. 1251 *et seq.* (also known as the Federal Water Pollution Control Act). The Department is extending the period for comment on the proposed regulation from June 19, 1986, to July 3, 1986.

DATE: Comments on the proposed rule (51 FR 16636) must be submitted by July 3, 1986.

ADDRESS: Comments should be sent to: Keith Eastin, Deputy Under Secretary, CERCLA 301 Project Director, Room 4354, Department of the Interior, 1801 "C" Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Keith Eastin, (202) 343-5183; David Rosenberger, (202) 343-1301; or Willie Taylor, (202) 343-7531.

SUPPLEMENTARY INFORMATION: On May 5, 1986, the Department proposed a rule establishing simplified procedures (type "A" procedures) for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a discharge of oil or a release of a hazardous substance for the purposes of CERCLA and section 311(f) (4) and (5) of the CWA. The May 5, 1986, notice stated that the proposed rule was being developed under a deadline imposed by the court in *State of New Jersey et al.* v. *Ruckelshaus et al.*, Cir. No. 84-1668 (D.C.N.J.) (now Thomas), modified on February 3, 1986, required promulgation of final "A regulations" on or before October 7, 1986. Because of that deadline, the notice stated that comments on the proposed rule were to be submitted on or before June 19, 1986.

The Department received numerous requests from the public for additional time to comment on this proposed rule. The Department intends to petition the court to approve a modification in the schedule for the promulgation of the final "A" regulations. While awaiting the court's ruling on this motion, the Department is extending the comment period to July 3, 1986. If the court rules favorably upon the motion, the comment period will then be extended further to ensure that all members of the public have adequate time to comment fully on this proposed rule.

Dated: June 16, 1986.

Keith E. Eastin,

Deputy Under Secretary.

[FR Doc. 86-13852 Filed 6-18-86; 8:45 am]

BILLING CODE 4310-10-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-231, RM-5293]

Radio Broadcasting Services; Rocky Mount, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by WNLB Radio, Inc., proposing the allotment of Channel 260A to Rocky Mount, Virginia, as that community's first FM service.

DATES: Comments must be filed on or before August 4, 1986, and reply comments on or before August 19, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Peter Gutmann, Pepper & Corazzini, 1776 K Street NW., Washington, DC 20006 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-231, adopted May 30, 1986, and released June 11, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 86-13885 Filed 6-18-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-144]

Radio Broadcasting; Review of Technical Parameters for FM Allocations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; order extending time.

SUMMARY: Action taken herein extends the time for filing comments and replies to comments in response to the *Notice of Proposed Rule Making* in MM Docket No. 86-144 (51 FR 15927, April 29, 1986). This notice requested comment on amendment of the Commission's Rules regarding the technical parameters of the FM Allocation rules. The extension of time was requested by the National Association of Broadcasters.

DATES: Comments are due on or before August 11, 1986, and replies to comments are due on or before August 26, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT:
Michael Lewis, Mass Media Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

Order Extending Time for Filing Comments to Notice of Proposed Rule Making

[MM Docket No. 86-144]

In the matter of review of Technical Parameters for FM Allocation Rules of Part 73, Subpart B, FM Broadcast Stations.
Adopted: June 10, 1986.
Released: June 12, 1986.
By the Chief, Mass Media Bureau.

1. The deadlines for filing comments and reply comments in this proceeding are currently June 12, 1986 and June 27, 1986, respectively. On June 2, 1986, the National Association of Broadcasters (NAB) filed a motion to extend these deadlines 60 days to August 11, 1986 and August 26, 1986.

2. In support of its motion, NAB states that the *Notice of Proposed Rule Making* in this proceeding seeks comment on several complex issues regarding the technical parameters of the FM allocation rules and that the allotted time for filing comments is inadequate to analyze and respond to all issues raised. In particular, the NAB states that issue 5, which deals with the intermediate frequency taboos of FM allocations, cannot be adequately addressed without extensive testing of current FM receivers. Thus, the NAB requests the extension of time to perform such testing. Finally, the NAB notes that while the other issues in question do not require testing, they are of extreme importance to broadcasters and the additional time would be beneficial in formulating an informative response to the Commission.

3. We recognize that the subject *Notice* did include many complex proposals and that issue 5 is the most technically challenging. Therefore, we will extend the comment period as requested by the NAB. We believe that this will provide the NAB and others with sufficient time to adequately review this matter.

4. Accordingly, it is ordered that the time for filing comments to the above referenced *Notice* is extended to and including August 11, 1986 and August 26, 1986, for reply comments.

5. This action is taken pursuant to the authority found in sections 4(i), 5(c)(1), and 303(r) of the Communications Act of 1934, as amended, and section 0.281 of the Commission's Rules.

Federal Communications Commission.
James C. McKinney,
Chief, Mass Media Bureau.
[FR Doc. 86-13884 Filed 6-18-86; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Extension of Comment Period on Proposal to Reclassify Ranched Nile Crocodile Populations in Zimbabwe from Endangered to Threatened by Similarity of Appearance

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Service extends the comment period on a proposed rule to reclassify ranched Nile crocodile populations in Zimbabwe from endangered to threatened by similarity of appearance.

DATES: Comments on this proposal must be received by July 10, 1986.

ADDRESS: Comments and other information concerning the proposal should be sent to the Associate Director—Federal Assistance/Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, DC 20240. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

SUPPLEMENTARY INFORMATION:

Background

The Nile crocodile occurs along the lower Nile, and in parts of tropical and southern Africa, and Madagascar. In Zimbabwe, there are five ranches that raise Nile corcodiles for the purpose of exporting skins. In 1983, the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) moved ranched Nile Crocodile populations in Zimbabwe from Appendix I to II. This change in status recognizes that ranched populations are not in immediate danger of extinction, but that there is still a need to regulate trade of these animals.

On March 7, 1986 (51 FR 7965), the Service published a proposed rule to reclassify ranched Nile crocodiles in Zimbabwe from endangered to threatened by similarity of appearance under section 4 of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1533. Because the Government of Zimbabwe did not have enough time to comment on the proposed rule, and because the Service desires to avail itself of the most complete and current information available in deciding a final course of action, the period for comment on this proposal is extended to July 10, 1986. All information received by July 10, 1986 will be considered. The Service hereby requests all interested parties to provide any additional information regarding ranched populations of Nile crocodiles in Zimbabwe.

Authority.—Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1255; Pub. L. 97-304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: May 30, 1986.
P. Daniel Smith,
Acting Assistant Secretary for Fish and Wildlife and Parks.
[FR Doc. 86-13826 Filed 6-18-86; 8:45 am]
BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atomospheric Administration

50 CFR Part 652

Atlantic Surf Clam and Ocean Quahog Fisheries; Public Hearing

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

ACTION: Notice of public hearing.

SUMMARY: The Mid-Atlantic Fishery Management Council will hold a public hearing for the purpose of public input on whether the quarterly surf clam allocations for the Georges Bank Area should be revised and whether the quarterly and annual surf clam quarterly quota adjustment provision should be revised.

DATE: The hearing will be held at 3:45 pm on Tuesday, July 8, 1986. Comments on the issue must be received on or before July 21, 1986.

ADDRESSES: The hearing will be held at the Days Inn, 100 Hopkins Place, Baltimore, MD 21201. Comments on the issue should be sent to Mr. John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 South New Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: John C. Bryson, (302) 674–2331.

SUPPLEMENTARY INFORMATION: The regulations implementing Amendment 6 to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries were published on August 14, 1985, (50 FR 32707) and May 12, 1986, (51 FR 17346). The regulations contain at § 652.21(c)(2) a provision that the annual surf clam quota for the Georges Bank Area is divided into quarterly quotas, with the first and fourth quarters (January-March and October-December) each allocated 10 percent of the annual quota and the second and third quarters (April-June and July-September) each allocated 40 percent of the annual quota. The regulations contain, at § 652.21(a)(3) for the Mid-Atlantic Area; at § 652.21(b)(3) for the Nantucket Shoals Area; and at § 652.21(c)(3) for the Georges Bank Area, a provision that if the catch of surf clams falls more than 5,000 bushels of the quarterly quota for the Area, the Secretary will add the amount of the shortfall to the succeeding quarterly quota; that if the actual catch exceeds the quarterly quota, the amount of the excess will be deducted from the succeeding quarterly quota; and that adjustments from the last quarterly period would be carried over to the first quarterly period of the next year, except that no more than 10 percent of the annual quota may be carried over into the next year for the Nantucket Shoals and Georges Bank Areas.

The Council is seeking public comment on whether any or all of those provisions should be revised at this time.

Dated: June 16, 1986.

Morris M. Pallozzi,

Director, Office of Enforcement.

[FR Doc. 86–13929 Filed 6–18–86; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 51, No. 118
Thursday, June 19, 1986

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

Soil Conservation Service

Felts Park Critical Area Treatment RC&D Measure, Virginia

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Felts Park Critical Area Treatment RC&D Measure, City of Galax, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. James W. Spieth, Acting State Conservationist, Soil Conservation Service, 400 North Eighth Street, Richmond, Virginia 23240–9999, telephone (804) 771–2455.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. James W. Spieth, Acting State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for constructing 400 feet of diversion and seeding 0.25 acres of eroding park land in the City of Galax, Virginia.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. James W. Spieth, Acting State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Executive Order 12372 regarding inter-government review of federal and federally-assisted programs and projects is applicable)

Dated: June 11, 1986.

James W. Spieth,

Acting State Conservationist.

[FR Doc. 86–13911 Filed 6–18–86; 8:45 am]

BILLING CODE 3410–16–M

McMillan Park Critical Area Treatment RC&D Measure Plan, Arkansas

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the McMillan Park RC&D Measure Plan, Polk County, Arkansas.

FOR FURTHER INFORMATION CONTACT: Jack C. Davis, State Conservationist, Soil Conservation Service, 2405 Federal Office Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201, telephone (501) 378–5445.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environmental. As a result of these findings, Jack C. Davis, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for the treatment of approximately two acres of critically eroding area in McMillan Park which is located within the city of Mena, Arkansas. These critically eroding areas will be treated by shaping, grading, vegetating, stabilizing streambanks and providing subsurface drainage for wet areas.

The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency and to various Federal, state, and local agencies and interested parties. A limited number of copies of the FNSI are available to fill copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Jack C. Davis.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

"(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)"

Dated: June 10, 1986.

Jack C. Davis,

State Conservationist.

[FR Doc. 86–13809 Filed 6–18–86; 8:45 am]

BILLING CODE 3410–16–M

Availability of a Record of Decision, Middle Grave Creek Watershed, West Virginia

AGENCY: Soil Conservation Service.

ACTION: Notice of availability of a record of decision.

SUMMARY: Rollin N. Swank, responsible Federal official for projects administered under this provisions of Pub. L. 83–566, 16 U.S.C. 1001–1008, in the State of West Virginia, is hereby providing notification that a record of decision to proceed with the installation of the Middle Grave Creek Watershed project is available. Single copies of this record of decision may be obtained from

Rollin N. Swank at the address shown below.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, Room 301, Morgantown, West Virginia 26505, telephone (304) 291–4151.

Dated: June 10, 1986.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. State and local review procedures for Federal and federally assisted programs and projects are applicable)

Rollin N. Swank,

State Conservationist.

[FR Doc. 86–13807 Filed 6–18–86; 8:45 am]

BILLING CODE 3410–16–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of ATBCB meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (ATBCB) has scheduled a meeting to be held from 10:00 am to 1:00 pm, on Wednesday, June 25, 1986, to take place in Department of Transportation Conference Room 2230, 400 Seventh Street SW, Washington, DC.

Items on the agenda: presentation of FY 1988 budget request; procedures for reprogramming funds; publication of section 540 rule (if approved by Justice); ATBCB draft comments on USPS Interim Standards for leased buildings; report on aircraft boarding chairs contract; report on hand anthropometrics contract.

DATE: Wednesday, June 25, 1986—10:00 am–1:00 pm.

ADDRESS: Department of Transportation Conference Room 2230, 400 Seventh Street SW., Washington, DC.

All other committees of the ATBCB will meet on Monday and Tuesday, June 23 and 24, 1986, in the Department of Transportation Conference Room 2230, 400 Seventh Street SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Larry Allison, Special Assistant for External Affairs, (202) 245–1591 (voice or TDD).

Margaret Milner,

Executive Director.

[FR Doc. 86–13806 Filed 6–18–86; 8:45 am]

BILLING CODE 6820–BP–M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

Correction

In FR Doc. 86–13065 appearing on page 21011 in the issue of Tuesday, June 10, 1986, make the following correction:

In the third column, in the table, the period for "Carbon Black from Mexico" (next to last entry) should read "01/01/85–12/31/85".

BILLING CODE 1505–01–M

[Docket Number 1617–01 and 1618–01]

Datalec, Ltd. and Bryan V. Williamson, Respondents; Order

On May 15, 1986, the Administrative Law Judge issued his Decision and Order in the matter of Datalec, Ltd. and Bryan V. Williamson which was referred to me pursuant to section 13(c) of the Export Administration Act of 1979, 50 U.S.C. app. 2401–2420 (1982), as amended by the Export Administration Act Amendments of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985) and 15 CFR 338.8(a) for final action.

In 1968, Williamson was denied all U.S. export privileges for an indefinite period. Upon general review of the denial order, Williamson's denial period was set to a fixed date terminating on May 31, 1981. Between January 1980 and July 1980, Williamson, acting as managing director and majority shareholder of Datalec, Ltd., caused, aided and abetted Datalec's participation in 3 U.S. export transactions. By his involvement in the 3 U.S. export transactions, Williamson violated the terms of the denial order and §§ 387.2 and 387.4 of the Export Administration Regulations.

Datalec, Ltd. engaged in the 3 export transactions involving a person subject to a denial order. Datalec, Ltd. was named ultimate consignee in each of the 3 aforementioned export transactions. Datalec, Ltd. violated § 387.12 because it participated in the transaction involving Williamson (a denied party). The Administrative Law Judge issued an order denying export privileges to respondents for twenty years.

The appropriate sanction in this case is a denial period limited to 20 years. Evidence adduced at the Hearing supports a finding of "related person" status to the following company and individuals who are accordingly subject to the provisions of this order:

Datagon, GmbH, Bruehler Strasse 2,500 Cologne 50, Federal Republic of Germany

Ivor Edwards, 33 Stuckton Road, Newport Givent, Wales, U.K.

Christopher A. Carrigan, #4 St. Mary's, Close Bransgore Christ Church, Dorset, England.

Additionally, I remand to the Administrative Law Judge (ALJ) the related party issue as to Martin Coyle, Swerther Strasse 195, D–5050 Bruel, Federal Republic of Germany, for additional review of information concerning Mr. Coyle's status. Mr. Coyle will have fifteen (15) working days from the date of this Order to provide the ALJ with such information as he desires. If he provides no additional information within such period, then this Order shall apply to him as final agency action as though no extension of time has been granted. If he does provide information in a timely fashion, the ALJ will have five (5) working days from the date of receipt to issue his decision as to Mr. Coyle.

Having affirmed the record and based on the facts addressed in this case, I affirm the Order of the Administrative Law Judge. This constitutes final agency action on this matter, except as to Mr. Coyle.

Dated: June 16, 1986.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

[FR Doc. 86–13861 Filed 6–18–86; 8:45 a.m.]

BILLING CODE 3510–25–M

National Oceanic and Atmospheric Administration

[P108H]

Application for Marine Mammal Permit; Marine Animal Productions, Inc.

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: a. Name Marine Animal Productions, Inc. b. Address P.O. Box 4078, Gulfport, Mississippi 39502–4078.

2. Type of Permit: Public Display.

3. Name and Number of Marine Mammals: Atlantic bottlenose dolphins (tursiops truncatus) 8, California sea lions (Zalophus californianus) 4.

4. Type of Take: Beach stranded and/or captive born California sea lions will be taken. Atlantic bottlenose dolphins will be captured.

5. Location of Activity: California, and between Mobile Bay and Mississippi River.

6. Period of Activity: 3 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dated: June 11, 1986.

Samuel W. McKeen,

Chief of Management and Budget Staff, National Marine Fisheries Service.

[FR Doc. 86–13931 Filed 6–18–86; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of General Permit

A general permit was issued on June 16, 1986, to FEDERPESCA, Rome, Italy to take marine mammals incidental to commercial fishing operations under Category 1: Towed or Dragged Gear pursuant to 50 CFR 216.24.

The genreal permit allows the taking of not more than 60 cetaceans annually by certificate holders operating under this permit within the U.S. fishery conservation zone of the North Atlantic Ocean. The permit is valid until December 31, 1986.

This general permit is available for public review in the office of the Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC.

Dated: June 16, 1986.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 86–13866 Filed 6–18–86; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Restraint Limits for Certain Cotton Textile Products Produced or Manufactured in Nepal Under a New Bilateral Agreement

June 13, 1986.

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 June 20, 1986. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377–4212.

Background

The Governments of the United States and Nepal have exchanged diplomatic notes dated May 30 and June 1, 1986, establishing a new Bilateral Cotton Textile Agreement for the period beginning on October 1, 1985 and extending through December 31, 1990. The agreement establishes specific import limits for cotton textile products in Categories 340 (men's and boys' woven shirts), 341 (women's, girls' and infants' woven blouses and shirts), and 342 (women's, girls' and infants' cotton skirts), produced or manufactured in Nepal and exported during the agreement year which began on January 1, 1986 and extends through December 31, 1986. It was also agreed under the terms of the new bilateral agreement to establish a specific limit for playsuits in Category 337, exported during the fifteen-month period which began on October 1, 1985 and extends through December 31, 1986. This limit will supersede the limit previously established for this category for goods exported during the twelve-month period which began on September 29, 1985 and extends through September 28, 1986.

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile products in the foregoing categories, produced or manufactured in Nepal, in excess of the designated restraint limits.

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), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

June 13, 1986.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive cancels and supersedes the directive of December 23, 1985 concerning cotton textile products in Category 337, produced or manufactured in Nepal and exported during the twelve-month period which began on September 29, 1985 and extends through September 28, 1986.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1845); pursuant to the Bilateral Cotton Textile Agreement of May 30 and June 1, 1986, between the Governments of the United States and Nepal; and in accordance with the provisions of Executive Order 11651 of May 3, 1972, as amended, you are directed to prohibit, effective on June 20, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in the following categories, produced or manufactured in Nepal and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986, in excess of the following restraint limits:

Category	12-month restraint limits [1] (dozen)
340	180,000
341	600,000
342	100,000

[1] The limits have not been adjusted to account for any imports exported after December 31, 1985 in the case of Categories 340, 341 and 342 and after September 10, 1985 in the case of Category 337. Charges for Category 337 during the period October 1, 1985 through March 31, 1986 amounted to 19,269 dozen. Charges for categories 340, 341 and 342 amounted to 67,294 dozen, 69,076 dozen, and 7,172 dozen, respectively, for the period January 1, 1986 through March 31, 1986.

Textile products in Categories 340, 341, and 342 which have been exported to the United States prior to January 1, 1986 shall not be subject to this directive.

Textile products in Categories 340, 341, and 342 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

Also effective on June 20, 1986, you are further directed to prohibit entry for consumption and withdrawal from warehouse for consumption for cotton textile products in Category 337, produced or manufactured in Nepal and exported during the fifteen-month period which began on October 1, 1985 and extends through December 31, 1986, in excess of 93,750 dozen.[1]

Textile products in Category 337 which have been exported to the United States prior to October 1, 1985 shall not be subject to this directive.

The limits set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of May 30 and June 1, 1986, between the Governments of the United States and Nepal which provide, in part, that: (1) restraint limits may be exceeded by designated percentages; (2) restraint limits may be increased by carryover and carryforward up to 11 percent of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate future adjustments under the foregoing provisions of the bilateral agreement will be made to you by letter.

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), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-13862 Filed 6-18-86; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limits have not been adjusted to account for any imports exported after December 31, 1985 in the case of Categories 340, 341 and 342 and after September 30, 1985 in the case of Category 337. Charges for Category 337 during the period October 1, 1985 through March 31, 1986 amounted to 19,269 dozen. Charges for categories 340, 341 and 342 amounted to 67,294 dozen, 69,076 dozen, and 7,172 dozen, respectively, for the period January 1, 1986 through March 31, 1986.

DEPARTMENT OF DEFENSE

Department of the Air Force

Air Force Reserve Officer Training Corps Advisory Committee, Meeting

May 1, 1986.

The Air Force Reserve Officer Training Corps (AFROTC) Advisory Committee will meet on July 15, 1986, from 8:15 a.m. to 4:30 p.m. and on July 16, 1986, from 8:15 a.m. to 12:00 p.m. at Air Force Reserve Officer Training Corps Headquarters, Building 500, Room 19, Maxwell Air Force Base (AFB), Alabama.

The AFROTC Advisory Committee meets to offer advice, views, and recommendations regarding the educational mission of AFROTC. The Committee is an external source of expertise and serves in an advisory capacity to the Commander, Air Training Command and the Commandant, AFROTC.

Meeting is open to the public.

For further information, contact Air Force Reserve Officer Training Corps Advisory Committee, Dr. Grover E. Diehl, Project Officer, AFROTC/XPX, Maxwell AFB, Alabama 36112-6663, telephone (205) 293-7856.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-13900 Filed 6-18-86; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on U.S. Navy Anti-Submarine Warfare Technology 1986-1996 will meet on July 8-9, 1986, at the Naval Research Laboratory, Building 43, Washington, DC. The meeting will commence at 8:30 a.m. and terminate at 5:30 p.m. on July 8; and commence at 8:30 a.m. and terminate at 5:00 p.m. on July 9, 1986. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to evaluate the security of the present and future U.S. Navy surface fleet and undersea surveillance systems. The agenda will include technical briefings on the threat, surface ASW response, strategic and tactical performance requirements, undersea surveillance, and emerging technology. These briefings will contain information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217-5000, Telephone number (202) 696-4870.

Dated: June 16, 1986.

Harold L. Stoller, Jr.,

Commander, JAGC, U.S. Navy Federal Register Liaison Officer.

[FR Doc. 86-73872 Filed 6-18-86; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee will meet July 14-18, 1986 and July 21-25, 1986, at the Naval Ocean Systems Center, San Diego, California. Sessions of the meeting will commence at 8:00 a.m. and terminate at 5:00 p.m. on all days. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to discuss basic and advanced research. The agenda for the meeting will include briefings and presentations pertaining to Under Ice Warfare Requirements; U.S. Navy Anti-Submarine Warfare

Technology 1986–1996; and Rapid Acquisition of Rapidly Advancing Technology. These briefings and presentations contain information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: June 16, 1986.

Harold L. Stoller, Jr.,

Commander, JAGC, U.S. Navy Federal Register Liaison Officer.

[FR Doc. 86–13873 Filed 6–18–86; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER86–528–000 et al.]

Connecticut Light and Power Company, et al.; Electric Rate and Corporate Regulation Filings

June 12, 1986.

Take notice that the following filings have been made with the Commission:

1. Connecticut Light and Power Company

[Docket No. ER86–528–000]

Take notice that on June 9, 1986, The Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule with respect to Transmission Agreement dated December 29, 1985 between (1) CL&P and Western Massachusetts Electric Company (WMECO) and (2) Central Vermont Public Service Corporation (CVPS).

CL&P states that the Transmission Agreement provides for transmission services to CVPS for the wheeling of a maximum of 50 megawatts of Connecticut Municipal Electric Energy Cooperative ("CMEEC") system power.

The transmission charge rate is a weekly rate equal to one fifty-secondth of estimated annual average cost of transmission service on the Northeast Utilities system determined in accordance with Schedule A and Exhibits I, II, and III thereto of the Transmission Agreement. The weekly transmission charge is determined by the product of (i) the transmission charge rate ($/kW-week) and (ii) the maximum number of kilowatts CVPS purchases from CMEEC during an hourly period of such week. The weekly transmission charge is reduced appropriately to give due recognition for payments made by CVPS to other systems also providing transmission service. CL&P requests that the Commission waive its standard notice period and permit the Transmission Agreement to become effective on December 29, 1985.

WMECO has filed a Certificate of Concurrence in this docket. CL&P states that copies of this rate schedule have been mailed or delivered to CL&P, WMECO, and CVPS (Rutland,Vermont). CL&P further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: June 25, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Electric Energy, Inc.

[Docket No. ER86–529–000]

Take notice that on June 9, 1986, Electric Energy, Inc. ("EEInc.") tendered for filing an executed letter agreement, dated April 1, 1986, between EEInc. and the United States Department of Energy ("DOE") amending the Power Contract between EEInc. and DOE. By their letter agreement, EEInc. and DOE have agreed to modify currently effective notice provisions in the Power Contract and have agreed to changes in the pricing of Additional Power and Economy Energy to permit the parties greater flexibility in negotiating future additional power and economy energy transactions. EEInc. has requested an effective date of June 1, 1986, and, accordingly, seeks waiver of the notice requirements under the Federal Power Act.

A copy of the filing has been served on DOE.

Comment date: June 25, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Idaho Power Company

[Docket No. ER86–530–000]

Take notice that on June 9, 1986, the Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summaryof sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during April 1986, along with cost justification for the rate charged. This filing includes the following supplements:

Utah Power & Light Company, Supplement No. 53
Montana Power Company, Supplement No. 41
Sierra Pacific Power Ccmpany, Supplement No. 50
Portland General Electric Company, Supplement No. 46
Washington Water Power, Supplement No. 38

Comment date: June 25, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Electric Power Company

[Docket No. ER86–526–000]

Take notice that on June 9, 1986, Wisconsin Electric Power Company (WEPCO) tendered for filing supplemental service specifications for transmission service, designated by it as Supplement Numbers 8, 9, and 10 to Exhibit C, for transmission of power from Cliff's Electric Service Company for Wisconsin Public Power, Inc. System. The filing has been executed under protest by Wisconsin Public Power, Inc. System subject to a reservation of rights set forth in a letter from an official of Wisconsin Public Power, Inc. System to an official of WEPCO, dated May 29, 1986.

Comment date: June 25, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–13832 Filed 6–18–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-513-000, et al.]

Canadian Gateway Pipeline System, et al.; Natural Gas Certificate Filings

June 13, 1986.

Take notice that the following filings have been made with the Commission:

1. Canadian Gateway Pipeline System

[Docket No. CP86-513-000]

Take notice that on May 23, 1986, Canadian Gateway Pipeline System (Applicant), One Houston Center, Houston, Texas 77010, filed in Docket No. CP86-513-000 an application pursuant to section 7(c) of the Natural Gas Act, for (1) a certificate of public convenience and necessity authorizing the construction and operation of a natural gas pipeline system and the transportation of natural gas in interstate commerce through such facilities for any subscribing shipper and (2) a blanket certificate pursuant to Section 284.221 of the Commission's Regulations (18 CFR 284.221) authorizing open-access, non-discriminatory transportation of natural gas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that it would be a general partnership organized by Consolidated Gas Transmission Corporation (Consolidated) and Texas Eastern Niagara, Inc., an affiliate of Texas Eastern Transmission Corporation (Texas Eastern).

Applicant states that the purpose of its application is to seek authorization to bring new firm Canadian gas supplies to markets in the eastern United States and to provide transportation service to shippers on an open-access, non-discriminatory basis. It is anticipated that these supplies would be transported through the TransCanada PipeLines Limited (TransCanada) system to the Niagara Spur owned by Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), and redelivered to Applicant. The gas proposed to be transported by Applicant would be owned by pipelines, local distribution companies, marketers or other parties.

Applicant proposes that facilities and related services and operations would be brought on line in two separate phases. In Phase I, Applicant would use capacity made available to it by Tennessee in Tennessee's existing Niagara Spur and would also use facilities to be constructed by Applicant to transport up to 100,000 dt equivalent of natural gas per day from the Niagara Falls, New York, point of importation to the New York and New Jersey city gates. Phase I service is scheduled to commence on November 1, 1987.

In Phase II Applicant proposes to transport up to 400,000 dt equivalent of natural gas per day. Applicant states that the second phase could be available for service as early as November 1, 1988, depending upon market needs. The expanded level of service in Phase II would be made available by means of facilities to be added by Applicant to its system and expansions of Tennessee's Niagara Spur to be constructed by Applicant in conjunction with Tennessee. An application has not yet been filed with the Commission for any future facilities necessary on Tennessee's system.

Applicant states that its system would consist of incremental capacity to be operated in conjunction with Texas Eastern's and Consolidated's existing facilities. Incremental capacity associated with Consolidated's existing system would be between a point of interconnection with Tennessee's Niagara Spur near Marilla, New York, and near Tamarack, Pennsylvania. Incremental capacity associated with Texas Eastern's existing facilities would be between a point near Tamarack, Pennsylvania, and various city gate points in New York and New Jersey.

Applicant alleges that proposed capacity expansions associated with Texas Eastern's and Consolidated's facilities would be sufficient to transport the proposed volumes and that no existing capacity on either Texas Eastern's or Consolidated's existing facilities would be committed to the project nor would anyone other than Applicant or its customers bear any costs associated with the incremental facilities.

Applicant proposes to construct the following facilites:

Phase I

35.67 miles of 30-inch pipeline—Various counties in New York, New Jersey and Pennsylvania
21.86 miles of 36-inch pipeline—Various counties in New York, New Jersey and Pennsylvania
7,000 hp—2 compressor units—Potter and Centre Counties, Pennsylvania
Measuring and regulating station—Clinton County, Pennsylvania

Phase II

6.7 miles of 20-inch pipeline—Various Counties in New York, New Jersey and Pennsylvania
14.0 miles of 24-inch pipeline—Various counties in New York, New Jersey and Pennsylvania
14.75 miles of 30-inch pipeline—Various counties in New York, New Jersey and Pennsylvania
48.50 miles of 36-inch pipeline—Various counties in New York, New Jersey and Pennsylvania
35,000 hp—5 compressor units—Various counties in New York, New Jersey and Pennsylvania
Expansion of measuring and regulating station—Clinton County, Pennsylvania

The facilities are estimated by Applicant to cost $80,423,000 for Phase I and $134,255,000 for Phase II.

Applicant also seeks authority to render transportation service for Texas Eastern Marketing Corporation (TEMARK), Texas Eastern Gas Services Company (TEGAS) and open-access, non-discriminatory transportation services for other subscribing shippers.

It is stated that TEMARK, a wholly-owned subsidiary of Texas Eastern, would be assigned existing Canadian import authorizations presently held by Texas Eastern, which authorize total import volumes of 151,000 dt equivalent per day of natural gas. Applicant seeks authority to transport for TEMARK maximum daily quantities of 100,000 dt per day on a firm basis and such additional quantities as may be mutually agreeable.

It is also stated that TEGAS, a wholly-owned subsidiary of Texas Eastern, has blanket authority from the Ecomomic Regulatory Administration in Docket No. ERA-16-19.NG to import natural gas from Canada for sale to purchasers, including local distribution companies and end-users, on a short-term or "pot" basis. Applicant seeks authority to transport on an interruptible basis such gas as TEGAS requests and as Applicant has available capacity to transport.

The proposed transportation service would be rendered in accordance with proposed Rate Schedules T-1 and T-2. Rate Schedule T-1 for firm transportation service would incorporate a two-part rate structure. The demand rates, $11.419 for Phase I and $7.634 for Phase II, are said to be designed to recover depreciation, interest expense, fixed operating and maintenance expenses, a portion of equity return and related taxes, and taxes other than income taxes. A portion of equity return and related taxes and variable operating expenses (excluding fuel) would be recovered through the commodity rate of $0.2774 for Phase I and $0.2092 for Phase II. Applicant's interruptible transportation under Rate Schedule T-2 provides for a rate not in excess of a maximum commodity rate of $0.6528 per dt in Phase I and $0.4602 per dt in Phase II and not less than the minimum commodity rate as established

in the tariff. Applicant requests that the Commission specifically permit the flowthrough of all of Tennessee's transportation charges.

Applicant also applies for a single blanket certificate of public convenience and necessity authorizing transportation of natural gas on behalf of others pursuant to § 284.221 of the Commission's Regulations. (18 CFR 284.221)

Applicant alleges that its system represents the implementation of an innovative concept by its sponsors that responds to the current structural changes in the nation's natural gas industry, current regulatory policy, as exemplified in Order No. 436, intensely competitive market conditions, market needs for additional pipeline capacity and supply flexibility for Northeast gas consumers. Applicant also alleges that its proposed system would address the need for an open-access, non-discriminatory transportation system to implement the importation of incremental Canadian gas supplies. Applicant states that it would be an open-access pipeline that provides the flexibility for shippers to acquire transportation capacity for either system supply or incremental marketing and that it would provide the shippers with a reliable pipeline system that would be a non-stop corridor with capacity available from the Canadian border directly to the eastern city gates.

The Applicant has not included in its tendered application the detailed environmental report required by § 2.82 of the Commission's Regulations. However, the Applicant states that it will supplement the instant filing with its environmental report on June 30, 1986.

Comment date: July 3, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. Mantaray Transmission Company

[Docket No. CP86-508-000]

Take notice that on May 21, 1986, Mantaray Transmission Company (Mantaray), 3000 Bissonnet, Houston, Texas 77251, filed in Docket No. CP86-508-000 an application pursuant to section 7 of the Natural Gas Act and Subpart E of Part 157 of the Commission's Regulations (18 CFR 157.100, *et seq.*) for an optional certificate of public convenience and necessity authorizing the construction and operation of certain pipeline facilities and the transportation of natural gas through such facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Mantaray proposes to construct and operate 33.5 miles of 20-inch pipeline and appurtenant facilities to connect gas supplies under development in the Matagorda Island Area of offshore Texas. The pipeline would extend from a production platform in Matagorda Island Area Block 622 to an interconnection with the mainline of Texas Eastern Transmission Corporation (Tetco) in Calhoun County, Texas. The pipeline would have a design capacity of 180,000 Mcf per day.

It is estimated that the cost of the facilities would be approximately $29,200,000. This includes $5,975,000 for material and contract costs for a liquids terminal for which Mantaray is not seeking Commission authorization. The project would be financed based on a capital structure of 75 percent debt and 25 percent equity. The equity portion would be financed through an equity contribution from Mantaray's owner-partners, Mantaray Pipeline Company and Texas Eastern Mantaray, Inc., which, in turn, are wholly-owned subsidiaries of Panhandle Eastern Corporation and Tetco. The debt portion would initially be financed through short-term loans backed by the partners with permanent long term financing to be arranged once construction of the project is completed.

Mantaray states that it has executed precedent agreements with Panhandle Eastern Pipe Line Company and Tetco providing for execution of service agreements to provide firm transportation service of up to 65,000 dekatherms per day equivalent of natural gas for each. In addition to providing this firm service for Panhandle and Tetco, Mantaray proposes to provide firm and interruptible service to the extent of its available capacity on a first-come, first-served basis without any undue discrimination.

Mantaray proposes to provide firm service under its Rate Schedule FT and interruptible service under Rate Schedule IT, with the following rates and fees:

Transportation rates	Maximum rate	Minimum rate
Rate schedule FT:		
Reservation charge per dekatherm per month of firm transportation quantity	$2.31	0
Commodity rate per dekatherm transported (cents)	4.58	1.00
Rate schedule IT: Commodity rate per dekatherm transported (cents)	17.26	1.00
Additional fees: Request for service processing fee		$1,000.00

Mantaray states that concurrently with the filing of the instant application it has filed an application in Docket No. CP86-507-000 for a blanket transportation certificate under § 284.221 of the Commission's Regulations (18 CFR 284.221).

Comment date: July 3, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Northern Border Pipeline Company

[Docket No. CP84-407-002 [1]]

Take notice that on May 9, 1986, Northern Border Pipeline Company (Applicant), 2600 Dodge Street, Omaha, Nebraska 68131, filed in Docket No. CP84-407-002, an amendment to application pursuant to Section 7(c) of the Natural Gas Act so as to request authority for the construction and operation of facilities for the transportation and delivery of natural gas on a firm and overrun basis, imported from Canada, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that on May 11, 1984, it filed in Docket No. CP84-407-000 an application for section 7(c) authority to (1) construct and operate additional compression on its existing pipeline between part of Morgan, Montana, and Ventura, Iowa; (2) to construct and operate pipeline and related facilities extending from Ventura, Iowa, to Sandwich, Illinois; and (3) to transport additional gas volumes in intrastate commerce. Applicant further states that on February 15, 1985, it filed a supplement to its application to reflect an increase in transported volumes of gas and corresponding change in the construction and operation of facilities. Applicant states that it is amending its application in Docket No. CP84-407-000 so as to reflect (1) a new point of terminus of its proposed pipeline extension near Chrisman, Illinois; (2) the transportation of natural gas to serve the Northeast market; (3) the transportation of natural gas volumes through the pipeline extension for Panhandle Eastern PipeLine Company (Panhandle); and (4) the facilities necessary to accommodate the transportation of the natural gas volumes to the new point of terminus.

Applicant proposes to construct and operate

(a) Two new single unit 16,000 horsepower compressor stations on its existing pipeline system.

[1] The correct subdocket for this filing is 002. Parties to this case were served with copies marked with subdocket 003 and should disregard that designation.

(b) Approximately 396 miles of 36-inch Pipeline extending from the terminus of its existing system near Ventura, Iowa, to a point of interconnect with the existing facilities of Midwestern Gas Transmission Company (Midwestern) and with the existing facilities of Panhandle near Chrisman, Illinois, and three single unit 16,000 horsepower compressor stations, one meter station and related facilities on the pipeline extension.

Applicant proposes to construct for prospective use

(a) Interconnect facilities, consisting of a tee, 20-inch side valve and blind flange, at the point where the proposed extension intersects the existing mainline facilities of Northern Natural Gas Company, ANR Pipeline Company, Natural Gas Pipeline Company of America's Amarillo and Gulf Coast systems and Trunkline Gas Company.

(b) Interconnect facilities, up to 24-inch in diameter, which have not been identified at this time to meet the needs of pipeline companies for receipt or delivery points. Such interconnect facilities will consist of a tee, side valve, and blind flange. The cost of each interconnect will not exceed $200,000, with reimbursement of the total actual cost of construction by the requesting pipeline.

Applicant is not requesting authority to operate these prospective facilities at this time, but will do so in future applications as appropriate.

The estimated total capital cost of the proposed facilities in 1986 dollars is approximately $374 million. Applicant states that it proposes to finance the construction of the proposed facilities on a "project financing" basis.

Applicant also proposes to transport on a firm basis approximately 650,000 Mcf per day of Canadian natural gas volumes proposed to be imported by Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Texas Eastern Transmission Corporation, Transcontinental Gas Pipe Line Corporation and Boundary Gas, Inc. Applicant further proposes to transport on a firm basis up to 150,000 Mcf per day of natural gas volumes for Panhandle from Ventura, Iowa, through the proposed pipeline extension to the point of interconnection with Panhandle near Chrisman, Illinois. Applicant indicates that it will transport these volumes pursuant to its currently approved cost of service tariff.

Applicant states that its proposal is competitive with the various alternative proposals for the transportation of natural gas to the Northeast market which are pending before the Commission in the consolidated proceeding in *Boundary Gas, Inc., et al.*, Docket No. CP81-107-000, *et al.* (Phase 2).

Due to the timing requirements established by the Administrative Law Judge for filing the amendment, Applicant has not included in its tendered application the detailed environmental report required by § 2.82 of the Commission's Regulations. However, Applicant states that it will supplement the instant filing with its environmental report on September 1, 1986.

Comment date: July 3, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP85-511-001]

Take notice that on May 15, 1986, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-511-001 an amendment to its application filed in Docket No. CP85-511-000 pursuant to Section 7(c) of the Natural Gas Act so as to reflect a change in the effective date and the availabilitv section of its proposed general service rate schedule, referred to as Rate Schedule GS-1, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

In its original application, Northern proposed to effectuate on March 27, 1985, the sale of natural gas under Rate Schedule GS-1 along with the associated transfer of firm entitlement from participating customers under existing firm rate schedules to proposed Rate Schedule GS-1 as provided for by the Stipulation and Agreement of Settlement filed in resolution of issues in Docket Nos. RP82-71, TA83-1-59, TA84-1-59, and TA85-1-59 (RP82-71 Stipulation and Agreement). It is stated that subsequently the Commission has remanded the RP82-71 Stipulation and Agreement to the Administrative Law Judge as to all participants for the purpose of developing a record upon which a decision on the contested issues regarding the offer of settlement may reasonably be based. However, Northern states that it has agreed in its Stipulation and Agreement of Settlement filed in resolution of issues in Docket No. RP85-206 (RP85-206 Settlement) to implement on October 27, 1985, the sale of natural gas under Rate Schedule GS-1. It was further agreed in the RP82-71 Stipulation and Agreement that the availability of such rate schedule be limited to Northern's customers purchasing gas pursuant to Rate Schedule CD-1 on January 1, 1986.

Northern amends its original application in order to make effective its proposed Rate Schedule GS-1 on October 27, 1985, instead of March 27, 1985. Northern also changes the availability section of Rate Schedule GS-1 in order to limit its availability to Northern's customers purchasing gas pursuant to its Rate Schedule CD-1 on January 1, 1986.

Northern indicates that as a result of the RP85 206 sett1ement, 21 additional customers have elected to purchase natural gas under Rate Schedule GS-1. It is indicated that these customers are the City of Brooklyn, Iowa, Municipal Natural Gas Department of Coon Rapids, Iowa, Lloyd V. Crum, Jr., Community Utility Company, Racine, Minnesota, Elroy Gas Inc., Municipal Gas System of Graettinger, Iowa, Municipal Utilities Guthrie Center, Iowa, Office of Public Works, Hawarden, Iowa, Island Gas, Inc., City of Lake Park, Iowa, City of Lyons, Nebraska, Municipal Gas Department of Manilla, Iowa, Village of Pender, Nebraska, Peninsular Gas Company, City of Rock Rapids, Iowa, City of Sabula, Iowa, City of Sac City, Iowa, City of Two Harbors, Minnesota, Department of Public Utilities, Virginia, Minnesota, City of Waukee, Iowa, City of West Bend, Iowa and City of Woodbine, Iowa.

Northern also deletes Kansas Power and Light Co. (KP&L) from the list of customers initially requesting service under Rate Schedule GS-1 since KP&L would not be eligible for the GS-1 service.

Northern also proposes to provide its customers with the additional option to elect service under Rate Schedule GS-1 to be effective on the same day as their First Year's Contract Demand Reductions/Conversions as detailed in Part B, Part IV of the Docket No. RP85-206 Stipulation and Agreement.

Northern states that its amendment herein shall not be considered as a rescission of its previous agreement to effectuate Rate Schedule GS-1 on Marcl 27, 1985. It is indicated that Northern still is committed to effectuating proposed Rate Schedule GS-1 on March 27, 1985, as agreed upon by all parties in the RP82-71 Stipulation and Agreement.

Comment date: July 3, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Northwest Central Pipeline Corporation

[Docket No. CP86–512–000]

Take notice that on May 23, 1986, Northwest Central Pipeline Corporation (Applicant), P.O. Box 3288, Tulsa, Oklahoma 74102, filed in Docket No. CP86–512–000 an application, as supplemented May 29, 1986, pursuant to section 7(c) of the Natural Gas Act for authority to continue to transport natural gas for various shippers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it initiated transportation service pursuant to Part 284 of the Commission's Regulations on behalf of the shippers listed below and proposes to continue such service until the earlier of one year beyond the present authorization period termination date or the date Northwest Central receives authorization to commence open access transportation pursuant to the Commission's Order No. 436:

Shipper	Current service report docket No.	Daily quantity Mcf
Northern Gas Marketing on behalf of Northern Illinois Gas Company, Coronado Transmission Company, Endevco Oil & Gas Company.	ST84–1181–000	50,000
Delta Gas Resources on behalf of Peoples Gas Light & Coke.	ST85–1671–000	5,000
Delta Gas Resources on behalf of Illinois Power Company.	ST85–1672–000	5,000
Bridgeline Gas Distribution Co.	ST85–79–000	30,000
ANR Gathering Company on behalf of Cincinnati Gas & Electric Company.	ST84–405–000	15,000
Scissortail Natural Gas Company on behalf of El Paso Natural Gas Company.	ST85–570–000	50,000

Applicant states that no facilities are required to continue the transportation.

Applicant indicates it would charge the applicable rates provided in its Rate Schedule T–1 which is included in Original Volume No. 2 to its FERC Gas Tariff. Applicant would charge, if applicable, a 4.0-cent per Mcf dehydration charge and 17.0-cent per Mcf gathering charge. Applicant states that its T–1 rates are 7.0 cents and 1.0 cent per Mcf per 100 miles of forward haul and backhaul, respectively.

Comment date: July 3, 1986, in accordance with Standard Paragraph F at the end of this notice.

6. Northwest Central Pipeline Corporation

[Docket No. CP86–515–000]

Take notice that on May 28, 1986, Northwest Central Pipeline Corporation (Applicant), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP86–515–000 a request pursuant to §§ 157.205 and 157.211 of the regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate sales taps for 2 agricultural customers, under the certificate issued in Docket Nos. CP82–479–000 and CP82–479–001, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate sales taps in order to sell, on an interruptible basis, approximately 6,000 Mcf of natural gas per year to Wilbert Bevan and Sons in Edwards County, Kansas, and approximately 6,000 Mcf of natural gas per year to Kley Steuber and Gillen, Inc. in Finney County, Kansas. It is stated that the total estimated cost of the proposed facilities would be $11,670, which cost would be paid from treasury cash.

Applicant proposes to charge these customers a base price of $1.3330 per Mcf plus or minus such monthly adjustments which reflect Applicant's cost of purchased gas per Mcf. It is further stated that Applicant would not need to acquire any new gas supply to make these proposed sales and that such sales would not have any detrimental effect on any of Applicant's existing customers.

Comment date: July 28, 1986, in accordance with Standard Paragraph G at the end of this notice.

7. Phillips Gas Pipeline Company

[Docket No. CP86–496–000]

Take notice that on May 15, 1986, Phillips Gas Pipeline Company (PGPL), 456 Home Savings and Loan Building, Bartlesville, Oklahoma 74004, filed in Docket No. CP86–496–000, pursuant to Rule 207 of the Commission's rules of practice and procedure, for a petition for a declaratory order clarifying that PGPL's certificate issued October 29, 1984, in Docket No. CP84–536–000, authorized transportation for the purpose of effecting direct industrial sales by PGPL to various PGPL affiliates for their consumption in Texas. Alternatively, PGPL requests pursuant to section 7(c) of the Natural Gas Act a certificate of public convenience and necessity, authorizing service for direct industrial sales by PGPL to its affiliates, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

PGPL states that it interprets the certificate granted to it in Docket No. CP84–536–000 on October 29, 1984, as authorizing transportation for the purpose of effecting direct industrial gas sales from PGPL to Phillips Petroleum Company (Phillips) and other affiliated industrial users in Texas without limitations concerning volumes or points of delivery and title passage. PGPL states that intermediate transportation from PGPL's pipeline facilities near the Oklahoma-Texas border to the industrial use sites of the affiliated users is provided by Phillips Natural Gas Company (PNG) in its Texas Border Gathering System pipeline and by Dow Pipeline Company and other intrastate pipelines in Texas who transport residue gas to the industrial use sites after gas processing at several locations. PGPL requests confirmation that residue gas transportation services may be performed by intrastate pipelines in Texas for PGPL or its affiliates to the industrial use sites from points where processing occurs without a change in the intrastate pipelines' regulatory status.

PGPL further states that Phillips and E. I. du Pont de Nemours and Company (Du Pont) entered into a Tolling Agreement dated September 16, 1985, for conversion to methanol of gas supplied by Phillips at Du Pont's methanol conversion plant at Beaumont, Texas. It is stated that Phillips 66 Natural. Gas Company (P66NG) has succeeded to the rights of Phillips under the Tolling Agreement. PGPL seeks a declaratory order that P66NG's use of gas for conversion to methanol under the Tolling Agreement is an industrial use of gas authorized under PGPL's original certificate. In the alternative, PGPL seeks any necessary authorizations required for transportation related to PGPL's sale of up to 40,000 Mcf per day of natural gas to P66NG for its use under the terms of the Tolling Agreement.

Comment date: July 3, 1986, in accordance with Standard Paragraph F at the end of this notice.

8. Southern Natural Gas Company

[Docket No. CP86–439–000]

Take notice that on April 14, 1986, Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202– 2563, filed in Docket No. CP86–439–000 an application pursuant to Section 7 of the Natural Gas Act for a limited term certificate of public convenience and necessity authorizing the transportation of natural gas for Columbia Nitrogen Corporation and Nipro, Inc. (jointly referred to as CNC), all as more fully set forth in the application which is on file with the

Commission and open to public inspection.

Southern requests authorization to transport on an interruptible basis up to 76 billion Btu of natural gas per day for CNC for a term of one year from the date of any order issued in this proceeding. It is stated that CNC would purchase the gas from Mid Continent Gas Company and Arkla Energy Resources. It is stated that CNC would cause the gas to be delivered to Southern at the existing point of interconnection between United Gas Pipe Line Company and Southern near Perryville, Ouachita Parish, Louisiana. Southern indicates that it would redeliver the gas, less 3.25 percent for fuel and company-use gas, to Atlanta Gas Light Company for CNC's account at the Augusta No. 2 meter station, Richmond County, Georgia.

Southern states that CNC would pay Southern each month the following transportation rate:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to Atlanta under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to Atlanta do not exceed the daily contract demand of Atlanta, the transportation rate would be 48.2 cents per million Btu; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to Atlanta under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's, Rate Schedule OCD on such day to Atlanta exceed the daily contract demand of Atlanta, the transportation rate for the excess volumes would be 77.6 cents per million Btu.

Southern would collect from CNC the GRI surcharge of 1.35 cents per Mcf or any such other GRI funding unit or surcharge as hereafter prescribed.

Southern also requests flexible authority to provide transportation from additional delivery points in the event that CNC would obtain alternative sources of supply of natural gas.The additional transportation service would be to the same redelivery point, the same recipient, and within the maximum daily transportation volume of gas as stated in the application. Southern would file a report providing certain information with regard to the addition of any delivery points.

Comment date: July 3, 1986, in accordance with. Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed 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. 86-13833 Filed 6-18-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF86-749-000 et al.]

Brunswick Pulp & Paper Co. et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Brunswick Pulp & Paper

[Docket No. QF86-749-000]

June 12, 1986.

On May 22, 1986, Brunswick Pulp & Paper Company (Applicant), of P.O. Box 1438, Brunswick, Georgia 31521, 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 is located at Applicant's pulp and paper mill in Brunswick, Georgia. The facility consists of three extraction turbines having a total net power production capacity of 51 megawatts, and five heat recovery boilers. The steam produced from the facility will be used in the pulp, paper and chemical production processes. The primary energy source will be black liquor and woodyard waste (84%). The remaining energy input will be natural gas or oil. The installation of the facility was completed in 1972 with an electric power production capacity of 34 megawatts. Turbine-generator No. 4 will be reconstructed in 1986 to increase its capacity from 29 MW to 46 MW.

2. Stewartstown Steam Company

[Docket No. QF86-779-000]

On June 2, 1986, Stewartstown Steam Company, a limited partner of the Swift River/Hafslund Company of 10 Harbor Street, Danvers, Massachusetts 01923 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Coos County, New Hampshire. The facility will consist of a wood-fired boiler and a condensing steam turbine generating unit. The net power production capacity of the facility will be 13.8 MW.

3. Viking Energy of McBain, Inc.

[Docket No. QF84-399-002]

June 13, 1986.

On May 22, 1986, Viking Energy of McBain, Inc. (Applicant), of 4008 W. Wackerly Road, Midland, Michigan 48640, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.20 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility is located in McBain, Michigan and will consist of a two stage wood burner, a heat exchanger, a waste heat recovery boiler and a steam turbine generator. The net electric power production capacity of the facility will be 18.5 MW. The primary source of energy will be biomass in the form of wood waste.

4. Adirondack Resource Recovery Associates

[Docket No. QF86-778-000]

June 12, 1986.

On May 30, 1986, Adirondack Resource Recovery Associates of 110 South Orange Avenue, Livingston, New Jersey 07039 submitted for filing an application for certification of a facility as qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located between River Road (State Route 254) and the Hudson River, in the village of Hudson Falls, New York. The facility will consist of two refractory covered waterwall furnaces and associated boilers and a steam turbine-generator. The primary energy source will be biomass in the form of municipal solid waste. The net electric power production capacity of the facility will be 12 MW.

5. Arizona State Board of Directors for Community Colleges

[Docket No. QF86-766-000]

June 12, 1986.

On May 27, 1986, the Arizona State Board of Directors for Community Colleges (Applicant), c/o Maricopa County Community College District, 3225 N. Central Avenue, Suite 810, Phoenix, Arizona 85012, 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 in Phoenix, Arizona and will consist of two reciprocating engine generator units and two waste heat recovery boilers. The thermal energy will be used to operate two 90-ton absorption chillers. The electric power production capacity of the facility is 460 kW. The primary source of energy will be natural gas.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-13834 Filed 6-18-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP86-505-000]

East Tennessee Natural Gas Co.; Notice of Application

June 3, 13, 1986.

Take notice that on May 21, 1986, East Tennessee Natural Gas Company (Applicant), P.O. Box 10245, Knoxville, Tennessee 37939-0245, filed in Docket No. CP86-505-000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the rearrangement of maximum daily quantities and increases and decreases the contract demands of some of its customers, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that in response to requests from its customers, it proposes to (1) rearrange the maximum daily quantities (MDQ) of some of its customers within existing contract demand volumes prior to the 1986-87 heating season (see Appendix A) and (2) to increase and decrease contract demands (CD) of certain of its customers prior to the 1986-87 heating season (see Appendix B). Applicant states that in 1984 and 1985, it offered all of its customers the opportunity to rearrange their MDQ's and change CD's and that some costomers requested increases and others requested decreases resulting in a net increased contract demand of 1,523 Mcf. Applicant also states that utilizing this amount of deliverability from local producers, it can allow for the requested changes. Applicant states that no facilities are required to effectuate the proposed MDQ and CD changes.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 3, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public

convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

APPENDIX A.—EAST TENNESSEE NATURAL GAS COMPANY PRESENT AND PROPOSED REARRANGEMENT OF MAXIMUM DAILY QUANTITIES (MDQ) BY DELIVERY POINTS AND CHANGES IN CONTRACT DEMANDS

Line No.	Customer	Delivery Point	Present (CP85-610) MDQ	Increase (Decrease)	Proposed (MDQ)
	Column (1)	(2)	(3)	(4)	(5)
1	Town of Algood	Algood	450	50	500
2	Total—Contract Demand		450	50	500
3	Town of Englewood	Englewood	506	94	600
4	Total—Contract Demand		506	94	600
5	City of Etowah	Etowah	2,167	200	2,367
6	Total—Contract Demand		2,167	200	2,367
7	Fayetteville Gas System	Fayetteville	4,239	150	4,389
8	Total—Contract Demand		4,239	150	4,389
9	Town Gainesboro	Gainesboro	582	418	1,000
10	Total—Contract Demand		582	418	1,000
11	Gallatin Gas System	Gallatin #1	3,039	50	3,089
12		Gallatin #2	1,520	0	1,520
13	Total—Contract Demand		4,559	50	4,609
14	City of Jamestown	Jamestown	1,159	141	1,300
15	Total—Contract Demand		1,159	141	1,300
16	Lenoir City Utility District	Lenoir City	3,083	370	3,453
17	Total—Contract Demand		3,083	370	3,453
18	Livingston Gas System	Livingston	1,651	100	1,751
19	Total—Contract Demand		1,651	100	1,751
20	Loudon Utilities	Loudon	3,400	300	3,700
21		Vonore	300	0	300
22	Total—Contract Demand		3,700	300	4,000
23	Madisonville Gas System	Madisonville	950	50	1,000
24	Total—Contract Demand		950	50	1,000
25	Middle Tennessee Utility District	Carthage	4,500	500	5,000
26		Monterey	5,400	0	5,400
27		Alto	3,780	0	3,780
28		Red Bank	4,320	0	4,320
29	Total—Contract Demand		18,000	500	18,500
30	Sweetwater Board of Public Utilities	Sweetwater	2,580	100	2,680
31	Total—Contract Demand		2,580	100	2,680
32	Department of Energy	A Station	875	(175)	700
33		B Station	1,400	(800)	600
34		C Station	125	(25)	100
35	Total—Contract Demand		2,400	(1,000)	1,400

APPENDIX B.—EAST TENNESSEE NATURAL GAS COMPANY PRESENT AND PROPOSED CONTRACT AUTHORIZATIONS

[Mcf at 14.73 psia]

Line No.	Particulars	Rate schedule	Current contract authorizations	Proposed contract authorization in Docket No. CP86-275	Proposed increase	Proposed contract authorization in the instant Docket No. CP86-
	Column 1	(2)	(3)	(4)	(5)	(6)
1	Resale Customers:					
2	Zone 1—					
3	Town of Algood	SG-1	450	450	50	500
4	City of Athens	G-1	4,926	4,926		4,926
5	Atlanta Gas Light	CD-1		50,000		50,000
6	Chattanooga Gas Company	CD-1	47,000	47,000		47,000
7	Citizens Gas Utility District	SG-1	2,742	2,742		2,742
8	City of Cookeville	G-1	5,080	5,080		5,080
9	City of Dunlap	SG-1	2,500	2,500		2,500
10	Elk River Public Utility District	CR-1	10,777	10,777		10,777
11	Town of Englewood	SG-1	506	506	94	600
12	City of Etowah	SG-1	2,167	2,167	200	2,367
13	City of Fayetteville	SG-1	4,239	4,239	150	4,389
14	Town of Gainesboro	SG-1	582	582	418	1,000
15	City of Gallatin	G-1	4,559	4,559	50	4,609
16	City of Harriman	SG-1	3,704	3,704		3,704
17	City of Jamestown	SG-1	1,159	1,159	141	1,300
18	City of Knoxville	G-1	35,000	35,000		35,00
19	City of Lenoir City	SG-1	3,083	3,083	370	3,453
20	City of Lewisburg	G-1	4,380	4,380		4,380
21	City of Livingston	SG-1	1,651	1,651	100	1,751
22	City of Loudon	G-1	3,700	3,700	300	4,000
23	Town of Madisonville	SG-1	950	950	50	1,000
24	First Utility District of Maury County—Mt. Pleasant	SG-1	1,781	1,781		1,781
25	Middle TN Utility District	CR-1	18,000	18,000	500	18,500
26	City of Monteagle	SG-1	420	420		420
27	Oak Ridge Utility District	G-1	7,200	7,200		7,200

APPENDIX B.—EAST TENNESSEE NATURAL GAS COMPANY PRESENT AND PROPOSED CONTRACT AUTHORIZATIONS—Continued

[Mcf at 14.73 psia]

Line No.	Particulars	Rate schedule	Current contract authorizations	Proposed contract authorization in Docket No. CP86-275	Proposed increase	Proposed contract authorization in the instant Docket No. CP86-
	Column 1	(2)	(3)	(4)	(5)	(6)
28	Powell Clinch Utility District	G-1	4,861	4,861		4,861
29	City of Rockwood	SG-1	2,852	2,852		2,852
30	City of South Pittsburg	SG-1	3,155	3,155		3,155
31	City of Sweetwater	SG-1	2,580	2,580	100	2,680
32	United Cities Gas Co. Zone I	CR-1	21,978	21,978		21,978
33	Zone 2—					
34	Jefferson-Cocke County Utility District	SG-2 and G-2	6,730	6,730		6,730
35	Natural Gas Utility District of Hawkins County	G-2	4,175	4,175		4,175
36	Sevier County Utility District	SG-2	4,000	4,000		4,000
37	United Cities Gas Co.—Zone II	CR-2	14,660	14,660		14,660
38	Unicoi County Utility District	SG-2	2,500	2,500		2,500
39	Tennessee-Virginia Energy Corporation—Zone 2	CR-2	21,396	21,396		21,396
40	Zone 3—					
41	Tennessee-Virginia Energy Corporation—Zone 3	CR-3	23,362	23,362		23,362
42	Roanoke Gas Company	CD-3	9,789	9,789		9,789
43	Total Jurisdictional		288,594	338,594	2,523	341,117
44	Total United Cities Gas Co.		36,638	36,638		36,638
45	Total Tennessee-Virginia Energy Corporation (formerly Volunteer Natural Gas and Colonial Natural Gas)		44,758	44,758		44,758
46	Direct Sales Customers: [1]					
47	Zone 1—					
48	Aluminum Co. of America	(F)	18,000	18,000		18,000
49	Aluminum Co. of America	(R)	8,000	8,000		8,000
50	Aluminum Co. of America	(S)	5,000	5,000		5,000
51	Armour and Company	(R)	800	800		800
52	Bowater Southern Paper Company	(F)	3,500	3,500		3,500
53	Bowater Southern Paper Company	(R)	26,500	26,500		26,500
54	Greenback Industries, Inc.	(F)	500	500		500
55	Occidental Chemical Corp.[2]	(F)	150	150		150
56	Occidental Chemical Corp.[2]	(R)	4,500	4,500		4,500
57	Rhone-Poulenc Chemical Co.[3]	(F)	300	300		300
58	Rhone-Poulenc Chemical Co.[3]	(R)	1,200	1,200		1,200
59	Monsanto Company	(F)	150	150		150
60	Monsanto Company	(R)	6,000	6,000		6,000
61	Old Hickory Brick Co.	(R)	500	500		500
62	Olin Corporation	(R)	1,200	1,200		1,200
63	Sewanee Silica Co.	(F)				
64	Stauffer Chemical Company—					
65	Mt. Pleasant	(F)	700	700		700
66	Mt. Pleasant	(R)	6,000	6,000		6,000
67	Tennessee Air Nat'l Guard	(F)	550	550		550
68	Union Carbide Corporation	(R)	7,500	7,500		7,500
69	Department of Energy	(F)	2,400	2,400	(1,000)	1,400
70	Department of Energy	(R)	7,634	7,634		7,634
71	Zone 2—					
72	AFG Industries, Inc.	(F)	7,300	7,300		7,300
73	AFG Industries, Inc.	(R)	3,700	3,700		3,700
74	General Shale Products Corporation	(R)	4,196	4,196		4,196
75	Mead Corporation	(F)	200	200		200
76	Mead Corporation	(R)	1,000	1,000		1,000
77	Tennessee Eastman Co.	(F)	9,600	9,600		9,600
78	Tennessee Eastman Co.	(R)	1,049	1,049		1,049
79	Total Non-Jurisdictional	(F)	43,350	43,350	(1,000)	42,350
80		(R)	79,779	79,779		79,779
81		(S)	5,000	5,000		5,000
82	Total System	(F)	331,944	381,944	1,523	383,467
83		(R)	79,779	79,779		79,779
84		(S)	5,000	5,000		5,000

[1] Authorized Volumes at 1000 BTU/CF at 14.73 psia.
[2] Formerly Hooker Chemical Corporation.
[3] Formerly Mobil Chemical Company.
Notes: (F) Firm Service; (R) Interruptible Service; (S) Seasonal Service.

[FR Doc. 86-13765 Filed 6-18-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP86-100-001]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Tariff Revisions

June 16, 1986.

Take notice that on June 12, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) tendered for filing the following tariff sheets to its FERC Gas Tariff to be effective July 1, 1986:

Substitute Second Revised Tariff Sheet No. 22
Substitute Original Tariff Sheet No. 22A
Substitute First Revised Tariff Sheet No. 97

Tennessee states that these tariff sheets are filed in substitution of the sheets filed pursuant to § 284.7 of the Commission's regulations on May 30, 1986 in the referenced proceeding to reflect maximum and minimum rates for service under Tennessee's Rate Schedule IT and a revision to Rate Schedule IT to provide that Tennessee may adjust the rates for service to any Shipper between the maximum and minimum. The substituted tariff sheets make only technical corrections and do not affect the rates for IT service proposed in the May 30th filing.

Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the

Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, D.C. 20426, in accordance with Rules 208 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 19, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-13915 Filed 6-18-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-89-001]

Williston Basin Interstate Pipeline Co.; Tariff Revision

June 16, 1986.

Take notice that on June 13, 1986, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing Substitute First Revised Sheet No. 95 to its FERC Gas Tariff, Original Volume No. 1-A (Transportation and Storage) to be effective July 1, 1986.

Williston Basin states that Substitute First Revised Sheet No. 95 makes reference to transportation transaction proposed to be continued pursuant to 18 CFR 284.105(a), which was inadvertently excluded from First Revised Sheet No. 95, previously filed on May 30, 1986.

Williston Basin has served a copy of this filing upon the affected jurisdictional customers and the regulatory commissions for the states where the service is performed.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.214, 385.211). All such motions or protests should be filed on or before June 19, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-13915 Filed 6-18-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of May 5 Through May 9, 1986

During the week of May 5 through May 9, 1986, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Government Accountability Project, 5/8/86; KFA-0027

The appellant filed an Appeal from a denial by the Albuquerque Information Office of a Request for Information under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that although no responsive documents were located the search by DOE officials had been adequate. An important issue considered in the Decision and Order was how extensive the search for documents responsive to a FOIA request must be when there is some evidence that the documents may exist.

Remedial Orders

Beta Energy Corporation, James R. Blakemore, 5/8/86; HRO-0103

James R. Blakemore objected to a Proposed Remedial Order (PRO) which the Economic Regulatory Administration (ERA) issued to Blakemore and Beta Energy Corp., on September 17, 1982. The PRO found that Blakemore's crude oil reselling activities had violated the layering rule; 10 CFR 212.186. In considering Blakemore's Statement of Objections, the DOE rejected the argument that the layering rule was ambiguous and the claim that Blakemore had provided services and functions traditionally and historically associated with the resale of crude oil. The DOE also found that Blakemore's reselling activities violated the layering rule and that Blakemore was fully liable for the violations. In accordance with an objection filed on behalf of the Controller of the State of California, the DOE directed that all refunds in this matter be distributed pursuant to the procedures set forth in 10 CFR Part 205, Subpart V.

Canal Refining Company, 5/8/86; HRO-0290

On May 9, 1986, OHA issued a Remedial Order to Canal in which it determined that the firm had charged a price for controlled crude oil in excess of its ceiling price. Specifically, OHA found that during each month of the audit period Canal entered into reciprocal purchase and sale transactions in which it sold price-controlled crude oil at its ceiling price and purchased identical volumes of stripper well crude oil at significant discounts. In this regard, OHA determined that it was appropriate to consider the discount Canal received on the stripper crude oil as part of the price it charged for controlled crude oil. Accordingly, OHA determined that the price Canal received for its controlled crude oil was equal to the sale price of the controlled crude oil plus the amount of the discount realized in its purchase of the stripper crude oil, and that the full price was in excess of its ceiling price.

Pester Derby Oil Company, 5/8/86, HRO-0304

Pester Derby Oil Company (Pester) objected to a Revised Proposed Remedial Order (RPRO) issued to the firm on August 13, 1985. The RPRO was issued pursuant to a Decision and Order issued to Pester by the Office of Hearings and Appeals (OHA) on February 11, 1985. In that decision, OHA directed the Economic Regulatory Administration either to recompute or eliminate the amount of overcharges relating to Pester's sales of a particular grade of gasoline. After reviewing the RPRO and Pester's Statement of Objections, the DOE determined that the RPRO did not adequately explain the way in which the alleged overcharges had been recalculated. Consequently, the ERA was directed to issue a second RPRO with a complete discussion of the basis for the revised alleged overcharges.

Request for Exception

Napakiak Corporation, 5/9/86; KEE-0007

Napakiak Corporation filed an Application for Exception from the requirement to submit Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm had not shown that it was more adversely affected by the reporting requirement than other reporting firms. Accordingly, exception relief was denied.

Refund Applications

Apco Oil Corporation/John RuppOil Company, Inc., RF83-54; Sentry Oil Company, Inc., 5/7/86; RF83-146

The DOE issued a Decision and Order concerning two Applications for Refund filed by the John Rupp Oil Company, Inc., and Sentry Oil Company, Inc. Each of the applicants had purchased refined petroleum products from Apco Oil Corporation, and each sought a portion of the settlement fund obtained by the DOE through a consent order with Apco. *Apco Oil Corp.*, 12 DOE ¶ 85,149 (1985). Both of the applicants were eligible to apply for refunds greater that $5,000, but elected to limit their claims to $5,000 and therefore followed the small claims procedure outlined in *Apco Oil Corp., 12* DOE ¶ 85,149 (1985). After examining the applications, the DOE concluded that each of the two firms should receive a refund, based on its volumetric per gallon refund amount, as described in the Appendix to the Decision. The total amount of refunds granted was $13,347.

Bayou State Oil Company; Ida Gasoline, Inc./E-Z Mart Stores, Inc., 5/6/86; RF117-10

The DOE issued a Decision and Order concerning an Application for Refund filed by E-Z Mart Stores, Inc., on the basis of the procedures outlined in *Bayou State Oil Co.*, 12 DOE ¶ 85,197 (1985). In its Application, E-Z Mart sought a refund of more than $5,000 and under *Bayou State*, was required to demonstrate that it had cost banks greater than the amount of the requested refund and that it was injured as a result of the alleged overcharges. After examining the evidence and supporting documentation, the DOE concluded that E-Z Mart Stores had failed to demonstrate that it had cost banks which exceeded the requested refund. Accordingly, the refund was limited to the threshold amount for small claims of $5,000, plus interest.

Continental Resource Company/Warren Petroleum Company, RF61-1; E.I. du Pont de Nemours & Company, 5/8/86; RF61-2

Warren Petroelum Company filed an Application for Refund, seeking a portion of funds remitted by Continental Resource Company pursuant to a consent order that Continental entered into with the DOE. Warren purchased 238,279,039 gallons of natural gas liquid products (NGLPs) from Continental during the consent order period. The DOE found that virtually all of the NGLPs bought by Warren from Continental were purchased at prices which exceeded prevailing market price levels. As result, it appeared that Warren had been competitively injured and the firm was granted a refund of $3,070,650.43, plus accrued interest. The amount of refund equals the gallons of NGLPs that Warren purchased from Continental multiplied by a volumetric per gallon refund amount.

E.I. du Pont de Nemours & Company also filed an application for refund in the Continental proceeding on the basis that it indirectly purchased propane and ethane from Continental through Warren. In conjunction with the Warren request, the DOE determined that Warren had received its entire allocable share of the Continental fund and, since there was no evidence that Warren had passed through any overcharges to its customers, the Du Pont request was denied.

Gulf Oil Corporation/Kay Bee Auto Service of Deer Park, Inc., et al., 5/7/86; RF40-00238 et al.

The DOE issued a Decision granting 21 Applications for Refund from the Gulf Oil corporation consent order fund filed by resellers and retailers of Gulf refined products. In considering the applications, the DOE found that each of the claimants had demonstrated that it would not have been required to pass through to its customers a cost reduction equal to the refund claimed. Accordingly, the firms were granted refunds totalling $29,933, representing $25,008 in principal and $4,925 in interest.

Gulf Oil Corporation/Stewart Street Gulf, 5/7/86; RF40-1517.

The DOE issued a Decision and Order concerning an Application for Refund filed by Stewart Street Gulf, a retailer of Gulf petroleum products located in Welch, West Virginia. The firm applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), governing the disbursement of settlement funds received from Gulf pursuant to a 1978 consent order. In its determination, the DOE found that Stewart Street had been able to pass on the price increases implemented by Gulf in the form of increased prices to Stewart's customers. Accordingly, Stewart could not have been injured by Gulf's pricing practices and the refund application was denied.

Leonard E. Belcher, Inc./A-C Motor Express; RF227-27; Bay State Refining Company, Inc., 5/8/86; RF227-30.

The DOE issued a Decision and Order concerning Applications for Refund filed by A-C Motor Express and Bay State Refining Company, Inc. in the Leonard E. Belcher, Inc. (Belcher) refund proceeding. Both applicants were end-users of No. 2 fuel oil purchased directly from Belcher. In accordance with the procedures outlined in *Leonard E. Belcher, Inc.*, 13 DOE ¶ 85,348 (1986), each applicant made a sufficient showing of injury by documenting its purchase volumes from Belcher. After examining the evidence and supporting documentation submitted by the applicants, the DOE concluded that the applicants should receive a total of $7,641, representing $6,216 in principal and $1,425 interest.

Little America Refining Company/Elliott Wholesale & Oil Company, RF112-148; Rapp's, Inc., 5/7/86; RF112-188

The DOE issued a Decision and Order granting refunds from the Little America Refining Company (Larco) deposit escrow account to Elliott Wholesale & Oil Company and Rapp's, Inc. The applicants, both resellers of Larco product, submitted claims for less than $5,000, and were therefore not required to submit detailed evidence of injury. The total amount of refunds granted to these firms was $8,019, representing $5,339 in principal and $2,680 in interest.

Mobil Oil Corporation Stewart-Webster Gas Company et al., 5/5/86; RF225-69 et al.

The Department of Energy issued a Decision and Order granting refunds from the Mobil Oil Corporation deposit fund escrow account to 9 purchasers of Mobil refined products. All of the refund applicants are retailers of products other than motor gasoline, and applied for refunds which were under the $5,000 threshold limit outlined in *Mobil Oil Corp.*, 13 DOE ¶ 85,399 (1985). The amount of refunds granted to these firms totalled $19,523, including accrued interest.

National Helium Corporation/Missouri, RM3-21; Webster Oil Company/Missouri, RM49-22; Vickers Energy Corporation/Missouri, RM1-23; Vickers Energy Corporation/Missouri, 5/8/86; RQ1-289

The State of Missouri filed Requests for Modification and a proposed second-stage refund plan with the Office of Hearings and Appeals (OHA) pursuant to Decisions and Orders estabishing procedures for the disbursement of funds obtained under consent orders with National Helium corporation, Webster Oil Company and Vickers Energy Corporation. Missouri requested that $24,732 in interest previously awarded to it be used on its two new proposed programs instead of two previously approved plans. Missouri also proposed that $146,100 of its second-stage refund money be used to fund a traffic light dimming project and a computerized school bus routing program. Both plans would benefit consumers of petroleum products by reducing taxes or increasing state services. The OHA denied approval of these plans because their benefits to consumers are too indirect. As a result, the OHA also denied Missouri's requests for Modification until such time as Missouri has submitted an acceptable plan for the use of the principal monies.

Sid Richardson Carbon and Gasoline Company and Richardson Products Company/Schupbach & Streitmatter Gas Company et al., 5/8/86; RF26-25 et al.

THe DOE issued a Decision and Order concerning Applications for Refund filed by four propane resellers in connection with a consent order fund remitted by the Sid Richardson Carbon and Gasoline Company and Richardson Products Company (Sid Richardson). According to the applications, at some point during the consent order period three of the four firms did not have any banks of unrecovered increased product costs and, indeed, had "negative" cost banks. The DOE concluded that these "negative" cost banks indicated that the three firms had passed through all increased product costs, including any alleged overcharges incurred during all of the months in which the "negative" banks were recorded. Therefore, refunds were limited to volumes purchased after the "negative" banks were eliminated. Using a three-step competitive disadvantage methodology, the DOE determined that each firm should receive 100 percent of its allocable share for its eligible Sid Richardson purchases. The amount of refunds granted these firms was $258,766, representing $136,142 in principal and $122,624 in interest.

VGS Corporation/Gresham Petroleum Company, 5/5/86; RF191-3

The DOE issued a Decision and Order concerning an Appliciation for Refund filed by Gresham Petroleum Company (Gresham), a reseller of VGS Corporation/Southland Oil Company petroleum products. The firm applied for a refund based on the procedures outlined in *VGS Corp.*, 13 DOE ¶ 85,165 (1985), governing the disbursement of settlement funds received from VGS pursuant to a 1981 consent order. Since Gresham's level of purchases from VGS during the consent order period qualified it for a refund below the $5,000 threshold for small claims, the firm was not required to demonstrate detailed evidence of injury resulting from the alleged overcharges. The DOE concluded that Gresham should receive a total refund of $1,049, representing $664 in principal and $385 in accrued interest.

Zia Fuels (GGC, Inc.) Intercontinental Petroleum Corporation et al., 5/5/86; *RF216-2 et al.*

The Office of Hearings and Appeals granted Application for Refund filed by four claimants from a fund obtained through consent order that the DOE entered into with GGC, Inc. Two of the applicants were end-users and two were resellers who requested refunds below the $5,000 threshold for small claims. The total amount of the refunds granted was $8,640, representing $6,267 in principal plus $2,373 in interest.

Dismissals

The following submissions were dismissed:

Company Name and Case No.

Afri-American Supply Company; KFA-0022
Barbier Oil & Supply Company; HEE-0168
Bob's Gulf Service; RF40-750
Campbell Oil Company, Inc.; KEE-0009
Canal and Broad Gulf; RF40-1446
Canal and Scott Gulf; RF40-1447
Cannatella's Gulf; RF40-1445
Carlson's Garage; RF225-1874
County of Dane; RF225-2112
Dearybury Oil Company; KEE-0020
Degrood Oil, Inc; KEE-0030
Detroit Golf Club; RF225-2104
Diamond Shamrock; RF225-2229, RF225-2230
Door Control Inc; RF225-2107
Ed Hartz & Sons, Inc.; RF225-1838
Form-A-Tool Company, Inc.; RF225-2097
Formax, Inc.; RF225-2113
Good Hope Refineries/Val-Cap, Inc.; RF189-5
Graniteville Company; RF225-2099
Heim Corporation; RF225-2096
ITT Rayonier Inc.; RF225-2105
Jackson Municipal Airport Authority; RF191-2
Les Peterson Oil Company; KEE-0011
M&E Ford Volvo; RF225-2106
Martin-Eagle Oil Comapny, Inc., KEE-0024
National Treasury Employees Union; KFA-0039
Philips ECG, Inc.; RF225-2116
Riverview Gardens; RF232-338
Branch Brook Gardens; RF232-340
Robert O. Svensson; RF225-2103
Roussel's Gulf Service; RF40-388
Standard Tool & Manufacturing Company; RF225-2115
Tri-Kris Company; RF225-2108
Wayne Trail Tool Company; RF225-2110
Worthington Steel Company; RF225-2111

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: June 9, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86-13845 Filed 6-18-86; 8:45 am]

BILLING CODE 6450-07-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Implementation of special refund procedures and solicitation of comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding a total of $500,000(plus accrued interest) in consent order funds to members of the public. The funds are being held in escrow pursuant to a consent order involving Cloyce K. Box.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to Case Number HEF-0041.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR § 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set forth below. The Proposed Decision relates to a consent order entered into by Cloyce K. Box which settled possible pricing violations in sales of motor gasoline made on behalf of Box by J.R. Adams Oil Co., of Guymon, Oklahoma, during the period April 2, 1974 through July 30, 1974, or by Ritco, Inc., of Waco, Texas, between March 21, 1974 and June 13, 1974.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute funds remitted by Box and being held in escrow. The DOE has tentatively decided that the funds should be distributed in two stages. The specific requirements for establishing eligibility for refunds in the first stage are set forth in the Proposed Decision.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this Notice in the **Federal Register** and should be sent to the address set forth at the beginning of this Notice. All comments received in these proceedings will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: June 9, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

June 9, 1986.

Name of Firm: Cloyce K. Box
Date of Filing: October 13, 1983
Case Number: HEF-0041

The Economic Regulatory Administration (ERA) filed a petition on October 13, 1983, requesting that the Office of Hearings and Appeals (OHA) implement a special refund proceeding to distribute funds received pursuant to a Consent Order entered into by the DOE and Cloyce K. Box (Box), formerly President of OKC Corporation (OKC). This Consent Order is independent of a separate Consent Order with OKC itself which has been the subject of a separate Subpart V proceeding. See *Office of Enforcement: In the Matter of OKC Corp.*, 9 DOE ¶ 82,551 (1982) (*OKC*).

I. Background

According to the record in this proceeding and the related *OKC* proceeding (Case No. BEF-0032), during the period of federal petroleum price controls, Box entered into business arrangements with a number of independent brokers (the so-called "friendly brokers") under which Box arranged for the brokers to purchase refined petroleum products from OKC. The friendly brokers then resold the products at excessive prices in violation of the DOE price regulations, and split the profits with Box. Box Consent Order ¶¶ 1-3; *OKC*, 9 DOE at 85,270. In order to settle all claims and disputes between Box and the DOE regarding these transactions in 1974, Box and the DOE entered into a Consent Order on July 17, 1980, in which Box agreed to remit $505,000 to the DOE, of which $500,000 was for the purpose of restitution to injured parties and $5,000 was a civil penalty. On the same date, Box entered into a Memorandum of Understanding which resolved all DOE-related criminal allegations against Box in return for his

pleading guilty to a 23-count information charging him with aiding and abetting violations of 10 CFR 210.62(c), in violation of section 5(a) of the Emergency Petroleum Allocation Act of 1973, 15 U.S.C. 754(a)(3)(B)(ii).[1] The Consent Order states that it does not constitute an admission by Box of any civil or criminal liability, or of any wrongdoing or illegal act. ¶ 7. In accordance with the terms of the Consent Order, Box remitted to the DOE $500,000, which is currently being held in an interest-bearing escrow account pending distribution by the DOE. The civil penalty of $5,000 was deposited into the miscellaneous receipts account of the United States Treasury.

II. Jurisdiction and Authority

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

III. Proposed Refund Procedures

A. Refund Claimants

We propose that the distribution of refunds take place in two stages. In the first stage, refund monies would be distributed to those firms who were injured as a result of the 23 transactions specified in the criminal information that was settled by the Memorandum of Understanding. Twenty of these transactions involved sales arranged by Box of OKC motor gasoline to J. R. Adams of Guymon, Oklahoma, d/b/a J. R. Adams Oil Company (Adams) during the period from April 2, 1974 through July 30, 1974. The remaining three transactions involved Box-arranged sales of OKC motor gasoline to Edwin W. Gummelt, Jr., and Robert A. Whitley, of Waco, Texas, together d/b/a Ritco, Inc. (Ritco) during the period March 21, 1974, through June 13, 1974. While transactions similar to those specified in the information occurred during a much longer period and with other firms, the Box Consent Order, both on its own terms and when read together with the Memorandum of Understanding, makes it clear that these are the only transactions covered by the civil settlement agreement. Consent Order Introduction and ¶¶ 1, 2. Memorandum of Understanding ¶¶ 1, 3, 6. The persons injured as a result of these transactions were the customers who purchased the OKC motor gasoline from Adams or Ritco at allegedly illegal prices. The record clearly indicates that Adams and Ritco not only were not injured in any way by the transactions but were directly involved with Box in committing the alleged violations.[2]

Accordingly, potential claimants are resellers (including retailers and refiners) and end-users who purchased OKC motor gasoline from either Adams or Ritco during the Box consent order period,[3] and who satisfactorily demonstrate that they were injured by the alleged overcharges.[4] Firms identified in the file of the OKC proceeding as customers of Adams and Ritco during the Box consent order period will receive direct notice of this proceeding.

1. Refund Applications by Resellers

In Subpart V proceedings, reseller applicants are generally required to demonstrate that they did not pass on to their customers price increases implemented by the consent order firm. *See, e.g., Vickers.* We propose to adopt this requirement in the present proceeding.[5] Accordingly, in order to qualify for a refund, resellers must show that market conditions required them to absorb the alleged overcharges. A reseller must also show that it had a "bank" of unrecovered costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices.[6] The maintenance of a bank will not, however, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982); *Vickers Energy Corp./Standard Oil Co.*, 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982).

However, as in many prior special refund cases, we propose to adopt a presumption of injury with respect to small claims by resellers. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). The cost to a small firm of gathering evidence of injury could exceed the expected refund. Consequently, without simplified procedures, some injured resellers would be effectively denied an opportunity to obtain a refund. Under the small claims presumption we are proposing to adopt, a reseller claimant will not be required to submit any evidence of injury beyond purchase volumes if its refund claim is $5,000 or less.

Resellers who made only spot purchases will be presumed to have suffered no injury. They would therefore be ineligible for any refund, even a refund at or below the small claims threshold level. Spot purchasers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot purchases of OKC product from Adams or Ritco at increased prices unless they were able to pass through the full amount of the quoted selling price to their own customers. *See Vickers*, 8 DOE at 85,396–97; *Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,200 (1982) (*Amoco*). The same rationale holds true in the present case. Accordingly, any reseller claimant who was a spot purchaser must submit evidence to rebut the spot purchaser presumption and establish the extent to which it was injured as a result of the spot purchase(s).

2. End-Users

We propose to adopt a finding that end-users or ultimate consumers whose business is unrelated to the petroleum

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[1] *United States v. Cloyce K. Box*, Cr. No. 80–107W (W.D. Okla. July 17, 1980). Box paid a fine of $5,000 per count or a total fine of $115,000. Box's guilty plea was entered pursuant to the standards of *North Carolina v. Alford*, 400 U.S. 25 (1970), which permit a court to accept a guilty plea from a person accused of a crime despite that person's unwillingness to admit to participation in the acts constituting the crime.

[2] Adam's and Ritco's owners pled guilty to charges of selling petroleum products at higher prices than permitted under the price regulations in the same transactions that were specified in the Box criminal information. *United States v. John R. Adams*, CR. No. 78–166–T (W.D. Okla. December 14, 1978) ($1,000 fine), *United States v. Whitley and Gummelt*, CR. No. 79–165–T (W.D. Okla. December 17, 1979) ($15,000 fine for each defendant).

[3] The Box consent order period for firms that purchased OKC motor gasoline from Adams is April 2, 1974 through July 30, 1974. For firms that purchased OKC motor gasoline from Ritco, the Box consent order period is March 21, 1974 through June 13, 1974.

[4] Any of the other "friendly brokers" who may have purchased from Adams and Ritco will also be ineligible for a refund on the grounds of "unclean hands." *See OKC*, 9 DOE at 85,270; *see also Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,206 (1984). These other brokers are: Boyce Box d/b/a Quality Oil; Robert Vail d/b/a Robert Vail, Inc.; Consolidated Materials, Inc., a consolidation ofStonewalk Corporation and CLB Corporation, owned primarily by Donald G. Baxter; and Metro Energy, owned by Phil and Jean Parker. *See SEC v. Cloyce K. Box and OKC*, CA–3–80–1217D, (N.D. Tex.) (First Supplemental Complaint for Permanent Injunction).

[5] We recognize, of course, that in the present case the price increases were imposed not by the person who entered into the consent order, i.e., Box, but by Adams and Ritco.

[6] Banks must be shown from the month of purchase until the date the bank requirement for motor gasoline was eliminated —July 15, 1979 for retailers, May 1, 1980 for most resellers and retailer-resellers, and January 28, 1981 for refiners and the 52 resellers and retailer-resellers listed at 46 FR 81255 (December 10, 1980), Fed. Energy Guzdelines, Petroleum Regulations 1974–1981, ¶ 15,497C.

industry were injured by the alleged overcharges settled by the Box Consent Order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Texas Oil & Gas Corp.*, 12 DOE at 88,209. We therefore propose that an end-user of OKC refined products purchased from Adams or Ritco need only document that it was an ultimate consumer of a specific amount of OKC motor gasoline to make a sufficient showing that it was injured by the alleged overcharges.

B. Calculation of Refund Amounts

We must further determine the proper method for dividing the consent order fund among successful applicants. We propose to adopt a presumption that the alleged overcharges were dispersed equally in the sales of OKC motor gasoline by Adams and Ritco in the 23 transactions specified in the criminal information. In order to calculate a per gallon refund amount under this volumetric method, we shall divide the principal amount of the Box consent order fund, $500,000, by the 9,700,260 gallons of OKC motor gasoline which was purchased and resold by Adams and Ritco during the Box consent order period (March 21, 1974 through July 30, 1974). This yields a refund amount of $0.051545 per gallon.[7]

Finally, we propose to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those cases. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225; *see also* 10 CFR § 205.286(b).

IV. Refund Application Procedures

Refund applications in this proceeding should not be filed until issuance of a final Decision and Order. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received, we intend to publicize the distribution process and to provide an opportunity for any affected party to file a claim. In addition to publishing copies of the proposed and final decisions in the **Federal Register**, copies will be provided to those customers of Adams and Ritco during the Box consent order period whom we are able to locate.

In the event that money remains after all first-stage claims have been disposed of, these funds could be distributed in various ways. We will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed.

It Is Therefore Ordered:

The refund amount remitted to the Department of Energy by Cloyce K. Box pursuant to the Consent Order executed on July 17, 1980 will be distributed in accordance with the foregoing Decision.

[FR Doc. 86-13843 Filed 6-18-86; 8:45 am]
BILLING CODE 6450-01-M

[7] Like the other presumptions we are establishing in this proceeding, the volumetric presumption is rebuttable. The volumetric method of computing refunds represents a simple and equitable alternative available to firms which are not able to perform the difficult task of substantiating a particular level of alleged overcharge and injury. Any claimant will be allowed to file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See, e.g., Quaker State Oil Refining Corp.*, 13 DOE ¶ 85,211 at 88,552 (1985).

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy has adopted the final procedures to be followed in refunding $21,082,535.86 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings brought by the Economic Regulatory Administration of the Department of Energy involving Marathon Petroleum Company.

DATE AND ADDRESS: Applications for refund must be filed in duplicate by December 5, 1986, and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to the Case Number KEF-0021.

FOR FURTHER INFORMATION CONTACT: Virginia A. Lipton, Assistant Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-2400.

To receive suggested refund application forms contact: Marcia B. Proctor, Chief, Docket and Publications Branch, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-4924.

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to a January 30, 1986 consent order between the DOE and Marathon Petroleum Company. That consent order settled certain disputes between the firm and the DOE concerning Marathon's possible violations of DOE regulations in its sales of crude oil and refined petroleum products. The consent order covers the period January 1, 1973 through January 27, 1981.

The Decision sets forth the procedures and standards that the DOE has formulated to distribute the contents of an escrow account in the amount of $21,082,535.86, funded by Marathon pursuant to the consent order. The DOE has divided the consent order fund into two pools; one relating to Marathon crude oil sales and the other relating to Marathon sales of refined products. Under the procedures adopted, purchasers of Marathon refined products may file claims for refunds from the escrow fund. The amount of the refund available to an applicant will generally be a pro rata or volumetric share of the Marathon consent order fund. The Decision provides that in order to receive a portion of its allocable share, a claimant must furnish the DOE with evidence that it was injured by the allegedly unlawful prices for covered products charged by Marathon. However, the Decision indicates that no separate, detailed showing of injury will be required of end-users of the relevant product, or of firms which file refund claims in amounts of $5,000 or less. The Decision further indicates that an applicant whose claim, if granted, would result in a refund greater than $5,000 but less than $50,000 may elect to receive a refund based on 35 percent of its allocable share. Applicants requesting refunds of $50,000 or more will be required to provide a detailed showing of injury. The Decision also sets forth a suggested application format which claimants may use. Proper disposition of any funds remaining after all meritorious claims of Marathon refined product purchasers have been paid will be decided at a future date.

With regard to the portion of the consent order fund attributable to Marathon's alleged crude oil violations, the decision places the money into a pool of crude oil moneys for distribution pursuant to the DOE's Statement of

Restitutionary Policy for crude oil claims.

Applications for refund must be filed by December 5, 1986, and should be sent to the address set forth at the beginning of this notice. Refund applicants must file two copies of their submission. All applications received in this proceeding will be available for public inspection between the hours of 1:00 p.m. and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: June 11, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

June 11, 1986.

Name of Firm: Marathon Petroleum Company
Date of Filing: March 26, 1986
Case Number: KEF-0021.

On March 26, 1986, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a petition with the Office of Hearings and Appeals (OHA), requesting that the OHA formulate and implement procedures for distributing funds obtained through the settlement of enforcement proceedings involving Marathon Petroleum Company (Marathon). *See* 10 CFR Part 205, Subpart V. On April 18, 1986, the OHA issued a Proposed Decision and Order tentatively setting forth procedures for distributing the Marathon settlement fund. 51 FR 16198 (May 1, 1986). We further provided a 30-day period for submission of comments regarding our proposal. That period elapsed on June 2, 1986. The purpose of the present Decision is to address the comments received and provide the final procedures for disbursement of the Marathon funds.

Section I below summarizes the tentative procedures adopted in the Proposed Order. Section II reviews and considers the comments we received regarding those procedures. Section III sets forth the final Marathon refund procedures applicable to parties claiming refunds based on purchases of Marathon refined products. A claimant should take special note of those requirements applicable to its particular circumstances. The specific application requirements are followed by a discussion of general requirements which apply to all refund applications involving refined petroleum products. We have also prepared suggested forms that claimants may use to file their applications. These forms appear as an Appendix to this Decision. Refund applications must be filed by December 5, 1986. Printed forms are available from OHA.

I. Summary of Proposed Marathon Refund Procedures

As we stated in the Proposed Decision, during the period covered by the settlement agreement, Marathon was engaged in the production, sale and refining of crude oil, as well as in the sale of refined petroleum products. DOE audits of Marathon's operations revealed possible regulatory violations in the firm's application of the federal petroleum price and allocation regulations. In order to settle claims and disputes between Marathon and the DOE, the two parties entered into a consent order which became final on January 30, 1986.[1] Under the terms of the consent order, Marathon remitted $21,082,535.86 to the DOE in settlement of alleged violations occurring between January 1, 1973 and January 27, 1981 (the consent order period). These funds are being held in an escrow account established with the United States Treasury pending a determination of their proper distribution.

Because the consent order resolves alleged violations involving both sales of crude oil and refined products, we proposed to divide the fund into two pools. *See Standard Oil Co. (Indiana),* 10 DOE ¶ 85,048 (1982) (*Amoco*). As we stated in the Proposed Order, according to information set forth in the **Federal Register** Notice announcing the proposed Marathon consent order, approximately 40 percent of the aggregate amount of the alleged violations settled by the consent order concern Marathon's production and sales of crude oil. 50 FR 34901, 34902 (August 28, 1985). We therefore proposed that this same percentage of the principal contained in the Marathon escrow account, or $8,433,014, be set aside as a pool of crude oil funds. We further proposed that the remaining 60 percent of the Marathon funds, or $12,649,522 be made available for distribution to claimants who demonstrate that they were injured by Marathon's alleged violations in sales of refined petroleum products.

Marathon, like other producers of crude oil, was subject to the Mandatory Petroleum Price Regulations set forth in 6 CFR Part 150 and 10 CFR Part 212.[2] To the extent that Marathon miscertified old crude oil as new or stripper well crude oil, the impact of the violations was spread throughout the domestic refining industry by the operation of the Entitlements Program, 10 CFR 11.67. *See, e.g., Union Oil Co. v. DOE,* 688 F.2d 797 (Temp. Emer. Ct. App. 1982), *cert. denied,* 459 U.S. 1202 (1983). Based on the OHA's report to the District Court in the Stripper Well Exemption Litigation, *see Report of the Office of Hearings and Appeals, In re: Department of Energy Stripper Well Exemption Litigation,* MDL No. 378 (D. Kan., filed June 21, 1985), 6 Fed. Energy Guidelines ¶ 90,507 at 90,620 (1985) (the Stripper Well Report), the DOE announced that the Department would maintain overcharges associated with such violations in escrow to afford Congress the opportunity to select the means of making indirect restitution. *See* Statement of Restitutionary Policy, 50 FR 27400 (July 2, 1985). We therefore tentatively decided to pool the Marathon funds attributable to alleged crude oil violations with other crude oil funds for distribution in accordance with departmental policies. *See* 50 FR at 27400-02.

With regard to the remainder of the Marathon settlement fund, the $12,649,522 apportioned to refined products, we proposed to implement a two-stage refund proceeding in which purchasers of Marathon refined petroleum products will be afforded an opportunity to submit refund applications during the initial stage.[3] In connection with first-stage applications by Marathon purchasers, we adopted several presumptions. First, we presumed that the alleged overcharges were dispersed equally in all sales of refined product made by Marathon

[1] Section 501 of the Marathon consent order resolves all pending and potential civil and administrative claims by the DOE against Marathon, with certain enumerated exceptions. See consent order section 501(a) through (g).

[2] The DOE regulations, in effect from August 19, 1973 until January 27, 1981, governed prices charged in crude oil sales to first purchasers by defining ceiling prices for various tier classifications of crude oil. The regulations permitted producers to sell certain crude oil, such as crude oil produced from a "stripper well property," at market price levels. When a producer sold crude oil, it was required to certify in writing to the purchaser the respective volumes of crude oil belonging to each tier classification in each purchase. When a refiner processed the crude oil, it was required to report these certifications to the DOE to enable the agency to administer the Crude Oil Entitlements Program, 10 CFR 211.67.

[3] We indicated that after all claims of Marathon purchasers had been considered, we would determine the appropriate manner of disbursing remaining Marathon refined product funds in a second-stage refund proceeding.

during the consent order period and that refunds should therefore be made on a pro rata or volumetric basis. Under the volumetric refund approach, a claimant is eligible to receive a refund equal to the number of gallons purchased times the per gallon refund amount. We also refer to this volumetric refund amount as the claimant's "allocable share." [4] In the Proposed Order, we get the per gallon refund amount at $.00042 per gallon. We derived this figure by dividing the consent order funds available for distribution to non-crude oil claimants ($12,649,522) by the number of gallons of covered products other than crude oil which Marathon indicated to us that it sold from September 1973 through the date of decontrol of the relevant product (29,983,247,000). However, we also recognized that some claimants may have been disproportionately overcharged, and indicated that any purchaser may file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See Sid Richardson Carbon and Gasoline Co.*, 12 DOE ¶ 85,054 at 88,164 (1984).

We proposed to adopt a number of presumptions concerning injury. These presumptions excuse certain categories of refund applicants from proving that they were injured by Marathon's alleged overcharges, thus simplifying the refund process for these applicants.

We tentatively found that end-users and ultimate consumers whose businesses are unrelated to the petroleum industry would not be required to provide a separate demonstration that they were injured by Marathon's alleged refined product overcharges. Unlike regulated firms in the petroleum industry, end-users generally were not subject to price controls during the consent order period and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, we found an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). We proposed, therefore, that end-users of Marathon products need only document that they were ultimate consumers of a specific amount of Marathon products to make a sufficient showing that they were injured by the alleged overcharges.

We also tentatively decided not to require firms whose prices for goods and services are regulated by a government agency or by the terms of a cooperative agreement to demonstrate injury as a result of alleged overcharges on refined products. Although such firms, e.g., public utilities and agricultural cooperatives, generally would have passed overcharges through to their customers, they generally would pass through any refunds as well. Therefore, we suggested that we would require such applicants to certify that they will pass any refund received through to their customers, to provide us with a full explanation of how they plan to accomplish this restitution, and to explain how they will notify the appropriate regulatory body or membership group of their receipt of the refund money. *See Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,203 (1982). We noted, however, that a cooperative's sales of Marathon products to non-members would be treated in the same manner as sales by other resellers.

We also proposed specific procedures regarding refund applications filed by resellers, retailers and refiners. We proposed, first, to adopt a small-claims presumption, as we have in many previous cases. Under the small-claims presumption, a claimant seeking total refunds of $5,000 or less (excluding interest) is not required to submit any evidence of injury, beyond establishing the volume of Marathon products it purchased during the settlement period. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984). We believe that the cost to the applicant of gathering evidence of injury to support a small refund claim and the cost to the OHA of analyzing the additional evidence might be outweighed by the benefits that could be achieved by receiving the additional information.

In the Proposed Order we also stated that refiners, resellers and retailers seeking refunds greater than $5,000 would be expected to provide a more detailed injury showing. We tentatively adopted a further presumption for refiner, reseller or retailer applicants whose claims, if granted, would result in a total refund greater than $5,000, but less than $50,000, excluding interest (medium range claimants). Based on our review of prior cases, we believed it a reasonable presumption that firms that sold Marathon refined products and that maintained banks of unrecovered costs were likely to have experienced some injury as a result of the alleged overcharges. *E.g., Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985) (*Mobil*); *Amoco*, 10 DOE at 88,222–23. Based on national average data and the conclusions regarding absorption of injury reached in those cases, we tentatively decided to adopt an injury presumption of 35 percent in the Marathon refund proceeding. Accordingly, we proposed that any medium range claimant be permitted to elect to receive a refund based on 35 percent of its total allocable or volumetric share. We tantatively determined that in order to receive a refund based on this 35 percent presumption, an applicant would be required to substantiate the volume of product it purchased from Marathon and demonstrate the existence of banks of unrecouped product costs at levels at least equal to the refund claimed.

Finally, we proposed that a large refund applicant in this general category, one whose total claims, if granted, would result in a refund of $50,000 or more excluding interest, be required to provide a detailed showing of injury. We stated in the Proposed Order that such an applicant would be expected to show that it did not pass along the alleged overcharges to its own customers, by demonstrating that it maintained a bank of unrecovered product costs beginning with the first month of the period for which a refund was claimed through the date on which that product was decontrolled. In addition, we provided that a claimant specifically establish injury by showing that it did not pass through those increased costs.

II. Comments Regarding Marathon Proposed Order

(A) Crude oil comments

As we stated above, we indicated that we would disburse the $8,433,014 of the Marathon consent order fund relating to alleged crude oil violations in accordance with departmental policy. In connection with this proposal, we received joint comments filed by the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, Utah, and West Virginia and separate comments by the State of California and the Commonwealth of Pennsylvania. These States suggest that OHA not follow agency crude oil policy and instead distribute to the States funds not disbursed to directly injured claimants.

The DOE Crude Oil Policy arose out of a report which the OHA issued in the Stripper Well Exemption Litigation. *Report of the Office of Hearings and Appeals, In Re: Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan. filed June 21, 1985), 6 Fed. Energy Guidelines ¶ 90,507 (1985). That Report concluded that the

[4] Claimants are also eligible to receive a pro rata share of interest accrued on the escrowed funds.

Entitlements Program spread the effects of crude oil miscertifications throughout the crude oil industry.[5] From the OHA's findings, the Deputy Secretary of Energy concluded that an indirect means of effectuating restitution was appropriate in crude oil refund proceedings. Therefore, on June 21, 1985, the Deputy Secretary established the DOE Policy of Restitution for Crude Oil Overcharges. 50 Fed. Reg. 27400 (July 2, 1985). The policy statement announced that the DOE would maintain overcharge monies in escrow to afford Congress the opportunity to select the means of making indirect restitution. Should Congress decline to act on the issue by the fall of 1986, the DOE stated that the funds should be paid to the miscellaneous receipts accounts of the United States Treasury in order to benefit all Americans. In June 1985, the OHA issued an order announcing that it intended to follow the DOE Policy. 50 Fed. Reg. 27402 (July 2, 1985). The OHA solicited and considered comments to that announcement and determined that it would apply the DOE Policy in all special refund cases involving crude oil. *Amber Refining, Inc.*, 13 DOE ¶ 86,217 (1985) (*Amber*).

As we stated above, the jurisdictions referred to above urge that all monies not disbursed to identified injured parties be distributed to States for indirect restitution, rather than in accordance with DOE Policy. However, none of the comments presents any reason why the Policy is inapplicable to these funds. Rather, the comments suggest that alternative methods of restitution are preferable. For example, they argue that state governments are the most appropriate recipients of refund monies not designated for readily identifiable injured parties.

In light of our Decision in *Amber*, we have determined that the Marathon crude oil refund monies should be pooled with other crude oil funds for distribution in accordance with the departmental policies. As we stated in *Amber*, there is no merit to comments which disagree with the OHA implementation of DOE policies. *Amber*, 13 DOE at 88,569. OHA's delegation expressly subjects it to Departmental policies and determinations such as this one are governed by departmental policy. *Id.; Windsor Gas Corp.*, 14 DOE ¶SS, No. KEF–0002 (May 22, 1986); *American Pacific International, Inc.*, 14 DOE ¶ 85,158 (1986) (*API*).[6] Accordingly, we will adopt the plan set forth in the Proposed Order for disbursement of the portion of the Marathon consent order fund attributable to crude oil.

(B) Refined Product Comments

We also received a number of comments concerning our proposed procedures for disbursement of the portion of the Marathon funds attributable to refined products. Lucky Stores, Inc. (Lucky), the Marathon Brand Committee of the Petroleum Marketers Association of America and the Marathon Jobbers Group (the Committee) assert that the small-claims limit of $5,000 should be increased. Lucky claims that refund applicants whose volume of Marathon purchases would make them eligible for an allocable refund share of greater than $5,000 will not be able to file a claim for their full allocable share because they are unable to make the required injury showing. The Committee asserts that the small-claims limit should be increased to allow claimants that purchased "average" amounts of Marathon product (8.4 million gallons annually) to utilize the small-claims injury presumption.

Setting a threshold limit is, of course, a matter of judgment in any particular case. However, the OHA has now adopted the $5,000 small-claims threshold in numerous cases. *E.g., API*, 14 DOE at 88,295; *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Marion Corp.*, 12 DOE ¶ 85,014 (1984). The basis for the small-claims refund approach is that a separate detailed showing of injury may be complicated and burdensome for firms applying for relatively small refunds. As we have stated on several occasions with respect to these smaller claims, the costs incident to filing and processing applications that set forth a detailed showing of injury may outweigh the benefits of receiving this additional data. The small-claims process permits the OHA to use its own resources more efficiently. *Seminole Refining, Inc.*, 12 DOE ¶ 85,188 (1985); *Little America Refining Co./The M. H. Cook Pipeline Construction Co.*, No. RF112–1 (August 30, 1985) (proposed decision).

Raising the small-claims threshold level as Lucky suggests would facilitate a higher refund level to more applicants, without providing a concomitant benefit in the overall refund process, such as greater efficiency or accuracy. Moreover, the suggestion of the Committee would involve a complete revision of the policy behind the small-claims approach. The procedure was developed to enable smaller applicants to file claims efficiently and easily. It was not designed to assist the applicant that purchased "average" volumes, if in reality that applicant is requesting a significant refund. Under the plan suggested by the Committee, the average applicant, one purchasing 8.4 million gallons of product annually for the audit period, would receive a refund of more than $25,000 under the small-claims approach. We find that an applicant requesting a refund of this magnitude should be prepared to fully document the injury experienced.

Lucky also suggests that after all meritorious claims have been satisfied, the remaining funds should be distributed to small claimants. We see no basis for adopting this suggestion, which would effectively distribute the contents of the Marathon escrow to those Marathon purchasers that simply happened to have filed applications. *Pennzoil Co./Paul L. Strycula*, 12 DOE ¶ 85,211 (1985). We find no merit in such an inequitable approach.

As we indicated above, in our Proposed Order we tentatively determined that medium range claimants (those requesting refunds greater than $5,000 but less than $50,000) could receive refunds of 35 percent of their volumetric refund amount, by establishing the volumes of Marathon product that they purchased and by demonstrating the existence of banks of unrecovered product costs in the amount of the refund claimed.

The State of California objects to our tentative determination to set 35 percent as the presumptive level of injury with respect to medium range claimants. The State refers to the analysis used in the *Report of the Office of Hearings and Appeals, In Re: Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan. filed June 21, 1985), 6 Fed. Energy Guidelines ¶ 90,507 (1985). California states that in the Stripper Well Report we found that retailer and reseller injury absorption would not exceed the 2.7 to 8.1 percent range experienced by refiners, and argues that the medium range

[5] The Crude Oil Entitlements Program, part of the DOE's system of mandatory petroleum price and allocation controls, was in effect from November 1974 through January 1981. The program was intended to equalize access to the benefits of crude oil price controls among all domestic refiners and their downstream customers. To accomplish this end, refiners were required to make transfer payments among themselves through the purchase and sale of entitlements. Because of the manner in which the program worked, it had the effect of dispersing overcharges resulting from crude oil miscertifications throughout the domestic refining industry. *Amber Refining, Inc.*, 13 DOE ¶ 85,217 (1985).

[6] However, as we stated in the Proposed Decision and Order, after all the refunds to directly injured parties have been made, we may find it appropriate to use Marathon consent order funds associated with sales of refined products to provide for indirect restitution through the States.

presumption in the present proceeding not exceed that level.

We find the analysis used in the Stripper Well Report inapplicable here. That Report referred to general cost increases experienced by the industry as a whole. When costs increase to all members of a class, it is likely that they will be able to pass through a high percentage of those increases and still remain competitive. It is this situation that was involved in the Stripper Well Report. On the other hand, when the costs of only one purchaser at a particular level increase, that purchaser is less able to fully pass through those costs and remain competitive. It is for this reason that we find it likely that the absorption rate by Marathon customers was higher than that referred to in the Stripper Well Report. Accordingly, we see no basis for using the absorption percentage figures of the Stripper Well Report. *See also Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985).

The Committee of Marathon Customers (CMC) [7] believes that we have improperly limited medium range claimants to a 35 percent injury presumption level. CMC claims that "full compensation" should be awarded to motor gasoline applicants. CMC Comments at 26–28. The purpose of the medium range presumption approach is to provide a simplified alternative refund procedure for certain types of applicants and enable OHA to process these applications with greater efficiency. From our broad experience in conducting refund proceedings, we believe that the 35 percent presumption is a reasonable one. We have stressed repeatedly, however, that medium range applicants may receive their full allocable share upon a persuasive demonstration of injury. Apart from the 35 percent level, we see no reliable evidence for establishing any other presumption of injury level and no basis for presuming that medium range motor gasoline applicants experienced 100 percent injury levels. Accordingly, we will adhere to the 35 percent presumption figure set forth in the Proposed Order.

Marathon, Leader Oil Company and the Committee filed comments suggesting that medium range claimants be permitted to receive a refund at the 35 percent presumptive level without being required to demonstrate the existence of banks. These commenters suggest that it is difficult to establish banks for the early years of the consent order period. We are inclined to agree that this aspect of the showing for the medium range claimant should be revised. As we stated in the Proposed Decision and Order, we believe, based on national average price data, that wholesalers and resellers of refined petroleum products were likely to have absorbed approximately 35 percent of alleged Marathon overcharges. In view of this finding, we believe that production of bank data will not measurably enhance the accuracy and reliability of our analysis of whether individual applicants experienced injury and thereby make it worthwhile for the OHA to perform detailed analyses of bank data in this medium range.

Marathon also recommends that we allow even the largest refund claimants, those requesting a refund of $50,000 or more, to elect the 35 percent presumption method. We believe that data supporting claims of this magnitude warrant the most careful scrutiny. Consequently, we will adhere to our original proposal that applicants requesting refunds of greater than $50,000 must show not only purchases and appropriate levels of banks of unrecouped product costs, but also that the alleged overcharges were not passed through. However, these larger applicants may limit their claims to 340,136,054 gallons and thereby receive $49,999 under the 35 percent presumption methodology. Conversely, any mid-range claimant may prove the full extent of its injury, rather than elect the 35 percent presumption method.

Marathon has also asked, if in the event that we are not convinced by the proof of injury submitted by a large refund applicant, whether that claimant will receive a refund based on the 35 percent presumption method, or no refund at all. In the past we have taken the position that whether a refund is granted in this situation depends on the type of information submitted. If the data convinced us that the applicant was not injured, no refund was approved. On the other hand, if the data was unconvincing or inconclusive as to injury, we have been willing to grant a refund at the percentage presumptive level or the small-claims level. *E.g., Little America Refining Co./Silco Oil Co.*, 14 DOE ¶ 85,128 (1986). *See also Standard Oil Co. (Indiana)/Capital Gas Co.*, 13 DOE ¶ 85,199 (1985).

CMC raises several arguments challenging the Proposed Decision and Order's approach for disbursement of the Marathon funds. CMC first challenges our finding in the Proposed Decision that larger refund claimants would generally be expected to establish injury in order to receive a refund. Normally this injury showing involves a two-part test. First, the applicant must establish that it had banks of unrecovered product costs in at least the amount of the refund claimed and, secondly, the claimant must present evidence that it did not pass through the alleged overcharges to its own customers. CMC claims that this test is improper and argues that a refund claimant is "entitled to recover for the overcharge it sustained so long as it did not, during the period of controls, earn profits in excess of those permitted by law." CMC Comments at 11. CMC suggests that banks or other evidence that the applicant maintained lawful prices would be probative of this issue. *Id.* at n.1. Thus, CMC essentially argues that the measure of an applicant's injury is diminished profits. *Id.* at 11–12. In a recent case, the Federal District Court for the District of Delaware rejected this very argument. *Atlantic Richfield Co. v. DOE*, 618 F. Supp. 1199 (D. Del. 1985) (hereinafter cited as *ARCO*). Specifically, the Court stated that the term injury "connotes more than the mere payment of an unlawful overcharge," and that "OHA's requirement of proof of non pass-through is entirely reasonable and well within OHA's authority." *Id.* at 1210, 1211. Accordingly, we reject CMC's argument that the Marathon Proposed Decision and Order improperly requires larger refund applicants to demonstrate that they did not pass through the alleged Marathon overcharges.

In the Marathon Proposed Decision and Order, we stated that in order to prove injury an applicant would be expected to show that due to market conditions it was unable to pass through the alleged Marathon overcharges. CMC alleges that this is an unfair limit, since there may be other reasons why an applicant may not have been able to pass through these increased costs.

We did not intend to unduly limit an applicant's opportunity to show that it did not pass through alleged overcharges. Although a demonstration that market forces prevented the claimant from passing through those charges is certainly one method for establishing injury, we will certainly consider other persuasive injury showings demonstrating that the alleged overcharges were absorbed by the claimant.

CMC also challenges the comparative methodology used by OHA to evaluate whether some types of applicants have experienced injury. That methodology, known as the competitive disadvantage test, generally compares the prices that

[7] CMC is comprised of 16 firms that purchased substantial volumes of motor gasoline from Marathon during the consent order period and for whom Marathon was a major supplier.

a consent order firm charged an applicant with average prices charged in the applicant's market area for that product at the applicant's level of distribution. CMC claims that there is no support in judicial precedent for the "competitive disadvantage requirement." CMC Comments at 15. These objections are without merit. First, the court in *ARCO* specifically upheld the authority of the OHA to require refund applicants to establish injury. *Id.* at 1210–11. In so doing, the court reviewed and upheld our application of the competitive disadvantage test as one reasonable method for establishing injury. *Id.* at 1213. Moreover, although we find that this method is generally useful and reliable, an applicant is always free to suggest reasonable alternative methods for establishing injury and provide appropriate data for application of its methodology. However, in the absence of an appropriate alternative showing, we will generally adopt the competitive disadvantage approach. *E.g., Lewtex Oil & Gas Corp./Gulf Oil Corp.*, 13 DOE ¶ 85,325 at 88,815 (1985). Thus, CMC's assertion that OHA has illegally applied the competitive disadvantage requirement is without basis.

In our Proposed Order, we adopted the implicit presumption that any overcharges that Marathon allegedly committed were spread evenly over the time when the relevant product was controlled. CMC urges that we use a different approach. Specifically, CMC suggests that we adopt a presumption that overcharges occurred only during those periods when a product would have been in short supply. CMC believes that during periods of adequate supply, market forces would not allow a reseller of product to overcharge its customers and remain competitive. CMC concludes that it is only in shortage periods that a supplier would have been able to overcharge its customers. We see no foundation for this conclusion. As an initial matter, we see no basis to presume that overcharges could occur only during periods of shortage. Under CMC's theory, during periods of adequate supply, if a supplier's prices were above market prices it would not be able to sell the product. We cannot agree with CMC's implicit assumption that simply because a supplier's prices did not exceed market levels that it committed no overcharge. For example, if a supplier had access to low-priced product it could have resold the product at competitive prices and still have overcharged.

Moreover, the refiner price rule at 10 CFR 212.83, to which Marathon was subject, is extremely complex, and violations could result from many reasons not strictly related to overcharges to a particular customer during a shortage period. For example, erroneous refiner cost calculations could relate to improper accounting methods, the equal application rule, and improper class of purchaser determinations. In fact, the consent order settled alleged Marathon violations of many improper cost calculation allegations. 50 FR at 34902–03. These alleged violations were settled without specific findings that the improper calculations caused Marathon to charge specific excessive prices. 50 FR at 34902. There is nothing in the record in this case that would assist us in determining when, during the consent order period, Marathon would have charged lower prices had it calculated its banks in the manner DOE alleged to be correct. We therefore see no rational foundation for adopting CMC's approach that the alleged Marathon overcharges occurred only during shortage periods. On the contrary, we believe it more reasonable to assume that the alleged overcharges were dispersed evenly throughout the regulated period for each covered product.

CMC also alleges that we incorrectly apportioned 40 percent of the consent order funds to crude oil purchasers. It asserts that this allocation was not based upon adequate findings of fact. CMC states: "The PDO merely recites that 'it appears that approximately 40 percent of the aggregate amount of the alleged violations settled by the consent order concern Marathon's production and sales of crude oil.' " CMC Comments at 28. CMC's citation is incorrect. The sentence referred to by CMC is actually as follows: "According to information set forth in the Federal Register Notice announcing the proposed Marathon consent order it appears that approximately 40 percent of the alleged violations settled by the consent order concern Marathon's production and sales of crude oil. 50 FR 34901, 34902 (August 28, 1985)." 51 FR 16198, 16199 (May 1, 1986). Thus, our basis for allocating 40 percent of the crude oil funds was clearly set forth: we referred to the information developed by the agency in its audit of Marathon and announced through the publication of the consent order.

CMC next argues that the allocation of 40 percent of the Marathon fund to the crude oil pool is inequitable. CMC believes that Marathon's refined product customers must have absorbed more than 60 percent of the alleged Marathon overcharges. It asserts that Marathon refined greater volumes of crude oil than it produced and earned significantly more revenue form its sales of refined products than on its sales of crude oil. This assertion, even if true, does not bear upon the portion of the Marathon settlement fund that may resaonably be allocated to refined products. If Marathon did miscertify crude oil that it used for producing refined products, the effect these miscertifications would have been experienced by participants in the Entitlements Program, rather than by Marathon refined product purchasers. The Entitlements Program compensated both entitlements purchasers and sellers for such alleged miscertifications.

Moreover, as we stated above, the ERA suggested in the Notice of the Proposed Consent Order that 60 percent of the Marathon settlement fund may have been related to refined product overcharges. The Notice provided a 30-day comment period. 50 Fed. Reg. at 34904. According to the Notice announcing the final Marathon consent Order, no comments were received challenging the refined product/crude oil apportionment referred to in the Notice of the Proposed Consent Order. 51 FR 3820, 3821 (January 30, 1986). CMC's comments in the present proceeding provide no reasonable basis upon which we could establish a different apportionment. Further, based on our broad range of experience and our knowledge of the Marathon enforcement issues, we believe the 60/40 apportionment is sound. Accordingly, we will rely on these figures in the current refund proceeding.

Finally, CMC claims that OHA improperly requires a gasoline retailer applicant to submit a separate refund application form for each retail store for which a refund is claimed. CMC appears to base this claim on the fact that for price computation purposes DOE regulations considered a retailer, rather than each individual retail station, as "a firm." CMC therefore believes retailers must be permitted to submit information on a firm-wide basis.

As an initial matter, CMC confuses the considerations applicable to an enforcement proceeding with those involved in a refund proceeding. For purposes of determining compliance with price regulations, a retailer may have been permitted to calculate its maximum lawful selling prices on a firm-wide basis. However, in a refund proceeding, we wish to ensure that no gasoline retailer receives duplicate refunds for the same retail outlet. It is for reaons of efficiency and accuracy that we request that gasoline retailers

submit a separate application form for each station. However, use of the application forms themselves is optional, not mandatory. Therefore, a motor gasoline retailer applicant may submit combined figures for all stations. This may well result in increased time and effort to process the claim and could therefore delay refund approval. We therefore fail to see any merit in CMC's comment regarding motor gasoline retailer claims.

Having considered the comments filed with respect to the procedures applicable to claimants applying for refunds based on purchases of Marathon refined products, we have summarized below the procedures applicable to these types of refund applications.

III. Refund Procedures for Refined Product refund Claims

During the first stage of the refund process, the Marathon settlement fund available for refined products will be distributed to purchasers who satisfactorily demonstrate that they were injured by Marathon's alleged pricing violations. From our experience with Subpart V proceedings, we believe that potential claimants will fall into the following categories: (1) end-users, i.e., consumers who used the Marathon refined products; (2) regulated entities not subject to the former federal oil price controls which used Marathon products in their businesses or cooperatives which sold Marathon products in their businesses; and (3) refiners, resellers or retailers who resold the Marathon proucts.

As we discussed in our Proposed Order, refunds will generally be made on a pro rata or volumetric basis. The volumetric refund amount in this special refund proceeding is $.00042 per gallon. However, we recognize that the impact on an individual purchaser might have been greater. Therefore, any purchaser may file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See, e.g., Sid Richardson Carbon and Gasoline Co.*, 12 DOE ¶ 85,054 (1984).

(A) Specific application requirements for each category of refined product refund applicants

(1) Refund Applications by End-Users

As discussed above, we are adopting a finding that end-users or ultimate consumers whose businesses are unrelated to the petroleum industry were injured by the alleged overcharges settled by the Marathon consent order. End-user claimants need only document their purchase volumes of Marathon products to make a sufficient showing that they were injured by the alleged overcharges.

(2) Refund Applications by Regulated Firms or Cooperatives

As we indicated above, agricultural cooperatives and regulated firms, such as public utilities, that are required to pass on to their customers the benefit of any refund received will be exempted from the requirement that they make a detailed showing of injury. *See Office of Special Counsel*, 9 DOE ¶ 82,538 (1982); *Tenneco Oil Co./Farmland Industries, Inc.*, 9 DOE ¶ 82,597 (1982). Instead, those firms and cooperative groups will be required to certify that they will pass any refund received through to their customers, to provide us with a full explanation of the manner in which they plan to accomplish this restitution to their customers and to notify the appropriate regulatory body of the receipt of refund money. A cooperative's sales of Marathon products to nonmembers will be treated in the same manner as sales by other resellers.

(3) Refund Applications by Resellers, Retailers and Refiners

(a) *Refiners, Resellers and Retailers Seeking Refunds of $5,000 or Less.* We are adopting the small-claims presumption set forth in the Proposed Order. Therefore, a claimant seeking a refund of $5,000 or less will not be required to submit any evidence of injury beyond establishing the volume of Marathon motor gasoline it purchased during the consent order period.[8] *See Texas Oil & Gas Corp.*, 12 DOE at 88,210; *Marion Corp.*, 12 DOE ¶ 85,014 (1984). In addition to the general information required from all applicants, this type of claimant need only establish, thorugh substaintiating the volumes of purchases, that it is a small-claims applicant.

(b) *Refiners, Resellers and Retailers Seeking Refunds Greater Than $5,000.* We will also adopt a medium range injury presumption of 35 percent. This presumption may be elected by a reseller/refiner/retailer applicant whose claim would result in a refund greater than $5,000 but less than $50,000. However, as we discussed above, we will not require medium range applicants adopting the presumption to provide evidence of banks of unrecouped product costs. These applicants will be requried only to establish the volumes of product purchased from Marathon. Of course, a medium range applicant may elect not to receive a refund based on this presumption and may, instead prove the extent of its injury using the criteria applicable to large claimants. Conversely, an applicant may limit the amount of the refund it is requesting to less than $50,000 and elect the 35 percent presumption method.

A frim which claims a refund of $50,000 or more will be required to provide a detailed demonstration of its injury, as well as detailed purchase volume information. Such a firm will be required to demonstrate that it maintained a bank of unrecovered product costs. In addition, a claimant must show, through market conditions or otherwise, that it did not pass through those increased costs to its customers. Such a showing might be made through a demonstration of a lowered profit margin, decreased market share, or depressed sales volume during the period of purchases from the consent order firm.

(4) Refund Applications by Spot Purchasers

If a claimant made only sporadic purchases of significant volumes of Marathon product, we consider that claimant to be a spot purchaser. We believe that in most circumstances such a claimant should not receive a refund, since it is unlikely to have experienced injury. Purchasers on the spot market tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of Marathon product at increased prices unless they were able to pass through the full amount of the quoted selling price at the time of purchase to their own customers. *See Vickers*, 8 DOE at 85,396–97. Therefore, a firm which made only spot purchases from Marathon will not receive a refund unless it presents evidence rebutting the spot purchaser presumption and establishes the extent to which it was injured as a result of its purchases of Marathon motor gasoline during the consent order period. *See Saber Energy, Inc./Mobil Oil Corp.*, 14 DOE ¶ 85,170 (1986). Spot purchasers will *not* be able to use the presumption of injury for small-claims described above.

[8] Claimants whose monthly purchases during the period for which a refund is claimed result in a volumetric refund of greater than $5,000, but who cannot establish that they did not pass through the alleged price increases to their customers, or who limit their claims to the threshold amount, will be eligible for a refund of the $5,000 threshold amount without being required to submit additional evidence of injury. *See Office of Enforcement*, 10 DOE ¶ 85,029 at 88,122 (1982) (*Ada*); *Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396 (1981) (*Vickers*).

(5) Applicants Seeking Refunds Based on Allocation Claims

We also recognize that we may receive claims alleging Marathon allocation violations. Such claims are based on the consent order firm's alleged failure to furnish petroleum products that it was obliged to supply to the claimant under the DOE allocation regulations. *See* 10 C.F.R. Part 211. We will evaluate refund applications based on allocation claims by referring to standards such as those set forth in *OKC Corp./Town & Country Markets, Inc.*, 12 DOE ¶ 85,094 (1984), and *Aztex Energy Co.*, 12 DOE ¶ 85,116 (1984).

(6) Refund Applications by Consignees

Consignee agents are firms that distributed covered products pursuant to a contractual agreement with a refiner, under which the refiner retained title to the products, specified the price to be paid by the purchaser and paid the consignee a commission based on the volume of covered products it distributed. 10 CFR 212.31.

In previous decisions, we have adopted the rebuttable presumption that consignees that distributed the products of a consent order firm were not economically injured as a result of their contractual arrangement with their refiner/supplier. *Gulf Oil Corp./C.F. Canter Oil Co.*, 13 DOE ¶ 85,388 (1986). For example, we indicated in *Amoco* that "consignee agents established their prices at a set, per gallon commission fee that was added to Amoco's wholesale price. That type of arrangement insured that a consignee did not absorb any alleged overcharges." 10 DOE at 88,200. We therefore decided to adopt a presumption that Amoco consignees generally experienced no injury as a result of their purchases from Amoco. However, we also determined that consignees could rebut this presumption by establishing that "their sales volumes, and their corresponding commission revenues, declined due to the alleged uncompetitiveness of Amoco's prices." *Id. See also Aztex Energy Co.*, 12 DOE ¶ 85,116 (1984). We will adopt this approach in the Marathon proceeding.

(B) General refund application requirements

In the Appendix to this Decision, we have set forth a suggested form for applications filed by gasoline retailer claimants and one for other applicants. Gasoline retailer applicants using the suggested form must file a separate form for *each gasoline station* for which a refund is requested. All other applicants using the suggested form must file a separate form for *each product* for which a refund is requested. We will accept all applications that contain the information necessary to process a claim, whether or not the suggested form is used. For those claimants not using the suggested form, the information that must be included in an application is set forth below.

1. An application for refund must be in writing, signed by the applicant, and specify that it pertains to the Marathon Petroleum Company Special Refund Proceeding, Case No. KEF-0021.

2. Each applicant should furnish its name, street or post office address, and its telephone number. If the applicant is a business firm, it should furnish all other names under which it operated during the period for which the claim is being filed.

3. Each applicant should specify how it used the product—i.e., whether it was a refiner, reseller, retailer or an end-user.

4. Each applicant must submit a monthly purchase schedule for Marathon purchases during the consent order period, January 1, 1973 through January 27, 1981.

5. If an applicant purchased Marathon refined products from a reseller, it must establish its basis for belief that the product originated with Marathon and identify the reseller from whom the product was purchased. Indirect purchasers who either fall within a class of applicant whose injury is presumed, or who can prove injury, may be eligible for a refund if the reseller of Marathon products passed through the alleged Marathon overcharges to its own customers.

6. The application for refund should contain the name, address, and telephone number of the person who prepared the application. If the preparer was someone other than the applicant, the applicant should furnish us with the name and telephone number of a contact person familiar with the facts set forth in the application who we may contact for additional information concerning the application. Unless otherwise specified, the refund check will be issued to the preparer.

7. Each applicant must indicate whether it or a related firm has authorized any individual to file any other refund application in the Marathon refund proceeding on its behalf, and if so attach an explanation.

8. If the applicant is affiliated or associated with Marathon in any manner, it must so indicate and provide information explaining the nature of its relationship with the consent order firm.

9. If the applicant has been involved in enforcement proceedings brought by the DOE, it must provide a summary of the present status of the proceeding, or if the matter is no longer pending, it must indicate how the proceeding was resolved.

10. If the applicant is a firm which did not actually purchase gasoline from Marathon, but is a successor to a Marathon customer, the applicant must provide evidence establishing that it, rather than Marathon's former customer, is entitled to a refund.

11. Each application must include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001.

12. All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585. Any applicant who believes that its application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the confidential information has been deleted, together with a statement specifying why any such information is privileged or confidential.

13. Applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

14. Applications must be filed no later than December 5, 1986. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284 and the procedures set forth in this Decision and Order.

(C) Distribution of the remainder of the consent order funds attributable to Marathon's refined product sales

In the event that money remains after all first stage claims have been disposed of, undistributed funds attributable to Marathon's alleged refined product violations could be distributed in a number of different ways. For example, the funds may be distributed through plans formulated by state governments to benefit consumers who were likely injured by Marathon's alleged overcharges. *See, e.g., Northeast Petroleum Industries*, 11 DOE ¶ 85,199 (1983). However, we will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed.

It Is Therefore Ordered That:

(1) Applications for Refunds from the fund remitted to the Department of Energy by Marathon Petroleum Company pursuant to the consent order which became final on January 30, 1986 may now be filed.

(2) All applications must be filed no later than December 5, 1986.

Dated: June 11, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appendix

DOE Use Only

Suggested Format for Application for Marathon Refund—KEF—0021

(Separate Application for Each Product Please)

1. Name of Applicant during refund period:

Address during refund period:

2. To whom should refund check be made out?

Address to which check should be sent:

Contact Person:
Telephone: (_____)

3. (a). Total gallonage for which refund is requested (from page 3): _____

(b). Product (e.g., diesel, propane): _____

4. Was the product you bought Marathon-branded? Yes( ) No( )

5. Were you supplied by Marathon directly? Yes( ) No( )

If yes, please provide Marathon customer number here _____. If no to Items 4 and 5, attach an explanation of why you believe the product was sold by Marathon.

6. Did your firm resell the product? Yes( ) No( )

If no, describe the nature of your business.

If yes, and total refund requested by the firm and all affiliated entities for all Marathon products exceeds $5,000, attach information on banks of unrecovered product costs as well as the required showing. (See Decision for injury showing requirements.)

7. Immediate supplier(s) during refund period name(s):

Address:
Telephone: (_____)

8. Have you been a party or are you currently a party in a DOE enforcement action or private Section 210 action? If yes, please attach an explanation. (See Decision for specific details.) Yes( ) No( )

9. Have you or a related firm filed any other application for refund involving any Marathon product? If yes, attach an explanation. Yes( ) No( )

10. Have you or a related firm authorized any individual(s) other than those identified on this form to file an application on your behalf? If yes, attach an explanation. Yes( ) No( )

11. Were you a consignee agent? (A consignee agent distributed products for Marathon, but did not own them. Marathon specified the price and gave the agent a commission.) Yes( ) No( )

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a jail sentence, a fine, or both, pursuant to 18 U.S.C. § 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application form which will be placed in the OHA Public Reference Room.

Date

Signature of Applicant

Title

KEF–0021

Name of Applicant:

MONTHLY PURCHASE VOLUMES OF (PRODUCT)

	1973	1974	1975	1976	1977	1978	1979	1980	1981
January	*******								
February	*******								*******
March									*******
April									*******
May									*******
June									*******
July									*******
August									*******
September									*******
October									*******
November									*******
December									*******
Yearly total									

GRAND TOTAL FOR THIS PRODUCT: _____ GALLONS ($.00042 per gallon) Claims for less than $15.00 will not be processed (35,715 gallons total purchases).
Do not include any purchases of product after that product's date of decontrol.

Product	Date decontrolled
Butane and Natural Gasoline	Jan. 1, 1980.
Aviation Gas and Jet Fuel	Feb. 26, 1979.
Naphtha-Based Jet Fuel	Oct. 1, 1976.
Naphthas	Sept. 1, 1976.
Middle Distillates	July 1, 1976.
Residual Fuel	June 1, 1976.
Ethane and Asphalt	Apr. 1, 1974.

GAS STATION FORM

DOE Use Only

Gas Station Filing for Motor Gasoline

Suggested Format for Application for Marathon Refund—KEF–0021

(Separate Application for Each Gas Station Please)

1. Name of Gas Station:

Street address of gas station during refund period:

2. To whom should refund check be made out?

Address to which check should be sent:

Contact Person:
Telephone: (_____)

3. Total gallonage for which refund is requested (from page 3): (_____)

4. Was the product you bought Marathon-branded? Yes ( ) No ( )

5. Were you supplied by Marathon directly? Yes ( ) No ( )

6. Immediate supplier(s) during refund period name(s):

Address:
Telephone: (_____)

7. If the total refund requested by the firm and all affiliated entities for all products exceeds $5,000, attach information on banks of unrecovered product costs as well as the

required injury showing. (See Decision for injury showing requirements.)

8. Have you been a party or are you currently a party in a DOE enforcement action or private Section 210 action? If yes, please attach an explanation. Yes ( ) No ( )

9. Have you or a related firm filed any other application for refund involving any Marathon product? If yes, attach an explanation. Yes ( ) No ( )

10. Have you or a related firm authorized any individual(s) other than those identified on this form to file an application on your behalf? If yes, attach an explanation. Yes ( ) No ( )

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a jail sentence, a fine, or both, pursuant to 18 U.S.C. § 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application form which will be placed in the OHA Public Reference Room.

Date

Signature of Applicant

Title

KEF-0021

Name of Applicant:

MONTHLY PURCHASE VOLUMES OF MOTOR GASOLINE

	1973	1974	1975	1976	1977	1978	1979	1980	1981
January	*******								*******
February	*******								*******
March									*******
April									*******
May									*******
June									*******
July									*******
August									*******
September									*******
October									*******
November									*******
December									*******
Yearly total									*******

GRAND TOTAL FOR THIS GAS STATION: _____ GALLONS ($.00042 per gallon) Claims for less than $15.00 will not be processed (35,715 gallons total purchases).

[FR Doc. 86-13844 Filed 6-18-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

Toxic and Hazardous Substances Control; Certain Chemical; Approval of Test Marketing Exemption

[OPTS-59221A; FRL-3034-1]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-86-42. The test marketing conditions are described below:

EFFECTIVE DATE: June 13, 1986.

FOR FURTHER INFORMATION CONTACT: Michelle Roddy, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Environmental Protection Agency, RM. E-609B, 401 M Street SW., Washington, DC 20460, (202-475-8993).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-86-42. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volumes, uses and number of customers must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-86-42. A bill of lading accompanying each shipment must state that the use of the substance is restricted to those approved in the TME. In addition, the Company shall maintain the following records until five years after the dates they are created, and shall make them available to EPA for inspection or copying in accordance with section 11 of TSCA.

1. The applicant must maintain records of the quantity of the TME substance produced and must make these records available to EPA upon request.

2. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substances.

T-86-42

Date of Receipt: May 6, 1986

Notice of Receipt: May 16, 1986 (51 FR 18035).

Applicant: Confidential.

Chemical: (G) Dimethyl siloxane copolymer.

Use: (G) Coating component.

Production Volume: 1,200 lbs.

Number of Customers: Nine

Worker Exposure: Manufacturing: Dermal/Inhalation, a total of 3 workers, 2 hours/day for 2 days/year. Processing: Dermal/Inhalation, a total of 4 workers, 8 hours/day for 180 days/year. Use: Dermal/Inhalation, a total of 2 workers, 8 hours/day for 250 days/year.

Test Marketing Period: One year.

Commencing on: June 13, 1986.

Risk Assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not pose any unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the

conditions and restrictions of an exemption should any new information come to its attention which casts signficant doubt on its findings that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: June 13, 1986.

Edwin F. Tinsworth,

Acting Director, Office of Toxic Substances.

[FR Doc. 86-13859 Filed 6-18-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Agency Information Collection Activities Under OMB Review

June 11, 1986.

The following information collection requirements have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Doris Benz, (202) 632-7513.

OMB No.: 3060-0009

Title: Application for Consent to Assignment of Radio Broadcast Station Construction Permit or License or Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License

Form No.: FCC 316

The approval on FCC 316 has been extended through 5/31/87. The June 1983 edition with the previous expiration date of 4/30/86 will remain in use until updated forms are available.

OMB No.: 3060-0017

Title: Application for a Low Power TV, TV Translator or FM Translator Station License

Form No.: FCC 347

The approval on FCC 347 has been extended through 4/30/89. The April 1985 edition with the previous expiration date of 4/30/86 will remain in use until updated forms are available.

OMB No.: 3060-0354

Title: Emergency Broadcast System Questionnaire

A new one-time survey has been approved for use through 5/31/87.

It will be conducted in Massachusetts.

Federal Communications Commission.

William J. Tricarico,

Secretary.

FR Doc. 86-13886 Filed 6-18-86; 8:45 am]

BILLING CODE 6712-01-M

Agency Information Collection Activities Under OMB Review

June 13, 1986.

The following information collection requirement has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Doris Benz (202) 632-7513.

OMB No.: 3060-0011

Title: Application for Instructional Television Fixed Station License

Form No.: FCC 330-L

The approval on FCC 330-L has been extended through 6/30/89. The current edition will remain in use until updated forms are available.

Federal Communications Commission.

William J.Tricarico,

Secretary.

[FR Doc. 86-13887 Filed 6-18-86; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket 86-125, Phase II]

Interstate Access Terms and Conditions; Order Designating Issues for Investigation

AGENCY: Federal Communications Commission.

ACTION: Order designating issues for investigation.

SUMMARY: The Common Carrier Bureau has adopted, under delegated authority, an Order designating for investigation issues relating to interstate access tariff terms and conditions that became effective October 1, 1985. The action is taken as discussed in the Bureau's Access Order, released September 30, 1985, which allowed most local exchange carriers' (LECs) access tariffs filed on July 2, 1985 to go into effect, subject to certain rate adjustments and an investigation into the access rates, terms and conditions. The Bureau states its tentative conclusions concerning the reasonableness and accuracy of the terms and conditions and the reasons upon which the conclusions are based, directs the LECs to submit additional information and invites comment from interested parties.

FOR FURTHER INFORMATION CONTACT: Kurt DeSoto, Attorney, Common Carrier Bureau, (202) 632-6917.

SUPPLEMENTARY INFORMATION: This is a summary of the Common Carrier Bureau's Order Designating Investigation Issues in CC Docket No. 86-125, Phase II, adopted May 30, 1986, and released June 9, 1986. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Order Designating Issues for Investigation

Pursuant to the Commission's rules, the local exchange carriers (LECs) filed revised annual interstate access tariffs on July 2, 1985. The LECs proposed revisions to virtually all their rates, terms and conditions for both switched and special access services.

While allowing most of the revisions to become effective on October 1, 1985, as scheduled, the Common Carrier Bureau released an Order on September 30, 1985, to initiate an investigation into certain aspects of these tariff revisions, including issues raised in numerous petitions to suspend and investigate or to reject these revisions. The Bureau divided this investigation into several stages and proceedings. Special access rates were set for investigation in CC Docket No. 85-166. Issues with respect to the reasonableness of the rates for switched access were set for investigation in CC Docket No. 86-125, Phase I. In the present Order, pursuant to Section 204(a) of the Communications Act, 47 U.S.C. 204(a), the Bureau designates issues with respect to particular switched access tariff non-rate terms and conditions. The Bureau presents tentative conclusions regarding the reasonableness of the interstate access terms and conditions, directs the LECs to file supplemental information and seeks public comment. In a subsequent Order, modifications of existing terms and conditions will be required as necessary.

The Bureau reaches tentative conclusions and requests further justification or information as to: minimum monthly usage charges; credit allowances; presubscription error liabilities; extended area service restrictions; Feature Group D trunk ordering options; cancellation charges; expedited order charges; standard interval information; resale provisions; advance payments; discontinuance provisions; assumed minutes of use formulae and notification requirements; Feature Groups B and D routing options; message unit credits; recording service; directory assistance; and additional engineering, labor and miscellaneous charges.

Procedural Requirements

The Bureau's view that certain access tariff terms and conditions are unreasonable is not final. Carriers and other commenters are invited to present evidence and comments relevant to these issues. LECs will have an opportunity to comment on the Bureau's tentative conclusions when they submit their Direct Cases, and interested parties may include such comments in their oppositions.

Filing parties are required to comply withthe following format in their filings: Formal submissions should include the title and docket number of the proceeding in the heading, and reference the specific tariff or tariffs to which the pleading is directed (if appropriate). For example:

Annual 1985 Access Tariff Filings CC Docket No. 86-125, Phase II

The investigation in this docket will be conducted as a notice and comment proceeding. The initial round of filings by the LECs and the National Exchange Carrier Association (NECA) should be captioned "Direct Case." The pleadings opposing the direct cases should be captioned "Opposition to Direct Cases" or "Comments on Direct Case," not as petitions to suspend or reject. The LECs' and NECA's rebuttals to the oppositions and comments should be captioned "Rebuttal." Direct cases should be submitted on July 9, 1986; oppositions and comments should be submitted on July 29, 1986; and rebuttals should be submitted on August 13, 1986.

Ex parte contacts (*i.e.*, written or oral communications with a Commissioner or Commission staff members that address the merits of this proceeding, both procedural and substantive) are permitted in this proceeding until a public notice of scheduled Commission consideration of a final Order or a final Order itself is issued. Written *ex parte* contacts must be filed with the Secretary for inclusion in the public file. A written summary of oral *ex parte* presentations must be served on the Secretary and the Commission officials receiving each presentation. For other requirements, see generally § 1.1231 of the Commission's Rules, 47 CFR 1.1231.

Ordering Clauses

Accordingly, it is ordered that each local exchange carrier which is subject to the provisions in paragraph 17, *supra*, shall submit a Direct Case in this proceeding in accordance with the requirements established in paragraph 17, *supra*, and all other requirements established in this Order.

It is further ordered that each local exchange carrier which is subject to the following provisions of this Order shall submit to the Commission the information or data specified in these provisions: (1) Paragraphs 13 through 16, *supra;* (2) Appendix A, pp. A-2 and A-3 to A-4; (3) Appendix C, pp. C-7, C-12 to C-13, C-18, C-19, C-27, C-29, C-39 and C-41; (4) Appendix D, pp. D-4, D-5, D-8 to D-9 and D-11; Appendix E, p. E-2; and Appendix G, p. G-5. Such information or data shall be submitted as part of the Direct Cases of the local exchange carriers involved, and shall be submitted not later than the date specified in paragraph 17, *supra.*

It is further ordered that this Order shall take effect upon the date of its release.

Federal Communications Commission.

Carl D. Lawson,

Deputy Chief, Common Carrier Bureau.

[FR Doc. 86-13888 Filed 6-18-86; 8:45 am]

BILLING CODE 6712-01-M

Closed Circuit Test of the Emergency Broadcast System

June 10, 1986.

A test of the Emergency Broadcast System (EBS) has been scheduled during the week of June 23, 1986. Only ABC, AP Radio, CBS, CNN, MBS, NBC, NPR, United Stations and UPI Audio Radio Network affiliates will receive the Test Program for the Closed Circuit Test. The ABC, CBS, NBC, and PBS television networks and the national cable program supplier networks are not participating in the test.

Network and press wire service affiliates will be notified of the test procedures via their network approximately 25 minutes prior to the test.

Final evaluation of the test is scheduled to be made about one month after the Test.

This is a closed circuit test and will not be broadcast over the air.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-13889 Filed 6-18-86; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Robert Adelman et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Robert Adelman	Johannesburg, California	BPH-850712MY	86-205
B. Kitchen Productions, Inc	Johannesburg, California	BPH-850712MZ	
C. Shara Whitney d/b/a Small Market Minority Radio.	Johannesburg, California	BPH-850712NA	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 51 FR 19347, May 29, 1986. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicant(s)
1, Comparative	A, B, C.
2. Ultimate	A, B, C.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, DC 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 86-13890 Filed 6-18-86; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Elijah Broadcasting Corp. et al.

1. The Commission has before it the following mutually exclusive applications for a new AM station:

Applicant	City/State	File No.	MM Docket No.
A. Elijah Broadcasting Corp	Walkersville, MD	BP-850411AD	86-162
B. Head Hog Limited Partnership	McLean, VA	BP-850701AI	
C. Reston Community Broadcasting, Inc	Reston, VA	BP-850701AK	
D. WGTS, Inc	College Park, MD	BP-850701AR	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading	Applicant(s)
Environmental Impact	A.
Air Hazard	A, D.
307(b)	All applicants.
Contingent comparative	All applicants.
Ultimate	All applicants.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 86-13891 Filed 6-18-86; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Faith Education Foundation et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Faith Educational Foundation	Evansville, Ind	BPED-840418IC	86-168
B. Western Kentucky University	Henderson, Ky	BPED-840611IU	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading	Applicant(s)
1. Main Studio	B.
2. 307(b)—Noncommercial Educational	A, B,
3. Contingent Comparative—Noncommercial Educational	A, B.
4. Ultimate	A, B.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 86-13892 Filed 6-18-86; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Matanuska Broadcasting Co. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Enid C. Pepper, d/b/a Matanuska Broadcasting Company.	Palmer, AK	BPH-841207MC	86-176
B. Valley Broadcasting Co., Inc	Palmer, AK	BPH-850228MF	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading	Applicant(s)
1. Air Hazard	A, B.
2. Comparative	A, B.
3. Ultimate	A, B.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 86-13893 Filed 6-18-86; 8:45 am]

BILLING CODE 6712-01-M

[Docket No. 86-196]

Southwestern Bell Telephone Company et al.; Order Designating Application for Hearing

AGENCY: Federal Communications Commission.

ACTION: Order Designating Applications for Hearing.

SUMMARY: This order designates three applications in the Public Land Mobile Radio Service for comparative hearing pursuant to § 22.33(c)(i) of the Federal Communications Commission's Rules, 47 CFR 22.33(c)(i). Southwestern Bell Telephone Company, File No. 22554-CD-P/L-3-85, proposes to add one-way channels on frequency 152.84 MHz at Big Spring, Seminole, and Andrews, Texas. J & J Systems, Inc., File Numbers 21119-CD-P/L-1-85 and 21121-CD-P/L-3-85, proposes new service on frequency 152.84 MHz at Andrews, Key, Denver City, and Seminole, Texas. The Commission finds that it is in the public interest to allow Southwestern Bell the opportunity to prove that an additional location on its existing system will benefit the public more than will J & J Systems' service.

DATES: Within 20 days of the release date of this order, applicants must file a written notice of their intention to appear on the day of the hearing and to present evidence on the specified issues.

ADDRESS: Federal Communications Commission, Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Susan Magnotti (202) 632-6450.

SUPPLEMENTARY INFORMATION:

This is a summary of the Common Carrier Bureau's designation order, pursuant to delegated authority; adopted May 7, 1986, and released June 3, 1986. An erratum to the order corrects the caption.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230) 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Washington, DC 20037.

William J. Tricarico,

Secretary.

[FR Doc. 86-13894 Filed 6-18-86; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Irving A. Uram et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Irving A. Uram	Hilo, Hawaii	BPH-841228MH	86-175
B. Southport Radio, Inc	Hilo, Hawaii	BPH-841231MC	
C. Pamela D. Anderson	Hilo, Hawaii	BPH-841231MD	
D. Hilo Broadcasting Company, Inc	Hilo, Hawaii	BPH-841231MK	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading	Applicant(s)
1. Environmental impact	C.
2. Air hazard	B, C.
3. Comparative	A, B, C, D.
4. Ultimate	A, B, C, D.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 86-13895 Filed 6-18-86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

[Agreement No. 224-010945]

Philadelphia Port Corporation Terminal Agreement; Erratum

The **Federal Register** Notice of June 2, 1986 (Vol. 51, No. 105, Page 19796) stated that Lavino Shipping Company (Lavino) would assign to Delaware Operating Company all of its (Lavino's) rights, titles and interest into and under the leases between Philadelphia Port Corporation and Lavino.

It has now been decided to renumber Agreement No. 224–010945 with the appropriate amendment numbers of the affected lease agreement, to wit: 224–002553–003, 224–002553A–001, 224–002553C–002, 224–002553D–001, 224–002553E–001, 224–002553F–001 and 224–004019–002.

Dated: June 13, 1986.

By Order of the Federal Maritime Commission.

John Robert Ewers,

Secretary.

[FR Doc. 86–13805 Filed 6–18–86; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Citicorp: Proposed Acquisition of Federal Saving Bank

Citicorp, New York, New York, has applied under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire through its wholly owned subsidiary, Citicorp Person-to-Person, Inc., St. Louis, Missouri, all of the voting shares of National Permanent Bank, F.S.B. ("National Permanent"), Washington, DC, a federal savings bank. Upon consummation of the acquisition, Citicorp also would acquire indirectly National Permanent's service corporation subsidiaries.

Although the Board has not added the operation of a federal savings bank to the list of nonbanking activities permissible for bank holding companies set forth in § 225.25(b) of the Board's Regulatory Y (12 CFR 225.25(b)), the Board has determined by individual order that the operation of a federal savings bank is closely related to banking.

Interested persons may express their views in writing on the question whether consummation of the proposed acquisitions 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 interest, or unsound banking practices." Any comments must conform with the requirements of the Board's Rules of Procedure (12 CFR 262.3(e)).

In view of the request by the Federal Home Loan Bank Board that the Board act promptly on this application, the comment period has been shortened to fifteen days.

Accordingly, comments regarding this application must be submitted in writing and must be received at the offices of the Board of Governors not later than 5:00 P.M. on July 3, 1986. This application is available for immediate inspection at the offices of the Board of Governors and the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, June 17, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–14026 Filed 6–17–86; 5:14 pm]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Medicaid Program; Notice of Hearing on Reconsideration of Disapproval of a California State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS

ACTION: Notice of Hearing.

SUMMARY: This notice announces an administrative hearing on July 16, 1986, in San Francisco, California to reconsider our decision to disapprove California State Plan amendment 85–15.

DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk July 7, 1986.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverge, 365 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207 Telephone: (301) 594–8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove a California State Plan Amendment.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is where California SPA 85–15 violates section 1902(a)(10)(C)(i)(III) and section 1902(a)(17)(B) of the Social Security Act and Federal regulations at 42 CFR 435.831(a)(2.)

California SPA 85–15 provides for the use of the State's community property rules in determining Medicaid financial eligibility of medically needy aged, blind and disabled individuals.

The Medicaid statute at section 1902(a)(10)(C)(i)(III) of the Social Security Act requires that States apply the same methodologies as are applied in the Supplemental Security Income (SSI) program is determining financial eligibility of medically needy aged, blind or disabled individuals. SSI regulations at 20 CFR 416 specify the methodology which States must apply in determining what is income and how it affects eligibility.

SSI regulations at 20 CFR 416.1102 define income as ". . . anything you receive in cash or in kind that you can use for food, clothing or shelter. . . ." SSI by statute is a Federal program with uniform eligibility standards and requirements. It uses nationwide rules to determine what income will be considered as the individual's and what income will be considered as the spouse's. For example, Federal rules require that benefit payments made under title II of the Act be considered as income to the individual beneficiary, and not be transferred or assigned to any other individual. Medicaid follows SSI rules as required by law. The SSI policy does not provide for any special treatment of income in those States which have in effect community property laws. Since the California plan amendment would apparently consider community property rules in determining attribution of all income received by married individuals, without regard to the Federal rules and would count the income of each spouse as his/her interest (one-half) of their own income and one-half of the other spouse's income it conflicts with SSI policies on counting income for purposes of establishing eligibility. Thus, HCFA has determined the California proposal

violates section 1902(a)(10)(C)(i)(III) of the Act because the State proposes to apply its community property rules in determining ownership of income rather than the required SSI methods.

We recognize that section 2373(c) of the Deficit Reduction Act of 1984 imposed a moratorium with respect to the application of the provisions of section 1902(a)(10)(C)(i)(III) of the Act which requires use of a single income and resource standard and that the cash assistance methodologies be applied under medically needy programs. Under the moratorium, more liberal financial eligibility methodolgies than those of the cash assistance programs may be applied in the State plan but only those more liberal provisions which were already contained in the approved State plan. There are two reasons HCFA has determined the California SPA 85–15 is not covered by the moratorium. In addition to the fact that California's amendment on community property is not in its existing State plan, and thus not covered by the moratorium, the moratorium applies only to the provisions of the plan which are more liberal than the cash assistance methodology. Using community property rules is sometimes more liberal and sometimes more restrictive than cash assistance rules, depending upon the relative incomes of each spouse as well as which spouse is attempting to qualify for Medicaid. Because the California proposal can result in methodologies which are more restrictive than the cash assistance methodologies it is not covered by the moratorium.

Finally, section 1902(a)(17)(B) of the Act has a two-fold purpose. First, it prescribes a State from considering any income or resource which is not available. Second, it requires a State to consider as available, all income and resources which are determined, in accordance with the Secretary's regulations, to be available (unless the cash program rules require this income or resource be disregarded). Regulations at 42 CFR 435.831(a)(2) require States covering all SSI recipients to deduct amounts that would be deducted in determining SSI. HCFA determined that California SPA 85–15 violates section 1902(a)(17)(B) and Federal regulations at 42 CFR 435.831(a)(2) since it would exclude income which the Secretary has determined (under SSI rules which are applicable to Medicaid) to be available to the individual (by considering it to be his/her spouse's), and which is not disregarded under that program. Similarly, the amendment would include as an individual's income, a portion of his/her spouse's income which is not considered to be the individual's income under the SSI program.

The notice to California announcing an administrative hearing to reconsider our disapproval of its State plan amendment reads as follows:

Kenneth W. Kizer, MD., M.P.H.,
Director, Department of Health Services, 714/744 P Street, Sacramento, California 95814

Dear Dr. Kizer: This is to advise you that your request for reconsideration of the decision to disapprove California State Plan Amendment 85–15 was received on May 16, 1986.

California State Plan Amendment 85–15 proposes to apply the State's community property laws in determining Medicaid financial eligibility of medically needy aged, blind and disabled individuals. You have requested a reconsideration of whether this plan amendment conforms to the requirements for approval under the Social Security Act and pertinent Federal regulations. The issues to be considered at the hearing are: (1) whether under the plan amendment California would employ the "same methodology" as SSI in determining the Medicaid eligibility of the medically needy aged, blind, and disabled; (2) if the methodology is not the same as that used under SSI, whether the amendment violates the "same methodology" requirement of section 1902(a)(10)(C)(i)(III); (3) whether the amendment would consider as available to an individual income which is not considered available according to standards prescribed by the Secretary, thereby violating section 1902(a)(17)(B) of the Act; (4) whether the amendment fails to consider as available, income which must be considered available under standards prescribed by the Secretary, thereby violating section 1902(a)(17)(B) of the Act; and (5) whether the disapproval of the amendment is precluded by the moratorium established by section 2373(c) of the Deficit Reduction Act of 1984 on certain actions by the Secretary.

I am scheduling a hearing on your request to be held on July 16, 1986 in the 21st Floor Conference Room, 100 Van Ness Avenue, San Francisco, California. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Lawrence Ageloff as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594–8261.

Sincerely,
William L. Roper, M.D.,
Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: June 13, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 86–13882 Filed 6–18–86; 8:45 am]
BILLING CODE 4120–01–M

Public Health Service

National Center for Health Services Research and Health Care Technology Assessment; Carotid Endarterectomy, for Treatment of Carotid Occlusive Disease

The Public Health Service (PHS) through the Office of Health Technology Assessment (OHTA), announces that it is coordinating an assessment of what is known of the safety, clinical effectiveness, appropriateness and use of carotid endarterectomy for the treatment of carotid occlusive disease. Carotid endarterectomy is an operation for the removal of an atherosclerotic plaque from a carotid artery. Specifically, this assessment seeks to determine the medical indications for this procedure and the appropriateness of its use on asymptomatic and symptomatic patients. Specific guidelines are sought for identifying patients who may benefit from this procedure. The assessment also seeks to determine whether or not there is conclusive evidence or lack thereof on the benefits of endarterectomy over medical therapy in the management of patients with carotid artery disease.

PHS assessments consist of a synthesis of information obtained from appropriate organizations in the private sector as well as from PHS agencies and others in the Federal Government. The PHS assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on this assessment, a PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than September 15, 1986.

The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published controlled clinical trials and other well-designed clinical studies, and information related to the clinical acceptability and effectiveness of this technology, and a characterization of the patient population most likely to benefit from it.

Proprietary information is not being sought.

Written Material should be submitted to: R. Steven Bodaness, M.D., Ph.D., National Center for Health Services Research and Health Care Technology Assessment, Park Building, Room 3–10, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4990.

Dated: June 11, 1986.

Enrique D. Carter,

Director, Office of Health Technology Assessment, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 86–13840 Filed 6–18–86; 8:45 am]

BILLING CODE 4160–17–M

National Center for Health Services Research and Health Care Technology Assessment; Chemical Aversion Therapy in Treatment of Alcoholism

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), announces that it is coordinating a reassessment of what is known of the safety, clinical effectiveness, and use (indications) of chemical aversion therapy in the treatment of alcoholism. Chemical aversion therapy is a treatment which relies on the development of a conditioned response to facilitate abstinence from consumption of alcohol. One of several chemical agents (i.e., emetine, apomorphine, lithium) is used to induce unpleasant physical symptoms (e.g., nausea and vomiting) which are repeatedly linked to the sight, smell and consumption of alcohol. The patient thereby associates the unpleasant symptoms with the alcohol and voluntarily abstains from consumption. Neither electrical aversion therapy nor disulfiram therapy is included within the scope of this assessment.

This approach to the treatment of alcoholism was previously assessed by the Public Health Service in 1981, resulting in a recommendation to the Health Care Financing Administration (HCFA) regarding the use of chemical aversion therapy for the treatment of alcoholism under the Medicare program. Persisting questions regarding the safety and efficacy of this therapeutic modality have resulted in a request by the Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS) for the Office of Health Technology Assessment to conduct a reassessment of this therapy.

The specific questions this reassessment seeks to answer are: (1) Is aversive conditioning using chemicals in the treatment of alcoholism a generally accepted medical practice in the United States? (2) Are there any populations of patients or situations in which chemical aversion therapy may be considered the preferred treatment? (3) Is aversion therapy using chemicals or pharmaceuticals a safe treatment for alcoholism? (4) Is aversion therapy using chemicals effective in the treatment of alcoholism? (5) If aversion therapy using chemicals has been shown to be safe and effective in the treatment of alcoholism, has any specific drug been shown to be more safe and effective? (6) Does chemical aversion therapy in the treatment of alcoholism have demonstrated safety and efficacy which is comparable to other treatment alternatives? (7) Are there known complications of chemical aversion therapy that would mitigate against its use in the treatment of alcoholism? This assessment also seeks to determine what is known about the cost of this mode of treatment.

PHS assessments consist of a synthesis of information obtained from appropriate organizations in the private sector and from PHS and other agencies in the Federal Government. PHS assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on this assessment, a PHS recommendation will be formulated to assist OCHAMPUS in establishing coverage policy. The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published, controlled clinical trials and other well-designed clinical studies. Information related to the characterization of the patient population most likely to benefit from it, as well as on clinical acceptability and the effectiveness of this technology and extent of use are also being sought. Proprietary information is not being sought. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than September 30, 1986 or within 90 days from the date of publication of this notice.

Written material should be submitted to: Morgan N. Jackson, M.D., M.P.H., Office of Health Technology Assessment, NCHSR&HCTA, Park Building, Room 3–10, 5600 Fishers Lane, Rockville, MD 20857 (301) 443–4990.

Dated: June 12, 1986.

Enrique D. Carter,

Director, Office of Health Technology Assessment, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 86–13841 Filed 6–18–86; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N–86–1617]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management an Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

Action: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Evaluation of the Local Property Urban Homesteading Demonstration
Office: Policy Development and Research
Form Number: None
Frequency of Submission: Single-Time
Affected Public: Individuals or Households
Estimated Burden Hours: 204
Status: New
Contact: Earl Lindveit, HUD, (202) 755–6450; Robert Fishman, OMB, (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 23, 1986.

Proposal: Multifamily Mortgage Insurance Premium Billing Statement and Reconciliation
Office: Administration
Form Number: HUD27032 and 27033 (Replaces HUD–239A)
Frequency of Submission: Monthly
Affected Public: Businesses or Other For-Profit
Estimated Burden Hours: 354
Status: Revision
Contact: Frances Jones, HUD, (202) 755–7022; Robert Fishman, OMB, (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 23, 1986.

Donald J. Keuch, Jr.,

Deputy Assistant Secretary.

[FR Doc. 86–13918 Filed 6–18–86; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Irrigation Operation and Maintenance Charges; Water Charges and Related Information on the Flathead Irrigation Project, Montana

This notice is proposed operation and maintenance rates and related information is published under the authority delegated to the Assistant Secretary—Indian Affairs by the Secretary of the Interior in 230 DM 1 and redelegated by the Assistant Secretary—Indian Affairs to the Area Director in 10 BIAM 3.

This notice is given in accordance with § 191.1(e) of Part 191, Subchapter T, Chapter 1, of Title 25 of the Code of Federal Regulations, which provides for the maintenance assessments and related information of the Flathead Irrigation Project for Calendar Year 1986 and subsequent years.

This notice sets forth changes to the operation and maintenance charges and related information applicable to the Flathead Irrigation Project, St. Ignatius, Montana. These charges were proposed pursuant to the authority contained in the Acts of August 1, 1913 and March 7, 1928, (38 Stat. 583, 25 U.S.C. 382; 45 Stat. 210.25 U.S.C. 387).

In Compliance with the above, the operation and maintenance charges for the lands under the Flathead Irrigation Project, Montana, for the season of 1986 and 1987 and subsequent years until further notice, are hereby fixed as follows:

For the season of 1986 for lands not included in an Irrigation District but including lands held in trust for Indians, the rate per acre for the various divisions are as follows:
Jocko Division—4.28/Acre
Post/Pablo Division—7.12/Acre
Mission Division—8.31/Acre
Camas Division—4.31/Acre

Lands included in an irrigation district, lands held in Trust for Indians and non-district lands will be assessed operation maintenance charges at $12.63 per acre for the season of 1987.

Payments

The Operation and Maintenance charges on the trust and non-district lands become due on April 1 each year and the lands within an irrigation district are bi-annually billed.

To all assessments on lands in non-Indian ownerships, remaining unpaid 60 days after the due date, there shall be added a penalty of one and one-half percent per month, or fraction therefore, from the due date until paid. No water shall be delivered to any farm unit until all irrigation charges have been paid.

Wilford G. Bowker,

Acting Portland Area Director.

[FR Doc. 86–13901 Filed 6–18–86; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

Closure of Public Lands; Alaska

The following lands under the jurisdiction of the Bureau of Land Management are hereby closed to the discharge of all firearms for any purpose, with the exception of State and Federal law enforcement officers acting in the performance of their official duty:

T. 16 N., R. 1 E., Portions of Sections 2, 3, 10, 11 and 15, Seward Meridian. Lands which are bordered to the east by the Alaska Railroad and bounded on the north and west by the Matanuska River and the south by the Knik River.

This land is being closed because increasing unrestricted discharge of firearms over flat terrain poses a serious threat to public safety.

This closure is effective 6 a.m., June 9, 1986 and will remain in effect until such time as this land is conveyed to the State of Alaska or the Eklutna Corporation.

Any person who fails to comply with this closure order may be subject to a fine not to exceed $1,000.00 and/or imprisonment not to exceed 12 months.

This Notice of Closure is issued under authority of section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733) and 43 CFR 8364.1.

Don Hinrichsen,

Peninsula Area Manager.

[FR Doc. 86–13908 Filed 6–18–86; 8:45 am]

BILLING CODE 4310–JA–M

Ukiah, CA; District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting, Ukiah, California, District Advisory Council.

SUMMARY: Pursuant to Pub. L. 94–579 and 43 CFR Part 1780, the Ukiah District Advisory Council will meet to discuss ongoing planning efforts involving Ukiah District programs, including the Sacramento River Activity Plan, the Arcata Resource Management Plan, and the Knoxville off-road vehicle Activity Management Plan.

DATES: The meeting will start at 1:00 p.m. Wednesday, July 23, 1986 and adjourn at 3:00 p.m. Thursday, July 24, 1986.

ADDRESS: The meeting will be held at the Faith Lutheran Church, 560 Park Blvd., Ukiah, California.

FOR FURTHER INFORMATION CONTACT: Barbara Taglio, Ukiah District Office, Bureau of Land Management, 555 Leslie Street, Ukiah, California 95482.

SUPPLEMENTARY INFORMATION: The Advisory Council will be briefed by Area Managers from the Arcata, Clear Lake, and Redding Resource Areas, about programs throughout the Ukiah District (16 northwestern California counties). Individuals may submit oral or written comments for the Council's consideration. Opportunity for oral comments will be provided at 11:00 a.m. Thursday July 23. Summary minutes of the meeting will be maintained by the Ukiah District Office and will be

available for inspection and reproduction within 30 days of the meeting.

Dated: June 13, 1986.

Van W. Manning,

District Manager.

[FR Doc. 86-13909 Filed 6-18-86; 8:45 am]

BILLING CODE 4310-84-M

[NM 59308]

New Mexico; Realty Action Lease of Public Land In Otero County

The following described parcel of public land has been examined and found to be suitable for lease with option to purchase under the provision of the Recreation and Public Purposes Act of June 14, 1926 (43 U.S.C. 869). The land will not be offered for lease until 60 days after the date of this notice.

New Mexico Principal Meridian

T. 17 S., R. 10 E.,
Sec. 18, W½W½SW¼NE¼NE¼.
Containing 2.50 acres.

The lands are proposed to be offered to the Otero County Board of Commissioners for the development of a fire sub-station. The lease is not in conflict with the Bureau's planning system; the lands are not critical to any resource program and have been found suitable for use as a fire sub-station. It has been determined that lease of this parcel of land to the Otero County Board of Commissioners will serve important public objectives.

This notice of realty action is being issued in accordance with new regulations contained in 43 CFR 2740 and in lieu of an initial classification decision. No adverse comments were received in response to proposed classification decision issued December 11, 1985.

The lease, when issued, will be subject to the following terms and conditions:

1. The lease will be issued for a ten-year period with option to purchase at any time during the ten-year period upon determination by the authorized officer that the requirements of the development and management plans filed by Otero County Board of Commissioners on December 5, 1984 have been met.

2. Such terms and conditions as required by law and public policy and which the authorized officer considers necessary for the proper development of the land, for the protection of Federal property, and for the protection of the public interest.

3. The lease shall be terminable by the authorized officer upon failure of the lessee to comply with the terms of the lease, upon a finding, after notice and opportunity for hearing, that all or part of the land is being devoted to a use other than the use authorized by the lessee, or upon a finding that the land has not been used by the leasee for the purpose specified in the lease for any consecutive two-year period.

4. Rental will be $10 per year with first year rental due before issuance of the lease. Thereafter, annual rental will be due and payable by the lease anniversary date.

5. The lease will not be transferable except with the consent of the authorized officer.

6. All minerals together with the right to mine and remove the same under applicable laws and regulations to be established by the Secretary of the Interior shall be reserved to the United States.

Publication of this notice in the **Federal Register** segregates the public lands from appropriation under any other public land law including locations under the mining laws except as provided in the notice or any amendments or revisions to the notice. The segregative effect will end upon issuance of a lease or 18 months from the date of the publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Las Cruces District Manager, Bureau of Land Management, 1800 Marquess, Las Cruces, NM 88005. Objections will be reviewed by the BLM State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: June 11, 1986.

Robert R. Caulkins,

Acting District Manager.

[FR Doc. 86-11635 Filed 6-18-86; 8:45 am]

BILLING CODE 4310-FB-M

[N-42776]

Realty Action; Competitive Sale of Public Lands In Washoe County, NV

The following public lands have been examined and found suitable for competitive sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713), at not less than fair market value.

Mount Diablo Meridian

T. 21 N., R. 21 E.,
Sec. 18, N½NE¼NE¼, W½NE¼, E½NW¼.

The area described above aggregates 180 acres, more or less.

Upon publication of this notice in the **Federal Register**, the described land shall be segregated from all forms of nondiscretionary appropriation under the public land and mining laws. This segregative effect shall terminate upon issuance of a patent, upon publication in the **Federal Register** of a termination of the segregation or 270 days from the date of this publication, whichever comes first.

The sale is consistent with the Bureau's Planning System and with local government plans. The lands are not needed for support of any resource programs and are not suitable for management by another federal agency.

The lands have no known values for locatable, saleable or leasable minerals.

The patent when issued will contain the following reservation to the United States:

A right-of-way thereon for ditches and canals constructed by the authority of the United States, under the Act of August 30, 1890, 26 Stat. 391; U.S.C. 945.

No bids will be accepted for less than the appraised fair market value of the property. The property has been appraised at $450 per acre, for a total of $81,000. Bidders must be either, 1) citizens of the United States, 18 years of age or older; 2) corporations subject to the laws of any state or of the United States; 3) other entities such as associations and partnerships capable of holding lands or interests therein under the laws of the state within which the lands are located; or 4) states, state instrumentalities or political subdivisions authorized to hold property.

Sealed bids may be made by a principal or duly qualified agent. Sealed bids shall be considered only if received at the Carson City District Office, Bureau of Land Management, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89701, prior to 4:15 p.m., August 27, 1986. The written sealed bids will be opened and publicly declared at the sale. Each bid shall be accompanied by a certified check, postal money order or cashiers check made payable to the Department of the Interior—BLM for not less than ten (10) percent of the amount of the bid and shall be enclosed in a sealed envelope marked in the lower left hand corner, *BLM Land Sale,* N-42776. If two or more sealed bids containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by supplemental bidding. If the tract does not sell at the first offering, sealed bids will be accepted at the Carson City

District Office during business hours (7:30 to 4:15) every Wednesday following the date of the sale until the tract is sold or withdrawn from sale.

The remainder of the full bid price shall be paid within 180 days of the sale. Failure to submit the full bid price within 180 days shall disqualify the apparent high bidder and the deposit shall be forfeited and disposed of as other receipts of sale. All other bids will either be returned or rejected within 30 days of the sale date. Conveyance of the mineral estate will occur simultaneously with sale of the lands in accordance with section 209(b)(1)(1) of Pub. L. 94–579. Acceptance of a bid offer will constitute an application for conveyance of the mineral estate and will require payment oa a $50 non-refundable fee which must accompany the bid.

BLM may reject any and all offers or withdraw the lands from sale if the authorized officer determines that sale would not be fully consistent with the Federal Land Policy and Management Act or other applicable law.

The lands will not be offered for sale for at least 60 days after the date of this notice. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Carson City District Office, Bureau of Land Management, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89701. Any adverse comments will be evaluated and this notice upheld, modified or vacated.

Dated this 9th day of June, 1986.

Norman L. Murray,

Acting District Manager.

[FR Doc. 86–13815 Filed 6–18–86; 8:45 am]

BILLING CODE 4310–HC–M

Realty Action-Modified Competitive Sale of Public Lands in Lincoln County, NV

The following land has been examined and identified as suitable for disposal by modified competitive bidding sale procedures under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) at no less than fair market value:

Mount Diablo Base and Meridian

T.1S., R.69E.,
Sec. 6, Lots 3, 4, 5, SE¼NW¼, N½N½N E¼SW¼.
T.1N., R.68E.,
Sec. 36, SW¼SW¼, SE¼SW¼. (within)

The above described public lands comprise 147.87 acres, more or less.

The sale is consistent with the Bureau's planning system. The public interest will be served by offering this land for sale. The land is not needed for any resource program and is not suitable for management by the Bureau or another Federal department or agency. The proposed sale is consistent with the Caliente Planning Unit Management Framework Plan. The land will not be offered for sale any sooner than 60 days after the date of publication of this notice in the **Federal Register**. The sale lands support approximately three AUMs livestock carrying capacity out of a total of 824 AUMs in the N–4 Grazing Allotment. The sale will not result in an adjustment in total preference.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

All mineral deposits in the lands so patented, and to it, or persons authorized by it, the right to prospect, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. A 60 foot wide road easement for State Highway 86 affecting the S½SW¼ of section 36;

2. The rights granted by oil and gas lease, N–31135, authorized under section 29 of the Act of February 25, 1920, 41 Stat. 437 and the Act of March 4, 1933, 47 Stat. 1570. Patent will issue subject to the rights of the prior permittee or lessee to use so much of the surface of said land as is required for oil and gas exploration and development operations, without compensation to the patentee for damages resulting from proper oil and gas operations, for the duration of the lease, and any authorized extensions of that lease. Upon termination or relinquishment of said oil and gas lease, this reservation shall terminate.

Conveyance of the available mineral estates having no known mineral values will occur simultaneously with the sale of the land. A bid accompanied by a $50.00 nonrefundable filing fee will constitute an application for conveyance of those mineral estates.

Detailed information concerning the sale, including the planning documents, and the environmental assessment/land report, is available for review at the Bureau of Land Management Las Vegas District Office, 4765 W. Vegas Drive, Las Vegas, Nevada. Federal law requires that bidders be U.S. citizens, 18 years of age or older.

Sealed bids may be submitted to our Las Vegas District Office, 4765 W. Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126. Bids must be received at the District Office no later than close of business (4:15 p.m.) the day prior to the bid opening date to be eligible for that bid opening. Qualified sealed bids will be opened starting at 9:00 a.m. at the Las Vegas District Office. The sale date will be announced later.

Sealed bids must be enclosed in an envelope identified with the case file number N–42974, and labeled "sealed bid—do not open" on the outside. The enclosure within the envelope must contain the number, the amount of the bid, the bidder's name and address, and payment of at least 20% of the bid tendered. Certified check, postal money order, bank draft or a cashier's check made payable to the Department of the Interior, Bureau of Land Management are the *ONLY* acceptable forms of payment. No bids will be accepted for less than the minimum bid which will be specified later.

If you are the successful bidder at the sale offering (i.e., bid opening date), the balance of the amount bid is due within 180 days of the date of the sale. Failure to submit the full bid price within 180 days shall result in cancellation of the sale of the parcel and the deposit shall be forfeited and disposed of as other receipts of sale.

An adjoining landowner, Mr. Chester Oxborrow, will be given a preference right to purchase the property by meeting the high bid within 30 days of the subject sale. Failure to exercise this option shall constitute a waiver of such bidding provision.

All bids will be either returned, accepted, or rejected within 30 days of the sale date.

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent or 270 days from the date of the publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 26569, Las Vegas, Nevada 89126–0569. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become fhe final determination of the Department of the Interior.

Dated: June 10, 1986.

Ben F. Collins,

District Manager, Las Vegas.

[FR Doc. 86-13907 Filed 6-18-86; 8:45 am]

BILLING CODE 4310-HC-M

Availability of Record of Decision and Rangeland Program Summary for the Two Rivers Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of record of decision for the Two Rivers Management Plan.

SUMMARY: In accordance with 43 CFR 1610.5 and section 102(2)(c) of the National Environmental Policy Act of 1969 (40 CFR 1505.2), the Department of the Interior, Bureau of Land Management, notice is hereby given of the issuance of the Record of Decision and Rangeland Program Summary for the Two Rivers Resource Management Plan. Initiation of actions which implement this plan can begin with the signing of the Record of Decision.

DATES: The Record of Decision became effective with the signing of that document on May 30, 1986 by William G. Leavell, State Director, Oregon. Copies of this document have been mailed to those people who received the draft and final RMP/EIS documents. Copies were available for the public on June 10, 1986.

ADDRESS: Requests for copies of the approved Resource Management Plan Record of Decision and Rangeland Program/Summary should be addressed to Brian Cunninghame, Project Manager, Bureau of Land Management, Prineville District, 185 East Fourth Street, Prineville, Oregon 97754.

SUPPLEMENTARY INFORMATION: The Draft RMP/EIS was released for a 90 day public comment period in April 1985. The proposed RMP/Final EIS was released for public review in September of 1985. One protest was received, analyzed and denied by the Director, BLM. The Governor of Oregon did not identify any inconsistencies with State or local plans, programs or policies or recommend any changes in the proposed plan.

Alternatives Analyzed

Five alternatives for managing the public lands in the Two Rivers Planning Area were analyzed in the Resource Management Plan/Environmental Impact Statement (RMP/EIS).

The selected Resource Management Plan (the Preferred Alternative in the Draft RMP/EIS) emphasizes production on a sustained yield basis, and use of renewable resources on the majority of public lands in the two Rivers Planning Area. It also provides for protection, maintenance or enhancement of riparian, soil, water, botanical and recreational resource values as well as wildlife habitat. This alternative is the environmentally preferable alternative. This Resource Management Plan best meets national guidance, best satisfies the planning criteria, including consistency with other Federal, state, local and tribal plans and best resovles issues while contributing to the local economy.

The Emphasize Commodity Production and Enhancement of Economic Benefits Alternative would have emphasized economic benefits to the economy through production of goods and services on public lands to meet local and possibly regional demands.

The Continue Existing Management Alternative would have provided for management of all resources at current levels. This is the No Action Alternative required by the National Environmental Policy Act.

The Emphasize Natural Values While Accommodating Commodity Production Alternative would have provided for protection, maintenance and enhancement of the natural environment. The production of commodities would have occurred where significant conflict with the protection of natural values could be avoided or mitigated.

The Emphasize Natural Values Alternative would have enhanced natural values in all areas.

Decision

The decision is to adopt the Two Rivers Resource Management Plan. Major actions contained in the plan will be applied to 324,705 acres of public land in the Prineville District. Implementation of this decision provides for harvest of timber on 10,715 acres with a sustainable harvest level of 14.1 million board feet per decade; grazing management will continue on 292,736 acres (233 grazing allotments) of public land; riparian vegetation condition will be enhanced on 1,057 acres; wildlife and fish habitat will be maintained or improved; approximately 1,000 acres of public land may be offered for sale annually; and cultural, soil, water, botanical, visual and recreational resources will be protected. Approximately, 188,000 acres of public land will be open to mineral exploration—subject to standard lease requirements and stipulations. A restrictive no surface occupancy stipulation will be maintained on 132,000 acres of public lands in the planning area—lands identified as nationally significant or visually sensitive.

The use of off-road vehicles on public land in the Two Rivers Planning Area is also hereby regulated in accordance with the authority and requirements of Executive Orders 11644 and 11989 and regulations contained in 43 CFR Part 8340.

Approximately 263,000 acres of public land are designated as open to off road vehicle use since no signficant impacts are occurring and off road vehicle use is essential for conducting other resource uses. Vehicle travel on 53,860 acres of public land will be restricted to existing roads and trails, year long. A seasonal closure on these 53,860 acres will be implemented when appropriate to prevent excessive damage to soil and vegetation. During this period vehicle travel will be confirmed to designated roads only. Vehicle travel on 7,027 acres of public land will be restricted to designated roads and trails on public land, year long. Vehicle travel on 818 acres of public lands will not be allowed so as to protect unique natural values and riparian habitat, as well as to prevent excessive soil and vegetation disturbance.

Five special management areas are hereby designated as follows:

1. The Island in the Cove Palisades State Park—250 acres. Designate as an Area of Critical Environmental concern; Research Natural Area to protect and preserve what is considered to be the best remaining example of the western juniper-big sagebrush wheatgrass plant association in the region. It is also a raptor, deer, and waterfowl use area and contains outstanding scenic vistas of Lake Billy Chinook and the Cascades.

2. The Horn Butte Curlew Area—6,000 acres. Designate as an Area of Critical Environmental concern to protect and preserve the important nesting habitat for the long billed curlew.

3. The Governor Tom McCall Preserve at Rowena—12.5 acres. Designate as an Area of Critical Environmental concern, Outstanding Natural Area to protect the outstanding botanic values of this area.

4. Botanic/Scenic areas within the Columbia Gorge—76 acres. Designate as an Area of Critical Environmental Concern; Outstanding Natural Area to protect the important botanic/zoologic and scenic qualities of this area located just outside the Tom McCall Preserve but within the Columbia Gorge.

5. Historic Spanish Gulch Mining District—335 acres. Designate as an Area of Critical Environmental Concern

to protect and maintain significant historical values. The designation will recognize valid existing mineral rights.

Specific management actions for each area are included in the Record of Decision. These actions include but are not necessarily limited to:

(1) closing the areas to off road vehicle use,

(2) continuing to not lease the areas for fluid mineral exploration and development,

(3) to not sell mineral material (rock, sand or gravel),

(4) to continue to exclude livestock grazing from the areas,

(5) preclude the use of mechanized equipment in fire suppression and,

(6) prohibit the collection of rocks, plants, plant parts or animals.

Mitigation Measures

All protective measures and standard operating procedures identified in the plan will be taken to mitigate adverse impacts. These measures will be strictly enforced during implementation. Monitoring and evaluation will tell how effective these measures are in minimizing environmental impacts. Therefore, additional measures to protect the environment may be taken during or following monitoring.

Dated: June 13, 1986.

James L. Hancock,

District Manager.

[FR Doc. 86-13810 Filed 6-18-86; 8:45 am]

BILLING CODE 4310-33-M

Land Resource Management; Survey of plat filings; Montana

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: Plats of survey of the lands described below accepted April 29, 1986, were officially filed in the Montana State Office effective 10 a.m. on May 29, 1986.

Principal Meridian, Montana

T. 23 N., R. 6 E.

The plat represents the dependent resurvey of a portion of the south boundary and a portion of the subdivisional lines; and the survey of the subdivision of section 34, Township 23 North, Range 6 East, Principal Meridian, Montana. The area described is located in Chouteau County.

This survey was executed at the request of the Lewistown District Office for the administrative needs of the Bureau.

Principal Meridian, Montana

T. 13 S., R. 3 W.

The plat represents the dependent resurvey of the line between sections 22 and 27, Township 13 South, Range 3 West, Principal Meridian, Montana. The area described is located in Beaverhead County.

Principal Meridian, Montana

T. 2 N., R. 4 W.

The plat represents the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, and certain boundaries of mineral surveys, Township 2 North, Range 4 West, Principal Meridian, Montana. The area described is located in Jefferson County.

These surveys were executed at the request of the Butte District Office for the administrative needs of the Bureau.

Principal Meridian, Montana

T. 2 N., R. 28 E.

The supplemental plat shows amended lottings of the NE¼ of section 16, Township 2 North, Range 28 East, Principal Meridian, Montana. The area described is located in Yellowstone County.

This plat was prepared at the request of the Deputy State Director, Division of Lands and Renewable Resources, for the administrative needs of the Bureau.

EFFECTIVE DATE: May 29, 1986.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Dated: June 10, 1986.

Eugene D. Russell,

Acting State Director.

[FR Doc. 86-13897 Filed 6-18-86; 8:45 am]

BILLING CODE 4310-DN-M

Land Resource Management; Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of Filing of Plats of Survey.

SUMMARY: Plats of survey of the lands described below accepted March 19, 1986, and March 20, 1986, were officially filed in the Montana State Office effective 10 a.m. on May 29, 1986.

Fifth Principal Meridian, South Dakota

T. 107 N., R. 72 W.

The plat, in three sheets, representing the dependent resurvey of a portion of the subdivisional lines and subdivision of certain sections; and the survey of the subdivision of certain sections and the Lake Sharpe Reservoir Boundary, Township 107 North, Range 72 West, Fifth Principal Meridian, South Dakota, was accepted March 19, 1986. The area described is located in Lyman and Buffalo Counties.

Fifth Principal Meridian, South Dakota

T. 107 N., R. 73 W.

The plat representing the dependent resurvey of a portion of the east boundary; subdivisional lines, and subdivision of certain sections; and the survey of the subdivision of certain sections and the Lake Sharpe Reservoir Boundary, Township 107 North, Range 73 West, Fifth Principal Meridian, South Dakota, was accepted March 19, 1986. The area described is located in Lyman, Buffalo, and Hughes Counties.

Fifth Principal Meridian, South Dakota

T. 108 N., R. 73 W.

The plat, in three sheets, representing the dependent resurvey of a portion of the Second Standard Parallel North (south boundary), Township 109 North, Range 72 West; the dependent resurvey of the south and east boundaries, a portion of the subdivisional lines, and subdivision of certain sections; and the survey of the subdivision of certain sections and the Lake Sharpe Reservoir Boundary, Township 108 North, Range 73 West, Fifth Principal Meridian, South Dakota, was accepted March 19, 1986. The area described is located in Lyman and Buffalo Counties.

Fifth Principal Meridian, South Dakota

T. 108 N., R. 74 W.

The plat, in six sheets, representing the dependent resurvey of a portion of the east and west boundaries, portions of the subdivisional lines and subdivision of certain sections; and the survey of the subdivision of certain sections and the Lake Sharpe Reservoir Boundary, Township 108 North, Range 74 West, Fifth Principal Meridian, South Dakota, was accepted March 19, 1986. The area described is located in Hughes and Lyman Counties.

Fifth Principal Meridian, South Dakota

T. 108 N., R. 75 W.

The plat, in three sheets, representing the dependent resurvey of portions of the south and east boundaries, subdivisional lines, and the subdivision of certain sections; and the survey of the subdivision of certain sections and the Lake Sharpe Reservoir Boundary, Township 108 North, Range 75 West, Fifth Principal Meridian, South Dakota, was accepted March 20, 1986. The area described is located in Hughes and Lyman Counties.

Fifth Principal Meridian, South Dakota
T. 108 N., R. 75 W.

The plat, in three sheets, representing the dependent resurvey of the west boundary, portion of the subdivisional lines, and subdivision of certain sections; and the survey of the subdivision of certain sections and the Lake Sharpe Reservoir Boundary, Township 108 North, Range 75 West, Fifth Principal Meridian, South Dakota, was accepted March 20, 1986. The area described is located in Hughes and Lyman Counties.

Fifth Principal Meridian, South Dakota
T. 108 N., R. 76 W.

The plat, in four sheets, representing the dependent resurvey of the south and east boundary and subdivisional lines; and the survey of the subdivision of certain sections and the Lake Sharpe Reservoir Boundary, Township 108 North, Range 76 West, Fifth Principal Meridian, South Dakota, was accepted March 20, 1986. The area described is located in Hughes and Lyman Counties.

Fifth Principal Meridian, South Dakota
T. 108 N., R. 76 W.

The plat representing the dependent resurvey of the subdivisional lines, and the subdivision of certain sections; and the survey of the subdivision of certain sections and the Lake Sharpe Reservoir Boundary, Township 108 North, Range 76 West, Fifth Principal Meridian, South Dakota, was accepted March 20, 1986. The area described is located in Hughes and Lyman Counties.

Fifth Principal Meridian, South Dakota
T. 110 N., R. 77 W.

The plat, in three sheets, representing the dependent resurvey of portions of the subdivisional and meander lines, and the subdivision of certain sections; and the survey of the subdivision of certain sections and the Lake Sharpe Reservoir Boundary, Township 110 North, Range 77 West, Fifth Principal Meridian, South Dakota, was accepted March 20, 1986. The area described is located in Hughes County.

These surveys were executed at the request of the U.S. Army Corps of Engineers.

EFFECTIVE DATE: May 29, 1986.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Dated: June 6, 1986.

Eugene D. Russell,

Acting State Director.

[FR Doc. 86-13813 Filed 6-18-86; 8:45 am]

BILLING CODE 4310-DN-M

Filing of Plat Of Survey; Oregon/ Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands have been officially filed in the Oregon State Office, Portland, Oregon on the dates hereinafter stated:

Willamette Meridian

Oregon

T. 8 S., R. 45 E.,
Accepted April 24, 1986 and officially filed May 6, 1986.

T. 16 S., R. 16 E.,
Accepted April 30, 1986 and officially filed May 5, 1986.

T. 2 S., R. 8 W.,
Accepted May 16, 1986 and officially filed May 19, 1986.

Washington

T. 7 N., R. 16 E.,
Accepted April 24, 1986 and officially filed May 6, 1986.

T. 8 N., R. 16 E.,
T. 21 N., R. 11 W.,
The above-listed plats were accepted May 16, 1986 and officially filed May 19, 1986.

The above-listed plats represent dependent resurveys, subdivisions and survey.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 NE Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

Dated June 13, 1986.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-13814 Filed 6-18-86; 8:45 am]

BILLING CODE 4310-33-M

[OR-4011, OR-17241, OR-21583, OR-21901, OR-22451]

Oregon; Notice of Proposed Continuation of Withdrawals

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Coast Guard proposes that the five land withdrawals for the Yaquina Head, Cape Meares, Umpqua River, and Heceta Head Light Stations and Coos Bay Coast Guard Station continue for an additional 25 years. The lands would remain closed to surface entry and mining but have been and would remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208 (Telephone 503-231-6905).

SUPPLEMENTARY INFORMATION:

The U.S. Coast Guard proposes that all or portions of the existing land withdrawals made by the Executive Orders of July 14, 1884, June 8, 1866, May 28, 1889, August 23, 1895, and July 18, 1891, be continued for a period of 25 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The lands involved are located at Coos Head (6.10 acres located near Charleston in Sec. 2, T. 26 S., R. 14 W., W.M.), Yaquina Head (4.50 acres near Newport in Sec. 30, T. 10 S., R. 11 W., W.M.), Cape Meares (1.55 acres located near Tillamook in Sec. 13, T. 1 S., R. 11 W., W.M.), Umpqua River (15.3 acres near Reedsport in Sec. 13, T. 22 S., R. 13 W., W.M.), and Heceta Head (2.00 acres near Florence in Sec. 33, T. 16 S., R. 12 W., W.M.) in Coos, Douglas, Lane, Lincoln, and Tillamook Counties, Oregon.

The purpose of the withdrawals is to protect the Coast Guard's Yaquina Head, Cape Meares, Umpqua River, and Heceta Head Light Stations and Coos Bay Coast Guard Station. The withdrawals segregate the lands from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: June 9, 1986.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-13910 Filed 6-18-86; 8:45 am]

BILLING CODE 4310-33-M

[OR-22153]

Oregon; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture proposes that a land withdrawal for the Sled Springs Guard Station continue for an additional 20 years. The land would remain closed to mining and would be opened to surface entry, but would remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, (Telephone 503–231–6905).

SUPPLEMENTARY INFORMATION:

The Forest Service, U.S. Department of Agriculture proposes that the existing land withdrawal made by the Secretarial Order of March 28, 1907, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The land involved is located approximatley 10 miles northeast of Wallowa and contains 20 acres within Sections 26 and 35, T. 3 N., R. 44 E., W.M., Wallowa County, Oregon.

The purpose of the withdrawal is to protect the Sled Springs Guard Station Administrative Site within the Wallowa-Whitman National Forest. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal, except to open the land to such forms of disposition that may by law be made of National Forest lands other than under the mining laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: June 9, 1986.

B. Lavelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86–13898 Filed 6–18–86; 8:45 am]

BILLING CODE 4310-33-M

[ORE-013117]

Oregon; Notice of Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Army, Corps of Engineers proposes that a land withdrawal for the Fall Creek Reservoir Project continue in part for an additional 100 years. The lands would remain closed to surface entry and mining but have been and would remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, (Telephone 503–231–6905).

SUPPLEMENTARY INFORMATION:

The Department of the Army, Corps of Engineers proposes that the existing land withdrawal made by Public Land Order No. 3610 of April 6, 1965, be continued in part for a period of 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The lands involved are located approximately 18 miles southeast of Eugene and aggregate approximately 47.70 acres within Section 31, T. 18 S., R. 1 E., and Section 6, T. 19 S., R. 1 E., W.M., Lane County, Oregon.

The purpose of the withdrawal is to protect the Fall Creek Reservoir Project. The withdrawal segregates the lands from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal. The Corps of Engineers has also relinguished the balance of the withdrawal containing approximately 33.50 acres which are not needed for project purposes.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: June 9, 1986.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86–13905 Filed 6–18–86; 8:45 am]

BILLING CODE 4310-33-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Exxon Co., U.S.A.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document.

SUMMARY: This Notice announces that Exxon Company, U.S.A., Unit Operator of the South Timbalier Block 54 Federal Unit Agreement No. 14–08–0001–3444, submitted on June 4, 1986, a proposed Development Operations Coordination Document describing the activities it proposes to conduct on the South Timbalier Block 54 Federal unit.

The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 143, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 838–0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in the proposed development operations coordination document available to affected States, executives

of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: June 13, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-13902 Filed 6-18-86; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Taylor Energy Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Taylor Energy Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 1184, Block 16, South Marsh 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 June 11, 1986.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS 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: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 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 States, 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: June 13, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-13903 Filed 6-18-86; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Challenger; Minerals Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Challenger Minerals Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5410, Block 97, Vermilion 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 Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on June 9, 1986.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Matairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Rules and Production, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838-0876.

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 States, 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: June 11, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-13811 Filed 6-18-86; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Cockrell Oil Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Cockrell Oil Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 3560, Block 33, 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 June 5, 1986.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS 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: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Rules and Production, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838-0875.

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 DOCD's available to affected States, executives of affected States, 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: June 11, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-13812 Filed 6-18-86; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Statue of Liberty-Ellis Island Centennial Commission Meeting

AGENCY: Department of the Interior.

ACTION: Notice of Meeting.

SUMMARY: A meeting of the Statute of Liberty-Ellis Island Centennial Commission will be held in New York City on Saturday, July 5, 1986. The Commission will meet at the New York Hilton at 10:30 a.m. to receive a report on proposals for use of the south half of Ellis Island and to conduct such other business as is properly before the meeting.

DATE: July 5, 1986.

FOR FURTHER INFORMATION: Keith Eastin, (202) 343–5183.

Dated: June 16, 1986.

Keith Eastin,

Deputy Under Secretary.

[FR Doc. 86–13979 Filed 6–18–86; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Act of 1984; Petroleum Environmental Research Forum

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. No. 98–462 ("the Act"), Petroleum Environmental Research Forum ("PERF") has filed a written certification simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in the membership of PERF. The change consists of the addition of the following to the membership of PERF:

Amerada Hess Corporation 1 Hess Plaza, Woodbridge, New Jersey 07095

Marathon Oil Company, 539 South Main Street, Findlay, Ohio 45840

The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The original notification disclosing the identities of the original parties to the venture and the objectives of PERF and the area of its planned activity was published at 51 FR 8903, on March 14, 1986.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 86–13860 Filed 6–18–86; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration of Ganes Chemicals, Inc.

By Notice dated April 26, 1986, and published in the **Federal Register** on May 2, 1986 (51 FR 16401), Ganes Chemicals, Inc., Lessee of Siegfried Chemical, Industrial Park Road, Pennsville, New Jersey 08070, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Methadone (9250)	II
Methadone-Intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane (9254).	II
Bulk dextropropoxyphene (non-dosage forms) (9273).	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 12, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86–13864 Filed 6–18–86; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Registration of Penick Corp.

By Notice dated April 28, 1986, and published in the **Federal Register** on May 2, 1986 (51 FR 16404), Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Pholcodine (9314)	I
Alphacetylmethadol (9603)	I
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Pethidine (meperidine) (9230)	II
Methadone (9250)	II
Methadone-Intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane (9254).	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extracts (9620)	II
Tincture of opium (9630)	II
Powdered opium (9639)	II
Granulated opium (9640)	II
Mixed alkaloids of opium (9648)	II
Concentrate of poppy straw (9670)	II
Phenazocine (9715)	II
Fentanyl (9801)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 12, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86–13865 Filed 6–18–86; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes a notice at least monthly of all agency requests for records disposition authority (records schedules) which include records being proposed for disposal or which reduce the records retention period for records already authorized for disposal. The first notice was published on April 1, 1985. Records schedules identify records of continuing value for eventual preservation in the National Archives of the United States and authorize agencies to dispose of records of temporary value. NARA invites public comment on proposed records disposals as required by 44 U.S.C. 3303a(a).

DATE: Comments must be received in writing on or before August 18, 1986.

ADDRESS: Address comments and requests for single copies of schedules identified in this notice to the Records

Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requestors must cite the control number assigned to each schedule when requesting a copy.

The control number appears in parentheses immediately after the title of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. government agencies create billions of records in the form of paper, film, magnetic tape, and other media. In order to control the accumulation of records, Federal agencies prepare records schedules which specify when the agency no longer needs them for current business and what happens to the records after the expiration of this period. Destruction of the records requires the approval of the Archivist of the United States, which is based on a thorough study of their potential value for future use. A few schedules are comprehensive; they list all the records of an agency or one of its major subdivisions. Most schedules cover only one office, or one program, or a few series of records, and many are updates of previously approved schedules.

This public notice identifies the Federal agencies and their appropriate subdivisions requesting disposition authority, includes a control number assigned to each schedule, and briefly identifies the records scheduled for disposal. The complete records schedule contains additional information about the records and their disposition. Additional information about the disposition process will be furnished with each copy of a records schedule requested.

Schedules Pending Approval

1. Departments of the Army and the Air Force, Army and Air Force Exchange Service (N1–334–86–2). Records relating to exchange operating procedures.

2. Department of the Navy, Naval Data Automation Command, Naval Records and Information Management Department (N1–143–86–1). Housekeeping records of the Bureau of Supplies and Accounts. Also included in this schedule are records appraised as permanent.

3. Department of Agriculture, Office of Inernational Cooperation and Development (NC1–166–84–1). Comprehensive schedule covering records relating to the administration of programs designed to share knowledge of agriculture through development assistance and cooperation with other countries.

4. Department of Commerce, Office of the Secretary (N1–40–86–2). Phonographic recording of a speech made on January 20, 1942, by Robert H. Hinkley, Assistant Secretary of Commerce.

5. Defense Logistics Agency, Staff Director of Administration, Resources Management Division (N1–361–86–1). Contracts and purchase orders.

6. United States Information Agency, Attestation Staff (N1–306–86–3). Textual records relating to duty-free designation of audio visual material judged to have an appropriate educational nature under the United Nations Beirut Agreement.

7. Department of Justice, Federal Bureau of Investigation, Records Management Division (N1–65–86–17, –18, –20, –22, and –24). Documentation containing personal information of insufficient historical or other value to warrant archival retention. Expunction of the information has been requested by the individual to whom it relates.

8. Department of the Treasury, Comptroller of the Currency (N1–101–86–2). Microfilm copy of bank charter certificates. The paper originals have been designated for eventual transfer to the National Archives.

Dated: June 12, 1986.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 86–13853 Filed 6–18–86; 8:45 am]

BILLING CODE 7515–10–M

NUCLEAR REGULATORY COMMISSION

[Docket 50–433]

Public Service Company of New Hampshire, et al., Seabrook Station, Unit 1; Environmental Assessment and Finding of no Significant Impact

The Nuclear Regulatory Commission (the Commission) is considering issuance of an extension to the latest construction completion date specified in Construction Permit CPPR–135. Construction Permit CPPR–135 for the Seabrook Station, Unit 1 was issued to Public Service Company of New Hampshire, et al. on July 7, 1976, with the latest construction completion date as June 30, 1983.[1] By Order, dated May 12, 1984, the Commission extended the latest construction completion date for Seabrook Station, Unit 1 to June 30, 1986. The Seabrook Station is located in Seabrook Township, Rochingham County, New Hampshire on the southeastern coast of the State of New Hampshire.

Environmental Assessment

Identification of Proposed Action: The proposed action would amend the construction permit by extending the latest construction completion date from June 30, 1986 to June 30, 1987. The proposed action is in response to applicants' request, dated May 7, 1986.

The Need for the Proposed Action

The proposed action is needed because the construction of the facility is not 100% completed. Construction of Seabrook Unit 1 is virtually complete, but it is not an absolute certainty that the construction will be fully completed by June 30, 1986, the present expiration date of CPPR–135. In addition, formulation of offsite emergency plans for various State and Local governmental entities which are necessary for NRC approval for issuance of an operating license may not be forthcoming prior to June 30, 1986. Essential regulatory approvals for fuel loading and low power operation may not be issued prior to June 30, 1986.

The requested revised completion date extends beyond the date by which the applicant expects to load fuel at Seabrook Station, Unit 1 and reflects a conservative estimate of actual completion.

Environmental Impacts of the Proposed Action

The environmental impacts associated with construction of the facility have been previously discussed and evaluated in the NRC staff's Final Environmental Statement (FES) issued in December 1974 for the construction permit stage which covered construction of Seabrook Station, Units 1 and 2. The NRC's staff Final Environmental Statement (FES) related to operation of the two units was issued in December 1982.

Since the proposed action involves extending the construction permit, radiological impacts are not affected by this action. The impacts that are involved are all non-radiological and are associated with continued construction.

[1] Public Service Company of New Hampshire is authorized to act as agent and representative for the: Bangor Hydor-Electric Company, Canal Electric Company, Central Maine Power Company, Central Vermont Public Service Corporation, Connecticut Light & Power Company, Fitchburg Gas & Electric Light Company, Hudson Light & Power Department, Maine Public Service Company, Massachusetts Municipal Wholesale Electric Company, Montaup Electric Company, New England Power Company, New Hampshire Electric Cooperative, Inc., Public Service Company of New Hampshire, Taunton Municipal Lighting Plant, United Illuminating Company, Vermont Electric Generation and Transmission Cooperative, Inc. and Washington Electric Cooperative, Inc.

As a result of the review of the Final Safety Analysis Report to date and considering the nature of the delays, the NRC staff has identified no area of significant safety consideration in connection with the extension of the construction completion date for Seabrook Station, Unit 1. The only change proposed by the applicant is an extension of the latest construction completion date to June 30, 1987. This extension would not change the activities already considered by previous Commission safety reviews of the facility and authorized by the construction permit, other than to extend the latest date by which construction must be completed. There are no new significant impacts associated with the extension.

Alternatives Considered

A possible alternative to the proposed action would be to deny the request. Under this alternative, the applicant would not be able to complete construction of the facility. This would result in denial of the benefit of power production. This option would not eliminate the environmental impacts of construction already incurred.

If the construction were halted and not completed, site redress activities would restore some small area to their natural state. This would be a slight environmental benefit, but much outweighed by the economic losses from denial to use a facility that is virtually complete.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the FES for the Seabrook Station.

Agencies and Persons Contacted

The NRC staff reviewed the applicants' request and applicable documents referenced therein that support this extension. The NRC did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepared an environmental impact statement for this action. Based upon the environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the request for extension, dated May 7, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the local public document room in the Exeter Public Library, Front Street, Exeter, New Hampshire, 03833.

Dated at Bethesda, Maryland this 13th day of June 1986.

For the Nuclear Regulatory Commission.

Victor Nerses,

Acting Director PWR Project Director #5, Division of PWR Licensing—A.

[FR Doc. 86–13924 Filed 6–18–86; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Actuarial Advisory Committee; Public Meeting

Notice is hereby given in accordance with Pub. L. 92–463 that the Actuarial Advisory Committee will hold a meeting on July 15, 1986, at the office of the Chief Actuary of the U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, on the conduct of the 17th Actuarial Valuation of the Railroad Retirement Account. The agenda for this meeting will include the results of the recently completed mortality, remarriage and family composition studies for the 17th Valuation, together with the recommendations of the Chief Actuary as to the mortality, remarriage and family composition assumptions to be used for the 17th valuation.

The meeting will be open to the public. Persons wishing to submit written statements or make oral presentations should address their communications or notices to the RRB Actuarial Advisory Committee, c/o Chief Actuary, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

Dated: June 13, 1986.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 86–13899 Filed 6–18–86; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–23317; File No. 4–284]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Amendment To Plan for Reporting Minor Disciplinary Rule Violations

The New York Stock Exchange, Inc. ("NYSE") submitted on March 24, 1986 copies of a proposed amendment to its minor rule violation plan, pursuant to Rule 19d–1(c)(2) under the Securities Exchange Act of 1934 ("Act").[1] The Commission previously has approved a minor disciplinary rule plan filed by the NYSE.[2] The amendment adds violations of NYSE Rule 412 (Customer Securities Account Transfers) to the list of minor rule violations subject to the plan.[3] Violations of Rule 412 will be reported to the Commission in a manner identical to all other violations subject to the minor disciplinary rule plan. Such reports include (1) a quarterly report listing the NYSE internal file number for the case, (2) SEC file number, (3) the name of the individual or member organization, (4) the nature of the violation, (5) the specific rule provision violated, (6) the date of violation, (7) the fine imposed, (8) an indication of whether the fine is joint and several, (9) the number of times the violation has occurred, and (10) the date of disposition.[4]

Notice of the proposed amendment was given by the issuance of a Commission release (Securities Exchange Act Release No. 23172, April 23, 1986) and by publication in the **Federal Register** (51 FR 16126, April 30, 1986). No comments were received with respect to the proposed amendment.

The Commission finds that the proposed amendment to the minor disciplinary rule plan is consistent with the requirements of section 6 and 19 of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19d–1(c)(2) under the Act, that the proposed plan amendment be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

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[1] Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23838. The Commission adopted amendments to paragraph (c) of Rule 19d–1 to allow self-regulatory organizations ("SROs") to submit, for Commission approval, plans for the abbreviated reporting of minor disciplinary infractions. Under the amendments, any disciplinary action taken by an SRO for violation of an SRO rule that has been designated a minor rule pursuant to the plan shall not be considered "final" for purposes of section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted the available administrative remedies.

[2] *See* Securities Exchange Act Release Nos. 22300 (August 8, 1985), 50 FR 32818, and 22415 (September 15, 1985), 50 FR 38600. The minor disciplinary rule plan relieves the NYSE of the current reporting requirement, imposed by section 19(d)(1) of the Act, for final disciplinary actions, with respect to violations listed under NYSE Rule 476A, which are designated as minor rules.

[3] *See* Securities Exchange Act Release No. 22663 (November 26, 1985), 50 FR 49638. Rule 412 requires that, following a customer request for a transfer of his or her account from one NYSE member organization to another, the transfer take place within ten business days.

[4] The fine schedule under Rule 476A is as follows: (1) First offense, a fine of $500 for an individual and $1,000 for a member organization; (2) second offense, a fine of $1,000 for an individual and $2,500 for an individual and $5,000 for a member organization. Fines in excess of $2,500 are not covered by the minor disciplinary rule plan.

[5] *See* 17 CFR 200.30–3(a)(44).

Dated: June 11, 1986.
Shirley E. Hollis,
Acting Secretary.

[FR Doc. 86-13851 Filed 6-18-86; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-23313; File No. SR-CBOE-86-10]

Self-Regulatory Organizations; Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to RAES Eligibility for Individuals and Groups

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 April 16, 1986, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change which imposes participation responsibilities on CBOE market makers who use the Exchange's Retail Automatic Execution System ("RAES").[1] The proposed rule change also broadens the classes of CBOE members who may elect to participate in RAES.

The proposal was noticed in Securities Exchange Act Release No. 23180 (April 28, 1986), 51 FR 16765 (May 6, 1986). No comments were received regarding the proposed rule change.

I. Description of the Proposed Rule Change

Currently, the CBOE permits only individual market makers to participate in RAES, and allows those market makers to sign on and off the system at any time during the trading day. The proposal expands participation in RAES to include two additional types of market maker group accounts: (a) Exchange-approved joint accounts; and (b) member organizations with multiple market maker nominees.[2] As presently required for individual participants, all the members of a group account must sign the applicable RAES Participation Agreement and complete the RAES instructional program in order to be eligible to sign onto RAES.

The proposed rule change also subjects each category of participants to somewhat differing requirements. For example, individual market makers who log into RAES must remain on the system whenever present in the OEX pit for the duration of the week in which they signed on the System and for the next expiration Friday, but may log on and off the System whenever they leave the trading crowd. Failure to meet the obligation to stay on the System while present in the OEX pit will disqualify a member from signing onto RAES for a period of one month, absent a demonstration of good cause.

Joint account participants all must be on RAES simultaneously. Once the joint account has been logged onto RAES, all members of the joint account automatically will remain on the System for the remainder of that week and automatically will be present on the system for the entire week containing the next expiration Friday. Members of the joint account will not be able to log off of RAES at will during a trading day, although relief can be obtained from the OEX Floor Procedure Committee ("Committee"). Such relief may be necessary, for example, where position limits would otherwise be volated or for financial capital reasons.

Lastly, any one of a member organization's multiple nominees may log all of the organization's nominees onto RAES, using their acronyms and passwords. All nominees' trades will clear into the account of the designated nominee, as designated by each member organization. Whenever any of the participating nominees is logged onto the System, all must be. Nominees must log onto the system for a week at a time and will automatically be logged onto the System for the week containing the next expiration Friday. Release from these obligations only can be obtained from the Committee.

The Committee reserves the authority to establish limits on the size of groups eligible to use RAES. The Committee also retains the right to prohibit any group from participating in RAES where it appears that the group is disproportionately large in comparison to other users of RAES; appears to have been formed solely for the purpose of engaging in RAES trades; and is not reasonably necessary to the efficient functioning of the System.

II. Basis for Approval

In its submission to the Commission, the CBOE states that the proposed rule change is needed because "the noticeable increase in volatility that has characterized the marketplace has discouraged individual participation in RAES by increasing the potential exposure of an individual to substantial, one-sided market movements."[3] The CBOE states that its market makers have shown an interest in pooling their RAES trading activity, thereby decreasing their individual exposure to various market movements. In the CBOE's opinion, the proposal reflects a careful balancing of the Exchange's desire "to open . . . RAES . . . to groups of participants, and thereby ensure both the integrity and the continued availability of the System to public customers, with the realistic expectation that certain affirmative obligations may be expected of market-makers who use RAES."[4] The CBOE has imposed stricter market-making obligations upon groups as opposed to individuals, because it believes that the sudden departure from the system of a group of participants could have more deleterious consequences to the remaining participants in RAES than would the logging off of an individual market maker.

The CBOE believes that the proposed rule changes are consistent with the provisions of the Act, and in particular, Section 6(b)(5), because in its opinion the proposals are designed to improve market efficiency and enhance the market functioning of RAES. In addition, CBOE notes that the Commission approved a similar proposal in connection with the American Stock Exchange's ("Amex") AUTO-EX system.[5]

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[1] RAES has operated since February 1, 1985, as a pilot program in a limited number of series of the Standard & Poor's 100 Index ("OEX"). It automatically executes public customer market and marketable limit orders entered into RAES against participating market makers in the CBOE trading crowd at the best bid or offer reflected in the CBOE's quotation system. For a more detailed description of the system, *see* Securities Exchange Act Release Nos. 21695, (January 28, 1985), 50 FR 4823 and 22015 (May 6, 1985), 50 FR 19832.

[2] In the typical case, members of a joint account hold individual memberships on the CBOE as traders for their own accounts, and finance the joint account through the individual contributions of each member to the account. Nominees of a member organization are generally financed by that organization.

[3] File No. SR-CBOE-86-10 at 7.

[4] *Id.*

[5] The Amex's AUTO-EX system automatically executes and reports certain Major Market Index orders. In connection with the start-up of AUTO-EX, the Amex proposed that market makers who wised to participate in AUTO-EX be obligated to do so on a weekly basis and on the near-term expiration Friday. *See* Securities Exchange Act Release Nos. 22306 (August 9, 1985), 50 FR 32930 and 22610 (November 8, 1985), 50 FR 47480 (File No. SR-Amex-85-29). Recently, the Amex filed a proposed rule change with the Commission which would amend these requirements by, among other things, reducing the weekly commitment to a daily one, *i.e.*, market makers would be permitted to participate in AUTO-EX on a daily basis. However, any market maker participating on any day during the expiration week would be required to sign onto the system on Expiration Friday. *See* Securities Exchange Act Release No. 23195 (May 2, 1986), 51 FR 17420.

The Commission believes that the proposed rule change, by imposing requirements to ensure adequate market maker participation in the system, will increase RAES' availability to public customers, particularly during periods of market volatility. Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6(b)(5) of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Dated: June 10, 1986.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86-13847 Filed 6-18-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

June 16, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Mylan Laboratories, Inc.
Common Stock, $0.05 Par Value (File No. 7-8953)
Shoe-Town, Inc.
Common Stock, $0.01 Par Value (File No. 7-8954)
Barnett Banks of Florida, Inc.
Common Shares, $2.00 Par Value (File No. 7-8955)
General Cinema Corporation
Common Stock, $1.00 Par Value (File No. 7-8956)
Payless Cashways, Inc.
Common Stock, $0.50 Par Value (File No. 7-8957)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 8, 1986, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86-13926 Filed 6-18-86; 8:45 am]

BILLING CODE 8010-01-M

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[6] 15 U.S.C. 78s(b)(2) (1982).

[7] 17 CFR 200.30-3(a)(12) (1985).

[Release No. 35-24126]

Filings Under the Public Utility Holding Company Act of 1935 ("Act"); Columbus and Southern Ohio Electric Co.

June 12, 1986.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 7, 1986 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit, or in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Columbus and Southern Ohio Electric Company (70-7267)

Columbus and Southern Ohio Electric Company ("C&SOE"), 215 North Front Street, Columbus, Ohio 43215, a subsidiary of America Electric Power Company, Inc., a registered holding company, has filed a declaration pursuant to sections 6(a) and 7 of the Act and Rule 50 thereunder.

C&SOE proposes to issue and sell from time to time through December 31, 1986, up to $160,000,000 aggregate principal amount of first mortgage bonds ("Bonds") by competitive bidding, in one or more new series, each with a maturity of not less than 5 nor more than 30 years.

In the event that competitive bidding is impractical or undesirable due to market conditions, C&SOE proposes, subject to Commission authorization by further order, either to place the Bonds privately with institutional investors or to negotiate with underwriters for the sale of the Bonds. If C&SOE determines to issue the Bonds in more than one series, C&SOE may wish to sell one or more series on a competitive bidding basis and one or more series on a negotiated basis.

As an alternative to the issuance of all or a portion of the Bonds, C&SOE proposes to issue from time to time through December 31, 1986, up to $160,000,000 principal amount of Notes to one or more commercial banks or other financial institutions pursuant to a proposed term loan agreement. The proposed agreement and Notes thereunder would be for a term of not less than two nor more than ten years from the date of borrowing. The Notes would bear interest at a fixed rate not greater than 13.0 percent per annum. Any proceeds realized from the sale of the Bonds and/or the Notes will be used to refund long-term debt prior to maturity.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86-13846 Filed 6-18-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15147; File No. 811-3582]

First Investors High Yield Fund, Inc. (Formerly, Preferred Customer Money Market Fund, Inc.); Application for Investment Company Deregistration

June 12, 1986.

Notice is hereby given that First Investors High Yield Fund, Inc.

("Applicant"), 120 Wall Street, New York, New York 10005, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on April 9, 1986, and an amendment thereto on June 4, 1986, for an order of the Commission pursuant to section 8(f) of the Act 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 to the Act and rules thereunder for the text of the applicable provisions thereof.

According to the application, Applicant, a Maryland corporation, filed registration statements under the Act and the Securities Act of 1933 on October 13, 1982. Applicant states that it commenced a public offering of its securities on February 28, 1983. Applicant also states that all of its shareholders voluntarily redeemed their shares of Applicant as of December 29, 1983. Applicant represents that its Board of Directors determined that it was not feasible to continue a public offering of its shares in view of the uncertainties surrounding general market conditions and unanimously passed a resolution recommending the dissolution of Applicant on March 27, 1986.

Applicant represents that all expenses in connection with its liquidation are being borne by the Applicant's co-underwriters. Applicant further represents that it does not currently propose to engage in any business activities other than those related to this application. Applicant states that it has retained no assets, no debts or other liabilities, and that it is not a party to any litigation or administrative proceeding. Finally, Applicant states that it has not within the past 18 months transferred any of its assets to a separate trust and that it has filed Articles of Dissolution with the appropriate authority in Maryland.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than July 3, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of the interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant(s) 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,

Acting Secretary.

[FR Doc. 86-13849 Filed 6-18-86; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-14986]

Application and Opportunity for Hearing; The Western Union Telegraph Co.

June 12, 1986.

Notice is hereby given that The Western Union Telegraph Company (the "Applicant") has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939, as amended (herein sometimes referred to as the "Act"), for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeships of J. Henry Schroder Bank & Trust Company ("Schroder"), a corporation duly organized and existing under the laws of the State of New York, under certain indentures of The Western Union Telegraph Company (the "Company") which were heretofore qualified under the Act are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to prevent Schroder from acting as trustee under any of such indentures.

The Company has issued and outstanding, as of March 1, 1986, the following debt securities secured by the following indentures, in each case, between the Company and Schroder, as trustee:

(i) $10,000,000 principal amount of 5¼% Sinking Fund Debentures Due 1987, under an Indenture dated as of February 1, 1962 (the "1962 Indenture");

(ii) $12,500,000 principal amount of 6½% Sinking Fund Debentures Due 1989, under an Indenture dated December 15, 1966 (the "1966 Indenture");

(iii) $26,820,000 principal amount of 8.45% Sinking Fund Debentures Due March 15, 1996, under an Indenture dated as of March 15, 1971;

(iv) $38,163,000 principal amount of 7.90% Sinking Fund Debentures Due May 15, 1997, under an Indenture dated as of March 15, 1972;

(v) $36,597,000 principal amount of 8.10% Sinking Fund Debentures Due August 15, 1998, under an Indenture dated as of March 1, 1973;

(vi) $8,334,000 principal amount of 10% Notes Due August 1, 1986, under an Indenture dated as of August 1, 1976;

(vii) $31,468,000 principal amount of 9¼% Sinking Fund Debentures Due December 1, 1997, under an Indenture dated as of December 1, 1977;

(viii) $75,000,000 principal amount of 16% Notes Due June 15, 1991, under an Indenture dated as of June 15, 1981;

(ix) $100,000,000 principal amount of 13¼% Sinking Fund Debentures Due October 1, 2008, under an Indenture dated as of July 1, 1983; and

(x) $50,000,000 principal amount of 13⅝% Notes Due 1994, under an Indenture dated as of March 15, 1984.

In connection with the appointment of Schroder as successor trustee under each of the above named indentures, the Company applied to the Commission, by application dated January 28, 1985 (the "1985 Application"), for an order to exclude such indentures from the operation of section 310(b)(1) of the Act. In response, the Commission issued an order, dated March 11, 1985 (the "1985 Order"), pursuant to which it excluded the above named indentures from the operation of section 310(b)(1) of the Act.

In addition to the securities outstanding under the indentures subject to the 1985 Order, the Company has issued and outstanding $26,400,000 principal amount of 5% Sinking Fund Debentures Due 1992 under an Indenture dated as of February 1, 1964 (the "1964 Indenture"), between the Company and Chemical Bank, formerly Chemical Bank New York Trust Company (the 1964 Indenture and the indentures subject to the 1985 Order shall hereinafter be referred to collectively as the "Indentures" and sometimes individually as an "Indenture").

Chemical Bank, the original trustee (the "Resigning Trustee") under the 1964 Indenture, is resigning and the Company is duly appointing Schroder as successor trustee, which appointment Schroder is accepting, all pursuant to an Instrument of Resignation, Appointment and Acceptance, among the Company, the Resigning Trustee and Schroder.

Section 310(b) of the Act (which is included in Section 7.8 of each of the 1962 Indenture and the 1964 Indenture, Section 608 of the 1966 Indenture and Section 7.08 of each of the other Indentures) provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in said Section of the Act), it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate

such conflicting interest or resign. Subsection (b)(1) of said Section provides, with certain exceptions stated therein, that a trustee under a qualified indenture of a company shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities, or certificates of interest or participation in any other securities of such company are outstanding.

The present application, filed pursuant to clause (ii) of section 310(b)(1) of the Act (as set forth in Section 7.8 of each of the 1962 Indenture and the 1964 Indenture, Section 608 of the 1966 Indenture and Section 7.08 of each of the other Indentures) seeks to exclude the 1964 Indenture from the operation of section 310(b)(1) of the Act together with the indentures excluded under the 1985 Order.

The effect of the proviso contained in clause (ii) of section 310(b)(1) of the Act on the matter of the present application is such that the Indentures may be excluded from the operation of section 310(b)(1) of the Act if the Company shall have sustained the burden of proving, by this application to the Commission and after opportunity for hearing thereon, that the trusteeships of Schroder under the 1964 Indenture and the indentures subject to the 1985 Order are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Schroder from acting as trustee under the 1964 Indenture or any of such other Indenture.

The Applicant alleges that:

(1) The Indentures are wholly unsecured and the debt securities secured by the Indentures rank *pari passu inter se*. The only material differences between the Indenture and between the rights of the holders of the debt securities secured by the Indentures relate to aggregate principal amounts, dates of issue, certain financial convenants of the Company, Events of Default as defined in the Indenture, maturity and interest payment dates, interest rates, redemption prices and procedures, sinking fund provisions, and other provisions of a similar nature.

(2) As stated in the Company's 1985 Application, in each case where a resigning trustee was the original trustee was the original trustee under more than one Indenture, each Indenture specifically describes each previously executed Indenture having the same original trustee, in accordance with one of the exceptions provided in section 310(b)(1) of the Act and the corresponding section of each such Indenture.

(3) No default has at any time existed under any Indenture.

(4) Upon consummation of the proposed Exchange Offers, Plan of Merger and New Debt Offering, Schroder will be trustee under five additional indentures that will be wholly unsecured and the debt to be secured by the indentures will rank *pari passu inter se* with the debt secured by the existing Indentures.

(5) Such differences as exist among the Indentures are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Schroder from acting as trustee under the 1964 Indenture or any one or more of the indentures subject to the 1985 Order.

The Applicant has waived notice of hearing, any right to a hearing on the issues raised by the application, and all rights to specify procedures under the Rules of Practice of the Commission with respect to its application.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application which is on file in the offices of the Commission at the Public Reference Room, File No. 22–14986, 450 Fifth Street NW., Judiciary Plaza, Washington, DC 20549.

Notice is further given that an order granting the application may be issued by the Commission at any time on or after July 2, 1986, unless prior thereto a hearing upon the application is ordered by the Commission, as provided in clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939, as amended. Any interested person may, not later than July 1, 1986, at 5:30 p.m., Eastern Time, submit in writing to the Commission, his or her views or any additional facts bearing upon this application or the desirability of a hearing thereon. Any such comments or requests should be addressed to: Secretary, Securities and Exchange Commission, Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86–13848 Filed 6–18–86; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–15148; (812–6385)]

Sequoia Fund, Inc.; Deferred Compensation Plan Application

June 12, 1986.

Notice is hereby given that Sequoia Fund, Inc. ("Applicant"), 1370 Avenue of the Americas, New York, NY 10005, registered as an open-end, diversified, management investment company under the Investment Company Act of 1940 ("Act"), filed an application on May 14, 1986, requesting an order, pursuant to section 6(c) of the Act, exempting Applicant's proposed deferred compensation plan for directors ("Plan"), to the extent necessary, from the provisions of sections 13(a)(2), 18(f)(1), 22(f) and 22(g) of the Act, and, pursuant to section 17(d) of the Act and Rule 17d–1 thereunder, to permit certain joint transactions relating to the Plan. 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 Act and the rules thereunder for the text of the relevant provisions.

According to the application, Applicant has a seven-member Board of Directors, four of whom are not "interested persons" of Applicant within the meaning of section 2(a)(19) of the Act ("Disinterested Directors"). The Disinterested Directors of Applicant currently receive aggregate fees of approximately $600 per month plus $1,200 for each directors' meeting attended.

Under the proposed Plan, each Disinterested Director will be allowed to elect to defer receipt of all or a specified portion of fees which otherwise would become payable to such director for services performed after the date of the PLan. The election shall continue in effect until terminated by notice in writing, such termination to take effect on the first day of the calendar year beginning after receipt of the notice of termination. A deferred compensation account will be established for each electing Disinterested Director. All amounts in such accounts will bear interest at a rate equivalent to the rate for 90-day U.S. Treasury Bills as determined at the beginning of each calendar quarter and interest will be credited monthly.

According to the application, all amounts credited to a deferred compensation account shall become payable on the earlier of: (i) The first business day in January following the year in which an electing Disinterested Director ceases to be a director of

Applicant; and (ii) the date, if any, specified by the electing Disinterested Director. Payments will be made in a lump sum or in annual installments in accordance with an electing Disinterested Director's specifications, or, a combination thereof if Applicant consents. In event of the electing Disinterested Director's death, amounts payable under a Plan will thereafter be payable to such persons as the electing director designated in the written notice of election, or, if the electing director has failed to so designate, to the Disinterested Director's estate.

Applicants state that the purpose of the Plan is to permit individual Disinterested Directors to elect to defer receipt of their fees in order to avoid diminution or loss of Social Security benefits to which such directors may otherwise be entitled, to enable such directors to defer payment of income taxes on such fees, to save for retirement and for other reasons. Applicant believes that the availability of the Plan will enhance their ability to continue to attract and retain highly qualified directors. Applicant states that the Plan will not obligate Applicant to set directors' fees at any particular level. Applicant further states that the deferral of directors' fees in accordance with the Plan will have a negligible effect on Applicant's assets, liabilities and net income per share.

Applicant contends that the Plan possesses none of the characteristics of senior securities which led Congress to enact restrictions on the issuance of such securities, that the restriction on transferability or negotiability of directors' fees would not adversely affect the interests of Applicant's shareholders or directors, and that the deferral of fees under the Plans should be viewed as being "issued" not for services, but rather, in return for Applicant's not being required to pay such fees on a current basis. Applicant therefore requests exemptions from the provisions of sections 13(a)(2), 18(f)(1), 22(f) and 22(g) of the Act, to the extent necessary, to permit implementation of the Plan.

Similarly, Applicant asserts that the Plan does not possess the characteristics of joint transactions within the meaning of section 17(d) of the Act and Rule 17d–1 thereunder. In this respect, Applicant notes that the interest to be accrued on deferred amounts will be based upon the rate paid on 90-day U.S. Treasury Bills, and hence, that the Plan does not possess the profit-sharing characteristics required for a joint transaction as contemplated by the Act. To the extent that the Plan may be deemed to involve joint transactions, Applicant submits that the participation in the Plan by Applicant will not be on a basis that is less advantageous than that of any affiliated person.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than July 3, 1986, 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, DC 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,

Acting Secretary.

[FR Doc. 86–13850 Filed 6–18–86; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB for Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted within 21 days of this publication in the **Federal Register.** If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies

Copies of forms, request for clearance (S.F. 83s), supporting statements, instructions, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Richard Vizachero, Small Business Administration, 1441 L Street NW., Room 200, Washington, DC 20416, Telephone: (202) 653–8538

OMB Reviewer: Patricia Aronsson, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395–7231.

Title: Candidate for Appointment to SBA Advisory Councils
Form No.: SBA 898
Frequency: On occasion
Description of Respondents: Individuals wishing to be considered for appointment to the SBA Advisory Council.
Annual Responses: 1,400
Annual Burden Hours: 70
Type of Request: Extension
Title: Report of Transaction on Loans Serviced by Banks
Form No.: SBA 172
Frequency: Monthly
Description of Respondents: This form is used by banks to show how much of a remittance is due SBA on the loan serviced by the bank.
Annual Responses: 56,400
Annual Burden Hours: 9,400
Type of Request: Extension.

Dated: June 13, 1986.

Richard Vizachero,

Chief, Administrative Procedures and Documentation Section, Small Business Administration.

[FR Doc. 86–13855 Filed 6–18–86; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 01/01–0337]

Application for a Small Business Investment Company License; Pioneer SBIC Corp. et al.

An application for a license to operate a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (14 U.S.C. 551 *et seq.*) has been filed by Pioneer Ventures Limited Partnership, (Applicant), 60 State Street, Boston, Massachusetts 02109, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1986).

The corporate and limited partners

and management of the Applicant are as follows:

Name	Title or relationship
Pioneer SBIC Corp., 60 State Street, Boston, Massachusetts 02109.	Corporate General Partner.
Frank M. Polestra, 19 Sanderson Road, Lexington, Massachusetts 02173.	Limited Partner.
Christopher W. Lynch, 75 Old Sudbury Road, Wayland, Massachusetts 01778.	Limited Partner.
Pioneer Capital Corporation, 60 State Street, Boston, Massachusetts 01209.	Investment Advisor/Manager.

Pioneer SBIC Corp., the corporate general partner, is a wholly subsidiary of Pioneer Capital Corporation. Pioneer Capital Corporation is a wholly owned subsidiary of the Pioneer Group, Inc. Mr. John F. Cogan, Jr., as the only beneficial owner of more than 10 percent of the equity securities of the Pioneer Group, Inc., Indirectly holds approximately 16.5 percent interest in the Applicant.

The Applicant, a Massachusetts limited partnership will begin operations with $3,000,080 in partnership capital. The Applicant will conduct its activities primarily in the State of Massachusetts but will consider investments in business in other areas in the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the company under the management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment. Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in Boston, Massachusetts.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 12, 1986.

Robert G. Lineberry,

Deputy Association Administrator for Investment.

[FR Doc. 86-13839 Filed 6-18-86; 8:45 am]

BILLING CODE 8025-10-M

TENNESSEE VALLEY AUTHORITY

Forms under review by the Office of Management and Budget

AGENCY: Tennessee Valley Authority.

ACTION: Forms Under Review by the Office of Management and Budget.

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

Requests for information, including copies of the forms proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Attention: Desk Officer for Tennessee Valley Authority, 395-7313.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751-2524, FTS 858-2524.

Type of Request: Renewal of a previously approved information collection

Title of Information Collection: Foreign Line Crossing Data

Frequency of Use: Nonrecurring

Type of Affected Public: State or local governments and small businesses or organizations

Small Businesses or Organizations Affected: Yes

Federal Budget Functional Category Code: 271

Estimated Number of Annual Responses: 135

Estimated Total Annual Burden Hours: 1350

Need For and Use of Information: When a company wishes to build a line over or under a power transmission line owned by TVA, TVA must review certain engineering data to ensure reliability of the power system and to protect the public by ensuring that the crossing meets the National Electrical Safety Code. The information collection provides such engineering data.

Dated: June 11, 1986.

John W. Thompson,

Manager of Corporate Services, Senior Agency Official.

[FR Doc. 86-13808 Filed 6-18-86; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB, May 16, 1986-June 12, 1986

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation, during the period May 16, 1986-June 12, 1986, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler or Annette Wilson, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 426-1887, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the **"FOR FURTHER INFORMATION CONTACT"** paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the **"FOR FURTHER INFORMATION CONTACT"** paragraph set forth above. If you

anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB from May 16, 1986–June 12, 1986:

DOT No: 2730
OMB No: New
By: National Highway Traffic Safety Administration
Title: 49 CFR 571.210, Seat Belt Assembly Anchorages
Form(s): None
Frequency: On occasion
Respondents: Businesses
Need/Use: Motor Vehicle manufacturers are required to include in the owners manual instructions on installation of child restraints where lap belts in front passenger seating positions of vehicle are not included as standard equipment.

DOT No: 2744
OMB No: 2130–0005; 2130–0041; and 2130–0515
By: Federal Railroad Administration
Title: Hours of Service Regulations
Form(s): FRA F 6180.3
Frequency: On occasion and recordkeeping
Respondents: Railroads
Need/Use: The Federal Railroad Administration uses this information to insure enforcement of hours of duty regulations and to control the conditions of proper rest for employees engaged in one or more critical categories of work.

DOT No: 2746
OMB No: 2125–0076
By: Federal Highway Administration
Title: Written Notice of Death After Filing Accident Report
Form(s): None
Frequency: On occasion
Respondents: Motor Carriers operating in interstate or foreign commerce
Need/Use: For the motor carrier to give written notice of death to the FHWA, if death occurs within 30 days after an accident report (Form MCS–50T or 50B) has been filed.

DOT No: 2747
OMB No: 2115–0525
By: United States Coast Guard
Title: Sub-Chapter Q Manufacturers Test Reports (46 CFR)
Form(s): N/A
Frequency: On occasion
Respondents: Manufacturers of safety valves, and flame arrestors
Need/Use: This information collection requires the above respondents to submit drawings and test reports for safety materials. The information is used to determine whether their items meet minimum levels of safety and performance, and also serves to identify approved items.

DOT No: 2748
OMB No: 2133–0503
By: Maritime Administration
Title: Inventory of American Intermodal Equipment
Form(s): N/A
Frequency: Annually
Respondents: U.S. Steamship and Intermodal Equipment Leasing Companies.
Need/Use: The inventory is used to help determine commercial assets available to meet worldwide contingency planning requirements for the Department of Defense.

DOT No: 2749
OMB No: 2115–0055
By: United States Coast Guard
Title: Recreational Boat Manufacturer Identification Code
Form(s): N/A
Frequency: On occasion
Respondents: Recreational Boat Manufacturers and Importers and Backyard Boat Builders
Need/Use: This information collection requirement is needed and used to identify the manufacturer or importer of recreational boats. The information collected is used for recall purposes as well as to obtain information in case of accidents, lost or abondoned boats.

DOT No: 2750
OMB No: 2115–0521
By: United States Coast Guard
Title: Certificate in Lieu of Lost or Destroyed Discharge
Form(s): SF–180 or letter
Frequency: On occasion
Respondents: Retired military
Need/Use: This information collection requirement is needed and used to replace the original discharge certificate as proof of service in the Coast Guard.

DOT No: 2751
OMB No: None
By: Urban Mass Transportation Administration
Title: Buy America Requirements
Form(s): None
Frequency: On occasion
Respondents: State or local governments, businesses or other for-profit organizations
Need/Use: UMTA regulations require all bidders to certify compliance with the general requirements or the special requirements for rolling stock. The Buy America certifications will be used by UMTA grantees and bidders on UMTA funded contracts to assure that the products being purchased comply with the applicable statutory and regulatory requirements.

DOT No: 2752
OMB No: 2132–0513
By: Urban Mass Transportation Administration
Title: Letter of Credit Application
Form(s): 1193 and 1194
Frequency: On occasion
Respondents: State and local governments
Need/Use: The information is used to establish a letter of credit for a particular grantee or other qualifying recipient of federal funds. It provides UMTA with data on the organization authorized to execute requests for payments under the letter of credit.

DOT No: 2753
OMB No: 2138–0004
By: Research and Special Program Administration
Title: Part 248—Submission of Audit Reports
Form(s): None
Frequency: Annual
Respondents: Certificated air carriers
Need/Use: The Department uses audit reports for monitoring air carrier continuing fitness and as a quality control check of Form 41 submissions. Also the Department sends a copy of the reports to ICAO in fulfillment of its international treaty obligation.

DOT No: 2754
OMB No: 2133–0007
By: Maritime Administration
Title: Maintenance and Repair Cumulative Summary
Form(s): MA–140
Frequency: Quarterly/other
Respondents: U.S.-flag subsidized liner operators
Need/Use: To determine liner operator's eligibility for subsidy payments for maintenance and repair costs.

DOT No: 2755
OMB No: 2133–0025
By: Maritime Administration
Title: Position Reporting System for Vessels
Form(s): CG–4796A
Frequency: Other—Every 48 hours at sea, arrival and departure and changes to previous information
Respondents: Vessels at Sea
Need/Use: Allow for marshalling of ships for national defense purposes and for search and rescue for safety of life at sea.

DOT No: 2756
OMB No: New
By: Office of the Secretary of Transportation (P–43)
Title: Order Instituting Investigation
Form(s): N/A

Frequency: Only once

Respondents: Selected Intra-Alaskan certificated air carriers

Need/Use: To establish rates to be paid by the U.S. Postal Service to air carriers for the carriage of mail by aircraft within the State of Alaska.

Issued in Washington, DC on June 12, 1986.

John E. Turner,

Director of Information Systems and Telecommunications.

[FR Doc. 86-13825 Filed 6-18-86; 8:45 am]

BILLING CODE 4910-62-M

[FRA General Docket No. H-85-4]

Train Air Brake Test Program; Burlington Northern Railroad Co.; Public Hearing

In accordance with 49 CFR 211.41, notice is given that the Federal Railroad Administration (FRA) will hold a public hearing on the Burlington Northern Railroad Company's (BN's) petition for a waiver until March 31, 1991, of certain provisions of FRA's power brake regulations, in order to use and test trains with air repeater units. This proceeding is identified as FRA General Docket No. H-85-4.

BN's specific request is for relief from the obligation to conduct a leakage test on the portion of the train to the rear of the air repeater unit. See 49 CFR 232.12(b)(1), (d)(1), (d)(3), (e), (i)(2), (i)(3); 232.13(d)(1), (d)(2). Test trains would operate on various subdivisons of the BN's Chicago, Twin Cities, Billings Seattle, and Denver Regions.

In response to BN's request, FRA granted a temporary, conditional waiver, pending receipt and evaluation of public comments. The waiver is conditioned on BN's adherence to the parameters of the test program set forth in this notice. (For further details, see FRA notice on the test program, published at 51 FR. 5,437-5,438, February 13, 1986.)

The Rail Labor Executives' Association and the Brotherhood Railway Carmen of the United States and Canada have protested BN's application and requested a hearing. After examining BN's petition, the protests and hearing requests, and the available facts, FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10:00 a.m. on Tuesday, August 5, 1986, at 110 South Fourth Street, Room 471, Minneapolis, Minnesota.

In accordance with § 211.25 of the FRA Rules of Practice (49 CFR 211.25), the hearing will be informal and will be conducted by a representative designated by FRA. Strict rules of evidence will not apply, and cross-examination will be somewhat limited. The FRA representative will make an opening statement outlining the scope of the hearing. Then each person in attendance will be permitted to make an initial statement. After each initial statement is completed, the hearing officer, the technical panel, and the audience will be allowed to question the witness. After all the initial statements are completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so, in the same order in which they made their initial statements. In addition, written statements or other documents may be submitted at the hearing for inclusion in the record of this proceeding. If practical, eight copies of each written statement or other document should be submitted. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, D.C. on June 13, 1986.

J. W. Walsh,

Associate Administrator for Safety.

[FR Doc. 86-3922 Filed 6-18-86; 8:45 am]

BILLING CODE 4910-06-M

Federal Railroad Administration

[FRA General Docket No. H-86-2]

Roller Bearing Test Program

The Federal Railroad Administration (FRA) is considering a proposal to conduct a long-term roller bearing test program on five-unit articulated double stack container cars, which would require a waiver of a provision of the FRA's Freight Car Safety Standards.

The regulatory provision involved is the portion of § 215.115(a)(3) that prohibits a car from being placed in service or continued in service if it has a roller bearing with a seal that permits leakage of lubricant in clearly formed droplets. 49 CFR 215.115(a)(3). The purpose of the test is to determine what causes certain roller bearing seals to leak on five-unit articulated double stack container cars and not on other cars in the general freight car fleet. The roller bearings involved have been used for many years with no serious seal leakage problem on a wide variety of freight cars in the national fleet. In particular, the test is designed to determine whether such leaks on such double stack cars do, in fact, indicate an underlying safety problem and, therefore, whether there is a valid safety rationale for applying the probhibition against leakage of lubricant to such double stack cars.

Five-unit articulated double stack container cars ("double stack cars") have an Association of American Railroads mechanical designation of "FCA-Q450." They are typically used to carry containerized cargo between port facilities on the Pacific and Atlantic coasts. A total of approximately 625 double stack cars are in service in this country, a figure that should grow as additional cars are built and enter the fleet.

FRA field inspections, initially on double stack cars owned by the American President Lines, detected a high incidence of roller bearing seal leakage. Subsequent inspections revealed such leakage to be relatively frequent on double stack cars generally.

In response to the seal leakage problem, FRA met with representatives of the Union Pacific Railroad Company, Thrall Car Company, American President Lines, Trailer Train Company, Consolidated Rail Corporation, and Timken Roller Bearing Company to discuss these inspection results and the possibility of initiating a test program to ascertain why the seals on these cars were permitting lubricant to be lost. These companies indicated their willingness to participate in an appropriate test program. In order to build on this momentum, FRA granted a temporary waiver of § 215.115(a)(3) pending receipt and evaluation of public comments. That temporary waiver is conditioned on adherence to the parameters of the test program described later in this notice. The decision to grant the existing waiver was based on the determination that immediate action was required in the public interest.

FRA investigations have not been able to isolate any specific factor or component that would account for the observable leakage phenomena. One theory is that the higher temperatures at which the double stack cars operate (as recorded by hot box detectors) are a factor in the seal leakage. One facet of the test program will be to instrument some wheel sets so that it will be possible to develop actual temperature conditions so as to determine whether temperature is a factor.

The decision to sanction a test program, albeit tentatively, stems from the inability to isolate a particular causation factor for the lubricant loss and receipt of data, obtained from hearings disassembled after removal from service, indicating there is no clear correlation between bearing distress

and the visual observation of the grease leaking at the lip of the bearing. In fact, the disassembly inspections to date have revealed no bearing in distress even through the grease analysis has indicated various levels of grease loss, grease deterioration, or presence of water.

The long-term test program waiver envisioned by FRA would include all double stack cars, a total of roughly 625 cars, hauled by a variety of railroads, including Union Pacific Railroad Company, Consolidated Rail Corporation, the Chicago and North Western Transportation Company, Southern Railway Company, Burlington Northern Railroad Company, Southern Pacific Transportation Company, New York, Susquehanna & Western Railway, and the Delaware and Hudson Railway Company. Since a test fleet of this size is difficult to monitor closely extensive operational data would be collected on only the approximately 250 double stack cars presently owned by the American President Lines (together with any additonal double stack cars that come under APL ownership during the test period, such as cars presently being manufactured.) The APL cars are typically transported by the Union Pacific, Conrail, the Chicago and North Western, Southern, and Southern Pacific.

The short-term test of double stack cars is being conducted under the following guidelines. If a long-term test is sanctioned, all items of the following guidelines would apply to the APL double stack cars, and only items 8 and 9 would apply to other double stack cars.

Roller Bearing Test Program Guidelines

1. Wiping of the bearing seals will be discontinued so that evidence remains in palce as to the apparent severity of the grease leakage.

2. An analysis of the inspection data recorded thus far by FRA and the railroads will be performed to determine the type of grease used in the disassembled and leaking bearings and whether grease type is a factor contributing to the leaking of the seal.

3. For every 100,000 miles of service through 500,000 miles of service, one pair of wheels with an observed seal leak will be removed and given a disassembly inspection. If wheel assemblies attain 500,000 miles, then a wheel assembly will be removed and given a disassembly inspection at every additional 50,000 miles of service.

4. For every pair of wheels removed for any reason, *e.g.*, wheel wear or derailment, a teardown inspection of the bearing will be performed.

5. All hot box detector high readings for the double stack cars will be reported to the Office of Safety, FRA, Washington, DC 20590, as soon as practicable after the occurrence.

6. The FRA inspectors and the railroads will record all roller bearings found leaking, and the data is to be forwarded to the Office of Safety, FRA, Washington, DC 20590, at the end of each month.

7. At each location where the cars are placed in a train, the cars shall be inspected by a person designated under § 215.11 of the Freight Car Safety Standards (49 CFR 215.11).

(A pre-departure inspection by a person not designated under § 215.11 is not acceptable.) Such inspections by a designated inspector shall be monitored by the district FRA inspector.

8. Any FRA inspector or railroad inspector will retain final authority to remove any double stack car from service for grease leaking that the inspector believes would present an immediately unsafe and hazardous condition.

9. All derailments of double stack cars shall be reported to the Office of Safety, FRA, Washington, DC 20590, as soon as practicable after the occurrence.

FRA is now seeking information and comments of all interested parties on this test program and waiver request. All interested parties are invited to participate in this proceeding through written submissions. FRA does not anticipate scheduling a hearing for oral comment because the facts do not appear to warrant it. An opportunity to present oral comments will be provided, however, if, by August 8, 1986, any party submits a written request for hearing that demonstrates that its position cannot properly be presented by written statements.

All written communications concerning this petition should reference "FRA General Docket No. H–86–2" and should be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, FRA, 400 7th Street, SW., Washington, DC 20590.

Comments received by August 8, 1986, will be considered before final action is taken in this proceeding. All comments received will be available for examination during regular working hours in Room 8201, Nassif Building, 400 7th Street, SW., Washington, DC 20590.

Issued in Washington, DC, on June 13, 1986.

Joseph W. Walsh,

Associate Administrator for Safety.

[FR Doc. 86–13923 Filed 6–18–86; 8:45 am]

BILLING CODE 4910–06–M

National Highway Traffic Safety Administration

[Docket No. IP86–1; Notice 2]

Motor Vehicle Safety Standards; Grumman-Olson; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by the Grumman-Olson Division of Grumman Allied Industries, Inc. of Sturgis, Michigan, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for a noncompliance with 49 CFR 571.302 Motor Vehicle Safety Standard No. 302 "Flammability of Interior Materials." The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on January 9, 1986, and an opportunity afforded for comment (51 FR 1055).

Paragraph S4.3(a) of FMVSS No. 302 in pertinent part requires that:

(2) "When tested in accordance with S5, material described in S4.1 and S4.2 shall not burn, nor transmit a flame front across its surface, at a rate of more than four inches per minute."

The petitioner, Grumman Olson, manufactured 3,943 walk-in vans for the United Parcel Service between January 1, 1981 and November 1, 1985, with seat fabric which showed a burn rate average of 5.1 inches/minute.

The noncompliance was brought to the attention of Grumman Olson when the Union City Body Company, which also manufactures bodies for the United Parcel Service, petitioned for exemption from Standard No. 302. Both Union City Body Company and Grumman Olson use the same seat supplier.

Upon investigation, Grumman Olson discovered that its seat supplier had changed the seat material in 1981 with no update of the certification. Grumman Olson submitted samples of seat material to an independent test laboratory to determine the burn rate. The three samples submitted averaged 5.1 inches/minute.

Grumman Olson argued that the noncompliance was inconsequential for the following reasons:

1. The noncompliance is marginal.

2. The amount of seat fabric is relatively small.

3. The material is located on a pedestal type seat and is located approximately 20 inches above the floor.

4. Due to the location and size of the seat, any fire in the vehicle would have to be very severe to reach the seat and

set it on fire. Ignition of the seat fabric would be the result of a severe truck fire and not a material contributing factor.

5. All units carry a 5–BC fire extinguisher.

One comment was received on the petition from Patricia Hill, who opposed it principally because she believed the actual burn rate was far from a marginal failure. A further reason presented by her for denial is the possibility that the material could be reused: "It is common practice to remove serviceable parts from a vehicle about to be scrapped for use in the repair of another vehicle."

The agency has decided to grant Grumman Olson's petition as it did the petition by Union City (51 FR 12759, April 15, 1986). Although the burn rates reported exceed the maximum permissible burn rate, the fact that the vehicle is intended for occupancy by only one person reduces the likelihood of injuries to the public at large. The presence of a fire extinguisher in the van minimizes the possibility that a fire will spread. On the basis of these facts the agency has concluded that petitioner has met its burden of persuasion that the noncompliance with Standard No. 302 herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

(Sec. 102, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on June 16, 1986.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86–13921 Filed 6–18–86; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 21–86]

Treasury Notes of June 30, 1988, Series AB–1988

Washington, June 12, 1986.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31, of Title 31, United States Code, invites tenders for approximately $9,750,000,000 of United States securities, designated Treasury Notes of June 30, 1988, Series AB–1988 (CUSIP No. 912827 TT 9), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities.

2. Description of Securities

2.1. The Notes will be dated June 30, 1986, and will accrue interest from that date, payable on a semiannual basis on December 31, 1986, and each subsequent 6 months on June 30 and December 31 through the date that the principal becomes payable. They will mature June 30, 1988, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. Notes in registered definitive form will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Notes in book-entry form will be issued in multiples of those amounts. Notes will not be issued in bearer form.

2.5. Denominational exchanges of registered definitive Notes, exchanges of Notes between registered definitive and book-entry forms, and transfers will be permitted.

2.6. The Department of the Treasury's general regulations governing United States securities apply to the Notes offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, June 18, 1986. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, June 17, 1986, and received no later than Monday, June 30, 1986.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which

tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitve tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Monday, June 30, 1986. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, June 26, 1986. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, June 30, 1986. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted are not required to be assigned if the new Notes are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new Notes are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (Notes offered by this circular) in the name of (name and taxpayer identifying number)". Specific instructions for the issuance and delivery of the new Notes, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment must be delivered at the expense and risk of the holder.

5.4. Registered definitive Notes will not be issued if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (e.g., an individual's social security number or an employer identification number) is not furnished. Delivery of the Notes in registered definitive form will be made after the requested form of registration has been validated, the registered interest account has been established, and the Notes have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, to issue and deliver the Notes on full-paid allotments, and to maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 86-13883 Filed 6-17-86; 2:35 pm]

BILLING CODE 4810-40-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirement Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirement submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission. USIA is requesting a generic clearance of its public opinion surveys which are conducted abroad. We are also requesting clearance of an internal form IAP-90, which is used to collect information on the availability of performing artists for appearances overseas on behalf of the United States.

DATE: Comments must be received by July 21, 1986.

Copies: Copies of the request for clearance (SF-83), supporting statement, instructions, transmittal letter and other documents submitted to OMB for review may be obtained from the USIA Clearance Officer. Comments on the item listed should be submitted to the Office of Information and Regulatory Affairs of OMB, attention Desk Officer for USIA.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Office, John Davenport, U.S. Information Agency, M/

ASP-Room 623, 301 4th Street, SW., Washington, DC, 20547, telephone (202) 485–7505. And OMB Review: Bruce McConnell, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC, 20503, telephone (202) 395–3785.

SUPPLEMENTARY INFORMATION: Title: USIA Surveys.

Form Number. No form used for this information collection. Abstract: Executive Order 1204's of March 27, 1978, requires the Director of the U.S. Information Agency to be the principal advisor within the U.S. Government on International educational, informational and cultural matters. The scope of the USIA Director's advice includes assessments of the impact of U.S. foreign policy on public opinion abroad. USIA conducts public opinion surveys overseas as a means of obtaining such information. The agency seeks clearance from OMB for these foreign opinion surveys. USIA will provide OMB a quarterly report of surveys conducted.

Title: Fact Sheet for Performing Artists Touring Privately. Form Number: IAP–90.

Abstract: Under the requirements of Pub. L. 87–256. The Mutual Educational and Cultural Exchange Act of 1961. The U.S. Information Agency tries to stengthen the understanding and respect of the United States by foreign people through the sponsorship of performing artists and groups. This is done at minimal cost to the U.S. Government by our program of selecting artists on private tours overseas to schedule performances, in countries of the United States Government. The purpose of these programs is to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States, and the contributions being made toward a peaceful and more fruitful life for people throughout the world.

Dated: June 13, 1986.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 86–13896 Filed 6–18–86; 8:45 am]

BILLING CODE 8230–01–M

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation of Authority of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Essence of Indian Art" (included in the list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements between the Asian Art Museum and foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Asian Art Museum of San Francisco, San Francisco, California, beginning on or about June 20, 1986, to on or about November 30, 1986, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: June 16, 1986.

Thomas E. Harvey,

General Counsel and Congressional Liaison.

[FR Doc. 86–13928 Filed 6–18–86; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202–485–7976, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

United States Advisory Commission on Public Diplomacy; Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held July 16, 1986, in Room 600, 301 4th Street, SW., Washington, DC at 10 a.m.

The Commission will meet with Dr. Mark Blitz, Associate Director of USIA's Bureau of Educational and Cultural Affairs, to discuss the Agency's educational and cultural programs. It will also meet with Mr. Marvin Stone, Deputy Director, USIA, to discuss the agency's program and operations review process.

Please call Gloria Kalamets, (202) 485–2468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: June 16, 1986.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc. 86–13927 Filed 6–18–86; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 118
Thursday, June 19, 1986

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 DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C 552b), notice is hereby given that at 9:06 p.m. on Friday, June 13, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Bossier Bank and Trust Company, Bossier City, Louisiana, which was closed by the Commissioner of Financial Institutions for the State of Louisiana, on Friday, June 13, 1986; (2) accept the bid for the transaction submitted by The First National Bank of Shreveport, Shreveport, Louisiana; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Mr. Dean S. Marriot, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: June 16, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-13948 Filed 6-17-86 11:09 am]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 4:00 p.m. on Monday, June 16, 1986, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director C.C. Hope, Jr. (Appointive), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of a recommendation regarding the Corporation's assistance agreement with an insured bank.

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable.

The Board further determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a recommendation regarding the liquidation of assets acquired by the Corporation from The Citizens Bank of Winigan Missouri, Winigan, Missouri (Case No. 46,563-SR).

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter added to the agenda in a meeting open to public observation; and that the matter added to the agenda could be considered in a closed meeting by authority of subsections (c)(4) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552(c)(4) and (c)(9)(B)).

Dated: June 17, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-13985 Filed 6-17-86; 2:34 pm]

BILLING CODE 6714-01-M

3

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, June 24, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

* * * * *

DATE AND TIME: Thursday, June 26, 1986, 10:00 a.m.

PLACE: 999 E. Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates of Future Meetings
Corrections and Approval of Minutes
Final Audit Report—Reagan-Bush '84 Primary
Final Audit Report—Americans With Hart, Inc.
Draft AO 1986-17—Stephen Gillers on behalf of Mark Green
Draft AO 1986-20—Jacqueline Balk-Tusa on behalf of Senator Mark Andrews
Draft AO 1986-21—Timothy C. Houpt on behalf of the Wayne Owens for Congress Committee
Notice of Proposed Rulemaking 11 C.F.R. §§ 110.3, 110.4, 110.5 and 110.6
Draft Revisions to 11 C.F.R. §§ 110.1 and 110.2
Routine Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 86-14010 Filed 6-17-86; 3:50 pm]

BILLING CODE 6715-01-M

4

TENNESSEE VALLEY AUTHORITY

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 51 FR 21272 (June 11, 1986).

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2 p.m. (e.d.t.), Friday, June 13, 1986.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

ADDITIONAL MATTER: The following item was added to the previously announced agenda:

B. Purchase Award

2. Amendment to Contract No. 71C6254114–1 with Westinghouse Electric Corporation for nuclear steam supply systems for Watts Bar Nuclear Plant to provide for U-bend heat treating services for Watts Bar steam generators

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615–632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202–245–0101.

SUPPLEMENTARY INFORMATION:

TVA Board Action

The TVA Board of Directors found at its June 13, 1986 public meeting that, the public interest not requiring otherwise, TVA business required the subject matter of this meeting be changed to include the additional item shown above and that no earlier announcement of this change was possible.

The members of the TVA Board voted to approve the above findings at that meeting, as recorded in the minutes of that meeting.

Dated: June 13, 1986.

Herbert S. Sanger, Jr.,

General Counsel and Secretary.

[FR Doc. 86–13942 Filed 6–17–86; 10:42 am]

BILLING CODE 8120–01–M

federal register

Thursday
June 19, 1986

Part II

Environmental Protection Agency

40 CFR Part 60

Air Pollution; Standards of Performance for New Stationary Sources, Industrial-Commercial-Institutional Steam Generating Units

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2987-6]

Air Pollution; Standards of Performance for New Stationary Sources; Industrial-Commercial-Institutional Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: This proposal would amend Subpart Db of 40 CFR Part 60 to add standards limiting emissions of sulfur dioxide (SO_2) and particulate matter (PM) from new, modified or reconstructed industrial-commercial-institutional steam generating units. The proposed standards would apply to new, modified, and reconstructed industrial-commercial-institutional steam generating units capable of combusting more than 29 MW (100 million Btu/hour) heat input.

Subpart Db, which includes emission standards for nitrogen oxides (NO_x) and PM, was proposed on June 19, 1984 (49 FR 25102) for industrial-commercial-institutional steam generating units. At that time, standards for SO_2 emissions and for PM emissions from oil-fired industrial-commercial-institutional steam generating units were still under development.

Electric utility steam generating units larger than 73 MW (250 million Btu/hour) heat input capacity would not be covered by the proposed standards. They would continue to be subject to separate standards under 40 CFR Part 60, Subpart Da.

The proposed standards implement Section 111 of the Clean Air Act and are based on the determination that emissions from industrial-commercial-institutional steam generating units cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The intent is to require new, modified, and reconstructed industrial-commercial-institutional steam generating units to control emissions to the level achievable by the best demonstrated technological system of continuous emission reduction, considering costs, nonair quality health, and environmental and energy impacts.

DATES: *Comments.* Comments must be received on or before September 2, 1986.

Public Hearing. If anyone requests to speak at a public hearing by July 10, 1986, a public hearing will be held on August 4, 1986 beginning at 10:00 a.m. Persons interested in attending the hearing should call Ms. Shelby Journigan at (919) 541-5578 to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must request to speak at the public hearing by July 10, 1986.

Incorporation by Reference. The incorporation by reference of certain publications in these standards will be approved by the Director of the **Federal Register** as of the date of publication of the final rule.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE-131), Attention Docket Number A-83-27, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

Public Hearing. If anyone requests a public hearing, it will be held at EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Shelby Journigan, Standards Development Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5578.

Background Information Documents. The background information documents (BID's) for the proposed standards consist of nine documents. See **SUPPLEMENTARY INFORMATION** for a listing of these documents. Anyone wishing to review the BID's should contact their respective trade association.

Docket. Docket Number A-83-27, containing supporting information used in developing the proposed standards, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street SW, Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Porter or Ms. Dianne Byrne, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5578.

SUPPLEMENTARY INFORMATION:

Background Information Documents

The background information documents (BID's) for the proposed standards consist of nine documents as follows:

1. Fossil Fuel Fired Industrial Boilers—Background Information, Volumes 1 and 2 (EPA-450/3-82-006a and b, March 1982).
2. Nonfossil Fuel Fired Industrial Boilers—Background Information (EPA-450/3-82-007, March 1982).
3. Industrial Boiler SO_2 Technology Update Report (EPA-450/3-85-009, July 1984).
4. Fluidized Bed Combustion: Effectiveness as an SO_2 Control Technology for Industrial Boilers (EPA-450/3-85-010, September 1984).
5. Industrial Boiler SO_2 Cost Report (EPA-450/3-85-011, November 1984).
6. Projected Impacts of Alternative Sulfur Dioxide New Source Performance Standards for Industrial Fossil Fuel-Fired Boilers (EPA-45013-86-007, March 1985).
7. An Analysis of the Costs and Cost Effectiveness of SO_2 Control for Mixed Fuel-Fired Steam Generating Units (EPA-450/3-86-001, January 1986).
8. An Analysis of the Costs and Cost Effectiveness of Allowing SO_2 Emission Credits for Cogeneration Systems (EPA-450/3-85-030, December 1985).
9. Summary of Regulatory Analysis: New Source Performance Standards for Industrial-Commercial-Institutional Steam Generating Units of Greater than 100 Million Btu/hour Heat Input Capacity (EPA-450/3-86-005, June 1986).

These reports are being provided to industry trade associations. Because of the number of volumes involved and the associated printing and distribution costs, only a limited number of sets was printed. The trade associations have, therefore, agreed to allow member groups access to their document sets. Anyone wishing to review the BID's should contact their representative trade association. If the trade association does not have access to the BID's, a set will be provided to the association for the use of their membership.

A limited number of volumes of documents 1 and 2 above are available through the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161, telephone number (703) 487-4650. The price of the three-volume set is $28.00.

Preamble Outline

I. Introduction
- A. New Source Performance Standards—General
- B. NSPS Decision Scheme
- C. Overview of This Preamble

II. Summary of the Standards
- A. Source Category To Be Regulated
- B. Pollutants To Be Regulated
- C. Best Demonstrated Technology

D. Format for the Standards
E. Actual Standards
F. Performance Testing and Monitoring Requirements
G. Reporting and Recordkeeping
III. Impacts of the Standards
A. Air
B. Water and Solid Waste
C. Energy
D. Control Costs
E. Economic Effects
IV. Solicitation of Public Comment
A. Energy Price Scenarios
B. Exemptions From Percent Reduction Requirements
V. Rationale
A. Selection of Source Category
B. Selection of Pollutants, Fuels, and Affected Facilities
C. Selection of Best System of Continuous Sulfur Dioxide Emission Reduction
D. Selection of Best System of Particulate Matter Emission Reduction
E. Modification and Reconstruction Provisions
F. Performance Test Methods and Monitoring Requirements
G. Reporting and Recordkeeping Requirements
VI. Administrative Requirements
A. Public Hearing
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C. Clean Air Act Procedural Requirements
D. Office of Management and Budget Reviews
E. Regulatory Flexibility Act Compliance

I. Introduction

A. New Source Performance Standards—General

New source performance standards (NSPS or standards) implement Section 111 of the Clean Air Act. The NSPS are issued for categories of sources which cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. They apply to new stationary sources of emissions; i.e., sources whose construction, reconstruction, or modification begins after a standard for them is proposed.

An NSPS requires these sources to control emissions to the level achievable by the best system of continuous emission reduction, considering costs.

B. NSPS Decision Scheme

An NSPS is the product of a series of decisions related to certain key elements for the source category being considered for regulation. The elements identified in this "decision scheme" are generally the following:

1. Source category to be regulated—usually an entire industry but can be a process or group of processes within an industry.

2. Pollutant(s) to be regulated—the particular substance(s) emitted by the source that the standard will control.

3. Best system of continuous emission reduction—the technology on which the standards will be based; i.e.,

> . . . application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements) the Administrator determines has been adequately demonstrated. [section 111(a)(1)].

4. Affected facility—the pieces or groups of equipment that comprise the sources to which the standards will apply.

5. Emission points to be regulated—within the affected facility, the specific physical location emitting pollutants (e.g., vents, stacks, and equipment leaks).

6. Format for the standards—the form in which the standards are expressed; i.e., as a percent reduction in emissions, as pollutant concentrations, or as equipment standards.

7. Actual standards—based on what the best demonstrated technology can achieve, the maximum permissible emissions.

> **Note.**—In general, standards do not require that a specific technology be used to achieve them. The source owner/operator may select the method for achieving the pollution control required.

8. Other possible considerations—In addition, NSPS often include: standards for visible emissions, modification/reconstruction considerations, monitoring requirements, performance test methods, and reporting and recordkeeping requirements.

C. Overview of This Preamble

This preamble will:

1. Summarize the important features of this NSPS by discussing the conclusions reached with respect to each of the elements in the decision scheme.

2. Describe the environmental, energy, and economic impacts of this NSPS.

3. Present a rationale for each of the decisions in the decision scheme.

4. Present a regulatory impact analysis.

5. Discuss administrative requirements relevant to this action.

II. Summary of the Standards

A. Source Category To Be Regulated

The proposed standards for SO_2 would apply to industrial-commercial-institutional steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) combusting coal, oil, or mixtures of these fuels with any other fuels. The proposed standards for PM would apply to industrial-commercial-institutional steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) combusting oil or mixtures of oil with any other fuels.

B. Pollutants To Be Regulated

Emissions of SO_2 and PM would be regulated under the proposed standards.

C. Best Demonstrated Technology

The proposed standards are based on the preliminary conclusion that flue gas desulfurization (FGD) represents the best demonstrated technology for reducing emissions of SO_2 from coal-fired industrial-commercial-institutional steam generating units and that FGD represents the best demonstrated technology for reducing emissions of SO_2 and PM from oil-fired units. Flue gas desulfurization systems can be defined as processes in which the flue gases containing SO_2 are contacted by alkaline reagents that react with and absorb the SO_2 gases.

The determination of best demonstrated technology reflects the Agency's consideration of a wide variety of factors. These factors include the feasibility and availability of a technology, the costs of control, and energy and environmental effects. Before promulgating a final rule, the Agency will review its preliminary finding that FGD represents best demonstrated technology in light of the public comments received and the Agency's own additional analyses.

D. Format for the Standards

The proposed standards for SO_2 include both a percent reduction requirement and an emission limit for SO_2. Emissions would be calculated as nanograms of pollutant per joule of heat input (ng/J) or pounds of pollutant per million Btu of heat input (lb/million Btu) supplied by the fuel. The proposed standards for PM establish an emission limit which is also calculated on a ng/J or lb/million Btu heat input basis.

E. Actual Standards

1. Sulfur Dioxide

The proposed regulation would require all coal-fired industrial-commercial-institutional steam generating units equipped with conventional wet FGD systems or lime spray drying systems and all coal-fired fluidized bed combustion (FBC) systems to achieve a 90 percent reduction in SO_2 emissions and meet an emission limit of 516 ng SO_2/J (1.2 lb SO_2/million Btu) heat input. Coal-fired steam generating units using an emerging technology for SO_2 control would be required to

achieve a 50 percent reduction in SO_2 emissions and meet an emission limit of 258 ng SO_2/J (0.6 lb SO_2/million Btu) heat input. Steam generating units firing mixtures of coal with any other fuel (except oil or natural gas) and having an annual fossil fuel utilization factor for coal of 30 percent (0.30) or less would be required to meet an SO_2 emission limit of 516 ng/J (1.2 lb SO_2/million Btu) heat input.

The proposed standards would require all oil-fired industrial-commercial-institutional steam generating units equipped with conventional wet FGD systems or lime spray drying systems and all oil-fired FBC systems to achieve a 90 percent reduction in SO_2 emissions and meet an emission limit of 344 ng SO_2/J (0.8 lb SO_2/million Btu) heat input. Oil-fired steam generating units using an emerging technology to control SO_2 emissions would be required to achieve a 50 percent reduction in SO_2 emissions and meet an emission limit of 172 ng SO_2/J (0.4 lb SO_2/million Btu) heat input. Steam generating units firing oil and meeting an SO_2 emission limit of 86 ng/J (0.2 lb SO_2/million Btu) or less would not be required to achieve a further percent reduction in SO_2 emissions.

The emission limit for steam generating units firing a mixture of coal and oil would be determined by proration.

2. Particulate Matter

The proposed regulation would establish a PM emission limit of 43 ng/J (0.1 lb/million Btu) heat input for industrial-commercial-institutional steam generating units firing oil, either alone or in combination with other fuels.

F. Performance Testing and Monitoring Requirements

The proposed regulation would require continuous monitoring of SO_2 emissions. Compliance with the percent reduction requirements and emission limits would be determined on a continuous 30-day rolling average basis by calculating the average percent reduction and SO_2 emissions for 30 consecutive steam generating unit operating days, as measured by the continuous emission monitoring system (CEMS). These calculations would be made in accordance with Reference Method 19 or 19A.

The performance testing and monitoring requirements for PM would be the same as those proposed previously for coal-, wood-, and solid waste-fired steam generating units (49 FR 25102, June 19, 1984).

G. Reporting and Recordkeeping

The proposed regulation would require steam generating unit owners or operators to submit a notification of the intent to initiate operation of a new, modified, or reconstructed steam generating unit, as well as the results of the initial performance test and performance evaluation of the CEMS, if applicable. In addition, if an owner or operator installs an emerging technology to control SO_2 emissions, a complete description of the technology would be submitted.

Quarterly reports of SO_2 emissions would also be required under the proposed regulation. Each report would include all 30-day rolling average percent reduction and emission values calculated during the calendar quarter. Records of all data collected would be maintained for a period of 2 years.

III. Impacts of the Standards

A. Air

Compared to a steam generating unit as presently controlled by a typical State implementation plan (SIP), the proposed standards could reduce emissions of SO_2 from a typical industrial-commercial-institutional steam generating unit by between 465 Mg/year (510 tons/year) and 2,420 Mg/year (2,670 tons/year), depending on steam generating unit size and the type of fuel fired.

The proposed standards could reduce emissions of PM from a typical oil-fired industrial-commercial-institutional steam generating unit by about 49 Mg/year (54 tons/year).

In the fifth year after this NSPS becomes applicable, nationwide emissions of SO_2 would be decreased by about 290,000 Mg/year (320,000 tons/year) compared with projected emission levels under the regulatory baseline. Nationwide emissions of PM would be decreased by about 12,000 Mg/year (13,000 tons/year) compared with projected emissions under the regulatory baseline.

B. Water and Solid Waste

In the fifth year after the proposed standards become applicable, national solid and liquid waste production associated with industrial- commercial-institutional steam generating units could nearly double compared to the regulatory baseline. This increase, however, would represent only a small portion of the total waste production at most manufacturing plants employing steam generating units. In addition, the wastes produced by SO_2 control processes are nonhazardous and nontoxic and can be disposed of along with the other manufacturing plant wastes using traditional treatment and disposal techniques. Therefore, no adverse water or solid waste impacts are anticipated as a result of the proposed standards.

C. Energy

The proposed standards will not result in significant impacts on national fuel use markets. Fuel switching from coal and oil to natural gas is projected to occur, but the impact of this fuel switching on coal, oil, and natural gas markets would be small.

D. Control Costs

1. Typical Steam Generating Unit Costs

Under the proposed standards, the capital cost of a typical industrial-commercial-institutional steam generating unit could increase by between 4 and 25 percent over the costs at the regulatory baseline. The magnitude of the increase would depend on several factors, including steam generating unit size, capacity factor, regional location, the type of control device installed, and the type of fuel fired. Similarly, annualized costs for a typical steam generating unit could increase by between 6 and 22 percent over the costs at the regulatory baseline, depending on the factors mentioned above.

2. Nationwide Costs

During the fifth year of applicability of the proposed standards, the nationwide annualized costs for industrial-commercial-institutional steam generating units would be about $3.93 billion, compared with about $3.77 billion under the regulatory baseline. This represents an increase in annualized costs of about $165 million, or a potential national annualized cost increase of about 4 percent as a result of the proposed standards.

E. Economic Effects

The industry-specific economic effects of the proposed standards were assessed for six industries which were considered likely to experience the most severe impacts. For these six industries, product prices were projected to increase by less than 0.01 to 1.5 percent in the fifth year following promulgation of the proposed standards, assuming "full cost pass-through" of increased steam costs. Value added was projected to increase by about 0.01 to 5 percent, again assuming "full cost pass-through." Assuming "full cost absorption" of increased steam costs, return on assets was projected to decrease by 0.03 to 2.8 percentage points. Again, this analysis

was based on the "worse case" scenario for the most severely affected industry groups.

IV. Solicitation of Public Comment

The standards being proposed today reflect the Agency's directive [section 111(a)(1)(A)(ii) of the Clean Air Act] to establish percent reduction standards for fossil fuel-fired sources provided the impacts of such requirements are reasonable. Accordingly, today's proposed standards also reflect the Agency's judgment of what represents reasonable impacts. To determine whether impacts are reasonable, the Agency considers such factors as costs, emission reductions, nonair environmental impacts, and the cost effectiveness of the standards compared to less stringent regulatory options. Each of these impacts is discussed in this preamble.

A. Energy Price Scenarios

The Agency recognizes that the cost impacts associated with today's standards are directly affected by the fuel prices that were projected at the time that the impact analyses were conducted and that the energy scenario on which the national impacts analysis is based does not reflect current expectations of future energy prices.

It is anticipated that an energy scenario prepared at the current time would reflect generally lower oil prices and a higher degree of uncertainty in natural gas prices than the scenario used in the current analysis. This would likely result in even lower coal penetration in the steam generating unit market than the current analysis indicates due to lower oil prices and would likely result in a wider range of projected emission reductions and cost effectiveness values resulting from the control of oil combustion due to uncertainty in relative oil and gas prices.

The Agency intends to update its energy price scenarios between proposal and promulgation of these standards to determine whether the costs, emission reductions and, in particular, the cost effectiveness of this rule will be altered significantly. When the Agency completes its analysis, this information will be added to the docket.

B. Exemptions from Percent Reduction Requirements.

The Agency solicits comments on whether to expand the exemption from percent reduction requirements for some steam generating units based upon their size or capacity utilization rates. Specifically, comments are solicited on whether percent reduction standards should apply only to coal-, oil-, and mixed fuel-fired steam generating units with heat input capacities greater than 73 MW (250 million Btu/hour) (or some other size category) or to steam generating units with annual fossil fuel utilization rates of more than 45 percent (or 30 or 15 percent).

Standards for steam generating units exempted from percentage reduction requirements would be 516 ng SO_2/J (1.2 lb SO_2/million Btu) for coal-fired steam generating units, 344 ng SO_2/J (0.8 lb SO_2/million Btu) for oil-fired steam generating units, and 516 ng SO_2/J (1.2 lb SO_2/million Btu) for mixed fuel-fired steam generating units. EPA also solicits comments on other alternative standards for steam generating units that are small or that have low capacity utilization rates.

A key factor influencing the cost effectiveness of this proposed rule is the projected ability of firms to switch from oil to natural gas for steam generating units of smaller size and steam generating units that have low capacity utilization rates. Given the dramatic changes in oil and natural gas prices that have transpired since the Agency undertook its energy scenarios, the cost effectiveness of requiring a percent reduction in SO_2 emissions for these categories of steam generating units could change. The Agency intends to analyze the impact of revised energy price forecasts upon the cost effectiveness of SO_2 control for smaller steam generating units and steam generating units with low capacity utilization rates after proposal and add this analysis to the docket.

As discussed above, classes of steam generating units would be exempt from percent reduction requirements on the basis that the impacts of a percent reduction requirement would be deemed unreasonable, and thus that the technologies necessary to achieve such percent reductions could not be said to be "adequately demonstrated" within the meaning of section 111 of the Act. Given the magnitudes of the costs and emission reductions associated with the controls of these steam generating units, the Agency is interested in receiving information from commenters on what should be the basis for determining when the impacts of a percent reduction requirement are unreasonable.

The Agency also specifically solicits comments on whether the percentage reduction requirement in section 111(a)(1)(A)(ii) of the Act applies to this standard. Comments are invited on whether establishing standards based on the application of emission control technology (e.g., flue gas desulfurization) under the projection that most sources will fuel switch and thereby avoid the costs associated with the emission control technology is an appropriate interpretation of this section of the Act. In addition, comments are invited on the use of low sulfur fuels as the basis of NSPS, and the percent reduction associated with the pretreatment of very low sulfur oils.

V. Rationale

A. Selection of Source Category

On August 21, 1979, a priority list for development of additional NSPS was published in accordance with sections 111(b)(1)(A) and 111(f)(1) of the Clean Air Act. This list identified 59 major stationary source categories that were judged to contribute significantly to air pollution that could reasonably be expected to endanger public health or welfare. Fossil fuel-fired industrial steam generating units ranked eleventh on this priority list of sources for which NSPS would be established in the future.

Of the 10 sources ranked above fossil fuel-fired industrial steam generating units on the priority list, nine were major sources of volatile organic compound (VOC) emissions. Because there are many areas which have not attained the national ambient air quality standard for (NAAQS) ozone, major sources of VOC emissions were accorded a very high priority. The remaining source category ranked above fossil fuel-fired industrial steam generating units was stationary internal combustion engines, a major source of NO_x emissions. Fossil fuel-fired industrial steam generating units were the highest ranked source of PM and SO_2 emissions, and the second highest ranked source of NO_x emissions when the priority list of source categories not previously regulated by NSPS was published.

Wood and solid waste are widely used as fuel in industrial steam generating units. As a result, industrial-commercial-institutional steam generating units firing these fuels could also be significant contributors to future air pollution. In addition, large commercial and institutional steam generating units have essentially the same design, fuel capability, and emissions potential as industrial steam generating units. Consequently, on June 19, 1984, an amendment to the priority list was proposed that would expand the source category of industrial fossil fuel-fired steam generating units to cover all steam generating units, including both fossil fuel-fired and nonfossil fuel-fired steam generating units, as well as steam generating units used in commercial and institutional applications (49 FR 25156,

June 19, 1984). Consistent with this proposed amendment of the priority list, the source category for the proposed standards includes both fossil and nonfossil fuel-fired industrial, commercial and institutional steam generating units.

Fossil and nonfossil fuel-fired steam generating units are significant sources of emissions of three major pollutants: PM, SO_2, and NO_x. The expected construction of new coal-, oil-, and fossil/nonfossil fuel-fired steam generating units as a result of plant expansions and replacements of existing steam generating units is expected to result in a growth in emissions from this source category. A number of these new facilities will fire coal and high sulfur oil. Combustion of wood and solid waste in combination with coal or oil is also projected to increase due to the lower cost of these nonfossil fuels. These developments could result in significant increases in SO_2 emissions if standards of performance are not established for new industrial-commercial-institutional steam generating units.

National ambient air quality standards have been established for SO_2 because of its known adverse effects on public health and welfare. Impacts of this pollutant have been documented in a criteria document prepared under Section 108 of the Clean Air Act. These effects are a major basis for concluding that emissions from industrial-commercial-institutional steam generating units constitute a potential danger to public health and welfare. Also significant is the fact that many new industrial-commercial-institutional steam generating units will be located in urban areas where a large population will be exposed to the emissions.

B. Selection of Pollutants, Fuels, and Affected Facilities

Emissions of PM from the combustion of oil and SO_2 emissions from the combustion of oil, coal and mixed fuels (i.e., combustion of mixtures of fossil fuels or fossil and nonfossil fuels) would be the pollutants regulated under the proposed standards. The NSPS have already been proposed that would limit PM emissions from industrial-commercial-institutional steam generating units firing coal, wood, or solid waste and NO_x emissions from steam generating units firing mixtures of fossil fuels or fossil and nonfossil fuels (49 FR 25102, June 19, 1984).

The potential impacts associated with this "phased" approach to rulemaking were considered prior to proposing standards for PM and NO_x. The standards being proposed today are not retroactive and affect only new steam generating units built after this date. No potential problems have been identified that might result from this phased approach to rulemaking and no unreasonable impacts are anticipated to occur.

The proposed standards would limit emissions of SO_2 from steam generating units firing oil, coal, and fuel mixtures containing any of these fuels and emissions of PM from oil-fired steam generating units. The proposed standards would cover industrial-commercial-institutional steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour). Analyses of the projected new steam generating unit population indicate that nearly all new steam generating units larger than 29 MW (100 million Btu/hour) heat input capacity will be industrial steam generating units, with only a few commercial and institutional steam generating units in this size range. The steam generating unit size limit of 29 MW (100 million Btu/hour) heat input capacity would, therefore, include only the largest commercial and institutional steam generating units and would concentrate the scope of the proposed standards on industrial steam generating units. Utility steam generating units larger than 73 MW (250 million Btu/hour) heat input capacity remain subject to Subpart Da.

Development of NSPS limiting emissions of sulfur oxides, NO_x, and PM from steam generating units with heat input capacities of 29 MW (100 million Btu/hour) or less is currently underway. The type of unit used, the physical design characteristics of these units, the cost impacts of emission control systems on steam production costs, and the application of steam are often different for smaller steam generating units than for larger steam generating units. Because these factors have been found to be materially different, separate study of smaller steam generating units is appropriate. This will assure that an adequate evaluation is conducted of the technical and economic factors associated with applying emission controls to smaller steam generating units.

C. Selection of Best System of Continuous Sulfur Dioxide Emission Reduction

The regulatory analyses discussed below are summarized and discussed in greater detail in the set of nine BID documents listed in the introduction to this preamble. In particular, the document entitled "Summary of Regulatory Analysis: New Source Performance Standards for Industrial-Commercial-Institutional Steam Generating Units of Greater Than 29 MW (100 million Btu/hour) Heat Input Capacity" presents an overview of the analyses and regulatory alternatives considered in developing the proposed standards. This document is referenced extensively in the discussion below, and is referred to as "Summary of Regulatory Analysis" for the sake of brevity.

The 1977 amendments to section 111 of the Clean Air Act require standards of performance for new fossil fuel-fired steam generating units to include both an emission limit and a requirement that emissions be reduced by a specified percentage. Section 111 also requires that the emission limit and the percentage reduction requirement reflect the performance of the best technological system of continuous emission reduction which has been adequately demonstrated, taking into consideration the costs, energy requirements, and environmental impacts of achieving such emission reduction (i.e., best demonstrated technology). In determining the degree of emission reduction that has been demonstrated, section 111 allows standards of performance to distinguish among various classes, types, and sizes of steam generating units in order to reflect best demonstrated technology.

In light of these Clean Air Act requirements, the analyses of alternative standards of performance examined various classes, types, and sizes of industrial-commercial-institutional steam generating units to determine if a percent reduction requirement would have unreasonable cost, energy, or environmental impacts. In addition, the analyses examined the incremental cost, energy, and environmental impacts of a percent reduction requirement over the impacts of a standard based on the use of low sulfur fuels. Thus, the requirements set forth in section 111 of the Clean Air Act have largely determined both the type and the scope of the analyses that have been performed in support of this rulemaking.

Another point that should be noted is that the analyses are influenced, in particular, by the energy scenarios that have been used to bound the regulatory analysis. As described in "Summary of Regulatory Analysis" under "Consideration of National Impacts," two distinct crude oil price scenarios were considered in performing the national impact analysis. One of these price scenarios assumed a 1985 base price of $25 per barrel with only moderate future increases in crude oil

prices, resulting in a relatively high penetration of oil in the new industrial-commercial-institutional steam generating unit energy market. Under this high oil penetration scenario, the model used to calculate national impacts, the Industrial Fuel Choice Analysis Model (IFCAM), predicted that under the regulatory baseline residual oil and natural gas would compete for the new steam generating unit energy demand, with residual oil capturing about 65 percent, and natural gas about 30 percent, of the 1990 energy demand. This scenario reflected a "best guess" as to future fuel use in new industrial-commercial-institutional steam generating units.

In response to concerns that this scenario might significantly underestimate coal use, the other price scenario assumed relatively sharp increases in future crude oil prices, resulting in a relatively high penetration of coal in the new industrial-commercial-institutional steam generating unit energy market. Under this high coal penetration scenario, IFCAM predicted that under the regulatory baseline coal and natural gas would compete for the new steam generating unit energy demand, with coal capturing about 60 percent, and natural gas about 40 percent, of the 1990 energy demand.

Another point that should be noted, and which has significantly shaped the framework within which the basis of standards of performance for industrial-commercial-institutional steam generating units have been selected, is the relative insensitivity of cost impacts to the specific level of a percent reduction requirement. This relative insensitivity permits the selection of the proposed standards to be divided into a two-step process. The decision concerning the basis of the standards (i.e., require a percent reduction in SO_2 emissions or permit the use of low sulfur fuels) can be separated from the decision regarding the specific requirements to include in the standards (i.e., 50, 70, 90, etc., percent reduction, if percent reduction is selected as the basis of the standards; or 1.7, 1.2, etc., lb SO_2/million Btu for coal-fired steam generating units; or 1.6, 0.8, 0.3, etc., lb SO_2/million Btu for oil-fired steam generating units, if use of low sulfur fuels is selected as the basis for standards).

As discussed in "Summary of Regulatory Analysis" under "Consideration of National Impacts," there is little difference in national cost impacts among alternative control levels requiring various percent reductions in SO_2 emissions. For example, under the high oil penetration scenario, national cost impacts range from $3,474 million/year to $3,482 million/year for the various alternatives considered which would require a percent reduction in emissions. Similarly, under the high coal penetration scenario, national cost impacts range from $3,754 million/year to $3,758 million/year for the various percent reduction alternatives considered. Differences of such small relative magnitude would not result in substantially different cost impacts on a national basis. Consequently, it is not necessary to consider numerous percent reduction levels in determining whether a standard requiring a percent reduction in emissions would have unreasonable impacts compared to a standard based on the use of low sulfur fuels. Rather, in considering whether the standards should require a percent reduction in SO_2 emissions or be based on the use of low sulfur fuels, a single percent reduction level can be used as representative of the impacts associated with standards requiring a percent reduction in SO_2 emissions.

For purposes of the analysis focusing on whether the basis of the standards should be percent reduction requirements or the use of low sulfur fuels, a 90 percent reduction requirement was selected to represent the range of percent reduction requirements that could be included in standards of performance. This percent reduction level was selected for this purpose for several reasons. It represents the level of performance which has been demonstrated by various FGD system technologies, as discussed in "Summary of Regulatory Analysis" under "Performance of Demonstrated Emission Control Technologies," and it is consistent with the intent of Section 111 of the Clean Air Act that standards of performance reflect the performance of best demonstrated emission control technologies. In addition, as discussed in "Summary of Regulatory Analysis" under "Consideration of Demonstrated Emission Control Technology Costs," a 90 percent reduction requirement is more cost effective than lower percent reduction requirements, such as 50 or 70 percent.

As also discussed in "Summary of Regulatory Analysis" under "Consideration of National Impacts," there are relatively greater differences in annualized costs among alternative control levels based on the use of low sulfur fuels. This is particularly true under the high oil penetration scenario where annualized costs for the more stringent control level (i.e., Control Level II) are about $50 million/year greater than the costs associated with the less stringent control level (i.e., Control Level I). Consequently, in the case of low sulfur fuel-based standards for oil-fired steam generating units, two alternatives were used in the analysis to represent standards based on the use of low sulfur oil: an emission level of 344 ng SO_2/J (0.8 lb SO_2/million Btu) and an emission level of 688 ng SO_2/J (1.6 lb SO_2/million Btu) heat input.

Under the high coal penetration scenario, however, the difference in annualized costs among alternative low sulfur fuel standards is less, amounting to under $10 million/year. Consequently, in evaluating the impacts of standards based on the use of low sulfur coal, a single alternative was used to represent standards based on the use of low sulfur coal: An emission level of 516 ng SO_2/J (1.2 lb SO_2/million Btu) heat input.

In summary, several points should be kept in mind in reviewing the discussion presented below summarizing selection of the proposed standards. First, the analysis has focused on the incremental environmental, cost, and energy impacts associated with standards that include a percent reduction requirement over those associated with standards based on the use of low sulfur fuels. In evaluating these impacts, the analysis has distinguished among various classes, types, and sizes of steam generating units.

Second, impacts of various standards have been estimated for two widely different scenarios of future fuel use in industrial-commercial-institutional steam generating units. For the reasons mentioned above, these scenarios cannot be used to assess quantitatively the impact of various standards on market interactions between coal and oil.

Finally, and perhaps most significantly, the relative insensitivity of cost impacts to the specific level of a percent reduction requirement permits the selection of standards of performance to be subdivided into a two-step process. First, the basis of standards can be considered and selected using a single percent reduction requirement to represent the full range of percent reduction requirements that could be included in standards of performance. Also, in the case of coal, a single emission limit, and in the case of oil, two emission limits, can be used to represent the range of emission limits that could be included in standards of performance based on the use of low sulfur fuels. Second, after selecting the basis of the proposed standards, the specific percent reduction requirements

or the specific emission limits reflecting the use of low sulfur fuels which should be included in the proposed standards can be considered and selected.

1. Basis of Standard for Coal-Fired Steam Generating Units

In addition to the points outlined and discussed above, it should also be noted that the regulatory analysis examined the potential impacts of NSPS from three different perspectives: The perspective of overall national impacts; the perspective of specific industries subject to the standards; and the perspective of individual steam generating units subject to the standards. At the national level, the regulatory analysis examined the cost and emission impacts associated with both standards requiring a percent reduction in SO_2 emissions and standards based on the use of low sulfur coal. At the specific industry level, the analysis focused more narrowly on selected industries considered most likely to experience adverse economic impacts associated with standards requiring a percent reduction in emissions. Finally, at the individual steam generating unit level, the cost and emission impacts associated with standards requiring a percent reduction in SO_2 emissions and standards based on the use of low sulfur coal were examined from the perspective of various sizes, types, and geographic locations of steam generating units.

National Impacts. As noted above and discussed in "Summary of Regulatory Analysis" under "Consideration of National Impacts," the national impacts associated with NSPS for fossil fuel-fired steam generating units were analyzed through the use of a computer model known as IFCAM. As also noted above, the high coal penetration scenario was used to assess the potential impacts of a set of regulatory alternatives limiting SO_2 emissions from coal-fired steam generating units. The regulatory alternatives were structured to examine impacts as a function of steam generating unit size (heat input capacity).

The regulatory alternatives become progressively more stringent by first requiring only steam generating units with heat input capacities greater than 73 MW (250 million Btu/hour) to achieve a percent reduction in SO_2 emissions, but then requiring steam generating units with progressively lower heat input capacities to achieve a percent reduction in SO_2 emissions as well. The most stringent regulatory alternative requires all coal-fired industrial-commercial-institutional steam generating units with heat input capacities of greater than 29 MW (100 million Btu/hour) to achieve a percent reduction in SO_2 emissions. The least stringent regulatory alternative is based on the use of low sulfur coal for all coal-fired industrial-commercial-institutional steam generating units with heat input capacities of greater than 29 MW (100 million Btu/hour).

As discussed in "Summary of Regulatory Analysis" under "Consideration of National Impacts" and shown in Table 8–7, assuming a high coal penetration in new fossil fuel-fired steam generating units, standards based on the use of low sulfur coal for all new coal-fired steam generating units with heat input capacities of greater than 29 MW (100 million Btu/hour) result in a projected reduction in national SO_2 emissions of 192,000 Mg/year (212,000 tons/year) over the regulatory baseline in the fifth year following proposal of standards (i.e., 1990). In comparison, standards requiring all new coal-fired steam generating units with heat input capacities of greater than 29 MW (100 million Btu/hour) to achieve a percent reduction in emissions result in projected national SO_2 emission reductions of 281,000 Mg/year (310,000 tons/year) over the regulatory baseline in 1990.

Of the difference in projected reductions in national SO_2 emissions between these two alternatives (about 89,000 Mg/year), somewhat less than half (about 44,000 Mg/year) results from standards requiring all new coal-fired steam generating units with heat input capacities greater than 73 MW (250 million Btu/hour) to achieve a percent reduction in SO_2 emissions. Additional national SO_2 emission reductions of 15,000 Mg/year (17,000 tons/year), 21,000 Mg/year (23,000 tons/year), and 9,000 Mg/year (10,000 tons/year) result from requiring all new coal-fired steam generating units with heat input capacities of greater than 58 MW (200 million Btu/hour), 44 MW (150 million Btu/hour), and 29 MW (100 million Btu/hour), respectively, to achieve a percent reduction in SO_2 emissions.

This analysis, therefore, projects that standards requiring all new coal-fired steam generating units to achieve a percent reduction in SO_2 emissions result in greater reductions in national SO_2 emissions than standards based on the use of low sulfur coal. Moreover, the analysis also projects that standards requiring all new coal-fired steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) to achieve a percent reduction in SO_2 emissions result in significantly greater national SO_2 emission reductions than standards requiring only relatively larger coal-fired steam generating units to achieve a percent reduction in emissions.

As is also shown in Table 8–7, assuming a high coal penetration in new fossil fuel-fired steam generating units, NSPS based on the use of low sulfur coal for all new coal-fired steam generating units with heat input capacities of greater than 29 MW (100 million Btu/hour) result in a projected national annualized cost increase of $18 million/year over the regulatory baseline in 1990. This represents an increase of less than 1 percent in the total national annualized costs associated with operation of all new fossil fuel-fired steam generating units projected to be constructed between 1986 and 1990.

In comparison, standards requiring all new coal-fired steam generating units with heat input capacities of greater than 29 MW (100 million Btu/hour) to achieve a percent reduction in emissions result in projected national annualized cost increases of about $32 million/year over the regulatory baseline in 1990. This represents an increase in total national annualized costs of about 1 percent.

Of the difference in projected increases in total national annualized costs between these two alternatives (about $14 million/year), nearly all ($11 million/year) results from standards requiring all new coal-fired steam generating units with heat input capacities greater than 44 MW (150 million Btu/hour) to achieve a percent reduction in SO_2 emissions. As shown in Table 8–7, the analysis indicates that regulatory alternatives requiring only relatively larger coal-fired steam generating units (i.e., those with heat input capacities of greater than 73 MW) to achieve a percent reduction in SO_2 emissions result in marginally greater total national annualized costs than alternatives requiring all new coal-fired steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) to achieve a percent reduction in emissions.

As discussed in "Summary of Regulatory Analysis" under "Consideration of National Impacts," this apparent anomaly is explained by the larger number of natural gas-fired steam generating units that are projected in response to increasingly stringent regulatory alternatives. In response to standards that require coal-fired steam generating units with lower and lower heat input capacities to

achieve a percent reduction in emissions, an increasing number of these steam generating units are projected to fire natural gas instead of coal to avoid the costs associated with installing and operating FGD systems.

As discussed in "Summary of Regulatory Analysis" under "Consideration of National Impacts," IFCAM selects the least cost alternative available to comply with each regulatory alternative examined. This includes the option of firing an alternative fuel, such as natural gas, as well as installation of an FGD system. The least cost alternative is selected on the basis of the after-tax net present value associated with each option available to comply with the regulatory alternative in question. The IFCAM projects total national annualized costs for each regulatory alternative examined, however, using the annualized costs—not the after-tax net present value— associated with each projected new steam generating unit.

As discussed in "Summary of Regulatory Analysis" under "Consideration of Demonstrated Emission Control Technology Costs" and shown in Table 6–19, while firing natural gas instead of coal may result in an increase in after-tax net present value, it can also result in a decrease in annualized costs. Thus, it is possible for total projected national annualized costs to decrease in response to increasingly stringent regulatory alternatives.

Under the assumption of high coal penetration in new fossil fuel-fired steam generating units, therefore, this analysis indicates that the increase in total national annualized costs associated with standards requiring all new coal-fired steam generating units to achieve a percent reduction in SO_2 emissions is small compared to the increase in total national annualized costs associated with standards based on the use of low sulfur coal.

Based on the projected national emission reductions and annualized cost increases described above, the national average cost effectiveness of NSPS based on the use of low sulfur coal for all new coal-fired steam generating units with heat input capacities of greater than 29 MW (100 million Btu/hour) is about $92/Mg ($85/ton) of SO_2 removed. In comparison, standards requiring all new coal-fired steam generating units with heat input capacities of greater than 29 MW (100 million Btu/hour) to achieve a percent reduction in emissions result in a national average cost effectiveness of $110/Mg ($100/ton) of SO_2 removed.

The national incremental cost effectiveness of a standard requiring all new coal-fired steam generating units with heat input capacities of greater than 29 MW (100 million Btu/hour) to achieve a percent reduction in emissions over a standard based on the use of low sulfur coal is about $150/Mg ($140/ton) of SO_2 removed. As discussed in "Summary of Regulatory Analysis" under "Consideration of National Impacts" and shown in Table 8–7, this is considerably less than the national incremental cost effectiveness (about $635/Mg of SO_2 removed) of a standard requiring only new coal-fired steam generating units with heat input capacities of greater than 73 MW (250 million Btu/hour) to achieve a percent reduction in SO_2 emissions over a standard based on the use of low sulfur coal for all new coal-fired steam generating units. The national incremental cost effectiveness of a standard requiring all new coal-fired steam generating units to achieve a percent reduction in SO_2 emissions over the next most stringent regulatory alternative, requiring only new coal-fired steam generating units with heat input capacities of greater than 44 MW (150 million Btu/hour) to achieve a percent reduction in SO_2 emissions, is also less, about $330/Mg ($300/ton) of SO_2 removed.

This apparent anomaly of decreasing national incremental cost effectiveness with increasingly stringent regulatory alternatives results from the larger number of natural gas-fired steam generating units that are projected under increasingly stringent standards. As mentioned above and discussed in "Summary of Regulatory Analysis" under "Consideration of National Impacts," increased firing of natural gas instead of coal can lead to decreased national annualized costs. In addition, increased firing of natural gas results in large reductions in SO_2 emissions. As a result, the national incremental cost effectiveness of increasingly stringent standards can decrease and, as shown in Table 8–7, can even become negative in some cases.

Under the assumption of high coal penetration in new fossil fuel-fired steam generating units, therefore, this analysis indicates that the national average cost effectiveness of standards requiring new coal-fired steam generating units to achieve a percent reduction in SO_2 emissions is not substantially higher than the national average cost effectiveness of standards based on the use of low sulfur coal. In addition, this analysis indicates that the national incremental cost effectiveness of standards requiring coal-fired steam generating units with heat input capacities of greater than 29 MW (100 million Btu/hour) to achieve a percent reduction in emissions over standards based on the use of low sulfur coal is about $165/Mg ($150/ton) of SO_2 removed.

As also discussed in "Summary of Regulatory Analysis" under "Consideration of National Impacts" and shown in Table 8–7, assuming a high coal penetration in new fossil fuel-fired steam generating units, NSPS based on the use of low sulfur coal for all new coal-fired steam generating units with heat input capacities of greater than 29 MW (100 million Btu/hour) result in a projected reduction in national coal consumption of 40 million GJ/year (36 trillion Btu/year) in 1990 compared to the regulatory baseline. This decline in national coal use is projected to be offset by an equivalent increase in natural gas use. Standards requiring all new coal-fired steam generating units with heat input capacities of greater than 29 MW (100 million Btu/hour) to achieve a percent reduction in SO_2 emissions result in a projected reduction in national coal consumption of 140 million GJ/year (137 trillion Btu/year) in 1990 compared to the regulatory baseline. This decline in coal use is also projected to be offset by an equivalent increase in natural gas use.

The difference between these two alternatives in projected reductions in national coal use (about 100 trillion Btu/year) in 1990 is distributed relatively uniformly among the intermediate regulatory alternatives examined. As increasingly smaller coal-fired steam generating units are required to achieve a percent reduction in emissions, an increasingly greater number of these units are projected to fire natural gas instead of coal. The impact of this fuel choice on national coal and natural gas markets would be negligible, however. As shown in Table 8–9 of "Summary of Regulatory Analysis," a decline in coal consumption of 140 million GJ/year (137 trillion Btu/year) in 1990 represents a reduction in projected industrial coal consumption of less than 3 percent, and a reduction in projected total national coal consumption of less than 1 percent. As also shown in Table 8–9, no disproportionate impacts on Midwestern coal markets were projected. Similarly, as shown in Table 8–8, projected national natural gas consumption by the industrial sector would increase in 1990 by a maximum of about 2 percent under standards requiring all new coal-fired steam generating units with heat input capacities of greater than 29 MW (100 million Btu/hour) to achieve a percent reduction in SO_2 emissions.

Assuming a high coal penetration in new fossil fuel-fired steam generating units, therefore, this analysis indicates that the potential impact of standards requiring a percent reduction in SO_2 emissions for all new coal-fired steam generating units with heat input capacities of greater than 29 MW (100 million Btu/hour) on projected national coal and natural gas consumption by the industrial sector in 1990 is small.

As discussed in "Summary of Regulatory Analysis" under "Consideration of Secondary Environmental Impacts," potential secondary environmental impacts associated with standards of performance that include a percent reduction requirement have also been analyzed. These potential secondary environmental impacts include liquid and solid waste impacts.

As shown in Table 8–7, assuming a high coal penetration in new fossil fuel-fired steam generating units, the amount of liquid waste generated increases, and the amount of solid waste generated decreases, as smaller and smaller units are required to achieve a percent reduction in SO_2 emissions. As discussed in "Summary of Regulatory Analysis" under "Consideration of Demonstrated Emission Control Technology Costs," sodium scrubbing is frequently the least costly FGD system for use on industrial-commercial-institutional steam generating units. As a result, these impacts generally reflect the use of sodium scrubbing as the control system used to achieve a percent reduction in SO_2 emissions. As also discussed in "Summary of Regulatory Analysis" under "Consideration of Secondary Environmental Impacts," sodium scrubbing produces the greatest quantity of liquid wastes of all the FGD systems examined. Therefore, to the extent that other FGD technologies (such as lime spray drying) are selected to comply with a standard requiring a percent reduction in SO_2 emissions, the amount of liquid waste would decrease and the amount of solid waste would increase.

Most industrial-commercial-institutional steam generating units are part of a manufacturing plant which normally generates substantial amounts of liquid and solid waste from the manufacturing process itself. The amount of waste generated by the control of SO_2 emissions from these steam generating units, therefore, would represent only a small portion of the total wastes generated by the plant in most cases. In addition, the constituents of the FGD waste byproducts are not classified as toxic or hazardous under the Resource Conservation and Recovery Act (RCRA). As a result, they can be easily disposed of, along with the other plant wastes, by conventional methods without leading to significant secondary environmental impacts.

In summary, therefore, standards requiring a percent reduction in SO_2 emissions would result in an increase in the amounts of liquid and solid waste generated by industrial-commercial-institutional steam generating units. However, the quantities would be small compared to the total existing amounts of liquid and solid wastes generated by industrial plants at which these steam generating units are located. In addition, the nontoxic and nonhazardous nature of the FGD wastes permits their disposal using conventional techniques such as ponding, landfilling, sewerage, or direct discharge.

Industry-Specific Economic Impacts. The analysis discussed above of potential national impacts associated with standards of performance for new coal-fired steam generating units represents an assessment of the aggregate nationwide impact of standards requiring a percent reduction in SO_2 emissions. Because of the aggregate nature of this analysis of national impacts, it was unable to assess the potential impact of standards requiring a percent reduction in SO_2 emissions on specific individual sectors within the national economy. Accordingly, as discussed in "Summary of Regulatory Analysis" under "Consideration of Industry-Specific Economic Impacts," the regulatory analysis also examined the potential economic impacts of a standard requiring a percent reduction in SO_2 emissions on major industrial steam users.

Before discussing the analysis of industry-specific economic impacts, it should be noted that the analysis represents a "worse case" analysis of potential economic impacts. For example, the assessment of potential increases in national product prices (i.e., inflationary impact) and product prices at the manufacturing plant level assumes full cost pass-through of all increased costs to increased product prices. Similarly, the assessment of potential decreases in industry profitability (i.e., decreased return-on-assets) assumes full cost absorption of all increased costs. In practice, a portion of the increased costs associated with standards of performance limiting SO_2 emissions from all new fossil fuel-fired industrial-commercial-institutional steam generating units will be "passed through" to product prices and the remainder "absorbed." Thus, the assessment of potential impacts resulting from the assumptions of full cost pass-through or full cost absorption should be viewed as "worse case" assessments.

In addition, the analysis of potential industry-specific economic impacts also overlooks the possibility of fuel switching. The analysis assumes all new fossil fuel-fired stream generating units installed within the various industries examined will fire coal regardless of the relative economics of alternative fuels, such as natural gas. As discussed above, however, the national impact analysis indicates that firing natural gas instead of coal in response to standards requiring a percent reduction in SO_2 emissions is frequently less expensive than installation and operation of an FGD system. Consequently, since the analysis of potential industry-specific economic impacts assumes all new fossil fuel-fired steam generating units will fire coal and, in response to standards requiring a percent reduction in SO_2 emissions, these units will install and operate FGD systems, these impacts are overstated and also represent a "worse case" assessment of potential economic impacts.

Finally, as mentioned below and discussed in "Summary of Regulatory Analysis" under "Consideration of Industry-Specific Economic Impacts," those industries with high steam-to-product cost ratios or low annual capacity utilization, such as seasonal industries, were selected for analysis of potential economic impacts at the manufacturing plant level. The potential economic impacts associated with standards requiring a percent reduction in SO_2 emissions will be greater for these industries than other industries. Consequently, this aspect of the analysis also makes it a "worse case" analysis in the sense that it examined impacts only in those industries anticipated to experience the most severe economic impacts.

To assess the potential impact on product prices at the national level (i.e., national inflationary impacts) associated with standards requiring a percent reduction in SO_2 emissions, the industry-specific economic analysis examined potential impacts on product price for eight steam-intensive industrial categories which together consume about 70 percent of all industrial steam production. As discussed in "Summary of Regulatory Analysis" under "Consideration of Industry-Specific Economic Impacts," the product price impacts on these eight major industrial categories ranged from 0.01 to 0.03

percent, indicating that the potential impact on product prices at the national level of standards requiring a percent reduction in SO_2 emissions is negligible.

To assess the potential economic impacts of standards requiring a percent reduction in SO_2 emissions on specific industries at the individual manufacturing plant level, several industries were selected for analysis. As mentioned, industries with either high steam-to-product cost ratios or low annual capacity utilization rates were selected to provide a "worse case" viewpoint.

The results of this analysis are summarized in Table 9–1 of "Summary of Regulatory Analysis." As shown, assuming full cost pass-through to product prices, the potential increase in product prices as a result of standards requiring all new coal-fired steam generating units to achieve a percent reduction in SO_2 emissions could range from less than 0.1 percent to 1.5 percent. Similarly, assuming full cost absorption, potential increases in product value added range from less than 0.1 percent to 5.0 percent, and potential decreases in manufacturing plant profitability or return on assets range from less than 0.1 to 2.8 percent. None of these projected impacts are considered unreasonable.

Impacts on Individual Steam Generating Units. The analysis of industry-specific impacts discussed above examined the potential impacts of standards requiring a percent reduction in SO_2 emissions within specific industries at the manufacturing plant level. This analysis, however, was unable to assess potential impacts at the individual steam generating unit level. Consequently, the regulatory analysis also examined the cost and emission impacts associated with standards requiring a percent reduction in SO_2 emissions and standards based on the use of low sulfur coal in terms of individual steam generating units. In this analysis, potential impacts were examined for individual steam generating units as a function of steam generating unit location, size, and capacity factor. As in the industry-specific economic impact analysis discussed above, this analysis also overlooks the possibility of fuel switching in response to a standard requiring a percent reduction in SO_2 emissions. Thus, for the same reasons mentioned above, this analysis should also be viewed as a "worse case" analysis in terms of potential impacts.

To determine whether there were any significant differences associated with standards based on the use of low sulfur coal or standards requiring a percent reduction in SO_2 emissions on individual steam generating units with differences in geographic location, impacts were examined for steam generating units located in EPA Regions V and VIII. These regions were selected to represent typical eastern and western geographic locations, respectively. Coal-fired steam generating units with heat input capacities of 29, 44, 73, and 117 MW (100, 150, 250, and 400 million Btu/hour) operating at an annual capacity utilization factor of 0.6 were selected to represent typical coal-fired industrial-commercial-institutional steam generating units. The annual capacity utilization factor is defined as the actual annual heat input to the steam generating unit divided by the maximum annual heat input to the unit if it were operated at design capacity for 24 hours per day, 365 days per year (8,760 hours per year).

The emission reductions achieved by alternative control levels or standards based on either the use of low sulfur coal or on a percent reduction in SO_2 emissions were calculated for each size of representative steam generating unit and are shown in Tables 6–11 and 6–12 of "Summary of Regulatory Analysis" for a typical 44 MW (150 million Btu/hour) unit. In Region V, an alternative control level or standard based on the use of low sulfur coal achieves SO_2 emission reductions of 410 Mg/year (460 tons/year) over the regulatory baseline. An alternative control level or standard requiring a percent reduction in SO_2 emissions results in emission reductions of 600 Mg/year (660 tons/year) over the regulatory baseline. In Region VIII, an alternative control level or standard based on the use of low sulfur coal achieves SO_2 emission reductions of 410 Mg/year (460 tons/year) over the regulatory baseline. An alternative control level or standard requiring a percent reduction in SO_2 emissions results in emission reductions of 800 Mg/year (880 tons/year) over the regulatory baseline. Thus, the incremental annual emission reductions resulting from standards requiring a percent reduction in SO_2 emissions over standards based on the use of low sulfur coal for a typical 44 MW (150 million Btu/hour) heat input capacity steam generating unit would be 250 Mg/year (275 tons/year) in Region V and 390 Mg/year (430 tons/year) in Region VIII.

As discussed in "Summary of Regulatory Analysis" under "Consideration of Demonstrated Emission Control Technology Costs" and shown in Tables 6–13 and 6–14, the cost impacts associated with alternative control levels or standards based on the use of low sulfur coal, as well as alternative control levels or standards requiring a percent reduction in SO_2 emissions, were calculated for representative sizes of individual steam generating units. The potential increase in the annualized costs of new coal-fired steam generating units over the regulatory baseline as a result of compliance with an alternative control level or standard based on the use of low sulfur coal is about 3 percent in Region V and about 2 percent in Region VIII for all steam generating unit sizes examined. The potential increase in annualized costs as a result of compliance with an alternative control level or standard requiring a percent reduction in SO_2 emissions over the regulatory baseline ranges from 6 to 8 percent in Region V and from 11 to 12 percent in Region VIII, depending on steam generating unit size. Thus, the incremental increase in annualized costs resulting from standards requiring a percent reduction in emissions over standards based on the use of low sulfur coal would be about 3 to 5 percent in Region V and about 9 to 10 percent in Region VIII, depending on steam generating unit size.

On the basis of the emission reductions and potential annualized cost increases noted above, the average cost effectiveness of standards based on the use of low sulfur coal in Region V is between $430/Mg ($390/ton) and $470/Mg ($430/ton) of SO_2 removed. For standards requiring a percent reduction in SO_2 emissions, the average cost effectiveness in Region V ranged from $560/Mg ($510/ton) of SO_2 removed for a typical 117 MW (400 million Btu/hour) capacity unit to $930/Mg ($840/ton) of SO_2 removed for a typical 29 MW (100 million Btu/hour) capacity unit. In Region VIII, the average cost effectiveness of standards based on the use of low sulfur coal is about $250/Mg ($220/ton) of SO_2 removed for all steam generating unit sizes. For standards requiring a percent reduction in SO_2 emissions, the average cost effectiveness in Region VIII ranged from $670/Mg ($610/ton) of SO_2 removed for a typical 117 MW (400 million Btu/hour) capacity unit to $930/Mg ($840/ton) of SO_2 removed for a typical 29 MW (100 million Btu/hour) capacity unit.

In Region V, the incremental cost effectiveness of a standard requiring a percent reduction in SO_2 emissions over a standard based on the use of low sulfur coal ranges from $1,910/Mg ($1,730/ton) of SO_2 removed for a 29 MW (100 million Btu/hour) heat input capacity steam generating unit to $770/Mg ($700/ton) of SO_2 removed for a 117 MW (400 million Btu/hour) heat input capacity steam generating unit.

Similarly, in Region VIII the incremental cost effectiveness ranges from $1,820/Mg to $1,210/Mg ($1,650/ton to $1,100/ton) of SO_2 removed over the range of steam generating unit sizes examined.

These results indicate that standards requiring a percent reduction in SO_2 emissions at typical coal-fired steam generating units (i.e., capacity utilization factors in the range of 0.6) achieve a significant reduction in emissions at a reasonable incremental cost compared to standards based on the use of low sulfur coal for all sizes of steam generating units examined.

As mentioned above, the potential impacts of standards requiring a percent reduction in SO_2 emissions and standards based on the use of low sulfur coal were also examined as a function of steam generating unit capacity utilization factor. In particular, impacts were examined for a new 44 MW (150 million Btu/hour) heat input capacity coal-fired steam generating unit operated at an annual capacity utilization factor of 0.3 and also at an annual capacity utilization factor of 0.15.

The emission reductions achieved by alternative control levels or standards based on either the use of low sulfur coal or on a percent reduction in SO_2 emissions were calculated for a 44 MW (150 million Btu/hour) unit located in Region V and operating at a capacity utilization factor of 0.30 and at a capacity utilization factor of 0.15. At a capacity utilization factor of 0.3, an alternative control level or standard based on the use of low sulfur coal achieves SO_2 emission reductions of 205 Mg/year (230 tons/year) over the regulatory baseline. An alternative control level or standard requiring a percent reduction in SO_2 emissions results in emission reductions of 300 Mg/year (330 tons/year) over the regulatory baseline. At a capacity utilization factor of 0.15, an alternative control level or standard based on the use of low sulfur coal achieves SO_2 emission reductions of 100 Mg/year (110 tons/year) over the regulatory baseline. An alternative control level or standard requiring a percent reduction in SO_2 emissions results in emission reductions of 150 Mg/year (165 tons/year) over the regulatory baseline. The SO_2 emission reductions associated with a standard requiring a percent reduction in SO_2 emissions are greater, therefore, than those associated with a standard based on the use of low sulfur coal.

As discussed in "Summary of Regulatory Analysis" under "Consideration of Demonstrated Emission Control Technology Costs" and shown in Tables 6–15 and 6–16, the potential increase over the regulatory baseline in annualized costs of a new 44 MW (150 million Btu/hour) coal-fired steam generating unit associated with standards based on the use of low sulfur coal for steam generating units operated at low capacity utilization factors is about 2 percent or less in Region V and about 1 percent in Region VIII. The potential increase in annualized costs over the regulatory baseline associated with standards requiring a percent reduction in emissions is about 9 percent in Region V and about 11 percent or less in Region VIII. Thus, the incremental increase in annualized costs as a result of standards requiring a percent reduction in emissions over standards based on the use of low sulfur coal for steam generating units operating at low capacity utilization factors is about 7 to 8 percent in Region V and about 9 to 10 percent in Region VIII.

The average cost effectiveness of standards based on the use of low sulfur coal remains essentially constant with respect to steam generating unit capacity utilization factor. For a 44 MW (150 million Btu/hour) heat input capacity coal-fired steam generating unit, the average cost effectiveness of standards based on the use of low sulfur coal is about $440/Mg ($400/ton) of SO_2 removed in Region V and about $280/Mg ($250/ton) of SO_2 removed in Region VIII. The average cost effectiveness of standards based on a percent reduction in SO_2 emissions increases with decreasing steam generating unit capacity utilization factor. For a 44 MW (150 million Btu/hour) heat input capacity coal-fired steam generating unit located in Region V, the average cost effectiveness increases from $1,270/Mg ($1,150/ton) of SO_2 removed at a capacity utilization factor of 0.3 to $2,130/Mg ($1,930/ton) of SO_2 removed at a capacity utilization factor of 0.15.

The incremental cost effectiveness of a standard requiring a percent reduction in SO_2 emissions compared to a standard based on the use of low sulfur coal ranges from about $3,080/Mg ($2,790/ton) of SO_2 removed for a new 44 MW (150 million Btu/hour) heat input capacity coal-fired steam generating unit operating at a capacity utilization factor of 0.30 to about $5,110/Mg ($4,640/ton) of SO_2 removed for this same size steam generating unit operating at a capacity utilization factor of 0.15 in Region V. Similarly, the incremental cost effectiveness ranges from about $2,420/Mg ($2,200/ton) to about $3,950/Mg ($3,580/ton) of SO_2 removed in Region VIII.

These results indicate that the annual emission reductions achieved under a standard requiring a percent reduction in SO_2 emissions compared to a standard based on the use of low sulfur coal decrease as steam generating unit capacity utilization factor decreases. The incremental annualized cost impacts increase and the incremental cost effectiveness increases significantly as capacity utilization factor decreases.

As discussed above and in "Summary of Regulatory Analysis" under "Consideration of National Impacts," many steam generating units fire natural gas instead of coal in response to a standard requiring a percent reduction in SO_2 emissions. This fuel switching occurs predominantly in small steam generating units and in steam generating units operating at low capacity utilization factors. An examination of projected fuel selection as a function of steam generating unit capacity utilization factor indicates that even under the regulatory baseline no coal-fired steam generating units are expected to operate at capacity utilization factors of less than 30 percent. At such low capacity utilization factors, oil or natural gas are the fuels of choice even in the absence of standards of performance. The national impacts analysis, therefore, projects that little, if any, coal will be fired in new fossil fuel-fired steam generating units operating at low capacity utilization factors even assuming a high coal penetration.

In addition, those low capacity utilization factor steam generating units that might select coal would be most likely to fire natural gas instead of coal in response to standards requiring a percent reduction in SO_2 emissions. As discussed in "Summary of Regulatory Analysis" under "Consideration of Demonstrated Emission Control Technology Costs" and as illustrated by Table 6–19, the costs and cost effectiveness of the emission reductions resulting from fuel switching are quite reasonable. Consequently, the analysis discussed above of the potential impacts of standards requiring a percent reduction in SO_2 emissions on low capacity utilization factor steam generating units is considered misleading. As a result, the potential impacts of standards requiring a percent reduction in SO_2 emissions from coal-fired steam generating units, even those operating at low capacity utilization factors, are considered reasonable.

The analyses of national impacts, impacts on specific industries, and impacts on individual steam generating units have shown that the impacts of a standard requiring a percent reduction in SO_2 emissions are reasonable when compared to standards based on the use of low sulfur coal and when compared to the regulatory baseline. No sizes,

types, or other categories of coal-fired steam generating units were distinguished for which a standard of performance including a percent reduction requirement would result in unreasonable impacts. Therefore, the basis of the standard for coal-fired industrial-commercial-institutional steam generating units with heat input capacities of greater than 29 MW (100 million Btu/hour) is a percent reduction in SO_2 emissions.

2. Selection of Standard for Coal-Fired Steam Generating Units

A variety of technologies have been identified that are capable of continuously achieving a percent reduction in SO_2 emissions from coal-fired steam generating units. As discussed in "Summary of Regulatory Analysis" under "Selection of Demonstrated Emission Control Technologies," these technologies include both combustion modification and post-combustion control.

Combustion modification techniques for SO_2 control include coal/limestone pellets (CLP), limestone injection multistaged burners (LIMB), and fluidized bed combustion (FBC). As discussed in "Summary of Regulatory Analysis," CLP and LIMB are currently considered to be emerging rather than demonstrated technologies. The FBC system, however, is considered to be a demonstrated SO_2 control technology for purposes of developing NSPS.

Post-combustion control technologies can be further divided into two groups: Wet and dry FGD. Wet FGD processes include lime, limestone, dual alkali, and sodium wet scrubbing. All wet FGD systems are considered demonstrated SO_2 control technologies for purposes of developing NSPS. Dry FGD processes include electron beam irradiation, dry alkali injection, and lime spray drying. Of these, only lime spray drying is currently considered to be a demonstrated SO_2 control technology.

Both short-term and long-term SO_2 emission test data were gathered to assess the performance of these demonstrated control technologies in reducing SO_2 emissions from coal-fired steam generating units. As discussed in "Summary of Regulatory Analysis" under "Performance of Demonstrated Emission Control Technologies," analysis of the data gathered on the performance of lime, limestone, dual alkali, and sodium FGD systems indicates that these technologies are capable of continuously achieving a 90 percent reduction in SO_2 emissions from coal-fired steam generating units on a 30-day rolling average basis. Therefore, a 90 percent reduction in SO_2 emissions from coal-fired steam generating units on a 30-day rolling average basis through the use of wet FGD technologies is considered demonstrated.

Analysis of performance data gathered to assess the performance of FBC and lime spray drying technologies indicates that these technologies have the potential to achieve a 90 percent reduction in SO_2 emissions. Recently gathered long-term data from at least three FBC units presently operating indicate that FBC technologies are capable of continuously achieving a 90 percent reduction in SO_2 emissions from coal-fired steam generating units on a 30-day rolling average basis. Therefore, a 90 percent reduction in SO_2 emissions from coal-fired steam generating units on a 30-day rolling average basis through the use of FBC or lime spray drying technologies is considered demonstrated.

The cost impacts associated with percent reduction requirements ranging from as low as 50 percent reduction to as high as 90 percent reduction were analyzed for coal-fired steam generating units at both the national level and at the individual steam generating unit level. These analyses are discussed in "Summary of Regulatory Analysis" under "Consideration of National Impacts" and "Consideration of Demonstrated Emission Control Technology Costs."

As discussed in "Summary of Regulatory Analysis" under "Consideration of National Impacts," national annualized cost impacts were found to be relatively insensitive to variations in the specific level of the percent reduction requirement. For example, the national average cost effectiveness associated with a standard requiring a 50 percent reduction in SO_2 emissions is \$110/Mg (\$100/ton) of SO_2 removed for all new coal-fired steam generating units of greater than 29 MW (100 million Btu/hour) heat input capacity, compared to \$120/Mg (\$110/ton) of SO_2 removed for standards requiring a 90 percent reduction in SO_2 emissions. However, SO_2 emissions under a 90 percent reduction requirement are reduced by an additional 13,000 Mg/year (14,000 tons/year) below the emission levels achieved under a 50 percent reduction requirement.

The cost impacts associated with a range of percent reduction requirements were also examined for a typical coal-fired industrial-commercial-institutional steam generating unit with a heat input capacity of 44 MW (150 million Btu/hour). As shown in Table 6–17 of "Summary of Regulatory Analysis," the annualized cost differences of operating an FGD system to achieve a 90 percent reduction in SO_2 emissions versus a 50 percent reduction in SO_2 emissions range from about \$30,000/year for low sulfur coal to about \$210,000/year for high sulfur coal. The corresponding incremental emission reductions achieved under a 90 percent reduction requirement range from 127 Mg/year (140 tons/year) for low sulfur coal to 755 Mg/year (830 tons/year) for high sulfur coal. The average cost effectiveness of operating an FGD system at 90 percent reduction is \$510 to \$1,560/Mg (\$460 to \$1,420/ton) of SO_2 removed, compared to \$660 to \$2,480/Mg (\$600 to \$2,250/ton) of SO_2 removed for an FGD system operated at 50 percent reduction.

Both analyses, therefore, lead to the same conclusion: a 90 percent reduction requirement is more cost effective than lower percent reduction requirements. As discussed in "Summary of Regulatory Analysis" under "Consideration of Demonstrated Emission Control Technology Costs," this result emerges because the only increased costs associated with operating an FGD system to achieve a relatively high percent reduction in SO_2 emissions are the increased costs resulting from increased chemicals and utilities consumption and increased waste disposal costs. These increased costs are incremental in nature and relatively small. However, the increased reduction in SO_2 emissions resulting from operation at a high percent reduction level is quite significant.

In addition, in the national impacts analysis, the cost effectiveness of a 90 percent reduction requirement compared to the cost effectiveness of a lower percent reduction requirement is also influenced by fuel switching. As discussed in "Summary of Regulatory Analysis" under "Consideration of National Impacts," the impact of fuel switching from coal to natural gas in response to percent reduction requirements tends to decrease the resulting cost effectiveness of SO_2 control. While the increased costs associated with operating an FGD system at a high percent reduction are relatively small, in some cases these increased costs are sufficient to cause some additional steam generating units to fire natural gas instead of coal. This tends to decrease further the cost effectiveness of SO_2 control associated with the 90 percent reduction requirement.

Consequently, in both the national impact and individual steam generating unit impact analyses, a 90 percent reduction requirement emerges as more

cost effective than lower percent reduction requirements.

As discussed above, the ability of wet FGD technologies, lime spray drying systems, and FBC systems to achieve SO_2 emission reductions of 90 percent on a 30-day rolling average basis is considered demonstrated. Thus, a 90 percent reduction standard has been selected for new coal-fired steam generating units of greater than 29 MW (100 million Btu/hour) heat input capacity (except for units using emerging technologies, as discussed below).

One of the objectives of the Clean Air Act Amendments of 1977 was to encourage the use of locally available high sulfur coals. This objective was taken into consideration in selecting the SO_2 emission limit associated with the percent reduction requirements.

An analysis of U.S. coal reserve data indicates that only about 80 percent of U.S. raw coal reserves could be used to comply with a standard requiring a 90 percent reduction in SO_2 emissions and an emission limit of 258 ng SO_2/J (0.6 lb SO_2/million Btu) heat input. However, about 98 percent of U.S. raw coal reserves could be used to comply with a standard requiring a 90 percent reduction in SO_2 emissions and an emission limit of 516 ng SO_2/J (1.2 lb SO_2/million Btu) heat input. Therefore, an emission limit of 516 ng SO_2/J (1.2 lb SO_2/million Btu) heat input has been selected as the emission limit included with the 90 percent reduction requirement for coal-fired industrial-commercial-institutional steam generating units.

These standards reflect the use of the best technological system of continuous SO_2 emission reduction for coal-fired steam generating units. It is questionable, however, whether these standards are achievable by many emerging technologies at their current state of development. The very nature of emerging technologies prevents any quantitative assessment of their performance or costs. As a result, the regulatory analysis could not consider the potential impacts of alternative standards on the continued development of emerging technologies. Some emerging SO_2 control technologies, however, show promise of achieving greater emission control, or equivalent levels of control at substantially lower costs, than demonstrated technologies. Therefore, it is desirable that standards of performance accommodate and foster the continued development of emerging technologies.

It is quite likely that a requirement that all coal-fired industrial-commercial-institutional steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) achieve a minimum 90 percent reduction in SO_2 emissions would discourage the continued development of most emerging technologies. Owners and operators of new coal-fired steam generating units would likely view the risks of using an SO_2 control technology that has not been fully demonstrated to consistently achieve a 90 percent reduction in emissions as too great, and would, therefore, employ conventional demonstrated control technologies.

If, on the other hand, standards of performance were established that would allow emerging technologies to achieve lower percent reductions, these risks would be substantially reduced. Establishing less stringent percent reduction requirements for emerging technologies substantially increases the likelihood that owners and operators of new coal-fired industrial- commercial-institutional steam generating units will install and operate emerging technologies. The experience gained in utilizing emerging technologies will, in turn, foster their continued development while simultaneously reducing the perceived risks associated with their use.

Three alternative approaches were considered for accommodating the development and use of emerging SO_2 control technologies. The first alternative involved provisions for granting permits for less stringent percent reduction requirements to emerging technologies on a case-by-case basis. Under this alternative, owners or operators of new coal-fired steam generating units wishing to use an emerging SO_2 control technology could apply for a permit to operate the technology at a percent reduction less than that specified in the standards. Emerging technology permits would have the advantage of enabling levels of performance to be specified that reflect the best level of performance achievable by each technology for which a permit is issued.

Such an approach would require operation of conventional demonstrated technologies at high performance levels, but would permit emerging technologies to operate at lower performance levels. The major disadvantage associated with this alternative would be the substantial administrative burdens of preparing and reviewing applications for permits. A separate application would need to be submitted for each installation of an emerging technology and individual determinations would need to be made as to the most appropriate standard to apply in each case. The uncertainties inherent in case-by-case evaluations and the time required to apply for and receive a permit could effectively discourage the development and use of emerging technologies.

Another approach for accommodating emerging technologies would be the establishment of a "sliding scale" percent reduction requirement for all SO_2 control technologies, such as that included in the NSPS for electric utility steam generating units (40 CFR Part 60, Subpart Da). Under a sliding scale percent reduction requirement, an owner or operator could comply with either a standard including a relatively more stringent percent reduction requirement and a less stringent emission limit, or with a standard including a relatively less stringent percent reduction requirement and a more stringent emission limit. Such an approach would allow an owner or operator to fire coals with lower sulfur contents and comply with a relatively less stringent percent reduction requirement. Thus, emerging technologies could be operated at lower performance levels if low sulfur coal were fired. Without restricting a sliding scale percent reduction requirement to emerging technologies, however, this approach would also permit conventional demonstrated SO_2 control technologies to be operated at considerably less than the control levels that these technologies have clearly demonstrated.

The third alternative considered would allow emerging technologies to achieve a minimum designated percent reduction in SO_2 emissions that is lower than that for demonstrated technologies. Conventional demonstrated technologies, however, would always be required to operate at the 90 percent reduction performance level discussed above.

Designating less stringent percent reduction requirements for emerging SO_2 control technologies would eliminate the need for a case-by-case permitting process and the accompanying administrative burdens. This less burdensome approach would be more likely to encourage the development and use of emerging SO_2 control technologies without allowing conventional demonstrated technologies to be operated at performance levels less than those that have been demonstrated.

After considering each of the above alternatives for accommodating emerging technologies, designating lower percent reduction requirements for emerging technologies was selected as the regulatory approach best suited to

encouraging development and use of emerging technologies.

As discussed above, CLP, LIMB, electron beam irradiation, and dry alkali injection are considered examples of emerging technologies. This "list" is by no means complete, however, and many other technologies for SO_2 control are under development or may be developed in the future.

To encourage the continued development of emerging technologies, a percent reduction requirement should be set low enough to be reasonably attainable, but high enough to ensure that a minimum level of SO_2 emissions control is achieved. Although this is a matter of judgment, a minimum percent reduction requirement of 50 percent is considered appropriate for this purpose. Therefore, the proposed standards would require all new, modified, or reconstructed coal-fired industrial-commercial-institutional steam generating units with heat input capacities of greater than 29 MW (100 million Btu/hour) employing emerging SO_2 control technologies to achieve a minimum of 50 percent reduction in SO_2 emissions on a 30-day rolling average basis.

This percent reduction requirement is considerably less stringent than the 90 percent reduction requirement based on conventional demonstrated SO_2 emission control technologies. While it is considered desirable to encourage and foster continued development of emerging SO_2 emission control technologies, the use of such technologies should be limited to combustion of low sulfur coals. This will minimize any increase in SO_2 emissions at a coal-fired steam generating unit as a result of the use of an emerging technology. Therefore, an emission limit of 258 ng SO_2/J (0.6 lb SO_2/million Btu) has been selected as the emission limit associated with the percent reduction requirement for emerging technologies.

Selection of this SO_2 emission limit restricts the use of emerging technologies achieving the minimum percent reduction in SO_2 emissions to steam generating units firing coal with a sulfur content of 516 ng SO_2/J (1.2 lb SO_2/million Btu) heat input or less. However, to the extent that an emerging technology could achieve SO_2 emission reductions of greater than 50 percent, coals with higher sulfur contents could be fired without exceeding this emission limit. Because higher sulfur coals are generally less expensive than low sulfur coals, this will act as an incentive to achieve percent reductions of greater than 50 percent.

The proposed standard, therefore, provides a limited "window" for use of emerging technologies. This window will be reviewed regularly during the course of the review process associated with all NSPS. As appropriate, the percent reduction requirements will be revised upwards in light of additional performance data available at that time for various emerging technologies. As a result of these reviews, emerging control technologies that do not demonstrate improvements in performance capabilities, or show no promise of achieving emission reductions greater than 50 percent, will no longer be considered emerging technologies and all subsequent installations would be subjected to the same requirements as those included in the standards for conventional demonstrated control technologies.

3. Basis of Standard for Oil-Fired Steam Generating Units

The regulatory analysis for oil-fired steam generating units was conducted in the same manner as that described above for coal-fired steam generating units. The potential impacts of NSPS on oil-fired steam generating units were examined from the perspectives of overall national impacts, impacts on specific industries subject to the standards, and impacts on individual steam generating units subject to the standards. Each of these perspectives is discussed below.

National Impacts. As mentioned above and discussed in "Summary of Regulatory Analysis" under "Consideration of National Impacts," the national impacts associated with NSPS for fossil fuel-fired steam generating units were analyzed through the use of the computer model, IFCAM. As also noted above, the high oil penetration scenario was used to assess the potential impacts of standards limiting SO_2 emissions from oil-fired steam generating units. Similar to the analysis for coal-fired steam generating units, a set of regulatory alternatives or alternative standards was structured to examine impacts as a function of steam generating unit size (heat input capacity).

The regulatory alternatives become progressively more stringent by first requiring only steam generating units with heat input capacities above 73 MW (250 million Btu/hour) to achieve a percent reduction in SO_2 emissions, but then requiring steam generating units with progressively lower heat input capacities to achieve a percent reduction in SO_2 emissions as well. The most stringent regulatory alternative requires all oil-fired industrial-commercial-institutional steam generating units with heat input capacities of greater than 29 MW (100 million Btu/hour) to achieve a percent reduction in SO_2 emissions. The least stringent regulatory alternatives are based on the use of low sulfur oil to meet emission limits of 688 and 344 ng SO_2/J (1.6 and 0.8 lb SO_2/million Btu) heat input, respectively, for all oil-fired industrial-commercial-institutional steam generating units with heat input capacities of greater than 29 MW (100 million Btu/hour).

A summary of the national impacts associated with each regulatory alternative is shown in Table 8–7 of "Summary of Regulatory Analysis." As discussed in "Summary of Regulatory Analysis" under "Consideration of National Impacts" and assuming a high oil penetration in new fossil fuel-fired steam generating units, standards based on the use of low sulfur oil to meet an emission limit of 688 ng SO_2/J (1.6 lb SO_2/million Btu) heat input for all new oil-fired steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) result in a projected reduction in SO_2 emissions of 67,000 Mg/year (74,000 tons/year) over the regulatory baseline in the fifth year following proposal of standards (i.e., 1990). Standards based on the use of low sulfur oil to meet an emission limit of 344 ng SO_2/J (0.8 lb SO_2/million Btu) heat input for all new oil-fired steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) would result in projected SO_2 emission reductions of 157,000 Mg/year (173,000 tons/year) over the regulatory baseline in 1990. In comparison, standards requiring all new oil-fired steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) to achieve a percent reduction in emissions result in projected SO_2 emission reductions of 239,000 Mg/year (263,000 tons/year) over the regulatory baseline in 1990.

The difference in projected national SO_2 emission reductions between standards based on the use of low sulfur oil to meet an emission limit of 344 ng SO_2/J (0.8 lb SO_2/million Btu) heat input and standards requiring a percent reduction in emissions is about 82,000 Mg/year (90,000 tons/year). About one-third of this difference (30,000 Mg/year) results from standards requiring all new oil-fired steam generating units with heat input capacities greater than 73 MW (250 million Btu/hour) to achieve a percent reduction in SO_2 emissions. Additional national SO_2 emission reductions of 10,000 Mg/year (11,000 tons/year), 19,000 Mg/year (21,000 tons/year), and 22,000 Mg/year (24,000 tons/year) in 1990 result from requiring all

new oil-fired steam generating units with heat input capacities greater than 58 MW (200 million Btu/hour), 44 MW (150 million Btu/hour), and 29 MW (100 million Btu/hour), respectively, to achieve a percent reduction in SO_2 emissions.

This analysis, therefore, projects that standards requiring all new oil-fired steam generating units to achieve a percent reduction in SO_2 emissions achieve greater reductions in national SO_2 emissions than standards based on the use of low sulfur oil. Moreover, standards that require all new oil-fired steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) to achieve a percent reduction in SO_2 emissions result in significantly greater national SO_2 emission reductions than standards requiring only relatively larger oil-fired steam generating units to achieve a percent reduction in SO_2 emissions.

As is also shown in Table 8–7 of "Summary of Regulatory Analysis," assuming a high oil penetration in new fossil fuel-fired steam generating units, NSPS based on the use of low sulfur oil to meet an emission limit of 688 ng SO_2/J (1.6 lb SO_2/million Btu) heat input for new oil-fired steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) result in projected national annualized cost increases of $8 million/year over the regulatory baseline in 1990. Standards based on the use of low sulfur oil to meet an emission limit of 344 ng SO_2/J (0.8 lb SO_2/million Btu) heat input for all new oil-fired steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) result in projected annualized cost increases of $57 million/year over the regulatory baseline in 1990. These represent increases of about 0.2 and 1.7 percent, respectively, in the total national annualized costs associated with operation of all new fossil fuel-fired steam generating units projected to be constructed between 1986 and 1990.

In comparison, standards requiring all new oil-fired steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) to achieve a percent reduction in SO_2 emissions result in projected national annualized cost increases of about $133 million/year over the regulatory baseline in 1990. This represents an increase in total national annualized costs of about 4 percent.

The difference in projected increases in total national annualized costs between standards based on the use of low sulfur oil to meet an emission limit of 344 ng SO_2/J (0.8 lb SO_2/million Btu) and standards requiring all new oil-fired steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) to achieve a percent reduction in emissions is about $76 million/year in 1990. This represents a difference in total national annualized costs of about 2 percent. Of this, about half ($39 million/year) results from standards requiring all new oil-fired steam generating units with heat input capacities greater than 73 MW (250 million Btu/hour) to achieve a percent reduction in SO_2 emissions. Additional annualized costs of $5 million/year, $14 million/year, and $18 million/year result from standards requiring new oil-fired steam generating units with heat input capacities greater than 58 MW (200 million Btu/hour), 44 MW (150 million Btu/hour), and 29 MW (100 million Btu/hour), respectively, to achieve a percent reduction in SO_2 emissions.

Under the assumption of high oil penetration in new fossil fuel-fired steam generating units, therefore, this analysis indicates that the increase in total national annualized costs associated with standards requiring all new oil-fired steam generating units to achieve a percent reduction in SO_2 emissions is small compared to the national annualized costs associated with standards based on the use of low sulfur oil.

Based on the projected national emission reductions and annualized cost increases described above, the national average cost effectiveness of NSPS based on the use of low sulfur oil to meet an emission limit of 688 ng SO_2/J (1.6 lb SO_2/million Btu) heat input for new oil-fired steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) is about $120/Mg ($110/ton) of SO_2 removed. The average cost effectiveness of standards based on the use of low sulfur oil to meet an emission limit of 344 ng SO_2/J (0.8 lb SO_2/million Btu) heat input for all new oil-fired steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) is about $360/Mg ($330/ton) of SO_2 removed. In comparison, the national average cost effectiveness of standards requiring all new oil-fired steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) to achieve a percent reduction in SO_2 emissions is about $560/Mg ($510/ton) of SO_2 removed.

The national incremental cost effectiveness of a standard based on the use of low sulfur oil to meet an emission limit of 344 ng SO_2/J (0.8 lb SO_2/million Btu) heat input for all new oil-fired steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) over a standard based on the use of low sulfur oil to meet an emission limit of 688 ng SO_2/J (1.6 lb SO_2/million Btu) heat input for new oil-fired steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) is about $550/Mg ($500/ton) of SO_2 removed.

The national incremental cost effectiveness of a standard requiring all new oil-fired steam generating units to achieve a percent reduction in SO_2 emissions over a standard based on the use of low sulfur oil to meet an emission limit of 344 ng SO_2/J (0.8 lb SO_2/million Btu) heat input is about $920/Mg ($840/ton) of SO_2 removed. As discussed in "Summary of Regulatory Analysis" under "Consideration of National Impacts" and shown in Table 8–7, this is considerably less than the national incremental cost effectiveness (about $1,270/Mg of SO_2 removed) of a standard requiring only new oil-fired steam generating units with heat input capacities greater than 73 MW (250 million Btu/hour) to achieve a percent reduction in emissions over a standard based on the use of low sulfur oil to meet an emission limit of 344 ng SO_2/J (0.8 lb SO_2/million Btu) heat input for all new oil-fired steam generating units. The national incremental cost effectiveness of a standard requiring all new oil-fired steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) to achieve a percent reduction in SO_2 emissions over the next most stringent regulatory alternative, requiring only new oil-fired steam generating units with heat input capacities greater than 44 MW (150 million Btu/hour) to achieve a percent reduction in SO_2 emissions, is $820/Mg ($750/ton) of SO_2 removed.

As discussed above for coal-fired steam generating units, this apparent anomaly of decreasing national incremental cost effectiveness with increasingly stringent regulatory alternatives results from the larger number of natural gas-fired steam generating units that are projected under increasingly stringent standards. Although under the high oil penetration scenario national annualized costs generally increase in response to increasingly stringent standards, firing natural gas instead of oil results in proportionally larger reductions in SO_2 emissions. As a result, the national incremental cost effectiveness of increasingly stringent standards can decrease.

Under the assumption of high oil penetration in new fossil fuel-fired steam generating units, therefore, this analysis indicates that the national average cost effectiveness of standards

requiring new oil-fired steam generating units to achieve a percent reduction in SO_2 emissions is not substantially higher than the national average cost effectiveness of standards based on the use of low sulfur oil. In addition, this analysis also indicates that standards requiring all new oil-fired steam generating units with heat input capacities of greater than 29 MW (100 million Btu/hour) to achieve a percent reduction in SO_2 emissions are as cost effective as alternative standards requiring only relatively larger units to achieve a percent reduction in SO_2 emissions.

As also discussed in "Summary of Regulatory Analysis" under "Consideration of National Impacts" and shown in Table 8–7, assuming a high oil penetration in new fossil fuel-fired steam generating units, the regulatory alternative based on the use of low sulfur oil to meet an emission limit of 344 ng SO_2/J (0.8 lb SO_2/million Btu) heat input for all new oil-fired steam generating units with heat input capacities of greater than 29 MW (100 million Btu/hour) results in a projected reduction in national oil use of about 70 million GJ/year (66 trillion Btu/year) in 1990 compared to the regulatory baseline. Under the regulatory alternative requiring all new oil-fired steam generating units with heat input capacities of greater than 29 MW (100 million Btu/hour) to achieve a percent reduction in SO_2 emissions, national oil use is projected to decline by about 155 million GJ/year (145 trillion Btu/year) in 1990 compared to the regulatory baseline. This decline in oil use is projected to be offset by a nearly equivalent increase in natural gas use. Of the difference between these two alternatives in projected reductions in national oil use (about 79 trillion Btu/year), about one-half (40 trillion Btu/year) results from standards requiring oil-fired steam generating units with heat input capacities greater than 73 MW (250 million Btu/hour) to achieve a percent reduction in emissions. Similarly, most of the remaining difference in projected reductions in national oil use (about 26 trillion Btu/year) results from standards requiring all oil-fired steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) to achieve a percent reduction in SO_2 emissions. As discussed previously for coal-fired units, however, these reductions in oil use, and the corresponding increases in natural gas use, represent very small percentages of existing consumption of oil and natural gas in the industrial sector.

Assuming a high oil penetration in new fossil fuel-fired steam generating units, therefore, this analysis indicates that the potential impact of standards requiring a percent reduction in SO_2 emissions for all new oil-fired steam generating units with heat input capacities of greater than 29 MW (100 million Btu/hour) on projected national oil and natural gas consumption by the industrial sector in 1990 is small.

As discussed in "Summary of Regulatory Analysis" under "Consideration of Secondary Environmental Impacts," potential secondary environmental impacts associated with standards of performance that include a percent reduction requirement have also been analyzed. These potential secondary environmental impacts include liquid and solid waste impacts.

The impacts of various regulatory alternatives on the generation and disposal of solid and liquid wastes were examined at the national level. As shown in Table 8–7 of "Summary of Regulatory Analysis," assuming a high oil penetration in new fossil fuel-fired steam generating units, regulatory alternatives requiring a percent reduction in SO_2 emissions result in somewhat greater quantities of liquid waste compared to regulatory alternatives based on the use of low sulfur fuels. The table also indicates that the solid waste impacts are relatively small and do not differ significantly among the regulatory alternatives.

As discussed previously for coal-fired steam generating units and in "Summary of Regulatory Analysis" under "Consideration of Secondary Environmental Impacts," industrial-commercial-institutional steam generating units are generally part of a manufacturing plant which generates substantial amounts of liquid and solid waste from the manufacturing process itself. Therefore, the amount of waste generated by the control of SO_2 emissions from these steam generating units would represent only a small portion of the total wastes generated by the plant in most cases. As discussed previously for coal-fired steam generating units, the projected liquid and solid waste impacts reflect the IFCAM assumption that sodium scrubbing would generally be the SO_2 control system used to achieve a percent reduction in SO_2 emissions. To the extent that other FGD technologies (such as dual alkali) are selected to comply with a standard requiring a percent reduction in SO_2 emissions, the amount of liquid waste would decrease and the amount of solid waste would increase.

The constituents of the FGD waste byproducts are not classified as toxic or hazardous under RCRA and can be easily disposed of, along with the other plant wastes, by conventional methods. The nontoxic and nonhazardous nature of the FGD wastes permits their disposal using conventional techniques such as ponding, landfilling, sewerage, or direct discharge. Therefore, the use of FGD systems to achieve a percent reduction in SO_2 emissions would not result in any unreasonable adverse environmental impacts.

Industry-Specific Economic Impacts. The analysis discussed above of potential national impacts associated with standards of performance for new oil-fired steam generating units represents an assessment of the aggregate nationwide impact of standards requiring a percent reduction in SO_2 emissions. Because of the aggregate nature of this analysis of national impacts, it was unable to assess the potential impacts of standards requiring a percent reduction in SO_2 emissions on specific individual sectors within the national economy. Accordingly, the potential economic impacts of a standard requiring a percent reduction in SO_2 emissions on major industrial steam users were also considered.

As shown in Tables 6–17 and 6–29 in "Summary of Regulatory Analysis", the annualized costs associated with achieving a percent reduction in SO_2 emissions from a coal-fired steam generating unit are greater than the annualized costs associated with achieving a percent reduction in SO_2 emissions from an oil-fired steam generating unit. The increased annualized cost for a coal-fired steam generating unit, for example, is about $500,000/year for a unit firing low sulfur coal and about $900,000/year for a unit firing high sulfur coal. For an oil-fired steam generating unit, the corresponding costs range from about $360,000/year to about $575,000/year. Consequently, the industry-specific economic impacts associated with alternative standards for oil-fired steam generating units would be smaller than those associated with alternative standards for coal-fired steam generating units.

As discussed above for coal-fired steam generating units, the "worse case" analysis of potential industry-specific economic impacts of standards requiring a percent reduction in SO_2 emissions indicates that the resulting increases in product prices could range from less than 0.1 percent to 1.5 percent. Similarly,

assuming full cost absorption, potential increases in product value added range from less than 0.1 percent to 5.0 percent, and potential decreases in manufacturing plant profitability or return on assets range from less than 0.1 to 2.8 percentage points.

As mentioned above, none of these industry-specific impacts associated with a standard requiring a percent reduction in SO_2 emissions from coal-fired steam generating units is considered unreasonable. The annualized costs associated with achieving a percent reduction in SO_2 emissions from oil-fired steam generating units are smaller than the annualized costs associated with achieving a percent reduction in SO_2 emissions from coal-fired steam generating units. As a result, none of the industry-specific impacts associated with standards requiring a percent reduction in SO_2 emissions from oil-fired steam generating units are considered unreasonable.

Impacts on Individual Steam Generating Units. Finally, the regulatory analysis examined the cost and emission impacts associated with standards requiring a percent reduction in SO_2 emissions and standards based on the use of low sulfur oil in terms of individual steam generating units. In this analysis, potential impacts were examined for individual steam generating units as a function of steam generating unit size and capacity factor. Impacts as a function of geographic location were not examined because the price differential among oils with varying sulfur contents was generally assumed to be relatively uniform regardless of location.

As in the analysis discussed above for coal-fired steam generating units, the analysis of impacts on individual steam generating units overlooks the possibility of fuel switching in response to a standard requiring a percent reduction in SO_2 emissions. Thus, this analysis should be viewed as a "worse case" analysis in terms of potential impacts.

Oil-fired steam generating units with heat input capacities of 29, 44, 73, and 117 MW (100, 150, 250, and 400 million Btu/hour) operating at a capacity utilization factor of 0.55 were selected to represent typical oil-fired industrial-commercial-institutional steam generating units.

The emission reductions achieved by alternative control levels or standards based on either the use of low sulfur oil or on a percent reduction in SO_2 emissions were calculated for each size of representative steam generating unit and are shown in Table 6–26 of "Summary of Regulatory Analysis" for a typical 44 MW (150 million Btu/hour) heat input capacity unit. As shown in this table, an alternative control level based on the use of very low sulfur oil (i.e., 0.3 lb SO_2/million Btu heat input) has essentially the same impact as an alternative control level requiring a percent reduction in SO_2 emissions. It is less costly on an annual basis to install and operate an FGD system and burn high sulfur oil than it is to buy very low sulfur oil. Thus, for typical oil-fired steam generating units, the impacts associated with a standard based on the use of very low sulfur oil are essentially the same as the impacts associated with a standard requiring a percent reduction in SO_2 emissions.

As shown in Table 6–26, an alternative control level or standard based on the use of low sulfur oil to meet an emission limit of 688 ng SO_2/J (1.6 lb SO_2/million Btu) heat input achieves an SO_2 emission reduction of 450 Mg/year (500 tons/year) over the regulatory baseline for a typical 44 MW (150 million Btu/hour) heat input capacity steam generating unit. An alternative control level or standard based on the use of low sulfur oil to meet an emission limit of 344 ng SO_2/J (0.8 lb SO_2/million Btu) heat input achieves an SO_2 emission reduction of 720 Mg/year (790 tons/year) over the regulatory baseline. An alternative control level or standard requiring a percent reduction in SO_2 emissions (which is equivalent to an alternative control level or standard based on the use of very low sulfur oil) results in an emission reduction of 890 Mg/year (950 tons/year) over the regulatory baseline. The incremental annual emission reductions resulting from standards requiring a percent reduction in SO_2 emissions or standards based on the use of very low sulfur oil to meet an emission limit of 129 ng SO_2/J (0.3 lb SO_2/million Btu) heat input over standards based on the use of low sulfur oil to meet an emission limit of 344 ng SO_2/J (0.8 lb SO_2/million Btu) heat input for a typical 44 MW (150 million Btu/hour) heat input capacity steam generating unit would be 170 Mg/year (190 tons/year).

As discussed in "Summary of Regulatory Analysis" under "Consideration of Demonstrated Emission Control Technology Costs" and shown in Table 6–27, the cost impacts associated with alternative control levels or standards based on the use of low sulfur oil as well as with alternative control levels or standards requiring a percent reduction in SO_2 emissions were calculated for representative sizes of individual steam generating units. The potential increase in the annualized costs of new oil-fired steam generating units over the regulatory baseline as a result of compliance with an alternative control level or standard based on the use of low sulfur oil to meet an emission limit of 688 ng SO_2/J (1.6 lb SO_2/million Btu) heat input is about 5 percent for all steam generating unit sizes examined. The potential increase in the annualized costs of new oil-fired steam generating units over the regulatory baseline as a result of compliance with an alternative control level or standard based on the use of low sulfur oil to meet an emission limit of 344 ng SO_2/J (0.8 lb SO_2/million Btu) heat input is between 9 and 11 percent. The potential increase in annualized costs as a result of compliance with an alternative control level or standard based on the use of very low sulfur oil to meet an emission limit of 129 ng SO_2/J (0.3 lb SO_2/million Btu) heat input, or an alternative control level or standard requiring a percent reduction in SO_2 emissions, over the regulatory baseline ranges from about 10 to 12 percent, depending on steam generating unit size.

The incremental increase in annualized costs resulting from standards based on the use of very low sulfur oil to meet an emission limit of 129 ng SO_2/J (0.3 lb SO_2/million Btu) heat input or standards requiring a percent reduction in emissions over standards based on the use of low sulfur oil to meet an emission limit of 344 ng SO_2/J (0.8 SO_2/million Btu) heat input would be about 6 to 7 percent, depending on steam generating unit size.

On the basis of the emission reductions and potential annualized cost increases noted above, the average cost effectiveness of standards based on the use of low sulfur oil to meet an emission limit of 688 ng SO_2/J (1.6 lb SO_2/million Btu) heat input is between $460/Mg ($420/ton) and $480/Mg ($440/ton) of SO_2 removed. The average cost effectiveness of standards based on the use of low sulfur oil to meet an emission limit of 344 ng SO_2/J (0.8 lb SO_2/million Btu) heat input is between $550/Mg ($500/ton) and $690/Mg ($630/ton) of SO_2 removed. For standards based on the use of very low sulfur oil to meet an emission limit of 129 ng SO_2/J (0.3 lb SO_2/million Btu) heat input or standards requiring a percent reduction in SO_2 emissions, the average cost effectiveness ranged from $500/Mg ($450/ton) of SO_2 removed for a typical 117 MW (400 million Btu/hour) capacity unit to $730/Mg ($660/ton) of SO_2 removed for a typical 29 MW (100 million Btu/hour) capacity unit.

The incremental cost effectiveness of standards based on the use of very low sulfur oil to meet an emission limit of 129 ng SO_2/J (0.3 lb SO_2/million Btu) heat input or standards requiring a percent reduction in SO_2 emissions over standards based on the use of low sulfur oil to meet an emission limit of 344 ng SO_2/J (0.8 lb SO_2/million Btu) heat input ranges from $910/Mg ($830/ton) of SO_2 removed for a 29 MW (100 million Btu/hour) heat input capacity steam generating unit to $240/Mg ($220/ton) of SO_2 removed for a 117 MW (400 million Btu/hour) heat input capacity steam generating unit. The incremental cost effectiveness of an alternative control level or standard based on the use of low sulfur oil to meet an emission limit of 344 ng SO_2/J (0.8 lb SO_2/million Btu) heat input over an alternative control level or standard based on the use of low sulfur oil to meet an emission limit of 688 ng SO_2/J (1.6 lb SO_2/million Btu) heat input ranges from $1,070/Mg to $680/Mg ($970/ton to $620/ton) of SO_2 removed over the range of steam generating unit sizes examined.

These results indicate that standards based on the use of very low sulfur oil to meet an emission limit of 129 ng SO_2/J (0.3 lb SO_2/million Btu) heat input or standards requiring a percent reduction in SO_2 emissions at typical oil-fired steam generating units (i.e., capacity utilization factors in the range of 0.55) achieve a significant reduction in emissions at a reasonable incremental cost compared to standards based on the use of low sulfur oil for all sizes of steam generating units examined.

As mentioned above, the potential impacts of standards requiring a percent reduction in SO_2 emissions and standards based on the use of low sulfur oil were also examined as a function of steam generating unit capacity utilization factor. In particular, impacts were examined for a new 44 MW (150 million Btu/hour) heat input capacity oil-fired steam generating unit operated at an annual capacity utilization factor of 0.3 and at an annual capacity utilization factor of 0.15. As discussed previously, it is generally less costly for a typical oil-fired steam generating unit to achieve a 90 percent reduction in SO_2 emissions on a high sulfur oil than it is to fire a very low sulfur oil to meet an emission limit of 129 ng SO_2/J (0.3 lb SO_2/million Btu) heat input, due to the high premium price of very low sulfur oil. However, for oil-fired steam generating units operating at low capacity utilization factors, it is generally less costly to fire a very low sulfur oil to meet an emission limit of 129 ng SO_2/J (0.3 lb SO_2/million Btu) heat input. Thus, for low capacity utilization factor oil-fired steam generating units, three alternative control levels based on the use of low sulfur oil were examined for a typical 44 MW (150 million Btu/hour) heat input capacity steam generating unit—688, 344, and 129 ng SO_2/J (1.6, 0.8, and 0.3 lb SO_2/million Btu) heat input. An alternative control level requiring a 90 percent reduction in SO_2 emissions was also examined.

At a capacity utilization factor of 0.3, alternative control levels or standards based on the use of low sulfur oil to meet emission limits of 688 ng SO_2/J (1.6 lb SO_2/million Btu) and 344 ng SO_2/J (0.8 lb SO_2/million Btu) heat input achieve SO_2 emission reductions of 250 Mg/year (280 tons/year) and 400 Mg/year (440 tons/year), respectively, over the regulatory baseline. An alternative standard based on the use of very low sulfur oil to meet an emission limit of 129 ng SO_2/J (0.3 lb SO_2/million Btu) heat input achieves SO_2 emission reductions of 490 Mg/year (540 tons/year) over the regulatory baseline. An alternative control level or standard requiring a percent reduction in SO_2 emissions results in emission reductions of 530 Mg/year (580 tons/year) over the regulatory baseline.

Similarly, at a capacity utilization factor of 0.15, standards based on the use of low sulfur oil to meet emission limits of 688 ng SO_2/J (1.6 lb SO_2/million Btu) and 344 ng SO_2/J (0.8 lb SO_2/million Btu) heat input, and very low sulfur oil to meet an emission limit of 129 ng SO_2/J (0.3 lb SO_2/million Btu) heat input, achieve SO_2 emission reductions of 125 Mg/year (140 tons/year), 200 Mg/year (220 tons/year), and 245 Mg/year (270 tons/year), respectively, over the regulatory baseline. Alternative standards requiring a percent reduction in SO_2 emissions achieve emission reductions of 265 Mg/year (290 tons/year) over the regulatory baseline. The SO_2 emission reductions associated with a standard requiring a percent reduction in SO_2 emissions are greater, therefore, than those associated with standards based on the use of low or very low sulfur oil for oil-fired steam generating units operated at low capacity utilization factors.

As discussed in "Summary of Regulatory Analysis" under "Consideration of Demonstrated Emission Control Technology Costs" and as shown in Table 6–28, the potential increase over the regulatory baseline in annualized costs of a new 44 MW (150 million Btu/hour) heat input capacity oil-fired steam generating unit operating at low capacity utilization factors associated with standards based on the use of low sulfur oil to meet an emission limit of 688 ng SO_2/J (1.6 lb SO_2/million Btu) heat input ranges from 3 to 4 percent. The potential increase over the regulatory baseline in annualized costs associated with a standard based on the use of low sulfur oil to meet an emission limit of 344 ng SO_2/J (0.8 lb SO_2/million Btu) heat input ranges from about 7 to 9 percent. The potential increase over the regulatory baseline in annualized costs of a new 44 MW (150 million Btu/hour) heat input capacity oil-fired steam generating unit associated with a standard based on the use of very low sulfur oil to meet an emission limit of 129 ng SO_2/J (0.3 lb SO_2/million Btu) heat input ranges from about 15 to 17 percent. The potential increase over the regulatory baseline in annualized costs of a new 44 MW (150 million Btu/hour) heat input capacity oil-fired steam generating unit operated at a low capacity utilization factor associated with a standard requiring a percent reduction in SO_2 emissions ranges from about 20 to 22 percent.

The average cost effectiveness of standards based on the use of low sulfur oil remains essentially constant with respect to steam generating unit capacity utilization factor. For a 44 MW (150 million Btu/hour) heat input capacity steam generating unit operating at capacity utilization factors of 0.15 to 0.3, the average cost effectiveness of standards based on the use of low sulfur oil to meet an SO_2 emission limit of 688 ng/J (1.6 lb/million Btu) heat input is about $475/Mg ($435/ton) of SO_2 removed.

The average cost effectiveness of standards based on the use of low sulfur oil to meet an SO_2 emission limit of 344 ng/J (0.8 lb/million Btu) heat input is about $700/Mg ($635/ton) of SO_2 removed, and is about $855/Mg ($775/ton) of SO_2 removed for an emission limit of 129 ng SO_2/J (0.3 lb SO_2/million Btu) heat input based on the use of very low sulfur oil.

For a standard based on achieving a percent reduction in SO_2 emissions, average cost effectiveness increases with decreasing steam generating unit capacity factor. For a 44 MW (150 million Btu/hour) heat input capacity steam generating unit, the average cost effectiveness of a standard requiring a percent reduction in SO_2 emissions is $1,100/Mg ($1,000/ton) of SO_2 removed at a capacity utilization factor of 0.3 and increases to $1,550/Mg ($1,410/ton) of SO_2 removed at a capacity utilization factor of 0.15.

The incremental cost effectiveness of a standard requiring a percent reduction

in SO_2 emissions compared to a standard based on the use of very low sulfur oil ranges from about $4,410/Mg ($4,000/ton) of SO_2 removed for a new 44 MW (150 million Btu/hour) heat input capacity oil-fired steam generating unit operated at a capacity utilization factor of 0.30 to about $11,000/Mg ($10,000/ton) of SO_2 removed for this same size steam generating unit operated at a capacity utilization factor of 0.15. The incremental cost effectiveness of a standard based on the use of very low sulfur oil to meet an emission limit of 129 ng SO_2/J (0.3 lb SO_2/million Btu) heat input over a standard based on the use of low sulfur oil to meet an emission limit of 344 ng SO_2/J (0.8 lb SO_2/million Btu) heat input is about $1,540/Mg ($1,400/ton) of SO_2 removed for new 44 MW (150 million Btu/hour) heat input capacity oil-fired steam generating units operating at capacity utilization factors of 0.15 and 0.30. The incremental cost effectiveness of a standard based on the use of low sulfur oil to meet an emission limit of 344 ng SO_2/J (0.8 lb SO_2/million Btu) heat input over a standard based on the use of low sulfur oil to meet an emission limit of 688 ng SO_2/J (1.6 lb SO_2/million Btu) heat input is about $1,030 to $1,100/Mg ($940 to $1,000/ton) of SO_2 removed.

These results indicate that the annual emission reductions achieved under a standard requiring a percent reduction in SO_2 emissions compared to a standard based on the use of low sulfur oil decrease as steam generating unit capacity utilization factor decreases. The incremental annualized cost impacts associated with standards requiring a percent reduction over standards based on the use of low sulfur oil or very low sulfur oil increase, and the incremental SO_2 removal cost increases significantly, as capacity utilization factor decreases.

As discussed above and in "Summary of Regulatory Analysis" under "Consideration of National Impacts," however, many steam generating units fire natural gas instead of oil in response to a standard based on the use of very low sulfur oil or a standard requiring a percent reduction in SO_2 emissions. The analysis discussed above of the potential impacts of standards requiring a percent reduction in SO_2 emissions on low capacity utilization factor steam generating units does not reflect the effect of fuel switching.

The national impacts analysis, with its allowance for fuel switching, suggests that the incremental control costs of a percent reduction requirement vary inversely with capacity utilization factor. That is, SO_2 control costs for steam generating units operating at lower capacity utilization factors are higher than the control costs for steam generating units operating at higher capacity utilization factors.

The national incremental cost effectiveness of a standard requiring a percent reduction in emissions for steam generating units operating at capacity utilization factors of approximately 0.5 or more (and an emission limit based on the combustion of low sulfur fuel for steam generating units with capacity utilization factors below 0.5) compared to a standard based on the combustion of low sulfur fuel for all steam generating units is approximately $850/Mg ($775/ton).

As the applicability of percent reduction requirements is extended to include steam generating units with capacity utilization factors below 0.5, the incremental cost effectiveness of the standards increases. For example, the incremental cost effectiveness of requiring a percent reduction in emissions for all steam generating units with capacity utilization factors less than 0.5 is $1,020/Mg ($925/ton).

Extending the applicability of percent reduction requirements to steam generating units with capacity utilization factors below 0.5 yields an emission reduction of 38,000 Mg (42,000 tons) of SO_2 per year (roughly 15 percent of baseline emissions) at annualized costs of $39 million. While the Agency is proposing standards requiring a percent reduction in emissions for all oil-fired steam generating units, the Agency is interested in alternative ways of establishing standards that would make them more cost effective. As noted above, such approaches might include exempting steam generating units operating at lower capacity utilization factors.

4. Selection of Standard for Oil-Fired Steam Generating Units

As discussed above for coal-fired steam generating units, a number of technologies are capable of reducing emissions of SO_2 from oil-fired industrial-commercial-institutional steam generating units. Conventional wet FGD technologies, such as sodium scrubbing systems, have been widely applied to oil-fired steam generating units and are considered demonstrated for purposes of developing NSPS.

Short- and long-term test data were gathered to assess the performance of wet FGD systems in achieving a percent reduction in SO_2 emissions from oil-fired steam generating units. As discussed in "Summary of Regulatory Analysis" under "Performance of Demonstrated Emission Control Technologies," analysis of the data indicates that these technologies are capable of continuously achieving a 90 percent reduction in SO_2 emissions on a 30-day rolling average basis. Therefore, a 90 percent reduction in SO_2 emissions on a 30-day rolling average basis through the use of wet FGD technologies is considered demonstrated for oil-fired steam generating units.

Assessing the performance of other demonstrated control technologies, such as FBC or lime spray drying, in achieving sustained SO_2 emission reductions on oil-fired steam generating units is not as straightforward. The FBC and lime spray drying technologies, for example, were developed primarily for coal firing and nearly all commercially operating installations of these technologies are on coal-fired steam generating units. Therefore, the performance of these control technologies in achieving sustained reductions in SO_2 emissions from oil-fired steam generating units must largely be inferred from their performance on coal-fired units. While some changes in the design of these technologies may be appropriate for their use on oil-fired steam generating units, such as the use of electrostatic precipitators rather than fabric filters, there are no technical reasons to expect that the performance of FBC or lime spray drying when applied to oil-fired steam generating units would differ substantially from the performance levels demonstrated on coal-fired steam generating units. Consequently, a 90 percent reduction in SO_2 emissions on a 30-day rolling average basis is also considered demonstrated for these technologies when applied to oil-fired steam generating units.

The cost impacts associated with various percent reduction requirements were examined and analyzed for oil-fired steam generating units at both the national level and the individual steam generating unit level. These analyses are discussed in "Summary of Regulatory Analysis" under "Consideration of National Impacts" and "Consideration of Demonstrated Emission Control Technology Costs."

As discussed in "Summary of Regulatory Analysis" under "Consideration of National Impacts" and shown in Table 8–5, national annualized cost impacts were found to be relatively insensitive to variations in the specific level of the percent reduction requirement. For example, the national average cost effectiveness associated with various percent reduction requirements ranging from 70 percent to 90 percent varied from $600/

Mg ($540/ton) of SO_2 removed to $560/Mg ($510/ton) of SO_2 removed. However, SO_2 emissions under a 90 percent reduction requirement are reduced by an additional 28,000 Mg/year (31,000 tons/year) below the emission levels achieved under a 70 percent reduction requirement. Therefore, on a national basis, a 90 percent reduction requirement achieves greater SO_2 emission reductions at costs only slightly higher than those associated with lower percent reduction requirements for oil-fired steam generating units.

The cost impacts associated with various percent reduction requirements were also examined for a typical oil-fired industrial-commercial-institutional steam generating unit with a heat input capacity of 44 MW (150 million Btu/hour). As shown in Table 6–29 of "Summary of Regulatory Analysis," the annualized cost differences of operating an FGD system to achieve a 90 percent reduction versus a 50 percent reduction in SO_2 emissions ranges from about $30,000/year for low sulfur oil to about $113,000/year for high sulfur oil. The corresponding incremental emission reductions achieved under a 90 percent reduction requirement range from 80 Mg/year (88 tons/year) for low sulfur oil to 298 Mg/year (328 tons/year) for high sulfur oil. The average cost effectiveness of operating an FGD system at 90 percent reduction is $628 to $1,500/Mg ($570 to $1,360/ton) of SO_2 removed, compared to $750 to $2,040/Mg ($680 to $1,850/ton) of SO_2 removed for an FGD system operated at 50 percent reduction.

As in the national impact and individual steam generating unit impact analyses discussed above for coal-fired steam generating units, the results of both the national impact and individual steam generating unit impact analyses for oil-fired steam generating units lead to the same conclusion: a 90 percent reduction requirement is more cost effective than lower percent reduction requirements.

As discussed above, this result emerges because the only increased costs associated with operating an FGD system to achieve a high percent reduction in SO_2 emissions, rather than a low percent reduction, are the increased costs resulting from increased chemicals and utilities consumption and increased waste disposal costs. These increased costs are incremental in nature and relatively small. However, the increased reduction in SO_2 emissions resulting from operation at a high percent reduction level is quite significant.

In addition, in the national impacts analysis, the cost effectiveness of a 90 percent reduction requirement compared to the cost effectiveness of a lower percent reduction requirement is also influenced by fuel switching. As also discussed above, the impact of fuel switching in response to percent reduction requirements tends to improve the resulting cost effectiveness of SO_2 control. While the increased costs associated with operating an FGD system at a high percent reduction are small, in some cases these increased costs are sufficient to cause some additional steam generating units to fire natural gas instead of oil. This tends to improve further the cost effectiveness of SO_2 control associated with the 90 percent reduction requirement.

Consequently, in both the national impact and individual steam generating unit impact analyses, a 90 percent reduction requirement emerges as more cost effective than lower percent reduction requirements.

As discussed above, the ability of wet FGD systems, lime spray drying systems, and FBC systems to achieve this level of performance on a 30-day rolling average basis is considered demonstrated. Thus, a standard requiring a 90 percent reduction in SO_2 emissions has been selected for new oil-fired steam generating units of greater than 29 MW (100 million Btu/hour) heat input capacity (except for units using emerging technologies, as discussed below).

In selecting an SO_2 emission limit to accompany the percent reduction requirement for oil-fired steam generating units, consideration was given to emission levels which, when combined with a requirement to achieve a 90 percent reduction in SO_2 emissions, would not preclude the use of very high sulfur oils. Review of data on fuel oils currently produced by U.S. refineries indicates that the SO_2 content of the residual oils prior to hydrodesulfurization can be in excess of 2,580 ng/J (6.0 lb/million Btu). However, residual oils produced from particularly heavy crude oils, or oils recovered from tar sands and oil shales, could have SO_2 contents of up to 3,440 ng/J (8.0 lb/million Btu). Although these types of oils are not currently widely processed by U.S. refineries, they are expected to be processed more frequently in the future. Therefore, an SO_2 emission limit of 344 ng/J (0.8 lb/million Btu) heat input has been selected as the emission limit included in the 90 percent reduction requirement for oil-fired industrial-commercial-institutional steam generating units.

As discussed above concerning coal-fired steam generating units, it is questionable whether these standards for oil-fired steam generating units could be achieved by emerging technologies. Accommodating and fostering the continued development of emerging technologies is considered desirable. As with coal-fired steam generating units, establishing less stringent percent reduction requirements for emerging technologies applied to oil-fired steam generating units would increase the likelihood that owners and operators of new oil-fired industrial-commercial-institutional steam generating units will install and operate emerging technologies.

As mentioned in the introduction to this section, standards for coal- and oil-fired steam generating units should be conceptually similar so as to not create an advantage in the use of one fuel over another. Therefore, the regulatory approach selected for accommodating the use of emerging technologies on coal-fired steam generating units was also selected for accommodating the use of emerging technologies on oil-fired steam generating units.

Most emerging technologies for control of SO_2 emissions from steam generating units are being developed primarily for application to coal-fired steam generating units. Nonetheless, such emerging technologies as dry alkali injection, electron beam irradiation, and LIMB could be applied to oil-fired steam generating units as well. There are, in addition, no reasons to expect that the performance of emerging technologies when applied to oil-fired steam generating units would be any better or worse than when applied to coal-fired steam generating units. Therefore, the proposed standards would require all new, modified, or reconstructed oil-fired industrial-commercial-institutional steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) employing emerging SO_2 control technologies to achieve a minimum of 50 percent reduction in SO_2 emissions on a 30-day rolling average basis.

In order to minimize emissions from oil-fired steam generating units using an emerging technology for SO_2 control and subject to the 50 percent reduction requirement, the proposed standard includes an emission limit of 172 ng SO_2/J (0.4 lb SO_2/million Btu) heat input. As discussed above for coal-fired steam generating units, this limit is one-half of the otherwise applicable limit. This limits the use of emerging technologies achieving the minimum 50 percent reduction in SO_2 emissions to steam generating units firing low sulfur oil; i.e., oil with a sulfur content of 344 ng SO_2/J (0.8 lb SO_2/million Btu) heat input or

less. To the extent that emerging technologies may achieve SO_2 emission reductions of greater than 50 percent, oils with higher sulfur contents can be burned without exceeding the proposed emission limit. Because higher sulfur oils are generally less expensive than low sulfur oils, this will act as an incentive to achieve percent reductions of greater than 50 percent.

As discussed above for coal-fired steam generating units, therefore, the proposed standards provide a limited "window" for use of emerging technologies on oil-fired steam generating units. This window will be reviewed regularly during the course of the review process associated with all NSPS. As appropriate, the percent reduction requirements will be revised upwards in light of additional performance data available at that time for emerging technologies. As a result of these reviews, emerging control technologies that do not demonstrate improvements in performance capabilities, or show no promise of achieving emission reductions greater than 50 percent, will no longer be considered emerging technologies and would be subjected to the same requirements as those included in the standards for conventional demonstrated technologies.

5. Basis of Standard for Mixed Fuel-Fired Steam Generating Units

The regulatory analysis for mixed fuel-fired steam generating units (i.e., those firing mixtures of sulfur-bearing and nonsulfur-bearing fuels) was conducted in a manner parallel to that for steam generating units firing coal and oil. The analysis considered the impacts of alternative control levels or standards based on the use of low sulfur fuel or requiring a percent reduction in SO_2 emissions from three different perspectives: overall national impacts; specific industries subject to the standards; and individual steam generating units subject to the standards.

For purposes of calculating these impacts, the analyses assumed that "emission credits" are not provided for mixed fuel-fired steam generating units. (Emission credits would permit "dilution" of the SO_2 emissions resulting from combustion of coal or oil with "clean" gases resulting from combustion of non-sulfur containing fuels as a means of reducing emissions and meeting standards.) As discussed in "Summary of Regulatory Analysis" under "Consideration of Demonstrated Emission Control Technology Costs," this assumption permits mixed fuel-fired steam generating units to be considered as a type of low capacity utilization factor fossil fuel-fired steam generating unit. The merits of emission credits are considered and discussed below under "Other Considerations."

National Impacts. As discussed in "Summary of Regulatory Analysis" under "Consideration of National Impacts," the national impacts associated with NSPS were analyzed on the basis of projections to 1990 of new mixed fuel-fired steam generating units. The computer model used to assess the impacts of various standards for fossil fuel-fired units, IFCAM, considers only steam generating units firing fossil fuels. Consequently, this model could not be used in the analysis of national impacts on mixed fuel-fired steam generating units. The methodological approach employed in the analysis of national impacts on mixed fuel-fired steam generating units, however, was the same as that employed in the IFCAM model.

Similar to the analyses of national impacts discussed above for coal- and oil-fired steam generating units, a set of regulatory alternatives or alternative standards was structured to examine national impacts on mixed fuel-fired steam generating units as a function of steam generating unit size. These alternatives are shown in Table 8-11 of "Summary of Regulatory Analysis."

The regulatory alternatives become progressively more stringent by first requiring only mixed fuel-fired steam generating units with heat input capacities above 73 MW (250 million Btu/hour) to meet a standard based on the use low sulfur fuel. The second alternative requires all steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) to meet an emission limit based on the use of low sulfur fuel. The third alternative requires only mixed fuel-fired steam generating units larger than 73 MW (250 million Btu/hour) heat input capacity to achieve a percent reduction in SO_2 emissions, while all other steam generating units are required to meet an emission limit based on the use of low sulfur fuels. The fourth alternative requires all steam generating units larger than 29 MW (100 million Btu/hour) heat input capacity to achieve a percent reduction in SO_2 emissions.

As discussed in "Summary of Regulatory Analysis" under "Consideration of National Impacts" and shown in Table 8-12, standards based on the use of low sulfur fuel for all new mixed fuel-fired steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) result in a projected reduction in national SO_2 emissions of 42,000 Mg/year (46,000 tons/year) over the regulatory baseline in the fifth year following proposal of standards (i.e., 1990). In comparison, standards requiring all new mixed fuel-fired steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) to achieve a percent reduction in emissions result in a projected national SO_2 emission reduction of 55,700 Mg/year (61,200 tons/year) over the regulatory baseline in 1990.

Of the difference in projected national SO_2 emission reductions between these two alternatives (about 14,000 Mg/year), nearly all (about 13,500 Mg/year) results from standards requiring all new mixed fuel-fired steam generating units with heat input capacities greater than 73 MW (250 million Btu/hour) to achieve a percent reduction in SO_2 emissions. This occurs for two reasons: (1) Only a very small number of new mixed-fuel fired steam generating units in 1990 (i.e., 5 out of a total of 35) are projected to have heat input capacities less than 73 MW (250 million Btu/hour), and (2) all of the new mixed fuel-fired units with heat input capacities less than 73 MW (250 million Btu/hour) are projected to burn small amounts of coal or oil (i.e., about 20 percent) relative to the amount of nonsulfur-bearing fuel fired annually.

The amount of coal or oil fired in a steam generating unit can be expressed in terms of a fossil fuel utilization factor. This represents the percentage of the rated steam generating unit heat input capacity that is supplied by coal or oil. The fossil fuel utilization factor is, therefore, calculated on the basis of the amount of coal or oil that is actually fired compared to the maximum amount of fuel that could be fired in the steam generating unit. For example, a 117 MW (400 million Btu/hour) heat input capacity mixed fuel-fired steam generating unit operating at an annual capacity utilization factor of 0.6 is firing 70 MW (240 million Btu/hour) heat input on an annual basis. If this unit fires 20 percent coal and 80 percent nonsulfur-bearing fuel, the heat input supplied from coal is 14 MW (48 million Btu/hour) on an annual basis. This represents 12 percent of the potential total annual heat input to the steam generating unit, or a fossil fuel utilization factor of 0.12. Similarly, a mixed fuel-fired steam generating unit operating at an annual capacity utilization factor of 0.6 and firing a 50 percent coal/50 percent nonsulfur-bearing fuel mixture would have a fossil fuel utilization factor of 0.3, and a unit firing 80 percent coal and 20 percent

nonsulfur-bearing fuel would have a fossil fuel utilization factor of 0.48.

Based on the above discussion, this analysis projects that standards requiring all new mixed fuel-fired steam generating units to achieve a percent reduction in SO_2 emissions achieve greater reductions in national SO_2 emissions than standards based on the use of low sulfur fuel.

As shown in Table 8–12 of "Summary of Regulatory Analysis," NSPS based on the use of low sulfur fuel for all new mixed fuel-fired steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) result in a projected national annualized cost increase of $21.5 million/year over the regulatory baseline in 1990. This represents an increase of about 5 percent in the total national annualized costs associated with operation of all new mixed fuel-fired steam generating units projected to be constructed between 1986 and 1990. In comparison, standards requiring all new mixed fuel-fired steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) to achieve a percent reduction in emissions result in projected national annualized cost increases of about $42.9 million/year over the regulatory baseline in 1990. This represents an increase in total national annualized costs of about 10 percent.

Of the difference in projected increases in total national annualized costs between these two alternatives (about $21.4 million/year), nearly all ($19.9 million/year) results from standards requiring all new mixed fuel-fired steam generating units with heat input capacities greater than 73 MW (250 million Btu/hour) to achieve a percent reduction in SO_2 emissions. Again, this occurs as a result of both the small number of new mixed fuel-fired steam generating units projected to have heat input capacities less than 73 MW (250 million Btu/hour) and the low fossil fuel utilization factors projected for these units.

Based on the projected national emission reductions and annualized cost increases described above, the national average cost effectiveness of NSPS based on the use of low sulfur fuel for all new mixed fuel-fired steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) is about $520/Mg ($470/ton) of SO_2 removed. In comparison, standards requiring all new mixed fuel-fired steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) to achieve a percent reduction in emissions result in a national average cost effectiveness of $770/Mg ($700/ton) of SO_2 removed.

As shown in Table 8–12, however, the incremental cost effectiveness of a standard requiring all mixed fuel-fired steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) to achieve a percent reduction in SO_2 emissions, over a standard requiring only mixed fuel-fired steam generating units with heat input capacities greater than 73 MW (250 million Btu/hour) to achieve a percent reduction in SO_2 emissions, is about $5,800/Mg ($5,300/ton) of SO_2 removed. As discussed in "Summary of Regulatory Analysis" under "Consideration of National Impacts," this high incremental cost effectiveness level is not due to the relatively small size of steam generating units with heat input capacities less than 73 MW (250 million Btu/hour), but rather results from the projection that all of the new mixed fuel-fired steam generating units with heat input capacities less than 73 MW (250 million Btu/hour) will have low fossil fuel utilization factors.

On an annual basis, the potential emission reductions obtainable from these mixed fuel-fired steam generating units with heat input capacities less than 73 MW (250 million Btu/hour) units are much less than those obtainable from larger units, even under a standard that requires a percent reduction in SO_2 emissions. Moreover, FGD systems installed on these mixed fuel-fired units would be designed to accommodate firing of coal or oil at full load to provide maximum fuel use flexibility. Thus, the costs of these FGD systems would be similar to those installed on coal- or oil-fired steam generating units or on mixed fuel-fired units that fire relatively large amounts of coal or oil relative to nonsulfur-bearing fuel (i.e., with high fossil fuel utilization factors). As a result, for mixed fuel-fired steam generating units with heat input capacities of less than 73 MW (250 million Btu/hour) that have low fossil fuel utilization factors, the costs of achieving a percent reduction in SO_2 emissions are relatively high in proportion to the emission reductions achievable on an annual basis.

In summary, this analysis indicates that the national average cost effectiveness of standards requiring all new mixed fuel-fired steam generating units to achieve a percent reduction in SO_2 emissions is not substantially higher than the national average cost effectiveness of standards based on the use of low sulfur fuel. This analysis also appears to indicate that the incremental cost effectiveness of a standard requiring all steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) to achieve a percent reduction in SO_2 emissions over a standard that would require only mixed fuel-fired steam generating units with heat input capacities greater than 73 MW (250 million Btu/hour) to achieve a percent reduction in emissions is high. As discussed above, however, this high incremental cost effectiveness is not due primarily to the smaller size of these mixed fuel-fired steam generating units, but rather to the low fossil fuel utilization factors projected for new mixed fuel-fired steam generating units of less than 73 MW (250 million Btu/hour) heat input capacity (i.e., fossil fuel utilization factors in the range of 0.12).

As discussed in "Summary of Regulatory Analysis" under "Consideration of National Impacts" and shown in Table 8–12, NSPS are not projected to have any impact on fuel use in new mixed fuel-fired steam generating units. Under the regulatory baseline, the total fuel consumption in new mixed fuel-fired steam generating units is projected to be evenly divided between coal and nonfossil fuels. Oil and natural gas are not competitive with coal for use in mixed fuel-fired steam generating units under either the high oil penetration or high coal penetration energy scenarios discussed above for fossil fuel-fired steam generating units. In addition, as shown in Table 8–12, this fuel use pattern does not change under any of the regulatory alternatives or standards examined. Thus, this analysis indicates that the fuel switching projected to occur for fossil fuel-fired steam generating units in response to various NSPS is not projected to occur for mixed fuel-fired steam generating units.

As discussed in "Summary of Regulatory Analysis" under "Consideration of Secondary Environmental Impacts," potential secondary environmental impacts associated with standards of performance that include a percent reduction requirement have also been analyzed. The impacts of various regulatory alternatives on the generation and disposal of solid and liquid wastes were examined at the national level, as shown in Table 8–12. Regulatory alternatives requiring a percent reduction in SO_2 emissions result in greater quantities of liquid waste than do regulatory alternatives based on the use of low sulfur fuels. The table also indicates that the solid waste impacts associated with regulatory alternatives requiring a percent reduction in SO_2 emissions are not significantly greater

than those associated with regulatory alternatives based on the use of low sulfur fuel.

As discussed previously for coal- and oil-fired steam generating units, the quantities of wastes generated by FGD systems installed on mixed fuel-fired steam generating units is small compared to the total amounts of existing liquid and solid wastes generated by industrial plants at which these steam generating units are located. In addition, the nontoxic and nonhazardous nature of the FGD wastes permits their disposal using conventional techniques such as ponding, landfilling, or direct discharge without leading to any unreasonable secondary environmental impacts.

Industry-Specific Economic Impacts. The analysis discussed above of potential national impacts associated with standards of performance for new mixed fuel-fired steam generating units represents an assessment of the aggregate nationwide impact of standards requiring a percent reduction in SO_2 emissions. Because of the aggregate nature of this analysis of national impacts, the potential impact of standards requiring a percent reduction in SO_2 emissions was not assessed for specific industrial sectors within the national economy. Accordingly, the potential economic impacts of a standard requiring a percent reduction in SO_2 emissions on major industrial steam users were also considered.

For the same size steam generating unit operating at the same overall capacity utilization factor, the annualized costs associated with standards requiring a percent reduction in SO_2 emissions would be somewhat less for a mixed fuel-fired steam generating unit than for a fossil fuel-fired steam generating unit. In both cases, an FGD system would be installed to comply with the percent reduction requirement, and this FGD system would be designed to handle the total exhaust gas volume from the steam generating unit. This would be necessary for the mixed fuel-fired steam generating unit, as well as the fossil fuel-fired steam generating unit, because 100 percent coal or oil might have to be fired on occasion in the mixed fuel-fired steam generating unit when nonsulfur-bearing fuels were not available. As a result, capital costs associated with standards requiring a percent reduction in SO_2 emissions would be essentially the same for both mixed fuel-fired and fossil fuel-fired steam generating units.

Operating costs, however, would be somewhat lower for a mixed fuel-fired steam generating unit. These costs are a function of the amount of SO_2 removed by the FGD system which, for steam generating units of the same size, operating at the same capacity utilization factor, and firing coal or oil of the same sulfur content, would be less for a mixed fuel-fired steam generating unit than for a fossil fuel-fired steam generating unit. As a result, the industry-specific economic impacts associated with alternative standards for mixed fuel-fired steam generating units would also be somewhat less than those associated with alternative standards for fossil fuel-fired steam generating units.

As discussed above for coal-fired steam generating units, the "worse case" analysis of potential industry-specific economic impacts of standards requiring a percent reduction in SO_2 emissions indicates that the increases in product prices as a result of such a standard could range from less than 0.1 percent to 1.5 percent. Similarly, assuming full cost absorption, potential increases in product value added range from less than 0.1 percent to 5.0 percent, and potential decreases in manufacturing plant profitability or return on assets range from less than 0.1 to 2.8 percent.

As mentioned above, none of these industry-specific impacts associated with a standard requiring a percent reduction in SO_2 emissions from coal-fired steam generating units is considered unreasonable. The annualized costs associated with achieving a percent reduction in SO_2 emissions from mixed fuel-fired steam generating units are smaller than the annualized costs associated with achieving a percent reduction in SO_2 emissions from coal-fired steam generating units. As a result, none of the industry-specific impacts associated with standards requiring a percent reduction in SO_2 emissions from mixed fuel-fired steam generating units are considered unreasonable.

Impacts on Individual Steam Generating Units. The analysis of industry-specific impacts discussed above examined the potential impacts of standards requiring a percent reduction in SO_2 emissions within specific industries at the manufacturing plant level. This analysis, however, was unable to assess potential impacts at the individual steam generating unit level. Consequently, the regulatory analysis also examined the cost and emission impacts associated with standards requiring a percent reduction in SO_2 emissions and standards based on the use of low sulfur coal in terms of individual steam generating units.

As was discussed above and in "Summary of Regulatory Analysis" under "Consideration of Demonstrated Emission Control Technology Costs," assuming that emission credits are not provided, the cost impacts on mixed fuel-fired steam generating units of alternative control levels or standards based on the use of low sulfur fuel would be essentially the same as those for fossil fuel-fired units operating at low annual capacity utilization factors. The annual costs associated with alternative control levels or standards based on achieving a percent reduction in SO_2 emissions would also be the same for mixed fuel-fired and fossil fuel-fired steam generating units operating at low annual capacity utilization factors. Therefore, the cost impacts on mixed fuel-fired steam generating units of alternative control levels or standards can be examined by considering the cost analysis performed for fossil fuel-fired steam generating units operating at low annual capacity utilization factors. A mixed fuel-fired steam generating unit firing 50 percent coal or oil and 50 percent nonsulfur-bearing fuel at an annual capacity utilization factor of 0.6 (i.e., fossil fuel utilization factor of 0.3), for example, can be considered a fossil fuel-fired steam generating unit operating at an annual capacity utilization factor of 0.3 for purposes of analysis.

Most nonfossil fuel-fired steam generating units are designed with the flexibility to fire fossil fuel, as well as nonfossil fuel. As a result, most nonfossil fuel-fired steam generating units can be considered mixed fuel-fired steam generating units. The flexibility to fire fossil fuel is generally provided to overcome potential flame stability problems that arise with some nonfossil fuels and to ensure that the steam generating unit can continue to operate during periods when nonfossil fuel may not be available.

The basic design of a steam generating unit designed to fire nonfossil fuel is very similar to the basic design of a steam generating unit designed to fire coal. The increase in capital costs necessary to provide the flexibility for a nonfossil fuel-fired steam generating unit to fire coal, therefore, are small. As a result, selection of the fossil fuel to fire in a mixed fuel-fired steam generating unit is primarily a consideration of the price of the fossil fuel. In such a situation, with few exceptions, coal normally is the less expensive fuel. Consequently, most mixed fuel-fired steam generating units fire coal, rather than natural gas or oil, with nonfossil fuels.

The potential impacts associated with standards based on the use of low sulfur fuel and standards requiring a percent

reduction in SO_2 emissions, therefore, were examined by considering the potential impacts discussed above and in "Summary of Regulatory Analysis" under "Consideration of Demonstrated Emission Control Technology Costs" for a coal-fired steam generating unit with a heat input capacity of 44 MW (150 million Btu/hour) operating at annual capacity utilization factors of 0.3 and 0.15. As discussed above, annual fossil fuel utilization factor is calculated by multiplying the annual capacity utilization factor by the percentage of fossil fuel fired in the steam generating unit. Thus, the cost impacts for coal-fired steam generating units operating at annual capacity utilization factors of 0.3 and 0.15 correspond to the cost impacts associated with mixed fuel-fired steam generating units operating at an overall capacity utilization factor of 0.6 and firing a mixture of 50 percent coal/50 percent nonsulfur-bearing fuel and 25 percent coal/75 percent nonsulfur-bearing fuel, respectively.

An alternative control level or standard based on the use of low sulfur coal results in SO_2 emission reductions of 205 Mg/year (230 tons/year) over the regulatory baseline for a 44 MW (150 million Btu/hour) heat input capacity mixed fuel-fired steam generating unit located in Region V and operating at an annual fossil fuel utilization factor of 0.30. An alternative control level or standard requiring a percent reduction in SO_2 emissions results in emission reductions of 300 Mg/year (330 tons/year) over the regulatory baseline. At an annual fossil fuel utilization factor of 0.15, an alternative control level or standard based on the use of low sulfur coal achieves SO_2 emission reductions of 100 Mg/year (115 tons/year) over the regulatory baseline and an alternative control level or standard requiring a percent reduction in SO_2 emissions results in emission reductions of 150 Mg/year (165 tons/year) over the regulatory baseline. The SO_2 emission reductions associated with a standard requiring a percent reduction in SO_2 emissions are greater, therefore, than those associated with a standard based on the use of low sulfur coal.

As shown in Tables 6–15 and 6–16 of "Summary of Regulatory Analysis," the potential increase over the regulatory baseline in annualized costs of a new 44 MW (150 million Btu/hour) heat input capacity mixed fuel-fired steam generating unit associated with standards based on the use of low sulfur coal is about 1 or 2 percent in both Region V and Region VIII. The potential increase in annualized costs over the regulatory baseline associated with standards requiring a percent reduction in emissions is about 8 or 9 percent in Region V and about 10 or 11 percent in Region VIII. Thus, the incremental increase in annualized costs as a result of standards requiring a percent reduction in emissions over standards based on the use of low sulfur coal for mixed fuel-fired steam generating units is about 7 to 8 percent in Region V and 9 to 10 percent in Region VIII.

On the basis of the emission reductions and potential annualized cost increases noted above, the average cost effectiveness of standards based on the use of low sulfur coal in Region V is between $440/Mg ($400/ton) and $480/Mg ($440/ton) of SO_2 removed for typical mixed fuel-fired steam generating units with annual fossil fuel utilization factors between 0.3 and 0.15, respectively. For standards requiring a percent reduction in SO_2 emissions, the average cost effectiveness in Region V ranges from $1,250/Mg ($1,150/ton) of SO_2 removed for a mixed fuel-fired steam generating unit with an annual fossil fuel utilization factor of 0.3 to $2,130/Mg ($1,930/ton) of SO_2 removed for a mixed fuel-fired steam generating unit with an annual fossil fuel utilization factor of 0.15. In Region VIII, the average cost effectiveness of standards based on the use of low sulfur coal is between $240/Mg ($220/ton) and $300/Mg ($270/ton) of SO_2 removed for mixed fuel-fired steam generating units with annual fossil fuel utilization factors between 0.3 and 0.15, respectively. For standards requiring a percent reduction in SO_2 emissions, the average cost effectiveness in Region VIII ranges from $1,190/Mg ($1,080/ton) of SO_2 removed for a mixed fuel-fired steam generating unit with an annual fossil fuel utilization factor of 0.3 to $1,870/Mg ($1,700/ton) of SO_2 removed for a mixed fuel-fired steam generating unit with an annual fossil fuel utilization factor of 0.15.

In Region V, the incremental cost effectiveness of a standard requiring a percent reduction in SO_2 emissions over a standard based on the use of low sulfur coal ranges from $3,080/Mg ($2,790/ton) of SO_2 removed for a mixed fuel-fired steam generating unit with an annual fossil fuel utilization factor of 0.3 to $5,110/Mg ($4,640/ton) of SO_2 removed for a mixed fuel-fired steam generating unit with an annual fossil fuel utilization factor of 0.15. Similarly, in Region VIII, the incremental cost effectiveness ranges from $2,420/Mg ($2,200/ton) to $3,950/Mg ($3,580/ton) of SO_2 removed for mixed fuel-fired steam generating units with annual fossil fuel utilization factors between 0.3 and 0.15, respectively.

These results indicate that both the average and incremental cost impacts associated with standards requiring a percent reduction in SO_2 emissions increase significantly as the fossil fuel utilization factor of a mixed fuel-fired steam generating unit decreases.

As noted above and discussed in "Summary of Regulatory Analysis" under "Consideration of National Impacts," mixed fuel-fired steam generating units are not projected to fire natural gas instead of coal in response to a standard requiring a percent reduction in SO_2 emissions. This is true under both the high oil penetration and high coal penetration scenarios. Unlike fossil fuel-fired steam generating units, firing natural gas would not result in any significant reduction in steam generating unit capital costs which would partially offset the increased price of natural gas. Thus, unlike low capacity utilization factor fossil fuel-fired steam generating units which are likely to fire natural gas instead of coal to avoid the cost impacts discussed above, mixed fuel-fired steam generating units will likely incur the full cost impacts associated with standards requiring a percent reduction in SO_2 emissions.

Both the analysis of impacts at the national level and the analysis of impacts at the individual steam generating unit level, therefore, indicate that the costs of a standard requiring a percent reduction in SO_2 emissions are disproportionate to the emission reductions obtained for mixed fuel-fired steam generating units that fire small amounts of coal relative to nonsulfur-bearing fuel on an annual basis. Consequently, new mixed fuel-fired steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) that have annual fossil fuel utilization factors of 0.3 or less are considered a category of steam generating units for which a percent reduction requirement would have unreasonable impacts. These analyses, however, also show that the impacts of standards containing emission limits only are reasonable for all sizes and types of mixed fuel-fired steam generating units. Accordingly, the basis of the standard for mixed fuel-fired industrial-commercial-institutional steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) that operate at annual fossil fuel utilization factors for coal of 30 percent (0.3) or less is an emission limit only.

The analysis of national impacts, impacts on specific industries, and impacts on individual steam generating units have shown that the impacts of a

standard requiring a percent reduction in SO_2 emissions are reasonable for mixed fuel-fired steam generating units that operate at annual fossil fuel utilization factors greater than 0.3. These impacts are reasonable when compared to standards based on the use of low sulfur fuel and when compared to the regulatory baseline. Therefore, the basis of standards for mixed fuel-fired steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) that operate at annual fossil fuel utilization factors for coal of more than 0.3 is a percent reduction in SO_2 emissions.

6. Selection of Standard for Mixed Fuel-Fired Steam Generating Units

As with coal- and oil-fired steam generating units, the SO_2 control technologies which are capable of continuously achieving a percent reduction in SO_2 emissions from mixed fuel-fired steam generating units include both combustion modifications and post-combustion controls. Combustion modification through the use of FBC has received widespread application to steam generating units which fire low quality fossil fuels and nonfossil fuels, including mixed fuel-fired steam generating units. Wet and dry FGD technologies are also applicable to mixed fuel-fired steam generating units.

The SO_2 emissions from a mixed fuel-fired steam generating unit are a product of the sulfur content of the coal or oil in the fuel mixture. Consequently, the same technologies that are effective in controlling SO_2 emissions from coal- or oil-fired steam generating units are also effective in controlling SO_2 emissions from steam generating units that fire coal or oil in combination with nonsulfur-bearing fuels. Further, these control technologies are capable of achieving the same level of emission reduction from mixed fuel-fired steam generating units as from coal- or oil-fired steam generating units.

As discussed in "Summary of Regulatory Analysis" under "Performance of Demonstrated Emission Control Technologies," analysis of data gathered to assess the performance of wet FGD technologies (sodium, lime/limestone, and dual alkali), lime spray drying systems, and FBC systems indicates that these technologies are capable of continuously achieving a 90 percent reduction in SO_2 emissions from coal- and oil-fired steam generating units. Because, as mentioned above, these technologies are capable of achieving the same level of performance on mixed fuel-fired steam generating units, a 90 percent reduction in SO_2 emissions on a 30-day rolling average basis through the use of these technologies is considered demonstrated for mixed fuel-fired steam generating units.

The cost impacts associated with a range of percent reduction requirements were examined for coal- and oil-fired steam generating units. As discussed above, these analyses indicate that a 90 percent reduction requirement achieves the greatest emission reductions at costs only slightly higher than those associated with lower percent reduction requirements and that a 90 percent reduction requirement is more cost effective than lower percent reduction requirements. Similarly, a 90 percent reduction requirement for mixed fuel-fired steam generating units would also result in the greatest emission reduction at costs only slightly higher than those associated with lower percent reduction requirements.

As discussed above, the analysis of cost impacts of percent reduction standards on fossil fuel-fired steam generating units operating at low annual capacity utilization factors can be used to represent the impacts of percent reduction requirements on mixed fuel-fired steam generating units. Consequently, as shown in Table 6–10 of "Summary of Regulatory Analysis," for a mixed fuel-fired steam generating unit located in EPA Region VIII and operating at an annual fossil fuel utilization factor of 0.30, the average cost effectiveness of a 50 percent reduction requirement is $1,380/Mg ($1,250/ton) of SO_2 removed. For a 70 percent reduction requirement, the average cost effectiveness is $1,270/Mg ($1,150/ton) of SO_2 removed, and for a 90 percent reduction requirement, the average cost effectiveness is $1,200/Mg ($1,090/ton) of SO_2 removed.

As discussed above, the ability of wet FGD systems, lime spray drying systems, and FBC systems to achieve a 90 percent reduction in SO_2 emissions on a 30-day rolling average basis from mixed fuel-fired steam generating units is considered demonstrated. Thus, a standard requiring a 90 percent reduction in SO_2 emissions has been selected for new mixed fuel-fired steam generating units of greater than 29 MW (100 million Btu/hour) heat input capacity that have an annual fossil fuel utilization factor of greater than 0.30 (except for units using emerging technologies, as discussed below).

Because mixed fuel-fired steam generating units obtain their fossil fuel supplies from the same market sources as fossil fuel-fired steam generating units, the same consideration was given to emission limits which, when combined with a 90 percent reduction in SO_2 emissions, would not preclude the use of high sulfur fuels. Therefore, emission limits of 516 ng/J (1.2 lb/million Btu) heat input for mixed fuel-fired steam generating units firing coal, and 344 ng/J (0.8 lb/million Btu) heat input for mixed fuel-fired steam generating units firing oil, have been selected as the emission limits included in the 90 percent reduction standard for new industrial-commercial-institutional mixed fuel-fired steam generating units.

As discussed above for coal-fired and oil-fired steam generating units, it is questionable whether the standards discussed above could be achieved by emerging technologies. The importance of accommodating emerging technologies has also been discussed previously. Establishing less stringent percent reduction requirements for emerging technologies would increase the likelihood that owners and operators of new industrial-commercial-institutional steam generating units firing mixed fuels will install and operate these systems.

As discussed above, emerging SO_2 control technologies are being developed primarily for application to coal-fired steam generating units. Nonetheless, such emerging technologies as dry alkali injection, electron beam irradiation, and LIMB could be applied to mixed fuel firing as well. There are, in addition, no reasons to expect that the performance of emerging technologies when applied to mixed fuel-fired steam generating units would be any better or worse than that for coal- or oil-fired steam generating units. Therefore, the proposed standards would require all new, modified, or reconstructed mixed fuel-fired industrial-commercial-institutional steam generating units which have heat input capacities greater than 29 MW (100 million Btu/hour), which have an annual fossil fuel utilization factor of greater than 0.30, and which employ emerging SO_2 control technologies, to achieve a 50 percent reduction in SO_2 emissions.

In order to minimize emissions from mixed fuel-fired steam generating units using an emerging technology for SO_2 control and subject to the 50 percent reduction requirement, the proposed standard includes SO_2 emission limits of 258 ng/J (0.6 lb/million Btu) and 172 ng SO_2/J (0.4 lb SO_2/million Btu) heat input for steam generating units firing coal and oil, respectively, in a fuel mixture. As discussed above, these emission limits are one-half the otherwise applicable SO_2 emission limits. As a result, the use of emerging technologies achieving the minimum percent

reduction in SO_2 emissions is limited to mixed fuel-fired steam generating units firing coal with a sulfur content of 516 ng SO_2/J (1.2 lb SO_2/million Btu) heat input or less, or oil with a sulfur content of 344 ng SO_2/J (0.8 lb SO_2/million Btu) heat input or less. However, to the extent that these technologies can achieve SO_2 emission reductions of greater than 50 percent, coals or oils with higher sulfur contents can be burned without exceeding the proposed emission limit. Because higher sulfur fuels are generally less expensive than low sulfur fuels, this will act as an incentive to achieve percent reductions of greater than 50 percent.

The proposed standards, therefore, provide a limited "window" for use of emerging technologies. This window will be reviewed regularly during the course of the review process associated with all NSPS. As appropriate, the percent reduction requirements will be revised upwards in light of additional performance data available at that time for emerging technologies. As a result of these reviews, emerging control technologies that do not demonstrate improvements in performance capabilities, or show no promise of achieving emission reductions greater than 50 percent, will no longer be considered emerging technologies and would be subjected to the same requirements as those included in the standards for conventional demonstrated technologies.

As discussed above, the application of a percent reduction requirement to mixed fuel-fired steam generating units that have an annual fossil fuel utilization factor of 0.30 or less is considered unreasonable. Consequently, the standard for this category of steam generating units is an emission limit only. In selecting an SO_2 emission limit for this category of mixed fuel-fired steam generating units, consideration focused on the analysis of individual steam generating unit costs for coal-fired steam generating units which operate at low annual capacity utilization factors.

The analysis of the costs of alternative control levels or standards centered on SO_2 emission limits of 731 ng/J (1.7 lb/million Btu) heat input and 516 ng/J (1.2 lb/million Btu) heat input. Analysis of a higher emission limit was unnecessary because a higher limit would be equal to the regulatory baseline. On the other hand, an emission limit lower than 516 ng/J (1.2 lb/million Btu) was not considered because coals of lower sulfur content are not widely available throughout the United States.

As discussed above, the impacts of alternative control levels or standards on mixed fuel-fired steam generating units may be considered by examining the impacts discussed above and in "Summary of Regulatory Analysis" under "Consideration of Demonstrated Emission Control Technologies" on coal-fired steam generating units operating at low capacity utilization factors.

At an annual capacity utilization factor of 0.3 for coal (i.e., annual fossil fuel utilization factor of 0.3 for coal), an SO_2 emission limit of 731 ng/J (1.7 lb/million Btu) heat input reduces SO_2 emission reductions from a 44 MW (150 million Btu/hour) heat input capacity mixed fuel-fired steam generating unit by 115 Mg/year (130 tons/year) over the regulatory baseline. An emission limit of 516 ng/J (1.2 lb/million Btu) heat input results in SO_2 emission reductions of 205 Mg/year (230 tons/year) over the regulatory baseline. Thus, the incremental reduction in SO_2 emissions achieved by an emission limit of 516 ng SO_2/J (1.2 lb SO_2/million Btu) heat input over an emission limit of 731 ng SO_2/J (1.7 lb SO_2/million Btu) heat input is 90 Mg/year (100 tons/year).

At an annual fossil fuel utilization factor of 0.15 for coal, an SO_2 emission limit of 731 ng/J (1.7 lb/million Btu) heat input achieves SO_2 emission reductions from a 44 MW (150 million Btu/hour) heat input capacity mixed fuel-fired steam generating unit of 60 Mg/year (65 tons/year) over the regulatory baseline. An emission limit of 516 ng/J (1.2 lb/million Btu) heat input results in SO_2 emission reductions of 105 Mg/year (115 tons/year) over the regulatory baseline. Thus, the incremental reduction in emissions achieved by an emission limit of 516 ng SO_2/J (1.2 lb SO_2/million Btu) heat input over an emission limit of 731 ng SO_2/J (1.7 lb SO_2/million Btu) heat input is 45 Mg/year (50 tons/year).

The potential increases in annualized costs associated with these alternative standards are shown in Tables 6–15 and 6–16 of "Summary of Regulatory Analysis." The potential increase in the annualized costs over the regulatory baseline as a result of compliance with an alternative control level or standard of 731 ng SO_2/J (1.7 lb SO_2/million Btu) heat input is about 1 percent for a 44 MW (150 million Btu/hour) heat input capacity mixed fuel-fired steam generating unit operating at annual fossil fuel utilization factors of 0.15 to 0.3 in both Region V and Region VIII. The potential increase in annualized costs of a new mixed fuel-fired steam generating unit over the regulatory baseline as a result of compliance with an alternative control level or standard of 516 ng SO_2/J (1.2 lb SO_2/million Btu) heat input is about 1 percent in Region VIII, and from 1 to 2 percent in Region V. Thus, the incremental cost increases associated with an alternative control level or standard of 516 ng SO_2/J (1.2 lb SO_2/million Btu) heat input over an alternative control level or standard of 731 ng SO_2/J (1.7 lb SO_2/million Btu) heat input is generally in the range of 1 percent or less for a new mixed fuel-fired steam generating unit.

On the basis of the emission reductions and potential increased annualized costs, the average cost effectiveness of an alternative control level or standard of 731 ng SO_2/J (1.7 lb SO_2/million Btu) heat input ranges from $250/Mg ($230/ton) of SO_2 removed to $340/Mg ($310/ton) of SO_2 removed for a 44 MW (150 million Btu/hour) heat input capacity mixed fuel-fired steam generating unit operating an annual fossil fuel utilization factor for coal of 0.15 and 0.3, depending on regional location. The average cost effectiveness of an alternative control level or standard of 516 ng SO_2/J (1.2 lb SO_2/million Btu) heat input ranges from $240/Mg ($220/ton) of SO_2 removed to $480/Mg ($440/ton) of SO_2 removed. Thus, the incremental cost effectiveness of an alternative control level or standard of 516 ng SO_2 (1.2 lb SO_2/million Btu) heat input over an alternative control level or standard of 731 ng SO_2/J (1.7 lb SO_2/million Btu) heat input ranges from $110/Mg ($100/ton) of SO_2 removed to $670/Mg ($610/ton) of SO_2 removed.

These results indicate that a standard limiting emissions of SO_2 from mixed fuel-fired steam generating units with annual fossil fuel utilization factors for coal of 0.3 or less to 516 ng SO_2/J (1.2 lb SO_2/million Btu) heat input would achieve greater emission reductions than an alternative standard of 731 ng SO_2/J (1.7 lb SO_2/million Btu) heat input at reasonable costs. Therefore, an emission limit of 516 ng SO_2/J (1.2 lb SO_2/million Btu) heat input has been selected for mixed fuel-fired industrial-commercial-institutional steam generating units operating at annual fossil fuel utilization factors for coal of 0.3 or less.

7. Other Considerations

Percent Reduction Credits for Fuel Pretreatment. Section 111(a)(1) of the Clean Air Act permits reductions in emissions resulting from pretreatment of fuels to be credited toward satisfying the percent reduction requirement included in standards of performance for fossil fuel-fired stationary sources. The proposed standards, therefore,

include such credits. These credits, however, are applied in such a way that the uncontrolled, or partially controlled, emissions from firing the pretreated fuel are no greater than the controlled emissions which would have occurred if the untreated fuel had been fired.

For example, if a coal with a sulfur content of 1,000 ng SO_2/J (2.3 lb SO_2/million Btu) heat input was treated to reduce the sulfur content to 750 ng SO_2/J (1.7 lb SO_2/million Btu) prior to being fired, a credit for this reduction in the sulfur content of the coal could be applied towards compliance with the percent reduction requirements included in the proposed standards. Without pretreatment, a 90 percent reduction requirement would require that SO_2 emissions be reduced to 100 ng SO_2/J (0.23 lb SO_2/million Btu). With pretreatment, SO_2 emissions must still be reduced to this same level. Pretreatment, therefore, effectively reduces the minimal percent reduction requirement from 90 percent to 87 percent in this case.

Types of coal pretreatment processes for which percent reduction credits would be given include physical coal cleaning and solvent refining. Crushing and screening to separate rock and other material from raw coal prior to processing or shipment would not be considered fuel pretreatment processes.

The primary type of oil pretreatment process for which percent reduction credits would be given is hydrodesulfurization. The fuel pretreatment credit would be determined by the sulfur content of the residual oil prior to hydrodesulfurization compared to the sulfur content of the residual oil following hydrodesulfurization. Distillation to separate oils into various fractions or blending of oils to meet various fuel oil specifications such as viscosity or sulfur content would not be considered fuel pretreatment processes.

Credits for the reduction in SO_2 emissions resulting from fuel pretreatment may be applied toward compliance with the 90 percent reduction requirement included in the standards. However, credits for fuel pretreatment may not be applied toward compliance with the 50 percent reduction requirement for emerging technologies. The primary objective of the 50 percent reduction requirement is to stimulate and encourage the development and use of emerging SO_2 emission control technologies. If a credit were provided for the percent reduction achieved as a result of fuel pretreatment, emerging technologies could be operated at performance levels significantly below the minimum level of 50 percent.

The decision not to allow percent reduction credits for fuel pretreatment with the SO_2 standard for emerging technologies will not have any adverse impacts on the continued development or use of emerging or conventional fuel pretreatment technologies.

Owners or operators wishing to receive credit for the percent reduction in SO_2 emissions achieved by fuel pretreatment are required to provide documentation that the fuel used has undergone pretreatment for purposes of reducing sulfur content. Two types of documentation would be required. First, a statement from the fuel pretreatment facility would be required that identifies the fuel sulfur content before and after pretreatment. This statement must also outline the process(es) used to reduce fuel sulfur content and confirm that the percent sulfur removal reported was determined in accordance with Reference Method 19 or an approved alternative method. Second, documentation would be required to ensure that the fuel fired in the steam generating unit is the same fuel that has undergone pretreatment. This would include documentation tracking the shipment of the fuel between the pretreatment facility and the steam generating unit.

Conventional oil pretreatment technologies, such as hydrodesulfurization, are capable of reducing the sulfur content of residual fuel oil from about 70 to more than 95 percent. Thus, in some cases, the proposed standards of performance for oil-fired steam generating units could be achieved with little or no additional post-combustion control of SO_2 emissions. In fact, considering the sulfur content of typical untreated residual fuel oils, in combination with the performance capabilities of hydrodesulfurization processes and FGD systems, achieving an SO_2 emission rate of 86 ng/J (0.2 lb/million Btu) heat input or less at an oil-fired steam generating unit generally reflects a percent reduction in SO_2 emissions of 90 percent or more. This holds true whether fuel pretreatment is used alone or in combination with an FGD system. Therefore, owners or operators of oil-fired steam generating units that can show, in accordance with procedures outlined in Method 19 or 19A, that SO_2 emissions have been reduced to 86 ng/J (0.2 lb/million Btu) heat input or less, are not required to provide additional documentation to demonstrate compliance with the percent reduction requirement of the standards. This serves to remove the unnecessary administrative burden associated with the documentation procedures outlined above to obtain percent reduction credits for oil-fired steam generating units firing very low sulfur oils [i.e., 86 ng SO_2/J (0.2 lb SO_2/million Btu) heat input or less].

Conventional coal pretreatment technologies, such as physical coal cleaning, on the other hand, are generally only capable of reducing the sulfur content of coal by about 20 to 30 percent. In all cases, therefore, coal-fired steam generating units will need to employ an FGD system to comply with the proposed standards. In addition, documenting the percent reduction achieved by physical coal cleaning and tracking the shipment of coal from a coal cleaning plant to a coal-fired steam generating unit should prove less complex than for oil. Consequently, provisions similar to those mentioned above for very low sulfur oils are not provided for coal.

Emission Credits for Cogeneration and Mixed Fuel Firing. As discussed in "Summary of Regulatory Analysis" under "Consideration of Emission Credits," the impacts of emission credits were analyzed for two general types of industrial-commercial-institutional steam generating units: cogeneration steam generating units and mixed fuel-fired steam generating units. If emission credits were included in the proposed standards, they would permit higher SO_2 emissions from these types of steam generating units. In the case of a cogeneration steam generating unit, this emission credit would permit SO_2 emissions (in terms of pounds or tons per day, for example) to increase to the level that would have existed if a conventional, rather than a cogeneration, steam generating unit had been installed. In the case of a mixed fuel-fired steam generating unit, this emission credit would permit SO_2 emissions to increase to the same level that would have existed if only coal or oil, rather than a mixture of sulfur-bearing and nonsulfur-bearing fuels, were fired in the steam generating unit. In either case, therefore, the environmental benefits associated with cogeneration or mixed fuel firing, in terms of decreased SO_2 emissions, would be eliminated by providing emission credits.

As illustrated by Tables 10–1 and 10–4 of "Summary of Regulatory Analysis," emission credits for oil- and coal-fired cogeneration steam generating units would result in very small and relatively insignificant cost savings. In contrast, however, annual SO_2 emissions from

cogeneration steam generating units could increase substantially. Similarly, the analysis of emission credits for oil- and coal-fired combined cycle steam generating units (see Tables 10–6 and 10–9 of "Summary of Regulatory Analysis") indicates that emission credits would also result in very small cost savings, but substantial and very significant increases in SO_2 emissions.

The incremental cost effectiveness associated with the incremental reductions in SO_2 emissions achieved by not providing emission credits for cogeneration and combined cycle steam generating units is generally less than $1,100/Mg ($1,000/ton) of SO_2 removed for all fuels and regional locations examined. This is not considered unreasonable and, as a result, the proposed standards do not include emission credits for steam generating units employed as part of cogeneration or combined cycle systems.

As discussed in "Summary of Regulatory Analysis" under "Consideration of Emission Credits," the analysis of emission credits for mixed fuel-fired steam generating units indicates that emission credits for the heat input supplied to the steam generating unit from combustion of nonsulfur-bearing fuels, such as wood or municipal waste, would result in very small reductions in costs, but very large and significant increases in SO_2 emissions. The incremental cost effectiveness associated with the incremental reduction in SO_2 emissions achieved by not providing emission credits for mixed fuel-fired steam generating units is generally less than $460/Mg ($420/ton) of SO_2 removed for both coal- and oil-fired steam generating units. This is not considered unreasonable and, as a result, the proposed standards do not include emission credits for mixed fuel-fired steam generating units.

Provisions for FGD Malfunction. The General Provisions included in 40 CFR, Part 60, which apply to all standards of performance, define a malfunction as ". . . any sudden and unavoidable failure of air pollution control equipment . . . to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions."

A well operated and properly maintained FGD system is capable of achieving a high degree of reliability. As discussed in "Summary of Regulatory Analysis" under "Performance of Demonstrated Emission Control Technologies," long-term reliabilities in excess of 95 percent have been reported for many FGD systems. As with any piece of equipment, however, there may be occasional instances of malfunctions during which control of SO_2 emissions may be limited or curtailed for short periods of time.

If an FGD malfunction does occur, there are several methods by which emissions could be minimized during the period when the FGD system is not operational. These include the temporary use of low sulfur or nonsulfur-bearing fuels, such as very low sulfur fuel oils or natural gas; the use of a spare FGD absorber module; or even temporary shutdown of the steam generating unit at those sites with multiple steam generating units.

As discussed in "Summary of Regulatory Analysis" under "Consideration of Demonstrated Emission Control Technology Costs," the costs associated with the use of each of these alternatives (with the exception of temporary shutdown of the steam generating unit) were examined. The variation in the costs among the use of natural gas, very low sulfur fuel oil, or a spare FGD module, however, is relatively small. For purposes of the analyses discussed in "Summary of Regulatory Analysis" under "Consideration of Demonstrated Emission Control Technology Costs" and "Consideration of National Impacts," therefore, the use of natural gas was assumed during periods of FGD system malfunction. (The FGD system malfunctions were assumed to occur 5 percent of the time on an annual basis.) Thus, the costs associated with this general approach of firing natural gas, very low sulfur oil, or using a spare FGD module to control SO_2 emissions during periods of FGD system malfunction were included throughout all of the analyses discussed above.

The proposed standards, therefore, would not permit increased SO_2 emissions during periods of FGD system malfunction. The standards would require SO_2 emission data collected during periods of FGD malfunction to be included in calculating the 30-day rolling average SO_2 emission rate and percent reduction for each reporting period during which an FGD malfunction occurred.

As discussed above, combustion of a very low sulfur fuel oil with a sulfur content of 86 ng SO_2/J (0.2 lb SO_2/million Btu) or less would ensure compliance with the percent reduction requirements included in the proposed standards. Therefore, if fuel oil with a sulfur content of 86 ng SO_2/J (0.2 lb SO_2/million Btu) or less is fired in a steam generating unit during periods of FGD malfunction, a percent reduction of 90 percent may be assumed, as appropriate, for purposes of calculating 30-day rolling averages for those periods during which FGD malfunctions occurred. The SO_2 emission rate associated with firing very low sulfur oil during periods of FGD malfunction may be determined either through continuous emission monitoring or fuel sampling and analysis.

As discussed below under "Performance Test Methods and Monitoring Requirements," periods during which either coal or oil is not fired are not included in the steam generating unit operating hours for purposes of calculating the 30-day rolling averages.

Provisions for Startup and Shutdown. The operation of some industrial-commercial-institutional steam generating units may be cyclic or periodic in nature. These types of units are often operated for only a few hours per day or on a sporadic or seasonal basis, making the occurrence of startup and shutdown periods for such units relatively frequent. Emissions during these periods, therefore, could be a significant portion of the total annual SO_2 emissions from these steam generating units.

The FGD systems do not achieve their peak performance levels immediately after a "cold" startup. Some time is usually required for FGD systems to reach their optimum operating temperature or to reach chemical equilibrium. However, a review of the factors affecting the performance of SO_2 control systems indicates that SO_2 removal efficiency can be maintained at high levels even during periods of startup and shutdown. Any short-term variability in SO_2 emissions that may result from fluctuations in control device performance during system startup would be minimized over a 30-day averaging period.

Because of the potentially significant emissions that could occur during periods of startup and shutdown, and because techniques exist (such as firing natural gas or very low sulfur oil) that can minimize emissions during these periods, the proposed standards include a provision that emission data collected during periods of startup and shutdown be included in the calculations of all 30-day rolling average percent reduction and SO_2 emission values. As discussed above for FGD malfunction, periods in which a nonsulfur-bearing fuel such as natural gas is the only fuel fired would not be considered steam generating unit operating hours for purposes of calculating 30-day rolling averages.

D. Selection of Best System of Particulate Matter Emission Reduction

Standards of performance for new industrial-commercial-institutional steam generating units were proposed on June 19, 1984 (49 FR 25102). These standards of performance included PM emission limits for steam generating units firing coal, wood, municipal-type solid waste, and mixtures of fossil and nonfossil fuels. The June 19, 1984 proposal did not include PM standards for oil-fired industrial-commercial-institutional steam generating units.

As discussed above, the proposed standards for control of SO_2 emissions would require all coal-fired industrial-commercial-institutional steam generating units to achieve a percent reduction in SO_2 emissions. In order to meet this requirement, owners and operators of coal-fired steam generating units are anticipated to install SO_2 control devices. These devices will consist primarily of wet FGD systems.

As discussed in "Summary of Regulatory Analysis," wet FGD systems are capable of reducing emissions of PM as well as emissions of SO_2 from industrial-commercial-institutional steam generating units. Consequently, the proposed PM standards for coal-fired steam generating units (49 FR 25102) were reviewed to determine whether different standards for PM emissions should apply to coal-fired steam generating units subject to the proposed SO_2 standards.

The proposed SO_2 standards would also require oil-fired industrial-commercial-institutional steam generating units to achieve a percent reduction in SO_2 emissions. As with coal-fired steam generating units, the use of FGD systems to reduce SO_2 emissions from oil-fired steam generating units can also reduce PM emissions. Similarly, the use of low sulfur/low ash oil to reduce emissions of SO_2 also reduces emissions of PM. Therefore, standards limiting emissions of PM from oil-fired steam generating units were also considered.

1. Coal-Fired Steam Generating Units

The regulatory analysis (see "Performance of Demonstrated Emission Control Technologies" in "Summary of Regulatory Analysis") concluded that wet FGD systems are capable of reducing PM emissions from coal-fired steam generating units to 43 ng/J (0.1 lb/million Btu) heat input or less. The analysis conducted for the previously proposed PM standards (49 FR 25102) indicated that fabric filters and electrostatic precipitators (ESP's) can reduce PM emissions from these units to 22 ng/J (0.05 lb/million Btu) heat input or less.

As discussed in "Summary of Regulatory Analysis" under "Consideration of Demonstrated Emission Control Technology Costs" and shown in Table 6–32, the costs of an FGD system that is capable of controlling both PM and SO_2 emissions are greater than the costs of an FGD system for controlling SO_2 emissions alone. For example, a sodium FGD system capable of reducing PM emissions to 43 ng/J (0.1 lb/million Btu) heat input or less from a typical 44 MW (150 million Btu/hour) heat input capacity steam generating unit firing coal would cost about $400,000/year more to operate than an FGD system designed to control SO_2 only. The annualized cost of installing and operating an ESP upstream of an FGD system used for SO_2 control alone would be about $390,000, and the annualized cost of operating a fabric filter upstream of an FGD for SO_2 control alone would be about $420,000.

The use of an ESP or a fabric filter achieves incremental reductions in particulate emissions of about 18 Mg/year (20 tons/year) over those achieved by the use of an FGD capable of controlling both PM and SO_2 emissions for a typical 44 MW (150 million Btu/hour) heat input capacity steam generating unit firing coal. In the case of an ESP, these additional emission reductions are achieved at no additional cost above those associated with using an FGD system for combined control of SO_2 and PM. The incremental cost effectiveness of using a fabric filter upstream of an FGD system, compared to using an FGD system for combined control of SO_2 and PM, is about $1,275/Mg ($1,160/ton) of particulate matter removed.

The use of a fabric filter or ESP to reduce PM emissions in combination with an FGD system to reduce SO_2 emissions from coal-fired steam generating units, therefore, is considered reasonable. Consequently, the PM emission limit of 22 ng/J (0.05 lb/million Btu) heat input previously proposed for industrial-commercial-institutional coal-fired steam generating units remains applicable to new coal-fired steam generating units subject to today's proposed SO_2 standards.

2. Oil-Fired Steam Generating Units

As discussed above, wet FGD systems installed to reduce SO_2 emissions from oil-fired steam generating units can also reduce PM emissions. However, unlike FGD systems installed on coal-fired steam generating units, FGD systems installed on oil-fired steam generating units for control of both SO_2 and PM emissions are no different from those installed for control of SO_2 emissions alone. For oil-fired steam generating units, therefore, PM emission reductions achieved by FGD systems are achieved at a negligible incremental cost over the costs associated with SO_2 control alone. As a result, the use of an FGD system is highly cost effective for controlling PM emissions from oil-fired steam generating units in those instances where these control techniques are used for purposes of SO_2 control. Therefore, the reductions in PM emissions achieved by FGD systems can be viewed as representing the minimum level of PM control that merits consideration for oil-fired steam generating units.

As discussed above, the proposed standards require oil-fired steam generating units to achieve a percent reduction in SO_2 emissions. With the exception, discussed above, for oil-fired steam generating units firing very low sulfur oil, this will require the use of FGD systems.

The regulatory analysis (see "Performance of Demonstrated Emission Control Technologies" in "Summary of Regulatory Analysis") concluded that FGD systems are capable of reducing PM emissions from oil-fired steam generating units to 43 ng/J (0.10 lb/million Btu) heat input or less. As also discussed, however, ESP's can reduce PM emissions from oil-fired steam generating units to 30 ng/J (0.07 lb/million Btu) heat input or less. The use of an ESP upstream of an FGD system, therefore, would reduce PM emissions from oil-fired steam generating units to 30 ng/J (0.07 lb/million Btu) heat input or less.

As discussed in "Summary of Regulatory Analysis" under "Consideration of Demonstrated Emission Control Technology Costs" and shown in Table 6–31, annual PM emissions are reduced from about 82 Mg/year (90 tons/year) to about 33 Mg/year (36 tons/year) when an FGD system is installed to control emissions of SO_2 from a typical high sulfur oil-fired steam generating unit. The addition of an ESP upstream of an FGD system would reduce PM emissions from a typical 44 MW (150 million Btu/hour) heat input capacity steam generating unit from 33 Mg/year (36 tons/year) to 23 Mg/year (25 tons/year). The incremental annualized cost of installing and operating an ESP upstream of an FGD system would be about $340,000. Therefore, the incremental cost effectiveness associated with adding an ESP to an oil-fired steam generating unit equipped with an FGD system would be

about $34,000/Mg ($31,000/ton) of PM removed. This is considered unreasonable given the small incremental amount of PM control achieved. Therefore, a PM emission limit of 43 ng/J (0.10 lb/million Btu) heat input is proposed for oil-fired industrial-commercial-institutional steam generating units.

E. Modification and Reconstruction Provisions

Existing steam generating units that are modified or reconstructed would be subject to the requirements in the General Provisions (40 CFR 60.14 and 60.15) which apply to all NSPS. Few, if any, changes typically made to existing steam generating units would be expected to bring such steam generating units under the proposed SO_2 or PM standards.

A modification is any physical or operational change to an existing facility that results in an increase in emissions. Changes to an existing facility that do not result in an increase in emissions, either because the nature of the change has no effect on emissions or because additional emission control technology is employed to offset an increase in emissions, are not considered modifications. In addition, certain changes have been exempted under the General Provisions (40 CFR 60.14). These exemptions include: routine maintenance, repair, and replacement; production increases achieved without a capital expenditure as defined in § 60.2; production increases resulting from an increase in the hours of operation; addition or replacement of equipment for emission control (as long as the replacement does not increase emissions); relocation or change of ownership of an existing facility; and use of an alternative fuel or raw material if the existing facility was designed to accommodate it. In addition, both Section 111 of the Clean Air Act and 40 CFR 60.14 of the General Provisions exempt mandatory conversions to coal.

Reconstruction of an existing facility would make that facility subject to an NSPS regardless of any change in the emission rate, depending on the cost of the replaced components and the feasibility of meeting the standards. Reconstructed steam generating units would become subject to the proposed standards under the reconstruction provisions, regardless of changes in emission rate, if the fixed capital cost of reconstruction exceeds 50 percent of the cost of an entirely new steam generating unit of comparable design and if it is technologically and economically feasible to meet the applicable standards. Costs associated with steam generating unit routine maintenance are not included in determining reconstruction costs.

F. Performance Test Methods and Monitoring Requirements

The performance testing and emission monitoring requirements included in the proposed regulation would apply to all industrial-commercial-institutional steam generating units subject to the proposed SO_2 emission standards and oil-fired industrial-commercial-institutional steam generating units subject to the proposed PM standards.

1. Sulfur Dioxide

The proposed regulation includes provisions for continuous monitoring of SO_2 emissions to demonstrate continuous compliance with the standards. This would be accomplished through the installation and operation of continuous emission monitoring systems (CEMS) at the inlet and outlet of the SO_2 control device. Data collected by the CEMS would be used to determine compliance with the SO_2 percent reduction requirements and emission limits in accordance with Reference Method 19 (Appendix A). As-fired fuel sampling and analysis at the inlet to the steam generating unit or emissions measurement in accordance with Reference Method 6B at the inlet or outlet to the steam generating unit may be used in lieu of CEMS.

Affected facilities for which an emission limit only has been established would be able to monitor SO_2 emissions using any of the procedures included in Method 19A (Appendix A) or other approved alternative procedures. These procedures include as-fired fuel sampling and analysis, stack sampling, or operation of a single CEMS at the outlet of the SO_2 control device.

Methods for as-fired fuel sampling and analysis differ slightly for coal- and oil-fired steam generating units. For coal-fired steam generating units, a representative sample is collected at the time the coal bunker is filled and analyzed for sulfur content and heating value. These values are used to calculate the SO_2 emission rate until the bunker is refilled, at which time a new sample is collected and analyzed. For oil-fired steam generating units, one sample is collected during each steam generating unit operating day at the pipeline inlet to the steam generating unit and analyzed for heating value and sulfur content.

Compliance with the SO_2 percent reduction requirements and emission limits would be determined as a 30-day rolling average based on CEMS or fuel sampling data collected during the previous 30 consecutive steam generating unit operating days. The first 30-day average percent reduction and emission values calculated after initial unit startup would serve as the initial performance test required under § 60.8. Thereafter, the data would be used to determine 30-day rolling average percent reduction and SO_2 emission rates calculated as the arithmetic average of all hourly SO_2 emission values collected during the preceding 30 steam generating unit operating days. A new 30-day rolling-average percent reduction and SO_2 emission rate are calculated at the end of each steam generating unit operating day. As discussed in "Summary of Regulatory Analysis" under "Performance of Demonstrated Emission Control Technologies," a 30-day rolling average has been determined to best represent the long-term average emission levels and the performance of emission control devices.

When establishing standards that require the use of CEMS for determining compliance, it is necessary to consider that monitors undergo periods of downtime and, thus, are not always available 100 percent of the time. Therefore, minimum data requirements should be established that provide for downtime, but limit the amount of data permitted to be lost before use of an alternative monitoring method is required. These minimum data requirements would provide the owner or operator with time to maintain and calibrate the CEMS, correct minor malfunctions, and, if necessary, arrange for an alternative monitoring method, while at the same time providing sufficient data for compliance determinations. They also would prevent the possibility of an affected facility operating for unreasonably long periods without collecting emission data.

Under the proposed standards, each 30-day rolling average would be calculated using, as a minimum, data collected during 22 out of 30 consecutive steam generating unit operating days. Collection of this amount of data has been determined to be readily achievable using either fuel sampling and analysis or a well operated and properly maintained CEMS. If the specified amount of data cannot be captured due to unusual circumstances, alternative monitoring methods may be used to provide sufficient data for calculating the 30-day rolling averages.

If a steam generating unit periodically burns natural gas or other nonsulfur-bearing fuels, 24-hour periods during

which these fuels are the only fuels fired in the steam generating unit would not be considered steam generating unit operating days for purposes of determining compliance with the SO_2 standards. Rather, only those 24-hour periods (as defined in the proposed regulation) during which any fuel subject to the SO_2 emission limits under § 60.42b is fired in the steam generating unit would constitute steam generating unit operating days. Twenty-four-hour periods during which both sulfur-bearing and nonsulfur-bearing fuels are fired will be considered steam generating unit operating days, but emissions data collection would not be required during those portions of the steam generating unit operating day when nonsulfur-bearing fuels are fired. Emissions of SO_2 from the combustion of natural gas and other nonsulfur-bearing fuels are so low that including these emissions in the 30-day rolling average calculations would serve only to "dilute" the reported emission values.

In order to ensure that CEMS provide accurate data, daily calibration drift checks and quarterly accuracy audits would be required to be performed on each CEMS. These quality assurance checks would be performed in accordance with 40 CFR Part 60, Appendix F, Procedure 1, "Quality Assurance Requirements for Gaseous Continuous Emission Monitoring Systems Used for Compliance Determination." Appendix F, Procedure 1 applies to all CEMS used for continuous compliance determination under 40 CFR Part 60, Subparts D, Da, and Db.

2. Particulate Matter

The performance test methods and monitoring requirements for oil-fired industrial-commercial-institutional steam generating units are identical to those proposed on June 19, 1984 for coal-, wood-, and municipal-type solid waste-fired steam generating units (49 FR 25102), as amended by the addition of Reference Method 5B as a particulate matter test method (50 FR 21863, May 19, 1985).

G. Reporting and Recordkeeping Requirements

The proposed standards would require owners and operators of all affected facilities to submit notifications of steam generating unit construction or reconstruction, date of anticipated startup, date of actual startup, and anticipated date of demonstration of the CEMS (if applicable), as required under the General Provisions (40 CFR 60.7). In addition, this notification would include a description of the fuel(s) to be fired in the steam generating unit. If a steam generating unit will fire a very low sulfur oil and claims full fuel pretreatment credit toward satisfying the applicable percent reduction requirement, this would also be stated in the initial notification. Mixed fuel-fired steam generating units not subject to the percent reduction requirements would submit a statement verifying that they are subject to a Federally enforceable State or local permit limiting the fossil fuel utilization factor for coal to 30 percent (0.3) or less on an annual basis, a statement that the annual capacity utilization factor for fuels other than coal, oil, or natural gas is 10 percent (0.10) or greater, and a description of the types and amounts of all fuels to be fired in the steam generating unit. The annual capacity utilization factors would be determined on a 12-month rolling average basis, with a new average capacity utilization factor calculated at the end of each calendar month. Finally, if an emerging SO_2 control technology will be used for SO_2 control, a description of the technology to be used would also be included in the initial notification.

After the initial performance test has been completed, the proposed regulation would require that quarterly reports be submitted. These reports would include all 30-day rolling average emission rates and percent reduction values calculated during the reporting period, as well as identification of any periods for which data were excluded from these calculations. If credit toward the applicable percent reduction requirement is claimed based on fuel pretreatment, a statement would be submitted with the quarterly report certifying that the credit was determined in accordance with Method 19 and documenting each pretreated fuel shipment as discussed under "Other Considerations." In addition, each quarterly report would include the results of the daily CEMS drift tests and quarterly accuracy determinations as required under Appendix F, Procedure 1.

If the applicable SO_2 emission limit or percent reduction requirement is exceeded by any 30-day average during the reporting period, the quarterly report would also describe the reason for the exceedance or failure to meet the percent reduction requirement and the corrective action taken. If the minimum amount of data (as discussed in "Performance Test Methods and Monitoring Requirements") was not obtained for any 30-day rolling average period, reasons for failure to obtain sufficient data and a description of corrective action taken would also be included, along with all information needed to calculate the 30-day average values according to Method 19, Section 7.

The proposed regulation would also require that certain types of records be maintained. Records to be maintained include all data outputs of the CEMS or results of fuel sampling and analysis; all quarterly reports submitted under this rulemaking; and all records required under Appendix F, Procedure 1. All required records would be maintained for 2 years following the date of such records, after which they could be discarded.

The reporting and recordkeeping requirements in the proposed regulation are necessary to inform enforcement personnel as new steam generating units initiate operation. In addition, they would provide the data and information necessary to ensure continued compliance of these steam generating units with the proposed regulation. At the same time, these requirements would not impose an unreasonable burden on steam generating unit owners or operators.

VI. Administration Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed standards in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations should be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be mailed to the Central Docket Section at the address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, D.C. (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered in the development of this proposed rulemaking. The principal purposes of the docket are: (1) to allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial

review (except for interagency review materials [Section 307(d)(7)(A)]).

C. Clean Air Act Procedural Requirements

1. Administrator Listing—Section 111

As prescribed by Section 111 of the Clean Air Act, as amended, establishment of standards of performance for industrial-commercial-institutional steam generating units is based on the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979 and 49 FR 25156, dated June 19, 1984) that these sources contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare.

2. Periodic Review—Section 111

The regulation will be reviewed 4 years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

3. External Participation—Section 117

In accordance with section 117 of the Clean Air Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator will welcome comments on all aspects of the proposed regulation, including economic and technological issues.

In addition, comments are specifically solicited on several aspects of the proposed rulemaking. These issues were discussed previously in the SOLICITATION OF PUBLIC COMMENT section of this preamble.

4. Economic Impact Assessment—Section 317

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any NSPS promulgated under section 111(b) of the Act. An economic impact assessment was prepared for the proposed standards and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the proposed standards to ensure that the proposed standards would represent the best system of emission reduction considering costs. Portions of the economic impact assessment are included in the background information documents and additional information is included in the Docket.

D. Office of Management and Budget Reviews

1. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 USC 3501 et seq. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs, OMB, 726 Jackson Place, NW., Washington, DC 20503 marked "Attention: Desk Officer for EPA." Copies of these comments should also be submitted to Central Docket Section (LE–131), Attention: Docket Number A–83–27, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The final rule will respond to any OMB or public comments on the information collection requirements.

The average annual industry-wide burden of the reporting and recordkeeping requirements associated with the proposed regulation would be 75 person-years, based on an average of 180 respondents per year.

2. Executive Order 12291 Review

Under Executive Order 12291, the Agency must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis (RIA). This proposed regulation could result in industry-wide annualized costs in the fifth year after the standards would go into effect of more than the $100 million cutoff established as the first criterion for a major regulation in the Order. In accordance with the Order, an RIA has been prepared for the proposed regulation. The RIA considers the benefits, costs, and economic impacts associated with the regulatory alternatives that were considered in developing the proposed standards.

The analysis of benefits derived from reductions in SO_2 emissions included the following benefit categories: Improvements in visibility due to lower ambient sulfate (SO_4) concentrations; reduced morbidity, reduced residential materials damages, and reduced agricultural damage due to lower ambient SO_2 concentrations; and reduced morbidity and reduced household soiling due to lower ambient PM concentrations. However, coverage of these benefit categories is in some cases incomplete. For example, estimates of visibility improvements due to SO_4 reductions include visibility improvements in only the 31 eastern States (east of the Mississippi River). Likewise, benefits from reductions in PM are estimated only for the 31 eastern States. In addition, the SO_2 benefit estimates include reductions in residential materials damage, but no estimates are included for reductions in materials damage for commercial, industrial, or institutional facilities.

It is also important to note that a number of benefit categories were not included in the analysis. For example, potentially significant benefits from reductions in acid deposition are omitted, and reduced health effects due to lower SO_4 concentrations are not included. On the other hand, these estimates may also overstate, in some respects, the benefit categories.

Results of the analysis indicate that the recommended standards would result in annualized benefits of the same magnitude as the annualized costs. A copy of the RIA has been placed in Docket A–83–27 and is available for public review. The Agency solicits comments on the RIA and its potential role in this rulemaking.

This regulation was submitted to the OMB for review as required by Executive Order 12291. Any written comments from OMB and any responses to those comments will be included in Docket A–83–27. This docket is available for public inspection at EPA's Central Docket Section, which is listed under the **ADDRESSES** section of this notice.

E. Regulatory Flexibility Act Compliance

The Regulatory Flexibility Act requires consideration of the impacts of proposed regulations on small entities including small businesses, organizations, and jurisdictions. A small business is defined as any business concern which is independently owned and operated and not dominant in its field as defined by the Small Business Administration regulations under Section 3 of the Small Business Act. Similarly, a small organization is defined by the Small Business Administration as a not-for-profit enterprise, independently owned and operated, and not dominant in its field. A small jurisdiction is defined as any government district with a population of less than 50,000 people.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule, if promulgated, will not have a significant economic impact on a substantial number of small business entities because the number of small entities that would be affected, if any, is not substantial.

List of Subjects in 40 CFR Part 60

Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping, Fossil fuel-fired steam generating units.

Dated: May 3, 1986.

Lee M. Thomas,

Administrator.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

For reasons set out in the preamble, 40 CFR Part 60 Subpart Db as proposed on June 19, 1984 (49 FR 25102) is proposed to be amended as follows:

1. The authority citation for Part 60 continues to read as follows:

Authority: 42 U.S.C. 7411, 7414, and 7601(a).

2. Section 60.40b as proposed on June 19, 1984 (49 FR 25102) is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 60.40b Applicability and definition of affected facility.

(a) The affected facility to which this subpart applies is each industrial-commercial-institutional steam generating unit for which construction, modification, or reconstruction is commenced after June 19, 1984 and which has a heat input capacity from fuels combusted in the steam generating unit of more than 29 MW (100 million Btu/hour).

(b) Except as provided in paragraphs (d) and (e) of this section, any affected facility meeting the applicability requirements under paragraph (a) of this section and for which construction, modification, or reconstruction is commenced *after* June 19, 1986 is subject to the standards for particulate matter (PM), nitrogen oxides (NO_x), and sulfur dioxide (SO_2) under this subpart.

(c) Except as provided in paragraphs (d) and (e) of this section, any affected facility meeting the applicability requirements under paragraph (a) of this section and for which construction, modification, or reconstruction is commenced *before* June 19, 1986 is subject to the following standards:

(1) Coal-fired industrial-commercial-institutional steam generating units are subject to the PM and NO_x standards under this subpart. Coal-fired industrial-commercial-institutional steam generating units meeting the applicability requirements under Subpart D (Standards of performance for fossil fuel-fired steam generators; § 60.40) are also subject to the SO_2 standards under Subpart D (§ 60.43).

(2) Oil-fired industrial-commercial-institutional steam generating units are subject to the NO_x standards under this subpart. Oil-fired industrial-commercial-institutional steam generating units meeting the applicability requirements under Subpart D (Standards of performance for fossil fuel-fired steam generators; § 60.40) are also subject to the PM and SO_2 standards under Subpart D (§ 60.42 and § 60.43).

* * * * *

3. Section 60.41b as proposed on June 19, 1984 (49 FR 25102) is amended by revising the definition of "steam generating unit operating day" and adding in alphabetical order definitions as follows:

§ 60.41b Definitions.

* * * * *

"Cogeneration steam generating unit" means a steam generating unit that simultaneously produces both electrical (or mechanical) and thermal energy from the same primary energy source.

* * * * *

"Conventional technology" means SO_2 control technologies that include wet flue gas desulfurization technology, fluidized bed combustion technology, or lime spray drying technology.

* * * * *

"Emerging technologies" means any flue gas desulfurization system or combustion modification technology which is not a conventional technology, as determined by the Administrator pursuant to § 60.49b(a)(4).

"Flue gas desulfurization" means a system which uses an alkaline reagent to remove SO_2 from flue gases.

* * * * *

"Fluidized bed combustion technology" means a device wherein fuel and solid sorbent are distributed onto a bed, or series of beds, of aggregate for combustion and these materials together with solid products of combustion are forced upward in the device by the flow of combustion air and the gaseous products of combustion.

"Fossil fuel utilization factor" means the percentage of the rated steam generating unit heat input capacity that is supplied by fossil fuel.

"Fuel pretreatment" means the process by which a portion of the pollutant concentration of a fuel is removed prior to its combustion in a steam generating unit.

* * * * *

"Lime spray drying" means a dry flue gas desulfurization system in which the flue gases from a steam generating unit are sprayed with a finely atomized lime slurry in a spray dryer.

* * * * *

"Potential SO_2 emission rate" means the theoretical emissions (ng/J, lb/million Btu heat input) that would result from the combustion of a fuel in an uncleaned state without emission control systems.

* * * * *

"Steam generating unit operating day" means a 24-hour period between 12:00 midnight and the following midnight during which any fuel is combusted at any time in the steam generating unit. It is not necessary for fuel to be combusted continuously for the entire 24-hour period.

"Wet flue gas desulfurization technology" means a flue gas desulfurization system which removes sulfur oxides from a gas by contacting the gas with an aqueous, liquid reagent. The products of this contact are a gas with decreased amounts of sulfur oxides and an aqueous, liquid material with increased amounts of sulfur compounds. This definition shall apply to a device even if the aqueous, liquid material product of this contact is subsequently converted into a solid material by further processing by equipment integral to, or separate from, the device. Wet flue gas desulfurization technology includes lime, limestone, dual alkali, and sodium wet scrubbing.

* * * * *

4. Section 60.42b is redesignated as § 60.43b and paragraph (a)(4) is added as follows:

§ 60.43b Standard for particulate matter.

(a) * * *

Steam generating unit/fuel type	Particulate matter emission limit nanograms per joule heat input (lb/million Btu heat input)
* * * * *	
(4) Oil	43 (0.10)
* * * * *	

5. A new § 60.42b is added as follows:

§ 60.42b Standard for sulfur dioxide.

(a) Except as provided in paragraphs (b), (c), or (d) of this section, on and after the date on which § 60.8 requires a performance test to be completed, no owner or operator of an affected facility that combusts coal or oil, either alone or in combination with any other fuel, shall cause to be discharged into the atmosphere any gases which contain SO_2 in excess of 10 percent of the potential SO_2 emission rate (90 percent reduction) and which contain SO_2 in excess of the emission limit determined according to the following formula:

$$E_{SO2}=(516H_a+344H_b)/H_t \quad [E_{SO2}=(1.2H_a+0.8H_b)/H_t]$$

where:

E_{SO_2} is the SO_2 emission limit, expressed in nanograms per joule (ng/J) or lb/million Btu heat input,

H_a is the heat input from the combustion of coal, in joules (million Btu),

H_b is the heat input from the combustion of oil, in joules (million Btu), and

H_t is the total heat input from the combustion of coal and oil, in joules (million Btu). (H_t includes only the heat input supplied to the steam generating unit from the combustion of coal and oil and not the heat input from the combustion of natural gas, wood, solid waste, or other fuels.)

(b) On and after the date on which § 60.8 requires a performance test to be completed, no owner or operator of an affected facility that combusts coal or oil, either alone or in combination with any other fuel, and that uses an emerging technology for the control of SO_2 emissions, shall cause to be discharged into the atmosphere any gases which contain SO_2 in excess of 50 percent of the potential SO_2 emission rate (50 percent reduction) and which contain SO_2 in excess of the emission limit determined according to the following formula:

$ESO_2 = (256H_c + 172d)/Ht$ [$ESO_2 = (0.6H_c + 0.4_{a)/Ht}$]

where:

ESO is the SO_2 emission limit, expressed in ng/J (lb/million Btu) heat input,

H_c is the heat input from the combustion of coal, in joules (million Btu),

H_d is the heat input from the combustion of oil, in joules (million Btu), and

H_t is the total heat input from the combustion of coal and oil in joules (million Btu). (H_t includes only the heat input supplied to the steam generating unit from the combustion of coal and oil and not the heat input from the combustion of natural gas, wood, solid waste, or other fuels.)

(c)(1) The requirement(s) to reduce emissions to a certain percentage of the potential SO_2 emission rate included in paragraphs (a) and (b) of this section do not apply to an affected facility that combusts coal in combination with any other fuel, except oil or natural gas, provided the affected facility:

(i) Has an annual fossil fuel utilization factor for coal of 30 percent (0.30) or less;

(ii) Has an annual capacity utilization factor of 10 percent (0.10) or more for fuel(s) other than coal, oil, or natural gas; and

(iii) Is subject to a Federal, State, or local permit limiting operation of the affected facility to conditions (i) and (ii) above.

(2) The SO_2 emission limit(s) determined according to the applicable formula in paragraph (a) of this section continue to apply to facilities meeting the criteria in paragraph (c)(1) of this section.

(d) Compliance with the emission limit(s) and percent reduction requirements under this section are both determined on a 30-day rolling average basis.

6. Section 60.43b is redesignated as § 60.44b.

7. Section 60.45b is redesignated as § 60.48b, and a new § 60.45b is added as follows:

§ 60.45b Compliance and performance testing for sulfur dioxide.

(a) The SO_2 emission standards under § 60.42b apply at all times including periods of startup, shutdown, and malfunction.

(b) Compliance with the SO_2 emission standards under § 60.42b shall be determined through performance testing as described in paragraph (c) of this section.

(c) The following procedures are used in performance testing to determine the SO_2 emission rate and the percent of potential SO_2 emission rate discharged to the atmosphere.

(1) The SO_2 emission rate discharged to the atmosphere shall be determined using the following formula:

$E_{SO_2} = E_{SO_2}{}_o/X_k$

where:

E_{SO_2} is the SO_2 emission rate in ng/J (lb/million Btu) heat input.

$E_{SO_2}o$ is the arithmetic average of all hourly outlet emission rates for 30 successive steam generating unit operating days, as determined by Method 19 or Method 19A, in ng/J (lb/million Btu) heat input.

X_k is the fraction of total heat input for 30 successive steam generating unit operating days derived from coal, oil, or coal and oil as determined by Method 19 or Method 19A. ($X_k = 1.0$ if only coal, only oil, or mixtures of only coal and oil together are combusted.)

(2) The percent of potential SO_2 emission rate (% PER) discharged to the atmosphere shall be determined as follows:

(i) The percent reduction achieved by any fuel pretreatment shall be determined using the procedures in Method 19, Section 2 (Appendix A).

(ii) The percent reduction achieved by any SO_2 control system shall be determined by comparing the arithmetic average of all hourly emission rates measured at the inlet to the control system to the arithmetic average of all hourly emission rates measured at the outlet to the control system for 30 successive steam generating unit operating days, following the procedures in Method 19, Section 3. An "as fired" fuel sampling system may be used to determine the SO_2 input rate at the inlet to the SO_2 control device as described in Method 19, Section 3. When an "as fired" fuel sampling system is used, the percent reduction is calculated using the arithmetic average of all hourly emission rates from the SO_2 control device and the arithmetic average of all 24-hour or daily SO_2 input rates from the "as fired" fuel analysis for 30 successive steam generating unit operating days.

(iii) The overall percent reduction shall be determined using the result obtained in paragraphs (e)(1) (i) and (ii) of this section following the procedures in Method 19, Section 4 (Appendix A).

(iv) The percent of potential SO_2 emission rate emitted to the atmosphere shall be determined using the following formula:

% PER = 100 − % Ro

where % Ro is the overall percent reduction as determined in subparagraph (iii) of this section.

(d) For the initial performance test required under § 60.8, compliance with the SO_2 emission limits and percent reduction requirements under § 60.42b is based on the average emission rates and the average percent reduction for SO_2 for the first 30 consecutive steam generating unit operating days. The initial performance test is the only test for which at least 30 days prior notice is required unless otherwise specified by the Administrator. The initial performance test is to be scheduled so that the first steam generating unit operating day of the 30 successive steam generating unit operating days is completed within 30 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 150 days after initial startup of the facility.

(e) After the initial performance test required under § 60.8, compliance with the SO_2 emission limits and percent reduction requirements under § 60.42b is based on the average emission rates and the average percent reduction for SO_2 for 30 successive steam generating unit operating days. A separate performance test is completed at the end of each steam generating unit operating day after the initial performance test, and a new 30-day average emission rate and percent reduction for SO_2 are calculated to show compliance with the standard.

(f) Emissions of 86 ng/J (0.2 lb/million Btu) heat input or less from steam generating units combusting oil constitute compliance with the requirement to reduce emissions to a certain percentage of the potential SO_2 emission rate under § 60.42b.

(g) If the owner or operator of an affected facility has not obtained the minimum quantity of emission data as required under § 60.46b, compliance

with the emission limits and the percent reduction requirements under § 60.42b for the day on which the 30-day period ends may be determined by the Administrator by following the applicable procedures in Method 19, Section 7 Appendix A).

8. Section 60.44b as proposed on June 19, 1984 (49 FR 25102) is redesignated as § 60.46b.

9. A new § 60.47b is added as follows:

§ 60.47b Emission monitoring for sulfur dioxide.

(a) Except as provided in paragraph (b) of this section, the owner or operator of an affected facility subject to the SO_2 standards under § 60.42b shall install, calibrate, maintain, and operate continuous emission monitoring systems (CEMS) for measuring SO_2 concentrations and either oxygen or carbon dioxide concentrations and shall record the output of the systems. Sulfur dioxide and either oxygen or carbon dioxide concentrations shall both be monitored at the inlet and outlet of the SO_2 control device.

(b) As an alternative to operating CEMS as required under paragraph (a) of this section, an owner or operator may elect to determine the average SO_2 emissions and percent reduction by:

(1) Collecting fuel samples in an as-fired condition at the inlet to the steam generating unit analyzing for sulfur and heat content according to Method 19A (Appendix A). Section 2 of Method 19A provides procedures for converting these measurements into the format to be used in calculating the average SO_2 input rate.

(2) Measuring SO_2 according to Reference Method 6B at the inlet or outlet to the SO_2 control system.

(c) The CEMS required under paragraph (a) of this section shall be operated and data recorded during all periods of operation of the affected facility, including periods of startup, shutdown, or malfunction, except for CEMS breakdowns, repairs, calibration checks, and zero and span adjustments.

(d) The 1-hour average SO_2 emission rates measured by the CEMS required by paragraph (a) of this section and required under § 60.13(h) shall be expressed in ng/J or lb/million Btu heat input and shall be used to calculate the average emission rates under § 60.42b. At least 2 data points must be used to calculate each 1-hour average.

(e) The procedures under § 60.13 shall be followed for installation, evaluation, and operation of the CEMS.

(1) All CEMS shall be operated in accordance with the applicable procedures under Performance Specifications 1, 2, and 3 (Appendix B).

(2) Quarterly accuracy determinations and daily calibration drift tests shall be performed in accordance with Procedure 1 (Appendix F).

(3) For affected facilities burning coal or oil, alone or in combination with other fuels, the span value of the SO_2 CEMS at the inlet to the SO_2 control device is 125 percent of the maximum estimated hourly potential SO_2 emissions of the fuel fired, and the span value of the CEMS at the outlet to the SO_2 control device is 50 percent of the maximum estimated hourly potential SO_2 emissions of the fuel fired.

(f) When SO_2 emission data are not obtained because of CEMS breakdowns, repairs, calibration checks and zero and span adjustments, emission data will be obtained by using other monitoring systems as approved by the Administrator or the reference methods as described in paragraph (h) of this section to provide emission data for a minimum of 75 percent of the operating hours in at least 22 out of 30 successive steam generating unit operating days.

(g) If a steam generating unit periodically combusts natural gas, wood, or solid waste, or any other nonsulfur-bearing fuels, 24-hour periods during which these nonsulfur-bearing fuels are the only fuels combusted in the steam generating unit during the entire 24-hour period from midnight to the following midnight shall not be considered steam generating unit operating days for purposes of determining compliance with the SO_2 standard under § 60.42b. For periods during which both sulfur-bearing and nonsulfur-bearing fuels are combusted in the steam generating unit, only those hours during which any sulfur-bearing fuel is combusted shall be considered steam generating unit operating hours.

(h) Reference methods used to supplement CEMS data to meet the minimum data requirements in paragraph (f) of this section will be used as specified below or otherwise approved by the Administrator.

(1) Reference Methods 3 and 6 or 6B, as applicable, are used. The sampling location(s) for Reference Methods 3 and 6 are the same as those used for the CEMS.

(2) For Method 6, the minimum sampling time is 20 minutes and the minimum sampling volume is 0.02 dsm^3 (0.71 dsf^3) for each sample. Samples are taken at approximately 60 minute intervals. Each sample represents a 1-hour average.

(3) For Method 3, the oxygen or carbon dioxide sample is to be taken for each hour when continuous SO_2 data are collected or when Method 6 is used. Each sample shall be taken for a minimum of 30 minutes in each hour using the integrated bag method specified in Method 3. Each sample represents a 1-hour average.

(4) For each 1-hour average, the emissions expressed in ng/J (lb/million Btu) heat input are determined and used as needed to achieve the minimum data requirements of paragraph (f) of this section.

10. Section 60.46b as proposed on June 19, 1984 (49 FR 25102) is redesignated as § 60.49b and amended by revising paragraphs (b) and (i); and adding paragraphs (a)(3), (a)(4), (j), (k), (l), and (m) as follows:

§ 60.49b Reporting and recordkeeping requirements.

(a) * * *

(3) the design heat input capacity and the annual capacity factor at which the owner or operator anticipates operating the facility, and, if applicable, a copy of any Federal or Federally enforceable State or local permit which limits the annual fossil fuel utilization factor for coal to 30 percent (0.30) or less and limits the annual capacity factor for fuels other than coal, oil, or natural gas to 10 percent (0.10) or greater for affected facilities regulated under § 60.42b(c). The annual fossil fuel utilization factor and the annual capacity utilization factor shall be determined on a 12-month rolling average basis, with a new average calculated at the end of each calendar month.

(4) identification and description of any emerging technologies used for controlling emissions of SO_2 under § 60.42b. Upon receiving notification from the owner or operator of an affected facility that an emerging technology will be used for controlling emissions of SO_2, the Administrator will examine the description of the emerging technology proposed to be used and will determine whether this technology qualifies as an emerging technology. In making this determination, the Administrator may require the owner or operator of the affected facility to submit additional information concerning the control device. The determination of the Administrator shall be communicated to the owner or operator of the affected facility within 30 working days of receipt of notification from the owner or operator.

(b) For facilities subject to the SO_2, PM, and NO_x emission limits under § 60.42b, § 60.43b, and § 60.44b, the performance test data from the initial performance test and the performance evaluation of the CEMS using the applicable performance specifications in

Appendix B shall be submitted to the Administrator by the owner or operator of the affected facility.

* * * * * *

(i) The owner or operator of any affected facility subject to the SO_2 standards under § 60.42b shall submit written reports to the Administrator for every calendar quarter. All quarterly reports shall be postmarked by the 30th day following the end of each calendar quarter.

(j) For each affected facility subject to the reporting requirement in paragraph (i) of this section, the following information shall be reported to the Administrator:

(1) Calendar dates covered in the reporting period.

(2) Each 30-day average SO_2 emission rate measured during the reporting period, ending with the last 30-day period in the quarter; reasons for noncompliance with the emission standards; and a description of corrective actions taken.

(3) Each 30-day average percent reduction in SO_2 emissions calculated during the reporting period, ending with the last 30-day period in the quarter; reasons for noncompliance with the emission standards; and a description of corrective actions taken.

(4) Identification of the steam generating unit operating days for which SO_2 or diluent (oxygen or carbon dioxide) data have not been obtained by an approved method for at least 75 percent of the operating hours; justification for not obtaining sufficient data; and description of corrective action taken.

(5) Identification of the times when emissions data have been excluded from the calculation of average emission rates; justification for excluding data; and description of corrective action taken if data have been excluded for periods other than those during which nonsulfur-bearing fuels were combusted in the steam generating unit.

(6) Identification of "F" factor used for calculations, method of determination, and type of fuel combusted.

(7) Identification of times when hourly averages have been obtained based on manual sampling methods.

(8) Identification of the times when the pollutant concentration exceeded full span of the CEMS.

(9) Description of any modifications to the CEMS which could affect the ability of the CEMS to comply with Performance Specifications 2 or 3.

(10) Results of daily CEMS drift tests and quarterly accuracy assessments as required under Appendix F, Procedure 1.

(k) For each affected facility subject to the SO_2 standards under § 60.42b for which the minimum amount of data required under § 60.47b(f) were not obtained during a calendar quarter, the following information is reported to the Administrator in addition to that required under paragraph (j) of this section:

(1) The number of hourly averages available for outlet emission rates and inlet emission rates.

(2) The standard deviation of hourly averages for outlet emission rates and inlet emission rates, as determined in Method 19, Section 6.

(3) The lower confidence limit for the mean outlet emission rate and the upper confidence limit for the mean inlet emission rate, as calculated in Method 19, Section 6.

(4) The applicable potential SO_2 emission rate(s).

(5) The ratio of the lower confidence limit for the mean outlet emission rate and the allowable emission rate, as determined in Method 19, Section 7.

(l) If fuel pretreatment credit toward the SO_2 emission standard under § 60.42b is claimed, the owner or operator of the affected facility shall submit a signed statement with the quarterly report:

(1) Indicating what percentage fuel pretreatment credit was taken for the calendar quarter;

(2) Listing the quantity, heat content, and date each pretreated fuel shipment was received during the previous calendar quarter; the name and location of the fuel pretreatment facility; and the total quantity and total heat content of all fuels received at the affected facility during the previous calendar quarter;

(3) Certifying that the emission credit was determined in accordance with the provisions of § 60.45b and Method 19 (Appendix A); and

(4) Documenting the transport of the fuel from the fuel pretreatment facility to the steam generating unit.

(m) All records required under this section shall be maintained by the owner or operator of the affected facility for a period of 2 years following the date of such record.

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Thursday
June 19, 1986

Part III

Department of Education

34 CFR Part 500 et al.

Bilingual Education Regulations

Discretionary Grant Programs; Application Notices Establishing Closing Dates for Transmittal of Certain Fiscal Year 1986 Applications

DEPARTMENT OF EDUCATION

34 CFR Parts 500, 501, 505, 510, 514, 525, 526, 527, 537, 561, 573, and 574

Bilingual Education Regulations

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education issues general provisions and certain specific regulations to implement programs authorized under the Bilingual Education Act. The regulations implement the Education Amendments of 1984.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: William A. Wooten, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421, Reporters Building), Washington, DC 20202. Telephone (202) 245–2600.

SUPPLEMENTARY INFORMATION: The specific parts of these regulations implement the Basic Programs, the Family English Literacy Program, the Special Populations Program, the Program for the Development of Instructional Materials, the Educational Personnel Training Program, the Training Development and Improvement Program, and the Short-Term Training Program. These regulations implement the Education Amendment of 1984, which substantively amended the Bilingual Education Act, Title VII of the Elementary and Secondary Education Act (Title VII or the Act).

The Department published two Notices of Proposed Rulemaking (NPRMs) to implement the Bilingual Education Act, the first on May 24, 1985, at 50 FR 21766, to implement evaluation requirements under the Act, and the second on November 22, 1985, at 50 FR 48352, to implement the provisions of the Act for the programs listed in the **SUMMARY** section. In response to comments received from the public on these two NPRMs, the Secretary has made several significant changes. These include the following:

—Adding emphasis to the statutory requirement that bilingual programs be designed to allow students to meet grade promotion and graduation standards. (§ 500.10).

—Doubling the relative weight assigned to the funding criterion "Quality of key personnel," "Quality of key personnel and applicant," or "Quality of personnel" in the regulations (§§ 501.31(d), 525.31(d), 526.32(e), 537.31(c), 561.31(e), 574.32(e)).

—Clarifying which children may be counted toward the forty percent limitation on participation of children whose language is English. (§ 501.41)

—Conforming the regulations more closely with statutory language concerning the length of the project period. (§ 501.34)

—Providing grantees more flexibility in establishing the design of their evaluation plans. (§ 500.50(b)(1)).

A summary of the comments and the Secretary's responses to those comments is contained in the appendix to these regulations.

These final regulations have four main objectives that were also discussed briefly in the preamble to the proposed regulations:

First, and foremost, the package is intended to inform school districts seeking Federal assistance for transitional bilingual programs that the current legislation gives them broad discretion in determining the extent to which instruction in the native language is necessary to enable students to gain competence in the English language and make satisfactory educational progress. This means that, for the most part, the local educational agency, not the Federal government, decides the amount of native language instruction to be used, how to use it, and the duration of its use. Contrary to the impression of several commenters, the regulations do not change or add to the statutory definition of a "program of transitional bilingual education," nor do they place a limit on the extent of native language use in instruction. On the contrary, the preamble and appendix merely highlight the extent of statutory flexibility available to local educational agencies (LEAs) in designing and implementing these projects, while ensuring that all funded projects comply with the requirements of the Act.

Second, recognizing that parental involvement is crucial to children's success in school, the regulations emphasize the statutory requirements that parents be allowed to become involved in their children's bilingual education program. Parents can participate in program design, including the choice of the educational methods, and they must be given the option of deciding whether their children enroll in any federally-funded bilingual program. The regulations require that parents or other legal guardians of children identified for enrollment in projects be informed of the reasons for selection of their child, the alternative educational programs in the LEA, the alternatives that the LEA might have chosen for limited English proficient (LEP) students, and the native language used in the program offered by the LEA.

Third, the regulations establish specific requirements for school districts to demonstrate, as required by law, that they will build local capacity to finance bilingual education programs without Federal funds. These requirements will help place local bilingual programs on a sound financial footing.

These requirements do not reflect any intent to phase out the Federal program. Rather, they reflect Congress' and the Department's determination to spend limited Federal dollars—that clearly are inadequate to serve every eligible child—in the most effective manner, so that Federal funds not only buy services for needy children but also contribute to lasting programs that will continue to serve such children when Federal funds are reduced or not longer available.

Fourth, the regulations include provisions to ensure that LEP children obtain proficiency in English as quickly as possible so thay can participate effectively in the regular educational program. The Secretary interprets the primary goal of the Act to be to teach English and enable LEP children, "to become full and productive members of our society." This emphasis does not mean that children should be moved out of the program before they achieve full proficiency in English. But, programs that allow children to be held back unnecessarily and to languish in special classrooms should not be rewarded, especially when those children are capable of learning English more rapidly.

The regulations interpret and implement Title VII as amended, and apply to applications submitted and grants awarded beginning in fiscal year 1986.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291.

They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Intergovernmental Review

These programs are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened

federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Assessment of Educational Impact

In the NPRMs, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States. Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 500, 501, 525, 526, 537, 561, 573, and 574

Adult education, Bilingual education, Colleges and universities, Education, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements, Teachers.

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 regulations.

(Catalog of Federal Domestic Assistance Number: 84.003, Bilingual Education: Basic Programs; Family English Literacy Program; Special Populations Program; Program for the Development of Instructional Materials; Evaluation Assistance Centers Program; Educational Personnel Training Program; Training Development and Improvement Program; and Short-Term Training Program)

Dated: June 13, 1986

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by revising Parts 500, 501, 525, and 526; removing Parts 505, 510, 514, and 527; and adding new Parts 537, 561, 573, and 574 as follows:

1. Part 500 is revised to read as follows:

PART 500—BILINGUAL EDUCATION: GENERAL PROVISIONS

Subpart A—General

Sec.

500.1 What programs are governed by these regulations?
500.2 [Reserved]
500.3 What regulations apply to these programs?
500.4 What definitions apply to these programs?

Subpart B—What Kinds of Projects Does the Secretary Assist?

500.10 What requirements pertain to all programs assisted under this Act for limited English proficient persons?
500.11 What programs are there for students of limited Spanish proficiency in Puerto Rico?

Subpart C—How Does One Apply for an Award?

500.20 What requirements pertain to SEA review of an application?

Subpart D—[Reserved]

Subpart E—[Reserved]

Subpart F—What Evaluation Requirements Must Be Met by a Recipient?

Sec.

500.50 What evaluation requirements apply to a grantee?
500.51 What evaluation information must a grantee collect?
500.52 What information must a grantee report to the Secretary?

Authority: 20 U.S.C. 3221–3262, unless otherwise noted.

Subpart A—General

§ 500.1 What programs are governed by these regulations?

The regulations in this part apply to programs authorized under the Act. The programs governed by this part and their applicable program regulations are as follows:

(a) Basic Programs (34 CFR Part 501).

(Authority: 20 U.S.C. 3231(a) (1), (2), and (3))

(b) Programs of Academic Excellence (34 CFR Part 524).

(Authority: 20 U.S.C. 3231(a)(4))

(c) Family English Literacy Program (34 CFR Part 525).

(Authority: 20 U.S.C. 3231(a)(5))

(d) Special Populations Program (34 CFR Part 526).

(Authority: 20 U.S.C. 3231(a)(6))

(e) Program for the Development of Instructional Materials (34 CFR Part 537).

(Authority: 20 U.S.C. 3231(a)(7))

(f) State Educational Agency Program (34 CFR Part 548).

(Authority: 20 U.S.C. 3242)

(g) Evaluation Assistance Centers Program (34 CFR Part 549).

(Authority: 20 U.S.C. 3244)

(h) Educational Personnel Training Program (34 CFR Part 561).

(Authority: 20 U.S.C. 3251(a)(1))

(i) Fellowship Program (34 CFR Part 562).

(Authority: 20 U.S.C. 3251(a)(2), 3253)

(j) Training Development and Improvement Program (34 CFR Part 573).

(Authority: 20 U.S.C. 3251(a)(3))

(k) Short-Term Training Program (34 CFR Part 574).

(Authority: 20 U.S.C. 3251(a)(4))

(l) Multifunctional Resource Centers (34 CFR Part 575).

(Authority: 20 U.S.C. 3251(a)(5), 3252)

§ 500.2 [Reserved]

§ 500.3 What regulations apply to these programs?

(a) Except as described in paragraphs (b) and (c) of this section, the following regulations apply to programs authorized under the Act listed in § 500.1:

(1) The regulations in this Part 500.

(2) The Education Department General Administrative Regulations (EDGAR) in 34 CFR—

(i) Part 74 (Administration of Grants);

(ii) Part 75 (Direct Grant Programs);

(iii) Part 77 (Definitions That Apply to Department Regulations);

(iv) Part 78 (Education Appeal Board); and

(v) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The provisions in 34 CFR 75.217(c)–(e) (relating to the review of applications) do not apply to the State Educational Agency Program in Part 548.

(c) Except for the provisions in 34 CFR 75.51 (relating to proof of nonprofit status) the EDGAR provisions listed in paragraph (a)(2) of this section do not apply to the Fellowship Program in Part 562.

(Authority: 20 U.S.C. 3221–3262)

§ 500.4 What definitions apply to these programs?

(a) *Definitions in EDGAR.* The following terms used in the parts listed in § 500.1 (except Part 562) are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget period
Department
EDGAR
Elementary school
Fiscal year
Grant period

Local educational agency; for the purpose of carrying out programs under

the Act for individuals served by elementary, secondary, or postsecondary schools operated predominantly for Indian or Alaska Native children, the term also means an Indian tribe or tribally sanctioned educational authority.

Nonprofit
Nonpublic
Preschool
Private
Project
Public
Recipient
Secondary school
Secretary
State
State educational agency

(b) *Program definitions.* The following definitions also apply to the parts listed in § 500.1:

"Act" or "Title VII" means the Bilingual Education Act, Title VII of the Elementary and Secondary Education Act, as amended by Pub. L. 98-511.

(Authority: 20 U.S.C. 3221-3262)

"Educational personnel" means teachers, teacher aides, paraprofessionals, administrators, school psychologists, guidance counselors, and other persons who provide or are preparing to provide instructional or support services in programs for limited English proficient persons.

(Authority: 20 U.S.C. 3221-3262)

"Family English literacy program" means a program of instruction designed to help limited English proficient adults and out-of-school youth achieve competence in the English language. These programs of instruction may be conducted exclusively in English, or in English and the student's native language. Where appropriate, the programs may include instruction on how parents and family members can facilitate the educational achievement of limited English proficient children. To the extent feasible, preference for participation in the programs must be given to the parents and immediate family members of children enrolled in programs assisted under the Act.

(Authority: 20 U.S.C. 3223(a)(7))

"Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized for the special programs and services provided by the United States to Indians because of their status as Indians.

(Authority: 20 U.S.C. 3232(a)(1))

"Institution of higher education" (IHE) is defined in section 1001(e) of the Elementary and Secondary Education Act of 1965, as amended.

(Authority: 20 U.S.C. 3381(e))

"Limited English proficiency" and "limited English proficient," (LEP) when used with reference to an individual, means an individual—

(1)(i) Who was not born in the United States or whose native language is other than English;

(ii) Who comes from a home in which a language other than English is used most for communication; or

(iii) Who is an American Indian or Alaska Native and comes from a home in which a language other than English has had significant impact on his or her level of English language proficiency as a result of substantial use of that other language for communication; and

(2) Who, as a result of the circumstances described in paragraph (1) of the definition, has sufficient difficulty in speaking, reading, writing or understanding the English language to deny him or her the opportunity to—

(i) Learn successfully in classrooms in which the language of instruction is English; or

(ii) Participate fully in our society.

(Authority: 20 U.S.C. 3223(a)(1))

"Low-income," when used with respect to a family, means an annual income for a family which does not exceed the poverty level determined pursuant to section 111(c)(2) of Title I of the Elementary and Secondary Education Act of 1965.

(Authority: 20 U.S.C. 3223(a)(3))

"Native language," when used with reference to an individual of limited English proficiency, means the language normally used by the individual. If the language normally used by a child cannot be determined, the language normally used by the parents or legal guardians of the child is the child's native language.

(Authority: 20 U.S.C. 3223(a)(2))

"Programs of academic excellence" means programs of transitional bilingual education, developmental bilingual education, or special alternative instruction which have an established record of providing effective, academically excellent instruction and which are designed to serve as models of exemplary bilingual education programs and to facilitate the dissemination of effective bilingual educational practices.

(Authority: 20 U.S.C. 3223(a)(8))

"Program for limited English proficient persons" means any instructional program authorized under Part A of the Act.

(Authority: 20 U.S.C. 3231-3262)

"Program of developmental bilingual education."

(1) The term means a full-time program of instruction in elementary and secondary schools which provides, with respect to the years of study to which the program is applicable, structured English-language instruction and instruction in a second language. The program must be designed to help children achieve competence in English and a second language, while mastering subject matter skills. The instruction must, to the extent necessary, be in all courses or subjects of study which will allow a child to meet grade-promotion and graduation standards.

(2) Where possible, classes in programs of developmental bilingual education must be comprised of approximately equal numbers of students whose native language is English and limited English proficient students whose native language is the second language of instruction and study in the program.

(Authority: 20 U.S.C. 3223(a)(5))

"Program of transitional bilingual education."

(1) The term means a program of instruction, designed for children of limited English proficiency in elementary or secondary schools, which provides, with respect to the years of study to which the program is applicable, structured English language instruction, and, to the extent necessary to allow a child to achieve competence in the English language, instruction in the child's native language. The instruction must incorporate the cultural heritage of these children and of other children in American society. The instruction must, to the extent necessary, be in all courses or subjects of study which will allow a child to meet grade-promotion and graduation standards.

(2) In order to prevent the segregation of children on the basis of national origin in programs of transitional bilingual education, and in order to broaden the understanding of children about languages and cultural heritages other than their own, a program of transitional bilingual education may include the participation of children whose language is English, but in no event may the percentage of those children exceed 40 percent. The program may provide for centralization of teacher training and curriculum development, but it must serve the

children in the schools which they normally attend.

(3) In courses or subjects of study such as art, music, and physical education, a program of transitional bilingual education must make provision for the participation of children of limited English proficiency in regular classes.

(4) Children enrolled in a program of transitional bilingual education must, if graded classes are used, be placed, to the extent practicable, in classes with children of approximately the same age and level of educational attainment. If children of significantly varying ages or levels of educational attainment are placed in the same class, the program of transitional bilingual education must seek to ensure that each child is provided with instruction which is appropriate for his or her level of educational attainment.

(Authority: 20 U.S.C. 3223(a)(6))

"Special alternative instructional programs" means programs of instruction designed for children of limited English proficiency in elementary and secondary schools. The programs are not transitional or developmental bilingual education programs, but have specially designed curricula and are appropriate for the particular linguistic and instructional needs of the children enrolled. The programs must provide, with respect to the years of study to which the programs are applicable, structured English language instruction and special instructional services which will allow a child to achieve competence in the English language and to meet grade-promotion and graduation standards.

(Authority: 20 U.S.C. 3223(a)(6))

"Tribally sanctioned educational authority" means any department or division of education operating within the administrative structure of the duly constituted governing body of an Indian tribe, as well as any nonprofit institution or organization which—

(1) Is chartered by the governing body of an Indian tribe to operate any school or otherwise to oversee delivery of educational services to members of that tribe; and

(2) Is approved by the Secretary for the purposes of carrying out programs under the Act.

(Authority: 20 U.S.C. 3223(a)(2))

Subpart B—What Kinds of Projects Does the Secretary Assist?

§ 500.10 What requirements pertain to all programs assisted under this Act for limited English proficient persons?

All programs assisted under this Act must—

(a) Give priority to serving LEP children having the greatest need for those programs, particularly those children whose usual language is not English;

(b) Be designed to enable students to achieve full competence in English; and

(c) Be designed to allow students to meet grade-promotion and graduation standards.

(Authority: 20 U.S.C. 3222)

§ 500.11 What programs are there for students of limited Spanish proficiency in Puerto Rico?

Projects funded in the Commonwealth of Puerto Rico may include programs of instruction, teacher training, curriculum development, research, evaluation, and testing designed to improve the English proficiency of children and may also make provision for serving the needs of students of limited Spanish proficiency.

(Authority: 20 U.S.C. 3231(i))

Subpart C—How Does One Apply for an Award?

§ 500.20 What requirements pertain to SEA review of an application?

An applicant that seeks assistance under 34 CFR Parts 501 and 561 shall include evidence, in its application, that the SEA has been notified of the application and has been given an opportunity to offer recommendations on the application to the applicant and the Secretary and otherwise comply with the procedures in 34 CFR 75.156–75.160.

(Authority: 20 U.S.C. 3231(e)(4))

Subpart D—[Reserved]

Subpart E—[Reserved]

Subpart F—What Evaluation Requirements Must Be Met by a Recipient?

§ 500.50 What evaluation requirements apply to a grantee?

(a) This section establishes a comprehensive design of the general evaluation requirements and standards that a grantee funded under programs authorized under part A of Title VII must meet in carrying out an annual evaluation of a project which provides instructional services to limited English proficient persons.

(b) A grantee's evaluation must comply with the following requirements:

(1) A grantee's evaluation design must include a measure of the educational progress of project participants when measured against an appropriate nonproject comparison group.

(2) A grantee's evaluation design must meet the following technical standards:

(i) *Representativeness of evaluation findings.* The evaluation results must be computed so that the conclusions apply to the persons, schools or agencies served by the projects.

(ii) *Reliability and validity of evaluation instruments and procedures.* The evaluation instruments used must consistently and accurately measure progress toward accomplishing the objectives of the project, and must be appropriate considering factors such as the age, grade, language, degree of language fluency and background of the persons served by the project.

(iii) *Evaluation procedures that minimize error.* The evaluation procedures must minimize error by providing for proper administration of the evaluation instruments, at twelve-month testing intervals, accurate scoring and transcription of results, and the use of analysis and reporting procedures that are appropriate for the data obtained from the evaluation.

(iv) *Valid measurement of academic achievement.* The evaluation procedures must provide objective measures of the academic achievement of participants related to English language proficiency, native or second language proficiency (for programs of developmental bilingual education), and other subject matter areas.

(3)(i) A grantee's evaluation must provide information on the academic achievement of—(A) Current participants in the project, who are—

(*1*) Children who are limited English proficient; and

(*2*) Children whose language is English; and

(B) Children who were formerly served in the project as limited English proficient, have exited from the program, and are now in English language classrooms.

(ii) This information must include—

(A) The amount of time (in years or school months, as appropriate) the participants received instructional services in the project, and as appropriate, in another instructional setting;

(B) The participants' progress in achieving English language proficiency

and, for programs of developmental bilingual education, progress in another language; and

(C) The former participants' academic progress in English language classrooms.

(Authority: 20 U.S.C. 3243)
(Approved by the Office of Management and Budget under control number 1885-0003)

§ 500.51 What evaluation information must a grantee collect?

In carrying out the annual evaluation under § 500.50, a grantee shall collect information on—

(a) The educational background, needs, and competencies of the limited English proficient persons served by the project;

(b) The specific educational activities undertaken pursuant to the project;

(c) The pedagogical materials, methods, and techniques utilized in the program;

(d) With respect to classroom activities, the relative amount of instructional time spent with students on specific tasks; and

(e) The educational and professional qualifications, including language competencies, of the staff responsible for planning and operating the project.

(Authority: 20 U.S.C. 3243)
(Approved by the Office of Management and Budget under control number 1885-0003)

§ 500.52 What information must a grantee report to the Secretary?

A grantee shall report to the Secretary annaully, the information collected in § 500.51 and an evaluation of the overall progress of the project including the extent of educational progress achieved through the project measured, as appropriate, by—

(a) Tests of academic achievement in English language arts, and for programs of developmental bilingual education, second language arts;

(b) Tests of academic achievement in subject matter areas; and

(c) Changes in the rate of student—

(1) Grade-retention;

(2) Dropout;

(3) Absenteeism;

(4) Referral to or placement in special education classes;

(5) Placement in programs for the gifted and talented; and

(6) Enrollment in postsecondary education institutions.

(Authority: 20 U.S.C. 3243)
(Approved by the Office of Management and Budget under control number 1885-0003)

2. Part 501 is revised to read as follows:

PART 501—BILINGUAL EDUCATION: BASIC PROGRAMS

Subpart A—General

Sec.
501.1 Basic Programs.
501.2 Who is eligible to apply for assistance under Basic Programs?
501.3 What regulations apply to Basic Programs?
501.4 What definitions apply to the Basic Programs?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

501.10 What activities are eligible for assistance?
501.11 What level of commitment to continue the program must the applicant demonstrate?

Subpart C—How Does One Apply for an Award?

501.20 What must an applicant include in its application for assistance?
501.21 What requirements pertain to the application advisory council and the parent advisory committee?
501.22 What requirements pertain to the participation of children enrolled in nonprofit private schools?
501.23 What requirements pertain to preservice activities?
501.24 What requirements pertain to training activities?
501.25 What requirements pertain to the development of an evaluation plan?

Subpart D—How Does the Secretary Make an Award?

501.30 How does the Secretary evaluate an application?
501.31 What selection criteria does the Secretary use?
501.32 What additional factors does the Secretary consider in awarding grants?
501.33 What specific factors may the Secretary consider in awarding grants under special alternative instructional programs?
501.34 What is the length of the project period?

Subpart E—What Conditions Must Be Met by a Recipient?

501.40 What information must be given to parents?
501.41 What additional requirements apply to programs of transitional bilingual education?

Authority: 20 U.S.C. 3221-3262, unless otherwise noted.

Subpart A—General

§ 501.1 Basic Programs.

The Basic Programs provide assistance to eligible applicants for—

(a) Programs of transitional bilingual education authorized under section 721(a)(1) of the Act;

(b) Programs of developmental bilingual education authorized under section 721(a)(2) of the Act; or

(c) Special alternative instructional programs authorized under section 721(a)(3) of the Act.

(Authority: 20 U.S.C. 3231(a) (1), (2), and (3))

§ 501.2 Who is eligible to apply for assistance under Basic Programs?

(a) The following parties are eligible to apply for assistance under this part:

(1) Local educational agencies (LEAs).

(2) Institutions of higher education (IHEs), including junior or community colleges, that apply jointly with one or more LEAs.

(b) In the case of an application submitted by an IHE jointly with one or more LEAs, an LEA must be designated as the applicant in the group agreement required under 34 CFR 75.128.

(Authority: 20 U.S.C. 3231(b)(1)(A))

§ 501.3 What regulations apply to Basic Programs?

The following regulations apply to Basic Programs:

(a) The regulations identified in 34 CFR 500.3.

(b) The regulations in this Part 501.

(Authority: 20 U.S.C. 3231(a) (1), (2), (3))

§ 501.4 What definitions apply to the Basic Programs?

The definitions in 34 CFR 500.4 apply to the Basic Programs.

(Authority: 20 U.S.C. 3223, 3231(a) (1), (2), (3))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 501.10 What activities are eligible for assistance?

The Secretary provides assistance for the following activities:

(a) Establishing, operating, or improving basic programs.

(b) During the first six months of a project (unless a waiver is granted under § 501.23(b)), only preservice activities designed to prepare a grantee to operate the proposed project. These activities do not include providing instructional services to limited English proficient (LEP) children. Activities may include, but are not limited to—

(1) Program design;

(2) Materials development;

(3) Staff recruitment and training;

(4) Development of evaluation mechanisms and procedures; and

(5) Activities to involve parents in the educational program and to enable parents and family members to assist in the education of LEP children.

(c) Providing or securing training, as necessary, for personnel participating or preparing to participate in the program. To the extent possible, college or

university credit must be awarded for the training.

(Authority: 20 U.S.C. 3231(a) (1), (2), (3), (d)(1)(B), (f)(6))

§ 501.11 What level of commitment to continue the program must the applicant demonstrate?

(a)(1) The purpose of grants under this part is to build the capacity of the grantee to provide a program, on a regular basis, similar to that proposed for assistance, when Federal assistance under the project is reduced or no longer available.

(2) The program to be provided must be of sufficient size, scope, and quality to promise significant educational improvement for LEP children.

(b) To carry out this purpose—

(1) The Secretary funds a project only if the applicant demonstrates a realistic plan in its application to develop its programmatic capacity for serving LEP children and to assume financial responsibility for the program when Federal assistance is reduced or no longer available;

(2) The Secretary reduces the level of Federal assistance in each successive year of the project, unless—

(i) The plan under paragraph (b)(1) of this section provides for an increased commitment of local funds to provide expanded special services for greater numbers of LEP children in each successive year of the project; or

(ii) Based on unforeseen circumstances, such as a substantial influx of LEP children to the school district, the grantee—in an application for a successive budget period under the project—amends the plan under paragraph (b)(1) of this section to assure the Secretary that it will provide expanded services; and

(3) The Secretary, in determining the funding level for each successive year of a project, and in determining whether to renew a project after its first three years, in accordance with § 501.34, considers the extent to which the grantee has successfully carried out its plan under paragraph (b)(1) of this section.

(Authority: 20 U.S.C. 3231(f)(5))

(Approved by the Office of Management and Budget under control number 1885–0003)

Subpart C—How Does One Apply for an Award?

§ 501.20 What must an applicant include in its application for assistance?

An application must—

(a) Include the information and assurances required under—

(1) Section 721(c)(2) of the Act; and

(2) 34 CFR 500.20, 501.20—501.25 and 501.32, and 501.33, if applicable; and

(b) Provide assurances that the project will—

(1) Use only qualified personnel, who are proficient in spoken and written English, and, if appropriate, any other language or languages used for instruction;

(2) Comply with the non-supplanting requirements of section 721(f)(4) of the Act; and

(3) Comply with the parent advisory committee requirements in § 501.21(c).

(Authority: 20 U.S.C. 3231)

(Approved by the Office of Management and Budget under control number 1885–0003)

§ 501.21 What requirements pertain to the application advisory council and the parent advisory committee?

An applicant shall—

(a) Establish an application advisory council, of which a majority must be parents and other representatives of the children to be served in the program, to assist in the development of the application;

(b) Submit with its application documentation of its consultation with the council and the council's comments on the application and on the decision to submit an application under one of the programs listed in § 501.1.

(c) Assure in its application that—

(1) In carrying out its project, the applicant will provide for continuing consultation with, and participation by, a parent advisory committee composed of parents, teachers, and other interested individuals.

(2) The parent advisory committee will be selected by and predominantly composed of parents of LEP children participating in the program and may include members of the application advisory council; and

(3) In the case of a project carried out in a secondary school, the parent advisory committee will include representatives of the secondary school students participating in the project.

(Authority: 20 U.S.C. 3231(e))

(Approved by the Office of Management and Budget under control number 1885–0003)

§ 501.22 What requirements pertain to the participation of children enrolled in nonprofit private schools?

(a) An applicant shall demonstrate in its application that—

(1) In designing the project the applicant has consulted with appropriate private school officials and has taken into account the needs of LEP children enrolled in nonprofit private elementary and secondary schools in the area to be served; and

(2) The applicant will make provision for participation of the LEP children enrolled in nonprofit private schools—

(i) On a basis comparable to that provided for the public school children; and

(ii) Consistent with the number of those children enrolled in nonprofit private schools in the area to be served whose educational needs are of the type and whose language and grade level are of a similar type to those the program is intended to address. (See 34 CFR 75.650 Participation of students enrolled in private schools.)

(b) If the Secretary determines that an applicant is unable or unwilling to provide for the participation of LEP children enrolled in nonprofit private schools as required by this section, the Secretary—

(1) Withholds approval of the application until the applicant demonstrates that it is in compliance with the requirements of this section; or

(2) Reduces the amount of the grant by the amount the Secretary needs to—

(i) Arrange to assess the needs of children in nonprofit private schools in the area to be served; and

(ii) Carry out a program for limited English proficient persons which meets the needs of those children.

(Authority: 20 U.S.C. 3231(f)(2), (j))

(Approved by the Office of Management and Budget under control number 1885–0003)

§ 501.23 What requirements pertain to preservice activities?

(a) Except as provided in paragraph (b) of this section, an applicant shall demonstrate in its application how it plans to conduct the preservice activities described in § 501.10(b) for the first six months of the grant.

(b)(1) An applicant desiring a waiver of the requirement for preservice activities shall submit, as part of the application, a request for a waiver and shall demonstrate that it is already prepared to operate the proposed project successfully.

(2) If the Secretary denies a waiver request, an applicant is eligible for further funding consideration only if its original application would still meet the requirements of paragraph (a) of this section without the waiver.

(Authority: 20 U.S.C. 3231(d)(1)(B))

(Approved by the Office of Management and Budget under control number 1885–0003)

§ 501.24 What requirements pertain to training activities?

An applicant shall demonstrate in its application that it will—

(a) Provide or secure training for the persons participating in the project that,

to the extent possible, awards college or university credit for the training;

(b) Base training on an assessment of the needs of the persons who will be participating in the project and on the needs of the LEP children who will receive instruction under the project; and

(c) Apply the applicable provisions in 34 CFR 561.41 if the approved application provides for financial assistance to participants.

(Authority: 20 U.S.C. 3231(f)(6))

(Approved by the Office of Management and Budget under control number 1885–0003)

§ 501.25 What requirements pertain to the development of an evaluation plan?

An applicant shall demonstrate that its plan for evaluating the progress and achievements of the proposed project meets the requirements of 34 CFR 500.50–500.52.

(Authority: 20 U.S.C. 3231(f)(3), 3243)

(Approved by the Office of Management and Budget under control number 1885–0003)

Subpart D—How Does the Secretary Make an Award?

§ 501.30 How does the Secretary evaluate an application?

(a)(1) The Secretary evaluates an application on the basis of the criteria listed in § 501.31.

(2) The Secretary awards a maximum of 100 points for all the criteria.

(3) The maximum possible score for each complete criterion is indicated in parentheses following the heading for the criterion.

(b) The Secretary then applies the additional factors listed in § 501.32 in selecting applications for new grants.

(c) For special alternative instructional programs the Secretary may also consider the specific factors in § 501.33 in selecting applications for new grants.

(Authority: 20 U.S.C. 3231(a) (1), (2), (3), (c) (3), (f) (7), (g), (h))

§ 501.31 What selection criteria does the Secretary use?

The Secretary uses the following criteria in evaluating each application:

(a) *Description and assessment of need.* (17 points) The Secretary reviews each application to determine—

(1) The extent to which the applicant has identified the needs of the LEP students to be served in the program, including—

(i) The lack of proficiency of the LEP children in speaking, reading, writing, and understanding the English language; and

(ii) The degree of proficiency of the LEP children in their native language and in other courses or subjects of study.

(2) The reliability and objectivity of the methods used to identify those needs;

(3) The adequacy of the applicant's justification for concluding that the schools selected for the project enroll the children most in need of assistance within the LEA; and

(4) The extent to which the project will serve the children most in need of assistance, within the schools selected.

(b) *Program objectives and design.* (30 points)

(1) The Secretary reviews each application to determine the appropriateness and reasonableness of the applicant's design for meeting the needs of the LEP students to be served, including—

(i) The extent to which the instructional approach to be used will address the specific needs identified in the application; and

(ii) The extent to which other instructional approaches have been considered in choosing the instructional approach to be used in the project.

(2) The Secretary looks for the extent to which the project has specific and quantifiable objectives that will lead to the realization of the goals of the Act, including—

(i) The manner and time schedule by which the applicant will meet the needs of LEP children served by the project, including—

(A) The achievement of goals set for the children served by the project, especially the goal of achieving English language proficiency as quickly as possible;

(B) The identification of children who have achieved proficiency in the English language adequate for their effective participation in the regular educational program;

(C) Except for programs of developmental bilingual education, the transfer of those children identified in paragraph (b)(2)(i)(B) of this section to the regular educational program as soon as possible; and

(ii) The way the applicant plans to use its resources and personnel to achieve each objective.

(3) The Secretary reviews each application to determine the quality of the training plan for the project, including the extent to which—

(i) The plan provides for training personnel in ways designed to meet the needs of LEP children to be served by the project; and

(ii) Preservice training activities, if any, and inservice training activities are designed, to the extent possible, to award college or university credit.

(c) *Evaluation plan.* (8 points) The Secretary reviews the strength of the evaluation plan and its relationship to the educational goals of the project and the activities conducted to attain those goals.

Cross-Reference. See 34 CFR 75.590 Evaluation by the grantee.

(d) *Quality of personnel.* (15 points) (1) The Secretary reviews each application to determine the quality of the following personnel:

(i) The principal classroom instructional personnel.

(ii) The project director, if one is to be used, and other personnel essential to the success of the project.

(2) The Secretary considers—

(i) The time that each person referred to in paragraphs (d)(1) (i) and (ii) of this section will commit to the project; and

(ii) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications under paragraph (d)(1) of this section, the Secretary considers—

(i) Experience and training, in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(e) *Commitment, capacity, and cost effectiveness.* (30 points) (1) The Secretary reviews each application to determine the extent of the applicant's commitment to special programs designed to meet the educational needs of LEP students.

(2) The Secretary reviews the strength of the applicant's plan under § 501.11(b)(1) to develop its programmatic capacity for serving LEP children and to assume financial responsibility for the program, including provision for—

(i) The gradual assumption of program costs during the proposed project period;

(ii) The adoption of successful components of the project into the regular educational programs that it conducts for LEP children;

(iii) Follow-up services to children who have achieved proficiency in English; and

(iv) Use of its non-Federal resources to provide a program on a regular basis, similar to that proposed, that will be of

sufficient size, scope, and quality to promise significant improvement in the education of children of limited English proficiency in future years.

(3) If the applicant has carried out a previous project with funds under the Act, the Secretary also may consider the applicant's experience under that project in developing its programmatic capacity for serving LEP children and assuming financial responsibility for the program.

(4) The Secretary also reviews each application to determine the extent to which the project has—

(i) An adequate budget to support project activities in which costs are reasonable in relation to the objectives of the project; and

(ii) An effective plan of management that ensures proper and efficient administration of the project, including evidence that administrative costs constitute a minimum proportion of the total costs of the project.

(Authority: 20 U.S.C. 3231(a) (1), (2), (3), (c)(2), (d)(1)(B), (f), (1), (3), (5), (6), 3243)

(Approved by the Office of Management and Budget under control number 1885–0003)

§ 501.32 What additional factors does the Secretary consider in awarding grants?

(a) In addition to the points awarded under § 501.31, the Secretary considers the following factors in awarding grants:

(1) The need to assist LEP children who have been historically underserved by programs for limited English proficient persons.

(i) An applicant qualifies for points under this factor, if the Secretary determines that—

(A) The applicant has never received assistance under the Act; or

(B) The applicant has received assistance under the Act in the past but plans to serve a new language group. To receive points under this factor, at least 50 percent of the LEP children to be served by the project must belong to the new language group.

(ii) The Secretary does not give any points to an applicant that has received assistance under the Act in the past and plans to serve the same language group for which it received assistance.

(2) The relative need of the particular LEA(s) for the proposed program. The Secretary determines the relative need based upon—

(i) The overall concentration of LEP children in the district as compared to other applicants; and

(ii) Whether the applicant proposes to serve a significant number and proportion of LEP children who have arrived in the LEA during the last school year.

(3) The geographical distribution of LEP children. The Secretary considers the need to provide assistance in proportion to the distribution of LEP children throughout the Nation and within each of the States.

(4) The number and proportion of children from low-income families to be benefited by the program.

(b) The Secretary distributes an additional 15 points among the factors listed in paragraph (a) of this section. The Secretary indicates in the application notice published in the **Federal Register** how these 15 points will be distributed.

(Authority: 20 U.S.C. 3231 (f)(7), (h))

§ 501.33 What specific factors may the Secretary consider in awarding grants under special alternative instructional programs?

(a) For special alternative instructional programs, the Secretary may additionally give priority to applications based on—

(1) The administrative impracticability of establishing a bilingual education program due to the presence of a small number of students of a particular native language;

(2) The unavailability of personnel qualified to provide bilingual instructional services; and

(3) The applicant's current or past efforts to establish a bilingual education program.

(b) The Secretary may distribute an additional 5 points among the factors listed in paragraph (a) of this section. The Secretary indicates in the application notice published in the **Federal Register** how these 5 points are distributed.

(Authority: 20 U.S.C. 3231 (c)(3), (g))

§ 501.34 What is the length of the project period?

(a) The Secretary approves a project period of three years.

(b) The Secretary renews a grant for two additional years, if the grantee demonstrates, in its renewal application, to the satisfaction of the Secretary that—

(1) The program complies with all applicable requirements in the Act and the regulations governing the project;

(2) The grantee's project has made substantial and measurable progress in achieving the specific educational goals contained in its approved application, including the extent to which the grantee has—

(i) Met the objectives established in the application; and

(ii) Successfully carried out the provisions in the application for building its capacity to continue the project when Federal funding is reduced or no longer available; and

(3) There is a continuing need for the grantee's project.

(Authority: 20 U.S.C. 3231(d)(1) (A), (C))

Subpart E—What Conditions Must Be Met by a Recipient?

§ 501.40 What information must be given to parents?

(a) Before enrolling a child in the project (including each LEP child and each child whose language is English), and with sufficient advance notice to give the parents or legal guardians of the child adequate opportunity to decline enrollment, a grantee shall inform the parents or legal guardians of—

(1) The reasons for determining that the child is in need of special instructional services;

(2) The alternative educational programs that are available;

(3) The nature of the educational program for LEP students including—

(i) The instructional method to be used;

(ii) The instructional goals of the project;

(iii) The expected progress of the child in the project in English and other subject matter skills, including how quickly the child is expected to be able to function effectively in and to enter the regular educational program; and

(iv) The past effectiveness of comparable projects using a similar instructional method;

(4) The instructional alternatives for LEP students; and

(5) The option of and opportunity to decline enrollment of the child in the project.

(b) At appropriate intervals during the child's participation in the program, the grantee shall inform parents or legal guardians of the progress of their child in the program, including the extent to which the child is meeting the instructional goals referred to in paragraph (a)(3)(ii) of this section.

(Authority: 20 U.S.C. 3223(c), 3231 (d)(1)(D))

(Approved by the Office of Management and Budget under control number 1885–0510)

§ 501.41 What additional requirements apply to programs of transitional bilingual education?

(a) A grantee under the programs of transitional bilingual education shall comply with all additional requirements found in the definition of program of transitional bilingual education in section 703(a)(4)(B)–(D) of the Act and 34 CFR 500.4 regarding—

(1) The forty percent restriction on the participation of children whose language is English;

(2) The participation of LEP children in regular classes in courses such as art, music, and physical education;

(3) The requirement that the programs must be offered in the schools the children normally attend; and

(4) How the children must be grouped in graded and nongraded classrooms.

(b) For the purpose of paragraph (a)(1) of this section, children previously served as LEP in programs funded under the Act may not be counted as children whose language is English.

(Authority: 20 U.S.C. 3223(a)(4)(B)–(D))

PART 505—[REMOVED]

3. Part 505 is removed.

PART 510—[REMOVED]

4. Part 510 is removed.

PART 514—[REMOVED]

5. Part 514 is removed.

6. Part 525 is revised to read as follows:

PART 525—BILINGUAL EDUCATION: FAMILY ENGLISH LITERACY PROGRAM

Subpart A—General

Sec.

525.1 Family English Literacy Program.
525.2 Who is eligible to apply for assistance under the Family English Literacy Program?
525.3 What regulations apply to the Family English Literacy Program?
525.4 What definitions apply to the Family English Literacy Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

525.10 What activities are eligible for assistance?

Subpart C—How Does One Apply for an Award?

525.20 What must an applicant include in its application for assistance?
525.21 What requirements pertain to the development of an evaluation plan?

Subpart D—How Does the Secretary Make an Award?

525.30 How does the Secretary evaluate an application?
525.31 What selection criteria does the Secretary use?
525.32 What additional factors does the Secretary consider in awarding grants?
525.33 What is the length of the project period?

Authority: 20 U.S.C. 3221–3262, unless otherwise noted.

Subpart A—General

§ 525.1 Family English Literacy Program.

The Secretary provides assistance for projects under the Family English Literacy Program as defined in 34 CFR 500.4.

(Authority: 20 U.S.C. 3223(a)(7))

§ 525.2 Who is eligible to apply for assistance under the Family English Literacy Program?

The following parties are eligible to apply for assistance under the Family English Literacy Program:

(a) Local educational agencies (LEAs).

(b) Institutions of higher education, including junior or community colleges.

(c) Private nonprofit organizations, applying separately or jointly.

(Authority: 20 U.S.C. 3231(b)(1)(B))

§ 525.3 What regulations apply to the Family English Literacy Program?

The following regulations apply to the Family English Literacy Program:

(a) The regulations identified in 34 CFR 500.3.

(b) The regulations in this Part 525.

(Authority: 20 U.S.C. 3223 (a)(7), (h))

(20 U.S.C. 3231(a)(5))

§ 525.4 What definitions apply to the Family English Literacy Program?

The definitions in 34 CFR 500.4 apply to this program.

(Authority: 20 U.S.C. 3221(a)(5))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 525.10 What activities are eligible for assistance?

(a) The Secretary provides assistance for activities designed to establish, operate, and improve family English literacy programs such as—

(1) Instruction designed to help limited English proficient (LEP) adults and out-of-school youth achieve competence in the English language; and

(2) Instruction in methods by which parents and family members can facilitate the educational achievement of LEP children.

(b) Instruction under this program may be conducted exclusively in English or in English and the native language of the participants.

(Authority: 20 U.S.C. 3223(a)(7))

Subpart C—How Does One Apply for an Award?

§ 525.20 What must an applicant include in its application for assistance?

An application for an award under this program must contain the information required under section 721(c)(5) of the Act and § § 525.21 and 525.32.

(Authority: 20 U.S.C. 3231(a)(5))
(Approved by the Office of Management and Budget under control number 1885–0003)

§ 525.21 What requirements pertain to the development of an evaluation plan?

An applicant shall demonstrate in its application that its plan for evaluating the progress and achievements of the proposed project meets the requirements of 34 CFR 500.50–500.52.

(Authority: 20 U.S.C. 3231(a)(5), 3243)
(Approved by the Office of Management and Budget under control number 1885–0003)

Subpart D—How Does the Secretary Make an Award?

§ 525.30 How does the Secretary evaluate an application?

(a)(1) The Secretary evaluates an application on the basis of the criteria listed in § 525.31.

(2) The Secretary awards a maximum of 100 points for all the criteria.

(3) The maximum possible score for each complete criterion is indicated in parentheses after the heading for the criterion.

(b) The Secretary then applies the additional factors listed in § 525.32.

(Authority: 20 U.S.C. 3223(a)(7), (h))

§ 525.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need and impact.* (25 points) The Secretary reviews each application to determine the extent to which—

(1) There is a need for the proposed family English literacy program;

(2) The methods used by the applicant to identify the needs are objective and quantifiable;

(3) The project proposes to develop the skills of LEP adults and out-of-school youth to achieve competence in English and to facilitate the educational achievement of LEP children; and

(4) The applicant gives preference for participation in the proposed project to parents and immediate family members of children enrolled in programs assisted under the Act.

(b) *Program objectives and design.* (27 points) The Secretary reviews each application to determine the appropriateness and reasonableness of the applicant's design for meeting the needs of the persons to be served by the project and the likelihood that the project will meet those needs.

(c) *Commitment and capacity.* (15 points) The Secretary reviews each application to determine the applicant's commitment and capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(d) *Quality of personnel.* (15 points) (1) The Secretary reviews each application to determine the quality of the following personnel:

(i) The principal classroom instructional personnel.

(ii) The project director, if one is to be used, and other personnel essential to the success of the project.

(2) The Secretary considers—

(i) The time that each person referred to in paragraphs (d)(1) (i) and (ii) of this section will commit to the project; and

(ii) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications under paragraph (d)(1) of this section, the Secretary considers—

(i) Experience and training, in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) There is an effective plan of management that ensures the proper and efficient administration of the project, including evidence that administrative costs are a minimum proportion of the total costs of the project.

(f) *Evaluation plan.* (8 points) The Secretary reviews the strength of the evaluation plan and its relationship to the educational goals of the project and the activities conducted to attain those goals.

Cross-Reference. See 34 CFR 75.590 Evaluation by the grantee.

(Authority: 20 U.S.C. 3223(a)(7))

(Approved by the Office of Management and Budget under control number 1885–0003)

§ 525.32 What additional factors does the Secretary consider in awarding grants?

(a) The Secretary considers the following additional factors in awarding grants:

(1) The need to assist LEP children who have been historically underserved by programs for limited English proficient persons.

(2) The need to provide assistance in proportion to the distribution of LEP children throughout the Nation, and within each of the States.

(3) The need for financial assistance to establish, operate, or improve programs for limited English proficient persons.

(4) The relative numbers of children from low-income families sought to be benefited by the program.

(b) The Secretary distributes an additional 15 points among the criteria listed in paragraph (a) of this section. The Secretary indicates how these 15 points are distributed in the application notice published in the **Federal Register.**

(Authority: 20 U.S.C. 3231)

§ 525.33 What is the length of the project period?

The Secretary approves a project period of three years for an award under the Family English Literacy Program.

(Authority: 20 U.S.C. 3231(d)(2))

7. Part 526 is revised to read as follows:

PART 526—BILINGUAL EDUCATION: SPECIAL POPULATIONS PROGRAM

Subpart A—General

Sec.

526.1 Special Populations Program.
526.2 Who is eligible to apply for assistance under the Special Populations Program?
526.3 What regulations apply to the Special Populations Program?
526.4 What definitions apply to the Special Populations Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

526.10 What types of projects may be funded?

Subpart C—How Does One Apply for an Award?

526.20 What requirements pertain to the development of an evaluation plan?

Subpart D—How Does the Secretary Make an Award?

526.30 What priorities may the Secretary establish?
526.31 How does the Secretary evaluate an application?
526.32 What selection criteria does the Secretary use?
526.33 What is the length of the project period?

Subpart E—What Conditions Must Be Met by a Recipient?

526.40 What information must be given to parents?

Authority: 20 U.S.C. 3221–3262, unless otherwise noted.

Subpart A—General

§ 526.1 Special Populations Program.

The Special Populations Program provides assistance to preschool, special education, and gifted and talented programs which are—

(a) For limited English proficient (LEP) children; and

(b) Preparatory or supplementary to programs such as those assisted under the Act.

(Authority: 20 U.S.C. 3231(a)(6))

§ 526.2 Who is eligible to apply for assistance under the Special Populations Program?

The following parties are eligible for assistance under the Special Populations Program:

(a) Local educational agencies (LEAs).

(b) Institutions of higher education, including junior or community colleges.

(c) Private nonprofit organizations.

(Authority: 20 U.S.C. 3231(b)(1)(B))

§ 526.3 What regulations apply to the Special Populations Program?

The following regulations apply to the Special Populations Program:

(a) The regulations identified in 34 CFR 500.3.

(b) The regulations in this Part 526.

(Authority: 20 U.S.C. 3223(a)(6))

§ 526.4 What definitions apply to the Special Populations Program?

The following definitions apply to the Special Populations Program:

(a) The definitions in 34 CFR 500.4.

(b) The definitions implementing Part B of the Education of the Handicapped Act (EHA–B) for—

(1) "Handicapped children" in 34 CFR 300.5; and

(2) "Individualized education program" in 34 CFR 300.340.

(Authority: 20 U.S.C. 3223(a)(6), 20 U.S.C. 1401–1420)

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 526.10 What types of projects may be funded?

The Secretary provides assistance for activities that are preparatory or supplementary to programs, such as those assisted under the Act, designed to assist LEP students in achieving full competence in English. Special

Populations projects may establish, operate, and improve—

(a) Preschool programs for LEP children who have not reached elementary school age;

(b) Programs for LEP children who receive services in accordance with the EHA–B and which are supplementary to the services required by the EHA–B; and

(c) Programs for LEP children who by reason of outstanding abilities are capable of high performance.

(Authority: 20 U.S.C. 3231(a)(6))

Subpart C—How Does One Apply for an Award?

§ 526.20 What requirements pertain to the development of an evaluation plan?

An applicant shall demonstrate in its application that its plan for evaluating the progress and achievements of the proposed project meets the requirements of 34 CFR 500.50–500.52.

(Authority: 20 U.S.C. 3231(a)(6), 3243)

(Approved by the Office of Management and Budget under control number 1885–0003)

Subpart D—How Does the Secretary Make an Award?

§ 526.30 What priorities may the Secretary establish?

(a) In any fiscal year, the Secretary may establish as priorities, one or more of the activities listed in § 526.10.

(b) The Secretary announces any priorities in a notice published in the Federal Register.

(Authority: 20 U.S.C. 3231(a)(6))

§ 526.31 How does the Secretary evaluate an application?

(a)(1) The Secretary evaluates an application on the basis of the criteria listed in § 526.32.

(2) The Secretary awards a maximum of 100 points for all the criteria.

(3) The maximum possible score for each complete criterion is indicated in parentheses following the heading for the criterion.

(b) The Secretary then applies the additional factors listed in 34 CFR 525.32.

(Authority: 20 U.S.C. 3231(a)(6))

§ 526.32 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Description and assessment of need.* (17 points) The Secretary reviews each application to determine—

(1) The extent to which the applicant has identified the needs of the special populations to be served, including the lack of proficiency of the LEP children in understanding, speaking, and, if appropriate, reading and writing in the English language;

(2) The reliability and objectivity of the means used to identify those needs, including—

(i) The criteria and other objective means used to identify the LEP children eligible to participate in the project; and

(ii) If applicable, the basis for differentiating between children whose language problems relate to limited English proficiency and those whose language problems relate to the child's handicap as identified in his or her individualized education program developed in accordance with EHA–B, and 34 CFR Part 300; and

(3) The extent to which the project will serve those most in need of services.

(b) *Program objectives and design.* (30 points) (1) The Secretary reviews each application to determine the appropriateness and reasonableness of the applicant's design for meeting the needs of LEP students to be served, including the extent to which the instructional approach to be used will address the specific needs identified in the application.

(2) The Secretary looks for the extent to which the project has specific and quantifiable objectives that will lead to the realization of the goals of the Act, including—

(i) The manner and time schedule by which the applicant will meet the needs of LEP children served by the project, including—

(A) The achievement of goals set for the children served by the project, especially the goal of achieving English language proficiency as soon as possible;

(B) The identification of children who have achieved proficiency in the English language adequate for their effective participation in the regular educational program;

(C) The transfer of these children identified in paragraph (b)(2)(i)(B) of this section to the regular educational program as quickly as possible;

(ii) The strategies for coordination with established instructional programs at the elementary and secondary level for LEP children in the schools operated or supported by LEAs in the community or communities to be served; and

(iii) The way the applicant plans to use its resources and personnel to achieve each objective.

(3) The Secretary reviews each application to determine the quality of the training plan for the project, including the extent to which the plan addresses the needs of personnel to be trained to meet the needs of LEP children to be taught by the personnel.

(c) *Commitment and capacity.* (20 points) The Secretary reviews each application to determine the applicant's commitment and capacity to continue, expand, and build upon the project when Federal assistance ends.

(d) *Evaluation plan.* (8 points) The Secretary reviews the strength of the evaluation plan and its relationship to the educational goals of the project and the activities conducted to attain those goals.

Cross-Reference. See 34 CFR 75.590 Evaluation by the grantee.

(Authority: 20 U.S.C. 3231(a)(6), 3243)

(e) *Quality of personnel.* (15 points) (1) The Secretary reviews each application to determine the quality of the following personnel:

(i) The principal classroom instructional personnel.

(ii) The project director, if one is to be used, and other personnel essential to the success of the project.

(2) The Secretary considers—

(i) The time that each person referred to in paragraphs (e)(1) (i) and (ii) of this section will commit to the project; and

(ii) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications under paragraph (e)(1) of this section, the Secretary considers—

(i) Experience and training, in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(f) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) There is an effective plan of management that ensures the proper and efficient administration of the project, including evidence that administrative costs are a minimum proportion of the total costs of the project.

(Authority: 20 U.S.C. 3231(a)(6), 20 U.S.C. 1401–1402)

(Approved by the Office of Management and Budget 1885–0003)

§ 526.33 What is the length of the project period?

The Secretary approves a project period of one to three years.

(Authority: 20 U.S.C. 3231(d)(3))

Subpart E—What Conditions Must Be Met by a Recipient?

§ 526.40 What information must be given to parents?

A grantee shall inform parents or legal guardians of students identified for enrollment in the project of the information specified in 34 CFR 501.40.

(Authority: 20 U.S.C. 3223(c), 3231(d)(1)(D))

(Approved by the Office of Management and Budget under control number 1885–0510)

PART 527—[REMOVED]

8. Part 527 is removed.

9. A new Part 537 is added to read as follows:

PART 537—BILINGUAL EDUCATION: PROGRAM FOR THE DEVELOPMENT OF INSTRUCTIONAL MATERIALS

Subpart A—General

Sec.

537.1 Program for the Development of Instructional Materials.
537.2 Who is eligible to apply for assistance under the Program for the Development of Instructional Materials?
537.3 What regulations apply to the Program for the Development of Instructional Materials?
537.4 What definitions apply to the Program for the Development of Instructional Materials?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

537.10 What activities are eligible for assistance?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

537.30 How does the Secretary evaluate an application?
537.31 What selection criteria does the Secretary use?
537.32 What is the length of a project period?

Authority: 20 U.S.C. 3221–3262, unless otherwise noted.

Subpart A—General

§ 537.1 Program for the Development of Instructional Materials.

The Program for the Development of Instructional Materials provides assistance to establish, operate, and improve programs for the development of instructional materials in languages for which materials are commercially unavailable. These instructional materials must meet the needs of local educational agencies that offer instructional programs such as those authorized under Part A of the Act.

(Authority: 20 U.S.C. 3231(a)(7))

§ 537.2 Who is eligible to apply for assistance under the Program for the Development of Instructional Materials?

The following parties are eligible to apply under the part:

(a) State educational agencies (SEAs).

(b) Local educational agencies (LEAs).

(c) Institutions of higher education (IHEs).

(d) Private and public profit and nonprofit organizations.

(e) Individuals.

(Authority: 20 U.S.C. 3231(a)(7))

§ 537.3 What regulations apply to the Program for the Development of Instructional Materials?

The following regulations apply to this program:

(a) The regulations identified in 34 CFR 500.3.

(b) The regulations in this Part 537.

(Authority: 20 U.S.C. 3231(a)(7))

§ 537.4 What definitions apply to the Program for the Development of Instructional Materials?

The definitions in 34 CFR 500.4 apply to this program.

(Authority: 20 U.S.C. 3231(a)(7))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 537.10 What activities are eligible for assistance?

The Secretary provides assistance to develop instructional materials including testing materials for use in programs for limited English proficient persons.

(Authority: 20 U.S.C. 3231(a)(7))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

§ 537.30 How does the Secretary evaluate an application?

(a)(1) The Secretary evaluates an application on the basis of the criteria listed in § 537.31.

(2) The Secretary awards a maximum of 100 points for all the criteria.

(3) The maximum possible score for the complete criterion is indicated in parentheses after the heading for the criterion.

(b) The Secretary then applies the additional factors listed in 34 CFR 525.32.

(Authority: 20 U.S.C. 3231(a)(7))

§ 537.31, What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (35 points) The Secretary reviews each application to determine the extent of the need for the materials, including—

(1) The method used to identify the need;

(2) The nature and magnitude of the need; and

(3) How the applicant determined that the materials are not commercially available.

(b) *Program objectives and design.* (30 points)

(1) The Secretary reviews each application to determine the appropriateness and reasonableness of the applicant's design for meeting the need identified in the application, including how the instructional materials to be developed will meet that need.

(2) The Secretary looks for the extent to which the objectives of the project will lead to the realization of the goals of the Act, including—

(i) The goal of enabling LEP children to achieve English language proficiency;

(ii) The time schedule established to develop and test the instructional materials fully; and

(iii) The manner in which the applicant provides for the inclusion of staff of one or more LEAs in the development and testing of the instructional materials.

(c) *Quality of key personnel and applicant.* (15 points) (1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(2) To determine personnel qualifications under paragraph (c)(1) of this section, the Secretary considers—

(i) Experience and training, in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(3) The Secretary also considers the applicant's experience in developing instructional materials.

(d) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) There is an effective plan of management that ensures the proper and efficient administration of the project, including evidence that administrative costs are a minimum proportion of the total costs of the project.

(e) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

Cross-Reference. See 34 CFR 75.590 Evaluation by the grantee.

(Authority: 20 U.S.C. 3231(a)(7))

(Approved by the Office of Management and Budget under control number 1885–0003)

§ 537.32 What is the length of a project period?

The Secretary approves a project period of one to three years.

(Authority: 20 U.S.C. 3231(d)(3))

10. A new Part 561 is added to read as follows:

PART 561—BILINGUAL EDUCATION: EDUCATIONAL PERSONNEL TRAINING PROGRAM

Subpart A—General

Sec.

561.1 Educational Personnel Training Program.
561.2 Who is eligible to apply for assistance under the Educational Personnel Training Program?
561.3 What regulations apply to the Educational Personnel Training Program?
561.4 What definitions apply to the Educational Personnel Training Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

561.10 What activities are eligible for assistance?

Subpart C—How Does One Apply for an Award?

561.20 What requirements pertain to the application advisory council and advisory committee?

Subpart D—How Does the Secretary Make an Award?

561.30 How does the Secretary evaluate an application?
561.31 What selection criteria does the Secretary use?
561.32 What additional factors does the Secretary consider?

Subpart E—What Conditions Must be Met by a Recipient?

561.40 What additional requirement applies to programs that include preservice training?
561.41 What financial assistance to participants is allowable under this program?

Authority: 20 U.S.C. 3221–3262, unless otherwise noted.

Subpart A—General

§ 561.1 Educational Personnel Training Program.

The Educational Personnel Training Program provides financial assistance to meet the needs for additional or better trained educational personnel (as defined in 34 CFR 500.4), for programs for limited English proficient persons. These projects may provide training for parents and educational personnel and must emphasize opportunities for career development, advancement, and lateral mobility.

(Authority: 20 U.S.C. 3251(a)(1))

§ 561.2 Who is eligible to apply for assistance under the Educational Personnel Training Program?

Institutions of higher education are eligible to apply for assistance under the Educational Personnel Training Program.

(Authority: 20 U.S.C. 3251(a)(1))

§ 561.3 What regulations apply to the Educational Personnel Training Program?

The following regulations apply to the Educational Personnel Training Program:

(a) The regulations identified in 34 CFR 500.3.

(b) The regulations in this Part 561.

(Authority: 20 U.S.C. 3251(a)(1))

§ 561.4 What definitions apply to the Educational Personnel Training Program?

The following definitions apply to the Educational Personnel Training Program:

(a) The definitions in 34 CFR 500.4.

(b) "Preservice training" means training for educational personnel preparing to participate in programs for limited English proficient persons.

(Authority: 20 U.S.C. 3251(a)(1))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 561.10 What activities are eligible for assistance?

The Secretary provides assistance under this program for projects that provide training necessary to prepare educational personnel and parents to meet the ongoing needs of the limited English proficient (LEP) children that they will be serving. Assistance may be provided to degree and non-degree programs.

(Authority: 20 U.S.C. 3251(a)(1))

Subpart C—How Does One Apply for an Award?

§ 561.20 What requirements pertain to the application advisory council and advisory committee?

An applicant for an award under this program shall—

(a) Develop its application in consultation with an advisory council of which a majority must be parents and other representatives of LEP children needing instruction from personnel with training similar to that provided in the project;

(b) Include in its application documentation of consultation with the council and the comments which the council makes on the application; and

(c) Assure in its application that it will provide for continued consultation with, and participation by, an advisory committee of parents, teachers, and other interested individuals that is selected by and predominantly composed of parents of LEP children needing instruction from personnel with training similar to that provided.

(Authority: 20 U.S.C. 3231(e), 3251(b)(3)(c))

(Approved by the Office of Management and Budget under control number 1885–0003)

Subpart D—How Does the Secretary Make an Award?

§ 561.30 How does the Secretary evaluate an application?

(a)(1) The Secretary evaluates an application on the basis of the criteria listed in § 561.31.

(2) The Secretary awards a maximum of 100 points for all the criteria.

(3) The maximum possible score for each complete criterion is indicated in parentheses following the heading for the criterion.

(b) The Secretary then applies the additional factors in § 561.32.

(Authority: 20 U.S.C. 3251(a)(1))

§ 561.31 What selection criteria does the Secretary use?

The Secretary uses the following criteria in evaluating each application:

(a) *Need and impact.* (27 points) The Secretary reviews each application to determine—

(1) The extent to which the applicant has specifically identified needs to be addressed by the project for additional or better trained educational personnel to serve LEP students in the community, geographical region, or Nation; and

(2) The extent to which the methods used by the applicant to identify those needs are reliable and objective.

(b) *Program objectives and design.* (25 points) (1) The Secretary reviews each application to determine the appropriateness and reasonableness of the applicant's proposal for meeting the needs identified in its application, including—

(i) The extent to which those needs will be met by the project;

(ii) How rapidly those needs will be met by the project;

(iii) The appropriateness of the curriculum for meeting those needs; and

(iv) The extent and quality of practice teaching or other clinical experience—

(A) In the geographic area(s) where those needs have been identified; and

(B) In the substantive subject(s) for which the project will train personnel.

(2) The Secretary considers the extent to which a project designed to include preservice training contains coursework in—

(i) Teaching English as a second language;

(ii) Use of a non-English language for instructional purposes;

(iii) Linguistics;

(iv) Evaluation and assessment; and

(v) Involvement of parents in the educational process.

(3) The Secretary considers how well the specific project objectives will realize the goals of the Act. The Secretary considers the extent to which—

(i) The training objectives are—

(A) Clear and specific;

(B) Measurable; and

(C) Attainable within the proposed timeframe;

(ii) The training design is appropriate for the proposed objectives and participants;

(iii) The project will prepare teachers to teach English to LEP students;

(iv) The applicant proposes to use its resources and personnel to achieve each objective; and

(v) The project will provide opportunities for career development, advancement, and lateral mobility for participants in order to meet the changing needs of the LEP population to be served.

(Authority: 20 U.S.C. 3254(a), 3251(d))

(c) *Coordination.* (10 points) (1) The Secretary reviews each application to determine the applicant's plans to coordinate project activities with related projects, including other activities funded under the Act.

(2) The Secretary considers the extent to which the applicant will coordinate the project with—

(i) Other related degree and non-degree programs and course of study at the IHE; and

(ii) SEAs, LEAs, and IHEs in—

(A) The geographic area(s) in which there is a need for personnel; and

(B) The substantive subject(s) for which the project will train personnel.

(3) The Secretary also considers whether the project will complement and not duplicate other activities funded under the Act.

(d) *Commitment and capacity.* (10 points) The Secretary reviews each application to determine the applicant's commitment to the project and capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(e) *Quality of key personnel.* (15 points) (1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (e)(1) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(2) To determine qualifications under paragraph (e)(1) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(f) *Budget and cost effectiveness.* (8 points) The Secretary reviews each application to determine the extent to which—

(1) The budget for the project is adequate to support the project activities;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) There is an effective plan of management that ensures proper and efficient administration of the project including evidence that administrative costs are a minimum proportion of the project's total costs.

(g) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable, including—

(i) Data on numbers of participants;

(ii) Data on placement of participants;

(iii) Evidence of participants' success in serving LEP children in accordance with the needs identified in the application; and

(iv) Evidence that the project has developed the grantee's capacity as described in paragraph (d) of this section.

Cross-Reference. See 34 CFR 75.590 Evaluation by the grantee.

(Authority: 20 U.S.C. 3251(a)(1), (d))

(Approved by the Office of Management and Budget under control number 1885–0003)

§ 561.32 What additional factors does the Secretary consider?

(a) In addition to the points awarded under § 561.31, the Secretary considers the following factors which demonstrate the applicant's competence and experience in programs and activities such as those authorized under the Act:

(1) Job placement and development.

(2) Evidence of prior participant's success in serving LEP children in accordance with the needs identified in the prior project.

(3) Evidence of demonstrated capacity and cost effectiveness as described in § 561.31(d) and (f).

(b) The Secretary distributes an additional 10 points among the factors listed in paragraph (a) of this section. The Secretary indicates in the application notice published in the **Federal Register** how these 10 points are distributed.

(Authority: 20 U.S.C. 3254)

Subpart E—What Conditions Must Be Met by a Recipient?

§ 561.40 What additional requirement applies to programs that include preservice training?

Programs that include preservice training must be designed to ensure that participants become proficient in English and a second language of instruction.

(Authority: 20 U.S.C. 3251(d))

§ 561.41 What financial assistance to participants is allowable under this program?

(a) The Secretary may authorize a grantee to provide the following financial assistance to participants:

(1) Tuition and fees—the normal and usual costs associated with the course of study.

(2) Books—up to $250.

(3) Travel—up to $250 for travel related to practice teaching or clinical experience.

(4) Up to a maximum stipend of $325 per month, including allowances for subsistence and other expenses for a participant and his or her dependents, if the participant is—

(i) A full-time student in a program of study that was in the approved application; and

(ii) Gainfully employed no more than 20 hours a week or the annual equivalent of 1040 hours.

(b) In authorizing assistance to participants under paragraph (a) of this section, the Secretary considers the amount of other financial compensation that the participants receive during the training period.

(Authority: 20 U.S.C. 3225)

11. A new Part 573 is added to read as follows:

PART 573—BILINGUAL EDUCATION: TRAINING DEVELOPMENT AND IMPROVEMENT PROGRAM

Subpart A—General

Sec.

573.1 Training Development and Improvement Program.
573.2 Who is eligible to apply for assistance under the Training Development and Improvement Program?
573.3 What regulations apply to the Training Development and Improvement Program?
573.4 What definitions apply to the Training Development and Improvement Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

573.10 What activities are eligible for assistance?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

573.30 How does the Secretary evaluate an application?
573.31 What selection criteria does the Secretary use?

Subpart E—[Reserved]

Authority: 20 U.S.C. 3221–3262, unless otherwise noted.

Subpart A—General

§ 573.1 Training Development and Improvement Program.

The Training Development and Improvement Program provides financial assistance to encourage reform, innovation, and improvement in higher education programs related to programs for limited English proficient persons.

(Authority: 20 U.S.C. 3251(a)(3))

§ 573.2 Who is eligible to apply for assistance under the Training Development and Improvement Program?

Institutions of higher education (IHEs) are eligible to apply for assistance under the Training Development and Improvement Program.

(Authority: 20 U.S.C. 3251(b)(1))

§ 573.3 What regulations apply to the Training Development and Improvement Program?

The following regulations apply to the Training Development and Improvement Program:

(a) The regulations identified in 34 CFR 500.3.

(b) The regulations in this Part 573.

(Authority: 20 U.S.C. 3251(a)(3))

§ 573.4 What definitions apply to the Training Development and Improvement Program?

The definitions in 34 CFR 500.4 apply to the Training Development and Improvement Program.

(Authority: 20 U.S.C. 3251(a)(3))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 573.10 What activities are eligible for assistance?

The Secretary provides assistance for activities related to programs for limited English proficient persons which encourage reform, innovation, and improvement in—

(a) Applicable education curricula in graduate education;

(b) The structure of the academic profession; and

(c) The recruitment and retention of higher education and graduate school facilities.

(Authority: 20 U.S.C. 3251(a)(3))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

§ 573.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria listed in § 573.31.

(b) The Secretary awards a maximum of 100 points for all the criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses following the heading for the criterion.

(Authority: 20 U.S.C. 3251(a)(3))

§ 573.31 What selection criteria does the Secretary use?

The Secretary uses the following criteria in evaluating each application:

(a) *Need and impact.* (30 Points) (1) The Secretary reviews each application to determine—

(i) The extent to which there are specifically identified needs for the project; and

(ii) The extent to which the methods used by the applicant to identify those needs are reliable and objective.

(2) The Secretary also considers the extent to which—

(i) The project's objectives will assist in achieving the goals of the Act; and

(ii) The applicant proposes to use its resources and personnel to achieve each objective.

(b) *Program development and improvement.* (30 points) The Secretary

reviews each application to determine the appropriateness and reasonableness of the applicant's proposal for meeting the needs identified in the application including—

(1) The extent to which those needs will be met by the project;

(2) How rapidly those needs will be met;

(3) The courses, curriculum, or any applicable clinical training to be developed or revised; and

(4) The applicant's plan to recruit and retain qualified faculty members for the training program to be improved or reformed.

(c) *Coordination.* (10 points) (1) The Secretary reviews each application to determine the extent to which the applicant plans to coordinate project activities with related projects, including projects funded under the Act.

(2) The Secretary considers how the applicant will coordinate the project with—

(i) Other related programs and disciplines at the IHE; and

(ii) SEAs, LEAs, and IHEs in—

(A) The geographic area(s) in which there is a need for personnel; and

(B) The substantive subject(s) for which the project will train personnel.

(3) The Secretary also considers the extent to which the project will complement and not duplicate other activities funded under the Act.

(d) *Commitment and capacity.* (10 points) The Secretary reviews each application to determine—

(1) The applicant's commitment and capacity to continue, expand, and build upon the project when Federal assistance under this part ends; and

(2) The extent to which the applicant demonstrates competence and experience in programs and activities such as those authorized under the Act, particularly in training activities directly related to the objectives of the project.

(e) *Quality of key personnel.* (7 points) (1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (e)(1) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(2) To determine personnel qualifications under paragraph (e)(1) of this section, the Secretary considers—

(i) Experience and training, in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(f) *Budget and cost effectiveness.* (8 points) The Secretary reviews each application to determine the extent to which—

(1) The budget for the project is adequate to support the project activities;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) There is an effective plan of management that ensures proper and efficient administration of the project, including evidence that administrative costs constitute a minimum proportion of the total costs of the project.

(g) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

Cross-Reference. See 34 CFR 75.590 Evaluation by the grantee.

(Authority: 20 U.S.C. 3251(a)(4))

(Approved by the Office of Management and Budget under control number 1885–0003)

Subpart E—[Reserved]

12. A new Part 574 is added to read as follows:

PART 574—BILINGUAL EDUCATION: SHORT-TERM TRAINING PROGRAM

Subpart A—General

Sec.

574.1 Short-Term Training Program.
574.2 Who is eligible to apply for assistance under the Short-Term Training Program?
574.3 What regulations apply to the Short-Term Training Program?
574.4 What definitions apply to the Short-Term Training Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

574.10 What activities are eligible for assistance?

Subpart C—How Does One Apply for an Award?

574.20 What requirements pertain to consultation?

Subpart D—How Does the Secretary Make an Award?

574.30 What priorities may the Secretary establish?
574.31 How does the Secretary evaluate an application?
574.32 What selection criteria does the Secretary use?
574.33 What additional factors does the Secretary consider?

Subpart E—What Conditions Must Be Met by a Recipient?

574.40 What financial assistance to participants is allowable under this program?

Authority: 20 U.S.C. 3221–3262, unless otherwise noted.

Subpart A—General

§ 574.1 Short-Term Training Program.

The Short-Term Training Program provides financial assistance to improve the skills of educational personnel and parents participating in programs for limited English proficient persons.

(Authority: 20 U.S.C. 3251(a)(4))

§ 574.2 Who is eligible to apply for assistance under the Short-Term Training Program?

The following parties are eligible to apply for assistance under the Short-Term Training Program:

(a) Local educational agencies (LEAs).

(b) State educational agencies (SEAs).

(c) Institutions of higher education (IHEs), including junior or community colleges, and private for-profit or nonprofit organizations, which apply—

(1) After consultation with one or more LEAs or SEAs; or

(2) Jointly with one or more LEAs or SEAs.

(Authority: 20 U.S.C. 3251(b)(2))

§ 574.3 What regulations apply to the Short-Term Training Program?

The following regulations apply to the Short-Term Training Program:

(a) The regulations identified in 34 CFR 500.3.

(b) The regulations in this Part 574.

(Authority: 20 U.S.C. 3251(a)(4))

§ 574.4 What definitions apply to the Short-Term Training Program?

The following definitions apply to the Short-Term Training Program:

(a) The definitions in 34 CFR 500.4.

(b) "Consultation" means engaging in discussions with appropriate persons representing entities to be served by the proposed project to determine needs,

and providing opportunities for those persons to contribute to the development, operation, and evaluation of the proposed project.

(Authority: 20 U.S.C. 3223, 3251(a)(4))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 574.10 What activities are eligible for assistance?

The Secretary provides assistance for the following activities:

(a) Training designed to improve the instructional competence of teachers in carrying out their responsibilities in programs for limited English proficient persons.

(b) Training designed to improve the skills of educational personnel other than teachers, in carrying out their responsibilities in programs for limited English proficient persons.

(c) Training designed to improve the skills of parents in carrying out their responsibilities in programs for limited English proficient persons.

(Authority: 20 U.S.C. 3251(a)(4))

Subpart C—How Does One Apply for an Award?

§ 574.20 What requirements pertain to consultation?

An IHE or a private for-profit or nonprofit organization, which applies after consultation with one or more LEAs or SEAs, shall certify in its application that the consultation took place during the development of the proposed project and that the consultation will continue during the project period.

(Authority: 20 U.S.C. 3251(b)(2))

Subpart D—How Does the Secretary Make an Award?

§ 574.30 What priorities may the Secretary establish?

(a) The Secretary may annually establish, as a priority, one or more of the activities listed in § 574.10.

(b) The Secretary announces any annual priorities in a notice published in the **Federal Register.**

(Authority: 20 U.S.C. 3251(a)(4))

§ 574.31 How does the Secretary evaluate an application?

(a)(1) The Secretary evaluates an application on the basis of the criteria listed in § 574.32.

(2) The Secretary awards a maximum of 100 points for all the criteria.

(3) The maximum possible score for each complete criterion is indicated in parentheses following the heading for the criterion.

(b) The Secretary then applies the additional factors in § 574.33.

(Authority: 20 U.S.C. 3241(a)(4))

§ 574.32 What selection criteria does the Secretary use?

The Secretary uses the following criteria in evaluating each application:

(a) *Need.* (27 points) The Secretary reviews each application to determine—

(1) The extent to which there are specifically identified needs to be addressed by the project for the improvement of the skills of educational personnel and parents participating in programs for limited English proficient persons; and

(2) The extent to which the methods used by the applicant to identify those needs are reliable and objective.

(b) *Program objectives and design:* (25 points) (1) The Secretary reviews each application to determine the appropriateness and reasonableness of the applicant's proposal for meeting the needs identified in the application, including—

(i) The extent to which those needs will be met by the project;

(ii) How rapidly those needs will be met by the project; and

(iii) Whether an appropriate curriculum is proposed for meeting those needs.

(2) The Secretary also considers how well the specific project objectives will lead toward the realization of the goals of the Act, including consideration of the extent to which—

(i) The training objectives are—

(A) Clear and specific;

(B) Measurable; and

(C) Attainable within the proposed timeframe;

(ii) The training design is appropriate for the proposed objectives and participants;

(iii) The project is designed to train participants to teach English to LEP children; and

(iv) The applicant proposes to use its resources and personnel to achieve each objective.

(Authority: 20 U.S.C. 3254(a), 3251(d))

(c) *Coordination.* (10 points) (1) The Secretary reviews each application to determine the applicant's plans to coordinate project activities with related projects, including other activities funded under the Act.

(2) The Secretary considers—

(i) How the applicant will coordinate the project with SEAs, LEAs, and IHEs in—

(A) The geographic area(s) in which there is a need for personnel; and

(B) The substantive subject(s) for which the project will train personnel; and

(ii) The extent to which the project will complement and not duplicate other activities funded under the Act.

(d) *Commitment and capacity.* (10 points) The Secretary reviews each application to determine the applicant's commitment to the project and capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(e) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (e)(1) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(2) To determine personnel qualifications under paragraph (e)(1) of this section, the Secretary considers—

(i) Experience and training, in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(f) *Budget and cost effectiveness.* (8 points) The Secretary reviews each application to determine the extent to which—

(1) The budget for the project is adequate to support the project activities;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) There is an effective plan of management that ensures proper and efficient administration of the project, including evidence that administrative costs constitute a minimum proportion of the total costs of the project.

(g) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent

to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective, and produce data that are quantifiable, including—

(i) Data on numbers of participants;

(ii) Evidence that participants' performance successfully addresses the needs identified in the application; and

(iii) Evidence that the project has developed the grantee's capacity as described in paragraph (d) of this section.

Cross-Reference. See 34 CFR 75.590 Evaluation by the grantee.

(Authority: 20 U.S.C. 3251(a)(4))

(Approved by the Office of Management and Budget under control number 1885–0003)

§ 574.33 What additional factors does the Secretary consider?

(a) In addition to the points awarded under § 574.32, the Secretary considers the following factors which demonstrate the applicant's competence and experience in programs and activities such as those authorized under the Act:

(1) Evidence of prior participants' success in serving LEP children in accordance with needs identified in the prior project.

(2) Evidence of demonstrated capacity and cost effectiveness as provided in § 574.32 (d) and (f).

(b) The Secretary distributes an additional 10 points among the factors listed in paragraph (a) of this section. The Secretary indicates in the application notice published in the **Federal Register** how these 10 points are distributed.

(Authority: 20 U.S.C. 3251(a)(4), 3254)

Subpart E—What Conditions Must Be Met by a Recipient?

§ 574.40 What financial assistance to participants is allowable under this program?

(a) The Secretary may authorize a grantee to provide the following financial assistance to participants:

(1) Up to $250 for travel directly related to the individual's participation in the short-term training.

(2) Up to $325 per month for costs including allowances for subsistence and other expenses for a participant and his or her dependents.

(b)(1) A grantee may provide financial assistance to an individual participating in short-term training only to the extent necessary to allow the individual to participate in the training.

(2) In authorizing assistance to participants under paragraph (a) of this section, the Secretary considers the amount of other financial compensation that the participants receive during the short-term training period.

(Authority: 20 U.S.C. 3255)

Appendix—Summary of Comments and Responses to Bilingual Education Regulations

Note.—This appendix will not appear in the Code of Federal Regulations.

Changes have been made, where appropriate, to respond to comments received in response to the proposed regulations promulgated by the Department. The Department has not, however, specifically addressed the many comments objecting to particular statutory requirements that cannot be changed through regulations.

General Issues

Comment. Several commenters stated that the proposed regulations emphasize the statutory goal of achieving English language proficiency but do not sufficiently emphasize the statutory goal that programs be designed to allow participants to meet grade promotion and graduation standards.

Response. The emphasis in these regulations on achieving the statutory goal of English language proficiency does not eliminate other statutory requirements. However, in response to comments received, a change has been made in § 500.11 of the regulations to add a reference to the statutory requirements regarding grade promotion and graduation standards. Additionally, all statutory requirements are referenced in § 500.4 and in the selection criteria in each applicable part of the regulations, at §§ 501.31, 525.31, and 526.32.

Comment. One commenter, who strongly advocated greater flexibility in transitional bilingual education programs, emphasized the importance of adhering to the portion of the definition that "such instruction shall incorporate the cultural heritage of such [LEP] children and all other children in American Society."

Response. The emphasis placed on greater flexibility in transitional bilingual education programs can only be implemented within the limits of the law. All projects funded under the statute are required to comply with this statutory requirement concerning cultural heritage. The Secretary intends to ensure that all projects funded satisfy this cultural heritage requirement in accordance with congressional intent.

Comment. Several commenters stated that the emphasis on children exiting the program as quickly as possible distorts the Act's objective that children achieve "full proficiency" in English.

Response. This emphasis merely gives preference to projects that are designed to accomplish the primary objective of the Act—that the LEP children served gain the ability to participate effectively in regular classes—in a timely manner. The Secretary reiterates that all statutory requirements must be met for projects to be funded. Moreover, projects must be designed to meet the linguistic and academic needs of the students served. At the same time, the Secretary does not want to reward projects that allow children to be held back unnecessarily and languish in special classrooms when they are capable of learning English much more rapidly and moving into the academic mainstream with the confidence and skills that the statute is designed to promote.

Comment. Several commenters expressed concern that the proposed regulations emphasize minimal use of the student's native language in transitional bilingual education programs in a manner that further defines the statutory term "transitional bilingual education programs," contrary to the statute's prohibition of any further definition of this term.

Response. There is no attempt in the regulations to redefine the term "transitional bilingual education programs" or to limit native language instruction in these programs. The preamble to the proposed regulations merely clarified for the public that the statute provides flexibility regarding the extent to which native language is used in these programs. Many local educational agencies (LEAs) may not have been aware of this flexibility in the past.

Students vary in the extent to which they require native language instruction, depending on their knowledge of English and the subject being taught. LEAs should therefore evaluate the needs of the children that they serve and design programs of instruction that address those needs. The statute does not prescribe the minimum amount of time or instruction required to meet this standard, and LEAs are in the best position to make these educational judgments.

If a school district is unable to make any provision for native language instruction, or determines that providing native language instruction in its educational program is inconsistent with the educational needs of LEP students to be served, then its application cannot be considered for funding as a program of transitional bilingual education. However, its application may be submitted for consideration under the

Basic Programs competition as a special alternative instructional program, authorized under section 721(a)(3) of the Act.

Comment. Several commenters suggested that the Department—if it wishes greater flexibility in the types of programs funded—should pursue that goal by seeking additional appropriations to activate the statutory provisions for devoting additional funds to special alternative instructional programs once appropriations exceed $140,000,000.

Response. The preamble to the proposed regulations sought to clarify the legally permissible flexibility granted to LEAs, to determine the extent and duration of native language use in transitional bilingual education programs. Seeking additional appropriations would not help achieve this objective. Nor would this suggested action permit LEAs to determine the method of instruction most appropriate for meeting the needs of their LEP population, and to seek funding for that method without regard to artificial Federal restriction on the amount of funds that might be available for any particular method.

Comment. One commenter expressed concern that the emphasis on LEA flexibility in implementing Title VII projects may create confusion for LEAs in States that mandate particular methods of bilingual education. Clarification was requested to emphasize that nothing contained in these regulations be construed as preempting or superseding specific State laws pertaining to bilingual education.

Response. Title VII projects must comply with Title VII requirements in the Act and these regulations. To the extent that Title VII permits flexibility in the instructional approach, but State law constrains LEAs' choice of that approach, there presumably would be no conflict, and grantees would have to comply with State law as well as the Title VII requirements. In instances when State law directly conflicts with Title VII, grantees would have to comply with Title VII law and regulations if they want to receive Title VII funds. LEAs may wish to pursue with appropriate State authorities, who would be responsible for enforcing any State law restrictions, the issues of the extent to which flexibility permitted under this program is constrained by the State as well as any apparent conflict of Federal, State, and local laws.

Comments: Native American commenters expressed concerns that the regulations will result in funds being cut for bilingual education and decreased services being provided to Native Americans. They also were concerned that the regulations will eliminate teaching Native American language and culture in their schools and as a result reduce employment in Native American areas, especially through the elimination of school aide jobs. Several parents specifically indicated their support for continuing funding of current projects since these projects have provided their children an opportunity to learn Cherokee for the first time—an opportunity which was not available to these parents during their schooling.

Response: The Secretary's Bilingual Initiative, including these regulations, is designed to strengthen the Title VII program, not to reduce it or phase it out. The Department's FY 1987 budget proposes to increase funding for Title VII programs.

The Secretary also has no intent to decrease the availability of funding for any eligible Native American program or to reduce employment in Native American communities by eliminating jobs in Title VII programs. At the same time, however, the Department has an obligation to ensure that the limited Title VII funds are used for programs—including those designed to serve Native Americans—that serve the purposes of the Act and meet its requirements. Some of the types of projects mentioned by a number of these commenters—such as teaching an ancestral language to children who do not speak it—may be outside the purposes of the Act. Under the statute, transitional bilingual education projects cannot have the purpose of teaching a new language other than English to limited English proficient students. Moreover, the required native language instruction used in these programs must be the native language normally used by the LEP participants, or, when that language cannot be determined, the language normally used by the LEP participants' parents.

Part 500—General Provisions

Section 500.4—What definitions apply to these programs?

Comment. Several commenters suggested revisions in the definitions of "limited English proficient" (LEP) and "native language" to parallel more closely the language of the Act. Commenters specifically stated that the Secretary's interpretation of the statutory word "environment," to mean "home" in paragraphs (1) (ii) and (iii) in the LEP definition restricts the statute in a manner that would bar services to eligible LEP students, especially Native Americans. Additionally, commenters expressed concern that paragraph 2(ii), which further describes how the Secretary interprets the statutory language of the LEP definition, would improperly restrict the eligibility of students.

Commenters also expressed concern that the Secretary's interpretation of the native language definition would lead to the exclusion of now-eligible LEP students, especially Native Americans, who could benefit from Title VII programs.

Response. There is no intention to exclude any eligible LEP child, including Native Americans, from participating in Title VII programs. One change has been made in response to the comments received. Paragraph (2)(ii) of the LEP definition has been deleted, since this paragraph created confusion and was designed merely to clarify that the influence of a native language other than English is a necessary factor determining that a child is LEP.

There has been no change in interpreting "environment" to mean "home" in paragraphs (1) (ii) and (iii) of the LEP definition. The statute specifically authorizes the Secretary to define these sections of the LEP definition further. The Secretary believes that the term "home" is needed to clarify ambiguities in the statutory language, and will ensure that only eligible children in need of services participate in these programs. This change was made in 1980, in regulations interpreting the identical language of paragraph 703(a)(1)(B) (the statutory authorization for paragraphs (1)(ii) of these regulations), and has assisted the Department in the administration of the programs authorized under the statute. Department experience, including audit appeals before the Education Appeal Board, indicates that failure to clarify the term "environment" can lead to overbroad interpretations of these eligibility requirements. Without clarifying language, for instance, LEAs might identify as LEP, children who have been exposed to a non-English language *only* on television, with a babysitter, or in the playground.

Similarly, the Secretary believes that the regulatory definition of "native language" clarifies ambiguities in the statute. Section 703(a)(2) of the statute provides that " 'native language' when used with reference to an individual of limited English proficiency means the language normally used by such individuals[.]" Clearly, LEP children, the Act's intended beneficiaries, are the individuals referred to in the statute.

The statute further provides, "or, in the case of a child, the language normally used by the parents of the

child." The Secretary regards this second part of the definition as applicable only when the language of the individual child cannot be determined. Any other interpretation would conflict with the purpose of the Act since it would allow a LEP child to be placed in a program that provided instruction in a non-English language not spoken by the child, but spoken only by the parents of the child. Clearly, that child would not benefit from the use of that non-English language in accordance with the purposes of the Act.

Section 500.10—What requirements pertain to all programs assisted under this Act for Limited English Proficient persons?

Comment. Several commenters expressed concerns that the preference for serving those children whose "usual language is not English" will exclude and weaken opportunities for other LEP children in need of services to participate in Title VII programs.

Other commenters recommended including a provision that these programs provide for the development of student competence in a second language.

Response. This section clarifies the statutory priority in section 702 for serving children with the greatest need for Title VII programs. These regulations merely give preference to projects serving children whose "usual language is not English" and will not preclude the participation of other eligible LEP children in Title VII programs.

The requirement that programs provide for the development of student competence in a second language is statutorily applicable only to developmental bilingual education programs funded under section 721(a)(2). Therefore, no reference to that requirement has been made in this section of the general provisions.

Section 500.50—What evaluation requirements apply to a grantee?

Comment. Several commenters emphasized the burden and difficulties that many school districts may have in identifying appropriate, local non-project comparison groups in meeting the requirement of proposed § 500.50(b)(1), and questioned the statutory authorization for this requirement. Another commenter pointed out that it is not always possible to use norm-referenced tests with LEP students as recommended in the preamble to the proposed regulations.

One commenter requested clarification of "objective measure" as used in § 500.50(b)(1)(iv) and questioned whether the term is synonymous with standardized tests. Another commenter suggested the publication and distribution of special brochures on evaluating local programs and operating special training programs for local personnel.

Another commenter objected to language in proposed § 500.50(b)(3)(i)(C) that characterized children who were "formerly LEP" as "current participants."

Response. The regulations have been changed in response to commenters' concerns about the anticipated burden and difficulties imposed upon an LEA in identifying the nonproject comparison group prescribed by the proposed regulations, consisting of persons similar in age, grade, language proficiency, and other relevant background variables. The revised regulations only require an LEA's evaluation design to include an assessment of the educational progress of project participants when measured against an appropriate nonproject comparison group.

The Secretary recommends, but does not require, that an LEA, in fulfilling this nonproject, comparison group requirement, use tests that are based on national, State, or local normative data. Comparison to national normative data will provide local projects and the Department with an estimate of participants' growth relative to the national population. Comparisons to national, State or local normative data can provide local projects and the Department with an estimate of the participants' ability to function in local mainstream classrooms with their non-LEP peers and can further indicate the participants' ability to function at the level of established State or local standards. Use of normative data in this manner is also supported by a recent Department-sponsored study designed to examine and refine procedures for evaluation of Title VII local projects. The Evaluation Assistance Centers (EACs) funded under section 734 of the Act may assist LEAs in selecting an appropriate nonproject comparison group, including appropriate norm-referenced testing procedures, to fulfill this regulatory requirement.

In addition, for a particular grant period, the Secretary may announce in the **Federal Register** particular models, reporting requirements, and other technical standards that a grantee shall use to conduct the evaluation. Before adopting any models, requirements, or standards, the Secretary would comply with the applicable rulemaking requirements in section 431 of the General Education Provisions Act, 20 U.S.C. 1241, and other applicable laws.

The regulations have also been changed so that they no longer use the term "current participants" to refer to children who originally participated in the project as LEP, but who have exited from the project. The regulations now reference "children who were formerly served in the project as LEP who have exited from the program into English language classrooms." The performance of these children in their current English language classrooms must be reported.

The term "objective measure" is not limited to standardized tests but may refer also to other evaluation instruments, including those developed by LEAs, that consistently and accurately measure achievement.

The EACs conduct training programs for local and State personnel and provide non-regulatory guidance, which can include publication of brochures and training programs, to aid LEAs in evaluating their projects.

Section 500.51—What evaluation information must a grantee collect?

Comment. One commenter objected to the requirement that a grantee submit certain information annually, as part of its evaluation, which may already have been provided in the original application.

Response. The purpose of this requirement is to document changes which may have occurred during the implementation of the project year. Therefore, there is no duplication of information previously provided in the application.

Part 501—Basic Programs

Comment. Several commenters recommended restructuring the regulations to require three separate annual competitions for the programs identified as "Basic programs."

Response. The Secretary intends to conduct three separate competitions in fiscal year 1986 for "Basic projects." No change in the regulations is needed to do so.

Section 501.10—What activities are eligible for assistance?

Comment. Several commenters expressed concerns about the requirement that activities during the first six months of a grant exclusively be preservice training activities. They emphasized that awards are made late in the fiscal year, after the beginning of the school year, and that the preservice training requirement would make it difficult to design a full year instructional program during the first year of the grant.

Several commenters recommended that districts experienced in administering Title VII programs should not be required to conduct these preservice activities.

Response. The statute requires that the first six months of the project be limited to preservice activities. However, the statute and regulations allow LEAs to request waivers from the preservice requirement if they demonstrate that they are already prepared to operate their proposed projects successfully. In the absence of circumstances that would justify a waiver, the preservice training period provides an essential first step in operating a successful program.

It is the Department's intention to make awards early in future fiscal years. This will provide districts a greater opportunity to design full year instructional programs during the first year of their grants.

Section 501.11—What level of commitment to continue the program must the applicant demonstrate?

Comment. Several commenters suggested revisions in the section that specifies the level of commitment and capacity that an applicant must demonstrate. Some commenters stated that the term "realistic plan" in § 501.11(a) does not provide a measurable standard for an LEA, and suggested that more prescriptive language be provided. Others suggested that the regulations should specify the maximum percentage that the Federal grant may decline and the extent of assistance the Department will provide.

Some commenters stated that the regulations rely too heavily on increasing local financial commitment in determining a district's compliance with this factor, ignoring other possible measures, and contended that Congress did not intend an annual reduction of Federal funding. Commenters also expressed concerns that the regulations will have a disparate impact on poor districts and may impermissibly restrict the scope of the program by discouraging poor districts from applying for funds. Additionally, commenters expressed concern that local financial commitment could be inadequate to deal with fluctuations in immigration patterns that affect school populations. Finally, commenters expressed concerns that these regulations are designed to phase out all Federal support for bilingual programs.

Response. The statute requires a recipient of a Basic grant to build its capacity to provide a program of instruction for LEP children on a regular basis when Federal assistance for the project is reduced or no longer available. The regulations specify that the Department will fund a project only if the application describes a realistic plan for complying with this capacity building requirement.

The regulations further provide that the Department will reduce the level of Federal support in each successive year of the project unless the district provides for expanded services for a greater number of LEP students supported by local funds to ensure that Federal aid helps local districts build their own capacity. These provisions are designed to carry out the statutory mandate.

The statutory requirements reflect congressional intent that Federal dollars be used not merely to deliver needed services, but as "seed money" to develop or secure programmatic and financial resources that will permit continuing educational services beyond the Federal project period. However, the Department has not specifically prescribed measurable standards for the content of applicants' capacity building plans. This ensures that an LEA will have some flexibility in designing and implementing its capacity building plan.

There is no intention to discourage poor districts from applying for grants or to restrict impermissibly the scope of the program by relying heavily on increased local funding as evidence of a district's commitment to build capacity. Under some circumstances, a district can expand its programmatic capacity while making modest additional annual expenditures. For example, if a district demonstrated both fiscal inability to increase local funding significantly and evidence of expanded programmatic capacity during its project, it is possible that the LEA would be expected to make only limited additional annual expenditures.

Further, in order to meet fluctuations in immigration patterns, or other unforeseen circumstances, the regulations provide that an LEA may amend the plans initially submitted in its application and avoid reductions in the level of Federal assistance.

The Federal program has a national scope and limited resources. Clearly it is not designed to provide grants to meet permanently the needs of *all* LEP children in the districts served. The statutory purpose would not be realized if the Department funded poor (or affluent) districts for a few years and those districts did not build their capacity to continue a similar program, independently, once the Federal aid concluded. These capacity building requirements are designed to implement statutory mandates and do not reflect any intention to phase out Federal support for programs for limited English proficient persons.

Section 501.20—What must an applicant include in its application for assistance?

Comment. Several commenters suggested revising the requirement that applicants use only qualified personnel who are proficient in spoken and written English and, if appropriate, any other language or languages used for instruction. Concerns were expressed that these requirements are too difficult to implement since there are no appropriate measures to determine proficiency in many of the languages used in Title VII projects.

Other commenters recommended that only licensed or certified teachers be considered qualified personnel in States with licensing or certification procedures.

Response. Teacher quality is of critical importance to the success of Title VII projects. These regulations clarify the statutory requirement for projects to use personnel who are qualified for their responsibilities.

Rather than prescribing detailed requirements, the regulations provide LEAs with considerable flexibility to determine how to meet this personnel requirement, and encourage LEAs to employ personnel who are licensed or certified.

Section 501.21—What requirements pertain to the application advisory council and the parent advisory committee?

Comment. Several commenters recommended that project staff be required to be fluent in the native language of the parent participants on the advisory council and committee in order to communicate adequately with them.

Response. The Secretary recommends that an LEA make every effort to communicate effectively with parent participants on advisory councils and committees. However, the regulations do not require that project staff be fluent in the native language of all parent participants since such a requirement could be too burdensome on districts in which many different languages are spoken by parents.

Section 501.25—What requirements pertain to the development of an evaluation plan?

Comment. Several commenters stated that requiring applicants developing their evaluation plans to review section 733 of the statute as well as the

implementing regulations is burdensome. They recommended that the statutory reference be deleted, so that applicants need refer only to the regulations.

Response. The reference to section 733 of this Act has been deleted, since it is referenced in the general provisions of the regulations. However, applicants should be careful to review all applicable statutory and regulatory requirements for which they will be accountable, including those in section 733. The references to section 733 have also been deleted in §§ 525.21 and 526.20 of these regulations.

Section 501.31—What selection criteria does the Secretary use?

Comment. Several commenters recommended increasing the number of points given to the "quality of personnel" criterion because of the importance of teacher quality. Others suggested adding more points to the "evaluation plan" criterion because of the emphasis on evaluation activities found in the law.

Response. The Secretary agrees that teacher quality is of critical importance to the success of funded programs and has changed the number of points for the "quality of personnel" criterion from 7 points to 15 points. In order to make this change, the "description and assessment of need" has been reduced from 25 points to 17 points. (The name of this criterion has been changed to reflect more closely the nature of the criterion.) No additional points have been added to the "evaluation plan" criterion. The Secretary believes that 8 points is sufficient for the qualitative evaluation of an applicant's plan, which, regardless of the score received on the selection criterion, must comply with all of the requirements of section 733 of the statute and §§ 500.50–500.52 of these regulations.

Comment. Several commenters requested additional guidance on the information that an LEA is required to submit in its evaluation plan and its application.

Response. The information that must be included in an applicant's evaluation plan is discussed in §§ 500.50–500.52, which has been incorporated into this final regulatory package, although the requirements were published separately in proposed form at 50 FR 21578.

Comment. Several commenters questioned the relevance of § 501.31(a)(1)(ii), which specifies that the Secretary "reviews applications to determine the degree of proficiency of LEP children in their native language and in other courses or subjects of study." Additionally, they commented that these provisions are virtually impossible to implement since assessment instruments are not available in most languages used in Title VII projects.

Commenters also noted that this provision ignores a similar information requirement in section 721(c) of the statute.

Response. Technical changes have been made in the regulations to clarify that the Secretary awards points under this criterion based only on the quality of the needs assessment as described in the application. An applicant's relative need for a project compared to that of other applicants is reviewed by the Secretary under the additional factors in § 501.31(a)(2). The Department considers these factors to be important in identifying local district needs to serve LEP children, in order to determine whether the project designed will adequately meet these needs. Standardized assessment instruments are not necessarily required for assessing these needs of the LEP student population. Districts have the flexibility to identify the most appropriate methods for assessing the needs of their LEP population.

Section 721(c) does not specifically require applicants to provide all of the information necessary for the Secretary to determine the extent of student needs that will be met by the project. Therefore, this criterion does not duplicate section 721(c).

Comment. Several commenters suggested revisions in § 501.31(b)(1)(ii), which specifies that in determining the appropriateness and reasonableness of the applicant's project design, the Secretary reviews the extent to which the LEA has considered other instructional approaches in choosing the one to be used in the project. Commenters were concerned that this provision favors one particular methodological approach above others.

Response. This section is designed to ensure that an LEA has considered a variety of approaches and has selected the best. This criterion is not intended to encourage local districts to select any specific method of instruction authorized under Title VII.

Comment. Several commenters asked whether the quantifiable objectives that are considered under § 501.31(b)(2) will be used by the Department for compliance reviews, and in assessing eligibility for two additional years of funding under section 721(d)(1)(C) of the statute and § 501.34 of these regulations.

Response. The Department intends to use the objectives identified by an LEA for meeting the needs of its participating student population in evaluating an applicant's performance during the grant period and in assessing eligibility for two additional years of funding.

Comment. Several commenters suggested that § 501.31(b)(2)(i)(C), which provides for the transfer of LEP children served by the project to the regular educational program as soon as possible, may be inconsistent with the purposes of developmental bilingual education programs, which are aimed at developing competence in English and a second language.

Response. The regulations have been modified to exempt developmental bilingual education programs from this particular element of the selection criteria. However, points will continue to be given to developmental bilingual programs designed to develop LEP students' English language proficiency as quickly as possible, thereby enabling them to participate in regular classrooms. This is essential to ensure that these students receive the educational benefits contemplated by the Act.

Comment. Several commenters recommended deleting § 501.31(e)(3), which provides that, in evaluating an application, the Secretary may consider an applicant's experience under previous Title VII projects in developing its programmatic capacity for serving LEP children and assuming financial responsibility for the program. They argued that prior experience should not be considered.

Response. The Secretary considers an applicant's demonstrated experience in prior Title VII projects as important evidence of its commitment and capacity to continue Title VII projects once Federal funding is reduced or no longer available.

Comment. One commenter requested clarification of the criterion in § 501.31(e)(2)(iii) concerning follow-up services to children who have achieved proficiency in English as a part of its capacity building plan.

Response. The regulations provide local districts discretion to fashion the particular follow-up services desired for their students who have achieved proficiency in English. The Secretary will judge the appropriateness of follow-up services in relation to the nature of each project. The Secretary believes that further regulation of this requirement would unnecessarily limit LEA flexibility.

Section 501.32—What additional factors does the Secretary consider in awarding grants?

Comment. Several commenters recommended revising the provisions

concerning additional factors considered in awarding grants. These factors provide points for: (1) assisting children who have been historically underserved by programs of bilingual education; (2) the relative need of the particular LEAs for the proposed program; (3) the geographic distribution of LEP children; and (4) the number and proportion of children from low-income families to be benefited by the program.

Generally, commenters characterized these factors as arbitrary and capricious and contended that they would distort congressional priorities. They expressed concerns that these factors favor projects serving new immigrants, while detrimentally affecting ongoing projects and discouraging funding of new projects serving poor, Native American, and concentrated monolingual populations. Specifically, these comments addressed the Secretary's description of the elements considered in identifying a district as being "historically underserved" or "in relative need for the particular proposed program." Some expressed concerns that applicants would receive points for one factor while losing points for another. Others expressed concerns that LEAs that have received funding previously for a particular language group would be precluded from legitimately addressing needs of the same language group in different grade levels. Other commenters expressed concerns that applicants will lose points because they have received prior funding.

Response. These additional factors implement the statutory priorities found in section 721(h) of the Act. The statute does not specify how to apply these statutory priorities. The Secretary believes that these criteria will be helpful to applicants by establishing standards for the implementation of the statutory priorities.

Title VII is a capacity building program with a national scope and limited resources. These additional factors are designed to ensure that any district that demonstrates the applicability of a statutory priority in its application can receive additional points. Applicants that do not receive additional points under these four factors are not precluded from being funded under the Act. These additional factors are not applied to noncompeting continuation awards, and are not designed to favor new immigrants or detrimentally affect the poor, Native Americans, or monolingual districts. Most applicants will not receive additional points under all of the additional factors. For example, a district serving a large number of low-income students that has received funding in the past for the same language group would receive points under the factor that addresses the statutory priority for serving a large number and proportion of children from low-income groups. However, the district would not gain or lose any points for the historically underserved factor because it has received funding in the past for serving the same language group.

Section 501.34—What is the length of the project period?

Comment. Several commenters suggested that the regulations improperly shift the burden to the grantee to demonstrate its qualifications for two additional years of funding after it has completed three years of the project.

Response. Changes have been made in the regulations to parallel more closely the statutory language. In order to provide a basis for the Secretary to make the determinations contemplated by the Act, the regulations continue to require grantees to provide information that would establish the appropriateness of continued funding under the statutory standards. The Secretary will determine that these standards are not met if the grantee fails to meet these informational requirements.

The regulations have also been changed to clarify that, in determining if the grantee's project has made substantial and measurable progress in achieving the specific educational goals contained in the approved application, the Secretary will consider the extent to which the grantee met the objectives identified in its approved application and the capacity building requirements applicable during the project period.

Section 501.40—What information must be given to parents?

Comment. Several commenters were concerned that the information an LEA must give to parents would create paperwork burdens and require extensive staff time, especially with regard to information on alternative methods of instruction that could be provided to children. Others recommended that instructions on recordkeeping be more explicit; that districts be required to inform parents of the expected progress of their children in English and in other subject matter skills; and that districts be required to inform parents of this information in the parents' native language.

Response. The regulations have been modified to incorporate suggestions that parents be informed of the progress of their children in English and in other subject matter skills. The Secretary believes that these revised regulations implement the statutory requirements in sections 703(e) and 721(d)(1)(D) in a manner that is least burdensome in terms of paperwork and staff time, and most effective for providing full information to parents. Local school districts are encouraged to ensure that parents are informed of these matters in a language that they understand. Additional instructions on recordkeeping have not been incorporated into these regulations in order to provide maximum flexibility to an LEA to determine its individual recordkeeping methods.

Section 501.41—What additional requirements apply to programs of transitional bilingual education?

Comment. Commenters expressed concerns that the regulations conflict with the statute by prohibiting the participation of children who do not speak the native language used for instruction in programs of transitional bilingual education. They noted that under the statute, "children whose language is English" are allowed, to a limited extent, to participate in transitional bilingual programs.

Response. The statute and regulations provide that up to 40 percent of the participants in programs of transitional bilingual education may be children whose language is English. The preamble to the proposed regulations clarified that the native language of instruction used must be the native language of the LEP participants. A change has been made in the regulations, however, to clarify that children counted as English language participants cannot be children who have previously been served as LEP. This ensures that formerly LEP students will remain in regular classrooms once they have graduated from Title VII programs.

Part 525—Family English Literacy Program

Section 525.2—Who is eligible to apply for assistance under the Family English Literacy Program?

Comment. One commenter suggested that not-for-profit organizations be held accountable to some enforcement agency for performance of their obligations under the terms of the grant.

Response. Each grantee under the Act is accountable to the Department of Education for carrying out the project in accordance with its approved proposal

and applicable requirements. Methods used by the Federal Government in determining a grantee's compliance with terms of a grant award include site visits and audit investigations. If violations of the terms and conditions of the grant award are disclosed, awards can be terminated, misspent funds can be recouped, and cease and desist orders can be issued, among other remedies.

Section 525.31—What selection criteria does the Secretary use?

Comment. Several commenters recommended deleting the selection criterion, "commitment and capacity." They expressed concern that this element is an inappropriate criterion for applications from private nonprofit organizations, since those organizations are less likely than public educational institutions to have an ongoing existence but for the grant.

Response. The Secretary believes this criterion is an appropriate one for selecting applications. Private nonprofit organizations have the capability of developing their commitment and capacity to continue programs with funding from other sources, including private foundations, or other public and private education institutions.

Comment. Several commenters suggested a different point distribution in weighting the selection criteria, especially the "quality of personnel" criterion. They maintained that personnel are a primary determinant of a project's potential success. One commenter recommended increasing the number of points for "need" to help ensure that funds are properly targeted, and providing more points for the adoption of a pedagogically validated design to encourage the use of proven models, and to avoid development costs.

Response. The selection criteria have been reweighted. The Department agrees that teacher quality is of critical importance to the success of funded programs. The Department has increased the number of points for the "quality of personnel" criterion from 7 points to 15 points to ensure that applicants sufficiently address this critical criterion. In order to make this change, the "program objectives and design" criterion has been reduced from 30 to 27 points, and the "commitment and capacity" criterion has been reduced from 20 points to 15 points. No additional points have been added to the element of "need," since the Secretary believes this factor is adequately weighted relative to the other criteria.

The Secretary encourages applicants to use pedagogically validated designs, such as academic excellence models funded under Title VII, in implementing their projects. A qualitative judgment of the method chosen will be made under the "program objectives and design" criterion.

Part 526—Special Populations Program

Section 526.2—Who is eligible to apply for assistance under the Special Populations Program?

Comment. One commenter suggested that private nonprofit organization grantees be required to coordinate their projects with public schools.

Response. The Secretary, in evaluating applications under § 526.32(b)(2)(ii), considers the applicant's strategies for coordination with local school districts. The Secretary believes that this criterion adequately addresses the commenter's concern without adding detailed requirements.

Section 526.10—What types of projects may be funded?

Comment. One commenter recommended revising the regulations to require the provision of services to children who are eligible for services under Part B of the Education for the Handicapped Act (EHA–B) but are not receiving them.

Response. The regulations make clear that serving children eligible for services under EHA–B is an authorized project. However, there would be no basis in Title VII to *require* that Title VII funds be used to serve these children. In addition, Title VII funds may not be used to replace funds that would otherwise have been available for those children. Therefore, no change has been made to these regulations.

Section 526.30—What priorities may the Secretary establish?

Comment. Several commenters questioned the Secretary's authority to establish annual priorities under this program.

Response. Title VII does not prescribe how funds are to be distributed among the types of projects authorized by this program. That responsibility is exercised by the Secretary, consistent with any appropriate priorities established in the appropriations process. In discretionary grant programs where appropriations invariably do not permit all eligible purposes and projects to be funded, it is incumbent on the Secretary to select those purposes and projects that will best carry out the statute.

Section 526.32—What selection criteria does the Secretary use?

Comment. Several commenters recommended adding additional points to the "quality of personnel" criterion. They maintained that project personnel are a primary determinant of the potential for success of a project. One commenter recommended establishing a selection criterion for coordination between these supplementary projects and existing programs. Another commenter recommended including additional factors, such as a reference to use of pedagogically validated methods.

Response. The distribution of points for the selection criteria has been changed. The Department has increased the number of points for the "quality of personnel" criterion from 7 points to 15 points, to reflect the importance of this criterion. In order to make this change, the "description and assessment of need" criterion has been reduced from 25 points to 17 points. (The name of this criterion has been changed to more closely reflect the purpose of this criterion.) Technical changes have been made in the regulations to clarify that the Department awards points under this criterion based only on the quality of the needs assessment described in the application.

A new coordination criterion has not been created, since this element is adequately addressed in § 526.32(b)(2)(ii). The Secretary believes that the "program and objectives" criterion as presented in the regulations allows for a qualitative judgment of the method of instruction chosen for the project.

Part 537—Program for the Development of Instructional Materials

Section 537.1—Program for the Development of Instructional Materials

Comment. Several commenters questioned the requirement that projects must develop materials that will be of use to LEAs that offer instructional programs such as those authorized under the Act. They desired more latitude for the types of materials to be developed.

Response. The Secretary believes that the maximum benefit can be derived from Title VII resources if material development projects complement the purposes for which other Title VII funds are used to serve LEP students. Furthermore, the requirement does not restrict these projects to the development of materials that will be used in specific Title VII programs.

Section 537.2—Who is eligible to apply for assistance under the Program for the Development of Instructional Materials?

Comment. One commenter suggested that "individuals" be eliminated as eligible applicants under this program.

Response. The statute does not preclude individuals from eligibility under this program. Therefore, the Secretary believes that it is inappropriate to exclude them.

Section 537.10—What activities are eligible for assistance?

Comment. Several commenters questioned whether funds could be used to develop materials in English and other languages.

Response. The statute authorizes the use of funds for developing instructional materials in any languages for which materials are commercially unavailable. Applicants have the responsibility to demonstrate the commercial unavailability of materials in the languages in which they propose to develop materials. It is unlikely, however, that an applicant will be able to demonstrate that English language materials are not available.

Section 537.31—What selection criteria does the Secretary use?

Comment. Several commenters recommended adding more points to the quality of personnel criterion. They maintained that qualified personnel are a primary determinant for the potential success of a project. One commenter suggested that a coordination criterion be developed to ensure that materials developers maintain close ties with educational institutions.

Response. The selection criteria have been reweighted. The Department has increased the number of points for the quality of personnel criterion from 10 points to 15 points, to reflect the importance the Secretary assigns to project personnel. In order to make this change, the program objectives and design criterion has been reduced from 35 points to 30 points. The Secretary believes that the coordination element is adequately addressed in § 537.31(b)(2)(iii).

Comment. Several commenters questioned why the program objectives and design criterion in § 537.31(b)(2)(iii) refers to the manner that LEA staff will be included in the development and testing of the instructional materials.

Response. The Secretary believes that materials should be reviewed and assessed by teachers and administrators to ensure that those materials are useful and responsive to the needs of LEP children to be served.

Part 561—Educational Personnel Training Program

Sections 561.1—Educational Personnel Training Program and Section 561.10—What activities are eligible for assistance?

Comment. Several commenters recommended that these sections more closely track the statutory language and specifically reference the activities emphasized in section 741(a)(1) of the statute.

Response. The Secretary has revised § 561.1 to reflect more closely the language of the statute. Section 561.10 has not been changed, since other sections of the regulations, including revised § 561.1, sufficiently emphasize the specific activities referenced in the statute.

Section 561.20—What requirements pertain to the application advisory council and advisory committee?

Comment. Several commenters expressed concern about the nature and functions of the application advisory council and advisory committee. Some considered the requirements for these councils to be unrealistic, unnecessary, and difficult to implement. One particular concern was the difficulty in identifying parents of children to be served by personnel trained in these programs. Several suggested deleting this requirement. Others suggested modifying the composition of the council and committee to include "administrators" rather than parents.

Response. The statute requires the establishment of the application advisory council and advisory committee with parent representatives. "Administrators" may be included on the council as "other interested individuals."

Section 561.31—What selection criteria does the Secretary use?

Comment. Several commenters recommended adding additional points to the quality of personnel and evaluation criteria. The commenters maintained that the personnel associated with a project are a primary determinant of that project's potential success. Other commenters were concerned that the evaluation of a project would not be adequate unless that criterion received more points. Some commenters recommended a fuller description of the level of expertise required in the native language, culture, and curricula to be taught by the personnel. Some expressed concern that limitations on administrative costs will have a detrimental impact on the effective administration of these programs.

Response. The weighting of the selection criteria has been changed. The Department has increased the number of points for the quality of personnel criterion from 7 points to 15 points, to reflect the importance of this criterion. In order to make this change, the need and impact criterion was reduced from 30 points to 27 points, and the program objectives and design criterion was reduced from 30 points to 25 points. No additional points were added to the evaluation plan criterion, since the Secretary believes that the regulations sufficiently address this criterion, and provide for the Secretary to determine whether the grantee is achieving the goals of its project.

The Secretary believes that the revised regulations sufficiently address the expertise required of project personnel, in § 561.31(e)(2)(i). This section allows the applicant latitude in determining the specific type of experience and training suitable for personnel associated with its project. Finally, the Secretary believes that holding administrative costs to a minimum is an effective way of ensuring that project funds are used to address the intended beneficiaries of the Act.

Section 561.41—What financial assistance to participants is allowable under this program?

Comment. Several commenters requested explanatory material, including a list of programs surveyed to establish the rates of stipends.

Response. The Secretary established these stipend rates based upon prevailing rates in comparable Federal programs. Programs surveyed include National Graduate Fellowships, Indian Education Fellowships, Graduate and Professional Study Fellowships, and Foreign Language and Areas Studies Fellowships.

Part 573—Training Development and Improvement Program

Comment. Several commenters questioned the need to make revisions in the current regulations for the School of Education program since the statutory language has not changed from the prior authorization.

Response. The Secretary believes that revising these regulations was necessary in order to administer the program more effectively and to conform with the other Title VII regulations.

Part 574—Short-Term Training Program

Section 574.1—Short-Term Training Program

Comment. Several commenters recommended that the regulations more closely reflect the language of the statute by specifically referring to summer training institutes. They also suggested that students be included as eligible participants in these programs.

Response. These regulations do not preclude funding summer training institutes. They allow applicants flexibility to apply for summer training institutes as well as other types of short-term training programs. Since these programs are designed to train educational personnel and parents to assist in the provision of services to students, the regulations provide that students are not eligible recipients of services in these programs.

Section 574.30—What priorities may the Secretary establish?

Comment. Several commenters questioned the Secretary's authority to establish annual priorities under this program.

Response. Title VII does not prescribe how funds are to be distributed among the types of projects authorized by this program. That responsibility is exercised by the Secretary, consistent with any appropriate priorities established in the appropriations process. In discretionary grant programs where appropriations invariably do not permit all eligible purposes and projects to be funded, it is incumbent on the Secretary to select those purposes and projects that will best carry out the statute.

Comment. Several commenters requested explanatory material, including a list of programs surveyed, to establish the rates of stipends.

Response. The Secretary established these stipend rates based upon prevailing rates in comparable Federal programs. Programs surveyed include National Graduate Fellowships, Indian Education Fellowship, Graduate and Professional Study Fellowships, and Foreign Language and Areas Studies Fellowships.

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DEPARTMENT OF EDUCATION

Office of Bilingual Education and Minority Languages Affairs

Discretionary Grant Programs; Application Notices Establishing Closing Dates for Transmittal of Certain Fiscal Year 1986 Applications

AGENCY: Department of Education.

ACTION: Application notice establishing closing dates for transmittal of certain fiscal year 1986 applications under the Bilingual Education Act (Title VII of the Elementary and Secondary Education, as amended).

SUMMARY: The purpose of these application notices is to inform potential applicants of fiscal and programmatic information and closing dates for transmittal of applications for awards under certain programs administered by the Department of Education.

Because of the four percent statutory cap on funding special alternative instructional programs and the obligation to fund continuation awards, no new special alternative instructional awards will be made in fiscal year 1986.

Organization of Notice

This notice contains four parts. Part I includes, in chronological order, a list of all closing dates for new awards covered by this notice. Part II consists of individual application announcements for each program inviting new applications. Part III includes, in chronological order, a list of all closing dates for noncompeting continuation awards covered by this notice. Part IV consists of individual announcements for each program inviting noncompeting continuation applications.

The budget estimates in the individual application notices are based on current spending plans, and estimates of continuation costs.

Instructions for Transmittal of Applications

Applicants should note specifically the instructions for the transmittal of new and noncompeting continuation applications included below.

Transmittal of Applications

Applications for new projects must be mailed or hand-delivered on or before the closing date given in the individual program announcements included in this document. Each late applicant for a new project will be notified that its application will not be considered.

To be assured of consideration for funding, applications for noncompeting continuation awards should be mailed or hand-delivered on or before the closing date given in the individual program announcements included in this document. If an application for a noncompeting continuation award is late, the Department of Education may lack sufficient time to review it with other noncompeting continuation applications and may decline to accept it.

Applications sent by mail must be addressed to the Department of Education, Application Control Center, Attention: (Insert appropriate CFDA Number), Washington, DC 20202.

Hand-delivered applications must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building 3, 7th and D Streets, SW., Washington, DC.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays.

Intergovernmental Review

The Education Department General Administrative Regulations (EDGAR), 34 CFR Part 79, pertaining to intergovernmental review of Federal programs, apply to all programs included in this notice.

Immediately upon receipt of this notice, applicants that 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 contact, immediately upon receipt of this notice, 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 these programs.

In States that have not established a process or chosen a program for review, 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 the date in the program announcement to the following address:

The Secretary, U.S. Department of Education, Room 4181 (insert applicable CFDA No.), 400 Maryland Ave., SW., Washington, DC 20202. Proof of mailing will be determined on the same basis as applications.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

PART I—PROGRAMS WITH CLOSING DATES FOR NEW AWARDS LISTED IN CHRONOLOGICAL ORDER

CFDA No.	Program	Closing date	Closing date for State intergovernmental review comments
84.003A	Bilingual Education: Basic Programs—Programs of Transitional Bilingual Education.	Aug. 4, 1986	Sept. 4, 1986.
84.003J	Bilingual Education: Family English Literacy Program	do	Do.
84.003L	Bilingual Education: Special Populations Program	do	Do.
84.003N	Bilingual Education: Program for the Development of Instructional Materials.	do	Do.
84.003R	Bilingual Education: Educational Personnel Training Program	do	Do.
84.003Z	Bilingual Education: Training Development Program	do	Do.
84.003V	Bilingual Education: Short-Term Training Program	do	Do.

Part II—Individual Announcements for Programs With New Awards Listed Under Part I

84.003A Bilingual Education: Basic Programs—Programs of Transitional Bilingual Education

Closing Date: August 4, 1986.

Programmatic and Fiscal Information

Applications are invited for new projects under the Programs of Transitional Bilingual Education.

The Secretary makes awards under this program to local educational agencies (LEAs) and institutions of higher education applying jointly with one or more LEAs.

The purpose of the awards is to establish, operate, and improve programs of transitional bilingual education.

In accordance with 34 CFR 501.32(b), the Secretary—in evaluating applications under the published criteria—distributes an additional 15 points among the factors listed in § 501.32(a) as follows:

(1) Historically underserved (4 points).

(2) Relative need (4 points).

(3) Geographic distribution (3 points).

(4) Relative number and proportion of children from low-income families (4 points).

It is expected that awards under the Programs of Transitional Bilingual Education will range between approximately $40,000 and $400,000 for use in school year 1986–87.

However, these estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant unless that number is otherwise specified by statute or regulations.

Project Period

An application will be approved for a project period of three years.

Closing Date for Transmittal of Applications

An application for a grant must be mailed or hand-delivered by August 4, 1986.

Applications Delivered by Mail

An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.003A, Washington, DC 20202.

Applicable Regulations

Regulations applicable to this program include the following:

(a) The Bilingual Education: Basic Programs regulations in 34 CFR Part 501, published in this issue of the **Federal Register.**

(b) The Bilingual Education: General Provisions in 34 CFR Part 500, published in this issue of the **Federal Register.**

(c) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

Intergovernmental Review

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 September 4, 1986 to the appropriate address at the beginning of this notice.

Application Forms

Applications are expected to be ready for mailing in June 30, 1986. A copy of the application package may be obtained by writing to the Programs of Transitional Bilingual Education, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Ave., SW (Room 421, Reporters Building), Washington, DC 20202.

Further Information

For further information contact Dr. R. Cordova, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW (Room 421, Reporters Building), Washington, DC 20202. Telephone: (202) 245–2609.

Program Authority: 20 U.S.C. 3231(a)(1).

84.003J Bilingual Education: Family English Literacy Program

Closing Date: August 4, 1986.

Programmatic and Fiscal Information

The Secretary makes awards under this program to local educational agencies, institutions of higher education, including junior or community colleges, and private nonprofit organizations. Eligible applicants may apply separately or jointly.

The purpose of the awards is to establish, operate, and improve family English literacy programs.

In accordance with 34 CFR 525.32(b), the Secretary—in evaluating applications under the published criteria—distributes an additional 15 points among the criteria listed in § 525.32(a) as follows:

(1) Historically underserved (4 points).

(2) Geographic distribution (4 points).

(3) Need (4 points).

(4) Relative number and proportion of children from low-income families (3 points).

It is expected that an average award in the Family English Literacy Program will be approximately $125,000 for fiscal year 1986.

However, this estimate does 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.

Project Period

An application will be approved for a project period of three years.

(20 U.S.C. 3231(d)(2))

Closing Date for Transmittal of Applications

An application for a grant must be mailed or hand-delivered by August 4, 1986.

Applications Delivered by Mail

An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.003J, Washington, DC 20202.

Applicable Regulations

Regulations applicable to this program include the following:

(a) The Bilingual Education: Family English Literacy Program regulations in 34 CFR Part 525, published in this issue of the **Federal Register.**

(b) The Bilingual Education: General Provisions in 34 CFR Part 500, published in this issue of the **Federal Register.**

(c) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

Intergovernmental Review

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 September 4, 1986 to the appropriate address at the beginning of this notice.

Application Forms

Applications are expected to be ready for mailing in June 30, 1986. A copy of the application package may be obtained by writing to the Family English Literacy Program, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Ave., SW. (Room 421, Reporters Building), Washington, DC 20202.

Further Information

For further information contact Dr. Mary T. Mahony, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421, Reporters Building), Washington, DC 20202. Telephone: (202) 447–9228.

Program Authority: 20 U.S.C. 3231(a)(5).

84.003L Bilingual Education: Special Populations Program

Closing Date: August 4, 1986.

Programmatic and Fiscal Information

Applications are invited for new projects under the Special Populations Program.

The Secretary makes awards under this program to local educational agencies, institutions of higher education, including junior and community colleges, and private nonprofit organizations. Eligible applicants may apply separately or jointly.

The purpose of the awards is to establish, operate, and improve bilingual preschool, special education and gifted and talented programs that are preparatory or supplementary to

programs such as those assisted under Title VII.

In accordance with 34 (CFR 526.31(b), the Secretary—in evaluating applications under the published criteria—distributes an additional 15 points among the factors listed in § 525.32(a) as follows:

(1) Historically underserved (4 points).

(2) Geographic distribution (4 points).

(3) Need (4 points).

(4) Relative number and proportion of children from low-income families (3 points).

It is expected that the awards under the Special Populations Program will range between approximately $25,000 and $190,000 for fiscal year 1986.

However, this estimate does 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.

Project Period

For fiscal year 1986, an application will be approved for a project period of one year only.

(20 U.S.C. 3231(d)(3))

Priorities

The Secretary will give a competitive preference, in accordance with 34 CFR 75.105(c)(2)(ii), to projects for preschool children or for LEP children who by reason of outstanding abilities are capable of high performance as stated in 34 CFR 526.10 and 526.30(a) of the regulations published in this issue of the **Federal Register**.

Closing Date for Transmittal of Applications

An application for a grant must be mailed or hand-delivered by August 4, 1986.

Applications Delivered by Mail

An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.003L, Washington, DC 20202.

Applicable Regulations

Regulations applicable to this program include the following:

(a) The Bilingual Education: Special Populations Program regulations in 34 CFR Part 526, published in this issue of the **Federal Register**.

(b) The Bilingual Education: General Provisions in 34 CFR Part 500, published in this issue of the **Federal Register**.

(c) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

Intergovernmental Review

Any State process recommendations 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 September 4, 1986 to the appropriate address at the beginning of this notice.

Application Forms

Applications are expected to be ready for mailing in June 30, 1986. A copy of the application package may be obtained by writing to the Special Populations Program, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Ave., SW. (Room 421, Reporters Building), Washington, DC 20202.

Further Information

For further information contact Ms. Barbara Wells, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421, Reporters Building), Washington, DC 20202. Telephone (202) 732–1840.

Program Authority: 20 U.S.C. 3231(a)(6).

84.003N Bilingual Education: Program for the Development of Instructional Materials

Closing Date: August 4, 1986.

Programmatic and Fiscal Information

Applications are invited for new projects under the Program for the Development of Instructional Materials.

The purpose of these awards is to establish, operate, and improve programs to develop instructional materials in languages for which materials are commercially unavailable.

In accordance with 34 CFR 537.30(b), the Secretary—in evaluating applications under the published criteria—distributes an additional 15 points among the factors listed in § 525.32(a) as follows:

(1) Historically underserved (4 points).

(2) Geographic distribution (4 points).

(3) Need (4 points).

(4) Relative number and proportion of children from low-income families (3 points).

It is expected that the awards under the Program for the Development of Instructional Materials will average about $120,000 for fiscal year 1986.

It is expected that these funds could support 2 projects.

However, these estimates 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.

Project Period

For fiscal year 1986, an application will be approved for a project period of one year only.

(20 U.S.C. 3231(d)(3))

Closing Date for Transmittal of Applications

An application for a grant must be mailed or hand-delivered by August 4, 1986.

Applications Delivered by Mail

An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.003N, Washington, DC 20202.

Applicable Regulations

Regulations applicable to this program include the following:

(a) The Bilingual Education: Program for the Development of Instructional Materials regulations in 34 CFR Part 537, published in this issue of the **Federal Register**.

(b) The Bilingual Education: General Provisions in 34 CFR Part 500, published in this issue of the **Federal Register**.

(c) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

Intergovernmental Review

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 September 4, 1986 to the appropriate address at the beginning of this notice.

Application Forms

Applications are expected to be ready for mailing in June 30, 1986. A copy of the application package may be obtained by writing to the Program for the Development of Instructional Materials, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Ave., SW. (Room 421, Reporters Building), Washington, DC 20202.

Further Information

For further information contact Ms. Barbara Wells, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421, Reporters Building), Washington, DC 20202. Telephone: (202) 732–1840.

Program Authority: 20 U.S.C. 3231(a)(7).

84.003R Bilingual Education: Educational Personnel Training Program

Closing Date: August 4, 1986.

Programmatic and Fiscal Information

Applications are invited for new projects under the Educational Personnel Training Program.

The Secretary makes awards under this program to institutions of higher education.

The purpose of the awards is to establish, operate, and improve training programs for educational personnel preparing to participate in, or personnel participating in, the conduct of programs for limited English proficient persons, which shall emphasize opportunities for career development, advancement, and lateral mobility, and may provide training to teachers, administrators, counselors, paraprofessionals, teacher aides, and parents.

In accordance with 34 CFR 561.32(b), the Secretary—in evaluating applications under the published criteria—distributes an additional 10 points among the factors listed in § 561.32(a) as follows:

(1) Job placement and development (4 points).

(2) Evidence of prior participant's success in projects previously funded (2 points).

(3) Evidence of demonstrated capacity and cost effectiveness (4 points).

It is expected that awards under the Educational Personnel Training Program for fiscal year 1986 will range between approximately $40,000 and $220,000.

It is estimated that these funds could support 60 projects.

However, these estimates 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.

Project Period

An application may be approved for a project period of one year to three years.

Closing Date for Transmittal of Applications

An application for a grant must be mailed or hand-delivered by August 4, 1986.

Applications Delivered by Mail

An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.003R, Washington, D.C. 20202.

Applicable Regulations

Regulations applicable to this program include the following:

(a) The Bilingual Education: Educational Personnel Training Program regulations in 34 CFR Part 561, published in this issue of the **Federal Register.**

(b) The Bilingual Education: General Provisions in 34 CFR Part 500, published in this issue of the **Federal Register.**

(c) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

Intergovernmental Review

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 September 4, 1986 to the appropriate address at the beginning of this notice.

Application Forms

Applications are expected to be ready for mailing on June 30, 1986. A copy of the application package may be obtained by writing to the Educational Personnel Training Program, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421, Reporters Building), Washington, DC 20202.

Further Information

For further information contact Dr. Robert Kelly Acosta, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 421, Reporters Building), Washington, D.C. 20202. Telephone: (202) 245–2595.

Program Authority: 20 U.S.C. 3251(a)(1).

84.003Z Bilingual Education: Training Development and Improvement Program

Closing Date: August 4, 1986.

Programmatic and Fiscal Information

Applications are invited for new projects under the Training Development and Improvement Program.

The Secretary makes awards under this program to institutions of higher education.

The purpose of the awards is to encourage reform, innovation, and improvement in applicable education curricula in graduate education, in the structure of the academic profession, and in recruitment and retention of higher education and graduate school faculties as related to programs for limited English proficient persons.

It is expected that approximately $200,000 will be available for the Training Development and Improvement Program for fiscal year 1986.

It is estimated that these funds could support 2 projects.

However, these estimates 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.

Project Period

An application will be approved for a project period of one year.

Closing Date for Transmittal of Applications

An application for a grant must be mailed or hand-delivered by August 4, 1986.

Applications Delivered by Mail

An application delivered by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention 84.003Z, Washington, DC 20202.

Applicable Regulations

Regulations applicable to this program include the following:

(a) The Bilingual Education: Training Development and Improvement Program regulations in 34 CFR Part 573, published in this issue of the **Federal Register.**

(b) The Bilingual Education: General Provisions in 34 CFR Part 500, published in this issue of the **Federal Register.**

(c) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

Intergovernmental Review

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 September 4, 1986 to the appropriate address at the beginning of this notice.

Application Forms

Applications are expected to be ready for mailing in June 30, 1986. A copy of the application package may be obtained by writing to the Training Development and Improvement Program, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Ave., SW (Room 421, Reporters Building), Washington, DC 20202.

Further Information

For further information contact Ms. Arva Johnson, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW (Room 421, Reporters Building), Washington, DC 20202. Telephone: (202) 732–1766.

Program Authority: 20 U.S.C. 3251(a)(3).

84.003V Bilingual Education: Short-Term Training Program

Closing Date: August 4, 1986.

Programmatic and Fiscal Information

Applications are invited for new projects under the Short-Term Training Program.

The Secretary makes awards under this program to State educational agencies (SEAs), local educational agencies (LEAs), and institutions of higher education, including junior or community colleges, and private for-profit or nonprofit organizations which apply after consultation with or jointly with one or more SEAs or LEAs.

The purpose of the awards is to improve the skills of educational personnel and parents participating in programs for limited English proficient persons.

In accordance with 34 CFR 574.33(b), the Secretary—in evaluating applications under the published criteria—distributes an additional 10 points among the factors listed in § 574.33(a) as follows:

(1) Evidence of prior participant's success in projects previously funded (5 points).

(2) Evidence of demonstrated capacity and cost effectiveness (5 points).

It is expected that awards under the Short-Term Training Program for fiscal year 1986 will range between approximately $80,000 and $140,000.

It is estimated that these funds could support 13 projects.

However, these estimates 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.

Priorities

The Secretary will give a competitive preference, in accordance with 34 CFR 75.105(c)(2)(ii), to projects which provide training to teachers and parents as stated in 34 CFR 574.10 and 574.30 of the regulations published in this issue of the **Federal Register.**

Project Period

An application will be approved for a project period of one year.

Closing Date for Transmittal of Applications

An application for a grant must be mailed or hand-delivered by August 4, 1986.

Applications Delivered by Mail

An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.003V, Washington, DC 20202.

Applicable Regulations

Regulations applicable to this program include the following:

(a) The Bilingual Education: Short-Term Training Program regulations in 34 CFR Part 574, published in this issue of the **Federal Register.**

(b) The Bilingual Education: General Provisions in 34 CFR Part 500, published in this issue of the **Federal Register.**

(c) The Education Department General Administrative Regulations (EDGAR), in 34 CFR Parts 74, 75, 77, 78, and 79.

Intergovernmental Review

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 September 4, 1986 to the appropriate address at the beginning of this notice.

Application Forms

Applications are expected to be ready for mailing in June 30, 1986. A copy of the application package may be obtained by writing to the Short-Term Training Program, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Ave., SW (Room 421, Reporters Building), Washington, DC 20202.

Further Information

For further information contact Mr. Ramon Chavez. Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW (Room 421 Reporters Building), Washington, DC 20202. Telephone: (202) 245–2595.

Program Authority: 20 U.S.C. 3251(a)(4).

PART III—PROGRAMS WITH CLOSING DATES FOR NONCOMPETING CONTINUATIONS LISTED IN CHRONOLOGICAL ORDER

CFDA No.	Program	Closing date	Closing date for State intergovernmental review comments
84.003B	Bilingual Education: Basic Programs—Programs of Transitional Bilingual Education.	Aug. 4, 1986	Sept. 4, 1986.
84.003D	Bilingual Education: Basic Programs—Programs of Developmental Bilingual Education.	. . . . . do	Do.
84.003F	Bilingual Education: Basic Programs—Special Alternative Instructional Programs.	. . . . . do	Do.
84.003K	Bilingual Education: Family English Literacy Program	July 30, 1986	Sept. 2, 1986.
84.003S	Bilingual Education: Educational Personnel Training Program	. . . . . do	Do.
84.003W	Bilingual Education: Short-Term Training Program	. . . . . do	Do.

Part IV—Individual Announcements for Programs With Noncompeting Continuations Listed in Part III

84.003B Bilingual Education: Basic Programs—Programs of Transitional Bilingual Education

Closing Date: August 4, 1986.

Programmatic Information

Continuation Applications

Applications are invited for noncompeting continuation awards under the Programs of Transitional Bilingual Education.

Current recipients of grants under this program that have one or more year(s) remaining of an approved multi-year project period may request continuation of their present projects.

The purpose of the awards is to establish, operate, and improve programs of transitional bilingual education.

Applicants must amend their applications to conform with the new program regulations published in this issue of the **Federal Register.** For example, in order to be eligible for support, an applicant must ensure that its project complies with the requirements of—

34 CFR 500.4 (Definitions of "Limited English proficient" and "Native language");

34 CFR 500.50–500.52 and 34 CFR 501.25 (Evaluation plan);

34 CFR 501.11 (Capacity building plan);

34 CFR 501.20(b)(1) and (3) (Qualified personnel and parent advisory committee assurances); and

34 CFR 501.40 (Parent information).

(20 U.S.C. 3223(a)(1), (2), (c), 3231, 3243)

Renewal Applications

Renewal applications are also invited under the Programs of Transitional Bilingual Education for applicants originally selected for funding in fiscal year 1983.

In order to be eligible for renewal awards, applicants must meet the requirements in section 721(d)(1)(C) of Title VII and 34 CFR 501.34 of the regulations, and amend their applications to comply with all of the requirements in the Continuation Applications section of this notice.

As required in 34 CFR 501.34(b) of the regulations, renewal applicants must demonstrate in their renewal application to the satisfaction of the Secretary that—

1. The project complies with all applicable requirements in Title VII and in the regulations governing the program;

2. The project has made substantial and measurable progress in achieving the specific educational goals contained in its approved application, including progress in—

(i) Meeting the objectives established in its approved application; and

(ii) Successfully carrying out the provisions in the application (as approved under the 1983 regulations in 34 CFR 501.30(g)(1983)) for building capacity to continue the project when Federal funding is reduced or no longer available; and

3. There is a continuing need for the project.

(20 U.S.C. 3231(d)(1)(C))

Closing Date for Transmittal of Applications

To be assured of consideration for funding, applications for noncompeting continuation awards and renewal awards should be mailed or hand-delivered by August 4, 1986.

If the application is late, the Department of Education may lack sufficient time to review it with other applications for noncompeting continuations and renewal awards and may decline to accept it.

Applications delivered by Mail:

An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84:003B, Washington, DC 20202.

Applicable Regulations

Regulations applicable to this program include the following:

(a) The Bilingual Education: Basic Programs regulations in 34 CFR Part 501, published in this issue of the **Federal Register.**

(b) The Bilingual Education: General Provisions in 34 CFR Part 500, published in this issue of the **Federal Register.**

(c) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

Intergovernmental Review

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 September 4, 1986 to the appropriate address at the beginning of this notice.

Further Information

For further information contact Dr. R. Cordova, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW (Room 421, Reporters Building), Washington, DC 20202. Telephone (202) 245–2609.

Program Authority: 20 U.S.C. 3221–3262.

84.003D Bilingual Education: Basic Programs—Programs of Developmental Bilingual Education

Closing Date: August 4, 1986.

Programmatic Information

Applications are invited for noncompeting continuation awards under the Program of Developmental Bilingual Education.

Current recipients of grants under this program that have one or more year(s) remaining of an approved multi-year project period may request continuation of their present projects.

The purpose of the awards is to establish, operate, and improve programs of developmental bilingual education.

Applicants must amend their applications to conform with the new program regulations. For example, the applicant must ensure that its project complies with the requirements of—

34 CFR 500.4 (Definitions of "Limited English proficient" and "Native language");

34 CFR 500.50–500.52 and 34 CFR 501.25 (Evaluation plan);

34 CFR 501. 11 (Capacity building plan);

34 CFR 501.20(b)(1) and (3) (Qualified personnel and parent advisory committee assurances); and

34 CFR 501.40 (Parent information).

20 U.S.C. 3223(a)(1), (2), (c), 3231, 3243)

Closing Date For Transmittal of Applications

To be assured of consideration for funding, applications for noncompeting continuation awards should be mailed or hand-delivered by August 4, 1986.

If the application is late, the Department of Education may lack sufficient time to review it with other applications for noncompeting continuations and may decline to accept it.

Applications Delivered by Mail

An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.003D, Washington, DC 20202.

Applicable Regulations

Regulations applicable to this program include the following:

(a) The Bilingual Education: Basic Programs regulations in 34 CFR Part 501, published in this issue of the **Federal Register.**

(b) The Bilingual Education: General Provisions in 34 CFR Part 500, published in this issue of the **Federal Register.**

(c) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

Intergovernmental Review

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 September 4, 1986 to the appropriate address at the beginning of this notice.

Further Information

For further information contact Mr. Terrence Sullivan, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421, Reporters Building), Washington, DC 20202. Telephone (202) 245–2609.

Program Authority: 20 U.S.C. 3221–3262.

84.003F Bilingual Education: Basic Programs—Special Alternative Instructional Programs

Closing Date: August 4, 1986.

Programmatic Information

Applications are invited for noncompeting continuation awards under the Special Alternative Instructional Program.

Current recipients of grants under this program that have one or more year(s) remaining of an approved multi-year

project period may request continuation of their present projects.

The purpose of the awards is to establish, operate, and improve special alternative instructional programs.

Applicants must amend their applications to conform with new program regulations published in this issue of the **Federal Register.** For example, in order to be eligible for support, an applicant must ensure that its project complies with the requirements of—

34 CFR 500.4 (Definitions of "Limited English proficient" and "Native language");

34 CFR 500.50–500.52 and 34 CFR 501.25 (Evaluation plan);

34 CFR 501.11 (Capacity building plan);

34 CFR 501.20(b) (1) and (3) (Qualified personnel and parent advisory commitee assurances); and

34 CFR 501.40 (Parent information).

(20 U.S.C. 3223(a) (1), (2), (c), 3231, 3243)

Closing Date for Transmittal of Applications

To be assured of consideration for funding, applications for noncompeting continuation awards should be mailed or hand-delivered by August 4, 1986.

If the application is late, the Department of Education may lack sufficient time to review it with other applications for noncompeting continuations and may decline to accept it.

Applications Delivered by Mail

An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.003F, Washington, DC 20202.

Applicable Regulations

Regulations applicable to this program include the following:

(a) The Bilingual Education: Basic Program regualtions in 34 CFR Part 501, published in this issue of the **Federal Register.**

(b) The Bilingual Education: General Provisions in 34 CFR Part 500, published in this issue of the **Federal Register.**

(c) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

Intergovernmental Review

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 September 4, 1986 to the appropriate address at the beginning of this notice.

Further Information

For further information contact Mr. Robert Trifiletti, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421, Reporters Building), Washington, DC 20202. Telephone (202) 245–2609.

Program Authority: 20 U.S.C. 3221–3262.

84.003K Bilingual Education: Family English Literacy Program

Closing Date: July 30, 1986.

Programmatic Information

Applications are invited for noncompeting continuation awards under the Family English Literacy Program.

Current recipients of grants under this program that have one or more year(s) remaining of an approved multi-year project period may request continuation of their present projects.

The purpose of the awards is to establish, operate, and improve family English literacy programs.

Applicants must amend their applications to conform with the statute and new program regulations in order to be eligible for support. These include, for example, 34 CFR 500.50–500.52, and 525.21 (Evaluation plan).

(20 U.S.C. 3243)

Closing Date for Transmittal of Applications

To be assured of consideration for funding, applications for noncompeting continuation awards should be mailed or hand-delivered by July 30, 1986.

If the application is late, the Department of Education may lack sufficient time to review it with other applications for noncompeting continuations and may decline to accept it.

Applications Delivered by Mail

An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.003K, Washington, DC 20202.

Applicable Regulations

Regulations applicable to this program include the following:

(a) The Bilingual Education: Family English Literacy Program regulations in 34 CFR Part 525, published in this issue of the **Federal Register.**

(b) The Bilingual Education: General Provision in 34 CFR Part 500, published in this issue of the **Federal Register.**

(c) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

Intergovernmental Review

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 September 2, 1986 to the appropriate address at the beginning of this notice.

Further Information

For further information contact Dr. Mary T. Mahony, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421, Reporters Building), Washington, DC 20202. Telephone (202) 447–9228.

Program Authority: 20 U.S.C. 3221–3262.

84.003S Bilingual Education: Educational Personnel Training Program

Closing Date: July 30, 1986.

Programmatic Information

Applications are invited for noncompeting continuation awards under the Educational Personnel Training Program.

Current recipients of grants under this program that have one or more year(s) remaining of an approved multi-year project period may request continuation of their present projects.

The purpose of the awards is to establish, operate, and improve training programs for educational personnel preparing to participate in, or personnel participating in, the conduct of programs for limited English proficient persons, which shall emphasize opportunities for career development, advancement, and lateral mobility, and may provide training to teachers, administrators, counselors, paraprofessionals, teacher aides, and parents.

Applicants must amend their applications to conform with the new program regulations. For example, in order to be eligible for support, an applicant must ensure that its project complies with the requirements of—

34 CFR 561.20 (Parent advisory committee); and

34 CFR 561.41 (Financial assistance).

Closing Date for Transmittal of Applications

To be assured of consideration for funding, applications for noncompeting continuation awards should be mailed or hand-delivered by July 30, 1986.

If the application is late, the Department of Education may lack sufficient time to review it with other applications for noncompeting continuations and may decline to accept it.

Applications Delivered by Mail

An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.003S, Washington, DC 20202.

Applicable Regulations

Regulations applicable to this program include the following:

(a) The Bilingual Education: Educational Personnel Training Program regulations in 34 CFR Part 561, published in this issue of the **Federal Register.**

(b) The Bilingual Education: General Provisions in 34 CFR Part 500, published in this issue of the **Federal Register.**

(c) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

Intergovernmental Review

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 September 2, 1986 to the appropriate address at the beginning of this notice.

Further Information

For further information contact Dr. Robert Kelly Acosta, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421, Reporters Building), Washington, DC 20202. Telephone (202) 245–2595.

Program Authority: 20 U.S.C. 3221–3262.

84.003W Bilingual Education: Short-Term Training Program

Closing Date: July 30, 1986.

Programmatic Information

Applications are invited for noncompeting continuation awards under the Short-Term Training Program.

Current recipients of grants under this program that have one or more year(s) remaining of an approved multi-year project period may request continuation of their present projects.

The purpose of the awards is to improve the skills of educational personnel and parents participating in programs for limited English proficient persons.

Grantees that are institutions of higher education or private nonprofit or for-profit organizations applying after consultation with one or more LEAs or an SEA must comply with the consultation requirements in 34 CFR 574.20.

Closing Date for Transmittal of Applications

To be assured of consideration for funding, applications for noncompeting continuation awards should be mailed or hand-delivered by July 30, 1986.

If the application is late, the Department of Education may lack sufficient time to review it with other applications for noncompeting continuations and may decline to accept it.

Applications Delivered by Mail

An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.003W, Washington, DC 20202.

Applicable Regulations

Regulations applicable to this program include the following:

(a) The Bilingual Education: Short-Term Training Program regulations in 34 CFR Part 574, published in this issue of the **Federal Register.**

(b) The Bilingual Education: General Provisions in 34 CFR Part 500, published in this issue of the **Federal Register.**

(c) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

Intergovernmental Review

Any State process recommendation and other comments submitted by a State single point of contact and any comments for State, areawide, regional, and local entities must be mailed or hand-delivered by September 2, 1986 to the appropriate address at the beginning of this notice.

Further Information

For further information contact Mr. Ramon Chavez, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421, Reporters Building), Washington, DC 20202. Telephone (202) 245–2595.

Program authority: 20 U.S.C. 3221–3262.

Dated: June 13, 1986.

William J. Bennett,

Secretary of Education.

[FR Doc. 86–13731 Filed 6–16–86; 8:45 am]

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federal register

Thursday
June 19, 1986

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 20 et al.

Food for Human Consumption; Final Rules and Proposed Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 20 and 110

[Docket No. 78N-0296]

Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food; Revised Current Good Manufacturing Practices

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule that revises the current good manufacturing practice (CGMP) regulations for human foods. The primary purpose of the revision is to establish new, updated, or more detailed provisions for the food industry to help ensure a safe and sanitary food supply.

DATES: This final rule will become effective on December 16, 1986; comments by August 18, 1986.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Prince G. Harrill, Center for Food Safety and Applied Nutrition (HFF-210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0097.

SUPPLEMENTARY INFORMATION:

History

In the Federal Register of June 8, 1979 (44 FR 33238), FDA published a proposal to revise the current good manufacturing practice (CGMP) regulations for the manufacturing, processing, packing, and holding of human foods, the umbrella CGMP regulations (21 CFR Part 110). FDA sought to establish new, updated, and more detailed CGMP provisions concerning food industry personnel; plants and grounds; sanitary facilities, controls, and operations; equipment and utensils; processes and controls; product coding; warehousing and distribution; recordkeeping; and natural or unavoidable defect levels. FDA designed the proposed revision of the umbrella CGMP regulations to address the problems associated with foods for which specific CGMP regulations had not been promulgated and thus better ensure the production of safe and sanitary foods. FDA provided a period of 204 days, ending on December 31, 1979, for the filing of comments on the proposed revision.

To gather information and opinions on the impact of the proposed revision, FDA also held hearings in Chicago, IL, on September 11, 1979, in San Francisco, CA, on October 3, 1979, and in Atlanta, GA, on October 24, 1979. Approximately 250 persons attended the 3 hearings. Of the roughly 50 persons who made presentations at the hearings, nearly two-thirds represented small businesses. Because FDA was particularly interested in the impact that the revised regulations would have on small businesses, the agency solicited comments from small businesses and trade associations representing small businesses. The hearings resulted in a voluminous hearing record.

In addition to the comments received at the hearings, FDA has received 132 written communications reflecting the comments of suppliers, manufacturers and processors, trade associations, operators of small businesses, consumers, and other interested persons.

Revision in Response to Comments

The comments on the 1979 proposal, including those received at the hearings, suggested revisions of practically every section of the proposed rule. In response, FDA has adopted many of these suggestions in the regulation.

The most significant revision responds to comments concerned the proposed requirements for coding and recordkeeping. The vast majority of these comments questioned the need for these requirements for segments of the food industry that contend (1) their products pose little or no risk to the public health and (2) their products, in the rare event a risk arose, could be removed from the market expeditiously and effectively without the need to comply with the costly proposed requirements. Most comments also pointed out that the cost of coding and recordkeeping would be excessive, especially to small businesses.

To evaluate more fully the validity of industry's comments concerning the cost of the proposed regulations, FDA contracted for a study of compliance costs associated with the 1979 proposal as FDA then had considered modifying the proposal in response to comments. The study was conducted by ICF, Inc., Washington, DC, and is part of the record of this proceeding. ICF concluded that total compliance costs were $81 million. The costs were primarily attributable to the proposed recordkeeping ($76 million) and coding ($4.5 million) provisions. (Costs are adjusted to represent 1985 dollars.) ICF also found that 95 percent of the large manufacturers sampled and 93 percent of the small manufacturers sampled were already coding their products sufficiently to be in compliance with the proposed regulation. The recordkeeping costs would have been high because, although all manufacturers have detailed records, few have recordkeeping systems based on lot numbers which the proposed regulation would have required.

The purpose of proposing coding and recordkeeping was to facilitate a manufacturer's recall of suspect products in case such a recall was recommended by FDA. Although such information is potentially useful in determining the production time period which is effected by a recall, thereby limiting manufacturers' risk exposure, it is not needed to protect consumers from products that have been purchased but not ingested. Furthermore, all manufacturers either currently code all their products or keep shipping records in the ordinary course of business, or do both. As these sources can provide most of the information which would have been required in the proposed rule, and all of the information needed for a recall, it is not necessary to impose other economically burdensome recordkeeping requirements. This decision will save manufacturers and consumers approximately $80.5 million annually (1985 dollars) in foregone costs, costs which would have been incurred if the regulation had gone forward as proposed in the notice of proposed rulemaking.

For consumer protection, the most effective safeguard is product, not lot, identification and swift dissemination of such information by mass media. These mechanisms will in no way be compromised by the deletion of coding and recordkeeping requirements.

In addition, the products most likely to involve risk of recall (low acid food) are already subject to coding and recordkeeping requirements.

Accordingly, because industry voluntarily codes and keeps records adequate for consumer protection, FDA has decided not to require coding or recordkeeping. FDA, after reviewing comments and the ICF study, has concluded that an industry confronted with little likelihood of recalls of products subject to the proposed rule could decide that removal of all offending products from the market in the presence of a recall would protect the public health and would be more cost effective than maintaining records and coding products. On the other hand, an industry confronted with a high frequency of recalls or with the apparent potential for infrequent, but serious

contamination of a limited quantity of product, could decide that coding and recordkeeping are essential to accomplishing a recall. Under either option, the public would be protected and industry would have the opportunity to decide which recall strategy is appropriate.

Nevertheless, FDA encourages firms to code their products and to maintain appropriate records. FDA also reserves the option to reconsider this decision if future evidence indicates the cost effectiveness of mandatory coding and recordkeeping.

Because FDA is not requiring coding or recordkeeping in the final rule, FDA will not discuss in this preamble the detailed comments received on these topics.

FDA has decided to publish a final rule instead of a tentative final rule or revised proposal. The final rule is "in character with the original scheme" (*South Terminal Corp.* v. *EPA*, 504 F.2d 646, 658 (1st Cir. 1974)) and contains changes that are "logical outgrowths" of the comments received in response to the proposal (*AFL–CIO* v. *Marshall*, 617, F.2d 636, 676 (D.C. Cir. 1979)). Thus, FDA concludes that to issue a tentative final rule or a revised proposal is not necessary because it has provided the public "a reasonable and meaningful opportunity to participate in the rulemaking process" (*McCulloch Gas Processing Corp.* v. *Department of Energy*, 650 F.2d 1216, 1221 (Em. Appl. 1981)).

Although FDA is publishing a final rule, it is providing a comment period. If FDA decides on the basis of the comments received that any changes in the final rule are necessary, it will publish those changes in the Federal Register.

Costs

The industrywide compliance costs associated with this final rule would be between $272,000 and $623,000 per year. These costs are for the installation and maintenance of temperature indicating thermometers in industries where food products or processing techniques would allow the growth of microorganisms. The agency concludes that this rule is not a "major" rule under Executive Order 12291 and that it does not impose a significant burden on small businesses. No recordkeeping or reporting requirements are associated with the final rule.

General Comments

1. Several comments suggested that the proposed umbrella CGMP regulations be withdrawn because specific legislation affecting the food industry was before Congress and may become law.

FDA believes it inappropriate to await enactment of new legislation. Of course, if new legislation is enacted, FDA will make appropriate changes in the regulations.

2. Several comments questioned whether FDA inspectors would interpret the umbrella CGMP regulations differently for different food-processing operations or industries. Some comments expressed concern that inspectors might find violations of regulations that were not applicable to a particular processor or industry. One comment offered to assist FDA in training its personnel in specific food-processing methods.

FDA has an agency review procedure to ensure that any corrective action recommended by investigators is in accordance with agency policy and that a regulation has been properly interpreted before regulatory action is taken. FDA has trained, and will continue to train, appropriate personnel to understand and interpret the umbrella CGMP regulations properly. In the past, industry has been helpful in aiding in training FDA personnel, and FDA hopes that this cooperation will continue.

3. Several comments expressed the opinion that FDA had not fairly considered the wide array of manufactured foods affected by the revised umbrella CGMP regulations.

FDA believes that the agency did consider the wide array of foods, then decided that revising the umbrella CGMP regulations is more efficient than issuing repetitive proposed and final regulations on specific food industries.

4. Many comments suggested that broad or general performance standards that allowed for innovation in achieving the desired result would be more useful to the food industry than specific mandated techniques. Several comments suggested that the umbrella CGMP regulations be rewritten as a series of suggested guidelines, and that the "shalls" be changed to "shoulds," because the regulations are intended to be a broad performance standard for the entire food industry. Other comments stated that several sections were too general and interpretation of the intent would be impossible.

FDA agrees, in part, with the comments. FDA considers the CGMP regulations to have a twofold purpose: (1) To provide guidance on how to reduce insanitary manufacturing practices and on how to protect against food becoming contaminated; and (2) to state explicit, objective requirements that enable industry to know what FDA expects when an investigator visits one of its plants. The agency has critically reviewed each provision of the regulations to determine which provisions should be mandatory and thereby carry the force and effect of law. Wherever possible FDA has structured the regulations to provide general guidance to industry for ensuring the maintenance of good sanitary practices in the manufacturing, packing, and holding of food. The agency believes that several provisions of the regulations are necessary to ensure the maintenance of good sanitary practices and, therefore, that these provisions should be made mandatory.

5. A number of comments requested that the umbrella CGMP regulations be printed in two type faces to allow industry and FDA inspectors to differentiate more easily between the "shoulds" or general guidelines, and the "shalls" or mandatory requirements.

The Office of the Federal Register is unable to accommodate this request. Therefore, the umbrella CGMP regulations are not printed in two type faces.

6. Numerous comments requested that the term "prevent contamination" be changed to "minimize contamination" or "minimize the potential for contamination" or other similar words in various parts of the regulations.

FDA agrees and has changed the wording to reflect that the regulations are designed to protect against or to minimize the contamination of food. See the response to comment 125.

7. Several comments asserted that suggestions, lists of processes, analytical tests, and other enumerated techniques make the regulations confusing because they do not encompass all the possible relevant options. These comments requested that illustrative examples be deleted from the regulations.

The use throughout the regulations of prefatory phrases such as "includes, but not limited to," "may be accomplished by," and "including" establishes that the enumerated items are not all inclusive. The use of a suggested technique is not required. For these reasons, FDA is retaining in the final rule most of the lists of examples.

8. Several comments suggested that the regulations place greater emphasis on Federal and State agency coordination to help achieve more uniform guidelines and requirements for the food industry. One comment expressed concern that FDA did not expand the preliminary draft review procedures to include State food control agencies.

FDA agrees that interagency coordination is important in the development of CGMP regulations for any regulated commodity. Prior to publishing this final rule, FDA submitted preliminary drafts for review and comment to the Department of Agriculture and the Department of Commerce. FDA included recommendations from these agencies in the proposal. However, FDA did not submit a preliminary draft of the final rule to State food regulatory agencies because 21 CFR 20.81 provides that if a preliminary draft of a regulation is made available to persons outside of Federal agencies, it must then be made available to all interested persons. FDA believes that the comment period for the proposal was sufficient for all interested persons to submit their comments and suggested changes to the agency. FDA has made many changes in the final rule based on the comments submitted by industry, consumers, regulatory agencies at all levels of government, and other interested persons.

9. Several comments from the shellfish industry, including trade associations and other interested persons, stated that the proposed umbrella CGMP regulations would have a severe economic impact on the shellfish industry and, because of this impact, any action to promulgate the regulations without an economic analysis of the effect of such regulations on the shellfish industry, prepared jointly by the Department of Health and Human Services and Department of Commerce, would violate the intent of the Coastal Zone Management Act. This statute provides that:

> At least 60 days prior to the promulgation of any regulations concerning the National Shellfish Safety Program, the Secretary of Health and Human Services, in consultation with the Secretary of Commerce, shall publish an analysis (1) of the economic impact of such regulations on the domestic shellfish industry, and (2) the cost of such national shellfish safety program relative to the benefits that it is expected to achieve.

FDA disagrees with the contentions in the comments. The quoted provision is concerned with regulations specifically concerning the National Shellfish Safety Program (NSSP). Neither the statutory language nor its legislative history evinces any intent to require additional scrutiny of regulations of broader impact that do not concern NSSP or otherwise single out the shellfish industry. In any event, FDA's economic analysis of the regulations' effect on the food industry, including the shellfish industry, shows that industrywide the compliance costs are between $272,000 and $623,000 per year. A copy of FDA's analysis is on file in the administrative record of this proceeding.

10. Several comments requested that the CGMP regulations for cacao products and confectionery (21 CFR Part 118), which FDA proposed to revoke on September 7, 1979 (44 FR 52257), be retained because they satisfactorily set forth all the necessary elements for the sanitary manufacture and distribution of confectionery and chocolate products. One comment suggested that FDA incorporate into the umbrella CGMP regulations some of the unique features found in Part 118.

FDA proposed revocation of Part 118 because many of the requirements of Part 118 were incorporated in the proposal to amend Part 110, the umbrella CGMP. Elsewhere in this issue of the **Federal Register**, the agency is revoking the CGMP regulations for cacao products and confectionery, proposing to revoke CGMP regulations for frozen raw breaded shrimp, as well as withdrawing the proposed CGMP regulations for bakery foods and for peanuts and tree nuts.

11. Several comments requested clarification of whether the umbrella CGMP regulations will be applicable to the retail food store industry.

FDA does not interpret the umbrella CGMP regulations as applicable to retail food establishments. Although FDA's regulatory authority extends to food held for sale after shipment in interstate commerce, the agency has concentrated its regulatory efforts on ensuring the safety and sanitation of food up to the point when it reaches the retailer. In the **Federal Register** of July 23, 1982 (47 FR 31964), FDA announced the availability of a model retail food store sanitation code intended for adoption by State and local governments. The model code provides uniform food protection requirements for the operation of retail food stores.

Definitions

12. A number of comments on proposed § 110.3 suggested that definitions for microorganisms, rapid growth, ingredients, initial distribution, contamination, lot number, packaging lot, confectionery, process, processes, control, raw materials, raw food, and packaging lot be added to the definition section. Several comments suggested that raw materials be differentiated from ingredients. Some comments stated that the umbrella CGMP regulations should be concerned only with microorganisms of known adverse public health significance.

FDA believes that most of the terms are commonly understood. The term "microorganisms," however, seems to be misunderstood. Accordingly, FDA has added to the final rule § 110.3(i) which defines microorganisms as including yeasts, molds, bacteria, and viruses. The paragraph also defines the term "undesirable" microorganisms to be not just those that are of public health significance but also those that subject food to decomposition, that indicate that food is contaminated with filth, or that otherwise may cause food to be adulterated within the meaning of the act. The regulations are designed to prevent the growth of undesirable microoganisms. The scope of the definition is not limited to microorganisms of public health significance because these regulations are also concerned with sanitation, decomposition, and filth.

Regarding the second point, it is not possible to categorically distinguish between raw materials and other ingredients because raw materials are ingredients, and both raw materials and ingredients are food within the meaning of the Federal Food, Drug, and Cosmetic Act (the act). To stress this fact, FDA has added a definition for "food" to the regulations. The definition provides, correctly, that "food" includes raw materials and other ingredients. For emphasis and clarity, however, FDA often in the preamble and the final rule refers to "raw materials" or to "ingredients" as appropriate.

FDA also has added a new definition for "pest" (§ 110.3(j)). This definition eliminates any confusion as to the scope of the regulations that may have been caused by the agency's use of such terms as vermin, rodents, insects, etc.

Also, on its own initiative, FDA has modified the definition of "food-contact surfaces" in § 110.3(g). The definition now provides that food-contact surfaces also include utensils and food-contact surfaces of equipment.

13. Several comments suggested that, for clarity and comprehensiveness, the definition in proposed § 110.3(a) on acid foods or acidified foods be made the same as the definitions in the acidified foods CGMP regulations (21 CFR 114.3 (a) and (b)).

The proposed definition for "acid foods or acidified foods" is adequate for these regulations. The more comprehensive definition of acidified foods in 21 CFR Part 114 is necessary to inform processors of the scope of those regulations. The term proposed for the umbrella CGMP regulations is more general because it covers current good manufacturing practice for all foods. Therefore, FDA is making no change in the final rule.

14. One comment suggested that the definition should include only foods with an equilibrium pH of 4.5 or below instead of the 4.6 proposed. No reason was given for the suggested change. The acidified foods CGMP regulations (21 CFR Part 114) defines acid foods and acidified foods as those having a pH of 4.6 or below. This definition has been satisfactory to the agency and industry alike. Therefore, because the comment offered no reason for the suggested change to a pH of 4.5, FDA is making no change in the final rule.

15. Several comments considered the definition of "adequate" in proposed § 110.3(b) to be vague. Two comments were concerned that processors could be subject to inequitable interpretations, depending on the FDA investigator conducting the inspection. Two comments suggested that the definition be changed to "that which is needed to accomplish the intended purpose set forth in the guidelines of this part" instead of "* * * the intended purpose in keeping with good public health practices" as proposed.

The agency recognizes the need for consistency in its inspection programs. Accordingly, FDA thoroughly trains its investigators on how to conduct an inspection and how to interpret and apply the regulations. To further ensure that actions taken by FDA are consistent nationwide, FDA District Offices submit proposed regulatory actions to FDA Headquarters for review and concurrence before regulatory action may be taken. Inconsistent interpretations of the definition of "adequate" are not likely to occur.

FDA does not agree with the suggested change in wording. Although 21 CFR Part 110 contains advisory information, it also specifies requirements that must be met to produce safe and wholesome food and, therefore, is not a guideline. For these reasons, FDA has not made the requested change in the final rule.

16. Several comments requested that batter for bakery items be added to the definition in proposed § 110.3(c).

FDA agrees and has changed the definition accordingly.

17. A number of comments requested that the definition for blanching be amended in proposed § 110.3(d) to permit blanching by dry heat. It also was noted that blanching is used for purposes other than the inactivation of enzymes.

FDA agrees and has changed the definition accordingly.

18. One comment pointed out that proposed § 110.3(d) is inconsistent with the word usage under 21 CFR 164.110(e)(2) concerning the blanching of peanuts.

FDA agrees and has excluded tree nuts and peanuts from this definition in the final rule.

19. A number of comments suggested that the term "corrosion-free" in proposed § 110.3(e) be defined as "corrosion-resistant" or "free of visible rust or scale build-up."

FDA agrees that "corrosion-resistant" is the more appropriate term. FDA believes, however, that as now worded, the term is self explanatory. Accordingly, FDA has deleted the definition from the final rule.

20. One comment suggested that "critical control point" in proposed § 110.3(f) should not be used in the umbrella CGMP regulations because it has a specific definition in training schools and textbooks, in connection with canned foods. The comment also mentioned that the definition used in the umbrella CGMP is slightly different from that given by FDA officials in public statements.

The critical control point concept is significant for all food, not just canned foods. The agency agrees, however, that the definition proposed should more closely reflect FDA's previous use of the terminology. FDA has revised § 110.3(e) of the final rule accordingly.

21. One comment suggested that the applicability of "food-contact surfaces" in proposed § 110.3(g) be restricted to human foods.

The title of the regulations makes it clear that the regulations apply only to "human" foods. FDA has clarified the definition in the final rule so that, in any event, there should be no misunderstanding concerning its scope.

22. Several comments suggested that the size, type, and style of product should not be included in the definition of "lot" in proposed § 110.3(h). Many of these comments recommended that the definitions of lot in 21 CFR 113.3(m) and 114.3(c) would be more appropriate in this regulation. A number of comments expressed the opinion that the responsibility for determining lot size should be with the manufacturer. The size of a lot varies greatly in the food industry and the purpose of any given lot size is to allow segregation of products into identifiable lots that can be effectively recalled from the market. Comments also suggested that lot size should not be limited to a day's production. Other comments suggested that a lot size should be the production of 3 days or a week or more.

FDA agrees that the manufacturer has the primary responsibility for determining the size of a lot. However, FDA also is responsible to oversee the conduct of recalls and, as the comments recognized, a purpose of designating a lot is to facilitate recalls of a product. In that context, FDA believes that a manageable lot size is advantageous to the manufacturer and the agency. FDA has structured the regulations accordingly. FDA agrees that the definition of lot should be more consistent with FDA practice, and is adopting in this final rule a definition of "lot" that is compatible with that found in 21 CFR Parts 113 and 114.

23. Several comments on proposed § 110.3(h) suggested changing the term "lot" to "consignment" or "batch" in order to be consistent with the terminology in their particular industries.

FDA understands that the term "lot" is most widely used by the food industry, and, therefore, has not incorporated the suggested changes in the final rule.

24. Several comments said that the definition of "plant" in proposed § 110.3(i) (§ 110.3(k) of the final rule) is too broad. The comments pointed out that it would cover all food storage and display facilities of warehouses and retail stores as well as processing facilities, even though in these facilities foods are received in prepackaged form and there may be little or no possibility of contamination of food.

The definition of plant in proposed § 110.3(i) is broad, intentionally. The comments are correct that the definition extends to facilities where there is the possibility of contamination of food and, therefore, applies to facilities where even foods in prepackaged form are received.

Although the definition could apply to retail establishments, FDA does not so interpret the provision.

25. A number of comments on proposed § 110.3(j) "quality control operation" (§ 110.3(l) of the final rule) asserted that it is impossible to ensure that finished food is "free" from adulteration. They pointed out that the purpose of a quality control operation is to minimize contamination in the manufacturing process to the greatest extent possible to reduce the possibility of adulteration in the finished food. One comment requested that the word "ensure" be changed to read "insure that the food is safe and wholesome."

FDA believes that the primary purpose of a quality control operation is to provide a systematic procedure for taking all actions necessary to prevent food from being adulterated within the meaning of the act. FDA has revised the definition to clarify this point. See also the agency's response to comment 125.

26. One comment asked whether the definition of quality control reflects recognition of the variety of tests and control procedures that may be used for manufacturing and marketing purposes.

FDA advises that, as discussed above, for the purpose of these regulations, the definition of a quality control operation is limited to actions necessary to prevent food from being adulterated within the meaning of the act. The agency encourages manufacturers to expand these quality control operations to incorporate other procedures to ensure that the quality attributes of the food are maintained throughout production and storage.

27. Another comment suggested replacing the term "quality control operation" with "sanitation control operation" to emphasize that safety measures are a sanitation function.

FDA agrees that an adequate quality control operation carries with it many sanitation responsibilities. However, the agency does not agree that the phrase "sanitation operation" is an appropriate replacement for the proposed phrase "quality control operation." The umbrella CGMP regulations apply to both insanitary production conditions and other practices that might cause food to be adulterated.

28. Several comments on proposed § 110.3(k) "rework" (§ 110.3(m) of the final rule) requested that the definition allow the use of food that can be considered safe and wholesome only after proper treatment or reprocessing.

FDA points out that food that is adulterated because it contains undesirable microorganisms often cannot be successfully reconditioned but agrees that where food has been satisfactorily reconditioned it can be included in the term "rework." FDA has changed the definition accordingly.

29. One comment on proposed § 110.3(k) stated that the definition for rework is vague and asked for clarification of the point at which food would be removed for "rework."

FDA is rephrasing the definition to make clear what is included. However, it would be inappropriate to state the point at which food is to be removed to become "rework." Various manufacturers have different needs concerning "rework," and manufacturers should have the flexibility to use the term in a manner consistent with accepted usage for given operations.

30. One comment on proposed § 110.3(l) "safe-moisture level" (§ 110.3(n) of the final rule) recommended deleting the definition. The comment argued that for purposes of microbial control the concept of "water activity" (a_w) best reflects the microbial availability of water in a food system and therefore should be the criterion upon which to estimate microbial stability.

FDA disagrees. The definition of "safe-moisture level" is necessary to properly interpret a_w as used in § 110.80(b)(14) because different a_w's are required to attain a safe moisture level in different foods.

31. Several comments on proposed § 110.3(l) suggested enlarging the definition of safe moisture level to include the level of moisture necessary to prevent the growth of undesirable microorganisms "under the intended condition of processing, storage, and distribution." These comments argue that this change, plus a new definition for "microorganisms," would aid manufacturers in setting appropriate levels.

FDA agrees and has changed the definition to include the level of moisture.

32. Some comments on proposed § 110.3(1) suggested that a particular a_w be considered adequate if data exist in the literature or in company files showing that the a_w is safe for a particular food, rather than requiring the manufacturer to provide such data.

FDA agrees and is replacing the word "provided" with "available" in the final rule.

33. One comment on proposed § 110.3(l) stated: "This definition should be specified, i.e. 'semi-moist' or 'intermediate moisture' type foods. This designation would clarify the difference between foods with naturally high moisture contents and those with lowered (a_w's) that have been designed for that purpose."

FDA does not agree that the designations are necessary in this regulation. Identification of points like "semi-moist" or "intermediate moisture" along a gradient from a "natural" or "normal" moisture level to the safe moisture level is unnecessary in a document that is intended to specify the point at or below which microorganisms will not grow. Therefore, FDA has not changed the final rule in this regard.

34. Several comments on proposed § 110.3(m) "sanitize" (§ 110.3(o) of the final rule) requested that the definition be revised to refer to effective means of reducing the number of microorganisms because there is no method available to demonstrate absolute destruction of microorganisms.

FDA advises that the definition of "sanitize" relates to a process that is effective in destroying or reducing the number of microorganisms. The definition does not purport to include the total destruction of microorganisms. Therefore, FDA has made no change in the final rule.

35. One comment on proposed § 110.3(m) suggested that because "The GMPs repeatedly distinguished non-food contact surfaces (see, for example, §§ 110.35(c)(3) and 110.40(a)), it is appropriate that the definition of 'sanitize' contain the inclusive term 'food contact surfaces.' "

FDA agrees and has changed the definition accordingly.

36. One comment on the meaning of proposed § 110.3(n) (§ 110.3(p) of the final rule) suggested that, in the definition of "shall," the term "mandatory requirements" be changed to "food safety requirements."

The umbrella CGMP regulations pertain to more than food safety. For example, the regulations are also concerned with contamination by filth or decomposition which may or may not raise safety concerns. Therefore, FDA has not changed the final rule.

Current Good Manufacturing Practice

37. Some comments on proposed § 110.5 suggested deleting the reference to section 402(a)(3) of the act which provides that a food is adulterated if it has been manufactured under such conditions that it is unfit for food. One comment stated that a food may be unfit due to many things, including changes in texture, flavor, etc., and still not be adulterated.

The comments reflect a misunderstanding of the meaning of proposed § 110.5. Section 402(a)(3) of the act states that a food is adulterated "if it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for food; * * *". FDA agrees with the comment that a product is not unfit for food because it fails to meet the flavor or texture standards of the manufacturer. Other aspects of the food, however, e.g., contamination with pests, might render it unfit within the meaning of section 402(a)(3) of the act. FDA, therefore, has not changed the final rule.

38. Two comments on proposed § 110.5(b) read this paragraph to provide that the umbrella CGMP regulations are intended solely to prevent and control communicable diseases. A related comment suggested that the reference to the prevention and control of communicable diseases be combined with § 110.5(a) to include the concept of complying with section 361 of the Public Health Service Act, as well as avoiding adulteration within the meaning of section 402(a) (3) and (4) of the act.

FDA believes that the first set of comments have misinterpreted this section. The umbrella CGMP regulations are not designed solely to prevent and control communicable diseases, but are also designed to prevent food adulteration within the meaning of the act. Accordingly, the regulations apply to food that may be harmful as well as to food that may be contaminated, in whole or in part, with filth. As suggested by the one comment, the portion of § 110.5(b) concerning section 361 of the Public Health Service Act has been reworded and is a part of § 110.5(a) in the final rule.

Personnel

39. Several comments on proposed § 110.10(a) "disease control" objected to the proposed requirement that a person affected by disease in a communicable form, or while a carrier of such disease, or while affected with boils, sores, infected wounds, or any other abnormal source of microbial contamination be excluded from working in a food plant in any capacity in which there is a reasonable possibility of food or food ingredients becoming contaminated or of disease being transmitted by that person to other individuals. Two comments stated that compliance with the proposed requirement is essentially impossible because a disease may be present in its communicable stage before symptoms are discernible to plant management. One comment noted that this requirement would prevent individuals having mild communicable diseases, such as upper respiratory tract infections, from working in an area such as the boiler room due to the possibility of transmitting this infection to a fellow worker in this same nonfood handling environment. The comment requested that the scope of the requirement be limited to food-borne transmission. Another comment described the "virtual inability of plant management personnel to detect workers with sores or boils covered by clothing * * *."

FDA agrees that the provision should be clarified. The goals of the proposed requirement are met and the concerns expressed in the comments alleviated by changing the final rule to read as follows: "Any person who, by medical examination or supervisory observation, is shown to have, or appears to have, an illness, open lesion, including boils, sores, or infected wounds, or any other abnormal source of microbial contamination by which there is a reasonable possibility of food, food-contact surfaces, or food-packaging materials becoming contaminated, shall be excluded from any operations which may be expected to result in such contamination until this condition is corrected. Personnel shall be instructed to report such health conditions to their supervisors." This wording does not mandate that medical examinations be performed in order to comply with the requirements of § 110.10(a).

40. A number of comments on proposed § 110.10(b) "cleanliness" stated that the term "proper outer garments" is vague and should be deleted or clarified. Another comment suggested that the words "clean and" be added after the word "wearing."

In response to the comments, FDA is changing § 110.10(b)(1) to read as follows: "Wearing outer garments suitable to the operation in a manner that protects against the contamination of food, food-contact surfaces, or food-packaging materials."

41. Two comments on proposed § 110.10(b)(2) suggested either deleting the phrase "a high degree of" in the proposed statement, or replacing it with "adequate."

FDA agrees and has changed the provision accordingly.

42. One comment on proposed § 110.10(b)(3) suggested revising it to require that hands be washed thoroughly to prevent contamination by "unsafe" microorganisms, not "undesirable" microorganisms as proposed. The comment related this proposed change to other comments urging that FDA be concerned only with microorganisms that are "present at a level sufficient to be of recognized adverse public health significance." The comment asserted that "* * * relatively harmless microorganisms which may cause spoilage but not a health risk should not require the same action."

Because these regulations are based on section 402(a) (3) and (4) of the act, as discussed above, the agency has not limited the application of the regulations only to microorganisms that may be injurious to health. A food may be adulterated under the act if it contains any filthy substance or if it has been prepared, packed, or held under conditions where it may have become contaminated with filth. Accordingly, the word "undesirable" is more consistent with legal requirements than the word "unsafe." Therefore, FDA has not revised § 110.10(b)(3) as requested.

43. One comment addressing proposed § 110.10(b)(4) suggested that jewelry be removed when employees are in food-handling areas where such jewelry "could fall into production handling equipment or empty product containers * * *."

FDA agrees with this comment and also believes that the requirement should be expanded to include other objects that could fall into equipment or containers. FDA has made appropriate changes in the final rule.

44. One comment favored a prohibition on all jewelry in food-handling areas, while another comment requested that the phrase "or cover with a sanitary glove" be added to accommodate hand jewelry which could not be adequately sanitized.

FDA recognizes that some hand jewelry may not be readily removed, but can be prevented from becoming a source of contamination by sanitizing or by the use of a sanitary covering, such as a clean, sanitized, nonporous glove. Therefore, it is not necessary to prohibit all jewelry in food-handling areas when such items can be prevented from being a source of contamination. FDA agrees that provision should be made for effective covering of hand jewelry and has changed § 110.10(b)(4) of the final rule to that effect.

45. Some comments on proposed § 110.10(b)(6) requested that the paragraph be reworded to eliminate specific examples of hair restraints, such as caps, which these comments did not believe to be effective hair restraints. Several comments stated that some manufacturers maintain restrictive standards and do not allow employees to wear beards or mustaches while working in the plant. These comments suggested that a "broad performance standard" be adopted to allow for the differing policies of various manufacturers. Other comments requested that the final regulation be changed to exempt individuals employed in plant operations where there is no reasonable possibility of their hair contaminating either the food or food-contact surfaces.

It is the manufacturer's obligation to see that effective measures are taken to prevent the adulteration of food. When a manufacturer believes that the use of a particular hair restraint, such as a cap, is ineffective under the conditions of a particular operation, or that the wearing of beards or mustaches will adversely affect the integrity of the food manufactured at that specific installation, the manufacturer must adopt suitable controls. The requirement in no way restricts management from taking appropriate, positive action. The requirement does recognize, however, that in some food-manufacturing operations use of the enumerated hair restraints is an effective means of protecting against contamination of the food. Section 110.10(b) of the final rule requires hair restraints only where a reasonable possibility of contamination

from hair exists. In light of the apparent potential for misinterpretation of the scope of these requirements, FDA has changed § 110.10(b)(6) in the final rule so that this item in the list of methods of maintaining cleanliness reads as follows: "Wearing, where appropriate, in an effective manner, hair nets, headbands, caps, beard covers, or other effective hair restraints."

46. A number of comments addressing § 110.10(b)(7) suggested that the wording of the requirement prohibiting the storage of clothing or other personal belongings in areas where food is exposed, or in areas used for washing equipment or utensils, be changed to a positive instruction. These comments also suggested that plant management be required to designate areas for the storage of personal belongings.

FDA agrees and has changed § 110.10(b)(7) in the final rule so that this item in the list of methods for maintaining cleanliness reads as follows: "Storing clothing or other personal belongings in areas other than where food is exposed or where equipment or utensils are washed." FDA believes that the comments' request for the language stating that the storage areas for belongings be only those designated by plant management is not sufficiently specific, and therefore FDA has made no change in the final rule in this regard.

47. A number of comments on proposed § 110.10(b)(8) requested that the prohibition against the consumption of food and beverages and the use of tobacco in areas where food is exposed, or in areas for washing equipment or utensils, be changed to a more positive directive, and that these activities be limited to designated areas. Two comments were concerned that chewing gum be among these restricted activities.

FDA has changed § 110.10(b)(8) in the final rule in response to these comments. Also, chewing gum in areas where food is exposed now is a restricted activity.

48. One comment suggested that language be added to § 110.10(b)(8) to clarify that taste testing is allowed in certain areas, to ensure production of a palatable and acceptable product.

FDA recognizes that certain industries use taste testing as a routine quality control operation to ensure that certain textural and flavor characteristics are present in the food. Section 110.10(b)(8) does not prohibit taste testing provided it does not cause food to be adulterated within the meaning of the act. Accordingly, no change in this provision is needed.

49. Two comments on proposed § 110.10(c) "education and training" requested that personnel responsible for identifying sanitation failures or food contamination be required to have a background of education or experience and that food handlers and supervisors be required to have appropriate training in the principles of food sanitation.

The agency believes that the provisions of this section, if properly applied, are sufficient to maintain our supply of clean and safe food. More education of food handlers is always desirable, but is not always necessary.

50. A number of comments on proposed § 110.10(d) "supervision" requested that the proposed mandatory requirement that competent supervisory personnel be assigned the responsibility for assuring compliance by all personnel with the requirements of these regulations be changed to an advisory statement. Other comments noted that experienced educators and supervisors within the plants need to be competent sanitarians as well.

The agency does not agree that paragraph (d) should be merely advisory. For plant personnel to comply with the requirements for current good manufacturing practice, they must be instructed and supervised by adequately informed plant personnel. Although FDA cannot require that supervisors be trained sanitarians, even though that training is desirable, there is little chance of compliance with the many requirements of these regulations without the clear designation of responsibility for these supervisory functions to qualified persons. Therefore, FDA has made no change in the final rule.

Exclusions and Exemptions

51. Several comments on proposed § 110.19 "exclusions" objected to excluding any operation from coverage under these regulations because consumers deserve the same protection from "raw agricultural commodities" as that expected from food-processing establishments. One comment asked whether the holding or transportation of shell oysters before further processing is an excluded category.

FDA advises that because these regulations are concerned specifically with the manufacturing, packing, and holding of foods it is not reasonable to apply them to raw agricultural commodities. Accordingly, raw agricultural commodities, as defined by section 201(r) of the act (21 U.S.C. 321(r)), will continue to be regulated simply under the adulteration provisions of the act (section 402) and not under these regulations. FDA further advises that oyster shell stock prior to receipt at a processing plant is similarly excluded from the umbrella CGMP regulations and is regulated under the adulteration provisions of the act.

52. Comments from representatives of specific industries or manufacturers sought exemption of their particular operations. For example, the bakers' association challenged the necessity for good manufacturing practice regulations for their industry in light of the allegedly low health risks associated with bakery foods and the cost of implementing the regulations. Similarly, the molluscan shellfish industry argued that the safety and quality of shellfish are adequately controlled under the National Shellfish Sanitation Program, enforced by State control agencies. The shellfish industry generally urged an exemption for it or alternatively, the addition of a grandfather clause that would allow processors who are producing safe shellfish to continue their present methods of operation.

Likewise, the wine and beer industries emphasized that because they are under the jurisdiction of the Department of the Treasury's Bureau of Alcohol, Tobacco and Firearms they should not be required to comply with FDA's umbrella CGMP regulations. The wine industry added that its voluntary sanitation program provides adequate protection. Soft drink bottlers and their trade associations argued for exemption from the coding and recordkeeping regulations on the grounds that their present methods allow for prompt product recall. Similar arguments were put forth by bakers and other producers of products subject to frequent delivering and frequent removal of outdated merchandise. Ice producers and salt producers also asked for exemption on the ground that their products are less subject to contamination affecting health. Similarly, the dairy industry sought exemption on the ground that sufficient controls already exist to protect the public from unhealthful dairy products. Honey producers also claimed their products are unlikely to be contaminated and, therefore, the proposed regulations should not apply to the honey industry.

FDA is not granting any blanket exemptions as requested by these comments because it believes that the regulations as modified establish reasonable sanitation and health standards for the food industry generally, including those that requested exemptions. Each industry that commented is involved in food manufacturing and, therefore, is subject to the adulteration provisions of the act, as well as to the provisions of the final

rule. This is true even of the wine and beer industries. *CF. Brown-Foreman Distillers Corp.* v. *F. David Mathews, Secretary of Health, Education, and Welfare,* 435 F. Supp. 5, 6 fn. 2 (W.D. Ky. 1976). Most requests for exemption pertained to the proposed coding and recordkeeping requirements, which the agency has decided not to require.

Plants and Grounds

53. Two comments on proposed § 110.20(a) "grounds" suggested deletion of the sentence "The methods for adequate maintenance of grounds include, but are not limited to:" and subparagraphs (1), (2), and (3) that followed on storing equipment, maintaining roads, draining areas, and related practices, intended to protect against the contamination of food. The comments asserted that the word "shall," which introduces the "grounds" requirement, is incompatible with the language "but are not limited to," which follows. The comments also contended that the phrase "but are not limited to" would open numerous conditions to interpretation.

FDA disagrees. The examples cited describe some ways that a manufacturer can protect food from contamination. Obviously there are many other things that a manufacturer can do, but it is not possible to list all of these. The phrase "but are not limited to" merely points out that the examples cited are not all inclusive. The agency sees no conflict between the mandatory "shall" and the phrase "but are not limited to." Therefore, FDA has not changed the final rule in this respect.

54. One comment on proposed § 110.20(a)(2) requested clarification of the paragraph pertaining to "the maintenance of roads, yards and parking lots * * *." The comment specifically asked whether the plant and grounds areas must be paved and to what extent dust constitutes a source of contamination.

The manufacturer is responsible for the adequate maintenance of roads, yards, and parking lots to ensure that the finished food product is clean, safe, wholesome, and, among other things, free from undesirable microorganisms. Whether to pave the area surrounding the plant is the manufacturer's prerogative. The extent to which dust may constitute a source of contamination depends upon many factors (e.g., plant location and the particular food). FDA considers, therefore, that paving parking lots to prevent dust from being a source of contamination under certain circumstances is consistent with current good manufacturing practice. Therefore, FDA has not changed the final rule.

55. Two comments on proposed § 110.20 suggested adding a provision for waste treatment or disposal because it is an important part of plant maintenance.

FDA agrees and has added to the final rule new § 110.20(a)(4) which provides: "Operating systems for waste treatment and disposal in an adequate manner so that they do not constitute a source of contamination in areas where food is exposed."

56. One comment on proposed § 110.20(b) "plant construction and design" suggested that the proposed sentence, "Plant buildings and structures shall be suitable in size, construction, and design to facilitate maintenance and sanitary operations for food-processing purposes," be deleted. Another comment on this provision urged that the "shall" be changed to "should."

FDA disagrees. FDA believes the sentence is not only appropriate, but also instructive. The comment provided no information to alter FDA's belief that the design of a plant in which food is manufactured must facilitate maintenance and sanitary operations. Therefore, FDA has not accepted the suggested change.

57. Several comments on proposed § 110.20(b)(2) interpreted this paragraph to require a separation by location of the various operations enumerated in paragraph (b)(2) (i) through (vii) (receiving, raw material storage, etc.). The comments stated that to create additional partitions would add to sanitation hazards (by catching dirt and dust and by providing harborage for pests). Other comments suggested deletion of the list of the various operations.

Several comments expressed concern that misinterpretation of this paragraph could result in burdensome and unnecessary demands upon food manufacturers. For instance, comments noted that an inspector could construe each of the illustrated operations as mandatory. The comments stated that the language in the proposed provision, "The potential for contamination may be reduced by any effective means including the separation by location, partition, air * * * or other effective means" was ambiguous in that it could be read either of two ways: "(1) as using the separation of operations merely as an example or illustration, or (2) as saying that any such effective means must include such separation." One of the comments contained a proposed amendment to correct any possible misunderstanding: "The potential for contamination may be reduced by adequate food safety controls and operating practices or effective design including the separation by location or time, or partition, or air flow, or enclosed systems, or other effective means * * *."

FDA agrees with the comments and has adopted the suggestion in revised form in the final rule.

58. One comment on proposed § 110.20(b)(3) requested exempting wine fermentation processes from the requirements of paragraph (b)(3) (i) and (iv). The comment stated that all new wine fermenters are closed, but that some members of the industry still use open fermenters. A requirement that they be covered or replaced would create a genuine hardship for many of the smaller wineries. Further, the comment stated that wine subsequently undergoes a number of processes such as racking, filtration, and centrifugation, prior to its bottling. Therefore, any foreign material which might have entered the product during fermentation would be removed. This and another comment stated that it is not always necessary to skim fermentation vats and suggested changing "frequently" to "where appropriate."

This paragraph of the regulations requires that manufacturers take proper precautions for protecting products in outdoor bulk fermentation vessels. The paragraph does not require that any specific practice be followed. Rather, the paragraph merely suggests what practices may be appropriate, i.e., using protective coverings; controlling areas over and around the vessels to eliminate harborages for pests; checking on a regular basis for pests and pest infestation; and skimming the fermentation vessels, as necessary. Therefore, it is unnecessary to exclude the wine industry in the final rule. FDA agrees that it is not always necessary to skim fermentation vats and is replacing "frequently" with "as necessary" in the final rule.

59. One comment on proposed § 110.20(b)(4) interpreted this paragraph to require that establishments "essentially hose down areas" to clean them, and objected that water is not compatible with the processing of salt.

The comment construed the provision too narrowly. FDA considers acceptable any adequate means of cleaning and, therefore, has not changed the final rule.

60. One comment described proposed § 110.20(b)(4) as vague. Others requested modifying this paragraph to read in part: "aisles or working spaces between equipment and walls shall be

adequately unobstructed and of adequate width to permit employees to perform their duties and to minimize the potential for contamination of food or food-contact surfaces with clothing or personal contact."

FDA agrees, in principle, and has changed the final rule accordingly.

61. One comment on proposed § 110.20(b)(6) suggested that the reference to "steam" as a "noxious fume or vapor" is contrary to the traditional use of steam in food processing.

FDA agrees and has changed the final rule.

62. One comment on proposed § 110.20(b)(6) suggested changing this paragraph to state that fans and other air-blowing equipment shall be located and operated in a manner that "minimizes the potential to cause contamination of raw materials, work-in-process, rework, finished foods, food-packaging materials, and food-contact surfaces."

FDA agrees and has changed the final rule accordingly.

63. Several comments on proposed § 110.20(b)(7) suggested that "adequate" be substituted for "effective" screening against pests because "adequate" is defined in § 110.3(b), and because it would be consistent with other parts of the regulation.

FDA agrees and has changed the final rule accordingly.

Sanitary Operations

64. One comment on proposed § 110.35(a) "general maintenance" suggested that the requirement that the buildings, fixtures, and other physical facilities be kept "in good repair" should be eliminated because the quoted phrase may be subject to a variety of interpretations. The comment suggested that a statement requiring that these items be kept in a sanitary condition would be sufficient.

FDA agrees and has changed the first sentence of the final rule to read as follows: "Buildings, fixtures, and other physical facilities of the plant shall be maintained in a sanitary condition and shall be kept in repair sufficient to prevent food from becoming adulterated within the meaning of the act."

65. One comment on proposed § 110.35(a) (§ 110.35(b) of the final rule) suggested the deletion of the requirements dealing with (1) the microbial quality, the safety, and the efficacy of cleaning and sanitizing chemicals; (2) the storage of toxic materials in the plant; and (3) the prevention of contamination of food and food-packaging material from the use and storage of cleaning compounds, sanitizing agents, and pesticide chemicals. The comment reasoned that the proposed requirement that all applicable regulations of the Environmental Protection Agency (EPA) be followed "basically encompassed" the requirements enumerated in the proposed regulation.

FDA cannot compel manufacturers to comply with requirements that FDA cannot enforce. FDA is changing the sentence regarding EPA regulations from mandatory compliance to advisory compliance with all regulations promulgated by Federal, State, and local government agencies other than FDA, provided of course that the regulations are applicable to the umbrella CGMP regulations. However, FDA is retaining the specifically mentioned subjects of concern in the final rule, because failure to comply with these requirements may adversely affect the safety and wholesomeness of food.

66. Several comments on proposed § 110.35(a) concerned the sentence which read: "Detergents, sanitizers and other supplies employed in cleaning and sanitizing procedures shall be free of significant microbiological contamination and shall be safe and effective for their intended uses." One comment suggested that it is impractical to test detergents for contamination with microbial contamination. Another comment argued that users should be able to rely on the claims or warranties of the manufacturers of these products to satisfy the requirements of the regulations.

FDA is aware that many businesses do not have the resources to verify, through in-house testing procedures, that the cleaning and sanitizing chemicals they employ are of acceptable microbial quality and are safe and adequate for their intended use. For this reason, FDA is adding to § 110.35(b)(1) of the final rule a sentence allowing compliance with the requirement to be verified by any effective means, including purchase under a supplier's guarantee or certification, or examination of these materials for contamination.

67. Two comments on proposed § 110.35(a) suggested that the term "effective" be changed to "adequate." One comment argued that this change is appropriate because an absolute absence of contamination may be unattainable. The comment added that it is important to require that every necessary effort be made to minimize contamination.

FDA agrees and has changed § 110.35(b)(1) of the final rule accordingly.

68. A number of comments on proposed § 110.35(a) noted that the term "plant" could be misinterpreted to include warehouses and distribution centers.

FDA agrees and has modified the last sentence in § 110.35(b)(1) in the final rule to read as follows: "Only the following toxic materials that are required to maintain sanitary conditions may be used or stored in a plant where food is processed or exposed: (i) Those required to maintain clean and sanitary conditions; (ii) Those necessary for use in laboratory testing procedures; (iii) Those necessary for plant and equipment maintenance and operation; and (iv) those necessary for use in manufacturing operations." FDA advises that requirements regarding maintenance of acceptable conditions specifically during warehousing and distribution are provided under § 110.93.

69. Two comments on proposed § 110.35(b) "animal and vermin control" (§ 110.35(c) "pest control" in the final rule) suggested that this paragraph be modified to exempt guard dogs and guide dogs, under certain conditions, from the requirements of the first sentence of the proposed paragraph.

FDA agrees and has added the following sentence to the final rule: "Guard or guide dogs may be allowed in some areas of a plant if the presence of the dogs is unlikely to result in contamination of food, food-contact surfaces, or food-packaging materials."

70. One comment on proposed § 110.35(b) (§ 110.35(c) of the final rule) said that the sentence providing for the use of insecticides and rodenticides under precautions and restrictions that would protect against the contamination of food and food-packaging materials should be deleted since it duplicated existing EPA regulations.

FDA disagrees that the regulation results in an unnecessary requirement. Food that becomes contaminated with these compounds may be actionable under section 402 of the act. Accordingly, regulations specifying current good manufacturing practice for the food industry should stress the need for taking effective precautions in this area and are not duplicitous. Therefore, the agency is retaining this sentence in the final rule.

71. Several comments on proposed § 110.35(c) (§ 110.35(d) of the final rule) concerned the proposed requirement that food-contact surfaces used for the processing or holding of low-moisture raw materials or food be in a dry, sanitary condition at the time of use. Some comments suggested that phrases such as "when necessary" or "where applicable" be added to this sentence, but failed to explain the reasoning behind the suggested addition. Other

comments remarked that, just as it is not always necessary to sanitize wet-cleaned surfaces before use, it is not always necessary to dry wet-cleaned surfaces thoroughly before subsequent use. Another comment noted that lubricants, and sometimes moisture, are necessary on certain food-contact surfaces during the baking process. The comments recommended that the phrase "* * *, unless otherwise required by the demands of the baking process itself" be added to this sentence.

FDA believes that all the concerns raised by these comments can be satisfied by the new wording of the second sentence: "When the surfaces are wet-cleaned, they shall, when necessary, be sanitized and thoroughly dried before subsequent use."

72. In reference to the requirement in proposed § 110.35(c)(2) (§ 110.35(d)(2) of the final rule) that food-contact surfaces be cleaned and sanitized after any interruption during which these surfaces may have become contaminated, one comment noted that "any interruption" could be read to include such routine events as quality control checks. Another comment stated that the word "interruption" must be defined as to time period.

FDA recognizes that the possibility of contamination exists even during short, scheduled interruptions, such as quality control checks. The agency does not agree that the length of time of the interruption is of central concern. What is important is whether the utensils and other food-contact surfaces may become contaminated. FDA has changed the final rule to clarify this point.

73. Two comments on proposed § 110.35(c)(2) (§ 110.35(d)(2) of the final rule) criticized the requirement that food-contact surfaces in a continuous production operation be cleaned and sanitized according to a predetermined schedule. The comments claimed that cleaning functions should be based on need, such as a change in bacterial levels, rather than lapse of time.

FDA agrees and has changed § 110.35(d)(2) of the final rule.

74. One comment on proposed § 110.35(c)(5) (§ 110.35(d)(5) of the final rule) suggested that the term "effective," in the proposed requirement that sanitizing agents be effective and safe under conditions of use, be changed to "adequate."

FDA agrees and has changed the provision.

75. One comment on proposed § 110.35(d) (§ 110.35(e) of the final rule) "storage and handling of cleaned portable equipment and utensils" suggested requiring that cleaned and sanitized equipment that has been stored be rinsed and sanitized before subsequent use.

It is not always necessary to rinse and sanitize equipment with food-contact surfaces or utensils that have previously been cleaned and sanitized, if the equipment has been properly protected from contamination during storage. Therefore, the suggested change is not necessary and no such change is made in the final rule.

76. Another comment on proposed § 110.35(d) requested clarification of whether flour dust in a baking area is included in the phrase "other contamination" in the advisory statement that cleaned and sanitized food-contact surfaces should be stored in such a way as to protect these surfaces "from splash, dust, and other contamination."

The phrase "other contamination" refers to all other substances not specifically listed that may cause the food-contact surfaces to be considered insanitary. FDA does not consider airborne flour which settles on stored equipment to be a contaminant, unless it renders the surfaces of the equipment insanitary. Therefore no such change is made in the final rule.

Sanitary Facilities and Controls

77. One comment on proposed § 110.37 stated that this section should apply only to new construction and that compliance should be deferred for 2 years after the issuance of the final rule. The comment considered these changes necessary to protect small bakeries and to permit a period for design and construction of new facilities.

The proposed requirements of this section were essentially the same as the then existing requirements (21 CFR 110.35), with the exception of a new paragraph that prohibited backflow or cross-connection between piping systems that carry water for food processing and piping systems that discharge waste water or sewage. Because the requirements are not new, FDA believes that the effective date for this final rule provides adequate time for industry compliance.

78. One comment on proposed § 110.37(a) "water supply" suggested requiring that the water supply be obtained from a State-approved source and be monitored for bacterial and chemical contamination as required by the Safe Drinking Water Act, administered by EPA. The comment also suggested a requirement that any water used in the final rinse, fluming, and spray contact of the product or equipment be of potable quality.

FDA believes that the concerns raised by this comment are covered in the wording of the final rule. The water supply is required to be sufficient for the operations intended and derived from an adequate source. Water contacting food or food-contact surfaces must be safe and of adequate sanitary quality.

79. One comment on proposed § 110.37(a) requested that the requirement that "running water at a suitable temperature and under pressure as needed shall be provided in all areas where required for the processing, the cleaning of equipment, utensils, or containers, or for employee sanitary facilities," be changed by replacing the phrase "at a suitable temperature" with the phrase "suitable and/or ambient temperatures." The comment stated that the use of hot water in a segment of the seafood industry would hinder effective cleaning operations.

The wording of the provision in no way prevents the use of water at ambient temperature for cleaning, provided the temperature is suitable for the specific conditions encountered. Therefore, FDA has made no change in the provision.

80. One comment on proposed § 110.37(b) "plumbing" asked whether all plants would be required to replace standard hand-operated toilets with foot-operated high-pressure sanitary facilities regardless of additional cost.

One should not draw this interpretation from the requirements. If the present plumbing and toilet facilities are adequate and do not present a source of adulteration to the food, they need not be replaced.

81. One comment on proposed § 110.37(b)(5) stated that the word "ensure" in the proposed requirement that there be no backflow from, nor cross-connection between, waste water or sewage systems and water systems for food or food-processing use, should be changed to "provide." The comment suggested the change to alleviate the concern that industry would routinely be obligated to furnish blueprints of plumbing systems. The comment added that this type of submission should not be required unless there is reasonable evidence of a possible contamination problem.

FDA agrees and has changed the final rule accordingly.

82. Also with regard to the requirement in proposed § 110.37(b)(5) that there be no backflow from, or cross-connection between, piping systems that carry water for food or food manufacturing use and piping systems that discharge waste water or sewage, two comments suggested reversing the proposed order in which the piping systems are mentioned.

FDA agrees and has incorporated the changes into the final rule.

83. One comment on proposed § 110.37(b)(5) requested that the phrase "waste water" in the requirement prohibiting backflow from, and cross-connection between, piping systems be defined or differentiated more clearly from the water used for food or food manufacturing. The comment noted the economic importance of the counter current flow design used in some industry processes and expressed concern that the proposed requirement would prohibit this accepted design.

Under the regulations, waste water is water contaminated to a level above that considered acceptable for use in food manufacturing. FDA believes that the modified wording, as discussed in previous paragraphs of this preamble, conveys this meaning. Therefore, FDA has not attempted to expand on the meaning of "waste water" in this requirement in the final rule.

84. One comment on proposed § 110.37(b)(5) requested permitting the use of existing plumbing facilities that are maintained in a sanitary manner because the expenditures necessary to assure that there would be no backflow from piping systems that discharge waste water or sewage into piping systems that carry water for food or food manufacturing use are not justified.

FDA disagrees. Interruptions in water pressure can draw water from nonpotable sources into the processing water supply system unless backflow prevention devices or other suitable means are in effect. FDA considers the points expressed in paragraph (b)(5) to be basic to manufacturing safe and wholesome food. For this reason, FDA has retained the substance and the spirit of this paragraph, as proposed, in the final rule.

85. Comments on proposed § 110.37(c) "sewage disposal" and § 110.37(f) "rubbish and offal disposal" stated that references to appropriate EPA regulations should be added to these proposed paragraphs. One of the comments stated that industry has difficulty locating various agencies regulations governing a specific operation.

FDA is sympathetic to the concerns expressed in the comments, but believes that other agencies need to be the source of information on their applicable regulations to ensure that the information provided is accurate and up-to-date. Accordingly, FDA has not added the requested citations in these regulations.

86. A number of comments on proposed § 110.37(d) requested that the provision allow, because of geographic location or ground conditions, the location of toilet facilities outside the plant. One comment suggested providing only that the toilet facilities be readily accessible.

The agency agrees with the suggestion and has changed the final rule accordingly.

87. Two comments on proposed § 110.37(e) stated that the requirement of adequate and readily accessible hand-washing facilities and, if necessary, sanitizing facilities for employees handling unprotected food, unprotected packaging materials, and food-contact surfaces could be interpreted to require that hand-washing facilities be installed at receiving stations or in processing areas that could be adequately serviced by sanitizing stations. One comment suggested that the proposed requirement be replaced with the wording of the current CGMP regulations (21 CFR 110.35(e)).

FDA agrees in principle and has modified the final rule accordingly.

88. One comment on proposed § 110.37(e) suggested replacing the phrase "suitable drying services" in the requirement that specifies the components of a suitable handwashing and sanitizing facility, with the phrase "suitable drying devices." One comment requested that cloth towel dispensers be allowed as long as the towel dispensers are so constructed that only a clean and unused portion of towel is provided for each use.

FDA agrees with the comments and has changed the final rule accordingly.

89. Several comments on proposed § 110.37(e) objected to the specificity of "water control valves." One comment interpreted this phrase to describe only foot-operated control valves and stated that these valves are notorious for harboring undesirable microorganisms.

In response to these comments, FDA has expanded the scope of this paragraph to suggest the use of devices or fixtures, such as water control valves, that are designed and constructed to protect against recontamination of clean, sanitized hands. The phrase "water control valves" should not be interpreted as limited to foot-operated valves. For example, valves of the automatic shut-off variety and wing fixtures designed for shut-off of the water flow by pressure from the elbow are other methods that are superior to traditional valves using manual shut-off in minimizing the possibility of recontamination. FDA has no information showing that the valve mechanism of foot-operated water control valves is a source of contamination. However, the agency encourages anyone having such information to submit it to FDA.

Equipment and Utensils

90. Several comments on proposed § 110.40(a) objected to the proposed requirement that food-contact surfaces be "corrosion-free," suggesting that full compliance would be impossible.

FDA agrees and has substituted the term corrosion-resistant for corrosion-free in the final rule.

91. Some comments on proposed § 110.40(a) suggested that food-contact surfaces, while nontoxic, should be nonreactive with food components to prevent unwanted quality changes.

It is in the interest of the manufacturer to have food-contact surfaces that do not cause unwanted quality changes in food. Therefore, the final rule now requires that food-contact surfaces be made of nontoxic materials and designed to withstand the environment of their intended use.

92. One comment on proposed § 110.40(a) stated that daily cleaning of some equipment is not feasible because the equipment is of an enclosed nature and is operated at elevated temperatures for weeks at a time without shutting down.

The comment misunderstood what was proposed. However, FDA agrees that it is not necessary to clean such equipment on a daily basis as there is no opportunity for growth of micro-organisms. However, it is current good manufacturing practice to clean equipment at a frequency that is sufficient to avoid potential contamination. Therefore, FDA is making no change in the final rule.

93. A number of comments on proposed § 110.40(b) objected to the proposed requirement that seams on food-contact surfaces be smoothly bonded.

The provision does not require smooth, bonded seams. As an alternative, seams on food-contact surfaces may be maintained so as to minimize accumulation of food particles, dirt, and organic matter. Therefore, FDA has made no change in the final rule in this respect.

94. One comment on proposed § 110.40(b) urged exclusion of baking pans and conveying systems from the requirement of this paragraph because wire mesh belting and metal "take-apart" joints of canvas conveyor belting, including metal seams, are in common use in the baking industry and do not cause problems.

The regulations allow the use of baking pans and the conveying systems mentioned, provided they are properly

maintained. Because more detail is not needed, FDA has made no change in the provision.

95. A number of comments on proposed § 110.40(d) suggested that it is not always necessary to clean a gravimetric, pneumatic, closed, or automated system. Another comment suggested that the requirement be changed from "to be cleaned" to "to be maintained in an appropriate sanitary condition."

FDA agrees with the comments and has changed the final rule to include the suggested wording.

96. One comment on proposed § 110.40(e) suggested that this paragraph be deleted or combined with proposed § 110.40(g).

FDA agrees and has modified § 110.40(f) of the final rule to combine the two paragraphs.

97. One comment said that proposed § 110.40(e) would apply to ethylene oxide treatment, making it difficult to demonstrate that a measuring device or control is effective in minimizing the growth of microorganisms in the product.

FDA advises that the basis for this comment has been mooted by the change discussed in paragraph 96 above.

98. One comment on proposed § 110.40(e) stated that FDA should suggest, but not require, that plants have temperature control equipment.

Because the regulation of temperature is important in protecting against the growth of microorganisms, FDA has retained the requirement for temperature controls.

99. Some comments on proposed § 110.40(f) (§ 110.40(e) of the final rule) suggested that FDA require temperature-recording devices or an alarm mechanism for all freezers and cold storage compartments rather than permit a thermometer for this purpose. Other comments stated that recorders and alarms should he required only for storage rooms at 45 °F or below and that bakeries do not need temperature-recording devices or alarms on small coolers.

Although it is desirable to have temperature-recording devices or alarms in freezers or cold storage compartments, FDA believes that an accurate thermometer is satisfactory for most coolers, regardless of whether they are kept at, above, or below 45 °F. The requirement for temperature indicating, measuring, or controlling devices applies only to freezing and cold storage compartments used for storing raw materials or foods capable of supporting the growth of microorganisms. Therefore, FDA has not changed the final rule.

100. One comment on proposed § 110.40(g) (§ 110.40(f) of the final rule) suggested that the word "precise" be changed to "accurate" in the proposed requirement that instruments used for measuring or regulating conditions that control or prevent microbial growth in food "be precise and properly maintained." Another comment requested that "properly" be changed to "adequately."

FDA agrees with the comments and has changed the final rule accordingly.

101. A number of comments on proposed § 110.40(h) (§ 110.40(g) of the final rule) pointed out that compressed air and other gases mechanically introduced into foods may already be suitable for contact with food or food-contact surfaces and may not need to be filtered or washed. The comments further suggested that, since air or gases are sometimes used to add oil or other ingredients to the food, "properly filtered or washed" should be deleted or modified.

FDA agrees and has changed the final rule accordingly.

102. FDA received two comments on proposed § 110.40(i). Section 110.40(i) pertains to the proper control of sources of PCB contamination. The comments suggested that the section should require the use of catchpans to control the leakage of PCB's from sealed electrical transformers and capacitators. The comments also requested clarification regarding what the proposed language "in and around food plant" was meant to include.

FDA has deleted proposed § 110.40(i) from the final rule. The proposed requirements are no longer necessary. In the **Federal Register** of August 25, 1982 (47 FR 37342), the Environmental Protection Agency (EPA) published a final rule that prohibits the use of PCB transformers with a dielectric fluid PCB concentration of 500 parts per million or greater posing an exposure risk to food or feed. The final rule became effective October 1, 1985. EPA's final rule also prohibits the use of large PCB capacitators after October 1, 1988, unless they are located in restricted access electrical substations or in contained and restricted access indoor installations. EPA's final rule provides, in FDA's view, sufficient safeguards against the risk of contamination of food and feed from PCB-containing electrical equipment. Accordingly, FDA has deleted proposed § 110.40(i). In the **Federal Register** of July 18, 1985 (50 FR 29233), FDA also withdrew a rule it proposed (45 FR 30984; May 9, 1980) to revise proposed § 110.40(i) and other regulations that deal with PCB's.

Processes and Controls

103. Some comments on proposed § 110.80, *Processes and controls* suggested deleting the reference to quality control operations because they are not always necessary and would add the unnecessary expense of placing a quality control person in each plant or of using an outside laboratory.

FDA disagrees. Even the smallest operation should have some quality control system that results in the production of safe, clean, and wholesome foods. This does not mean that the manufacturer needs to hire a quality control specialist, nor does it mean that an outside laboratory must be used. Therefore, FDA has made no change in the final rule with respect to quality control operations.

104. One comment on proposed § 110.80 suggested the addition of a listing of quality control operations.

FDA advises that it is not necessary to list all possible quality control operations because they include all actions necessary to prevent food from becoming adulterated within the meaning of the act.

105. Several comments on proposed § 110.80 requested that it allow the use of some raw materials that are not fit for food until they have undergone processing or have been processed into an ingredient that is then incorporated into the finished product. Another comment noted that quality control operations should be concerned with both raw materials and ingredients.

FDA agrees with both comments and has changed the final rule accordingly.

106. Some comments on proposed § 110.80 challenged FDA's authority to require that the maintenance of the sanitation of the plant be under the supervision of an individual assigned responsibility for this function. Other comments suggested that the regulations require that the individual assigned be competent. Another comment stated that the term "over-all" is too broad and requested that responsibility for sanitation be allowed to be assigned to more than one individual.

FDA believes that every plant must have one or more individuals responsible for the sanitation of the plant and the personal hygiene of the employees. Courts have observed that the act embodies the simple and understandable expectation of the American public that food be manufactured, packed, and held with a reasonable degree of cleanliness. See, e.g., *United States* v. *An Article of Food * * * Pasteurized Whole Eggs*, 339 F. Supp. 131, 141 (N.D. Ga. 1972).

Accordingly, courts have encouraged the development of reasonable plant standards specifying steps to be taken to ensure that a reasonable degree of care and cleanliness be accorded the manufacture of food. See, e.g., *United States* v. *1,500 Cans More or Less*, * * *, 236 F.2d 208, 212 (7th Cir. 1956). The reasonable requirement that every plant assign one or more competent individuals as responsible for plant sanitation is, thus, clearly authorized.

FDA has made the final rule consistent with the latter comments to provide that the responsible individuals be "competent" and to clarify that the responsibility for the sanitation of a plant and the personal hygiene of the employees may be shared by several individuals.

107. One comment on proposed § 110.80 requested a more specific definition for the phrase "adequate sanitation principles."

The phrase must be broad so that industry can easily adapt adequate sanitation principles to its existing procedures. Therefore, FDA has not made the suggested change.

108. Some comments on proposed § 110.80 suggested that the sentence beginning with "chemical, microbiological or extraneous-material testing * * *" be expanded to include a phrase indicating that supplier's guarantees or certification be permitted to verify compliance with FDA regulations, guidelines, or action levels where applicable.

FDA disagrees. This paragraph refers primarily to sanitation within the plant. FDA has no objection to the manufacturer obtaining a supplier's guarantee or certification, as specifically mentioned in § 110.80(a) (2), (3), and (4).

109. A comment suggested that proposed § 110.80(a) state that although incoming raw materials and other ingredients should be inspected, as necessary, there are also other appropriate means of ensuring the cleanliness and fitness of ingredients.

FDA agrees and has changed the final rule accordingly.

110. A comment on proposed § 110.80(a)(1) suggested that there should be parallel programs by the U.S. Department of Agriculture (USDA) and the Interstate Commerce Commission (ICC) to cover the handling of raw materials and ingredients.

Although parallel programs are desirable, they are not a prerequisite to the proposed provision. Affected firms should contact USDA and ICC directly for information about their programs.

111. A comment on proposed § 110.80(a)(1) stated that the term "fit" is used in an unfamiliar context and suggested that it be changed to "appropriate" or "suitable."

FDA agrees and has substituted "suitable" for "fit" in the final rule.

112. Other comments on proposed § 110.80(a)(1) questioned whether the proposed provision that "raw materials shall be washed or cleaned as required" applies to grapes and oyster shell stock.

FDA advises that the handling of grapes and oyster shell stock would be covered if they are used as raw materials in a food-processing plant. FDA has clarified the quoted language by changing "required" to "necessary" in the final rule.

113. Several comments on proposed § 110.80(a)(1) pointed out that the conservation of water used for washing, rinsing, or conveying is important. The comments urged that this water be allowed to be reused if any possible microbial contamination harmful to humans has been minimized.

FDA agrees and has changed the final rule to provide that water may be reused for washing, rinsing, or conveying products, so long as it will not increase the level of contamination of food.

114. A comment on proposed § 110.80(a)(2) suggested deleting this paragraph, and other comments suggested that the goal should be to "control" microorganisms not necessarily to "destroy" them.

FDA does not agree that the paragraph should be deleted. The requirement is important because the use of untreated raw materials and other ingredients may contain high levels of potentially toxic microorganisms. FDA agrees in principle with the other suggestions, and has changed the final rule to clarify that if raw materials and ingredients contain levels of undesirable microorganisms, they must either not be used or else must be pasteurized or otherwise treated during manufacturing operations to prevent the food from being adulterated within the meaning of the act.

115. A comment suggested that a supplier's guarantee or certification should be permitted to verify compliance with FDA regulations, guidelines, or action levels for raw materials.

FDA agrees and has changed the final rule accordingly.

116. Several comments on proposed § 110.80(a)(3) stated that there is a lack of technically efficient methods for determining the presence of aflatoxins in spices and many other raw materials. Some of the comments also stated that it would not be practical or necessary to test for aflatoxin in certain commodities. Some comments also argued that this paragraph not apply to public warehouses.

Although there is a lack of adequate methods for determining the presence of aflatoxins in spices, methods do exist for other raw materials. Without further elaboration, the comment is too vague to respond to. FDA has, however, clarified the paragraph, which now provides:

> raw materials and other ingredients susceptible to contamination with aflatoxin or other natural toxins shall comply with current Food and Drug Administration regulations, guidelines, and action levels for poisonous or deleterious substances before these materials or ingredients are incorporated into finished products. Compliance with this requirement may be accomplished by purchasing raw materials and other ingredients under a supplier's guarantee or certification, or may be verified by analyzing these materials and ingredients for aflatoxins and other natural toxins.

This paragraph does not require public warehouses to test routinely for the presence of aflatoxins.

117. A comment on proposed § 110.80(a)(3) noted that USDA has an average limit of 25 parts per billion (ppb) of aflatoxin in its peanut certification programs, while FDA has established an action level for this substance at 20 ppb. The comment questioned whether a "USDA negative aflatoxin certificate" (i.e., aflatoxin not greater than 25 ppb) would be considered a supplier's certification in light of this difference in action levels.

Since 1969 FDA has taken the position that it will not object to movement in interstate commerce of lots of raw shelled peanuts with aflatoxins not exceeding 25 ppb, provided the peanuts are destined for further processing that will result in levels in the consumer product that meet the FDA guidelines. Therefore, a lot covered by such a USDA certificate and destined for further effective processing would satisfy the requirements of this section if the FDA requirements are met after further processing.

118. A comment on proposed § 110.80(a)(3) asserted that this requirement would place an inflationary burden on smaller wholesale bakers because it would require each baker, regardless of size, to set up a laboratory and to hire trained laboratory personnel.

FDA disagrees. The provision allows compliance to be accomplished by purchasing materials under a supplier's guarantee or certification. The agency believes that this provision, together with the other changes made in the final rule, alleviates the concerns expressed.

119. Several comments on proposed § 110.80(a)(4) stated that the word

"ingredients" should be added just after the words "raw materials."

FDA agrees and has changed the final rule to reflect that the paragraph refers to raw materials and other ingredients.

120. Some comments on proposed § 110.80(a)(4) suggested that, for compliance purposes, raw material suitability may be verified by any effective means, including a supplier's guarantee or certification.

FDA agrees and has modified the final rule accordingly.

121. A comment on proposed § 110.80(a)(4) stated that in this context the word "rework" is confusing, and recommended that the list of possible sources of contamination be removed.

As discussed elsewhere in this preamble, FDA has revised the definition of "rework" in § 110.3(m). Section 110.80(a)(4) identifies "rework" as one of several possible sources of contamination. These examples are consistent with other sections of the final rule and are of assistance to the manufacturer in ensuring an unadulterated product. Therefore, FDA has not changed § 110.80(a)(4) in the final rule.

122. A comment on proposed § 110.80(a)(4) stated that the "requirements" and "action levels" referred to in proposed § 110.80(a)(4) are voluntary, and recommended that the "shall" be changed to "should."

Because the regulations and action levels referred to are mandatory, FDA has not changed the final rule as requested.

123. Some comments on proposed § 110.80(a)(5) suggested adding the terms "ingredients and rework."

FDA agrees and has modified the final rule.

124. A comment on proposed § 110.80(a)(5) said that, in the case of many ingredients, normal ambient conditions are adequate to prevent contamination and that the words "when required" should be added to the reference to temperature.

The requested change in the final rule is unnecessary, because the provision does not mention a specific temperature and is sufficiently general to allow storage of ingredients under normal ambient conditions if this practice prevents a product from becoming adulterated within the meaning of the act.

125. Several comments on proposed § 110.80(a)(5) suggested changing the word "adulteration" to "contamination."

FDA usually uses the word "contamination" in the regulations because industry is more familiar with that word as it may affect a particular practice. FDA recognizes that it may be impossible to prevent the contamination of food and, accordingly, the regulations stress that one must "protect against" or "minimize" the contamination of food. The level of care that one must exercise to do this is the same as that level necessary to "prevent" food from being adulterated within the meaning of the act. Because the regulations provide procedures for preventing food from becoming adulterated within the meaning of the act, FDA frequently refers in the regulations to the statutory term "adulteration" rather than the word "contamination." FDA believes that the term "adulterated" is appropriate in the context of § 110.80(a)(5).

126. Some comments on proposed § 110.80(a)(5) suggested that, because raw materials arrive at the processing plant in bulk, it is inappropriate to require that they be held in containers designed or constructed to prevent their contamination. One comment suggested that raw materials might be washed or cleaned, before they are held under controlled temperature or humidity, or both.

FDA agrees that raw materials may be held in bulk, and has modified the final rule accordingly. Requirements for washing and cleaning raw materials are discussed in § 110.80(a). There are no restrictions on washing or cleaning raw materials prior to storage. Therefore, FDA has made no additional changes in § 110.80(a)(5).

127. A number of comments on proposed § 110.80(a)(6) pointed out that it is not always necessary to defrost frozen raw materials prior to use in the final food product. Examples given were frozen fish used in frozen breaded fish products and frozen spinach repacked into frozen sauce-in-bag products.

FDA agrees and has changed the final rule accordingly.

128. One comment on proposed § 110.80(a)(6) suggested that the words "except for the period of time actually required for processing" be removed from the regulation.

FDA agrees and has deleted these words from the final rule.

129. Several comments on proposed § 110.80(a)(6) stated that some frozen raw materials need to be defrosted prior to manufacturing. These comments also stated that defrosting may affect the material's organoleptic qualities without rendering the raw materials unsafe. Therefore, they suggested the phrase "have adverse public health consequences" be substituted for "not adversely affect their use as food."

FDA does not consider normal organoleptic quality changes to adversely affect the use of food materials that are defrosted under current good manufacturing practice. Therefore, FDA is not adopting the suggested change. In addition, the suggested change would be too limiting. The terminology "adverse public health consequences" does not apply to food that consists in whole or in part of a filthy, putrid, or decomposed substance, or is otherwise unfit for food. For clarification, FDA is changing the sentence in question to read as follows: "If thawing is required prior to use, it shall be done in a manner that prevents the food from becoming adulterated within the meaning of the act."

130. A comment on proposed § 110.80(a)(6) suggested limiting the term "frozen raw materials" to those items that are to be used by the plant in other food products, and that the term should not include frozen products that are thawed and held under refrigeration until sold.

The provision covers only frozen raw materials and ingredients.

131. One comment on proposed § 110.80(a)(7) stated that food additives and ingredients should meet the requirements of the Food Chemicals Codex.

Food Chemicals Codex requirements are included in FDA's requirements (21 CFR 170.30(h)(1)). Therefore, FDA has made no change in the final rule.

132. One comment on proposed § 110.80(a)(7) requested the deletion of the modifying terms "direct" and "indirect," in regard to contamination.

FDA agrees and has changed the final rule accordingly.

133. A number of comments on proposed § 110.80(b)(1) pointed out that it is not always necessary to clean all processing equipment and utensils frequently. Several comments suggested that the term "frequent" be changed to "adequate."

FDA agrees with these comments, and has changed the final rule to require that containers be kept in an "acceptable" condition through appropriate cleaning and sanitizing, as necessary.

134. One comment on proposed § 110.80(b)(1) suggested that "finished product containers" be changed to "bulk product containers." The comment gave no reason for this change.

The category "finished product containers" includes bulk product containers. Therefore, FDA has made no change in the final rule.

135. A comment on proposed § 110.80(b)(2) requested that its scope be limited to health matters.

FDA disagrees. The scope of the regulations is broader than suggested

and pertains to other possible causes of adulteration under the act.

136. Two comments maintained that public warehouses are not subject to § 110.80(b)(2). The comments stated further that neither warehousemen nor retail grocers are able to conduct sophisticated water activity tests on merchandise. The comments, therefore, concluded that this reference is intended to apply to processing operations only.

Public warehouses are subject to § 110.80(b)(2) but not to the portions of these regulations that are applicable to food-packing or food-packaging operations. The CGMP regulations do not apply to retail grocers.

137. A comment observed that compliance with proposed § 110.80(b)(2) will involve extensive and costly recordkeeping. Further, the comment stated that, because "water activity" is foreign to baking operations, this provision could be extremely expensive for smaller bakers.

The comment misunderstood the scope of this section for it imposes no recordkeeping requirements. The monitoring of factors such as time, temperature, water activity, humidity, and pH, is a suggested way to minimize the potential for the growth of undesirable microorganisms or for the deterioration or contamination of processed food or food ingredients. Therefore, FDA has made no change in the final rule in this regard.

138. A comment on proposed § 110.80(b)(2) suggested that the phrase "vacuum internal pressure in the containers" be added to the examples listed of ways to minimize the potential for growth of undesirable microorganisms. The comment further stated that the following sentence should be included: "Effective measures shall be taken to prevent contamination of food products by 100 percent monitoring vacuum internal pressure in containers on a production line with electronic vacuum inspectors, or other suitable effective means, where feasible."

The list of physical factors and processing operations is not all inclusive. FDA believes the proposed wording adequately expresses the intent behind this provision and allows use and monitoring of vacuum internal pressure in containers without the suggested additional language. Therefore, FDA has made no change in the final rule.

139. A number of comments on proposed § 110.80(b)(3) noted that not all foods support the rapid growth of undesirable microorganisms or are subject to decomposition. These comments pointed out that certain foods, like cheese and bakery products, pose no hazard and require no specific treatment. A comment further stated that it is not necessary to maintain frozen foods at 0 °F (-17.8 °C) or below, so long as the foods remain frozen.

FDA agrees that some foods pose no microbial hazard and require no specific temperature storage treatment. These foods are not subject to paragraph (b)(3). FDA also agrees that from a public health standpoint it is not necessary to maintain frozen foods at 0 °F (-17.8 °C). Therefore, FDA has revised the final rule accordingly.

140. A comment on proposed § 110.80(b)(3) suggested that, because the growth of microorganisms is essential in cheese, wine, and beer manufacture, the list of acceptable ways to hold foods should include "Establishment of continuing vigorous fermentation such as in the making and curing of natural cheese."

FDA notes that paragraph (b)(3) now applies to foods that can support the rapid growth of undesirable microorganisms, particularly those of public health significance, or that cause food decomposition. The growth of microorganisms essential to the fermentation of cheese, wine, and beer is not considered to be restricted by § 110.80(b)(3) because this growth is not undesirable. Therefore, FDA has made no change in the final rule.

141. One comment on proposed § 110.80(b)(3) said that the maximum temperature requirement for storing cold foods should be changed from 45 °F to 40 °F and that the minimum temperature requirement for storing hot foods should be changed from 140 °F to 150 °F. Another comment stated that 140 °F is too high a temperature to maintain hot food because it will dry out and become inedible. The comment further asserted that the same problem occurs when food is held at 120 °F, a point above which it has not been established that bacteria of public health significance can multiply. Other comments suggested that the specific values be removed from the regulation, because they are inappropriate for some foods.

FDA agrees that a maximum storage temperature for cold foods of 40 °F and a minimum temperature of 150 °F for hot foods would provide a greater safety margin. However, 45 °F has long been recognized as the maximum value for storage of cold foods, and 140 °F has been recognized as the minimum value for storage of hot food, to minimize the growth of microorganisms. Contrary to one of the comments, studies have shown that some microorganisms of public health significance multiply at temperatures above 120 °F. (Brown, D.F. and R.M. Twedt, "Assessment of Sanitary Effectiveness of Holding Temperature on Beef Cooked at Low Temperature, *Applied Microbiology*, 24:4, 1972, pp. 599-603.) FDA notes that unprotected food may dry out at any temperature, depending on the relative humidity of the surrounding atmosphere. Therefore, FDA has made no change in this provision of the final rule.

142. Two comments on proposed § 110.80(b)(3) suggested that the introductory wording be changed to make it clear that the indicated storage temperatures and heat treating of acid or acidified foods are merely examples of ways to control the microbial growth.

The proposed regulation already stated that compliance could be accomplished by any effective means. Therefore, in response to these comments, FDA has made no change in the final rule.

143. One comment on proposed § 110.80(b)(4) said that the control of microorganisms of public health significance should also apply to "handling and distribution" of foods.

FDA agrees and has modified the final rule accordingly.

144. Some comments suggested that the following definition of pasteurization be added to § 110.80(b)(4):

"Pasteurization shall mean treatment by any process during manufacturing and packaging which effectively destroys, inactivates or removes microorganisms capable of continued multiplication in the package."

A definition of pasteurization is not needed in the final rule because the term is generally understood by food manufacturers and consumers.

145. One comment on proposed § 110.80(b)(5) stated that it is not necessary and is redundant because § 110.80(a) adequately addresses the matters discussed in it. Several comments stated that "rework" may contain microorganisms that cause it to be adulterated within the meaning of the act, but, with proper heat treatment, may be made entirely acceptable for use. The comments also stated that microbially contaminated rework does not necessarily meet the raw material specifications until the time it is reprocessed. Other comments suggested that rework be stored under sanitary conditions before reprocessing.

FDA believes that § 110.80(a)(5), as revised in the final rule, adequately provides for the handling of rework. Therefore FDA has deleted proposed § 110.80(b)(5). Although food that is adulterated within the meaning of the act cannot always be successfully reconditioned, where it has been

satisfactorily reconditioned it is "rework" as defined in § 110.3(m) of the final rule.

146. Several comments on proposed § 110.80(b)(7) (§ 110.80(b)(6) of the final rule) questioned the practicality and reasonableness of the requirement concerning contamination between finished food and raw materials.

FDA has revised the final rule to provide that effective measures be taken to protect finished food from contamination by raw materials, other ingredients, or refuse.

147. Several comments on proposed § 110.80(b)(7) said that it is not necessary to cover conveyors to protect against contamination from extraneous material. Another comment said that conveyors need to be protected only in those locations where contamination hazards exist.

FDA agrees and has changed the final rule to require that materials and products transported by conveyor be protected as necessary.

148. Two comments on proposed § 110.80(b)(9) (§ 110.80(b)(8) of the final rule) stated that requiring metal detectors, which are not effective under certain circumstances, would place a financial burden on the small manufacturers.

FDA advises that metal detectors are mentioned as examples of a means which may be effective in protecting the food against contamination. The regulation, however, does not require their use.

149. One comment on proposed § 110.80(b)(9) requested the addition of traps as an effective means to prevent the inclusion of metal or other extraneous material in the finished food.

FDA agrees and has changed the final rule accordingly.

150. One comment on proposed § 110.80(b)(9) requested that a 1-to-2-year "grace period" be provided to allow industry time to change processing layouts and to purchase the devices necessary to comply with this requirement.

FDA believes that the delayed effective date for the final rule provides adequate time for industry compliance. The effective date of the final rule is delayed until December 16, 1986.

151. One comment on proposed § 110.80(b)(10) (§ 110.80(b)(9) of the final rule) noted that it may not be practical to reexamine reconditioned food, including raw materials, and other ingredients before their use in finished food. The following example was provided: "If the product is heat treated to reduce bacteria counts, it may not be possible to hold that product until the bacteria test results are available."

FDA agrees and has modified the final rule accordingly.

152. A number of comments on proposed § 110.80(b)(11) (§ 110.80(b)(10) of the final rule) stated that it is impossible to eliminate contamination completely from the food manufacturing process. The comments suggested that either the requirement be changed to an advisory statement or that the phrase "not to contaminate" be modified.

FDA agrees and has modified the final rule to read, in part, as follows: "* * * shall be performed so as to protect food against contamination."

153. Two comments on proposed § 110.80(b)(12) (§ 110.80(b)(11) of the final rule) requested that the advisory statements regarding heat blanching and minimizing growth of thermophilic organisms be changed to mandatory requirements by the substitution of "shall" for "should." The basis for the request was concern that sufficient heat be supplied to inactivate enzymes and that equipment be cleansed and sanitized sufficiently to preclude thermophilic growth.

FDA advises that some foods are heat blanched for reasons other than enzyme inactivation and that sufficient cause has not been demonstrated by the comments to justify making these provisions mandatory. Therefore, except for clarifying editorial changes, FDA is retaining the proposed wording in the final rule.

154. One comment concerning § 110.80(b)(12) of the proposal (§ 110.80(b)(11) of the final rule) stated that the requirement that water used to wash blanched food prior to filling be safe and of adequate sanitary quality was duplicative of the requirement in § 110.80(a)(1).

Section 110.80(a)(1) deals with raw materials and other ingredients. Section 110.80(b)(11) concerns processes and controls. FDA believes that these provisions are distinct and that it is appropriate to include requirements for water quality in both provisions. Therefore, FDA has not made the suggested change in the final rule.

155. One comment on proposed § 110.80(b)(13) (§ 110.80(b)(12) of the final rule) requested clarification of one of the examples given of ways to protect against contamination of batters and similar preparations: "(ii) Employing adequate heat processes where applicable." The comment sought clarification in that filth problems cannot be solved through the use of heat processes.

The regulation requires the use of adequate heat processes only where applicable, not when heat is not useful. FDA believes the regulation is sufficiently clear and has made no revisions in response to the comment.

156. Two comments on proposed § 110.80(b)(13) suggested that example (vi) be changed to reflect the variability of various food processes.

FDA agrees and has changed the final rule accordingly.

157. Some comments on proposed § 110.80(b)(14) (§ 110.80(b)(13) of the final rule) indicated that the examples of effective compliance measures were interpreted, incorrectly, to be mandatory practices which must be followed by all parts of the food industry.

Compliance with this paragraph may be accomplished by any effective means, including the operations that are presented as examples. FDA believes that a more careful reading of this paragraph would eliminate the concerns of these comments, and has retained, but for editorial changes, the proposed wording in the final rule.

158. Several comments on proposed § 110.80(b)(15) (§ 110.80(b)(14) of the final rule) were concerned about the possible expense entailed in following the enumerated examples of effective means of compliance with the safe moisture level requirement. They stated that the examples of testing controls are beyond the resources of many manufacturers.

The regulation does not require the use of the suggested examples. Other effective, but less expensive, compliance measures may be used.

159. A number of comments on proposed § 110.80(b)(16) (§ 110.80(b)(15) of the final rule) were received regarding the requirement that foods which rely on pH for preventing the growth of undesirable microorganisms be monitored and maintained at a pH of 4.6 or below. Two comments stated that the requirement should be rephrased to read "* * * rely solely on the control of pH * * *" in consideration of those foods in which pH is merely a partial control of microbial growth.

FDA agrees and is inserting the term "principally" in lieu of the suggested term "solely" in the final rule.

160. A comment on proposed § 110.80(b)(16) suggested including the following additional example of an effective practice for preventing the growth of undesirable microorganisms: "rework of the raw foods, ingredients, and finished products in a manner adequate for preventing the growth of microorganisms." No reason was given to support the suggestion.

The enumerated practices are only examples. Additional examples are not necessary.

161. A comment on proposed § 110.80(b)(16) said the term "microorganisms" should be qualified by the phrase "of public health significance" in order to clarify the use of this term.

As previously discussed in the preamble, microorganisms may render a food adulterated within the meaning of the act not only because they are harmful, but also for other reasons, such as they may constitute filth. Therefore, FDA has made no change in the final rule in response to the comment.

162. One comment on proposed § 110.80(b)(17) (§ 110.80(b)(16) of the final rule) interpreted a literal application of the requirement that ice be "manufactured in accordance with adequate standards" to be inappropriate where, for example, retail bakeries use small amounts of ice obtained from small plant freezers.

FDA agrees with this interpretation. Therefore, FDA has changed the final rule to read: "When ice is used in contact with food, it shall be made from water that is safe and of adequate sanitary quality, and shall be used only if it has been manufactured in accordance with current good manufacturing practice as outlined in this part."

Warehousing and Distribution

163. FDA received several comments on proposed § 110.93, concerning a definition for undesirable deterioration of food. The comments suggested that the regulation should be concerned only with microorganisms at levels that could be clearly identified as constituting a risk to human health. The comments also suggested that the regulations include a definition of microorganisms.

FDA defines the term "microorganisms" in § 110.3(i) of the final rule. As mentioned throughout this preamble, microorganisms may indicate contamination with filth or putrefaction, as well as harmfulness. Accordingly, FDA has not adopted the substance of the comments pertaining to microorganisms in the final rule. However, FDA has made other clarifying changes in § 110.93 of the final rule in response to the comments.

164. A comment expressed concern that manufacturers would be unable to assure completely good storage and transportation practices throughout the distribution chain.

Producers are expected to take reasonable precautions to see that food is transported and stored in such a manner that it does not become adulterated, particularly where the producer has continuing control of the products. Should evidence demonstrate that the cause of adulteration is due to negligence or illegal practices of the shipper or warehouse operator, FDA has the authority to take appropriate regulatory action against the responsible persons.

Natural or Unavoidable Defects in Food for Human Use That Present No Health Hazard

165. One comment on proposed § 110.110 stated that defect action levels (DAL's), which are established by FDA for natural or unavoidable defects that are not hazardous to health, should not be referenced in § 110.110 because they "are considered to be artificial values established by the Commissioner without public hearing."

FDA disagrees. DAL's are calculated and issued only when it is necessary and feasible to do so. DAL's are based on results of plant inspections, surveys, and research which may be performed in conjunction with industry, academia, or other government agencies. It is FDA's policy to publish notices in the **Federal Register** of the establishment of DAL's. Copies of compilations of current defect action levels may be obtained from FDA, as stated in § 110.110(e) of the final rule. As noted in § 110.110(b), DAL's are subject to change based on additional information or the development of new technology. Although DAL's are not rules that must be adhered to, and certainly are not subject to any requirement of a hearing, they offer reliable guidance on whether a particular defect may result in the product being adulterated within the meaning of the act. It is for this purpose that they are referenced in this section. Therefore, FDA has retained these proposed provisions in the final rule.

166. One comment on proposed § 110.110(c) expressed concern that violation of any of the Part 110 requirements could cause a product to be adulterated even though the levels of natural or unavoidable defects are lower than the established action levels. The comment also argued that section 402 of the act "does not provide for deeming a food to be adulterated if not produced in conformance with current Good Manufacturing Practice."

The purpose of this paragraph in the regulation is to specify that failure to maintain current good manufacturing practice throughout the manufacturing, packing, holding, or storage of food is not overcome by compliance with a DAL, which may or may not be affected by the violative practice. Many significant practices, such as measures that are taken to destroy or prevent the growth of microorganisms of public health significance (as covered under § 110.80(b)(4)), may not affect the level of natural or unavoidable defects but are nonetheless crucial to the production of food that is not adulterated within the meaning of the act. The comment concerning FDA's authority in this area overlooks the fact that courts have expressly held that FDA has the authority to promulgate and enforce substantive regulations defining current good manufacturing practice for the food industry. See *National Confectioners Ass'n* v. *Califano*, 569 F.2d 690 (D.C. Cir. 1978). See also *Nova Scotia Food Products Corp.* v. *United States*, 568 F.2d 240, 245–248 (2d Cir. 1978).

167. A number of comments on proposed § 110.110(d) objected to the provision that prohibits, without exception, the mixing of food which is above a DAL with another lot of food. Comments stated that there were instances, such as where the contamination is not due to violation of FDA's CGMP regulations, in which blending could be safely accomplished, thereby preventing the destruction of food. Therefore, it was argued that because FDA has allowed blending in individual cases, absolute prohibition of this action is improper, and the final regulations should be modified.

FDA has on rare occasion allowed the blending of food that was unavoidably contaminated with a poisonous or deleterious substance when (1) the food is shown to be safe for consumption after blending and (2) the destruction or diversion of the food involved would result in a substantial adverse impact on the national food supply. The general concern with blending, however, is not solely whether the food after blending is safe, but whether it is otherwise adulterated within the meaning of the act. Accordingly, FDA has not modified the regulation as requested by the comments.

168. The remaining comments requested that portions of the proposal be clarified. In response to these comments and on its own initiative, FDA has made many clarifying editorial changes in the final rule.

As one of the editorial changes, FDA has deleted the word "processing" in favor of exclusive reliance on the word "manufacturing." The words are synonymous, "manufacturing" being the more appropriate for regulations dealing with current good manufacturing practice. As has already been discussed, FDA has broadly defined "food" in the regulations to include raw materials and other ingredients. For clarity and consistency, as well as emphasis, however, FDA does use the words "raw materials" and "ingredients" where

appropriate. Similarly, because the regulations pertain to those systematic procedures to be followed to prevent "food" from being adulterated within the meaning of the act, FDA has generally avoided limiting the word "food" (for example, by using the terminology "finished food"), except where such limitations are appropriate or necessary for clarity or emphasis.

For editorial consistency, FDA is also revising 21 CFR 20.100(c)(8) to reflect a cross-reference to § 110.110(e), which contains cross-referenced action level provisions now located in § 110.99(e).

The final rule becomes effective December 16, 1986.

The agency has previously determined that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. FDA has not received any new information or comments that would alter its previous determination.

In accordance with Executive Order 12291, FDA has analyzed the effects of this final rule. Compliance costs are estimated to be between $272,000 and $623,000 annually depending on the exact number of firms ultimately affected by this action. Thus, in accordance with Executive Order 12291, the agency has determined that this final rule will not result in a major rule as defined by that Order.

In accordance with the Regulatory Flexibility Act, FDA has examined the effect that this final rule will have on small entities including small businesses. Although most of the cost of this action will be incurred by small businesses, FDA does not believe that its estimated cost of $180 per firm per year is excessive. Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action.

Interested persons may, on or before August 18, 1986, submit to the Dockets Management Branch (address above) written comments regarding this final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 20

Freedom of information.

21 CFR Part 110

Good manufacturing practices.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and the Public Health Service Act, Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

PART 20—PUBLIC INFORMATION

1. The authority citation for 21 CFR Part 20 continues to read as follows:

Authority: Sec. 201 et seq., Pub. L. 717, 52 Stat. 1040 et seq., as amended (21 U.S.C. 321 et seq.); sec. 1 et seq., Pub. L. 410, 56 Stat. 682 et seq., as amended (42 U.S.C. 201 et seq.); Pub. L. 90-23, 81 Stat. 54-56 as amended by 88 Stat. 1561-1565 (5 U.S.C. 552); 21 CFR 5.10, 5.11.

2. In Part 20, § 20.100 is amended by revising paragraph (c)(8) to read as follows:

§ 20.100 Applicability; cross-reference to other regulations.

* * * * *

(c) * * *

(8) Action levels for natural and unavoidable defects in food for human use, in § 110.110(e) of this chapter.

* * * * *

3. By revising Part 110 to read as follows:

PART 110—CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PACKING, OR HOLDING HUMAN FOOD

Subpart A—General Provisions

Sec.

110.3 Definitions.
110.5 Current good manufacturing practice.
110.10 Personnel.
110.19 Exclusions.

Subpart B—Buildings and Facilities

110.20 Plant and grounds.
110.35 Sanitary operations.
110.37 Sanitary facilities and controls.

Subpart C—Equipment

110.40 Equipment and utensils.

Subpart D—[Reserved]

Subpart E—Production and Process Controls

110.80 Processes and controls.
110.93 Warehousing and distribution.

Subpart F—[Reserved]

Subpart G—Defect Action Levels

110.110 Natural or unavoidable defects in food for human use that present no health hazard.

Authority: Secs. 302, 303, 304, 402(a), 701(a), 52 Stat. 1043-1046 as amended, 1055 (21 U.S.C. 332, 333, 334, 342(a), 371(a)); sec. 361, 58 Stat. 703 (42 U.S.C. 264); 21 CFR 5.10, 5.11.

Subpart A—General Provisions

§ 110.3 Definitions.

The definitions and interpretations of terms in section 201 of the Federal Food, Drug, and Cosmetic Act (the act) are applicable to such terms when used in this part. The following definitions shall also apply:

(a) "Acid foods or acidified foods" means foods that have an equilibrium pH of 4.6 or below.

(b) "Adequate" means that which is needed to accomplish the intended purpose in keeping with good public health practice.

(c) "Batter" means a semifluid substance, usually composed of flour and other ingredients, into which principal components of food are dipped or with which they are coated, or which may be used directly to form bakery foods.

(d) "Blanching," except for tree nuts and peanuts, means a prepackaging heat treatment of foodstuffs for a sufficient time and at a sufficient temperature to partially or completely inactivate the naturally occurring enzymes and to effect other physical or biochemical changes in the food.

(e) "Critical control point" means a point in a food process where there is a high probability that improper control may cause, allow, or contribute to a hazard or to filth in the final food or decomposition of the final food.

(f) "Food" means food as defined in section 201(f) of the act and includes raw materials and ingredients.

(g) "Food-contact surfaces" are those surfaces that contact human food and those surfaces from which drainage onto the food or onto surfaces that contact the food ordinarily occurs during the normal course of operations. "Food-contact surfaces" includes utensils and food-contact surfaces of equipment.

(h) "Lot" means the food produced during a period of time indicated by a specific code.

(i) "Microorganisms" means yeasts, molds, bacteria, and viruses and includes, but is not limited to, species having public health significance. The term "undesirable microorganisms" includes those microorganisms that are of public health significance, that subject food to decomposition, that indicate that food is contaminated with filth, or that otherwise may cause food to be adulterated within the meaning of the act. Occasionally in these regulations, FDA used the adjective "microbial" instead of using an adjectival phrase containing the word microorganism.

(j) "Pest" refers to any objectionable animals or insects including, but not limited to, birds, rodents, flies, and larvae.

(k) "Plant" means the building or facility or parts thereof, used for or in connection with the manufacturing, packaging, labeling, or holding of human food.

(l) "Quality control operation" means a planned and systematic procedure for taking all actions necessary to prevent food from being adulterated within the meaning of the act.

(m) "Rework" means clean, unadulterated food that has been removed from processing for reasons other than insanitary conditions or that has been successfully reconditioned by reprocessing and that is suitable for use as food.

(n) "Safe-moisture level" is a level of moisture low enough to prevent the growth of undesirable microorganisms in the finished product under the intended conditions of manufacturing, storage, and distribution. The maximum safe moisture level for a food is based on its water activity (a_w). An a_w will be considered safe for a food if adequate data are available that demonstrate that the food at or below the given a_w will not support the growth of undesirable microorganisms.

(o) "Sanitize" means to adequately treat food-contact surfaces by a process that is effective in destroying vegetative cells of microorganisms of public health significance, and in substantially reducing numbers of other undesirable microorganisms, but without adversely affecting the product or its safety for the consumer.

(p) "Shall" is used to state mandatory requirements.

(q) "Should" is used to state recommended or advisory procedures or identify recommended equipment.

(r) "Water activity" (a_w) is a measure of the free moisture in a food and is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature.

§ 110.5 Current good manufacturing practice.

(a) The criteria and definitions in this part shall apply in determining whether a food is adulterated (1) within the meaning of section 402(a)(3) of the act in that the food has been manufactured under such conditions that it is unfit for food; or (2) within the meaning of section 402(a)(4) of the act in that the food has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health. The criteria and definitions in this part also apply in determining whether a food is in violation of section 361 of the Public Health Service Act (42 U.S.C. 264).

(b) Food covered by specific current good manufacturing practice regulations also is subject to the requirements of those regulations.

§ 110.10 Personnel.

The plant management shall take all reasonable measures and precautions to ensure the following:

(a) *Disease control.* Any person who, by medical examination or supervisory observation, is shown to have, or appears to have, an illness, open lesion, including boils, sores, or infected wounds, or any other abnormal source of microbial contamination by which there is a reasonable possibility of food, food-contact surfaces, or food-packaging materials becoming contaminated, shall be excluded from any operations which may be expected to result in such contamination until the condition is corrected. Personnel shall be instructed to report such health conditions to their supervisors.

(b) *Cleanliness.* All persons working in direct contact with food, food-contact surfaces, and food-packaging materials shall conform to hygienic practices while on duty to the extent necessary to protect against contamination of food. The methods for maintaining cleanliness include, but are not limited to:

(1) Wearing outer garments suitable to the operation in a manner that protects against the contamination of food, food-contact surfaces, or food-packaging materials.

(2) Maintaining adequate personal cleanliness.

(3) Washing hands thoroughly (and sanitizing if necessary to protect against contamination with undesirable microorganisms) in an adequate hand-washing facility before starting work, after each absence from the work station, and at any other time when the hands may have become soiled or contaminated.

(4) Removing all insecure jewelry and other objects that might fall into food, equipment, or containers, and removing hand jewelry that cannot be adequately sanitized during periods in which food is manipulated by hand. If such hand jewelry cannot be removed, it may be covered by material which can be maintained in an intact, clean, and sanitary condition and which effectively protects against the contamination by these objects of the food, food-contact surfaces, or food-packaging materials.

(5) Maintaining gloves, if they are used in food handling, in an intact, clean, and sanitary condition. The gloves should be of an impermeable material.

(6) Wearing, where appropriate, in an effective manner, hair nets, headbands, caps, beard covers, or other effective hair restraints.

(7) Storing clothing or other personal belongings in areas other than where food is exposed or where equipment or utensils are washed.

(8) Confining the following to areas other than where food may be exposed or where equipment or utensils are washed: eating food, chewing gum, drinking beverages, or using tobacco.

(9) Taking any other necessary precautions to protect against contamination of food, food-contact surfaces, or food-packaging materials with microorganisms or foreign substances including, but not limited to, perspiration, hair, cosmetics, tobacco, chemicals, and medicines applied to the skin.

(c) *Education and training.* Personnel responsible for identifying sanitation failures or food contamination should have a background of education or experience, or a combination thereof, to provide a level of competency necessary for production of clean and safe food. Food handlers and supervisors should receive appropriate training in proper food handling techniques and food-protection principles and should be informed of the danger of poor personal hygiene and insanitary practices.

(d) *Supervision.* Responsibility for assuring compliance by all personnel with all requirements of this part shall be clearly assigned to competent supervisory personnel.

§ 110.19 Exclusions.

(a) The following operations are not subject to this part: Establishments engaged solely in the harvesting, storage, or distribution of one or more "raw agricultural commodities," as defined in section 201(r) of the act, which are ordinarily cleaned, prepared, treated, or otherwise processed before being marketed to the consuming public.

(b) FDA, however, will issue special regulations if it is necessary to cover these excluded operations.

Subpart B—Buildings and Facilities

§ 110.20 Plant and grounds.

(a) *Grounds.* The grounds about a food plant under the control of the operator shall be kept in a condition that will protect against the contamination of food. The methods for adequate maintenance of grounds include, but are not limited to:

(1) Properly storing equipment, removing litter and waste, and cutting weeds or grass within the immediate vicinity of the plant buildings or structures that may constitute an attractant, breeding place, or harborage for pests.

(2) Maintaining roads, yards, and parking lots so that they do not constitute a source of contamination in areas where food is exposed.

(3) Adequately draining areas that may contribute contamination to food by seepage, foot-borne filth, or providing a breeding place for pests.

(4) Operating systems for waste treatment and disposal in an adequate manner so that they do not constitute a source of contamination in areas where food is exposed.

If the plant grounds are bordered by grounds not under the operator's control and not maintained in the manner described in paragraph (a) (1) through (3) of this section, care shall be exercised in the plant by inspection, extermination, or other means to exclude pests, dirt, and filth that may be a source of food contamination.

(b) *Plant construction and design.* Plant buildings and structures shall be suitable in size, construction, and design to facilitate maintenance and sanitary operations for food-manufacturing purposes. The plant and facilities shall:

(1) Provide sufficient space for such placement of equip- ment and storage of materials as is necessary for the maintenance of sanitary operations and the production of safe food.

(2) Permit the taking of proper precautions to reduce the potential for contamination of food, food-contact surfaces, or food-packaging materials with microorganisms, chemicals, filth, or other extraneous material. The potential for contamination may be reduced by adequate food safety controls and operating practices or effective design, including the separation of operations in which contamination is likely to occur, by one or more of the following means: location, time, partition, air flow, enclosed systems, or other effective means.

(3) Permit the taking of proper precautions to protect food in outdoor bulk fermentation vessels by any effective means, including:

(i) Using protective coverings.

(ii) Controlling areas over and around the vessels to eliminate harborages for pests.

(iii) Checking on a regular basis for pests and pest infestation.

(iv) Skimming the fermentation vessels, as necessary.

(4) Be constructed in such a manner that floors, walls, and ceilings may be adequately cleaned and kept clean and kept in good repair; that drip or condensate from fixtures, ducts and pipes does not contaminate food, food-contact surfaces, or food-packaging materials; and that aisles or working spaces are provided between equipment and walls and are adequately unobstructed and of adequate width to permit employees to perform their duties and to protect against contaminating food or food-contact surfaces with clothing or personal contact.

(5) Provide adequate lighting in hand-washing areas, dressing and locker rooms, and toilet rooms and in all areas where food is examined, processed, or stored and where equipment or utensils are cleaned; and provide safety-type light bulbs, fixtures, skylights, or other glass suspended over exposed food in any step of preparation or otherwise protect against food contamination in case of glass breakage.

(6) Provide adequate ventilation or control equipment to minimize odors and vapors (including steam and noxious fumes) in areas where they may contaminate food; and locate and operate fans and other air-blowing equipment in a manner that minimizes the potential for contaminating food, food-packaging materials, and food-contact surfaces.

(7) Provide, where necessary, adequate screening or other protection against pests.

§ 110.35 Sanitary operations.

(a) *General maintenance.* Buildings, fixtures, and other physical facilities of the plant shall be maintained in a sanitary condition and shall be kept in repair sufficient to prevent food from becoming adulterated within the meaning of the act. Cleaning and sanitizing of utensils and equipment shall be conducted in a manner that protects against contamination of food, food-contact surfaces, or food-packaging materials.

(b) *Substances used in cleaning and sanitizing; storage of toxic materials.* (1) Cleaning compounds and sanitizing agents used in cleaning and sanitizing procedures shall be free from undesirable microorganisms and shall be safe and adequate under the conditions of use. Compliance with this requirement may be verified by any effective means including purchase of these substances under a supplier's guarantee or certification, or examination of these substances for contamination. Only the following toxic materials that are required to maintain sanitary conditions may be used or stored in a plant where food is processed or exposed: (i) Those required to maintain clean and sanitary conditions; (ii) Those necessary for use in laboratory testing procedures; (iii) Those necessary for plant and equipment maintenance and operation; and (iv) Those necessary for use in the plant's operations.

(2) Toxic cleaning compounds, sanitizing agents, and pesticide chemicals shall be identified, held, and stored in a manner that protects against contamination of food, food-contact surfaces, or food-packaging materials. All relevant regulations promulgated by other Federal, State, and local government agencies for the application, use, or holding of these products should be followed.

(c) *Pest control.* No pests shall be allowed in any area of a food plant. Guard or guide dogs may be allowed in some areas of a plant if the presence of the dogs is unlikely to result in contamination of food, food-contact surfaces, or food-packaging materials. Effective measures shall be taken to exclude pests from the processing areas and to protect against the contamination of food on the premises by pests. The use of insecticides or rodenticides is permitted only under precautions and restrictions that will protect against the contamination of food, food-contact surfaces, and food-packaging materials.

(d) *Sanitation of food-contact surfaces.* All food-contact surfaces, including utensils and food-contact surfaces of equipment, shall be cleaned as frequently as necessary to protect against contamination of food.

(1) Food-contact surfaces used for manufacturing or holding low-moisture food shall be in a dry, sanitary condition at the time of use. When the surfaces are wet-cleaned, they shall, when necessary, be sanitized and thoroughly dried before subsequent use.

(2) In wet processing, when cleaning is necessary to protect against the introduction of microorganisms into food, all food-contact surfaces shall be cleaned and sanitized before use and after any interruption during which the food-contact surfaces may have become contaminated. Where equipment and utensils are used in a continuous production operation, the utensils and food-contact surfaces of the equipment shall be cleaned and sanitized as necessary.

(3) Non-food-contact surfaces of equipment used in the operation of food plants should be cleaned as frequently as necessary to protect against contamination of food.

(4) Single-service articles (such as utensils intended for one-time use, paper cups, and paper towels) should be

stored in appropriate containers and shall be handled, dispensed, used, and disposed of in a manner that protects against contamination of food or food-contact surfaces.

(5) Sanitizing agents shall be adequate and safe under conditions of use. Any facility, procedure, or machine is acceptable for cleaning and sanitizing equipment and utensils if it is established that the facility, procedure, or machine will routinely render equipment and utensils clean and provide adequate cleaning and sanitizing treatment.

(e) *Storage and handling of cleaned portable equipment and utensils.* Cleaned and sanitized portable equipment with food-contact surfaces and utensils should be stored in a location and manner that protects food-contact surfaces from contamination.

§ 110.37 Sanitary facilities and controls.

Each plant shall be equipped with adequate sanitary facilities and accommodations including, but not limited to:

(a) *Water supply.* The water supply shall be sufficient for the operations intended and shall be derived from an adequate source. Any water that contacts food or food-contact surfaces shall be safe and of adequate sanitary quality. Running water at a suitable temperature, and under pressure as needed, shall be provided in all areas where required for the processing of food, for the cleaning of equipment, utensils, and food-packaging materials, or for employee sanitary facilities.

(b) *Plumbing.* Plumbing shall be of adequate size and design and adequately installed and maintained to:

(1) Carry sufficient quantities of water to required locations throughout the plant.

(2) Properly convey sewage and liquid disposable waste from the plant.

(3) Avoid constituting a source of contamination to food, water supplies, equipment, or utensils or creating an unsanitary condition.

(4) Provide adequate floor drainage in all areas where floors are subject to flooding-type cleaning or where normal operations release or discharge water or other liquid waste on the floor.

(5) Provide that there is not backflow from, or cross-connection between, piping systems that discharge waste water or sewage and piping systems that carry water for food or food manufacturing.

(c) *Sewage disposal.* Sewage disposal shall be made into an adequate sewerage system or disposed of through other adequate means.

(d) *Toilet facilities.* Each plant shall provide its employees with adequate, readily accessible toilet facilities. Compliance with this requirement may be accomplished by:

(1) Maintaining the facilities in a sanitary condition.

(2) Keeping the facilities in good repair at all times.

(3) Providing self-closing doors.

(4) Providing doors that do not open into areas where food is exposed to airborne contamination, except where alternate means have been taken to protect against such contamination (such as double doors or positive air-flow systems).

(e) *Hand-washing facilities.* Hand-washing facilities shall be adequate and convenient and be furnished with running water at a suitable temperature. Compliance with this requirement may be accomplished by providing:

(1) Hand-washing and, where appropriate, hand-sanitizing facilities at each location in the plant where good sanitary practices require employees to wash and/or sanitize their hands.

(2) Effective hand-cleaning and sanitizing preparations.

(3) Sanitary towel service or suitable drying devices.

(4) Devices or fixtures, such as water control valves, so designed and constructed to protect against recontamination of clean, sanitized hands.

(5) Readily understandable signs directing employees handling unproteced food, unprotected food-packaging materials, of food-contact surfaces to wash and, where appropriate, sanitize their hands before they start work, after each absence from post of duty, and when their hands may have become soiled or contaminated. These signs may be posted in the processing room(s) and in all other areas where employees may handle such food, materials, or surfaces.

(6) Refuse receptacles that are constructed and maintained in a manner that protects against contamination of food.

(f) *Rubbish and offal disposal.* Rubbish and any offal shall be so conveyed, stored, and disposed of as to minimize the development of odor, minimize the potential for the waste becoming an attractant and harborage or breeding place for pests, and protect against contamination of food, food-contact surfaces, water supplies, and ground surfaces.

Subpart C—Equipment

§ 110.40 Equipment and utensils.

(a) All plant equipment and utensils shall be so designed and of such material and workmanship as to be adequately cleanable, and shall be properly maintained. The design, construction, and use of equipment and utensils shall preclude the adulteration of food with lubricants, fuel, metal fragments, contaminated water, or any other contaminants. All equipment should be so installed and maintained as to facilitate the cleaning of the equipment and of all adjacent spaces. Food-contact surfaces shall be corrosion-resistant when in contact with food. They shall be made of nontoxic materials and designed to withstand the environment of their intended use and the action of food, and, if applicable, cleaning compounds and sanitizing agents. Food-contact surfaces shall be maintained to protect food from being contaminated by any source, including unlawful indirect food additives.

(b) Seams on food-contact surfaces shall be smoothly bonded or maintained so as to minimize accumulation of food particles, dirt, and organic matter and thus minimize the opportunity for growth of microorganisms.

(c) Equipment that is in the manufacturing or food-handling area and that does not come into contact with food shall be so constructed that it can be kept in a clean condition.

(d) Holding, conveying, and manufacturing systems, including gravimetric, pneumatic, closed, and automated systems, shall be of a design and construction that enables them to be maintained in an appropriate sanitary condition.

(e) Each freezer and cold storage compartment used to store and hold food capable of supporting growth of microorganisms shall be fitted with an indicating thermometer, temperature-measuring device, or temperature-recording device so installed as to show the temperature accurately within the compartment, and should be fitted with an automatic control for regulating temperature or with an automatic alarm system to indicate a significant temperature change in a manual operation.

(f) Instruments and controls used for measuring, regulating, or recording temperatures, pH, acidity, water activity, or other conditions that control or prevent the growth of undesirable microorganisms in food shall be accurate and adequately maintained, and adequate in number for their designated uses.

(g) Compressed air or other gases mechanically introduced into food or used to clean food-contact surfaces or equipment shall be treated in such a way that food is not contaminated with unlawful indirect food additives.

Subpart D—[Reserved]

Subpart E—Production and Process Controls

§ 110.80 Processes and controls.

All operations in the receiving, inspecting, transporting, segregating, preparing, manufacturing, packaging, and storing of food shall be conducted in accordance with adequate sanitation principles. Appropriate quality control operations shall be employed to ensure that food is suitable for human consumption and that food-packaging materials are safe and suitable. Overall sanitation of the plant shall be under the supervision of one or more competent individuals assigned responsibility for this function. All reasonable precautions shall be taken to ensure that production procedures do not contribute contamination from any source. Chemical, microbial, or extraneous-material testing procedures shall be used where necessary to identify sanitation failures or possible food contamination. All food that has become contaminated to the extent that it is adulterated within the meaning of the act shall be rejected, or if permissible, treated or processed to eliminate the contamination.

(a) *Raw materials and other ingredients.* (1) Raw materials and other ingredients shall be inspected and segregated or otherwise handled as necessary to ascertain that they are clean and suitable for processing into food and shall be stored under conditions that will protect against contamination and minimize deterioration. Raw materials shall be washed or cleaned as necessary to remove soil or other contamination. Water used for washing, rinsing, or conveying food shall be safe and of adequate sanitary quality. Water may be reused for washing, rinsing, or conveying food if it does not increase the level of contamination of the food. Containers and carriers of raw materials should be inspected on receipt to ensure that their condition has not contributed to the contamination or deterioration of food.

(2) Raw materials and other ingredients shall either not contain levels of microorganisms that may produce food poisoning or other disease in humans, or they shall be pasteurized or otherwise treated during manufacturing operations so that they no longer contain levels that would cause the product to be adulterated within the meaning of the act. Compliance with this requirement may be verified by any effective means, including purchasing raw materials and other ingredients under a supplier's guarantee or certification.

(3) Raw materials and other ingredients susceptible to contamination with aflatoxin or other natural toxins shall comply with current Food and Drug Administration regulations, guidelines, and action levels for poisonous or deleterious substances before these materials or ingredients are incorporated into finished food. Compliance with this requirement may be accomplished by purchasing raw materials and other ingredients under a supplier's guarantee or certification, or may be verified by analyzing these materials and ingredients for aflatoxins and other natural toxins.

(4) Raw materials, other ingredients, and rework susceptible to contamination with pests, undesirable microorganisms, or extraneous material shall comply with applicable Food and Drug Administration regulations, guidelines, and defect action levels for natural or unavoidable defects if a manufacturer wishes to use the materials in manufacturing food. Compliance with this requirement may be verified by any effective means, including purchasing the materials under a supplier's guarantee or certification, or examination of these materials for contamination.

(5) Raw materials, other ingredients, and rework shall be held in bulk, or in containers designed and constructed so as to protect against contamination and shall be held at such temperature and relative humidity and in such a manner as to prevent the food from becoming adulterated within the meaning of the act. Material scheduled for rework shall be identified as such.

(6) Frozen raw materials and other ingredients shall be kept frozen. If thawing is required prior to use, it shall be done in a manner that prevents the raw materials and other ingredients from becoming adulterated within the meaning of the act.

(7) Liquid or dry raw materials and other ingredients received and stored in bulk form shall be held in a manner that protects against contamination.

(b) *Manufacturing operations.* (1) Equipment and utensils and finished food containers shall be maintained in an acceptable condition through appropriate cleaning and sanitizing, as necessary. Insofar as necessary, equipment shall be taken apart for thorough cleaning.

(2) All food manufacturing, including packaging and storage, shall be conducted under such conditions and controls as are necessary to minimize the potential for the growth of microorganisms, or for the contamination of food. One way to comply with this requirement is careful monitoring of physical factors such as time, temperature, humidity, a_w, pH, pressure, flow rate, and manufacturing operations such as freezing, dehydration, heat processing, acidification, and refrigeration to ensure that mechanical breakdowns, time delays, temperature fluctuations, and other factors do not contribute to the decomposition or contamination of food.

(3) Food that can support the rapid growth of undesirable microorganisms, particularly those of public health significance, shall be held in a manner that prevents the food from becoming adulterated within the meaning of the act. Compliance with this requirement may be accomplished by any effective means, including:

(i) Maintaining refrigerated foods at 45 °F (7.2 °C) or below as appropriate for the particular food involved.

(ii) Maintaining frozen foods in a frozen state.

(iii) Maintaining hot foods at 140 °F (60 °C) or above.

(iv) Heat treating acid or acidified foods to destroy mesophilic microorganisms when those foods are to be held in hermetically sealed containers at ambient temperatures.

(4) Measures such as sterilizing, irradiating, pasteurizing, freezing, refrigerating, controlling pH or controlling a_w that are taken to destroy or prevent the growth of undesirable microorganisms, particularly those of public health significance, shall be adequate under the conditions of manufacture, handling, and distribution to prevent food from being adulterated within the meaning of the act.

(5) Work-in-process shall be handled in a manner that protects against contamination.

(6) Effective measures shall be taken to protect finished food from contamination by raw materials, other ingredients, or refuse. When raw materials, other ingredients, or refuse are unprotected, they shall not be handled simultaneously in a receiving, loading, or shipping area if that handling could result in contaminated food. Food transported by conveyor shall be protected against contamination as necessary.

(7) Equipment, containers, and utensils used to convey, hold, or store raw materials, work-in-process, rework, or food shall be constructed, handled, and maintained during manufacturing or storage in a manner that protects against contamination.

(8) Effective measures shall be taken to protect against the inclusion of metal or other extraneous material in food. Compliance with this requirement may be accomplished by using sieves, traps, magnets, electronic metal detectors, or other suitable effective means.

(9) Food, raw materials, and other ingredients that are adulterated within the meaning of the act shall be disposed of in a manner that protects against the contamination of other food. If the adulterated food is capable of being reconditioned, it shall be reconditioned using a method that has been proven to be effective or it shall be reexamined and found not to be adulterated within the meaning of the act before being incorporated into other food.

(10) Mechanical manufacturing steps such as washing, peeling, trimming, cutting, sorting and inspecting, mashing, dewatering, cooling, shredding, extruding, drying, whipping, defatting, and forming shall be performed so as to protect food against contamination. Compliance with this requirement may be accomplished by providing adequate physical protection of food from contaminants that may drip, drain, or be drawn into the food. Protection may be provided by adequate cleaning and sanitizing of all food-contact surfaces, and by using time and temperature controls at and between each manufacturing step.

(11) Heat blanching, when required in the preparation of food, should be effected by heating the food to the required temperature, holding it at this temperature for the required time, and then either rapidly cooling the food or passing it to subsequent manufacturing without delay. Thermophilic growth and contamination in blanchers should be minimized by the use of adequate operating temperatures and by periodic cleaning. Where the blanched food is washed prior to filling, water used shall be safe and of adequate sanitary quality.

(12) Batters, breading, sauces, gravies, dressings, and other similar preparations shall be treated or maintained in such a manner that they are protected against contamination. Compliance with this requirement may be accomplished by any effective means, including one or more of the following:

(i) Using ingredients free of contamination.

(ii) Employing adequate heat processes where applicable.

(iii) Using adequate time and temperature controls.

(iv) Providing adequate physical protection of components from contaminants that may drip, drain, or be drawn into them.

(v) Cooling to an adequate temperature during manufacturing.

(vi) Disposing of batters at appropriate intervals to protect against the growth of microorganisms.

(13) Filling, assembling, packaging, and other operations shall be performed in such a way that the food is protected against contamination. Compliance with this requirement may be accomplished by any effective means, including:

(i) Use of a quality control operation in which the critical control points are identified and controlled during manufacturing.

(ii) Adequate cleaning and sanitizing of all food-contact surfaces and food containers.

(iii) Using materials for food containers and food- packaging materials that are safe and suitable, as defined in § 130.3(d) of this chapter.

(iv) Providing physical protection from contamination, particularly airborne contamination.

(v) Using sanitary handling procedures.

(14) Food such as, but not limited to, dry mixes, nuts, intermediate moisture food, and dehydrated food, that relies on the control of a_w for preventing the growth of undesirable microorganisms shall be processed to and maintained at a safe moisture level. Compliance with this requirement may be accomplished by any effective means, including employment of one or more of the following practices:

(i) Monitoring the a_w of food.

(ii) Controlling the soluble solids-water ratio in finished food.

(iii) Protecting finished food from moisture pickup, by use of a moisture barrier or by other means, so that the a_w of the food does not increase to an unsafe level.

(15) Food such as, but not limited to, acid and acidified food, that relies principally on the control of pH for preventing the growth of undesirable microorganisms shall be monitored and maintained at a pH of 4.6 or below. Compliance with this requirement may be accomplished by any effective means, including employment of one or more of the following practices:

(i) Monitoring the pH of raw materials, food in process, and finished food.

(ii) Controlling the amount of acid or acidified food added to low-acid food.

(16) When ice is used in contact with food, it shall be made from water that is safe and of adequate sanitary quality, and shall be used only if it has been manufactured in accordance with current good manufacturing practice as outlined in this part.

(17) Food-manufacturing areas and equipment used for manufacturing human food should not be used to manufacture nonhuman food-grade animal feed or inedible products, unless there is no reasonable possibility for the contamination of the human food.

§ 110.93 Warehousing and distribution.

Storage and transportation of finished food shall be under conditions that will protect food against physical, chemical, and microbial contamination as well as against deterioration of the food and the container.

Subpart F—[Reserved]

Subpart G—Defect Action Levels

§ 110.110 Natural or unavoidable defects in food for human use that present no health hazard.

(a) Some foods, even when produced under current good manufacturing practice, contain natural or unavoidable defects that at low levels are not hazardous to health. The Food and Drug Administration establishes maximum levels for these defects in foods produced under current good manufacturing practice and uses these levels in deciding whether to recommend regulatory action.

(b) Defect action levels are established for foods whenever it is necessary and feasible to do so. These levels are subject to change upon the development of new technology or the availability of new information.

(c) Compliance with defect action levels does not excuse violation of the requirement in section 402(a)(4) of the act that food not be prepared, packed, or held under unsanitary conditions or the requirements in this part that food manufacturers, distributors, and holders shall observe current good manufacturing practice. Evidence indicating that such a violation exists causes the food to be adulterated within the meaning of the act, even though the amounts of natural or unavoidable defects are lower than the currently established defect action levels. The manufacturer, distributor, and holder of food shall at all times utilize quality control operations that reduce natural or unavoidable defects to the lowest level currently feasible.

(d) The mixing of a food containing defects above the current defect action level with another lot of food is not permitted and renders the final food

adulterated within the meaning of the act, regardless of the defect level of the final food.

(e) A compilation of the current defect action levels for natural or unavoidable defects in food for human use that present no health hazard may be obtained upon request from the Industry Programs Branch (HFF-326), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

Dated: March 13, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

Otis R. Bowen,

Secretary of Health and Human Services.

[FR Doc. 86-13822 Filed 6-18-86; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 118

[Docket No. 80N-0307]

Cacao Products and Confectionery; Revocation of Current Good Manufacturing Practice Regulations

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revoking the current good manufacturing practice (CGMP) regulations for cacao products and confectionery because the regulations are no longer necessary.

EFFECTIVE DATE: December 19, 1986.

FOR FURTHER INFORMATION CONTACT: Prince G. Harrill, Center for Food Safety and Applied Nutrition (HFF-210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0097.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 26, 1969 (34 FR 6977), the agency published a final rule governing CGMP in the food industry (see 21 CFR Part 110). Subsequently, the agency also published several regulations designed to address specific problems unique to the manufacture of certain food products. Among these were the regulations for cacao products and confectionery (21 CFR Part 118) published in the **Federal Register** of June 4, 1975 (40 FR 24162).

Since 1970, the agency has received numerous comments from industry supporting the fact that most problems addressed in the specific CGMP regulations are common to all parts of the food industry. In light of this information, the agency concluded that specific regulations would be unnecessary if Part 110 were revised to apply to most foods. Accordingly, in the **Federal Register** of June 8, 1979 (44 FR 33238), FDA proposed to so revise Part 110.

In keeping with the proposal, the agency, in the **Federal Register** of September 7, 1979 (44 FR 52257), published a proposal to revoke 21 CFR Part 118. FDA did not receive any comments in direct response to the proposal to revoke Part 118.

As a result of its evaluations of the numerous comments it received regarding the June 8, 1979, proposal, FDA is publishing elsewhere in this issue of the **Federal Register** a final rule to revise Part 110 to apply to most foods. In light of this final rule, the specific regulations for cacao products and confectionery are unnecessary. Accordingly, FDA is announcing in this document that it is revoking Part 118.

List of Subjects in 21 CFR Part 118

Cacao products, Candy, Food packaging, Reporting and recordkeeping requirements.

PART 118—[REMOVED]

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 402(a) (3) and (4), 701(a), 52 Stat. 1046, 1055 (21 U.S.C. 342(a) (3) and (4), 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Chapter I of Title 21 of the Code of Federal Regulations is amended by removing Part 118—Cacao Products and Confectionery.

Dated: March 28, 1986.

Maurice D. Kinslow,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-13818 Filed 6-18-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 123

[Docket No. 83N-0368]

Frozen Raw Breaded Shrimp; Current Good Manufacturing Practice

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revoke the current good manufacturing practice (CGMP) regulations for frozen raw breaded shrimp because the regulation is no longer necessary.

DATE: Comments by August 18, 1986.

ADDRESS: Written comments, data, or information to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Prince G. Harrill, Center for Food Safety and Applied Nutrition (HFF-210), Food and Drug Administration, 200 C St. Sw., Washington, DC 20204, 202-485-0097.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 26, 1969 (34 FR 6977), the agency published a final rule governing CGMP in the food industry (see 21 CFR Part 110). Subsequently the agency also published several regulations designed to address specific problems unique to the manufacture of certain food products. Among these were the regulations for frozen raw breaded shrimp (21 CFR Part 123) published in the **Federal Register** of January 13, 1970 (35 FR 420).

Since 1970, the agency has received numerous comments from industry supporting the fact that most of the problems addressed in the specific CGMP regulations are common to all parts of the food industy. In light of this information, the agency concluded that specific regulations would be unnecessary if Part 110 were revised to apply to most foods. Accordingly, in the **Federal Register** of June 8, 1979, the agency proposed to so revise Part 110. Elsewhere in this issue of the **Federal Register**, the agency is publishing a final rule that, among other things, revises Part 100 to apply to most foods. Because the final rule renders unnecessary the frozen raw breaded shrimp CGMP regulations, the agency is proposing in this notice to revoke Part 123. This action is consistent not only with final rule but also with the agency's program of reviewing existing regulations to eliminate those that are unnecessary (see 46 FR 3633; July 14, 1981). (See also the agency's notices published elsewhere in this issue of the **Federal Register** announcing the withdrawal of the agency's proposals to establish CGMP regulations for bakery foods and tree nuts, respectively, and the agency's final rule, also published elsewhere in this issue of the **Federal Register**, revoking the current CGMP regulations for cacao products and confectionary.)

Interested person may, on or before August 18, 1986 submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 123

Food packaging, Frozen food, Seafood.

PART 123—FROZEN RAW BREADED SHRIMP

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 402(a)(4), 710(a), 52 Stat. 1046 as amended, 1055 (21 U.S.C. 342(a)(4), 371(a))) and under 21 CFR 5.10, it is proposed that Chapter I of Title 21 of the Code of Federal Regulations be amended by removing Part 123—Frozen Raw Breaded Shrimp.

Dated: March 28, 1986.

Maurice D. Kinslow,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-13820 Filed 6-18-86; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 128f

[Docket No. 76N-0037]

Tree Nuts and Peanuts; Current Good Manufacturing Practice; Withdrawal of Proposed Rule

AGENCY: Food and Drug Administration.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing the proposal to establish current good manufacturing practice (CGMP) regulations for tree nuts and peanuts because the proposed regulations are no longer necessary.

FOR FURTHER INFORMATION CONTACT: Prince G. Harrill, Center for Food Safety and Applied Nutrition (HFF-210), Food and Drug Adminstration, 200 C St. SW., Washington, DC 20204, 202-485-0097.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 30, 1976 (41 FR 27000), the agency published a proposal to establish CGMP regulations for tree nuts and peanuts. The proposed regulations applied to almonds, Brazil nuts, cashew nuts, filberts, macadamia nuts, peanuts, pecans, pine nuts, pistachio nuts, and walnuts. A period of 60 days was provided for filing comments. At the request of a trade association, the comment period was extended 30 days by a notice in the **Federal Register** of August 23, 1976 (41 FR 35532). The comment period was extended an additional 30 days by a notice in the **Federal Register** of September 30, 1976 (41 FR 43179). FDA received numerous comments on the proposed regulations.

Subsequently, FDA published in the **Federal Register** of June 8, 1979 (44 FR 33238) a proposal to revise the umbrella CGMP regulations in Part 110. In the preamble to that proposal, FDA stated that the problems to be addressed by specific CGMP regulations, like those proposed for tree nuts and peanuts, are common throughout all segments of the food indutry. Accordingly, FDA concluded that the umbrella CGMP regulations in Part 110 should be revised to apply to most foods. In light of this conclusion, FDA announced in the June 9, 1979, proposal that it was staying the rulemaking proceeding for the proposed CGMP regulations for tree nuts and peanuts pending an evaluation of the comments on the proposed revisions to Part 110. The preamble to the June 8, 1979, proposal also stated that after the comments were evaluated, the agency would determine what action to take with respect to the proposed CGMP regulations for tree nuts and peanuts.

As a result of its evaluation of the numerous comments it received regarding the June 8, 1979, proposal, FDA is publishing elsewhere in this issue of the **Federal Register** a final rule that amends the umbrella CGMP regulations in Part 110 to apply to most foods, including tree nuts and peanuts. In the final rule FDA responds to the specific comments received concerning the June 30, 1976, proposal concerning tree nuts and peanuts. In light of the final rule, the agency's June 30, 1976, proposal is unnecessary.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 402(a) (3) and (4) and 701(a), 52 Stat. 1046, 1055 (21 U.S.C. 342(a) (3) and (4), 371(a))) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), the proposal to establish CGMP regulations for tree nuts and peanuts published in the **Federal**

Register of June 30, 1976 (41 FR 27000) is hereby withdrawn and the rulemaking proceeding initiated by that proposal is terminated.

Dated, March, 28, 1986.

Maurice D. Kinslow,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-13821 Filed 6-18-86; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 128e

[Docket No. 76N-0027]

Bakery Foods; Current Good Manufacturing Practice; Withdrawal of Proposed Rule

AGENCY: Food and Drug Administration.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing the proposal to establish current good manufacturing practice (CGMP) regulations for bakery foods because the proposed regulations are no longer necessary.

FOR FURTHER INFORMATION CONTACT: Prince G. Harrill, Center for Food Safety and Applied Nutrition (HFF-210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0097.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 12, 1976 (41 FR 6456), the agency published a proposal to establish CGMP regulations for bakery foods. The proposed regulations applied to such foods as bread, rolls, buns, crackers, stuffing, breading, biscuits, muffins, pretzels, cones, cakes, cookies, pies, pastries, and other sweet baked goods.

A period of 60 days was provided for filing comments. At the request of a trade association, the comment period was extended 30 days by a notice in the **Federal Register** of April 6, 1976 (41 FR 14526). The comment period was extended an additional 90 days by a notice in the **Federal Register** of May 14, 1976 (41 FR 19988). FDA received several comments on the proposal.

Subsequently, FDA published in the **Federal Register** of June 8, 1979 (44 FR 33238), a proposal to revise the umbrella CGMP regulations in Part 110. In the preamble to that proposal, FDA stated that the problems to be addressed by specific CGMP regulations, like those proposed for bakery foods, are common throughout all segments of the food industry. Accordingly, FDA concluded that the current umbrella CGMP regulations in Part 110 should be revised to apply to most foods. In light of this conclusion, FDA announced in the June 8, 1979, proposal that it was staying the proposed rulemaking proceeding for bakery foods pending an evaluation of the comments on the proposed revisions of the umbrella CGMP regulations. The preamble to the June 8, 1979, proposal also stated that after the comments were evaluated, the agency would determine what action to take with respect to the proposed CGMP regulations for bakery foods.

As a result of its evalaution of the comments it received regarding the June 8, 1979, proposal, FDA is publishing elsewhere in this issue of the **Federal Register** the final rule that amends the umbrella CGMP regulations in Part 110 to apply to most foods, including bakery foods. In the final rule FDA responded to the specific comments received on the February 12, 1976, proposal concerning bakery foods. In light of the final rule, the agency's February 12, 1976, proposal is unnecessary.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 402(a) (3) and (4) and 701(a), 52 Stat. 1046, 1055 (21 U.S.C. 342(a) (3) and (4), 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), the proposal to establish CGMP regulations for bakery foods published in the **Federal Register** of February 12, 1976 (41 FR 6456), is hereby withdrawn and the rulemaking proceeding initiated by that proposal is terminated.

Dated: March 28, 1986.

Maurice D. Kinslow,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-13819 Filed 6-18-86; 8:45 am]

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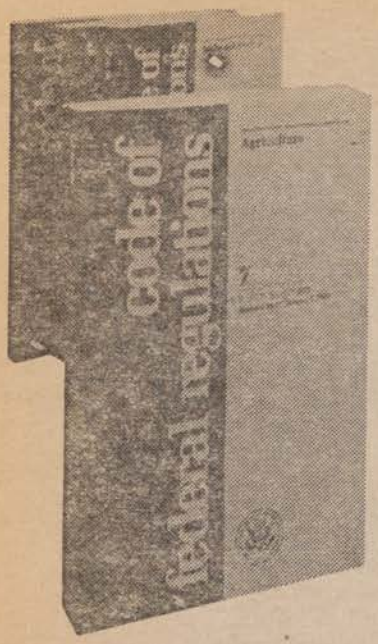
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