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Contents

Federal Register

Vol. 51, No. 181

Thursday, September 18, 1986

Separate Parts In This Issue

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR
Proclamations:
5525 33027

10 CFR
51 33224
171 33224

12 CFR
709 33029

14 CFR
39 (3 documents) 33029–33031
171 33176
Proposed Rules:
Ch. I 33061
39 (4 documents) 33061–33065

21 CFR
73 33032
807 33032

26 CFR
1 (2 documents) 33033

29 CFR
1910 33033

30 CFR
935 33034
Proposed Rules:
948 33066

32 CFR
292 33035

33 CFR
117 33036
151 33037
158 33037
165 33039
Proposed Rules:
117 33067

34 CFR
Proposed Rules:
761 33218

36 CFR
7 33040
251 33040

39 CFR
10 33041

40 CFR
60 (6 documents) 33041–33046
61 (6 documents) 33041–33046
799 33047
Proposed Rules:
261 33067

42 CFR
124 33208
Proposed Rules:
405 (2 documents) 33074, 33086
447 33086

44 CFR
64 33054

45 CFR
Proposed Rules:
1 33086
19 33086

46 CFR
97 33056
170 33056
172 33056

48 CFR
Proposed Rules:
204 33087
215 33087
230 33087

50 CFR
Proposed Rules:
17 33096

Federal Register
Vol. 51, No. 181
Thursday, September 18, 1986

Presidential Documents

Title 3—

The President

Proclamation 5525 of September 15, 1986

National Infection Control Week, 1986 and 1987

By the President of the United States of America

A Proclamation

Nosocomial (hospital-associated) infections directly cause more than twenty thousand deaths annually. They contribute indirectly to an additional sixty thousand deaths every year. Approximately one-third of all such infections, according to public health experts, are preventable. While doctors have long been aware of this problem in hospitals, there is new and growing concern about the spread of infection in day care centers. There is no way of reckoning the human cost of these infectious diseases. But we do know that the days lost from school and work as a result of these diseases and the cost of treating them create a great financial burden for the American public.

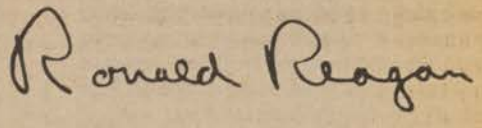
Scientific evidence has shown that improved health practices, such as proper hand-washing in health care and educational facilities, can significantly reduce the spread of infections, especially staphylococcal infections, which are a threat to hospital patients, and meningitis and diarrheal diseases, which can be contracted in day care centers that neglect proper hygienic practices.

Public Health Service investigators are continuing vital research. They are optimistic that new discoveries will lead to the development of improved techniques for diagnosing, treating, and preventing the spread of infectious diseases.

To focus public and professional attention on the seriousness of nosocomial and other infectious diseases, the Congress, by Public Law 99–373, has authorized and requested the President to designate a calendar week in 1986 and 1987 as "National Infection Control Week" and to issue a proclamation to that effect.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the weeks beginning October 19, 1986, and October 18, 1987, as National Infection Control Week. I call upon all Federal, State, and local government agencies, health organizations, communications media, and the people of the United States to observe these weeks with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of September, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.



[FR Doc. 86–21231
Filed 9–16–86; 12:05 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 51, No. 181
Thursday, September 18, 1986

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 709

Division of Assets, Liabilities and Capital; Deletion

AGENCY: National Credit Union Administration.

ACTION: Final deletion of existing regulation.

SUMMARY: Part 709—Division of Assets, Liabilities and Capital—is being deleted because the regulation has been rarely used and is no longer needed. Special situations can be handled on a case-by-case basis without the regulation.

EFFECTIVE DATE: September 10, 1986.

ADDRESS: National Credit Union Administration Board, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: D. Michael Riley, Director, Office of Examination and Insurance, at the above address, or telephone: (202) 357–1065.

SUPPLEMENTARY INFORMATION: NCUA is deleting Part 709 of the NCUA Rules and Regulations. Part 709—Division of Assets, Liabilities and Capital—contains provisions and procedures that enable members of a Federal credit union, who are a separately identifiable group, to undertake an equitable division of their assets, liabilities and capital, and charter a new Federal credit union. The most recent update of Part 709 was in 1973. Significant economic and policy changes have occurred since the regulation was modified. Over the past few years, there have been few, if any, "spin offs" using Part 709 of the Rules and Regulations. Accordingly, there is no need to retain this regulation. In addition, a number of requirements contained in Part 709 are duplicated in other sections of the Regulations, Bylaws, and chartering and insurance policies. These other provisions provide adequate flexibility of special cases to be resolved when, and if they arise.

On May 21, 1986 the NCUA Board issued, for comment, the proposed deletion of Part 709. In addition to comments provided by General Counsel and the Regional Directors, there was only one comment from the public. It was from a trade organization and it agreed with the deletion of Part 709.

Regulatory Procedures

The NCUA Board hereby certifies that the deletion does not have significant economic impact on a substantial number of small credit unions. The elimination of the regulation will reduce the regulatory burden and will not create any negative impact on credit unions.

Paperwork Reduction Act

The deletion will not increase collection requirements under the Paperwork Reduction Act. Therefore, the approval of the Office of Management and Budget is not required.

List of Subjects in 12 CFR Part 709

Division of assets, Liabilities and capital, Credit unions.

By the National Credit Union Administration Board on the 10th day of September, 1986.

Rosemary Brady,
Secretary of the Board.

PART 709—[REMOVED]

Accordingly, NCUA, removes Part 709 from the Regulations.

Authority: 12 U.S.C. 1766, 1789.

[FR Doc. 86–21169 Filed 9–17–86; 8:45 am]
BILLING CODE 7535–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86–NM–135–AD; Amdt. 39–5421]

Airworthiness Directives; British Aerospace Model BAe 125–800A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive, applicable to certain BAe Model 125–800A series airplanes, which requires inspection of certain wire bundles and replacement, if necessary, if the insulation has been damaged. This amendment also requires the installation of an improved protection for the cables to prevent further damage. This action is necessary to prevent fires which could result from shorted wires.

DATE: Effective October 24, 1986.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM–113; telephone (206) 431–2909. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires inspection, replacement, if necessary, and modification of certain wire bundles on BAe 125–800A series airplanes, was published in the **Federal Register** June 4, 1986 (51 FR 20305).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

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

It is estimated that 18 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be 4,320.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under

Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because of the minimal cost of compliance per airplane ($240.). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to BAe Model 125-800A series airplanes, serial numbers listed in BAe Service Bulletin 24-250-(3017D), dated April 8, 1985, certificated in any category. Compliance is required within 90 days after the effective date of this AD. To prevent a potential fire hazard associated with chafing of electrical wiring, accomplish the following, unless previously accomplished:

A. Inspect and replace, as necessary, the affected electrical cables and install the protective treatment to adjacent structures in accordance with BAe Service Bulletin 24-250-(3017D), dated April 8, 1985.

B. An alternate means of compliance of adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

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

All persons affected by this directive who have not already received the appropriate service bulletin from the manufacturer may obtain copies upon request to British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC 20041. This document may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This Amendment becomes effective October 24, 1986.

Issued in Seattle, Washington, on September 10, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-21072 Filed 9-17-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-NM-131-AD; Amdt. 39-5420]

Airworthiness Directives; British Aerospace Model BAe-146 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive, applicable to certain British Aerospace (BAe) Model 146 series airplanes, which requires modification of the longitudinal control system. This action is prompted by reports of control column oscillation, and is necessary to prevent unacceptable handling characteristics.

DATE: Effective October 24, 1986.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-2909. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires modification of the longitudinal control system on certain BAe Model 146 series airplanes to prevent unacceptable handling characteristics, was published in the **Federal Register** on June 13, 1986 (51 FR 21566).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

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

It is estimated that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be 3,200.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because of the minimal cost of compliance per airplane ($320.). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to BAe Model 146 series airplanes, as listed in BAe Service Bulletin 27-42-00671A, dated August 19, 1985, certificated in any category. Compliance is required within 60 days after the effective date of this AD, unless previously accomplished. To prevent control column oscillations, accomplish the following:

A. Modify the elevator control system in accordance with BAe Service Bulletin 27-42-00671A, dated August 19, 1985.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service bulletin from the manufacturer may obtain copies upon request to British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC 20041. This document may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This Amendment becomes effective October 24, 1986.

Issued in Seattle, Washington, on September 10, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-21073 Filed 9-17-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-149-NM-AD; Amdt. 39-5423]

Airworthiness Directives; DeHavilland of Canada, Ltd., Model DHC-8 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all known persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of DeHavilland Model DHC-8 series airplanes by individual telegrams. This AD requires deactivation of the ground spoilers and roll control spoilers in the ground mode. This action is necessary to prevent an uncommanded deployment of ground spoilers and roll control spoilers in the ground mode, and to preclude a hazardous loss of lift in a critical phase of flight.

DATES: Effective October 6, 1986.

This AD was effective earlier to all recipients of telegraphic AD T86-14-51, dated July 8, 1986. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from DeHavilland Aircraft of Canada, Ltd., Garrett Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the New York Aircraft Certification Office, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. C. Kallis or Mr. W. White, Systems Branch, ANE-173, FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION: On July 8, 1986, the FAA issued telegraphic AD T86-14-51, applicable to certain DeHavilland Model DHC-8 series airplanes, which requires deactivation of the ground spoilers and roll control spoilers in the ground mode. This action was prompted by an incident in which there was an uncommanded ground spoiler deployment in flight. This condition, if not corrected, could result in a hazardous loss of lift in a critical phase of flight.

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

The Federal Aviation Administration has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 29, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

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

Authority: 49 U.S.C. 1354(a); 1421 and 1423; 49 U.S.C. 106(g) (Revised. Pub. L. 97-449; January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

DeHavilland Aircraft of Canada, Ltd.: Applies to Model DHC-8-101 series airplanes, Serial Number 003 and subsequent, certificated in any category. Compliance is required before further flight, unless previously accomplished.

To preclude the uncommanded deployment of ground spoilers and roll control spoilers in the ground mode, accomplish the following:

A. Lockout circuit breaker ROLL SPLRS CONT, location F6, right essential bus, and circuit breaker GND SPLRS CONT, location C7, left main bus, in accordance with Section A of DeHavilland Alert Service Bulletin AB-27-25, dated July 3, 1986. Install a placard in the flight compartment, on the glareshield under the flight/taxi switch, to state the following: "GROUND SPOILERS AND ROLL CONTROL SPOILERS IN GROUND MODE ARE INOPERATIVE."

B. Insert a copy of this AD in the Airplane Flight Manual (AFM) Limitations Section. The elimination of all spoiler functions in ground mode increases landing distance and landing field length required by 15 percent when using flaps at 35 degrees (AFM, Figure 5.8.4.), and 10 percent when using flaps at 15 degrees (AFM Supplement #9, Figure 5.8.7.). With all spoiler functions in ground mode inoperative, there is negligible increase in the takeoff distance required and the takeoff run required.

C. An alternate means of compliance which provides an acceptable level of safety may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer, may obtain copies upon request to DeHavilland Aircraft of Canada, Ltd., Garrett Boulevard, Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

This amendment becomes effective October 6, 1986, as to all persons, except those persons to whom it was made immediately effective by telegraphic AD T86-14-51, issued July 8, 1986.

Issued in Seattle, Washington, on September 11, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-21075 Filed 9-17-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 85C-0532]

Confirmation of Effective Date for Iron Oxides, Chromium Oxide Greens, and Titanium Dioxide; Listing of Color Additives for Coloring Contact Lenses

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of August 9, 1986, for the final rule that amended the color additive regulations to provide for the safe use of iron oxides, chromium oxide greens, and titanium dioxide as color additives in contact lenses. This action responds to a petition filed by Wesley-Jessen.

DATE: Effective date confirmed: August 9, 1986.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 9, 1986 (51 FR 24815), FDA amended the color additive regulations to provide for the safe use of iron oxides, chromium oxide greens, and titanium dioxide as color additives in contact lenses.

FDA gave interested persons until August 8, 1986, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA has concluded that the final rule published in the **Federal Register** of July 9, 1986, should be confirmed.

List of Subjects in 21 CFR Part 73

Color additive, Cosmetics, Drugs, Medical devices.

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 (21 U.S.C. 371, 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections and requests for a hearing were filed in response to the July 9, 1986, final rule. Accordingly, the amendments promulgated thereby became effective August 9, 1986.

Dated: September 12, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-21086 Filed 9-17-86; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 807

[Docket No. 85N-0470]

Medical Device Registration; Recordkeeping Reduction

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to reduce the number of years that owners or operators of registered medical device establishments are required to keep a historical file of the labeling and advertisements for discontinued devices. The reduction is in response to Office of Management and Budget (OMB) guidelines. FDA is also revising and correcting the authority citation for its device registration regulations.

EFFECTIVE DATE: November 17, 1986.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Section 807.31 (21 CFR 807.31) requires owners or operators of medical device establishments to maintain a historical file of certain labeling and advertisements for their medical devices for (1) 5 years after the date the owner or operator made the last shipment of a discontinued device or (2) the anticipated useful life of the device (approved by OMB under control number 0910-0057).

OMB's rule (5 CFR Part 1320) implementing the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) (44 U.S.C. 3501-3520) establishes policies and procedures for controlling paperwork burdens imposed by Federal agencies on the public. Section 1320.6(f) of OMB's rule sets forth general information collection guidelines which provide that an agency should not require persons to retain records, other than health, medical or tax records, for more than 3 years, unless the agency demonstrates that the requirement is necessary to satisfy a statutory requirement or is justified by some other substantial need.

Based on its experience, and in consideration of OMB's guidelines, FDA believes that it is not necessary for the protection of the public health that the records required by § 807.31(c) be retained for 5 years.

Therefore, in the **Federal Register** of February 19, 1986 (51 FR 6008), FDA published a proposed rule to reduce the retention period applicable to labeling and advertising of discontinued devices to 3 years. The notice also proposed to revise the authority citation for 21 CFR Part 807 because reference to section 513 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c) was inadvertently omitted at the time Part 807 was originally promulgated.

The agency received two comments in response to the proposal. One comment was from a trade association; the other was from a manufacturer. Both comments supported the proposal.

Therefore, FDA is adopting the proposed rule as published in the **Federal Register** to reduce the retention period of labeling and advertising of discontinued devices to 3 years.

FDA has examined the consequences of this final rule in accordance with Executive Order 12291 and found that the rule is not a major rule as specified in the order. Therefore, a regulatory impact analysis is not required. FDA certifies, under the Regulatory Flexibility Act, that the rule will not have a significant economic impact on a substantial number of small entities because it does not impose any new requirements on any person. Therefore, a regulatory flexibility analysis is not required.

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 807

Confidential business information, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 807 is amended as follows:

PART 807—ESTABLISHMENT REGISTRATION AND DEVICE LISTING FOR MANUFACTURERS OF DEVICES

1. The authority citation for 21 CFR Part 807 is revised to read as follows:

Authority: Secs. 301(p) 501, 502, 510, 513, 701(a), 52 Stat. 1049-1051 as amended, 1055, 76 Stat. 794-795 as amended, 86 Stat. 462 as

amended, 90 Stat. 540–546 (21 U.S.C. 331(p), 351, 352, 360, 360c, 371(a)); 21 CFR 5.10.

2. In § 807.31 by revising paragraph (c) to read as follows:

§ 807.31 Additional listing information.

* * * * *

(c) Each owner or operator may discard labeling and advertisements from the historical file 3 years after the date of the last shipment of a discountinued device by an owner or operator.

* * * * *

Dated: August 14, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–21087 Filed 9–17–86; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8098]

Income Taxes; Returns Relating to Cash Payments in Excess of $10,000 Received in a Trade or Business

Correction

In FR Doc. 86–19939 beginning on page 31610 in the issue of Thursday, September 4, 1986, make the following corrections:

§ 1.60501–1 [Corrected]

1. On page 31612, in the second column, in § 1.60501–1(d)(2)(ii), third line, "many" should read "may"; and

2. On the same page, in the third column, in § 1.60501–1(d)(2)(iv), *Example,* twelfth line, "of" should read "at".

BILLING CODE 1505–01–M

26 CFR Part 1

[T.D. 8092]

Income Taxes; Temporary Regulations on Allocation of Basis to New Target's Assets.

Correction

In FR Doc. 86–14839 beginning on page 23737 in the issue of Tuesday, July 1, 1986, make the following corrections:

§ 1.338–4T [Corrected]

1. On page 23741, in the third column, in § 1.338–4T, in the line below *Answer 3, "Example:* (1)" should read "*Example:* (i)";

§ 1.338(b)–2T [Corrected]

2. On page 23742, in the second column, in § 1.338(b)–2T(a)(3), second line, "election" should read "allocation"; and

§ 1.338(b)–4T [Corrected]

3. On the same page, same column, in § 1.338(b)–4T(a)(3), second line, "§ 1338–4T(b)(1)" should read "§ 1.338–4T(b)(1)".

BILLING CODE 1505–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Commercial Diving Standard

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; technical amendments.

SUMMARY: This document amends paragraph (e)(1) of the section on equipment in the commercial diving standard, 29 CFR 1910.430, by correcting a reference to the OSHA standards on compressed gas cylinders and equipment to read "§§ 1910.101 and 1910.169–171," instead of "§§ 1910.166–19171." Sections 1910.166–168 were deleted in 1984 (49 FR 5318) because they repeated provisions also found in § 1910.101.

DATE: This amendment is effective September 18, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3637, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523–8151.

SUPPLEMENTARY INFORMATION: On February 10, 1984, OSHA published a final rule (49 FR 5318) revoking advisory and repetitive standards contained in OSHA's General Industry Standards (29 CFR Part 1910). Among the standards revoked by this action were those contained in §§ 1910.166 through 1910.168. These sections repeated requirements concerning compressed gas cylinders and compressed gas equipment which are also found in § 1910.101. As noted in the final rule, the removal of §§ 1910.166 through 1910.168 was not intended to lessen employee protection in any way.

However, 29 CFR Part 1910, Subpart T, Commercial Diving Operations, contains a provision, § 1910.430(e)(1), which requires that compressed gas cylinders be designed, constructed and maintained in accordance with the applicable provisions of 29 CFR 1910.166 through 1910.171. Because §§ 1910.166 through 1910.168 have been revoked, with their coverage being continued in § 1910.101, it is necessary to correct § 1910.430(e)(1) to reference § 1910.101 instead of §§ 1910.166 through 1910.168. Pursuant to 29 CFR 1911.5 and 5 U.S.C. 553(b), the Assistant Secretary has determined that notice and public procedure on this amendment are unnecessary. This is a minor amendment which corrects an inaccurate reference in the diving standard, and makes no substantive change in the requirements of that standard. For the same reason, pursuant to 5 U.S.C. 553(d), this amendment is made effective immediately upon publication.

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653 655, 657), section 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333), section 41, Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 941), 5 U.S.C. 553, Secretary of Labor's Order No. 9–83 (48 FR 35736) and 29 CFR Part 1911, 29 CFR Part 1910, is amended as set forth below.

Signed at Washington, DC, this 11th day of September 1986.

John A. Pendergrass,

Assistant Secretary of Labor.

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The Authority Citation for Subpart T of 29 CFR Part 1910 is revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Sec. 41, Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 941); Secretary of Labor's Order No. 8–76 (41 FR 25059) or 9–83 (48 FR 35736), as applicable; 29 CFR Part 1911. Section 1910.430(e)(1) also issued under 5 U.S.C. 553.

2. Paragraph (e)(1) of § 1910.430 is revised to read as follows:

§ 1910.430 Equipment.

* * * * *

(e) * * *

(1) Be designed, constructed and maintained in accordance with the

applicable provisions of 29 CFR 1910.101 and 1910.169 through 1910.171.

* * * * *

[FR Doc. 86-21026 Filed 9-17-86; 8:45 am]
BILLING CODE 4510-26-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Approval of Permanent Program Amendments for the State of Ohio Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval, with certain exceptions, of excess spoil amendments to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio submitted the amendments to OSMRE to bring its program into conformity with the Federal standards. Consistency of State and Federal standards is required by SMCRA.

EFFECTIVE DATE: September 18, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 Hamilton Road, Columbus, Ohio 43232; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background

The Ohio program was approved effective August 16, 1982, by the notice published in the August 10, 1982 **Federal Register**. 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** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11 and 935.15.

II. Discussion of Amendments

By letter dated March 3, 1986, the Ohio Department of Natural Resources, Division of Reclamation, submitted proposed amendments to Ohio's regulatory program at Ohio Administrative Code (OAC) 1501:13-4-05, 1501:13-4-14, and 1501:13-9-07.

The proposed changes to OAC sections 1501:13-4-05 and 1501:13-4-14 set forth the permitting requirements for surface and underground mining operations with regard to rock-toe buttresses and key-way cuts. OAC 1501:13-9-07 is a completely new regulation concerning the disposal of excess spoil. The amendment was proposed to address deficiencies that have been identified in the Ohio program with regard to the disposal of excess spoil.

On April 4, 1986, OSMRE published an announcement of the receipt of the amendments and invited public comment on the adequacy of the proposed amendments (51 FR 11588). The notice stated that a public hearing would be held only if requested. Since there were no requests for a hearing, a hearing was not held. The comment period closed on May 5, 1986.

During OSMRE's review of the proposed amendments several deficiencies were identified in OAC 1501:13-9-07. By letter dated May 21, 1986, OSMRE informed Ohio of these deficiencies. Ohio responded on June 23, 1986, by amending OAC 1501:13-9-07 to address all but one of the identified deficiencies as discussed below. On July 30, 1986, OSMRE reopened and extended the public comment period to allow the public an opportunity to comment on the amended proposal (51 FR 27204). The comment period closed on August 14, 1986. No comments were received during either comment period.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 and 732.15, that the program amendments submitted by Ohio on March 3, 1986, and amended on June 23, 1986, meet the requirements of SMCRA and 30 CFR Chapter VII, with one exception as discussed below. Accordingly, the Director is approving these program amendments and requiring the ODNR to amend the one rule. The Federal rules at 30 CFR Part 935 which codify decisions on the Ohio program are being amended to implement this decision.

This final rule is being made effective upon publication to expedite the State program amendment process and encourage the State to bring its program into conformity with the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

Ohio Administrative Code

1501:13-4-05 *Permit application requirements for reclamation and operations plans*—(L)(3) requires additional permit application information if excess spoil fills on surface mining operations require rock-toe buttresses or key-way cuts. The Director finds that the Ohio regulation contains identical language to and is no less effective than the Federal requirements found at 30 CFR 780.35(c).

1501:13-4-14 *Underground mining permit application requirements for reclamation and operations plans*—(N)(3) requires additional permit application information if excess spoil fills on underground mining operations require rock-toe buttresses or key-way cuts. The Director finds that the Ohio regulation is no less effective than the Federal requirements found at 30 CFR 784.19.

1501:13-9-07 *Disposal of excess spoil*—Ohio has adopted excess spoil regulations that are similar to those found at 30 CFR 701.5, 816/817.71, 816/817.72, 816/817.73, and 816/817.74. The Ohio regulations include the pertinent definitions, general requirements for disposal of excess spoil, valley fills/head-of-hollow fills, durable rock fills, and disposal on preexisting benches. The Director finds the Ohio regulations at OAC 1501:13-9-07 to be no less effective than the Federal regulations with the following exception at OAC 1501:13-9-07(F)(2).

1501:13-9-07(F)(2)—Under Ohio's amendment provision foundation investigations are required as well as laboratory testing of foundation materials consistent with 30 CFR 816/817.71(d)(1). However, unlike the Federal rule, the State's provision does not provide that the analyses of foundation conditions shall take into consideration the effect of underground mine workings, if any, upon the stability of the fill and appurtenant structures. This provision is important as the additional weight of the fill may cause subsidence into the mine workings. Therefore, the Director finds that OAC 1501:13-9-07(F)(2) is less effective than 30 CFR 816/817.71(d)(1), and he is requiring the State to amend it to be no less effective than the Federal requirements at 30 CFR 816/817.71(d)(1).

IV. Public Comments

No public comments were received.

V. Director's Decision

The Director, based on the above findings, is approving the amendments submitted to OSMRE on March 3, 1986, and modified on June 23, 1986, subject to

the required amendment set forth herein at 30 CFR 935.16(b). The Director is amending Part 935 of 30 CFR Chapter VII to reflect this decision.

VI. 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, for this action OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

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: September 12, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

PART 935—OHIO

30 CFR Part 935 is amended as follows:

1. The authority citation for Part 935 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. Section 935.15(x) is added to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(x) The following amendments submitted to OSMRE on March 3, 1986, as modified on June 23, 1986, are approved subject to the required amendment set forth at 30 CFR 935.16(b). This approval is effective September 18, 1986: Ohio Administrative Code, sections 1501:13–4–05, 1501:13–4–14 and 1501:13–9–07.

3. Section 935.16(b) is added to read as follows. The introductory text is republished.

§ 935.16 Required program amendments.

Pursuant to 30 CFR 732.17, Ohio is required to submit for OSMRE's approval the following proposed amendment by the date specified.

* * * * *

(b) By January 30, 1987, Ohio shall amend its program at OAC 1501:13–9–07(F)(2) to be no less effective than 30 CFR 816.71(d)(1) and 817.71(d)(1) concerning the consideration of the effect of underground mine workings on the foundation stability of excess spoil fills.

[FR Doc. 86–21145 Filed 9–17–86; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 292

Freedom of Information Act; Availability to the Public of Defense Intelligence Agency Information

AGENCY: Defense Intelligence Agency, DOD.

ACTION: Final rule.

SUMMARY: This final rule revises the Defense Intelligence Agency's earlier version of this part titled AVAILABILITY TO THE PUBLIC OF DEFENSE INTELLIGENCE AGENCY (DIA) INFORMATION which implements the Freedom of Information Act, as amended (5 U.S.C 552) within the DIA. This revision supercedes a final rule (40 FR 7292) published on February 19, 1975 at 32 CFR Part 292. This revision incorporates changes occasioned by the publication of DoD Directive 5400.7–R, the single DoD regulation on the FOIA Program.

EFFECTIVE DATE: September 18, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. Hardzog, Freedom of Information Act Officer, Defense Intelligence Agency, RTS–1, Washington, DC 20340–3299; Telephone, 202–373–3910, 3911 or autovon 243–3910.

SUPPLEMENTARY INFORMATION: Subsection (a) of the Freedom of Information Act, as amended (5 U.S.C. 552), requires that Federal agencies publish rules "stating the time, place, fees (if any), and procedures to be followed" in making records available to the public.

The Defense Intelligence Agency has determined that this revision is not a major rule as defined by Executive Order 12291, is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 90–354), and does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

List of Subjects in 32 CFR Part 292

Freedom of Information.

Accordingly, Part 292 of 32 CFR is revised to read as follows:

PART 292—AVAILABILITY TO THE PUBLIC OF DEFENSE INTELLIGENCE AGENCY (DIA) INFORMATION

Sec.

Authority: 5 U.S.C. 552

§ 292.1 Purpose.

This part implements the "Freedom of Information Act," (FOIA) 5 U.S.C. 552, as amended, within the DIA and outlines policy governing release of records to the public.

§ 292.2 Applicability.

The provisions of this part apply to all elements of DIA and govern the release of records of these elements. This part is effective on September 18, 1986.

§ 292.3 Indices.

The DIA does not originate final orders, opinions, statements of policy, interpretations, staff manuals or instructions that affect members of the public of the type covered by the indexing requirement of 5 U.S.C. 552(a)(2) or required to be published for the guidance of the public under 5 U.S.C. 552(a)(1). The Director, DIA, has therefore determined, pursuant to pertinent statutory and Executive Order requirements, that it is unnecessary and impracticable to publish an index of the type required by 5 U.S.C. 552 as amended.

§ 292.4 Procedures for request of records.

(a) Requests. Requests for access to records of the DIA should be filed by mail addressed to the Defense Intelligence Agency, RTS–1, Freedom of Information Act Office, Washington, DC, 20340–3299. Requests need not be

made on any special form, but must be by letter or other written statement identifying the request as a Freedom of Information Act request and setting forth sufficient information reasonably describing the requested record.

(b) Determination and Notification. When the requested record has been located and identified, the Freedom of Information Act Officer shall determine whether the record is one which, consistent with statutory requirements, Executive orders and appropriate directives, may be released or should be exempted under the provision of 5 U.S.C. 552. The Freedom of Information Act Officer, or the designee of the Executive Director, shall notify the requester of his determination within 10 working days of his receipt of the request.

(c) Extension of response time. Where the requested record cannot be provided within the initial response period of 10 days because of unusual circumstances, the Freedom of Information Act Officer shall notify the requester in writing of the delay within the initial response period, and the reasons therefor. In any case, the record should be provided, if releasable under the FOIA, within an additional 10 working-day period.

(d) Fees. Specific fees apply with respect to services rendered to the public.

(1) The schedule of fees chargeable is contained at § 286.60 et seq. As a component of the Department of Defense, the applicable published Departmental rules and schedules with respect to fees will also be the policy of DIA.

(2) Fees may be waived in certain instances. Generally, the Departmental rules with respect to fee waivers found at section 286 et seq. will also be the policy of DIA.

(3) Normally, collection of fees will be made in advance of rendering the service. In some instances, it may be more practical to collect charges and fees at the time of conveying the service or property to the recipient, but only in those instances where the request specifically states that whatever cost is involved will be acceptable or acceptable up to a specified limit that covers anticipated costs. In the absence of an agreement to pay required anticipated costs, the time for responding to a request begins on resolution of willingness to pay.

(4) Fees must be paid in full prior to search and issuance of requested copies. If uncertainty as to the existence of a record, or as to the number of sheets to be copied or certified, precludes remitting the exact fee chargeable with the request, DIA will inform the requester of the exact amount required.

(5) Remittances will be by personal check or bank draft on a bank in the United States or by U.S. postal money order. Remittances can be made payable to "Treasurer of the United States" and forwarded to the address listed above at § 292.4(a).

§ 292.5 Appeals.

(a) Any person denied access to records may, within 45 days after notification of such denial, file an appeal to the DIA at the address listed at § 292.4. Such an appeal shall be in writing and clearly marked as an appeal under the Freedom of Information Act. The appeal shall reference the initial denial and shall contain in sufficient detail the grounds upon which the requester believes release of the information is required.

(b) The appellate denial authority shall rest with the Director or Deputy Director of DIA.

(c) Appeals under the Freedom of Information Act shall be answered within 20 working days after receipt of the appeal.

Dated: September 15, 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-21147 Filed 9-17-86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 12-86-12]

Drawbridge Operation Requirements

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: At the request of California Department of Transportation, the Coast Guard is establishing a temporary drawbridge operation regulation for the Highway 12 drawbridge across the Sacramento River at Rio Vista, California, to require thirty minutes advance notice for the passage of vessels. This temporary regulation is being established to allow a painting contractor to complete cleaning and painting operations begun two years ago. Since this action will accommodate all the needs of marine traffic expected to pass the bridge, its impact is expected to be minimal.

EFFECTIVE DATE: This rule becomes effective on September 15, 1986 and terminates on October 17, 1986.

FOR FURTHER INFORMATION CONTACT: Wayne R. Till, Chief, Bridge Section, Aids to Navigation Branch (telephone: (415) 437-3514).

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for this regulation and it is being made effective in less than 30 days from the date of publication. Following normal rulemaking procedure would have been contrary to the public interest. Immediate action is needed to prevent further deterioration of the steel bridge structure. A comment period has not been provided because all the needs of navigation are provided for. A Local Notice to Mariners has been issued.

This temporary regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). Since there is no economic impact, a full regulatory evaluation is unnecessary. This temporary regulation will have no appreciable consequences as it will not prohibit any vessels from using the waterway. Since the economic impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant impact on a substantial number of small entities.

Drafting Information

The drafters of this rule are Wayne R. Till, project officer, and Lieutenant Commander Wayne C. Raabe, project attorney, Twelfth Coast Guard District Legal Office.

Discussion of Regulation

Cleaning and painting operations started two years ago. Shortly after the operations started the bridge was struck by a ship. The cleaning and painting was terminated so that repairs to the structure could be done. The repairs have been completed and cleaning and painting has been resumed. It is important now to complete the painting prior to the onset of the rainy season. The painting of the lift span is scheduled for the period September 15, 1986 through October 17, 1986. Advance notice is necessary to clear the lift span of painters and equipment prior to bridge openings.

Current regulations require the bridge to open on call. The temporary regulation will require thirty minutes advance notice from 7:30 A.M. to 4:00 P.M. Monday thru Friday, excluding holidays.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, Part 117 of Title 33 of the Code of Federal Regulations is revised as follows:

PART 117—DRAWBRIDGE OPERATION REQUIREMENTS

Subpart B—Specific Requirements

1. The authority citation for Part 117 continues to read as follows:

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

2. Section 117.189 is amended by adding paragraph (d) to read as follows:

§ 117.189 Sacramento river.

* * * * *

(d) During the period September 15, 1986 to October 17, 1986, the draw of the Rio Vista Bridge, mile 12.8, requires thirty minutes advance notice for openings from 7:30 A.M. to 4:00 P.M. Monday thru Friday, excluding holidays. The advance notice is to be given to the Rio Vista bridge via radiotelephone or by land line to (707) 374–2134.

Dated: September 4, 1986.

John D. Costello,

Vice Admiral, U.S. Coast Guard Commander, Twelfth Coast Guard District.

[FR Doc. 86–21157 Filed 9–17–86; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Parts 151 and 158

[CGD 78–035]

Reception Facility Requirements for Waste Materials Retained on Board

AGENCY: Coast Guard, DOT.

ACTION: Affirmation of interim final rule.

SUMMARY: This document affirms without change the interim final rule published on September 9, 1985 which put into effect the requirements of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the 1978 Protocol relating thereto (MARPOL 73/78). MARPOL 73/78 controls the amount of waste materials ships can discharge at sea, and requires reception facilities at ports and terminals to receive materials retained on board as a result of compliance with MARPOL 73/78. The regulations provide criteria for determining the adequacy of reception facilities and administrative procedures for granting Certificates of Adequacy to ports and terminals.

EFFECTIVE DATE: September 18, 1986.

FOR FURTHER INFORMATION CONTACT: Lieutenant Timothy M. Mallon, Office of Marine Safety, Security, and Environmental Protection, (G–MPS–3), telephone 202–267–0494. Normal working hours are between 7:00 a.m. and 3:30 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: An interim rule was published in the September 9, 1985 issue of the **Federal Register** (50 FR 36768), with an effective date of March 10, 1986. The interim rule invited comments for 90 days on a Certificate of Adequacy and Optional Application Form (Appendix A of the preamble), and on 33 CFR 158.163(a), responsibility for reception facility operations. The comment period ended on December 9, 1985. Comments were received from seven sources, including businesses and industry organizations. One of the seven comments was received on December 17, 1985, after the comment period had ended. All seven of these comments were considered before affirming the interim rule. An eighth comment, received on March 10, 1986, was not considered because of the late date and because it did not address any matters open to comment. Individual comments are addressed below.

The Coast Guard has consulted with the Administrator of the Environmental Protection Agency (EPA) as required by the Act to Prevent Pollution from Ships (Act) (33 U.S.C. 1905(A)). Comments by EPA officials, including formal comments on a draft of this rulemaking, and informal comments at meetings and other contacts, have been considered before issuing this affirmation.

Drafting Information

The principal persons involved in drafting this affirmation document are Lieutenant Timothy M. Mallon, of the Office of Marine Safety, Security and Environmental Protection, and Mr. Stanley M. Colby, Project Counsel, of the Office of Chief Counsel.

Background

Responding to comments to the NPRM, in the interim rule the Coast Guard changed the assignment of responsibility for reception facility operation (33 CFR 158.163(a)). This change was made so that persons other than the holder of a Certificate of Adequacy could be held accountable for the violation of a requirement under 33 CFR Part 158. However, the Coast Guard determined it would be impractical and contrary to the public interest to delay the publication of the entire Part 158 to give the public an opportunity to comment on the changes to § 158.163(a).

The interim rule also included a Certificate of Adequacy and Optional Application Form for comment. The Coast Guard stated that the application form would not become mandatory without the public having further notice and opportunity to comment.

Response to Comments

The Coast Guard received comments to the interim rule from seven sources including businesses, industry organizations, state and local governments. Three addressed the wording of § 158.163(a), one addressed aspects of the draft application form, and the remaining three addressed issues entirely outside the scope of the request for comments in the interim rule.

1. Section 158.163(a). One comment was concerned that the wording in this section would establish joint and several liability, affecting the person in charge of a port or terminal and the person who is in charge of a reception facility, for compliance with the requirements in the regulations. The comment proposed alternate wording that would assign responsibility for this compliance to the party having control over the particular operations fulfilling particular regulatory requirements.

The Coast Guard disagrees that the proposed change should be made. The intent of this section is to establish responsibilities so that problems with reception facilities can be dealt with appropriately using the remedial mechanisms of suspension and revocation (§ 158.170), and civil and criminal penalties (§ 158.195). The normal purpose of joint and several liability is to deal with situations where responsibility is difficult to allocate, and it is used more often for compensatory rather than remedial purposes. This mechanism is used in this regulatory program because the variety of possible arrangements between individual terminals and reception facilities precludes advance determination of responsibility for violations. The actual party or parties against whom enforcement action will be taken will be determined from the facts of a particular incident.

Civil and criminal penalty actions, when appropriate, are sought against the party having control over the particular violation. Suspension or revocation of the Certificate of Adequacy, on the other hand, must proceed against the holder of the Certificate of Adequacy, no matter who has control. The wording proposed by the comment would limit suspension and revocation action to situations over which the holder of a Certificate of Adequacy has immediate control. For this reason, the wording recommended by the comment has not been adopted.

Another comment claimed that this section places responsibility for oily wastes and ballast on persons who did not create the waste (persons in charge of ports or terminals) and that this was not contemplated by MARPOL 73/78 or the Act. The comment assumes that in all instances the persons in charge of ports and terminals will rely on independent contractors operating a "waste handling service" to provide the necessary reception facilities and argues that the persons in charge of ports and terminals should have no responsibility for how their activities are carried out. The Coast Guard disagrees that Part 158 exceeds the scope of MARPOL 73/78 and the Act in involving persons in charge of ports and terminals. They are responsible for the initial arrangements whereby adequate facilities are made available to vessels using the port or terminal. The Act dictates the involvement of persons in charge of ports and terminals in the application process (33 U.S.C. 1905(a)), and, as "applicants", in the issuance of the Certificates of Adequacy (33 CFR 1905(c)). The Act, in providing for suspension and revocation of Certificates of Adequacy "for cause or because of changed conditions" (33 U.S.C. 1905(c)(1)), clearly intends that "applicants" retain certain responsibility for the continued adequacy of reception facilities. Sections 158.163(a) and 158.170 merely implement the intent of the Act and are deliberately broad to cover all possible arrangements by which reception facilities are made available. The present wording is retained for that reason.

The third comment recommended that the responsibility for compliance be placed only on persons in charge of terminals and persons who are in charge of reception facilities, leaving out persons in charge of ports. The comment is from a port authority that is not in a position to exercise direct control of terminal and vessel operations. The Coast Guard disagrees because there are requirements, which the holder of a Certificate of Adequacy for a port must comply with, which do not involve terminal and vessel operations. For example, under § 158.165 the person in charge would have to notify the COTP if any of the information contained in the application submitted under § 158.140 changed. The Coast Guard must retain the present wording of § 158.163(a) in order to hold even a person in charge with as limited operational control as the port authority submitting the comment accountable for complying with this requirement.

2. *Draft Certificate of Adequacy and Application Form.* One comment addressed Appendix A of the preamble to the interim rule, the Certificate of Adequacy and Optional Application Form. The comment complained that the form was not previously published for comment. As noted in the preamble to the interim rule, the whole purpose of publishing Appendix A was to solicit public comment. The preamble stated that there would be further notice and opportunity to comment if the Coast Guard decided to make the application form mandatory. The comment also noted that the treatment of mobile tank trucks in the worksheet (Item E, page A–13, 50 FR 36788) was ambiguous in how to interpret the term "available" in the phrase "number of tank trucks available". This number is the number of tank trucks available to the applicant (owned, operated, or provided by third parties) to receive residues and mixtures containing oil from oceangoing ships at the applicant's port or terminal. This point has been clarified in guidance to Coast Guard Captain of the Port (COTP) Offices. If necessary, changes will be considered in future revisions of the form.

3. *Other comments.* The remaining comments were on aspects of the interim rule that were not open to comment. The Coast Guard cannot consider changes based on these comments, without further notice and opportunity to comment, but answers them so that the public is aware of the Coast Guard's views on these concerns.

Two comments suggested that the 24 hour period of § 158.200(a)(3)(i) should be changed to accommodate the time necessary to analyze samples of residues and mixtures containing oil to be discharged from oceangoing ships. One suggested that the time criteria be deleted or suspended, the other suggested that the 24 hour period start after the oceangoing ship is available at dockside for sampling of wastes to be received. The Coast Guard disagrees with these comments because either alternative would result in undue delay to ships. Under the first alternative there would be no time constraints, so there would be no control over delay to vessels. Under the second, many ships that have turn-around times far shorter than 24 hours would be unduly delayed. If sample analysis is considered desirable prior to discharge to reception facilities, it must be accomplished within the time criteria specified in § 158.200, unless these are waived by the COTP.

One comment addressed the waiver provisions of § 158.150, claiming they were too ambiguous and subject to misinterpretation. The Coast Guard disagrees with the comment, in that any attempt to specifically limit criteria for waivers will inevitably result in reasonable applications for waivers being denied because they do not meet the specific criteria. Variation between different COTPs is appropriate in many cases, because of the differences between conditions in the COTP zones. Any inconsistency between COTPs due to different interpretations will be controlled through internal guidance and the appeals process in § 158.190. The comment also requested an extension to the comment period of the interim rule. This was denied because ample opportunity to comment on this topic was provided in the NPRM.

One comment addressed the denial of entry provisions of §§ 158.130 and 158.180, stating that these provisions were overly restrictive and contrary to the intent of MARPOL, in that oceangoing ships that had no need for facilities would be denied entry. One example provided was a ship that had discharged waste at a previous port, and had no present need for reception facilities because it could continue to retain wastes onboard. The Coast Guard disagrees with the comment to the extent that it implies that the Coast Guard has the power to modify the denial of entry provisions in the Act (33 U.S.C. 1905(e)). The Act makes no mention of a present need for reception facilities, and the Coast Guard may not make this change by regulation. The Act was intended to encourage ports to have reception facilities available on a continuing basis.

One comment mentioned an EPA proposal to list "used oil" as a hazardous waste under the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901 *et seq.*), and raised questions about the implications of this proposal on reception facilities. EPA has received numerous comments on their proposed rule and is reevaluating its proposal in light of those comments. The Coast Guard will continue to consult with the EPA on these issues.

Final Regulatory Evaluation

For the Interim Final Rule, these regulations were considered significant

under Executive Order 12498 and DOT regulatory policies and procedures (44 FR 11034; February 26, 1979) and non-major under Executive Order 12291. Because this document only affirms the Interim Final Rule that implemented Annex I, this continues to be true.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, a Regulatory Flexibility analysis which discusses the impact of the proposal on small entities was done for the Interim Final Rule. The Coast Guard projected that a number of small entities will be affected. Because this document affirms the Interim Final Rule, the impact on small entities will not change.

Paperwork Reduction Act

The Interim Final Rule contained information collection requirements which were approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq). The Interim Final Rule proposed to make use of the Coast Guard form USCG–CG–01(A) (9–85) mandatory when applying for a Certificate of Adequacy. The Coast Guard did not receive any comments on this proposal and has submitted the form to the Office of Management and Budget for approval.

Environmental Impact

An environmental assessment and a finding of no significant impact were prepared for the Interim Final Rule. Since this document only affirms the Interim Final Rule, the assessment of the environmental impact is unaffected.

List of Subjects

33 CFR Part 151

Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 158

Hazardous waste, Oil pollution, Ports, Reception facilities, Terminals, Vessels.

Affirmation of Interim Rule

In consideration of the preceding the interim rule published at 50 FR 36768, September 9, 1985, amending 33 CFR Parts 151 and 158 is adopted as final without change.

August 29, 1986.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 86–21163 Filed 9–17–86; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COTP San Francisco Bay Regulation 86–06]

Security Zone Regulation: San Francisco Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a Security Zone in San Francisco Bay around the USS KITTYHAWK while it is moored at Pier 30/32, San Francisco, CA. The zone is needed to safeguard the USS KITTYHAWK from sabotage, subversive acts, accidents, or incidents of a similar nature. The Security Zone extends 100 yards around the vessel. Entry into this Security Zone is prohibited unless authorized by the Captain of the Port, San Francisco Bay.

EFFECTIVE DATES: This regulation becomes effective on 11 October 1986 at approximately 11:30 A.M., PDT. It terminates when the USS KITTYHAWK departs San Francisco Bay at approximately 9:00 A.M. PDT, 16 October 1986.

FOR FURTHER INFORMATION CONTACT: LTJG Steven J. Boyle, Coast Guard Marine Safety Office, San Francisco Bay, CA, 415–437–3073.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a "Notice of Proposed . . . Rulemaking" (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. The United States Navy's request for assistance was not received until 3 SEP. 1986. Subsequently, there was not sufficient time remaining to publish NPRM and delaying the Security Zone's effective date would be contrary to the public interest since immediate action is needed to safeguard vessels and their occupants on the scheduled date.

Drafting Information

The drafters of this regulation are LTJG. Steven J. Boyle, Project Officer for the Captain of the Port, and LCDR W. C. Raabe, Project Attorney, Twelfth Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation will occur on 11 October 1986 when the USS KITTYHAWK will arrive in San Francisco Bay for the Fleetweek 1986 ceremonies. Part of these ceremonies include a fireworks display to be launched from a barge adjacent to the USS KITTYHAWK on 12 October 1986. It is expected that the arrival of the USS KITTYHAWK will attract significant public and media attention and may be subject to protest demonstrations. A Security Zone will provide the Captain of the Port San Francisco Bay with the authority necessary to help ensure that spectators and/or protestors do not create situations where the USS KITTYHAWK and its occupants or the spectators and/or protestors themselves may come to harm. The security of the USS KITTYHAWK is in the national interest and a Security Zone is justified to help protect this military resource and its occupants. . . . This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

List of subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

PART 165—[AMENDED]

Regulation

In consideration of the foregoing Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231, 50 U.S.C. 191, 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5

2. A new § 165.T1206 is added to Subpart D to read as follows:

§ 165.T1206 Security Zone: San Francisco Bay, CA.

(a) *Location.* The following area is a Security Zone: A Security Zone is established 11 October 1986 around the USS KITTYHAWK while moored to Pier 30/32, San Francisco, CA. The Security Zone extends 100 yards around the USS KITTYHAWK.

(b) *Effective Date.* This regulation becomes effective when the vessel moors at Pier 30/32, San Francisco, CA and remains effective whenever moored at this location. It terminates when the USS KITTYHAWK departs San Francisco Bay at approximately 9:00 A.M. PDT, 16 October 1986.

(c) *Regulations.* (1) In accordance with the general regulation in 165.33 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port San Francisco Bay, CA. Section 165.33 also contains other general requirements.

Dated: September 10, 1986.

David Zawadzki,

Captain, U.S. Coast Guard, Captain of the Port San Francisco Bay.

[FR Doc. 86–21159 Filed 9–17–86; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Statue of Liberty National Monument, New York; Closure Regulation

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rulemaking is an administrative change removing expired material from the Code of Federal Regulations pertaining to the closure of the Statue of Liberty National Monument to public use through July 4, 1986. The closure was implemented by interim rule on September 13, 1985 for reasons of public safety during the period of the statue's restoration, but is no longer in effect. The monument and statue were reopened to the public on July 5, 1986.

EFFECTIVE DATE: October 20, 1986.

FOR FURTHER INFORMATION CONTACT: Andy Ringgold, National Park Service, Branch of Ranger Activities, P.O. Box 37127, Washington, DC 20013–7127, (202) 343–1360.

SUPPLEMENTARY INFORMATION:

Background

During 1985 and 1986, the National Park Service (NPS) phased in a gradual closure of the Statue of Liberty and Liberty Island in order to provide for public safety during construction activities related to the restoration of the statue. A total closure to public use was eventually effected and was announced through a notice published in the **Federal Register** on June 26, 1985 (50 FR 26415) and an interim rule published on September 13, 1985 (50 FR 37361). The interim rule, codified at Title 36 of the Code of Federal Regulations, § 7.44 (36 CFR 7.44), closed the Statue of Liberty National Monument to public use and access through July 4, 1986.

The statue renovation has been completed and the monument reopened to the public. The purpose of this rulemaking is to remove from the Code of Federal Regulations the closure provision of 36 CFR 7.44 that now constitutes expired material. Because the closure provision is the only text codified in § 7.44, the entire section is being removed.

The NPS is publishing this rulemaking as a final rule without prior publication of a proposed rule. This action is being taken because the NPS has determined that a proposed rulemaking and opportunity for public comment are unnecessary and contrary to the public interest. This determination is based on the facts that the effect of this rulemaking is limited to the removal of expired material from the Code of Federal Regulations and that prompt removal of that regulatory text is in the public interest. Publication of a proposed rule would delay this process unnecessarily and also result in unnecessary additional expense.

Summary of Public Comments

No public comments were received in response to the publication of the interim rule.

Drafting Information

The author of this rulemaking is Andy Ringgold of the NPS Branch of Ranger Activities, Washington, DC.

Paperwork Reduction Act

This rukemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance with Other Laws

The Department of the Interior has determined that this document constitutes an administrative change, not subject to the provisions of Executive Order 12291, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rukemaking has no economic effect since it neither removes substantive restrictions nor imposes new ones.

The NPS has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this proposed rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 7

National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Chapter I is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

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

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

§ 7.44 [Removed and Reserved]

2. By removing and reserving § 7.44.

Dated: September 10, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–21121 Filed 9–17–86; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

Land Uses

AGENCY: Forest Service, USDA.

ACTION: Notice; Completion of review of existing regulations.

SUMMARY: Executive Order 12291 requires periodic review of Federal regulations. The Forest Service hereby gives notice that it has completed its review of the rules at 36 CFR 251.23 which govern the designation of experimental areas and research natural areas. A survey was made of all nine Regional Offices and eight Experiment Stations to determine: (a) Whether the regulation is adequate for implementing establishment of these areas and, (b) whether any office or Station has received any correspondence or other expression of interest from the general public concerning this regulation. All reported that: (a) The regulation is adequate for implementing establishment of experimental areas and research natural areas and (b) the general public had not expressed any form of concern about the regulation. Therefore, the Forest Service finds no basis for revising the regulation.

FOR FURTHER INFORMATION CONTACT: Russell Burns, Timber Management

Research Staff, Forest Service, USDA. (703) 235–8200

F. Dale Robertson,

Associate Chief.

September 11, 1986.

[FR Doc. 86–21167 File 9–17–86; 8:45 am]

BILLING CODE 3410–11–M

POSTAL SERVICE

39 CFR Part 10

Express Mail International Service to Chile and Senegal; Delay in Commencement of Service to India

AGENCY: Postal Service.

ACTION: Final action on Express Mail International Service to Chile and Senegal; Notice of delay in proposed commencement of service to India.

SUMMARY: Pursuant to agreements with the postal administrations of Chile and Senegal, the Postal Service intends to begin Express Mail International Service with these countries at postage rates indicated in the tables below. Service is scheduled to begin on September 26, 1986.

EFFECTIVE DATE: September 26, 1986.

FOR FURTHER INFORMATION CONTACT: Leon W. Perlinn, (202) 268–2673.

SUPPLEMENTARY INFORMATION: By a notice published in the **Federal Register** on August 13, 1986 (51 FR 28958), the Postal Service announced that it was proposing to begin Express Mail International Service to Chile and Senegal. The **Federal Register** notice also provided information and postal rates concerning an agreement with the postal administration of India to begin Express Mail International Service on the same effective date as with Chile and Senegal. Indian authorities have informed the Postal Service that they wish to postpone the beginning of this service. Accordingly, the proposed service is delayed. The effective date will be published when it has been determined. Comments were invited on published rate tables, which are proposed amendments to the International Mail Manual (incorporated by reference in the Code of Federal Regulations, 39 CFR 10.1), and which are to become effective on the date service begins. No comments were received. Accordingly, the Postal Service states that it intends to begin Express Mail International Service with Chile and Senegal on September 26, 1986 at the rates indicated in the table below.

Lists of Subjects in 39 CFR Part 10

Postal Service, Foreign relations.

PART 10—[AMENDED]

The authority citation for Part 10 continues to read as follows:

Authority: 5 U.S.C. 552(a), 39 U.S.C. 401, 404, 407, 408.

CHILE—EXPRESS MAIL INTERNATIONAL SERVICE

Custom designed service [1] [2] up to and including—		On demand service [2] up to and including—	
Pounds	Rate	Pounds	Rate
1	$31.00	1	$23.00
2	35.90	2	27.90
3	40.80	3	32.80
4	45.70	4	37.70
5	50.60	5	42.60
6	55.50	6	47.50
7	60.40	7	52.40
8	65.30	8	57.30
9	70.20	9	62.20
10	75.10	10	67.10
11	80.00	11	72.00
12	84.90	12	76.90
13	89.80	13	81.80
14	94.70	14	86.70
15	99.60	15	91.60
16	104.50	16	96.50
17	109.40	17	101.40
18	114.30	18	106.30
19	119.20	19	111.20
20	124.10	20	116.10
21	129.00	21	121.00
22	133.90	22	125.90
23	138.80	23	130.80
24	143.70	24	135.70
25	148.60	25	140.60
26	153.50	26	145.50
27	158.40	27	150.40
28	163.30	28	155.30
29	168.20	29	160.20
30	173.10	30	165.10
31	178.00	31	170.00
32	182.90	32	174.90
33	187.80	33	179.80

[1] Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a designated Post Office.

[2] Pickup is available under a Service Agreement for an added charge of $5.60 for each pickup stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pickup charge.

SENEGAL— EXPRESS MAIL INTERNATIONAL SERVICE

Custom designed service [1] [2] up to and including—		On demand service [2] up to and including—	
Pounds	Rate	Pounds	Rate
1	$31.00	1	$23.00
2	35.90	2	27.90
3	40.80	3	32.80
4	45.70	4	37.70
5	50.60	5	42.60
6	55.50	6	47.50
7	60.40	7	52.40
8	65.30	8	57.30
9	70.20	9	62.20
10	75.10	10	67.10
11	80.00	11	72.00
12	84.90	12	76.90
13	89.80	13	81.80
14	94.70	14	86.70
15	99.60	15	91.60
16	104.50	16	96.50
17	109.40	17	101.40
18	114.30	18	106.30
19	119.20	19	111.20
20	124.10	20	116.10
21	129.00	21	121.00
22	133.90	22	125.90
23	138.80	23	130.80
24	143.70	24	135.70
25	148.60	25	140.60
26	153.50	26	145.50

SENEGAL— EXPRESS MAIL INTERNATIONAL SERVICE—Continued

Custom designed service [1] [2] up to and including—		On demand service [2] Up to and Including—	
Pounds	Rate	Pounds	Rate
27	158.40	27	150.40
28	163.30	28	155.30
29	168.20	29	160.20
30	173.10	30	165.10
31	178.00	31	170.00
32	182.90	32	174.90
33	187.80	33	179.80
34	192.70	34	184.70
35	197.60	35	189.60
36	202.50	36	194.50
37	207.40	37	199.40
38	212.30	38	204.30
39	217.20	39	209.20
40	222.10	40	214.10
41	227.00	41	219.00
42	231.90	42	223.90
43	236.80	43	228.80
44	241.70	44	233.70

[1] Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a designated Post Office.

[2] Pickup is available under a Service Agreement for an added charge of $5.60 for each pickup stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pickup charge.

A transmittal letter making these changes in the pages of the International Mail Manual will be published in the **Federal Register** as provided in 39 CFR 10.3 and will be transmitted to subscribers automatically.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 86–21143 Filed 9–17–86; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[A–9–FRL–3081–5]

Delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS); State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS and NESHAPS authority to the California Air Resources Board (CARB) on behalf of the Bay Area Air Quality Management District (BAAQMD). This action is necessary to bring the NSPS and NESHAPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the

public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS and NESHAPS categories from EPA to State and local governments.

EFFECTIVE DATE: August 18, 1986.

ADDRESS: Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A–3–1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974–8221, FTS 454–8221.

SUPPLEMENTARY INFORMATION: The CARB has requested authority for delegation of certain NSPS and NESHAPS categories on behalf of the BAAQMD. Delegation of authority was granted by a letter dated August 18, 1986 and is reproduced in its entirety as follows:

Mr. James D. Boyd,
Executive Officer, California Air Resources Board, 1102 Q Street, P.O. Box 2815, Sacramento, CA 95812.

Dear Mr. Boyd: In response to your request of July 17, 1986, I am pleased to inform you that we are delegating to your agency authority to implement and enforce the New Source Performance Standards (NSPS) category: Subpart LLL, Onshore Natural Gas Processing: SO_2 Emissions and the National Emission Standard for Hazardous Air Pollutants (NESHAPS) category: Subpart M, Asbestos on behalf of the Bay Area Air Quality Management District (BAAQMD). We have reviewed your request for delegation and have found Rule 10–47 and Rule 11–2 to be acceptable.

The delegation of NSPS Subpart 000, Nonmetallic Mineral Processing and the redelegation of NSPS Subpart EE, Surface Coating of Metal Furniture will be discussed in a separate letter.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Parts 60 and 61, including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you or the District of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,
Regional Administrator.

cc: Bay Area Air Quality Management District.

With respect to the areas under the jurisdiction of the BAAQMD, all reports, applications, submittals, and other communications pertaining to the above listed NSPS and NESHAPS source categories should be directed to the BAAQMD at the address shown in the ADDRESS section of this notice.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: September 5, 1986.

John Wise,
Acting Regional Administrator.

[FR Doc. 86–21126 Filed 9–17–86; 8:45 am]
BILLING CODE 6560–50–M

40 CFR Parts 60 and 61

[A–9–FRL–3082–1]

Delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS); State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS and NESHAPS authority to the California Air Resources Board (CARB) on behalf of the South Coast Air Quality Management District (SCAQMD). This action is necessary to bring the NSPS and NESHAPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS and NESHAPS categories from EPA to State and local governments.

EFFECTIVE DATE: August 11, 1986.

ADDRESS: South Coast Air Quality Management District, 9150 Flair Drive, El Monte, CA 91731.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A–3–1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974–8221, FTS 454–8221.

SUPPLEMENTARY INFORMATION: The CARB has requested authority for delegation of certain NSPS and NESHAPS categories on behalf of the SCAQMD. Delegation of authority was granted by a letter dated August 11, 1986 and is reproduced in its entirety as follows:

Mr. James D. Boyd,
Executive Officer, California Air Resources Board, 1102 Q Street, P.O. Box 2815, Sacramento, CA 95812.

Dear Mr. Boyd: In response to your request of July 28, 1986, I am pleased to inform you that we are delegating to your agency authority to implement and enforce certain categories of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) on behalf of the South Coast Air Quality Management District (SCAQMD). We have reviewed your request for delegation and have found the SCAQMD's programs and procedures to be acceptable. This delegation includes authority for the following source categories:

NSPS	40 CFR Part 60 Subpart
Equipment leaks of VOC from onshore natural gas processing plants.	KKK
Nonmetallic Mineral Processing Plants	OOO
Wool Fiberglass Insulation Manufacturing	PPP

In addition, we are redelegating the following NSPS and NESHAPS categories since the SCAQMD's revised programs and procedures are acceptable:

NSPS	40 CFR Part 60 Subpart
General provisions	A
Fossil-fuel fired steam generators	D
Electric utility steam generators	Da
Incinerators	E
Portland cement plants	F
Nitric acid plants	G
Sulfuric acid plants	H
Asphalt concrete plants	I
Petroleum refineries	J
Storage vessels for petroleum liquids	K
Petroleum storage vessels	Ka
Secondary lead smelters	L
Secondary brass and bronze ingot production plants.	M
Primary emissions from basic oxygen process furnaces (C. after 6/11/73).	N
Sewage treatment plants	O
Primary copper smelters	P
Primary zinc smelters	Q
Primary lead smelters	R
Primary aluminum reduction plants	S
Phosphate fertilizer industry: Wet process phosphoric acid plants.	T
Phosphate fertilizer industry: Superphosphoric acid plants.	U
Phosphate fertilizer industry: Diammonium phosphate plants.	V
Phosphate fertilizer industry: Triple superphosphate plants.	W
Phosphate fertilizer industry: Granular triple superphosphate.	X
Coal preparation plants	Y
Ferroalloy production facilities	Z
Iron and steel plants (electric arc furnaces)	AA
Steel plants: Electric arc furnaces and argon-oxygen decarubrization vessels constructed after 8–17–83.	AAa
Kraft pulp mills	BB
Glass manufacturing plants	CC
Grain elevators	DD
Surface coating of metal furniture	EE
Stationary gas turbines	GG
Lime manufacturing plants	HH
Lead-acid battery manufacturing plants	KK
Automobile and light-duty truck surface coating operations.	MM
Phosphate rock plants	NN
Ammonium sulfate	PP
Graphic arts industry: Publication rotogravure printing.	QQ
Pressure sensitive tape and label surface coating operations.	RR

NSPS	40 CFR Part 60 Subpart
Industrial surface coating: Large appliances	SS
Metal coil surface coating	TT
Asphalt processing and asphalt roofing manufacture.	UU
Synthetic organic chemical manufacturing industry: Equipment leaks of VOC.	VV
Beverage can surface coating	WW
Flexible vinyl and urethane coating and printing	FFF
Equipment leaks of VOC, petroleum refineries and synthetic organic chemical manufacturing industry.	GGG
Synthetic fiber production facilities	HHH
Petroleum dry cleaners	JJJ

NESHAPS	40 CFR Part 61 Subpart
General provisions	A
Beryllium	C
Beryllium rocket motor firing	D
Mercury	E
Vinyl chloride	F
Equipment leaks (fugitive emission sources) of benzene.	J
Asbestos	M
Equipment leaks (fugitive emission sources)	V

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Parts 60 and 61, including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you or the District of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayers,

Regional Administrator.

cc: South Air Quality Management District.

With respect to the areas under the jurisdiction of the SCAQMD, all reports, applications, submittals, and other communications pertaining to the above listed NSPS and NESHAPS source categories should be directed to the SCAQMD at the address shown in the letter of delegation.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: September 5, 1986.

John Wise,

Acting Regional Administrator.

[FR Doc. 86-21131 Filed 9-17-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 60 and 61

[A-9-FRL-3081-9]

Delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS); State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS and NESHAPS authority to the California Air Resources Board (CARB) on behalf of the North Coast Unified Air Quality Management District (NCUAQMD). This action is necessary to bring the NSPS and NESHAPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS and NESHAPS categories from EPA to State and local governments.

EFFECTIVE DATE: August 5, 1986.

ADDRESS: North Coast Unified Air Quality Management District, 5630 S. Broadway, Eureka, CA 95501.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A-3-1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-8221, FTS 454-8221.

SUPPLEMENTARY INFORMATION: The CARB has requested authority for delegation of certain NSPS and NESHAPS categories on behalf of the NCUAQMD. Delegation of authority was granted by a letter dated August 5, 1986 and is reproduced in its entirety as follows:

Mr. James D. Boyd

Executive Officer, California Air Resources Board, 1102 Q Street, P.O. Box 2815, Sacramento, CA 95812.

Dear Mr. Boyd: In response to your request of July 17, 1986, I am pleased to inform you that we are delegating to your agency authority to implement and enforce certain categories of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) on behalf of the North Coast Air Quality Management District (NCAQMD). We have reviewed your request for delegation and have found the NCAQMD's programs and procedures to be acceptable. This delegation includes authority for the following source categories:

NSPS	40 CFR Part 60 Subpart
Steel Plants: Electric arc furnaces and argon-oxygen decarburization vessels constructed after 8-17-83.	AAa
Metallic mineral processing plants	LL
Pressure sensitive tape and label surface coating operations.	RR
Synthetic organic chemical manufacturing industry: Equipment leaks of VOC.	VV
Flexible vinyl and urethane coating and printing	FFF
Equipment leaks of VOC, petroleum refineries and synthetic organic chemical manufacturing industry.	GGG
Synthetic fiber production facilities	HHH
Petroleum dry cleaners	JJJ
Equipment leaks of VOC from onshore natural gas processing plants.	KKK
Nonmetallic mineral processing plants	OOO

In addition, we are redelegating the following NSPS and NESHAPS categories since the SCAQMD's revised programs and procedures are acceptable:

NSPS	40 CFR Part 60 Subpart
General provisions	A
Fossil-fuel fired steam generators	D
Electric utility steam generators	Da
Incinerators	E
Portland cement plants	F
Nitric acid plants	G
Sulfuric acid plants	H
Asphalt concrete plants	I
Petroleum refineries	J
Storage vessels for petroleum liquids	K
Petroleum storage vessels	Ka
Secondary lead smelters	L
Secondary brass and bronze ingot production plants.	M
Primary emissions from basic oxygen process furnaces (C. after 6/11/73).	N
Sewage treatment plants	O
Primary copper smelters	P
Primary Zinc Smelters	Q
Primary lead smelters	R
Primary aluminum reduction plants	S
Phosphate fertilizer industry: Wet process phosphoric acid plants.	T
Phosphate fertilizer industry: Superphosphoric acid plants.	U
Phosphate fertilizer industry: Diammonium phosphate plants.	V
Phosphate fertilizer industry: Triple superphosphate plants.	W
Phosphate fertilizer industry: Granular triple superphosphate.	X
Coal preparation plants	Y
Ferroalloy production facilities	Z
Iron and steel plants (electric arc furnaces)	AA
Kraft pulp mills	BB
Glass manufacturing plants	CC
Grain elevators	DD
Surface coating of metal furniture	EE
Stationary gas turbines	GG
Lime manufacturing plants	HH
Lead-acid battery manufacturing plants	KK
Automobile and light-duty truck surface coating operations.	MM
Phosphate rock plans	NN
Ammonium sulfate	PP
Graphic arts industry: Publication rotogravure printing.	QQ
Industrial surface coating: Large appliances	SS
Metal coil surface coating	TT
Asphalt processing and asphalt roofing manufacture.	UU
Beverage can surface coating	WW

NESHAPS	40 CFR Part 61 Subpart
General provisions	A
Beryllium	C
Beryllium rocket motor firing	D
Mercury	E
Vinyl chloride	F
Equipment leaks (fugitive emission sources) of benzene.	J
Asbestos	M
Equipment leaks (fugitive emissions sources)	V

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Parts 60 and 61, including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you or the District of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,

Regional Administrator.

cc: North Coast Unified Air Quality Management District.

With respect to the areas under the jurisdiction of the NCUAQMD, all reports, applications, submittals, and other communications pertaining to the above listed NSPS and NESHAPS source categories should be directed to the NCUAQMD at the address shown in the letter of delegation.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: September 5, 1986.

John Wise,

Acting Regional Administrator.

[FR Doc. 86-21130 Filed 9-17-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 60 and 61

[A-9-FRL-3081-8]

Delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS and NESHAPS authority to the California Air Resources Board (CARB) on behalf of the Madera County Air Pollution Control District (MCAPCD). This action is necessary to bring the NSPS and NESHAPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS and NESHAPS categories from EPA to State and local governments.

EFFECTIVE DATE: August 11, 1986.

ADDRESS: Madera County Air Pollution Control District, 135 West Yosemite Avenue, Madera, CA 93637.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A-3-1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-8221, FTS 454-8221.

SUPPLEMENTARY INFORMATION: The CARB has requested authority for delegation of certain NSPS and NESHAPS categories on behalf of the MCAPCD. Delegation of authority was granted by a letter dated August 11, 1986 and is reproduced in its entirety as follows:

Mr. James D. Boyd,

Executive Officer, California Air Resources Board, 1102 Q Street, P.O. Box 2815, Sacramento, CA 95812.

Dear Mr. Boyd: In response to your request of July 21, 1986, I am pleased to inform you that we are delegating to your agency authority to implement and enforce certain categories of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) on behalf of the Madera County Air Pollution Control District. We have reviewed your request for delegation and have found the MCAPCD's programs and procedures to be acceptable. This delegation includes authority for the following source categories.

NSPS	40 CFR Part 60 Subpart
Steel plants: Electric arc furnaces and argon-oxygen decarburization vessels constructed after 8-17-83.	AAa
Metallic mineral processing plants	LL
Pressure sensitive tape and label surface coating operations.	RR
Synthetic organic chemical manufacturing industry: Equipment leaks of VOC.	VV
Beverage can surface coating industry	WW
Flexible vinyl and urethane coating and printing	FFF
Equipment leaks of VOC, petroleum refineries and synthetic organic chemical manufacturing industry.	GGG
Synthetic fiber production facilities	HHH
Petroleum dry cleaners	JJJ
Equipment leaks of VOC from Onshore natural gas processing plants.	KKK
Wool fiberglass insulation manufacturing	PPP

NESHAPS	40 CFR Part 61 Subpart
Equipment leaks (fugitive emission sources) of benzene.	J
Asbestos	M
Equipment leaks (fugitive emission sources)	V

In addition, we are redelegating the following NSPS and NESHAPS categories since the MCAPCD revised programs and procedures are acceptable:

NSPS	40 CFR Part 60 Subpart
General provisions	A
Fossil-fuel fired steam generators	D
Electric utility steam generators	Da
Incinerators	E
Portland cement plants	F
Nitric acid plants	G
Sulfuric acid plants	H
Asphalt concrete plants	I
Petroleum refineries	J
Storage vessels for petroleum liquids	K
Petroleum storage vessels	Ka
Secondary lead smelters	L
Secondary brass and bronze ingot production plants.	M
Primary emissions from basic oxygen process furnaces (C. after 6/11/73).	N
Sewage treatment plants	O
Primary copper smelters	P
Primary zinc smelters	Q
Primary lead smelters	R
Primary aluminum reduction plants	S
Phosphate fertilizer industry: Wet process phosphoric acid plants.	T
Phosphate fertilizer industry: Superphosphoric acid plants.	U
Phosphate fertilizer industry: Diammonium phosphate plants.	V
Phosphate fertilizer industry: Triple superphosphate plants.	W
Phosphate fertilizer industry: Granular triple superphosphate.	X
Coal preparation plants	Y
Ferroalloy production facilities	Z
Iron and steel plants (electric arc furnaces)	AA
Kraft pulp mills	BB
Glass manufacturing plants	CC
Grain elevators	DD
Surface coating of metal furniture	EE
Stationary gas turbines	GG
Lime manufacturing plants	HH
Lead-acid battery manufacturing plants	KK
Automobile and light-duty truck surface coating operations.	MM
Phosphate rock plants	NN
Ammonium sulfate	PP
Graphic arts industry: Publication rotogravure printing.	QQ
Industrial surface coating: Large appliances	SS
Metal coil surface coating	TT
Asphalt processing and asphalt roofing manufacture.	UU

NESHAPS	40 CFR Part 61 Subpart
General provisions	A
Beryllium	C
Beryllium rocket motor firing	D
Mercury	E
Vinyl chloride	F

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Parts 60 and 61, including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you or the District of any objections within 10 days of receipt of this letter. A notice of this

delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,

Regional Administrator.

cc: Madera County Air Pollution Control District.

With respect to the areas under the jurisdiction of the MCAPCD, all reports, applications, submittals, and other communications pertaining to the above listed NSPS and NESHAPS source categories should be directed to the MCAPCD at the address shown in the letter of delegation.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.).*

Dated: September 5, 1986.

John Wise,

Acting Regional Administrator.

[FR Doc. 86-21129 Filed 9-17-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 60 and 61

[A-9-FRL-3081-6]

Delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS); State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS and NESHAPS authority to the California Air Resources Board (CARB) on behalf of the Kings County Air Pollution Control District (KCAPCD). This action is necessary to bring the NSPS and NESHAPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS and NESHAPS categories from EPA to State and local governments.

EFFECTIVE DATE: August 11, 1986.

ADDRESS: Kings County Air Pollution Control District, 330 Campus Drive, Hanford, CA 93230.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A-3-1-), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-8221, FTS 454-8221.

SUPPLEMENTARY INFORMATION: The CARB has requested authority for delegation of certain NSPS and NESHAPS categories on behalf of the KCAPCD. Delegation of authority was granted by a letter dated August 11, 1986 and is reproduced in its entirety as follows:

Mr. James D. Boyd,

Executive Officer, California Air Resources Board, 1102 Q Street, P.O. Box 2815, Sacramento, CA 95812.

Dear Mr. Boyd: In response to your request of July 21, 1986, I am pleased to inform you that we are delegating to your agency authority to implement and enforce certain categories of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) on behalf of the Kings County Air Pollution Control District (KCAPCD). We have reviewed your request for delegation and have found the KCAPCD's programs and procedures to be acceptable. This delegation includes authority for the following source categories:

NSPS	40 CFR Part 60 Subpart
General provisions	A
Electric utility steam generators	Da
Petroleum storage vessels	Ka
Steel plants: Electric arc furnaces and argon-oxygen decarburization vessels constructed after 8-17-83.	AAa
Surface coating of metal furniture	EE
Stationary gas turbines	GG
Lead-acid battery manufacturing plants	KK
Metallic mineral processing plants	LL
Automobile and light-duty truck surface coating operations.	MM
Phosphate rock plants	NN
Ammonium sulfate	PP
Graphic arts industry: Publication rotogravure printing.	QQ
Pressure sensitive tape and label surface coating operations.	RR
Industrial surface coating: Large appliances	SS
Metal coil surface coating	TT
Asphalt processing and asphalt roofing manufacture.	UU
Synthetic organic chemical manufacturing industry: Equipment leaks of VOC.	VV
Beverage can surface coating industry	WW
Flexible vinyl and urethane coating and printing	FFF
Equipment leaks of VOC, petroleum refineries and synthetic organic chemical manufacturing industry.	GGG
Synthetic fiber production facilities	HHH
Petroleum dry cleaners	JJJ

NESHAPS	40 CFR Part 61 Subpart
Vinyl chloride	F
Asbestos	M

In addition, we are redelegating the following NSPS and NESHAPS categories since the KCAPCD's revised programs and procedures are acceptable:

NSPS	40 CFR Part 60 Subpart
Fossil-fuel fired steam generators	D
Incinerators	E
Portland cement plants	F
Nitric acid plants	G
Sulfuric acid plants	H
Asphalt concrete plants	I
Petroleum refineries	J
Storage vessels for petroleum liquids	K
Secondary lead smelters	L
Secondary brass and bronze ingot production plants.	M
Primary emissions from basic oxygen process furnaces (C. after 6/11/73).	N
Sewage treatment plants	O
Primary copper smelters	P
Primary zinc smelters	Q
Primary lead smelters	R
Primary aluminum reduction plants	S
Phosphate fertilizer industry: Wet process phosphoric acid plants.	T
Phosphate fertilizer industry: Superphosphoric acid plants.	U
Phosphate fertilizer industry: Diammonium phosphate plants.	V
Phosphate fertilizer industry: Triple superphosphate plants.	W
Phosphate fertilizer industry: Granular triple superphosphate.	X
Coal preparation plants	Y
Ferroalloy production facilities	Z
Iron and steel plants (electric arc furnaces)	AA
Kraft pulp mills	BB
Grain elevators	DD
Lime manufacturing plants	HH

NESHAPS	40 CFR Part 61 Subpart
General provisions	A
Beryllium	C
Beryllium rocket motor firing	D
Mercury	E

Although your letter requests delegation of Subpart CC, Glass Manufacturing Plants and Subpart XX, Bulk Gasoline Tanks, we are not granting delegation of authority since the KCAPCD's rule (enclosed with delegation request) specifically excludes these subparts until such time as the ARB approves adoption.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Parts 60 and 61, including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you or the District of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,

Regional Administrator.

cc: Kings County Air Pollution Control District.

With respect to the areas under the jurisdiction of the KCAPCD, all reports, applications, submittals, and other communications pertaining to the above listed NSPS and NESHAPS source categories should be directed to the

KCAPCD at the address shown in the letter of delegation.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: September 5, 1986.

John Wise,

Acting Regional Administrator.

[FR Doc. 86-21127 Filed 9-17-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 60 and 61

[A-9-FRL-3081-7]

Delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS); State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS and NESHAPS authority to the California Air Resources Board (CARB) on behalf of the Lake County Air Quality Management District (LCAQMD). This action is necessary to bring the NSPS and NESHAPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS and NESHAPS categories from EPA to State and local governments.

EFFECTIVE DATE: August 21, 1986.

ADDRESS: Lake County Air Quality Management District, 255 North Forbes Street, Lakeport, CA 95453.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A-3-1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-8221, FTS 454-8221.

SUPPLEMENTARY INFORMATION: The CARB has requested authority for delegation of certain NSPS and NESHAPS categories on behalf of the LCAQMD. Delegation of authority was granted by a letter dated August 21, 1986 and is reproduced in its entirety as follows:

Mr. James D. Boyd

Executive Officer, California Air Resources Board, 1102 Q Street, P.O. Box 2815, Sacramento, CA 95812.

Dear Mr. Boyd: In response to your request of August 8, 1986, I am pleased to inform you that we are delegating to your agency authority to implement and enforce certain categories of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) on behalf of the Lake County Air Quality Management District (LCAQMD). We have reviewed your request for delegation and have found the LCAQMD's programs and procedures to be acceptable. This delegation includes authority for the following source categories.

NSPS	40 CFR Part 60 Subpart
Electric utility steam generators	Da
Petroleum storage vessels	Ka
Primary copper smelters	P
Primary zinc smelters	Q
Primary lead smelters	R
Primary aluminum reduction plants	S
Coal preparation plants	Y
Ferroalloy production facilities	Z
Steel plants: Electric arc furnaces and argon-oxygen decarburization vessels constructed after 8-17-83.	AAa
Kraft pupl mills	BB
Glass manufacturing plants	CC
Grain elevators	DD
Surface coating of metal furniture	EE
Stationary gas turbines	GG
Lime manufacturing plants	HH
Lead-acid battery manufacturing plants	KK
Metallaic Mineral processing plants	LL
Automobile and light-duty truck surface coating operations.	MM
Phosphate rock plants	NN
Ammonium sulfate	PP
Graphic arts industry: Publication rotogravure printing.	QQ
Pressure sensitive tape and label surface coating operations.	RR
Industrial surface coating: Large appliances	SS
Metal coil surface coating	TT
Asphalt processing and asphalt roofing manufacture.	UU
Synthetic organic chemical manufacturing industry: equipment leaks of VOC.	VV
Beverage can surface coating industry flexible vinyl and urethane coating and printing.	FFF
Equipment leaks of VOC, petroleum refineries and synthetic organic chemical manufacturing industry.	GGG
Synthetic fiber production facilities	HHH
Petroleum dry cleaners	JJJ
Equipment leaks of VOC from onshore natural gas processing plants.	KKK
Onshore natural gas procesing: SO_2 emissions	LLL
Nonmetallic mineral processing plants	OOO
Wool fiberglass insulation manufacturing	PPP
Vinyl cholonide	F
Equipment leaks (fugitive emission sources) of benzene.	J
Asbestos	M
Equipment leaks (fugitive emission sources)	V

In addition, we are redelegating the following NSPS and NESHAPS categories since the LCAQMD's revised programs and procedures are acceptable:

NSPS	40 CFR Part 60 Subpart
General provisions	A
Fossil-fuel fired steam generators	D
Incinerators	E
Portland cement plants	F
Nitric acid plants	G
Sulfuric acid plants	H
Asphalt concrete plants	I
Petroleum refineries	J
Storage vessels for petroleum liquids	K
Secondary lead smelters	L
Secondary brass and bronze ingot production plants.	M
Primary emissions from basic oxygen process furnaces (c. after 6/11/73).	N
Sewage treatment plants	O
Phospate fertilizer industry: Wet process phosphoric acid plants.	T
Phosphate fertilizer industry: Superphosphoric acid plants.	U
Phosphate fertilizer industry: Diammonium phosphate plants.	V
Phosphate fertilizer industry: Triple superphosphate plants.	W
Phosphate fertilizer industry: Granular triple superphosphate.	X
Iron and steel plants (electric arc furnaces)	AA

NSPS	40 CFR Part 61 Subpart
General provisions	A
Beryllium	C
Beryllium rocket motor firing	D
Mercury	E

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Parts 60 and 61, including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you or the District of any objections within 10 days of receipt of this letter. A notice of this delegated authority will by published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayers,

Regional Administrator.

cc: Lake County Air Quality Management District (LCAQMD).

With respect to the areas under the jurisdiction of the LCAQMD, all reports, applications, submittals, and other communications pertaining to the above listed NSPS and NESHAPS source categories should be directed to the LCAQD at the address shown in the ADDRESS section of this notice.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

I certify that this rule will not hae a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of sections 11 and 112 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: September 5, 1986.

John Wise,

Acting Regional Administrator.

[FR Doc. 86-21128 Filed 9-17-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 799

[OPTS-42067A; (FRL-3070-6)]

Bisphenol A; Final Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a final rule, under section 4 of the Toxic Substances Control Act (TSCA), requiring manufacturers and processors of bisphenol A, hereinafter BPA, [4,4'-isopropylidenediphenol, CAS No. 80-05-7) to conduct a 90-day inhalation subchronic toxicity study with particular emphasis on pulmonary effects. EPA is also terminating the test rule process for acute and chronic aquatic toxicity testing of BPA. Both actions follow EPA's proposed rule on BPA published May 17, 1985 (50 FR 20691).

DATES: In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern ("daylight" or "standard", as appropriate) time on October 2, 1986. This rule shall become effective on November 3, 1986.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. E-543, 401 M St., SW., Washington, DC 20460. Toll free: (800-424-9065). In Washington, DC: (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: EPA is issuing a final test rule under section 4(a) of TSCA to require health effects testing of BPA.

I. Introduction

A. Test Rule Development Under TSCA

This notice is part of the overall implementation of section 4 of TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*), which contains authority for EPA to require the development of data relevant to assessing the risk to health and the environment posed by exposure to particular chemical substances or mixtures.

Under section 4(a)(1) of TSCA, EPA must require testing of a chemical substance to develop health or environmental data if the Administrator finds that:

(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

For a more complete understanding of the statutory section 4 findings, the reader is directed to the Agency's first proposed test rule package published in the **Federal Register** of July 18, 1980 (45 FR 48510), for an in-depth discussion of the general issues applicable to this action.

B. Regulatory History

As published in the **Federal Register** of May 29, 1984 (49 FR 22389), the Interagency Testing Committee (ITC) designated BPA for priority testing consideration and recommended chemical fate testing, including octanol/water partition coefficient and persistence; health effects testing, including reproductive effects, chronic effects, and oncogenicity specifically as a result of inhalation exposures; ecological effects testing, including acute and chronic toxicity to fish, aquatic invertebrates, and algae; and bioconcentration. The Agency responded to the ITC's recommendations for BPA by issuing in the **Federal Register** of May 17, 1985 (50 FR 20691), a proposed test rule for aquatic acute and chronic toxicity testing and a 90-day inhalation subchronic toxicity study in the rat with a 21-35 day post-exposure recovery and observation period. The May 1985 document contains BPA's chemical profile, specifies who would be required to conduct the proposed testing, a description of the test substance to be used, and a discussion of EPA's TSCA section 4(a) findings.

On October 3, 1985, EPA held a public meeting to hear and discuss oral comments presented on various aspects of the proposed rule. The transcript for this meeting is contained in the record for this action. Most of the discussion at this meeting addressed the test data from studies the BPA manufacturers had initiated in the spring of 1985 in anticipation of EPA's proposed test rule. The test data and final reports for the industry studies are included in the record for this action.

II. Public Comment

Several comments were provided to the Agency by the manufacturers in response to the proposed rule for BPA. These comments were received in a letter dated July 16, 1985, from the Society of the Plastics Industry (SPI), a professional organization representing the BPA manufacturers (Ref. 1). Oral comments were also presented by the manufacturers in EPA's public meeting on October 3, 1985.

EPA believes several of the issues are no longer applicable to this rulemaking because of the testing the manufacturers have already undertaken and the subsequent termination of the process for portions of the proposed testing in light of these studies (see Unit III below). EPA responses to public comments on several issues still relevant to the final rulemaking are given below. These deal specifically with the question of which of the various aspects of the procedures specified in the TSCA Health Effects Test Guideline for Subchronic Inhalation Testing (40 CFR 798.2450) should be made mandatory, i.e., changing language in the guidelines by utilizing the word "shall" instead of "should".

SPI commented that further testing is not necessary because data from the BPA manufacturers'-sponsored acute and 2-week aerosol toxicity studies (see Unit IV.A. below) satisfy EPA's concern for the localized effects of BPA.

The Agency does not agree that these data are sufficient to reasonably predict localized effects from BPA exposure. In fact, EPA believes the test data heighten the concern and need for additional testing. An in-depth discussion of these data and EPA's concerns is provided in Unit IV.A. below.

SPI also commented that the requirement under § 798.2450(d)(8)(iv) for continuous monitoring of temperature and humidity and recording of these values at least every 30 minutes, is excessive. SPI believes records should only be required for the start and end of the exposure period and include one measurement approximately halfway through the exposure period.

EPA believes this requirement is not excessive. Equipment for continuous monitoring and chart recording of both parameters is readily available. EPA believes toxicity data may be

significantly influenced by abrupt changes in either condition and only through continuous monitoring, as prescribed in this standard, can their influence be determined and interpreted. EPA also believes that changes in temperature and humidity may affect the BPA dust levels in the exposure chamber and that every effort should be taken to minimize such changes.

SPI commented that hematologic and clinical chemistry requirements prescribed in the TSCA Guidelines are excessive for any rodent study. In particular, SPI stated that the requirements for pretest determinations defeat at least in part, one of the reasons for including a concurrent control group. Also, with the biological variability inherent in these parameters, SPI believed that comparisons between control and treated groups are far more meaningful than pretest versus test and post-test comparisons between small subgroups. SPI also raised questions as to which five rats should be used for blood collection: The same five throughout the study, five randomly selected at each time interval, or five drawn at random from test groups which have been increased in size to provide animals solely for one-time blood collection. SPI suggested that the hematology and clinical chemistry determinations are justified only at the conclusion of the study, i.e., at the time of sacrifice, and that they should be conducted on all animals.

EPA agrees with SPI's comments. EPA believes that unless a chemical is suspected of having specific properties which would mandate 30-day hematology and clinical biochemistry determinations in blood, it would appear adequate if these determinations were performed at the end of the test period. EPA believes that the data from the oncogenicity bioassay conducted by the National Toxicolgy Program (NTP) do not raise this concern since the blood effects found were not attributed by NTP to BPA exposure (50 FR 20696). It is always preferable to have baseline hematologic and clinical biochemistry values on the animals prior to their undergoing testing since there can be a wide margin of variability in t!:e normal range values. However, if the testing laboratory provides historical control values for the species and strain of animals under test, it appears reasonable to accept such values in light of the fact that this same procedure is accepted by the Food and Drug Administration, the Organization for Economic Cooperation and Development (OECD), and EPA's Office of Pesticide Programs.

SPI also suggested that although the range of hematology and clinical chemistry determinations outlined in the guidelines may be appropriate under certain circumstances, a reasonable evaluation can be achieved with a clinical battery such as that used in the 2-week BPA dust inhalation study (Ref. 2).

EPA agrees with this comment and is recommending in this final rule that the hematological and clinical chemistry determinations be similar to those used in the 2-week aerosol toxicity study sponsored by SPI. EPA does not believe there is a necessity to conduct urinalyses because such data are available from toxicity testing done by NTP.

III. Decision To Terminate the Test Rule Process for Environmental Effects Testing of BPA

After proposing acute and chronic aquatic toxicity testing, the Agency received final study reports from SPI for the aquatic tests EPA had proposed. Because the testing proposed by EPA has been completed and the data, as described below, are adequate to reasonably predict the acute and chronic effects on fresh- and saltwater aquatic organisms, the Agency has decided to terminate that segment of the test rule process for environmental effects testing.

The results of freshwater acute tests using a measured test system showed that the 24-, and 48- through 96-hour LC_{50} values for the vertebrate (*Pime phales promelas* fathead minnow) were 4.7 and 4.6 ppm, respectively, and the 24- and 48-hour LC_{50} values for the invertebrate (*Daphnia magna*) were 15.5 and 10.2 ppm (Ref. 2). The 96-hour EC_{50} value for *Selenastrum capricornutum* was 2.73 mg BPA/ml by cell count and 3.10 mg/ml by total cell volume (Ref. 2).

EPA had also proposed that certain criteria be applied to the acute toxicity data for BPA to determine whether the chronic toxicity testing was necessary. EPA specified in the proposed rule that if the 96-hour LC_{50} value from any of the vertebrate and invertebrate acute test species was less than 1.0 ppm, or there were indications of chronicity (i.e., the ratio of the 48-hour to 96-hour LC_{50}'s is greater than 2), then chronic toxicity testing with the most sensitive test species should be performed. Therefore, because the 96-hour LC_{50} values submitted for BPA by SPI for the test species (vertebrate and invertebrate) were greater than 1 ppm, and the ratio of the 48-hour to 96-hour LC_{50} value is less than 2 in the fathead minnow (the ratio cannot be calculated for Daphnia because the study is not conducted over a 96-hour period), EPA believes further testing for chronic toxicity in the freshwater species is not warranted at this time.

Results submitted by SPI of saltwater acute tests using flow-through and measured test systems showed that the 24-, 48-, 72-, and 96-hour LC_{50} values for the vertebrate (*Menidia menidia* Atlantic silverside) were 12.0, 11.0, 9.3, and 9.3 ppm, respectively, and the invertebrate (*Mysidopsis bahia* Mysid shrimp) were 3.3, 1.5, 1.1, and 1.0 ppm, respectively (Ref. 3). The 96-hour EC_{50} values for *Skeletonema costatum* calculated by nonlinear interpolation were 1.0 mg/l (based on cell count) and 1.8 mg/l (based on chlorophyll a content). Again, applying EPA's proposed criteria for triggering chronic testing, the saltwater vertebrate and invertebrate 96-hour LC_{50} values were not less than 1.0 ppm, and the ratio of the 48-hour LC_{50} to the 96-hour LC_{50} values was less than 2. Therefore, EPA believes no further chronic testing for saltwater organisms is necessary at this time.

A separate and additional Ready Biodegradation Study was submitted by Shell Development Co. Greater than 90 percent BPA degradation was observed in all test waters within 4 days (Ref. 4). In this test, a spike of 3 mg/l BPA was added to four water samples: control, Houston ship channel water, Patricks Bayou water, and the chemical plant effluent. The study results eliminated the Agency's concern that BPA's environmental degradation might require years to achieve substantial BPA reduction in natural waters (see 50 FR 20691; May 17, 1985).

EPA believes that because BPA is nonpersistent (90 percent degraded in 4 days), it can reasonably conclude that BPA will not have a high bioconcentration factor. In addition, the weight of evidence for BPA suggests its toxicity is in the 1 to 10 ppm range with little indication of chronicity. Based upon these factors, the Agency has concluded that there is no need to require further aquatic toxicity testing because the Agency is in a position to reasonably predict its toxicity at environmental levels.

IV. Final Health Effects Test Rule For BPA

A. Findings

EPA is basing the final subchronic toxicity testing requirements for BPA on the authority of section 4(a)(1)(A) of TSCA. EPA finds that the manufacture, processing, use, and disposal of BPA may present an unreasonable risk of

lung injury after chronic inhalation exposure. EPA also finds there are insufficient data to reasonably determine or predict such effects on human health, and testing is necessary to develop these data. The bases for these findings are given below.

Available literature shows that hundreds of millions of pounds of BPA are produced annually in the United States (Ref. 5). BPA is used in the manufacture of polycarbonate resins, epoxy resins, and polysulfone and phenoxy resins. The National Occupational Hazard Survey (NOHS) data base (Ref. 6) indicates as many as 33,000 people in the chemical industries may be exposed to BPA at 911 plants. The National Occupational Exposure Survey (NOES) data base (Ref. 7) indicates that 9,446 workers are exposed to BPA SPI places the number of exposed workers closer to 500 (Ref. 1). EPA believes that any of these figures, along with the exposure information provided in its proposed test rule for BPA, provides sufficient evidence of potential exposure to the chemical during manufacture, processing, disposal and use.

After proposing the health effects testing for inhalation subchronic toxicity testing of BPA dusts, the Agency received final study reports (Ref. 2) from SPI for an acute (6-hour, single exposure) aerosol toxicity study and a 2-week aerosol toxicity study. Both studies were conducted using the Fischer 344 rat.

In the acute aerosol study, groups of 10 male and female rats were exposed to 0 or 170 mg/m^3 of BPA for 6 hours. The mass median aerodynamic diameter (MMAD) and geometric standard deviation for the BPA aerosol was 3.9±3.5 microns. Body weights were obtained at selected intervals. Half the animals were necropsied the day after the exposure and the remaining animals were sacrificed 14 days later.

Histopathologic changes were observed in the most anterior regions of the nasal tissue. This consisted primarily of inflammation in the external nares and the anterior portion of the nasal turbinates. In addition, ulceration in the incisive ducts which communicate between the nasal and oral cavities was observed. However, under the conditions of the study, these microscopic changes appeared to be reversible within the 2-week recovery period. No evidence for systemic toxicity was observed.

In the 2-week aerosol study, 20 male and 20 female rats were exposed to 0, 10, 50 or 150 mg/m^3 of BPA for 6 hours per day for nine exposures in 2 weeks. The MMAD for the concentrations examined ranged from 2.6 to 6.2 microns. The geometric standard deviation varied from 3.2 to 3.6 microns. Animals were observed daily, and body weights were recorded periodically. Samples were collected for hematology, clinical chemistry, and urinalysis from those animals necropsied the day following the final exposure to BPA. Half of the male and female rats were necropsied on the day following the last exposure to BPA, and the remaining animals were sacrificed 29 days after the final BPA exposure.

Toxicologic effects related to BPA exposure were described in the report. These effects consisted of a slight decrease in body weight gain of male rats exposed to 150 mg/m^3 BPA and microscopic changes in the anterior portion of the nasal cavity of male rats exposed to 150 mg/m^3 and female rats exposed to 50 or 150 mg/m^3. These effects were not observed 29 days after the last exposure to BPA. No evidence of systemic toxicity was observed at any time throughout the study. No effects were observed in rats exposed to 10 mg/m^3.

Of particular interest to EPA were the microscopic changes in the anterior portion of the nasal cavity seen immediately after cessation of exposure. These were described as very slight to slight hyperplasia of the squamous epithelium at the mucocutaneous junction and were observed in 7 of 10 males at 150 mg/m^3. The same lesion was described for 9 of 10 females at 50 mg/m^3 and 10 of 10 females at 150 mg BPA/m^3. The hyperplasia of the squamous epithelium extended into the nasal cavity to involve the respiratory epithelium overlying the vomeronasal organ.

EPA believes that for the purpose of a general subchronic toxicity study, the information available in the National Toxicology Program's oral gavage bioassay as referred to in the proposed rule (50 FR 20696), and its preliminary studies should provide the data needed to evaluate the toxicity of this chemical. However, while general toxicity may not be expected to alter with different routes of administration for this chemical there may be a site specific effect seen with BPA because of the route of exposure to humans. The indications that a problem may be present have been discussed in the May 17, 1985 proposed rule, i.e., thickening of interalveolar partitions (Ref. 8), and are further supported by the findings of the studies recently conducted by the BPA manufacturers and submitted to EPA by the SPI.

The Agency believes further concerns for BPA's localized toxic effects are provided by the additional studies. The inflammation and bilateral focal hyperplasia of the mucocutaneous junction provide evidence that BPA causes respiratory effects. Although apparently reversible after 4 weeks of no further exposure, this does not alleviate the Agency's concern that a more prolonged exposure to BPA may cause irreversible damage. Characterization of the potential for irreversible respiratory damage as a result of continued exposure to BPA dust is inadequate, and test data beyond that currently available are necessary to determine such an effect.

EPA concludes that on the basis of the potential for long-term occupational exposure to BPA, the existence of evidence of respiratory effects related to BPA dust exposures, and the lack of sufficient data to reasonably determine or predict BPA's health risk to humans, a 90-day inhalation subchronic toxicity study with a 28-day minimum post-exposure recovery and observation period is necessary to characterize the effects of BPA dust on the pulmonary system.

B. Test Standards

On the basis of the findings given above for health effects testing, the Agency is requiring that a 90-day subchronic inhalation toxicity test with a post-exposure recovery and observation period of not less than 28 days, using a satellite test group, shall be conducted for BPA. The Agency is requiring that this testing be performed in accordance with the methodology cited in the TSCA Health Effects Test Guideline at 40 CFR 798.2450 and the TSCA Good Laboratory Practice Standards in 40 CFR Part 792.

The Agency is also requiring that the BPA dust administered in this study consist of BPA particles of respirable size, specifically in the range of 0.1 to 5.0 micrometers in diameter. EPA is requiring that a satellite group of 20 animals (10 animals per sex) be maintained in the inhalation study under the high BPA concentration level for 90 days and observed for reversibility, persistence, or delayed occurrence of toxic effects for a post-treatment period of not less than 28 days. EPA is also requiring that the following clinical hematological examinations shall be carried out at least two times during the test period (i.e., at terminal sacrifice at 90 days and at terminal sacrifice for the post-exposure recovery period): packed cell volume (PCV), hemoglobin (Hgb), erythrocyte count (RBC), total leukocyte

(WBC), red blood cell indices (MCV, MCH, MCHC), platelet count (PLAT), and differential leukocyte count (DLC). EPA is also requiring that the following clinical biochemical determinations shall be carried out at least four times during the test period (as stated above): blood urea nitrogen (BUN), glutamic pyruvic transaminase activity (SGPT) glutamic oxaloacetic transaminase activity (SGOT), alkaline phosphatase activity (AP), glucose (Glu), total protein (TP), albumin (Alb), globulins (Glob), and acid/base balance. The Agency is also requiring a limited gross pathology for all animals to include an examination of the external surfaces of the body all orifices, cranial, thoracic and abdominal cavities and their contents, and the esophagus, stomach, and upper small intestine. Finally, EPA is requiring an initial histopathological examination of only the respiratory tract and lungs of all test animals in the control, high dose, and satellite groups. Further examinations of other dose groups shall be contingent on the findings of the initial examination.

C. Test Substance

EPA is requiring that BPA of at least 99 percent purity shall be used as the test substance.

D. Persons Required To Test

Section 4(b)(3)(B) specifies that the activities for which the EPA makes section 4(a) findings (manufacture, processing, distribution, use and/or disposal) determine who bears the responsibility of testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors are required to test if the findings are based on processing. Both manufacturers and processors are required to test if the exposure giving rise to the potential risk occurs during use, distribution, or disposal.

Because EPA has found that insufficient data exist to reasonably determine the respiratory effects on human health from the manufacture, processing, use, and disposal of BPA, EPA is requiring that persons who manufacture (or import) and/or process BPA at any time from the effective date of the final test rule to the end of the reimbursement period be subject to the testing requirements contained in this rule. The end of the reimbursement period will be 5 years after the last final report is submitted or an amount of time equal to that which was required to develop data if more than 5 years after the submission of the last final report required under the test rule.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from the requirement. EPA promulgated procedures for applying for TSCA section 4(c) exemptions in 40 CFR Part 790.

Manufacturers (including importers) subject to this rule are required to submit either a letter of intent to perform testing or an exemption application within 30 days after the effective date of the final test rule. The required procedures for submitting such letters and applications are described in 40 CFR Part 790.

Processors subject to this rule, unless they are also manufacturers, will not be required to submit letters of intent or exemption applications, or to conduct testing, unless manufacturers fail to submit notices of intent to test or later fail to sponsor the required tests. The Agency expects that the manufacturers will pass an appropriate portion of the costs of testing on to processors through the pricing of their products or reimbursement mechanism. If manufacturers perform all the required tests, processors will be granted exemptions automatically. If manufacturers fail to submit notices of intent to test or fail to sponsor all the required tests, the Agency will publish a separate notice in the **Federal Register** to notify processors to respond; this procedure is described in 40 CFR Part 790.

EPA is not requiring the submission of equivalence data as a condition for exemption from the required testing for BPA. As noted in Unit IV.C above, EPA is interested in evaluating the effects attributable to BPA and has specified a relatively pure substance for testing.

Manufacturers and processors subject to this test rule must comply with the test rule development and exemption procedures in 40 CFR Part 790 for single-phase rulemaking.

E. Reporting Requirements

EPA is requiring that all data developed under this rule be reported in accordance with its TSCA Good Laboratory Practice (GLP) standards, which appear in 40 CFR Part 792.

In accordance with 40 CFR Part 790 under single-phase rulemaking procedures, test sponsors are required to submit individual study plans within 45 days before initiation of each study.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. The Agency is requiring that manufacturers and processors responsible for the subchronic toxicity testing of BPA shall report the study results within 17 months from the effective date of this rule. Manufacturers and processors responsible for the subchronic effects testing of BPA shall submit progress reports to EPA 6 months and 12 months after the effective date of the final rule.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the **Federal Register** as required by section 4(d).

Persons who export a chemical substance or mixture which is subject to a section 4 test rule are subject to the export reporting requirements of section 12(b) of TSCA. Final regulations interpreting the requirements of section 12(b) are in 40 CFR Part 707. In brief, as of the effective date of this test rule, an exporter of BPA must report to EPA the first annual export or intended export of BPA to any one country. EPA will notify the foreign country concerning the test rule for the chemical.

F. Enforcement Provisions

The Agency considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by the Act or any regulation or rule issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by TSCA section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substance or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce. . . ." The Agency considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory inspections and data audits will be conducted periodically in accordance with the authority and

procedures outlined in TSCA section 11 by duly designated representatives of the EPA for the purpose of determining compliance with the final rule for BPA. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, and that reports accurately reflect the underlying raw data and interpretations and evaluations to determine compliance with TSCA GLP standards and the test standards established in the rule.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of the TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 of TSCA could be subject to a civil penalty of up to $25,000 for each violation with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers that fail to submit a letter of intent or an exemption request and that continue manufacturing after the deadlines for such submissions.

This provision would also apply to processors that fail to submit a letter of intent or an exemption application and continue processing after the Agency has notified them of their obligation to submit such documents (see 40 CFR 790.48(b)). Intentional violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to 1 year. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator as well as all the other factors listed in TSCA section 16. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

V. Economic Analysis of Rule

To assess the potential economic impact of this rule, EPA has prepared an economic analysis that evaluates the potential for significant economic impacts on the industry as a result of the required testing. The economic analysis estimates the costs of conducting the required testing and evaluates the potential for significant adverse economic impact as a result of these test costs by examining four market characteristics of bisphenol A: (1) Price sensitivity of demand, (2) industry cost characteristics, (3) industry structure, and (4) market expectations. If there is no indication of adverse effect, no further economic analysis will be performed, however, if the first level of analysis indictes a potential for significant economic impact, a more comprehensive and detailed analysis is conducted which more precisely predicts the magnitude and distribution of the expected impact.

Total testing costs for the final rule for bisphenol A are estimated to range from $117,700 to $147,100. In order to predict the financial decision-making practices of manufacturing firms, these costs have been annualized. Annualized costs are compared with annual revenue as an indication of potential impact. The annualized costs represent equivalent constant costs which would have to be recouped each year of the payback period in order to finance the testing expenditure in the first year.

The annualized test costs (using a cost of capital of 25 percent over a period of 15 years) range from $30,500 to $38,116. Based on the 1984 estimated production volume for bisphenol A of 762 million pounds, the unit test costs will be about 0.005 cents per pound. In relation to the selling price of 67 cents per pound for bisphenol A, these costs are equivalent to 0.007 percent of price.

Based on these costs and the uses of bisphenol A, the economic analysis indicates that the potential for significant adverse economic impact as a result of this testing rule is extremely low. This conclusion is based on the following observations:

1. The estimated unit test costs are very low, 0.007 percent of current price in the upper-bound case.

2. The overall demand for bisphenol A appears relatively inelastic due to its dominant usage as a captive intermediate and the highly dispersed uses of its end products.

3. The market expectations for bisphenol A are optimistic, with demand projected to grow by three to four percent annually through the balance of the 1980's.

Refer to the economic analysis for a complete discussion of test cost estimation and potential for economic impact resulting from these costs.

VI. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules. Copies of the study, Chemical Testing Industry: Profile of Toxicological Testing, can be obtained through the NTIS (PB 82-140773). On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing in this proposed rule.

VII. Rulemaking Record

EPA has established a public record for this rulemaking proceeding [docket number OPTS-42067A]. This record includes:

A. Supporting Documentation

(1) **Federal Register** notice designating BPA to the priority list (49 FR 22389) and all comments received on BPA

(2) **Federal Register** notice of EPA's proposed test rule on BPA (50 FR 20691) and all comments received on the proposed testing.

(3) Economic impact analysis of final test rule for bisphenol A.

(4) Communications consisting of letters and meeting summaries.

B. References

(1) The Society of the Plastics Industry. Letter from Fran W. Lichtenberg to TSCA Public Information Office. July 16, 1985.

(2) The Dow Chemical Company. Letter from Leroy Hampton to the U.S Environmental Protection Agency. June 20, 1985.

(3) The Society of the Plastics Industry. Letter from Fran W. Lichtenberg to Philip Wirdzek September 25, 1985.

(4) The Society of the Plastics Industry Letter from Hugh Patrick Toner to Philip Wirdzek. February 27, 1986.

(5) U.S Environmental Protection Agency. Econosic Impact Analysis of Proposed Test Rule for Bisphenol A Washington, D.C., Office of Toxic Substances, EPA. 1984.

(6) National Institute for Occupational Safety and Health. Computer printout: National Occupational Hazard Survey. Cincinnati, OH. Retrieved March 17, 1984.
(7) National Institute for Occupational Safety and Health. Computer printout: National Occupational Exposure Survey. Cincinnati, OH. Retrieved May 5, 1984.
(8) Stasenkova, K.P., Shumskaya, N.I., Grinbert, A.E. "Certain laws governing the biological action of bisphenol A derivatives, depending on their chemical structure." Gig. Tr. Prof. Zabol. 6:30–33. (In Russian; English Translation.). 1973.

The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in Rm. G–0004, NE Mall, 401 M St., SW. Washington, DC 20460.

VIII. Other Regulatory Requirements

A. Classification of Rule

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this test rule is not major because it does not neet any of the criteria set forth in section 1(b) of the Order; i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprise to compete with foreign enterprises.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA, response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.* Pub. L. 96–354, September 19, 1980), EPA is certifying that this test rule will not have a significant impact on a substantial number of small businesses because: (1) They are not likely to perform testing themselves, or to participate in the organization of the testing effort; (2) They will experience only very minor costs, if any, in securing exemption from testing requirements; and (3) They are unlikely to be affected by reinbursement requirements.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this final rule under the provisions of the paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2070–0033.

List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous substances, Chemicals, Recordkeeping and reporting requirements.

Dated: September 11, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 799—[AMENDED]

Therefore, 40 CFR Part 799 is amended as follows:

1. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. By adding § 799.940, to read as follows:

§ 799.940 Bisphenol A.

(a) *Identification of test substance.* (1) Bisphenol A (CAS Number 80–05–7) (hereinafter "BPA") shall be tested in accordance with this section.

(2) BPA of at least 99 percent purity shall be used as the test substance.

(3) BPA shall be administered as a dust for inhalation and shall consist of particles ranging in size from 0.1 to 5 micrometers.

(b) *Persons required to submit study plans, conduct tests, and submit data.* All persons who manufacture or process BPA, other than as an inpurity, November 3, 1986 to the end of the reimbursement period shall submit letters of intent to conduct testing, submit study plans, conduct tests, and submit data or submit exemption applications as specified in this section, Subpart A of this Part, and Parts 790 and 792 of this chapter for single-phase rulemaking.

(c) *Health effects testing*—(1) *Required inhalation toxicity testing.* Subchronic toxicity and recovery testing including the satellite test group, shall be conducted with BPA in accordance with the TSCA Health Effects Test Guideline for Inhalation Toxicity in § 798.2450 (a), (b), (c) and (e) of this chapter. The following additional testing requirements apply to bisphenol A:

(i) *Test procedures*—(A) *Animal selection*—(*1*) *Species and strain.* A mammalian species shall be used for testing. A variety of rodent species may be used although the rat is the preferred species. Commonly used laboratory strains shall be employed. If another mammalian species is used, the tester shall provide justification/reasoning for its selection.

(*2*) *Age.* Young adult animals shall be used. At the commencement of the study the weight variation of animals shall not exceed ±20 percent of the mean weight for each sex.

(*3*) *Sex.* (*i*) Equal numbers of animals of each sex shall be used at each dose level.

(*ii*) Females shall be nulliparous and nonpregnant.

(*4*) *Numbers.* (*i*) At least 20 animals (10 females and 10 males) shall be used for each test group.

(*ii*) If interim sacrifices are planned, the number of animals shall be increased by the number of animals scheduled to be sacrificed before the completion of the study.

(B) *Control groups.* A concurrent control group is required. This group shall be an untreated or sham-treated control group. Except for treatment with the test substance, animals in the control group shall be handled in a manner identical to the test group animals. Where a vehicle is used to help generate an appropriate concentration of the substance in the atmosphere, a vehicle control group shall be used. If the toxic properties of the vehicle are not known or cannot be made available, both untreated and vehicle control groups are required.

(C) *Satellite group.* A satellite group of 20 animals (10 animals per sex) shall be treated with the high concentration level for 90 days and observed for reversibility, persistence, or delayed occurrence of toxic effects for a posttreatment period of not less than 28 days.

(D) *Dose levels and dose selection.* (*1*) In subchronic toxicity tests, it is desirable to have a dose-response relationship as well as a no-observed-toxic-effect level. Therefore, at least three dose levels with a control and, where appropriate, a vehicle control (corresponding to the concentration of vehicle at the highest exposure level) shall be used. Doses should be spaced appropriately to produce test groups with a range of toxic effects. The data should be sufficient to produce a dose-response curve.

(*2*) The highest concentration should result in toxic effects but not produce an incidence of fatalities which would prevent a meaningful evaluation.

(*3*) The lowest concentration should not produce any evidence of toxicity. Where there is a usable estimation of human exposure, the lowest concentration should exceed this.

(*4*) Ideally, the intermediate dose level(s) should produce minimal observable toxic effects. If more than one intermediate dose level is used, the concentrations should be spaced to produce a gradation of toxic effects.

(5) In the low and intermediate groups and in the controls the incidence of fatalities should be low, to permit a meaningful evaluation of the results.

(6) In the case of potentially explosive test substances, care should be taken to avoid generating explosive concentrations.

(E) *Exposure conditions.* The animals should be exposed to the test substance ideally for 6 hours per day on a 7 day per week basis, for a period of 90 days. However, based primarily on practical considerations, exposure on a 5-day per week basis for 6 hours per day is the minimum acceptable exposure period.

(F) *Observation period.* (1) Duration of observation shall be for atleast 90 days.

(2) Animals in a satellite group scheduled for followup observations shall be kept for an additional minimum 28 days without treatment to detect recovery from, or persistence of, toxic effects.

(G) *Inhalation exposure.* (1) The animals shall be tested in inhalation equipment designed to sustain a dynamic air flow of 12 to 15 air changes per hour and ensure an adequate oxygen content of 19 percent and an evenly distributed exposure atmosphere. Where a chamber is used, its design should minimize crowding of the testing animals and maximize their exposure to the test substance. This is best accomplished by individual caging. To ensure stability of a chamber atmosphere, the total "volume" of the test animals shall not exceed 5 percent of the volume of the test chamber. Oronasal or head-only exposure may be used if it is desirable to avoid concurrent exposure by the dermal or oral routes.

(2) A dynamic inhalation system with a suitable analytical concentration control system shall be used. The rate of air flow shall be adjusted to ensure that conditions throughout the exposure chamber are essentially the same. Maintenance of slight negative pressure inside the chamber will prevent leakage of the test substance into the surrounding areas.

(3) The temperature at which the test is performed shall be maintained at 22° C (+2°). Ideally, the relative humidity shall be maintained between 40 to 60 percent.

(H) *Physical measurements.* Measurements or monitoring shall be made of the following:

(1) The rate of air flow should be monitored continuously but shall be recorded at least every 30 minutes.

(2) The actual concentrations of the test substance shall be measured in the breathing zone. During the exposure period the actual concentrations of the test substance should be held as constant as practicable and monitored continuously and shall be recorded at least at the beginning, at an intermediate time and at the end of the exposure period.

(3) During the development of the generating system, particle size analysis shall be performed to establish the stability of aerosol concentrations. During exposure, analysis shall be conducted as often as necessary to determine the consistency of particle size distribution.

(4) Temperature and humidity shall be monitored continuously and shall be recorded at least every 30 minutes.

(I) *Food and water during exposure period.* Food shall be withheld during exposure. Water may also be withheld if necessary.

(J) *Observation of animals.* (1) Each animal should be handled and its physical condition shall be appraised at least once each day.

(2) Additional observations should be made daily with appropriate actions taken to minimize loss of animals to the study (e.g. necropsy or refrigeration of those animals found dead and isolation or sacrifice of weak or moribund animals).

(3) Signs of toxicity shall be recorded as they are observed including the time of onset, the degree, and duration.

(4) Cage-sided observations should include but not be limited to changes in the skin and fur, eyes and mucous membranes, respiratory, circulatory, autonomic and central nervous sytems, somatomotor activity and behavior pattern.

(5) Animals shall be weighed weekly. Food consumption should also be determined weekly if abnormal body weight changes are observed.

(6) At the end of the study period all survivors in the nonsatellite treatment groups shall be sacrificed. Moribund animals shall be removed and sacrificed when noticed.

(K) *Clinical examinations.* (1) The following examinations shall be made on at least five animals of each sex in each group:

(i) Certain hematology determinations shall be carried out at least two times during the test period: at terminal sacrifice at the end of the 90-day test period and at completion of the post-exposure recovery period (satellite group). Hematology determinations which shall be appropriate to this study include: packed cell volume, hemoglobin, erythrocyte count, total leukocyte, red blood cell indices, platelet count, and differential leukocyte count.

(ii) Certain clinical biochemistry determinations on blood shall be carried out at least two times: at terminal sacrifice at the end of the 90-day test period and at completion of the post-exposure recovery period (satellite group). Clinical biochemistry test areas which shall be appropriate to this study include: blood urea nitrogen, glutamic pyruvic transaminase activity, glutamic oxaloacetic transaminase activity, alkaline phosphatase activity, glucose, total protein, albumin, globulins, and acid/base balance. Other determinations which may be necessary for an adequate toxicological evaluation include: analyses of lipids, hormones, Methemoglobin, and cholinesterase activity. Additional clinical biochemistry may be employed, where necessary, to extend the investigation of observed effects.

(2) The following examinations shall be made on at least five animals of each sex in each group:

(i) Ophthalmological examination, using an ophthalmoscope or equivalent suitable equipment, shall be made prior to exposure to the test substance and at the termination of the study. If changes in the eyes are detected, all animals should be examined.

(ii) Urinalysis is not recommended on a routine basis, but only when there is an indication based on expected or observed toxicity.

(L) *Gross pathology.* (1) All animals shall be subjected to a full gross necropsy which includes examination of the external surface of the body, all orifices and the cranial, thoracic and abdominal cavities and their contents, and the esophagus, stomach, and upper small intestine.

(2) At least the liver, kidneys, adrenals, brain, and gonads shall be weighed wet, as soon as possible after dissection to avoid drying.

(3) The following organs and tissues, or representative samples thereof, shall be preserved in a suitable medium for possible future histopathological examination: All gross lesions; lungs—which shall be removed intact, weighed, and treated with a suitable fixative to ensure that lung structure is maintained (perfusion with the fixative is considered to be an effective procedure); nasopharyngeal tissues; brain—including sections of medulla/pons cerebellar cortex and cerebral cortex; pituitary; thyroid/parathyroid; thymus; trachea; heart; sternum with bone marrow; salivary glands; liver; spleen; kidneys; adrenals; pancreas; gonads; uterus; accessory genital organs, epididymis, prostate, and, if present, seminal vesicles; aorta; skin; gall

bladder (if present); esophagus; stomach; duodenum; jejunum; ileum; cecum; colon; rectum; urinary bladder; representative lymph node; mammary gland; thigh musculature; peripheral nerve; eyes; femur—including articular surface; spinal cord at three levels—cervical, midthoracic, and lumbar; and exorbital lachrymal glands.

(M) *Histopathology.* The following histopathology shall be performed: (*1*) Full histopathology on the respiratory tract including nasal cavity, pharynx, larynx and paranasal sinuses of all animals in the control, high dose, and satellite groups.

(*2*) All gross lesions in all animals.

(*3*) Target organs in all animals.

(*4*) Lungs of animals in the low and intermediate dose groups shall also be subjected to histopathological examination contingent on the histopathological findings of the control, high dose, and satellite groups.

(*5*) When a satellite group is used, histopathology shall be performed on tissues and organs identified as showing effects in other treated groups.

(ii) [Reserved]

(2) *Reporting requirements.* (i) Subchronic toxicity testing, including the satellite test group, shall be completed and the final study report submitted to the Agency within 17 months from the effective date of this final rule.

(ii) Progress reports shall be suumitted at 6 month intervals, the first of which is due within 6 months of the effective date of this final rule.

(Information collection requirements have been approved by the Office of Management and Budget under control number 2070–0033.)

[FR Doc. 86–21125 Filed 9–17–86; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6731]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register.**

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et. seq.). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measuures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.** In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Deputy Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Deputy Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

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

§ 64.6 List of Eligible Communities.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified	Date certain Federal assistance no longer available in special flood hazard areas
Region I					
Vermont	Addison, town of, Addison County	500163B	July 15, 1975, Emerg.; Sept. 18, 1986, Reg.; Sept. 18, 1986, Susp.	11-22-74, 9-24-76 and 9-18-86	Sept. 18, 1986.
Do	Ferrisburg, town of, Addison County.	500002B	June 10, 1975, Emerg.; Sept. 18, 1986, Reg.; Sept. 18, 1986, Susp.	9-6-74, 5-17-77 and 9-18-86	Do.
Do	Panton, town of, Addison County	500169B	Dec. 23, 1975, Emerg.; Sept. 18, 1986, Reg.; Sept. 18, 1986, Susp.	1-17-75, 10-22-76 and 9-18-86	Do.
Do	Vergennes, city of, Addison County	500011B	Mar. 25, 1975, Emerg.; Sept. 18, 1986, Reg.; Sept. 18, 1986, Susp.	6-28-74, 6-25-76 and 9-18-86	Do.
Region II					
New Jersey	Rockaway, township of, Morris County.	340360B	July 28, 1972, Emerg.; Nov. 15, 1979, Reg.; Sept. 18, 1986, Susp.	1-4-74, 11-15-79 and 9-18-86	Do.
New York	Chester, town of, Orange County	360870A	Mar. 31, 1975, Emerg.; Sept. 18, 1986, Reg.; Sept. 18, 1986, Susp.	4-12-74, 12-5-75 and 9-18-86	Do.
Do	Mount Kisco, village of, Westchester County.	360918B	Mar. 6, 1976, Emerg.; Sept. 18, 1986, Reg.; Sept. 18, 1986, Susp.	12-9-77 and 9-18-86	Do.
Region III					
Maryland	Berlin, town of, Worcester County	240141B	Mar. 21, 1978, Emerg.; Sept. 18, 1986, Reg.; Sept. 18, 1986, Susp.	1-21-77 and 9-18-86	Do.
West Virginia	McDowell County, unincorporated areas.	540114B	July 18, 1975, Emerg.; Sept. 18, 1986, Reg.; Sept. 18, 1986, Susp.	1-10-75, 8-6-82 and 9-18-86	Do.
Region IV					
Kentucky	Ghent, city of, Carroll County	210046B	July 1, 1977, Emerg.; Sept. 18, 1986, Reg.; Sept. 18, 1986, Susp.	1-16-74, 6-4-76 and 9-18-86	Do.
Do	Milton, city of, Trimble County	210215B	May 29, 1975, Emerg.; Sept. 18, 1986, Reg.; Sept. 18, 1986, Susp.	3-15-74, 2-27-86 and 9-18-86	Do.
Region V					
Illinois	Chandlerville, village of, Cass County.	170023B	July 2, 1975, Emerg.; Sept. 18, 1986, Reg.; Sept. 18, 1986, Susp.	11-23-73, 1-16-76 and 9-18-86	Do.
Do	Hull, village of, Pike County	170553A	Apr. 30, 1974, Emerg.; Sept. 18, 1986, Reg.; Sept. 18, 1986, Susp.	6-11-76 and 9-18-86	Do.
Do	Petersburg, city of, Menard County	170506B	Aug. 11, 1975, Emerg.; Sept. 18, 1986, Reg.; Sept. 18, 1986, Susp.	12-7-73, 3-26-76 and 9-18-86	Do.
Do	Streator, city of, LaSalle and Livingston Counties.	170408B	Dec. 1, 1972, Emerg.; Sept. 18, 1986, Reg.; Sept. 18, 1986, Susp.	11-9-73, 3-26-76 and 9-18-86	Do.
Indiana	Wabash County, unincorporated areas.		Apr. 3, 1975, Emerg.; Aug. 19, 1986, Reg.; Sept. 18, 1986, Susp.	12-27-74, 1-27-78 and 8-19-86	Do.
Wisconsin	Kendall, village of, Monroe County	550287B	June 3, 1974, Emerg.; Sept. 18, 1986, Reg.; Sept. 18, 1986, Susp.	8-30-74, 4-16-76 and 9-18-86	Do.
Do	Madison, city of, Dane County	550083D	July 17, 1975, Emerg.; Sept. 30, 1980, Reg.; Sept. 18, 1986, Susp.	3-8-74, 9-5-75, 8-19-77, 9-30-80 and 9-18-86.	Do.
Region VI					
New Mexico	Las Vegas, city of, San Miguel County.	350068C	Aug. 11, 1975, Emerg.; Sept. 18, 1986, Reg.; Sept. 18, 1986, Susp.	6-28-74, 10-29-76, 4-19-83 and 9-18-86.	Do.
Oklahoma	Coweta, city of, Wagoner County	400216A	Mar. 21, 1978, Emerg.; Sept. 18, 1986, Reg.; Sept. 18, 1986, Susp.	6-4-76 and 9-18-86	Do.
Do	Claremore, city of, Rogers County	405375E	Nov. 6, 1970, Emerg.; Aug. 27, 1971, Reg.; Sept. 18, 1986, Susp.	8-28-71, 7-1-74, 1-19-75, 10-3-75 and 9-18-86.	Do.
Texas	Kirbyville, city of, Jasper County	480384B	June 12, 1975, Emerg.; Sept. 18, 1986, Reg.; Sept. 18, 1986, Susp.	5-10-74, 1-2-76 and 9-18-86	Do.
Do	Flower Mound, town of, Denton County.	480777A	July 31, 1975, Emerg.; Sept. 18, 1986, Reg.; Sept. 18, 1986, Susp.	10-29-76 and 9-18-86	Do.
Region VII					
Missouri	Mokane, village of, Callaway County.	290052B	Sept. 24, 1974, Emerg.; Sept. 18, 1986, Reg.; Sept. 18, 1986, Susp.	10-18-74, 11-12-75 and 9-18-86	Do.
Do	Morrison, city of, Gasconade County.	290142B	May 30, 1975, Emerg.; Sept. 18, 1986, Reg.; Sept. 18, 1986, Susp.	5-30-75, 10-3-75 and 9-18-86	Do.
Region I—Emergency Program Communities					
Vermont	Brighton, town of, Essex County	500205A	Mar. 27, 1975, Emerg.; Sept. 18, 1986, Susp	11-26-76	Do.
Do	Bloomfield, town of, Essex County	500045A	Dec. 12, 1975, Emerg.; Sept. 18, 1986, Susp	5-7-86	Do.
Do	Wells, town of, Rutland County	500271A	June 25, 1975, Emerg.; Sept. 18, 1986, Susp	9-10-76	Do.
Region V—Minimal Conversions					
Michigan	Breen, township of, Dickinson County.	260389B	Aug. 6, 1976, Emerg.; Sept. 18, 1986, Reg.; Sept. 18, 1986, Susp.	3-31-78 and 9-18-86	Do.
Region VIII					
Utah	Nephi, city of, Juab County	490065	May 29, 1975, Emerg.; Aug. 5, 1986, Reg.; Sept. 18, 1986, Susp.	8-5-86	Do.
Region X					
Idaho	White Bird, city of, Idaho County	160072B	Jan. 13, 1976, Emerg.; Sept. 18, 1986, Reg.; Sept. 18, 1986, Susp.	9-13-74, 12-26-75 and 9-18-86	Do.

Code for reading fourth column: Emerg.—Emergency, Reg.—Regular, Susp.—Suspension.

Issued: September 15, 1986.

Francis V. Reilly,

Deputy Administrator, Federal Administration.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 97, 170 and 172

[CGD 80-159]

Damage Stability and Flooding Protection for Great Lakes Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the stability requirements for bulk dry cargo vessels operating on the Great Lakes of North America to impose a one-compartment damage stability standard for Great Lakes bulk carriers, that is, damage to one compartment will not result in the loss of the ship. The standards are based on a recommendation by the National Transportation Safety Board following a casualty with extreme loss of life, extensive studies by the Maritime Administration and a major industry organization engaged in design, construction, and operation of Great Lakes vessels. These standards are intended to reduce the possibility of loss of a vessel or at least slow the sinking enough to allow the crew to safely abandon ship.

DATE: Effective Date: November 17, 1986.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Robert M. Letourneau, Office of Merchant Marine Safety (G-MTH-3), Room 1308, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593, (202) 267-2988.

SUPPLEMENTARY INFORMATON: During the last 25 years, there have been several sinkings of Great Lakes bulk carriers involving large loss of life. Because of their arrangement, these vessels flood rapidly when damaged and sink within a very short period of time. As a result, the Coast Guard initiated this rulemaking to develop a damage stability standard that includes a minimum amount of subdivision that might prevent the loss of the vessel or at least slow the sinking enough to allow the crew to safely abandon ship.

Advance Notices of Proposed Rulemaking (ANPRM) on the issue of damage stability standards for Great Lakes dry bulk cargo carriers were published in the **Federal Register** on March 16, 1978 (43 FR 10946), August 14, 1980 (45 FR 54095) and February 28, 1983 (48 FR 8312). A Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** of November 7, 1985 (45 FR 46315). The closing date for comments was January 6, 1986. Six comment letters to the NPRM were received. Those comments included trade organizations, independent naval architects, and government agencies. These comments are discussed below.

The Coast Guard is amending the stability requirements for bulk dry cargo vessels operating on the Great Lakes of North America to impose a one-compartment damage stability standard for Great Lakes bulk carriers, that is, damage to one compartment will not result in the loss of the ship.

The NPRM proposed a one-compartment damage stability standard for all new vessels, with the extents of damage based on those experienced by Great Lakes vessels. The proposal allowed inflatable seals as an alternative to watertight bulkhead doors, with operational requirements to ensure proper functioning. The final rule adopts the proposal with certain modifications which are discussed more fully below.

Drafting Information

The principal persons involved in drafting this document are Lieutenant Commander Robert M. Letourneau, Office of Merchant Marine Safety, and Commander Ronald C. Zabel, Office of the Chief Counsel.

Discussion of Comments

Two comments expressed concern that the regulations did not go far enough in providing protection from flooding resulting from other than hull damage. These regulations provide protection from side and bottom damage but have not directly addressed flooding over the top or flooding resulting from massive structural failure.

With regard to topside flooding through hatches, ventilators, doors, or other topside openings, the Coast Guard approach is that maintaining such fixtures tight is part of proper seamanship exercised by the master and crew and does not require additional regulatory standards. Protection from flooding over the top can be significantly improved by proper securing of hatch covers and through better design of ventilators and other similar openings so that they are in more protected locations and are of more substantial construction to better withstand bad seas. The design of ventilators will be more carefully considered during plan review and approval.

The Coast Guard does not believe it is reasonable to provide protection from flooding resulting from massive structural failure for two reasons. First, although the Coast Guard believes it is reasonable to safeguard against foreseeable casualty situations, the Coast Guard does not think it is practical to design against every possible circumstance. These regulations provide a degree of protection from collision and grounding which will prevent the loss of the ship or at least slow the sinking enough to allow the crew to safely abandon the ship. The location of a structural failure depends on the combination of the structural design, the condition of the vessel, vessel loading, and the seaway. Thus, the possible locations of a structural failure and the resulting flooded compartments are quite numerous and the exact location and its likelihood are not easily predicted. Second, while it may be possible to design against massive structural failure, the Coast Guard thinks the cost in doing so may be economically prohibitive. The Coast Guard is not aware of any requirement for any other vessel types to be designed to withstand a massive structural failure.

The Coast Guard believes that the establishment of design standards for resistance to flooding will assist in the survival of any ship, no matter how the flooding occurs.

The Coast Guard urges the industry to recognize that this rule sets only minimum standards which permit the designer full choice of arrangement. There are two general arrangement systems commonly in use on Great Lakes vessels which already meet this standard. The more versatile in terms of volume available for cargoes of different densities is the use of several transverse bulkheads. The other arrangement uses longitudinal bulkheads located inboard of the assumed transverse damage penetration. This arrangement has the economic advantages of faster cargo loading and offloading. The disadvantages are reduced cargo volume and possible loss of the ship in the event that actual damage penetration is greater than that assumed in the regulations. Thus, the designer is encouraged to consider new methods of loading and offloading so that transverse bulkheads can be used in all cases.

One comment asked why the standards were being applied unilaterally to U.S. vessels and not to

foreign flag vessels in U.S. waters. Great Lakes bulk carriers are either U.S. or Canadian flag vessels. Historically, the United States and Canada have cooperated in developing regulations applicable to Great Lakes shipping to improve safety. The Coast Guard has worked closely with the Canadian Coast Guard in developing damage stability standards for Great Lakes bulk carriers to ensure competition on a fair basis. This has resulted in similar standards being adopted by both countries. The Canadian government has completed public hearings on their proposed regulations and is reported to be in the final stages of administrative review. With regard to the application of these regulations to other foreign flag vessels, these standards are applicable only to bulk carriers and not ocean-going cargo ships. This is discussed further in the following paragraph.

One comment asked why the damage stability requirements were not being applied to ocean-going cargo vessels. The assumed extents of damage in these regulations are based on the casualty records of Great Lakes vessels and thus are not appropriate for ocean-going vessels that occasionally operate on the Great Lakes. The Coast Guard is working through the International Maritime Organization to develop an internationally accepted damage stability standard for ocean-going dry cargo vessels, using a statistically based method of assessing damage occurring in various locations throughout the vessel.

One comment wanted to know the status of the five recommendations made by the MARAD study prior to considering one-compartment subdivision. These five recommendations were:

a. An educational program to familiarize the crew with the effects of damage, the use of lifesaving equipment, and stability and hull bending stresses in severe sea states.

b. Improved lifesaving equipment.

c. High water level sensors and alarms.

d. Traffic separation schemes.

e. Required carriage of Emergency Position Indicating Radio Beacons (EPIRBS).

The Coast Guard has required exposure suits for personnel on Great Lakes vessels since November 1, 1980 and has required Class C EPIRBS on board Great Lakes vessels since March 29, 1985. The Coast Guard currently has an ongoing regulatory project which would require improvements to lifesaving equipment on board cargo and miscellaneous vessels and tankers operating on the Great Lakes, such as totally enclosed lifeboats and davit-launched liferafts. Vessel traffic systems have been instituted in the confined navigation areas of the St. Mary's River and the connecting waters between Lake Huron and Lake Erie. The Coast Guard is studying the need to install bilge piping systems and high water level alarms in cargo holds containing bulk cargoes. The effectiveness of this measure is questionable because of clogging of the system by the cargo. Although these recommendations increase the safety of Great Lakes bulk carriers, none of these alternatives would completely substitute for the implementation of damage stability standards.

One comment wanted to know the status of the recommendations for research in the MARAD study to determine the quantitative aspects of the subdivision standard. These included:

a. Determining the amount of stability and strength necessary after damage.

b. Determining the dynamics of bulk cargo movement when a vessel is subjected to synchronous roll.

c. Determining the causes of synchronous roll.

d. Determining the ability of a vessel to survive when broken in two parts.

e. Studying watertight integrity and strength of hatch closure systems.

The Coast Guard believes that the survival criteria required by these regulations provide adequate stability after damage. Examining strength after damage is quite difficult since there are a multitude of damage scenarios that would alter the bending stresses because of flooding and the loss of longitudinal strength.

Roll has not been related to any Great Lakes casualty, nor has the shifting of bulk cargoes. Great Lakes vessels, by their design geometry, and due to the wave climatology in which they normally operate, have a very short and uncomfortable roll period. Operating personnel will avoid these conditions if at all possible.

Because of their hull geometry, the point of maximum stress on the vessel structure of Great Lakes bulk carriers may vary considerably depending on the actual vessel loading and sea conditions. For this reason, it is not possible to predict where a major structural failure would occur and how a vessel would consequently break up. Because of the multitude of possible cases, it would be unreasonable to require such an analysis.

Hatch closure systems underwent close scrutiny during the investigation of the S/S EDMUND FITZGERALD casualty. Additional research conducted for the Coast Guard in 1979 concluded that hatch cover systems currently in use can be considered effective as designed for normally encountered storms and adverse weather conditions when operated and maintained in a proper manner. The Coast Guard is satisfied that present designs are adequate provided they are properly used.

The Coast Guard has not conducted further research into the areas recommended by the MARAD report. With the exception of determining the ability of a vessel to survive when broken in two parts, the Coast Guard agrees that each of these research items might provide valuable information that would enhance the damage stability regulations for Great Lakes bulk carriers. Budget constraints have made it necessary to curtail research efforts in many areas. However, the last of research in the suggested areas is not sufficient reason for delaying the implementation of these regulations as this research would only "fine tune" the subdivision and stability standards promulgated in this rule.

One comment suggested that the term "major conversion" be given a more specific definition. The Coast Guard agrees and has added a definition to § 170.055. This definition adopts the language of 46 U.S.C. 3701. The Coast Guard considers this definition appropriate for the major conversion of Great Lakes bulk carriers and other vessels converting to service as Great Lakes bulk carriers.

Three comments recommended that the damage and survival criteria be stated in English units. The Coast Guard has revised the regulations to state the extents of damage and the survival criteria in both English and metric units for convenience.

Comments Concerning Specific Sections

Section 170.255. Two comments recommended that the standard industry practice of using Class I doors in watertight bulkheads be permitted to continue. Although this is not desirable from the point of view of maintaining bulkhead watertight integrity, there is no casualty history which would cause the Coast Guard to refuse this request. Therefore, the Coast Guard accepts the argument that this type of closure has been safely used on Great Lakes vessels. The Coast Guard will permit the use of quick-acting Class I closures below the load waterline in Great Lakes bulk carriers. The use of quick-acting Class I closures is conditional upon the doors being equipped with indicators on the bridge which warn the master when

these doors are open and signs being posted at each door stating "KEEP THIS DOOR CLOSED."

Section 172.230. One comment asked for clarification of the meaning of paragraphs (a)(1) and (a)(2). The Coast Guard's intention was that main transverse watertight bulkheads and partial wing tank bulkheads should not be assumed damaged. The wording in the regulations has been changed to reflect this.

One comment thought the maximum wing tank length of 100 feet was unnecessary if a performance standard is being applied. The Coast Guard agrees and this maximum length for wing tanks has been eliminated.

Section 172.240. The Coast Guard has modified the requirements for assumed permeabilities for cargo spaces which are not completely filled. This section has been revised to allow permeabilities of less than 95% for partially filled cargo spaces provided that the designer can show that a lesser permeability is reasonable. This was in recognition of the fact that most Great Lakes bulk carriers operate with partially filled cargo holds a majority of the time. The Coast Guard believes that a 95% permeability for all loading conditions in which a cargo space is less than completely filled is too onerous.

Operational Requirements

In the NPRM, the Coast Guard suggested requirements for testing inflatable seals at each port call be incorporated in the regulations. Inflatable seals are used to maintain watertight integrity between the cargo hold and the tunnel space containing the conveyor belt. One comment said this was excessive and suggested testing after each carriage of cargo and the installation of a trouble light to indicate a malfunction of the inflatable seals. The Coast Guard partially agrees and will require the testing of inflatable seals by the crew after each carriage of cargo. The installation of a trouble light is considered unnecessary in light of the requirement for frequent testing.

Regulatory Evaluation

These regulations are considered to be non-major under Executive Order 12291 and non-significant order DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The current economic impact of these regulations has been found to be so minimal that a full evaluation is unnecessary. The increased cost to construct a new Great Lakes bulk dry cargo ship to conform to these standards is minimal in relation to the total cost of the vessel. The estimated cost of constructing a new Great Lakes bulk carrier is 100 million dollars. The cost of complying with these regulations would be approximately one million dollars, adding only one percent to the cost of building the ship. In exchange for this minimal cost the risk of catastrophic loss of life from a sudden sinking is substantially reduced.

In the publication, "Estimated Vessel Operating Expenses 1984", the Maritime Administration has estimated the daily cost of operation of a 1000-foot self-unloading Great Lakes bulk carrier, excluding capital investment recovery, as $13,842. Assuming a 240 day operating season, the annual operating expenses of this vessel are $3,322,080. Since these vessels have a useful service life in excess of 40 years, the life cycle operating costs are in the vicinity of $133 million. The cost of these regulations as a percentage of operating costs is less than one per cent.

A review of the MARAD and industry studies reveals that in the past 15 years, 25 new U.S. bulk carriers have been constructed. All but seven of these meet the one compartment subdivision standards through MARAD requirements for loan guarantees. Any new shipbuilding may be included in a MARAD loan guarantee program. These regulations would have no impact on a ship built with MARAD loan guarantees, since the MARAD damage stability standards exceed that contained in this rulemaking.

For vessels built in the future without MARAD loan guarantees, this rulemaking should be also be cost-beneficial. The sudden sinkings of the CARL D. BRADLEY (1958), DANIEL J. MORRELL (1966) and EDMUND FITZGERALD (1975) resulted in the loss of 90 lives. Although the exact number of lives that will be saved as a result of these regulations cannot be determined precisely, the benefit of saving only one life for each vessel built over the life of the ship makes these regulations cost beneficial, assuming the minimum accepted value of a human life of one million dollars.

Regulatory Flexibility Act

Since the impact of these regulations is expected to be minimal and anyone building a 100 million dollar ship could not be reasonably considered a small entity, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rulemaking could result in a minor increase in information collection requirements for submittal of stability calculations required by § 91.55-5 in Subchapter I of Title 46, Code of Federal Regulations. The information collection requirements of Subchapter I have been previously approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) and have been assigned OMB Approval Number 2115-0130. This rulemaking may also result in a minor increase in information collection requirements for log keeping required by § 97.15-5 in Subchapter I of Title 46, Code of Federal Regulations. The information collection requirements for official logbooks have been previously approved by the Office of Management and Budget under the Provisions of the Paperwork Reduction Act (44 U.S.C. et seq.) and have been assigned approval number 2115-0071. The actual increase in burden is dependent on whether new construction takes place. Since no new construction is contemplated at this time no information collection increase will occur. If new construction were to commence it would only be at the rate of one or two ships per year because only two shipyards capable of building large Great Lakes bulk carriers remain in operation on the Great Lakes. The increased recordkeeping requirement for two ships annually is considered to be so insignificant that no further approval is necessary.

List of Subjects

46 CFR Part 97

Cargo vessels, Marine safety, Reporting and recordkeeping requirements, Navigation (water), Penalties.

46 CFR Part 170

Marine safety, Subdivision, Stability, Vessels, Tank vessels, Cargo vessels, Nuclear vessels, Passenger vessels, Oceanographic vessels, Sailing vessels, Nautical schools, Tugboats, Towboats, Mobile offshore drilling units, Barges, Grain, Oil and gas exploration, Hazardous materials transportation, Gases, Natural gas, Incorporation by reference.

46 CFR Part 172

Marine safety, Subdivision, Stability, Tank vessels, Cargo vessels, Passenger vessels, Sailing vessels, Great Lakes, Barges, Grain, Hazardous materials transportation, Gases, and Natural gas.

In consideration of the foregoing, the Coast Guard is amending Parts 97, 170 and 172, Title 46, Code of Federal Regulations, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 is revised to read as follows and all other citations within this part are removed:

Authority: 46 U.S.C. 3306, 6101, 8105; 50 U.S.C. 198; 49 CFR 1.46(b).

2. A new § 97.15–75 is added to read as follows:

§ 97.15–75 Test of inflatable hopper gate seals on Great Lakes bulk dry cargo vessels.

(a) It is the duty of the Master to ensure that the inflatable hopper gate seals installed on vessels required to meet the damage stability requirements of Subpart H of Part 172 of this chapter are tested after each carriage of cargo.

(b) Where inflatable hopper gate seals are installed, the test must consist of inflating the seals and assuring they hold the design pressure for at least 15 minutes without a drop in pressure.

(c) The date of the test and the condition of the equipment must be noted in the vessel's official logbook.

3. In § 97.35–5, a new paragraph (a)(10) is added to read as follows:

§ 97.35–5 Actions required to be logged.

(a) * * *

(10) Inflatable hopper gate seals. Where installed to comply with Subpart G of Part 172 of this chapter after each carriage of cargo. See § 97.15–75.

4. A new § 97.37–60 is added to read as follows:

§ 97.37–60 Watertight doors.

Quick-acting Class I watertight doors fitted in accordance with the requirements in § 170.255(d) of this chapter must be marked "KEEP THIS DOOR CLOSED".

PART 170—[AMENDED]

5. The authority citation for Part 170 is revised to read as follows:

Authority: 43 U.S.C. 1333(d); 46 U.S.C. 3306; 46 App. U.S.C. 86, 88a; 50 U.S.C. 198; E.O. 12234, 45 FR 58801; 49 CFR 1.46.

6. Section 170.055 is amended by redesignating existing paragraphs (k) through (r) as paragraphs (l) through (s) respectively, and by adding a new paragraph (k) to read as follows:

§ 170.055 General terms.

* * * * *

(k) "Major conversion", as applied to Great Lakes bulk carriers, means a conversion of an existing vessel that substantially changes the dimensions or carrying capacity of the vessel or changes the the type of vessel or substantially prolongs its life or that otherwise so changes the vessel that it is essentially a new vessel.

* * * * *

7. Section 170.255 is amended by adding new paragraphs (d) and (e) to read as follows:

§ 170.255 Class I doors; permissible locations.

* * * * *

(d) Quick-acting Class 1 doors are permitted in any location on a vessel that operates on the Great Lakes and is required to meet the damage stability standards of Subpart H of Part 172 of this Chapter.

(e) For vessels required to meet the damage stability standards of Subpart H of this Chapter, when Class 1 doors are installed below a deck the molded line of which at its lowest point at side is less than 7 feet (2.14 meters) above the deepest load line, an indicator light for each door which warns when the door is open must be installed on the bridge.

PART 172—[AMENDED]

8. The authority citation for Part 172 is revised to read as follows:

Authority: 46 U.S.C. 3306 and 3703; 46 App. U.S.C. 86 and 88a; 50 U.S.C. 198; E.O. 12234, 45 FR 58801; 49 CFR 1.46(b), (n)(6), (z).

9. A new Subpart H is added to the table of contents for Part 172 to read as follows:

Subpart H—Special Rules Pertaining to Great Lakes Dry Bulk Cargo Vessels

Sec.

10. In § 172.005, a new paragraph (g) is added to read as follows:

§ 172.005 Applicability.

* * * * *

(g) Any dry bulk cargo carried in a new Great Lakes vessel.

11. A new Subpart H is added to Part 172 to read as follows:

Subpart H—Special Rules Pertaining to Great Lakes Dry Bulk Cargo Vessels

§ 172.215 Specific Applicability.

This subpart applies to each new Great Lakes vessel of 1600 gross tons or more carrying dry cargo in bulk.

§ 172.220 Definitions.

(a) As used in this subpart "Length (L)", "Breadth (B)", and "Molded Depth (D)" are as defined in § 45.3 of this Chapter.

(b) As used in this part "new Great Lakes Vessel" means a vessel operating solely within the limits of the Great Lakes as defined in this Subchapter that:

(1) Was contracted for on or after November 17, 1986 or delivered on or after November 17, 1988.

(2) has undergone a major conversion under a contract made on or after (the effective date of these regulations) or completed a major conversion on or after (one year of the effective date of these regulations).

§ 172.225 Calculations.

(a) Each vessel must be shown by design calculations to meet the survival conditions in § 172.245 in each condition of loading and operation, assuming the damage specified in § 172.230.

(b) When doing the calculations required by paragraph (a) of this section, the virtual increase in the vertical center of gravity due to a liquid in a space must be determined by calculating either—

(1) The free surface effect of the liquid with the vessel assumed heeled five degrees from the vertical; or

(2) The shift of the center of gravity of the liquid by the moment of transference method.

(c) In calculating the free surface effect of consumable liquids, it must be assumed that, for each type of liquid, at least one transverse pair of wing tanks or a single centerline tank has a free surface. The tank or combination of tanks selected must be those having the greatest free surface effect.

(d) When doing the calculations required by paragraph (a) of this section, the buoyancy of any superstructure directly above the side damage must not be considered. The unflooded parts of superstructures beyond the extent of damage may be considered if they are separated from the damaged space by watertight bulkheads and no progressive flooding of these intact spaces takes place.

§ 172.230 Character of damage.

(a) Design calculations must show that each vessel can survive damage—

(1) To any location between adjacent main transverse watertight bulkheads;

(2) To any location between a main transverse bulkhead and a partial transverse bulkhead in way of a side wing tank;

(3) To a main or wing tank transverse watertight bulkhead spaced closer than the longitudinal extent of collision penetration specified in Table 172.235 to another main transverse watertight bulkhead; and

(4) To a main transverse watertight bulkhead or a transverse watertight

bulkhead bounding a side tank or double bottom tank if there is a step or a recess in the transverse bulkhead that is longer than 10 feet (3.05 meters) and that is located within the extent of penetration of assumed damage. The step formed by the after peak bulkhead and after peak tank top is not a step for the purpose of this paragraph.

§ 172.235 Extent of damage.

For the purpose of the calculations required in § 172.225—

(a) Design calculations must include both side and bottom damage, applied separately; and

(b) Damage must consist of the penetrations having the dimensions given in Table 172.235 except that, if the most disabling penetrations would be less than the penetrations described in this paragraph, the smaller penetration must be assumed.

TABLE 172.235.—EXTENT OF DAMAGE

Collision Penetration	
Longitudinal extent	0.495 $L^{2/3}$ or 47.6 feet (1/3 $L^{2/3}$ or 14.5 m), whichever is less.
Transverse extent	4 feet 2 inches (1.25 m).[1]
Vertical extent	From the baseline upward without limit.
Grounding Penetration Forward of a Point 0.3L Aft of the Forward Perpendicular	
Longitudinal	0.495 $L^{2/3}$ or 47.6 feet (1/3 $L^{2/3}$ or 14.5 m), whichever is less.
Transverse	B/6 or 32.8 feet (10 m), whichever is less, but not less than 16.4 feet (5 m).[1]
Vertical extent	0.75 m from the baseline.
Grounding Penetration at Any Other Longitudinal Position	
Longitudinal extent	L/10 or 16.4 feet (5 m), whichever is less.
Transverse	4 feet 2 inches (1.25 m).
Vertical extent	2 feet 6 inches (0.75 m) from the baseline.

[1] Damage applied inboard from the vessel's side at right angles to the centerline at the level of the summer load line assigned under Subchapter E of this chapter.

§ 172.240 Permeability of spaces.

When doing the calculations required in § 172.225,

(a) The permeability of a floodable space, other than a machinery or cargo space, must be assumed as listed in Table 172.240;

(b) Calculations in which a machinery space is treated as a floodable space must be based on an assumed machinery space permeability of 85% unless the use of an assumed permeability of less than 85% is justified in detail; and

(c) Calculations in which a cargo space that is completely filled is considered flooded must be based on an assumed cargo space permeability of 60% unless the use of an assumed permeability of less than 60% is justified in detail. If the cargo space is not completely filled, a cargo space permeability of 95% must be assumed unless the use of an assumed permeability of less than 95% is justified in detail.

TABLE 172.240.—PERMEABILITY

Spaces and tanks	Permeability (percent)
Storeroom spaces	60
Accommodations spaces	95
Voids	95
Consumable liquid tanks	[1] 95 or 0
Other liquid tanks	[2] 95 or 0
Cargo (completely filled)	60
Cargo (empty)	95
Machinery	85

[1] Whichever results in the more disabling condition.
[2] If tanks are partially filled, the permeability must be determined from the actual density and amount of liquid carried.

§ 172.245 Survival conditions.

A vessel is presumed to survive assumed damage if it meets the following conditions in the final stage of flooding:

(a) *Final waterline.* The final waterline, in the final condition of sinkage, heel, and trim must be below the lower edge of an opening through which progressive flooding may take place, such as an air pipe, or an opening that is closed by means of a weathertight door or hatch cover. This opening does not include an opening closed by a:

(1) Watertight manhole cover;

(2) Flush scuttle;

(3) Small watertight cargo tank hatch cover that maintains the high integrity of the deck;

(4) Class 1 door in a watertight bulkhead;

(5) Remotely operated sliding watertight door;

(6) Side scuttle of the nonopening type;

(7) Retractable inflatable seal; or

(8) Guillotine door.

(b) *Heel angle.* The maximum angle of heel must not exceed 15 degrees, except that this angle may be increased to 17 degrees if no deck edge immersion occurs.

(c) *Range of stability.* Through an angle of 20 degrees beyond its position of equilibrium after flooding, a vessel must meet the following conditions:

(1) The righting arm curve must be positive.

(2) The maximum righting arm must be at least 4 inches (10 cm).

(3) Each submerged opening must be weathertight

(d) *Metacentric height.* After flooding, the metacentric height must be at least 2 inches (50 mm) when the vessel is in the equilibrium position.

(e) *Progressive flooding.* In the design calculations required by § 172.225, progressive flooding between spaces connected by pipes, ducts or tunnels must be assumed unless:

(1) Pipes within the assumed extent of damage are equipped with arrangements such as stop check valves to prevent progressive flooding to other spaces with which they connect; and,

(2) Progressive flooding through ducts or tunnels is protected against by:

(i) Retractable inflatable seals to cargo hopper gates; or

(ii) Guillotine doors in bulkheads in way of the conveyor belt.

W.J. Ecker,

Deputy Chief, Office of Marine Safety, Security and Environmental Protection.

September 8, 1986.

[FR Doc. 86-21161 Filed 9-17-86; 8:45 a.m.]

BILLING CODE 4910-14-M

Proposed Rules

Federal Register
Vol. 51, No. 181
Thursday, September 18, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-86-16]

Petitions for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Denied or Withdrawn

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking and of dispositions of petitions denied or withdrawn.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and be received on or before November 17, 1986.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB-10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3162.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC on September 12, 1986.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR RULEMAKING

Docket No.	Petitioner	Description of the petition
25925	Louis D. Neill	Amendment to extend the time period in which a pilot in command may operate aircraft to qualify for recent experience. Petitioner proposes to allow the period beginning at the end of evening civil twilight and ending at the beginning of morning civil twilight to be considered as night operations. Regulations affected: 14 CFR 135.247(a)(2). Petitioner's reason for rule: Standardization of night qualification times for all states, territories, etc., of the United States; to ensure compliance with related regulations, and to enhance aviation safety by reducing pilot duty time.
25026	Tom Carter	Amendment to require children under 2 years of age to wear a modified seat belt extension when being held by an adult during flight. Regulations affected: 14 CFR 91.14(a)(3), 121.311(b), 127.109(b). Petitioner's reason for rule: The amendment would provide added safety during flight to the child as well as the other passengers in the event of unexpected turbulence or mishap.
25045	Everett W. Morris	To amend the FAR to: (1) Add probability definitions to Part 1; (2) To make § 25.1309 consistent with the failure considerations of § 25,671; and (3) To incorporate into Part 25, as an appendix, the "FAIL-SAFE DESIGN CONCEPT" previously published and approved as part of the AC 120-42. *Regulations affected:* 14 CFR 25.1309, 25.671.
25044	Daniel J. Peterson	Petitioner seeks to amend § 91.79 by adding a new paragraph (e) which would permit a balloon (aircraft) to be operated at an altitude or distance lower/less than that specified for an operation conducted over "congested areas" and "other than congested areas."

PETITIONS FOR RULEMAKING—Continued

Docket No.	Petitioner	Description of the petition
		Regulations affected: 14 CFR 91.79, 91.79 (b) and (c).

PETITIONS FOR RULEMAKING: WITHDRAWN OR DENIED

Docket No.	Petitioner	Description and disposition of the rule requested
21369	Air Transport Association.	*Description of petition:* To extend the August 1, 1986, compliance date for Part 121 air carriers, to place onboard their aircraft medical equipment and drugs for use in the diagnosis and treatment of medical emergencies that might occur during flight time and to comply with related training and record keeping requirements. *Regulations affected:* 14 CFR 11.101, 121.309, 121.417, 121.715 and Appendix A. *Denied 7/18/86.*

[FR Doc. 86-21068 Filed 9-17-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-NM-168-AD]

Airworthiness Directives; CASA Model C-212 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require replacement of the power quadrant cover to provide protection for the power control slots on certain CASA Model C-212 series airplanes. The installation of the replacement power quadrant cover incorporates protection for the slots to prevent foreign objects from entering the interior of the pedestal. Foreign objects in the pedestal could jam or interfere with the power or trim control system, and cause partial loss of controllability of the airplane.

DATES: Comments must be received on or before November 10, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103),

Attention: Airworthiness Rules Docket No. 86–NM–168–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. This information may be examined at the FAA Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM–113; telephone (206) 431–2909. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 86–NM–168–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The Spanish Dirección General de Aviación Civil (DGAC) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which exists on certain Contrucciones Aeronauticas S.A. (CASA) Model C–212 series airplanes. The existing slots in the power control quadrant could permit foreign objects to enter the pedestal, and jam or interfere with the power or trim controls. CASA has issued Service Bulletin 212–76–05, dated October 23, 1985, describing replacement of the cover with a new one which incorporates protection for the slots. The DGAC has classified the service bulletin as mandatory.

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

Since these conditions are likely to exist on airplanes of this model registered in the United States, this AD is proposed that would require modification of the power control quadrant cover in accordance with the previously mentioned service bulletin.

It is estimated that 22 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Modification parts are estimated at $553 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $14,808. For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($673). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

CASA: Applies to CASA Model C–212 series airplanes, serial numbers as listed in CASA Service Bulletin 212–76–05, dated October 23, 1985, certificated in any category. Compliance is required within 180 days after the effective date of this AD. To prevent the entry of foreign objects into the power and trim controls in the pedestal, accomplish the following, unless previously accomplished:

A. Replace the power quadrant cover with a cover incorporating slot protection in accordance with CASA Service Bulletin 212–76–05, dated October 23, 1985.

B. Alternate means of compliance or adjustment of compliance time, which provide an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on September 11, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–21069 Filed 9–17–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 86–NM–182–AD]

Airworthiness Directives; CASA Model C–212 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require the replacement of trim control markings and placards on certain CASA Model C–212 series airplanes. The FAA has determined that the trim control markings and placards are inadequate, and may result in an unsafe mis-trim condition.

DATES: Comments must be received no later than November 7, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-182-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-2909. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-182-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The FAA has determined that an unsafe condition may exist on certain Construcciones Aeronauticas S.A. (CASA) Model C-212 series airplanes. The trim control markings and placards are inadequate and may lead to a mis-trimmed airplane for takeoff. CASA has developed and the Spanish Dirección General de Aviación (DGAC) has approved replacement markings and placards, which are described in CASA Service Bulletin 212-27-30 (for CC series airplanes) and Service Bulletin 212-27-31 (for CB series airplanes), both dated October 23, 1985. These new placards and markings are designed to reduce the potential for mis-trim and loss of control on takeoff.

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

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require replacement of the trim control markings and placards in accordance with the previously mentioned service bulletins.

It is estimated that 32 airplanes of U.S. registry would be affected by this AD, that it would take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Replacement parts are estimated at $50 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $14,400.

For the reasons discussed above, the FAA has determined tnat this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($450). A final evaluation has been prepared for this regulation and placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

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

Authority: 49 U.S.C. 1364(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

CASA: Applies to CASA Model C-212 series airplanes listed in CASA Service Bulletins 212-27-30 and 212-27-31, both dated October 23, 1985, certificated in any category. Compliance is required within 6 months after the effective date of this AD. To reduce the potential for a mis-trimmed takeoff, accomplish the following, unless previously accomplished:

A. Replace the trim control markings and placards in accordance with CASA Service Bulletins 212-27-30 (CC series airplanes) or 212-27-31 (CB series airplanes), both dated October 23, 1985, as applicable.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

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

All persons affected by this proposed directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on September 10, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-21071 Filed 9-17-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NM-176-AD]

Airworthiness Directives; CASA Model C-212 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that

would require modification of the propeller feathering system on certain CASA Model C-212 series airplanes. This action would require replacement of certain fasteners in the propeller feathering controls with fasteners incorporating double locking devices. The separation of a fastener, due to the failure of a single locking device, could result in loss of propeller control and, consequently, partial loss of controllability of the airplane.

DATES: Comments must be received on or before November 7, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-176-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Constructiones Aeronauticas S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-2909. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-176-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Spanish Dirección General de Aviación Civil (DGAC) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition, which exists on certain Construcciones Aeronauticas S.A. (CASA) Model C-212 series airplanes. The control linkages of the propeller feathering system have certain fasteners with single locking devices, which, in the event of a failure, could result in partial loss of controllability due to a fastener separation and an uncontrollable propeller.

CASA has issued Service Bulletin 212-76-04, dated October 23, 1985, which describes double locking devices for the propeller control system to prevent separation of a fastener as a result of failure of a locking device. The DGAC has classified the service bulletin as mandatory.

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

Since these conditions are likely to exist on airplanes of this model registered in the United States, an AD is proposed that would require incorporation of the modification described in the previously mentioned service bulletin.

It is estimated that 29 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Modification parts are estimated at $70 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $11,310.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($390). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

CASA: Applies to CASA Model C-212 series airplanes listed in CASA Service Bulletin 212-76-04, dated October 23, 1985, certificated in any category. Compliance is required within 6 months after the effective date of this AD. To prevent the partial loss of controllability of the airplane due to an uncontrollable propeller, accomplish the following, unless previously accomplished:

A. Modify the propeller feathering control system in accordance with CASA Service Bulletin 212-76-04, dated October 23, 1985.

B. Alternate means of compliance or adjustment of compliance time, which provide an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

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

All persons affected by this proposal who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on September 10, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-21074 Filed 9-17-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NM-177-AD]

Airworthiness Directives; CASA Model C-212 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD), applicable to certain CASA Model C-212 series airplanes, that would require modification of the cabin attendants' seats to provide automatic retraction of the seat when unoccupied. This action is necessary to ensure adequate access to an emergency exit in the event the airplane must be evacuated.

DATES: Comments must be received on or before November 7, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-177-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Construcciones Aeronautics S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-2909. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-177-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Spanish Dirección General de Aviación Civil (DGAC) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition, which exists on certain Construcciones Aeronauticas S.A. (CASA) Model C-212 series airplanes. The cabin attendant's seat partially obstructs the path to the adjacent emergency exit. CASA has developed a modification to the seat which makes the bottom of the seat automatically fold up when unoccupied to clear the evacuation path to the exit. CASA issued Service Bulletin 212-25-35, dated October 23, 1985, to provide instructions for the modification, and DGAC has classified the modification as mandatory.

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

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require modification of the attendant's seat in accordance with the previously mentioned service bulletin.

It is estimated that 32 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Modification parts are estimated at $16 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $6,912.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($216). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

CASA: Applies to the CASA Model C-212 series airplanes, serial numbers as listed in CASA Service Bulletin 212-25-32, dated October 23, 1985, certificated in any category. Compliance is required within 120 days after the effective date of this AD. To prevent obstruction of an evacuation path to an emergency exit, accomplish the following, unless previously accomplished:

A. Modify the attendant's seat in accordance with CASA Service Bulletin 212-25-32, dated October 23, 1985.

B. An alternate means of compliance or adjustment of compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

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

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. This

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

Issued in Seattle, Washington, on September 10, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-21070 Filed 9-17-86; 8:45 am]

BILLING CODE 4910-03-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

West Virginia Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and hearing on a proposed amendment submitted by West Virginia and a request from West Virginia to extend the deadline for submission of a required amendment to its permanent regulatory program (hereinafter referred to as the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of policy statements governing the State's inspection practices, while the requested extension involves a required amendment concerning the use of explosives. This notice sets forth the times and locations that the West Virginia program, proposed amendment and request for extension are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment and extension request, and the procedures that will be followed regarding the public hearing, if requested.

DATES: Written comments not received on or before 4:00 p.m. on October 20, 1986, will not necessarily be considered in the decision process. A public hearing on the proposal will be held upon request on October 14, 1986. Any person interested in making an oral or written presentation at the hearing should contact Mr. James C. Blankenship, Jr. at the OSMRE Charleston Field Office by the close of business on or before October 3, 1986. If no one has contacted Mr. Blankenship 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. Blankenship, a public meeting, rather than a hearing, may be held with the results of the meeting included in the West Virginia administrative record.

ADDRESSES: Written comments should be mailed or hand delivered to: Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, Attention: West Virginia Administrative Record, 603 Morris Street, Charleston, West Virginia 25301.

Copies of the extension request (Administrative Record No. WV 709), the West Virginia program, and the administrative record of the West Virginia program are available for public review and copying at the OSMRE offices and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed program amendment and extension request by contacting the OSMRE Charleston Field Office.

Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5315, Washington, DC 20240, Telephone: (202) 343-5492

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, Morgantown, West Virginia 26505, Telephone: (304) 291-4004

West Virginia Department of Energy, 1615 Washington Street, East Charleston, West Virginia 25305, Telephone: (304) 348-3267

FOR FURTHER INFORMATION CONTACT: James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

On March 3, 1980, West Virginia submitted its proposed permanent regulatory program, which the Secretary of the Interior disapproved on October 22, 1980, following a review in accordance with 30 CFR Part 732 (45 FR 69249-69271). On December 19, 1980, West Virginia resubmitted its proposed program, which the Secretary approved on January 21, 1981. Information concerning the general background of the permanent program submission, as well as the Secretary's findings, the disposition of comments and an explanation of the initial conditions of approval of the West Virginia program, can be found in the January 21, 1981, **Federal Register** (46 FR 5915-5956). Subsequent actions concerning proposed amendments and the conditions of approval are codified at 30 CFR 948.11, 948.12, 948.13, 948.15 and 948.16.

II. Submission of Amendment and Extension Request

By letter dated June 30, 1986 (Administrative Record No. WV 709), West Virginia submitted, among other things, a proposed amendment consisting of a policy statement establishing inspection frequency requirements, establishing procedures for determining when an operation may be considered inactive for inspection purposes, defining the terms "complete inspection" and "partial inspection" and establishing requirements governing the conduct of aerial inspections. The proposed amendment also includes a directive clarifying the impoundment inspection requirements of section 4B.05(c) of the West Virginia Surface Mining Reclamation Regulations. In addition, the State submitted a revised version of the Code of Violations, which OSMRE originally approved on July 11, 1985 (50 FR 28324-28342), to clarify how it is to be implemented and to revise the statutory citations to reflect passage of the West Virginia Energy Act, which OSMRE also approved, with certain exceptions, on July 11, 1985 (50 FR 28316-28323).

In the same letter, West Virginia requested that the deadline for submission of the amendment concerning the use of explosives, as required by 30 CFR 948.16(a), be extended until September 1, 1986, which further communication subsequently revised to October 1, 1986. By notice in the September 24, 1985 **Federal Register**, the Director had previously extended the deadline for submission of this amendment until November 26, 1985 (50 FR 38651-38653). West Virginia noted that the legislature must approve all permanent regulations, and that the 1986 session adjourned for the year on March 15, 1986, without considering the State's proposed regulatory revisions. Consequently, the State now proposes to file emergency regulations no later than October 1, 1986, at which time they will be submitted to OSMRE for review.

The issue which the amendment is needed to resolve involves section 4C.01 of the State's Surface Mining

Reclamation Regulations, which inappropriately relates blasting plan requirements to blasts using more than five pounds of explosives. Since section 3.01(A) of the State's blasting regulations requires certification only of blasting personnel who use explosives in accordance with the blasting plan, certain blasting operations would be exempt from the requirement of section 4C.01 that a certified blaster be responsible for all blasting operations. In addition, since section 4C.02 provides that only surface mining operations need prepare blasting plans, surface blasting at underground mines would not be covered. Both of these provisions are less effective than the Federal regulations at 30 CFR 816.61(c) and 817.61(c), which require that all surface blasting operations be conducted under the direction of a certified blaster.

Although the Director is concerned by the lengthy delays in resolving this problem, he is proposing to approve the extension request, based on West Virginia's commitment to promulgate emergency regulations. In accordance with the provisions of 30 CFR 732.17, he is now seeking comment on this proposed extension and on whether the proposed amendment satisfies the requirements of 30 CFR 732.15 for approval of State program amendments. If the amendment is approved, it will become part of the West Virginia permanent regulatory program.

III. Procedural 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 section 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 will be met by 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 948

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 12, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 86-21146 Filed 9-17-86; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 12-86-10]

Drawbridge Operation Regulations; Middle River, CA

AGENCY: Coast Guard, DOT.

ACTION: Cancellation of rulemaking.

SUMMARY: The Coast Guard is cancelling the rulemaking to allow the draw of the Atchison, Topeka and Santa Fe Railway Co. bridge across Middle River, mile 9.8, near Stockton, California to remain closed to navigation until abandoned. It would then have been placed in the open to navigation position until it was removed from the waterway. Since the Interstate Commerce Commission has not approved the proposed merger of the Atchison, Topeka and Santa Fe Railway Co. with the Southern Pacific Transportation Co., the railway company will continue to operate on this route. Since this segment of line will not be abandoned, the bridge cannot be put in the open to navigation position or removed from the waterway. The bridge will be restored to service and will continue to operate under the existing operating regulation.

FOR FURTHER INFORMATION CONTACT: Rose E. Guerra, Assistant Chief, Bridge Section, Aids to Navigation Branch (telephone: (415) 437-3514).

SUPPLEMENTARY INFORMATION: On 8 July 1986, the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations (51 FR 24271). Interested persons were requested to submit comments and six comments were received.

Drafting Information

The drafters of these regulations are Rose E. Guerra, project officer, and Lieutenant Commander Peter K. Mitchell, project attorney.

Discussion of Comments

The California Resources Agency had no comment. The other comments were from recreational boaters. All objected to the proposed regulation. Reasons given for the objections were: the proposed merger was not approved; access would be denied for rock barges and dredges in the event of a levee break; the existing 12 hour advance notice for an opening effectively prohibits boaters from transiting the waterways under the bridge which leads to biased low opening statistics; this is the secondary route from the south delta; this is the only alternate route from Discovery Bay and Cruiser Haven Marina for larger vessels; the heavy volume of traffic from Discovery Bay is forced to go by Holland Riverside Marina even if they are enroute to Middle River, which produces a tremendous amount of wakes; and too many waterways are being closed off.

Dated: August 30, 1986.

John D. Costello,

Vice Admiral, U.S. Coast Guard Commander, Twelfth Coast Guard District.

[FR Doc. 86-21156 Filed 9-17-86; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3081-4]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to exclude the solid wastes generated at three facilities from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions submitted 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste list. The effect

of this action, if promulgated, would be to exclude certain wastes generated at three particular facilities from listing as hazardous wastes under 40 CFR Part 261.

The Agency has previously evaluated all three of the petitions which are discussed in today's notice. Based on our review at that time, these petitioners were granted temporary exclusions. Due to changes to the delisting criteria required by the Hazardous and Solid Waste Amendments of 1984, however, these petitions have been evaluated both for the factors for which the wastes were originally listed, as well as other factors which reasonably could cause the wastes to be hazardous.

DATES: EPA will accept public comments on the proposed exclusions until October 3, 1986. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on these proposed decisions by filing a request with Bruce Weddle, whose address appears below, by October 3, 1986. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSP/OSW (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-86-BBEP-FFFFF".

Requests for a hearing should be addressed to Bruce Weddle, Director, Permits and State Programs Division, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at U.S. Environmental Protection Agency, 401 M Street SW., (subbasement), Washington, DC 20460, and is available for viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475-9327 or Kate Blow at (202) 382-4675 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-5096.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit any of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure [EP] toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To be excluded, petitioners must show that a waste generated at their facility does not meet any of the criteria under which the waste was listed. (See 40 CFR 260.22(a) and the background documents for the listed wastes.) In addition, the Hazardous and Solid Waste Amendments of 1984 (HSWA) require the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics, as well as present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. (See 40 CFR 260.22(a); section 222 of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6921(f); and the background documents for the listed wastes.) Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of a hazardous waste, generators remain obligated to determine whether their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. (See 40 CFR 261.3(c) and (d)(2).) Again, the substantive standard for "delisting" is: (1) that the waste not meet any of the criteria for which it was listed originally; and (2) that the waste is not hazardous after considering factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Where the waste is derived from one or more listed hazardous wastes, the demonstration may be made with respect to each constituent or the waste mixture as a whole. (See 40 CFR 260.22(b).) Generators of these excluded treatment, storage, or disposal residues remain obligated to determine whether these residues exhibit any of the hazardous waste characteristics on a periodic basis.

Approach Used to Evaluate Delisting Petitions

The Agency first will evaluate the petition to demonstrate whether the waste (for which the petition was submitted) is non-hazardous based on the factors for which the waste was originally listed. If the Agency believes that the waste is still hazardous (based on the factors for which the waste was originally listed), it will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the factors for which the waste was listed, it then will evaluate the waste with respect to other factors or contaminants, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous.

The Agency is using a hierarchical approach in evaluating petitions for the other factors or contaminants (*i.e.*, those listed in Appendix VIII of Part 261). This approach may, in some cases, eliminate the need for additional testing. The petitioner can choose to submit a raw materials list and process descriptions. The Agency will evaluate this information to determine whether any Appendix VIII hazardous constituents are used or formed in the manufacturing and treatment process and are likely to be present in the waste at significant levels. If so, the Agency then will request that the petitioner perform additional analytical testing. If the petitioner disagrees, he may present arguments on why the toxicants would

not be present in the waste, or, if present, why they would pose no toxicological hazard. The reasoning may include descriptions of closed or segregated systems, or mass balance arguments relating to the volume of raw materials used to the rate of waste generation. If the Agency finds that the arguments presented by the petitioner are not sufficient to eliminate the reasonable likelihood of the toxicant's presence in the waste, the petition would be tentatively denied on the basis of insufficient information. The petitioner then may choose to submit the additional analytical data on representative samples of the waste during the public comment period.

Rather than submitting a raw materials list, petitioners may test their waste for any additional toxic constituents that may be present and submit this data to the Agency. In this case, the petitioner should submit an explanation of why any constituents from Appendix VIII of Part 261, for which no testing was done, would not be present in the waste or, if present, why they would not pose a toxicological hazard.

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). Specifically, the Agency considers whether the waste is acutely toxic, as well as the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and bioaccumulate, their persistence in the environment once released from the waste, plausible types of management of the waste, and the quantities of waste generated. In this regard, the Agency has developed an analytical approach to the evaluation of wastes that are landfilled and land treated. See 50 FR 7882 (February 26, 1985), 50 FR 48886 (November 27, 1985), and 50 FR 48943 (November 27, 1985). The overall approach, which includes a ground water transport model, is used to predict reasonable worst-case contaminant levels in ground water in nearby receptor wells (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The land treatment model also has an air component and predicts the concentration of specific toxicants at some distance downwind of the facility. The compliance point concentration determined by the model then is compared directly to a level of regulatory concern. If the value at the compliance point predicted by the model is less than the level of regulatory concern, then the waste could be considered non-hazardous and a candidate for delisting. If the value at the compliance point is above this level, however, then the waste probably still will be considered hazardous, and not excluded from Subtitle C control.[1]

This approach evaluates the petitioned wastes by assuming reasonable worst-case land disposal scenarios. This approach has resulted in the development of a sliding regulatory scale which suggests that a large volume of waste exhibiting a particular extract level would be considered hazardous, while a smaller volume of the same waste could be considered non-hazardous.[2] The Agency believes this to be a reasonable outcome since a larger quantity of waste (and the toxicants in the waste) might not be diluted sufficiently to result in compliance point concentrations that are less than the level of regulatory concern. The selected approach predicts that the larger the waste volume, the higher the level of toxicants at the compliance point. For wastes that are managed in a landfill, the mathematical relationship (with respect to ground water) yields at least a six-fold dilution of the toxicant concentration initially entering the aquifer (*i.e.*, any waste exhibiting extract levels equal to or less than six times a level of regulatory concern will generate a toxicant concentration at the compliance point equal to or less than the level of regulatory concern). Depending on the volume of waste, an additional five-fold dilution may be imparted, resulting in a total dilution of up to thirty-two times.

The Agency is using this approach as one factor in determining the potential impact of the unregulated disposal of petitioned waste on human health and the environment. The Agency has used this approach in evaluating each of the wastes discussed in today's publication. As a result of this evaluation, the Agency is proposing to delist the waste from three petitioners.

It should be noted that EPA has not verified the submitted test data before proposing to grant these exclusions. The sworn affidavits submitted with each petition bind the petitioners to present truthful and accurate results. The Agency, however, has initiated a spot sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions before final exclusions will be granted.

Finally, before the Hazardous and Solid Waste Amendments of 1984 were enacted, the Agency granted temporary exclusions without first requesting public comment. The Amendments specifically require the Agency to provide notice and an opportunity for comment before granting a exclusion. All of the exclusions proposed today will not become effective unless and until made final. A notice of final exclusion will not be published until all public comments (including those from requested hearings, if any) are addressed.

Petitioners

The proposed exclusions published today involve the following petitioners: BBC Brown Boveri, Inc., Sanford, Florida; Pamcor C, Inc., Las Piedras, Puerto Rico; William L. Bonnell Company, Carthage, Tennessee.

I. BBC Brown Boveri, Inc.

A. Petition for Exclusion

BBC Brown Boveri, Inc. (BBC), located in Sanford, Florida, is involved in a metal preparation system prior to electroplating silver onto copper bus bars and electroplating copper followed by silver onto aluminum bus bars. BBC has petitioned the Agency to exclude its treated sludge, presently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. BBC has petitioned to exclude its currently generated sludge because it does not meet the criteria under which the waste was listed and does not exhibit any of the characteristics of hazardous waste.

The listed constituents of concern for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed). BBC claims that its wastewater treatment process generates a non-hazardous sludge, because cadmium and nickel are not used in the process and the chromium in the waste is essentially immobile.

Based upon the Agency's initial review of their petition (based only upon

[1] The Agency recently proposed a similar approach, including a ground water transport model, as part of the land disposal restrictions rule (see 51 FR 1602, January 14, 1986). The Agency, however, has not yet evaluated the comments on this proposal. If this approach is promulgated, the Agency will consider revising the delisting analysis at that time.

[2] Other factors may result in the denial of a petition, such as actual ground water monitoring data or spot check verification data.

the original listing criteria), BBC was issued a temporary exclusion on February 18, 1982. BBC was asked to submit additional information, as was required under the Hazardous and Solid Waste Amendments (HSWA) of 1984, to evaluate the petition. The Agency has re-evaluated BBC's petition to determine (1) whether a final exclusion should be granted, based on the original listing criteria, and (2) if the waste is non-hazardous with respect to factors and toxicants other than the original listing criteria. Today's notice is the result of the Agency's re-evaluation of BBC's petition.

BBC has submitted a detailed description of its electroplating and wastewater treatment processes (including schematic diagrams), total constituent analyses, and EP toxicity test results for cadmium, chromium, and nickel; results from analyses for total, free, and reactive cyanide; total constituent analyses and EP toxicity test results for arsenic, barium, lead, mercury, selenium, and silver; and results from total oil and grease analyses on representative waste samples. BBC also submitted a list of raw materials used in the manufacturing process. The Agency requested much of this information, as indicated above, to determine whether hazardous constituents, other than those for which the waste was listed, are present in the sludge at levels of regulatory concern.

BBC's manufacturing process includes a metal preparation system prior to electroplating silver onto copper bus bars and electroplating copper followed by silver onto aluminum bus bars. The Sanford facility operates a plating line consisting of alkaline cleaning, caustics etching, rinsing, wax dipping, and non-cyanide copper and silver plating. The spent plating baths are not discharged into the wastewater treatment system. A flow of waste liquid is received into a waste collection sump from the rinse, alkaline cleaners, caustic etch, and acid tanks. This flow is periodic and staggered, dependent on the necessity for clean-out. Liquid from the waste collection sump is pumped on a batch basis to a neutralization and treatment tank. Neutralization, flocculation, and clarification are accomplished before the supernatant is discharged to lined evaporation tanks. The sludge is then pumped to a sludge settlement tank for dewatering through a fabric bag gravity filtration system. Once filtration is completed, the dewatered sludge is removed from the fabric bags, placed in plastic lined 55 gallon drums, and disposed.

BBC presented analytical data on five composite core sludge samples which were collected from drums and sludge filter bags over a period of five years. BBC claims that these samples were representative of any variation of the listed and non-listed constituent in the waste. Each drum represented approximately one batch.

The total constituent and leachate analyses of the sludge samples for the listed constituents revealed the maximum concentration reported in Table 1.

TABLE 1.—Maximum Concentrations

Constituents	Total constituent analyses (mg/kg)	EP leachate analyses (mg/1)
Cd	38.2	0.034
Cr (total) [1]	115	.08
Ni	39	.17
CN	142	.403

[1] Hexavalent chromium is listed as the constituent of concern for this waste. The concentration of total chromium, however, is low enough to make a determination of hexavalent chromium unnecessary.

The total constituent and leachate analyses of the sludge for the non-listed EP toxic metals revealed the maximum concentration reported in Table 2.

Table 2.—Maximum Concentrations [1]

Constituents	Total constituent analyses (mg/kg)	EP leachate analyses (mg/1)
As	159	0.07
Ba	83	.39
Pb	2,360	.37
Hg	0.11	.0038
Se	30	.06
Ag	9,470	.29

[1] The EP leachate values and maximum constituents analyses reported in Table 2 represent the maximum levels reported for the particular metal and do not necessarily represent the same sample.

The maximum total oil and grease content reported was 0.233 percent. BBC also provided test data indicating that the sludge is not ignitable, corrosive, or reactive. BBC claims to generate a maximum of 0.212 tons of sludge per year.[3].

B. Agency Analysis and Action

BBC has demonstrated that its waste treatment system produces a non-hazardous sludge. The Agency believes that the five samples collected from drums and sludge filter bags were non-biased and adequately represent any variations that may occur in the waste petitioned for exclusion. The key factor that could vary toxicant concentration in the waste would be the use of different raw materials, due to changes in the product line being manufactured. Variations in the raw materials can be expected either when the facility performs as a job shop or when the product line changes on a seasonal basis. The Agency believes that the sampling period used by BBC was long enough to cover any scheduled changes in the product line, since the petitioner has verified that all of the plating lines were in operation during the sampling period. The samples, therefore, are believed to be representative of the waste generated by BBC.

The Agency has evaluated the mobility of the listed constituents from BBC's waste using the vertical and horizontal spread (VHS) model.[4] The VHS model generated compliance point values using the 0.212 tons per year generation rate and the maximum reported extract levels as input parameters. These compliance point concentrations are exhibited in Table 3.

TABLE 3.—VHS Model: Calculated Compliance Point Concentrations/Dewatered Sludge

Constituents	Compliance point concentration (mg/1)	Regulatory standards (mg/1)
Cd	0.001	0.01
Cr (total)	.002	.05
Ni	.005	.35
CN	.01	.02

The sludge exhibits cadmium and chromium levels (at the compliance point) below the National Interim Primary Drinking Water Standards; cyanide levels below the U.S. Public Health Services suggested drinking water standard; [5] and nickel levels below the Agency's Interim Health Advisory. [6] The total cyanide levels in the waste are also believed to be sufficiently low to preclude the generation of concentrations in air that exceed the air threshold limit set by the American Conference of Governmental Hygienists. [7] The presence of these

[3] BBC does not qualify for the small quantity generator exemption described in 40 CFR 261.5(a) because additional listed hazardous wastes, other than those described herein, are currently generated at the facility.

[4] See 50 FR 7882, Appendix 1, February 26, 1985, for a detailed explanation of the development of the VHS model for use in the delisting program. See also the final version of the VHS model 50 FR 48896, Appendix, November 27, 1985.

[5] Drinking Water Standards, U.S. Public Health Services Publication 956, 1962 (0.2 ppm).

[6] Pending the completion of current EPA studies on the health effects of nickel, the Agency's interim health advisory for nickel is 350 ppm for the purpose of delisting petitions. This standard is explained at 50 FR 20239–48, May 15, 1985.

[7] See American Conference of Governmental Hygienists; *Documentation of the Threshold Limit*

Continued

constituents is, therefore, not the regulatory concern.

The Agency also concluded, through the use of the VHS model, that no other EP toxic metals are present in the sludge at levels of regulatory concern (*i.e.*, none are above any regulatory standard at the compliance point using the VHS model). The compliance point values generated from the extract levels are displayed in Table 4.

TABLE 4.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS/DEWATERED SLUDGE

Constituents	Compliance point concentration (mg/l)	Regulatory standards (mg/l)
As	0.002	0.05
Ba	.01	1
Pb	.01	.05
Hg	.0001	.002
Se	.002	.01
Ag	.009	.05

The Agency reviewed BBC's raw materials lists and the material safety data sheets for each component of the raw materials lists. BBC's materials list indicated that no Appendix VIII hazardous constituents are used in the process and that formation of any of these constituents is highly unlikely. The Agency has concluded from this review that no other Appendix VIII hazardous constituents are present in the waste.

The Agency believes that the treatment process used by BBC generates a non-hazardous waste. The Agency, therefore, proposes to grant an exclusion to BBC's facility, located in Sanford, Florida, for its treated sludge, as described in its petition. (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process). [8] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.)

II. Pamcor C, Inc.

A. Petition for Exclusion

Pamcor C Inc. (Pamcor), engaged in the stamping, molding, forming, grinding, machining, and electroplating of electrical connectors at its Las Piedras, Puerto Rico facility, has petitioned the Agency to exclude its treated sludge, presently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. Pamcor has petitioned to exclude its generated sludge because it does not meet the criteria under which the waste was listed and does not exhibit any of the characteristics of hazardous waste.

The listed constituents of concern for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed). Pamcor claims that its wastewater treatment process generates a non-hazardous sludge because the constituents of concern are either present in insignificant concentrations or, if present, are essentially immobile. Pamcor also claims that the waste is not hazardous for any other reason.

Based upon the Agency's initial review of their petition, Pamcor was granted a temporary exclusion on December 27, 1982. The Agency's basis for granting the exclusion at that time was the low migration potential of the listed constituents. On November 8, 1984, the Hazardous and Solid Waste Amendments were enacted. In part, these Amendments require the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) In anticipation of these changes, and as a result of these new requirements, the Agency requested additional information from Pamcor. This information was submitted on July 5, 1985 and January 31, 1986. The Agency, therefore, has re-evaluated Pamcor's petition to: (1) Determine whether the petition should be granted based on the toxicants and factors for which it was originally listed; and (2) evaluate the waste for factors (other than those for which the waste was listed) to determine whether the waste is non-hazardous. Today's notice is the result of the Agency's re-evaluation of this petition.

Pamcor has submitted a detailed description of their manufacturing and wastewater treatment processes (including schematic diagrams); total constituent analyses and EP toxicity test results for cadmium, chromium, and nickel; results from analyses for total, free, leachable and reactive cyanide; total constituents analyses and EP toxicity test results for arsenic, barium, lead, mercury, selenium, and silver; reactivity test data for sulfide; test results for ignitability and corrosivity; and total oil and grease analyses on representative waste samples. Pamcor further provided a list of raw materials used in the manufacturing process. The Agency requested much of this information to determine whether hazardous constituents, other than those for which the waste was listed, are present in the sludge at levels of regulatory concern.

The manufacturing process includes cleaning, rinsing, etching and plating of roll strip connectors. The strips are then converted to small parts to manufacture the final product. The wastewater treatment system includes sodium hydroxide precipitation, gravity settling, and drum containerization.

Pamcor submitted data from fifteen composite samples collected over a period of four and one-half years from the waste stored in drums. Each drum sampled was divided into 4 segments of equal depth and samples were collected from each level. The four samples, representing the 4 levels in the drum were then composited into one sample for analysis. This procedure was followed for each drum sampled. Pamcor claims that these samples are representative and that there is no other process, operation, or feed material that would generate a waste which is not covered by these samples.

The total constituent and leachate analyses of the samples for the listed constituents revaled the maximum concentrations reported in Table 1.

TABLE 1.—MAXIMUM CONCENTRATIONS

Constituents	Total constituent analyses mg/kg (dry weight)	EP leachate analyses mg/l
Cd	3.5	0.081
Cr	520	1.6
Ni	300	.35
CN	30	.4

The total constituent and leachate analyses of the sludge samples for non-listed EP toxic metals revealed the maximum concentrations reported in Table 2.

Values for Substances in Workroom Air, Third Edition, 1971, Cincinnati, Ohio.

[8] The current exclusion applies only to the processes covered by the original demonstrations. A facility may file a new petition if it alters its process. Should such a change occur the facility must treat its waste as hazardous, however, until a new exclusion is granted.

TABLE 2.—MAXIMUM CONCENTRATIONS

Constituents	Total constituent analyses mg/kg (dry weight)	EP leachate analyses mg/l
As	26	0.4
Ba	83	.248
Hg	0.5	.018
Se	5	.020
Ag	1.5	.012
Pb		

The maximum total oil and grease content reported was 0.480 percent. Pamcor also submitted a list of raw materials used. Pamcor claims to generate less than 1 ton of waste per year.

B. Agency Analysis and Action

Pamcor C has demonstrated that its treatment system produces a non-hazardous sludge. The Agency believes that the samples collected were nonbiased and adequately represent any variations that may occur in the waste petitioned for exclusion. Since Pamcor does not operate as a job shop, variations in the sludge composition (due to raw material input) should not occur. The samples collected represented waste generated at different times over a four and one-half-year period. The Agency is satisfied that all plating operations conducted at Pamcor were represented by this sampling period.

The Agency has evaluated the mobility of the listed constituents from Pamcor's waste using the vertical and horizontal spread (VHS) model. [9] The VHS model generated compliance point values using the 0.688 tons per year generation rate and the maximum reported extract levels as input parameters. These compliance point concentrations are shown in Table 3.

TABLE 3.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS/SETTLED SLUDGE

Constituents	Compliance point concentration (mg/l)	Regulatory standards (mg/l)
Cd	0.002	0.01
Cr	.049	.05
Ni	.010	.35
CN	.012	.20

The sludge exhibited cadmium and chromium levels (at the compliance point) at or below the National Interim Primary Drinking Water Standards; cyanide levels below the U.S. Public Health Services suggested drinking water standard; [10] and nickel levels below the Agency's Interim Health Advisory. [11] The total cyanide levels in the waste are also believed to be sufficiently low to preclude the generation of concentrations in air that exceed the air threshold limit set by the American Conference of Governmental Hygienists. [12] These constituents are therefore, not of regulatory concern.

The Agency also concluded, through the use of the VHS model, that no other EP toxic metals are present in the sludge at levels of regulatory concern (*i.e.*, none are above any regulatory standard at the compliance point in the VHS model). The compliance point values generated from these extract levels are displayed in Table 4.

TABLE 4.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATION/SETTLED SLUDGE

Constituents	Compliance point concentrations (mg/l)	Regulatory stantards (mg/l)
As	0.025	0.05
Ba	.007	1.0
Pb	.007	.05
Hg	.0005	.002
Si	.0004	.01
Ag	.0003	.05

The Agency also reviewed Pamcor's material safety data sheets for each component of the raw materials list. The Agency has concluded from this review that no other Appendix VIII hazardous constituents, other than those tested for, are present or are expected to be formed in the waste.

The Agency believes that the treatment process used by Pamcor generates a non-hazardous waste. The Agency, therefore, proposes to grant an exclusion to Pamcor's facility located in Las Piedras, Puerto Rico for its treated drummed sludge, as described in its petition. (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment processes). [13] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.)

III. William L. Bonnell Company

A. Petition for Exclusion

The William L. Bonnell Company (Bonnell), a subsidiary of Ethyl Corporation, located in Carthage, Tennessee, has petitioned the Agency to exclude their wastewater treatment sludge. The facility manufactures aluminum extrusions of various forms, sizes, and finishes for end uses primarily in the building materials trade. The sludge presently is listed as EPA Hazardous Waste No. F019—Wastewater treatment sludges from the chemical conversion coating of aluminum. [14] The listed constituents of concern for this waste are hexavalent chromium and cyanide (complexed). Bonnell has petitioned to exclude its wastewater treatment sludge because it does not meet the criteria for which the waste originally was listed.

Based upon the Agency's review of their petition, Bonnell was granted a temporary exclusion on March 18, 1981 (see 46 FR 17199). The basis for granting the exclusion (at that time) was negligible concentrations of cyanide, and the low migration potential of chromium in the waste. Since the time, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Amendments require the Agency to consider factors (including additional toxicants) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from Bonnell. As a result, the Agency has re-evaluated Bonnell's petition to: (1) determine whether the temporary exclusion should be made final based on the original listing criteria; and (2) determine if the waste is non-hazardous with respect to factors and toxicants other than the original listing criteria. Today's notice presents the results of the Agency's re-evaluation of Bonnell's petition.

In support of their petition, Bonnell has submitted a detailed description of its manufacturing and treatment processes, including schematic diagrams; [15] total constituent analyses and EP toxicity test results of the sludge for total chromium; and analytical results for total cyanide. Bonnell also submitted total constituent analyses and

[9] See footnote 4.

[10] See footnote 5.

[11] See footnote 6. levels in the waste are

[12] See footnote 7.

[13] See Footnote 8.

[14] Bonnell petitioned the Agency to exclude its wastewater treatment sludge and sludge contained in its on-site surface impoundments. This proposed exclusion applies only to the wastewater treatment sludges currently generated at the facility, and not to sludges in the on-site surface impoundment.

[15] Bonnell has claimed their raw materials list and process description as confidential business information (CBI). This information is not available for public inspection.

EP toxicity test results for arsenic, barium, cadmium, lead, mercury, selenium, silver, and nickel; results for total sulfide analyses; and results for total oil and grease analyses on representative waste samples. Bonnell further submitted a list of raw materials used in the manufacturing process. As noted above, the Agency requested this information to determine whether toxicants, other than the original listing criteria, are present in the waste at levels of regulatory concern.

Bonnell uses a manufacturing process that involves the cleaning and conversion coating of aluminum extrusions to prepare the surfaces for finishing and painting. The pre-paint treatment process uses a five-stage series of cleaning and rinsing tanks. Bonnell claims that cyanide is not used in their process. The waste treatment process includes pH adjustment, chromium reduction with sulfur dioxide, lime precipitation, and vacuum filtration. Bonnell claims that its wastewater treatment sludge is non-hazardous due to the immobile nature of chromium and negligible levels of cyanide in the sludge. In addition, Bonnell claims that paints and solvents used at the facility cannot contact the chromium-bearing wastewater stream. Bonnell, therefore, also believes that the dewatered sludge is non-hazardous for any other reason.

For the purpose of providing supporting analytical data, Bonnell collected grab samples from the vacuum filter while it was operating. Bonnell's initial petition was based upon one sample collected in August of 1980. Following the Agency's request for additional data, four composite samples were collected in March of 1985 over a two week period and four samples were collected in May of 1986 over a one week period. Each composite sample was composed of a series of grab samples collected during a normal 8-hour operating shift. Overall, a total of nine samples were collected and analyzed for various parameters. Bonnell claims that all of the samples collected are representative of any variation of the listed and non-listed constituent concentrations in the waste because the manufacturing processes used at the facility are uniform and the use of raw materials does not vary significantly over time. Bonnell also claims that there is no significant seasonal variation in the amount of waste generated.

Total constituent and EP toxicity analyses of the dewatered sludge for the listed constituents revealed the maximum concentrations reported in Table 1.

TABLE 1.—MAXIMUM CONCENTRATIONS (PPM)

Listed constituents	Total constituent analyses	EP leachate analyses
Chromium (total)	9,900	[1] 0.7
Cyanide	<0.25	<[2] 0.012

<: Denotes concentrations below the detection limit.
[1] Hexavalent chromium is listed as the constituent of concern for this waste; however, the concentration of total chromium is low enough to make a determination of hexavalent chromium unnecessary.
[2] Free and leachable cyanide tests were not required, since cyanide is not used in the process and the total content was low. Leachable cyanide was determined by assuming a theoretical leaching of 100 percent and a twenty-fold dilution (100 grams of solids diluted with 2.0 liters of water) of the maximum total constituent concentration of cyanide.

Total constituent and EP toxicity analyses of the dewatered sludge for the non-listed EP toxic metals revealed the maximum concentrations reported in Table 2.

TABLE 2.—MAXIMUM CONCENTRATIONS (PPM)

Non-listed constituents	Total constituent analyses	EP leachate analyses
Arsenic	<60	<0.1
Barium	4	<0.01
Cadmium	<2	<0.05
Lead	<60	<0.1
Mercury	<0.2	<0.02
Nickel	5	<0.1
Selenium	<20	0.11
Silver	<1	<0.05

<: Denotes concentrations below the detection limit.

The maximum total oil and grease value reported by Bonnell was 0.06 percent. Bonnell also analyzed their dewatered sludge for total sulfides; the maximum concentration reported was <0.05 ppm. Bonnell also submitted a list of all raw materials used in its manufacturing and chromium-bearing wastewater treatment processes. This list indicated that no Appendix VIII hazardous constituents, other than those tested for, are used in the process and that formation of any of these constituents is highly unlikely. Bonnell also provided test data indicating that the sludge is not ignitable, corrosive, or reactive. Bonnell claims to generate approximately 220 cubic yards of sludge per year.

B. Agency Analysis and Action

Bonnell has demonstrated that its waste treatment system produces a non-hazardous sludge. The Agency believes that the nine samples collected by Bonnell from the vacuum filter in 1980, 1985, and 1986 were non-biased and adequately represent any variations that may occur in the waste stream petitioned for exclusion. The key factor that could vary toxicant concentrations in the waste would be the use of different raw materials due to changes in the product line being manufactured. Variation in raw materials can be expected either when the facility performs as a job shop or when the product line changes seasonably. The Agency believes that the sampling period used by Bonnell was long enough to cover any scheduled changes in the product line, since the petitioner has verified that there is no significant seasonal variation in the process and the chemicals used do not vary. Accordingly, the samples are believed to be representative of the waste generated by Bonnell at its Carthage, Tennessee facility.

The Agency has evaluated the mobility of the listed constituents from Bonnell's waste using the vertical and horizontal spread (VHS) model.[16] The VHS model generated compliance point values using the estimated annual waste generation volume (220 cubic yards) and the maximum reported by Bonnell extract levels as input parameters. The predicted compliance point concentrations for the listed constituents are reported in Table 3. (When leachate concentrations were below the detection limits, the value of the detection limit was used.)

TABLE 3.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS/(PPM) DEWATERED SLUDGE

Listed constituents	Compliance point concentrations	Regulatory standards
Chromium (total)	0.02	0.05
Cyanide	<0.0004	0.2

The dewatered sludge exhibited chromium levels (at the compliance point) below the National Interim Primary Drinking Water Standard and cyanide levels below the U.S. Public Health Service's suggested drinking water standard.[17] The waste's maximum sulfide and cyanide contents (<0.05 and <0.25 ppm, respectively) also are low enough not to be of regulatory concern from an air contamination route. That is, the Agency believes these levels to be sufficiently low so as to preclude the generation of hazardous levels of toxic gases. (The capability of a sulfide- or cyanide-bearing waste to generate hazardous levels of toxic gases, vapors, or fumes is a property of the reactivity characteristic.) These constituents, therefore, are not of regulatory concern.

The Agency also concluded, through using the VHS model, that the other EP toxic metals and nickel are not present

[16] See footnote 4.
[17] See footnote 5.

in the dewatered sludge at levels of regulatory concern (*i.e.*, none are above any regulatory standard at the compliance point in the VHS model). The compliance point values generated from these extract levels are displayed in Table 4.

TABLE 4.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATION/(PPM) DEWATERED SLUDGE

Non-listed constituents	Compliance point concentrations	Regulatory standards
Arsenic	<0.003	0.5
Barium	<0.0003	1.0
Cadmium	<0.0015	0.01
Lead	<0.003	0.05
Mercury	<0.0006	0.002
Nickel	<0.003	0.35
Selenium	<0.003	0.01
Silver	<0.0015	0.05

Bonnell also has demonstrated that the sludge does not demonstrate the characteristics of ignitability and corrosivity. The Agency also reviewed Bonnell's raw materials list and material safety data sheets for each component in the raw materials list. The Agency has concluded from this review that no other Appendix VIII hazardous constitutents, other than those tested for, are present in the waste.

The Agency believes that Bonnell's treatment process for chromium-bearing wastewater generates a non-hazardous waste that should be excluded from hazardous waste control. The Agency, therefore, proposes to grant an exclusion to Ethyl Corporation's subsidiary, William L. Bonnell Company, located in Carthage, Tennessee, for its dewatered sludge, as described in the petition. (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment processes).[18] In addition, generators still are obligated to determine whether the wastes exhibit any of the characteristics of a hazardous waste.)

IV. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case for the three petitioners being granted exclusions since this rule reduces rather than increases the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioners by an effective date six months after promulgation and the fact that such a deadline is not necessary to achieve the purpose of section 3010, we believe that this rule should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. The granting of the three exclusions is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at specific facilities from EPA's lists of hazardous wastes, thereby enabling these facilities to treat their wastes as non-hazardous.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will have no effect on increasing overall waste disposal costs. For the three facilities that may be excluded, this amendment will reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

(Sec. 3001 RCRA, 42 U.S.C. 6921)

Dated: September 10, 1986.

Marcia Williams,

Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Appendix IX, add the following wastestreams to Table 1 in alphabetical order:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NONSPECIFIC SOURCES

Facility	Address	Waste Description
BBC Brown Boveri, Inc.	Sanford, FL	Wastewater treatment sludges (EPA Hazardous Waste No. F006) generated from electroplating operations after [insert date of final rule's publication.]
Pamcor C, Inc	Las Piedras, PR.	Do.
William L. Bonnell Co.	Carthage, TN	Wastewater treatment sludges (EPA Hazardous Waste No. F019) Generated from the chemical Conversion coating of aluminum after [insert date of final rule's publication].

[FR Doc. 86-21132 Filed 9-17-86; 8:45 am]

BILLING CODE 6560-50-M

[18] See footnote 8.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BERC-270-P]

Medicare Program; Changes to the Lesser of Costs or Charges Provisions

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: To implement certain provisions of the Deficit Reduction Act of 1984 and to eliminate unnecessary reimbursement provisions, we are proposing that the following lesser of costs or charges provisions of the regulations (used for computing Medicare reimbursement to certain providers of covered health care services) would no longer apply:

- Effective with cost reporting periods beginning on or after October 1, 1984, the aggregation method, which

requires that the reasonable cost of services, and the customary charges for the same services, be totalled (and compared) without regard to whether the services were furnished under Part A or Part B of Medicare.

- Effective with cost reporting periods beginning on or after the effective date of the final rule, the carryover provisions, which permit a provider to accumulate and carry forward (to subsequent cost reporting periods) costs that previously went unreimbursed because the provider's charges were lower than its costs.

We would also provide that, effective with services furnished to Medicare beneficiaries on or after July 18, 1984, home health agencies be paid the lesser of the reasonable cost of durable medical equipment or the customary charges (less a 20 percent coinsurance), but not to exceed 80 percent of the reasonable cost of the equipment furnished as a home health benefit.

In addition, also effective with cost reporting periods beginning on or after October 1, 1984, we would revise the regulations that govern reimbursement for providers that furnish services either free of charge or at a nominal charge.

DATES: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. November 17, 1986.

ADDRESS: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, ATTENTION: BERC-270-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC;

or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to BERC-270-P.

Comments will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m., phone (202) 245-7890.

FOR FURTHER INFORMATION CONTACT: Paul Trimble, (301) 594-8640.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, inpatient services furnished by providers (such as hospitals or skilled nursing facilities (SNFs)) are covered and paid for under Part A (Hospital Insurance) of the program. Outpatient services furnished by providers (such as hospitals or outpatient physical therapy and speech pathology services (OPT) providers) are covered and reimbursed under Part B (Supplementary Medical Insurance) of Medicare.

Effective with cost reporting periods beginning on or after January 1, 1974, payment for both Part A and Part B services furnished by most providers was based (under sections 1814(b) and 1833(a)(2) of the Social Security Act (the Act), as amended by section 233 of the Social Security Amendments of 1972, Pub. L. 92-603 (the 1972 Amendments)) on the lesser of the reasonable cost of the services, as determined under section 1861(v) of the Act, or the provider's customary charges for the services. This reimbursement method is generally known as the "lesser of costs or charges (LCC) principle", and is set forth fully in regulations at 42 CFR 405.455. The LCC principle was established to reduce Medicare costs by ensuring that the program would not pay more for services than the provider charges to the general public (S. Rep. No. 92-1230, 92nd Cong., 2nd Sess. (1972), at p. 202). This principle was applied to all covered services of the following providers—

- Hospitals;
- SNFs;
- Home health agencies (HHAs); and
- OPTs.

As a result of the recently enacted rate of increase controls (section 1886(b) of the Act) and the prospective payment system (section 1886(d) of the Act), most hospital services are no longer subject to the LCC principle. Specifically, the LCC provisons are not applicable to Part A inpatient hospital services that are subject to either the ceiling on the rate of hospital cost increases (see § 405.463) or specific amounts for each discharge under the prospective payment system (see 42 CFR Part 412). Consequently, effective with cost reporting periods beginning on or after October 1, 1982, the LCC principle applies only to covered services furnished by SNFs, HHAs and OPTs, and to all covered—

- Hospital outpatient services and certain inpatient ancillary services reimbursable under Part B only.
- Inpatient and outpatient services furnished by hospitals (or parts of hospitals) that are new hospitals during the period in which they are temporarily exempt from the rate of increase ceiling under § 405.463(f)(1). Additionally, effective with cost reporting periods beginning on or after October 1, 1983, the LCC principle applies to covered inpatient and outpatient services furnished by new hospitals that are temporarily exempt from the rate of increase ceiling and that are excluded from the prospective payment system.

A. Application of the Aggregation Method in Calculating the LCC

The method for calculating the LCC amounts is based on an aggregation of the cost and charges for services covered under Part A and Part B. The current § 405.455(c) provides that total costs and charges are compared *without regard* to whether the services were furnished under Part A or Part B of Medicare. After comparing the reasonable costs to the customary charges, the provider is reimbursed based on the lesser of the two amounts.

On July 18, 1984, the President signed into law the Deficit Reduction Act of 1984 (Pub. L. 98-369). Title III of Division B of Pub. L. 98-369, the Medicare and Medicaid Budget Reconciliation Amendments of 1984, contains serveral changes relating to the LCC provisions.

Section 2308(a) of Pub. L. 98-369 directs the Secretary to issue regulations, applicable to cost reporting periods beginning on or after October 1, 1984, eliminating the aggregation method of calculating LCC and requiring that the LCC be calculated and reported separately for services furnished under Part A or Part B, with the exception of clinical diagnostic laboratory tests paid under section 1833(h) of the Act. Also, the regulations must provide for payment on the basis of separate determinations of LCC for services furnished under Part A or Part B.

B. The Carryover Provisions

Under the current regulations (§ 405.455(d)), of application of the aggregation method of computing LCC described above results in a provider's customary charges for covered services being lower than the reasonable cost of the services in a cost reporting period, the provider may carry forward the unreimbursed costs for the two succeeding cost reporting periods. Alternatively, if the two succeeding cost reporting periods combined are less than 24 full calendar months, the unreimbursed costs may be carried forward for three succeeding cost reporting periods. The Provider may add its unreimbursed costs (identified as Part A costs or Part B costs, and limited

to the excess of charges over costs for the respective parts, in order to maintain the integrity of the trust funds) from the previous cost reporting period to the allowable program reimbursement for the current cost reporting period. The total allowable program reimbursement in any cost reporting period cannot exceed the customary charges for that period.

There are two exceptions to this accounting procedure. First, new providers of services (see § 405.455(d)(2)) are permitted to carry forward the unreimbursed costs for five succeeding cost reporting periods or, if the five succeeding cost reporting periods combined are less than 60 full calendar months, for six cost reporting periods. Second, any recovery of unreimbursed Part A costs (or costs of Part B services furnished by HHAs) is prohibited in any cost reporting period if the costs were not reimbursed because the provider exceeded the cost limitations as specified in § 405.460 or § 405.463.

C. Durable Medical Equipment Furnished by HHAs

Under § 405.455(a), payments to HHAs for durable medical equipment (DME) furnished to Medicare beneficiaries are subject to the LCC principle. Prior to enactment of section 2321 of Pub. L. 98–369, if a beneficiary was under a home health plan of treatment, the use of medical appliances furnished by an HHA was a covered home health service under either Part A or Part B (with no deductible or coinsurance charge). In addition, an HHA could furnish DME under Part B as a "medical and other health service" (subject to the Part B annual deductible and 20 percent coinsurance). Section 2321 of Pub. L. 98–369 amended the definitionof covered "home health services" in section 1861(m)(5) of the Act to delete the reference to "medical applicances" and to refer specifically to the furnishing of DME to a beneficiary while under a home health plan. First, HHAs are to be reimbursed the lesser of the reasonable cost of this equipment or the customary charges (less 20 percent of the reasonable charges as provided in section 1866(a)(2)(A)(ii) of the Act). Second, the payment may not exceed 80 percent of the reasonable cost for the equipment regardless of whether the item is furnished under Part A or Part B. This determiniation for DME furnished in an HHA would be computed separately from all other services furnished in an HHA. Section 2321(g) of Pub. L. 98–369 makes these provisions applicable to DME furnished on or after July 18, 1984.

Section 3(b)(1) of Pub. L. 98–617 (November 8, 1984) amended section 1814(k) of the Act to provide that, effective July 18, 1984, payment to HHAs with respect to DME, is to be 80 percent of fair compensation as determined by the Secretary, if the DME is furnished by a public HHA or an HHA with a significant portion of its clientele who are low-income patients.

D. Nominal Charges

As an exception to the LCC principle, § 405.455(a) provides that public providers furnishing services either free of charge or at a nominal charge are to be reimbursed fair compensation for those services. Under § 405.455(b)(4) a public provider's charges are considered nominal if the aggregate charges are less than one-half of the reasonable cost of services or items represented by these charges. According to § 405.455(e), fair compensation for these services is defined as the full reasonable cost of the services.

Section 2308(b)(1) of Pub. L. 98–369 directs the Secretary to make several changes, effective with cost reporting periods beginning on or after October 1, 1984, to the nominal charges provisions:

- Section 2308(b)(1) of Pub. L. 98–369 requires the Secretary to revise the definition of nominal charges and provide that charges would be considered nominal if they are 60 percent (rather than less than 50 percent as previously provided) or less of the reasonable cost of services or items represented by the charges. Section 2308(b)(1) also requires that the determination of nominal charges is to be made separately with respect to Part A and Part B services (other than clinical diagnostic laboratory tests paid under section 1833(h) of the Act) or with respect to inpatient and outpatient services. Section 2308(b)(1) further provides that, for services furnished by HHAs, the Secretary may allowed the determination of nominal charges to be made on an aggregate basis for Part A and Part B services if the Secretary finds that a separate determination is not appropriate.
- Section 2308(b)(2) of Pub. L. 98–369 provides that the nominal charge provisions, which currently apply to public providers only, are applicable to other providers that demonstrate to the Secretary's satisfaction that they furnish services to a significant portion of low-income patients. The providers would have to request that Medicare reimbursement be subject to the nominal charge provisions.

In the conference report accompanying Pub. L. 98–369, Congress expressed the intent that providers that use a sliding scale or discounted schedule of charges that differentiates among patients on the basis of their ability to pay be allowed to use a sliding scale of charges (that is, charges less than the provider's established charges) or a discounted schedule of charges rather than to deem the charges to be full customary charges as actually billed for all patients (H.R. Conference Rep. No. 98–861, 98th Cong., 2nd Sess. (1984), at p. 1344). For this purpose, the Secretary is instructed to aggregate charge data for all Medicare and non-Medicare patients who are liable for payment on a charge basis. For example, if a provider appropriately applies a sliding scale of charges based on patients' ability to pay, we would determine the ratio of sliding scale charges to the provider's customary schedule of full charges. This ratio would then be applied to the Medicare charges in order to equate the Medicare charges to the customary charges for purposes of the nominality test.

II. Proposed Regulations

We are proposing to reorganize the entirety of § 405.455 to incorporate the necessary changes discussed above and to update the regulatory language.

A. Elimination of the Aggregation Method

Pursuant to section 2308(a) of Pub. L. 98–369, we are proposing to revise § 405.455 by prohibiting, effective with cost reporting periods beginning on or after October 1, 1984, the use of the aggregation method for computing LCC. Total customary charges would be compared, separately for Part A and for Part B, with total reasonable costs for covered items and services.

Elimination of the aggregation method would primarily affect hospital cost reimbursement. Although hospital inpatient services are generally not subject to the LCC principle, hospitals are required to aggregate Part A and Part B costs and charges for purposes of determining LCC for Part B. For example, under the regulations, prior to enactment of Pub. L. 98–369, Hospital A submitted the following billing for services provided:

	Part A	Part B	Total
Customary charges	$1,000	$300	$1,300
Reasonable costs	800	600	1,400

Under the aggregation method all customary charges ($1,300) and all

reasonable costs ($1,400) are separately totalled and compared. In this example, we would have paid in effect the reasonable costs ($1,400) less the "LCC disallowance" of $100 (that is, the excess of the aggregate reasonable costs over the aggregate customary charges) for a total of $1,300. (We would then have identified the disallowed costs of $100 of Part A or Part B for purposes of the carryover provisions discussed below.) Hence, in this example, the aggregation method would have allowed the provider to subsidize Part B with $200 ($1,000 minus $800) of Part A charges, and the provider's total payment of $1,300 would have included $800 under Part A and $500 under Part B.

Therefore, the aggregation method would have allowed the provider to subsidize Part B with $200 of Part A charges. Under the proposed elimination of the aggregation method, however, we would pay $800 for the Part A services and $300 for the Part B services, for a total of $1,100 (rather than the $1,300 shown in the example).

B. Elimination of the Carryover Provisions

We are proposing to revise § 405.455 to prohibit providers from carrying forward to succeeding cost reporting periods any reasonable costs that were not reimbursed because they exceeded the provider's customary charges. Unlike the other proposals, this change would apply to cost reporting periods beginning on or after the effective date of the final rule.

The carryover provisions resulted from the exercise of administrative discretion in response to congressional committee reports accompanying Pub. L. 92–603. These reports indicated the intent of Congress at that time that providers not be penalized for discrepancies between costs and charges arising from miscalculation of anticipated costs and charges.

In the decade subsequent to the enactment of Pub. L. 92–603, it has been our experience that providers have had sufficient experience and adequate time to make necessary adjustments and to establish a proper relationship between their costs and charges.

We expect that the proposed changes in the carryover provisions would affect only a minority of providers for the following reasons:

- Providers that continually incur unremibursed costs from year to year do not have the opportunity to recover the disallowed costs with or without these changes because, in order to recover unreimbursed costs, charges must exceed costs in subsequent years.
- Providers that incur unreimbursed costs on a non-recurrent basis may be able to reduce or eliminate these costs through sound financial practices such as—

—Anticipating capital expenditures and building them into their charge structure; or

—Creating allowances within their charge structure for unanticipated expenditures.

Furthermore, providers may be exempt from the LCC principle if they meet the nominal charge provisions, as described in this proposed rule, through furnishing services to a significant portion of low-income patients. As indicated in the impact analysis below, we believe that the carryover provisions are no longer necessary, and that most providers would not be affected by this change.

C. Durable Medical Equipment Furnished by HHAs

Pursuant to sections 2321 (a) and (b) of Pub. L. 98–369, we are proposing to reimburse HHAs that furnish DME as a home health service the lesser of the reasonable cost of the equipment or the customary charges (subject to the 20 percent coinsurance imposed by section 1866(a)(2)(A)(ii) of the Act), not to exceed 80 percent of the reasonable cost for the equipment (see proposed § 405.455(c)(2)(ii)). Payment is 80 percent of fair compensation for HHAs meeting the nominality test. Other conforming regulatory changes (that is, in §§ 405.240, 409.61, and 489.30) to implement section 2321 of Pub. L. 98–369 will be published in another **Federal Register** document.

D. Nominal Charges

Pursuant to section 2308(b) of Pub. L. 98–369, we are proposing to revise § 405.455 in the following manner:

- We would change the definition of nominal charges from charges that are less than 50 percent of reasonable costs to charges that are 60 percent or less of the reasonable cost of the services or items represented by the charges. Section 2308(b)(1) of Pub. L. 98–369 also directs that the charges used in making nominality determinations be the charges actually billed to charge-paying patients who are not entitled to Medicare benefits. We have added this provision to the proposed § 405.455(f)(2)(ii).
- The determination of nominal charges would be made separately with respect to Part A and Part B services (other than clinical diagnostic laboratory tests that are paid under section 1833(h) of the Act) unless the intermediary decides that the determination is to be made separately with respect to inpatient and outpatient services. The intermediary would make this decision on an individual provider basis.
- For providers that use a sliding scale or discounted charges based on their patients' ability to pay, nominal charges would be determined by using a sliding scale or discounted schedule of charges, and on the basis of charges billed to non-Medicare charge-paying patients. The intermediary would make this determination in the same manner as described above, that is, separately with respect to Part A and Part B services or with inpatient and outpatient services.
- For HHAs, the determination of nominal charges would be computed on an aggregate basis; that is, Part A and Part B charges would be totalled and compared with reasonable costs of the items and services without regard to whether the items or services are reimbursed under Part A or Part B of Medicare. We believe that these services should be considered on an aggregate basis because HHA items and services typically are not distinguished as solely Part A or solely Part B items and services; that is, a given item may be provided under Part A or Part B. Therefore, the costs associated with HHA items and services are unlike the costs associated with most other provider services that are distinguished as Part A or Part B. Rather, because the same pattern of costs arises under Part A as for Part B, the determination of nominal charges should be computed on an aggregate basis. The determination of nominal charges for DME furnished by HHAs would be made separately from the determination of nominal charges with respect to other HHA services, as authorized under section 2308(b)(1) of Pub. L. 98–369.

Section 2308(b) of Pub. L. 98–369 also provides that the nominal charge provisions be extended to non-public providers that furnish services to a significant portion of low-income patients. Therefore, we are proposing to revise § 405.455 to allow providers with a significant portion of low-income patients to apply the nominal charges provisions. If a non-public provider's customary charges are 60 percent or less of the reasonable cost represented by

the charges, and the provider can demonstrate that its charges are low because its customary practice is to charge patients based on their ability to pay, we would deem the provider to be furnishing services to a significant portion of low-income patients. The charges would be accounted for on a separate basis for inpatient and outpatient services in determining whether the nominality provisions are met. We believe these provisions, as proposed in §§ 405.455 (a) and (f), would clearly indicate that a provider is furnishing services to a significant portion of low-income patients because it is not imposing its full charges nor recouping full costs.

For providers that meet the nominal charge provisions, we would also revise § 405.455 to provide that payment for DME, furnished by public HHAs or HHAs furnishing services to a significant portion of low-income patients, is 80 percent of fair compensation for that equipment. All items and services (other than DME) furnished by providers that meet the nominal charge provisions are reimbursed reasonable cost (fair compensation), rather than the lesser of reasonable cost or customary charges.

III. Regulatory Impact Statement and Flexibility Analysis

A. Executive Order 12291 and the Regulatory Flexibility Act

Executive Order 12291 (E.O. 12291) requires that a regulatory impact analysis be performed and made available on any major rule. A "major rule" is defined as one that would result in an annual effect on the national economy of $100 million or more; cause a major increase in costs or prices for consumers, any industries, any government agencies, or any geographic regions; or have significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or import markets.

The Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA) requires that a regulatory flexibility analysis be performed and made available for each proposed rule unless the Secretary certifies that the rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all Medicare providers of health care services as small entities. Under the RFA, small entities include small businesses, nonprofit organizations that are not dominant in their field, and governmental jurisdictions of less than 50,000 population. Since nearly all health care providers participating in Medicare fall into one of these categories, a regulatory flexibility analysis would be required if a substantial number of providers would be significantly affected by the proposed rule.

The issuance of regulations eliminating the aggregation method and expanding the applicability of the nominal charges provision is required by section 2308 of Pub. L. 98–369. Since the elimination of the aggregation method would result in the greatest impact of all the provisions of these proposed rules, the primary impact of these proposals would result from the statute, not from these regulations, and therefore that portion of these regulations would not be subject to the criteria for identifying major rules. However, the elimination of the carryover provisions and the criteria for identifying nonpublic providers eligible for exclusions from the LCC principle under the nominal charges provision are not prescribed by statute. These proposals could have a significant economic impact on a substantial number of small entities and, therefore, an initial regulatory flexibility analysis is required.

Since the requirements of both types of analyses are similar, we have decided to perform a voluntary regulatory impact analysis along with the required regulatory flexibility analysis. Therefore, this section, along with the other portions of the preamble to this proposed rule, constitutes a voluntary regulatory impact analysis and an initial regulatory flexibility analysis. We will consider and respond in the final rule to the comments and data submitted on this analysis and the impacts of these proposals.

B. Impact of Elimination of the Aggregation Method

1. Providers Affected

The elimination of the aggregation method for computing LCC would substantially affect only certain hospitals that experience disallowances under the LCC principle, as discussed below. It would not affect hospitals that are excepted from the LCC principle under the nominal charge provision.

The aggregation method does not have a significant effect on the computation of LCC for SNFs or HHAs because they report primarily Part A costs. Also, OPTs are not affected by the aggregation method because all the services they furnish are paid for only under Part B. Further, the proposal would have no effect on CORFs or hospices since they are not subject to the LCC principle, as currently provided under § 405.455(a).

By eliminating the aggregation method, we would greatly increase the potential amount of LCC disallowances related to hospitals' Medicare Part B services. (An LCC disallowance is the excess of aggregate costs over aggregate charges, as determined by LCC computation, that is not allowed as a reimbursable cost during the cost reporting period in which costs excess charges.) We project that nearly 18 percent of short-term general hospitals, that is, slightly more than 1000 hospitals, would be affected by these proposed rules in that they would either have to modify their ratio of costs to charges or experience increased LCC disallowances. The resulting estimated savings are shown in the table in section F. of this analysis.

2. Potential Changes in Hospital Behavior

We do not believe that elimination of the aggregation method would result in the disallowance of the full amount by which Part A charges have subsidized Part B costs. Rather, we expect that a number of affected hospitals would be able to reduce or avoid LCC disallowances by various means. We expect that many hospitals began to take action to avoid increased LCC disallowances soon after section 2308 of Pub. L. 98–369 was enacted.

A hospital has several strategies available to it for changing the relationship of its costs for certain services to its charges for those services. First, a hospital may simply raise its charges. Second, the hospital may reduce its costs. Third, if its marginal costs for furnishing a greater volume of services are significantly less than the revenue expected from those services, the hospital may try to increase utilization. Further, these strategies are not mutually exclusive, and may be pursued in combination. Many hospitals that would initially appear to be likely to experience significant disallowances could avoid them entirely. In addition, to the extent that they achieve reductions or avoidance of disallowances by reducing costs, Medicare savings could also be realized.

3. Impact on Beneficiaries and Other Patients

If hospitals choose to increase their charges for Part B services, beneficiaries would be liable for increased coinsurance amounts. This would have two major effects. First, to the extent that a beneficiary or other patient could

incur lesser financial obligations by seeking services elsewhere, patients could choose to receive services from other facilities. Second, increased coinsurance amounts may be paid by Medicaid, by another insurer, or by the individual patient. To the extent those amounts are unpaid, increased charges could also result in an increase of bad debts for the hospital. However, an increase of bad debts would not necessarily mean a hospital would be worse off in view of the relationship of its actual revenues to its costs. Further, the Medicare bad debts resulting from beneficiaries' unmet deductible and coinsurance obligations are reimbursed to providers in accordance wtih § 405.420.

4. Paperwork Burden

Since cost and charge data are already identified separately for Part A and Part B, this proposal would not have a significant effect on the administrative cost and nature of provider or intermediary operations. It would not increase any paperwork burden. The proposed regulations concerning the elimination of the aggregation method do not include any information collection requirements that must be approved by the Executive Office of Management and Budget (EOMB) in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3511).

C. Impact of Changes to the Nominal Charge Provision

1. Providers Affected

The changes to the existing regulations at § 405.455(b)(4) would affect relatively few hospitals, as discussed below. In our experience, very few SNFs furnish enough services either free of charge or at a nominal charge that they are able to take advantage of these provisions. However, we are aware of a number of publicly-owned HHAs that currently benefit from the nominal charge provision. Further, since the nominal charges provision applicable to HHAs would differ from those applicable to other providers, we discuss the potential impact on HHAs separately, below. Since CORFs are not subject ot the LCC principal, these changes are not applicable to them.

There are three changes to the nominal charge provision that would affect hospitals. First, we would change the definition of nominal charges from less than 50 percent to 60 percent or less of the reasonable cost of services or items represented by the charges. Second, charges and costs would not be aggregated for all services to determine if the charges meet the test of nominality. Third, nonpublic hospitals that serve a significant portion of low-income patients and meet the nominality test could also be excepted from the LCC principle. Each of these changes would tend to increase the number of hospitals excepted from the LCC principle under the nominal charge provision, and those hospitals would then be paid their full reasonable costs for the items or services.

Based on a study of 909 hospitials, which is described in Appendix I to this proposed rule, we estimate that the proposed changes to the nominal charge provision could increase Medicare program expenditures by about $20 million annually. Hospitals in the study were from all States except those holding Medicare waivers that do not employ LCC requirements. However, this estimate does not reflect the proposed requirement that a nonpublic provider show that its customary practice is to charge its patients based on their ability to pay. We believe such practices are a cause of hospitals reporting a low ratio of charges to costs, and that the hospitals in our sample that have such low ratios generally would be able to show that this was their practice. To the extent that potentially affected hospitals could not make such showings, the number of hospitals projected to be excepted from the LCC principle would be reduced.

Of 909 hospitals in the study, only one met the nominal charge test under the current regulations, whereas 18 additional hospitals met the proposed revised test. Of the 19 hospitals in the study that would be excepted from the LCC principle under these proposed regulations:

- Five had fewer than 100 beds; 10 had between 100 and 300 beds. Only four had more than 300 beds, two of which had more than 500 beds.
- Six were public hospitals, 11 were nonprofit nonpublic hospitals, and two were proprietary hospitals.
- Eighteen were nonteaching hospitals. The only teaching hospital was a hospital with more than 500 beds.
- Eight were located in the North Central area of the country, five in the South Central area, four in Atlantic Coastal states, and two in Pacific states. None were located in New England or the Rocky Mountain area.
- The one hospital that met the nominality test under both the existing and the proposed criteria is a small (less than 25 beds) public hospital in Hawaii.

Each of the five public hospitals that would benefit from the revised criteria would, on the average, have had about $300,000 disallowed per year if the criteria were not revised. However, the average figure is misleading because more than $1.2 million of the total $1.5 million potential disallowance for these public hospitals was accounted for by the one teaching hospital with more than 500 beds.

The two proprietry hospitals would have an average of about $175,000 disallowed as a result of elimination of the aggregation method if the nominal charge provision were not changed. The other 11 nonpublic hospitals would have an average of about $195,000 disallowed. The average for all hospitals, including the six public hospitals, would be about $210,000, but this is distorted by the one large teaching hospital, which alone accounted for more than 30 percent of the total disallowance for all 19 hospitals. Disregarding that case, the average disallowance for the other 18 hospitals would be around $150,000.

Two of the benefitted public hospitals met the revised criteria as a result of the proposed disaggregation of Part A and Part B costs and charges. The other three public hospitals met the criteria as a result of the change from the less than 50 percent to the 60 percent or less threshold.

Of the 13 nonpublic hospitals that would benefit from the revised criteria, eight, including both proprietary hospitals, had a Part B ratio of charges to costs of less than 50 percent. Thus, the extension of the threshold from less than 50 percent to 60 percent or less would benefit seven of the 19 sample hospitals.

Based on this study, we expect that at least 55 hospitals nationwide would be excepted from the LCC principle if these proposed changes to the nominal charge provision are implemented. However, as discussed in Appendix I, we were not able to reflect the provisions of the law exactly in analyzing the data available to us on the nominality test. In particular, the data did not allow us to exclude the costs and charges of outpatient diagnostic clinical laboratory tests, and did not reflect the potential use of sliding scales or discounted charges. We expect the latter consideration to result in more hospitals meeting the nominal charge criteria than can be identified through our study methodology. Thus, we believe it is reasonable to expect about 100 hospitals could qualify for an exception from the LCC principle.

2. Projected Effect on HHAs

With one exception, the determination of nominal charges for HHAs would be computed by aggregating Part A and

Part B charges and reasonable costs. Nominal charges would be computed separately only for DME furnished by HHAs. Currently, the charges and reasonable costs related to DME are combined with all the other charges and costs in determining if an HHA meets the nominality test. Since we have not accumulated or analyzed DME and non-DME costs and charges separately before, we are uncertain how many HHAs will experience LCC disallowances or meet the nominality test for non-DME costs. It would seem that HHAs would be more likely to furnish non-DME services free or at nominal charges, with the result that a number of them may meet the nominality test.

Although we do not have sufficient data to estimate their number, we are aware of a number of HHAs that benefit from the nominal charge provision under the existing criteria. We believe the proposed changes could increase this number in three ways. First, increasing the basic threshold from less than 50 percent to 60 percent or less would probably increase the numbers of HHAs able to meet that criterion. Second, it is likely that extending the nominality test to nonpublic HHAs will benefitr some voluntary nonprofit HHAs, and may also benefit some for-profit (proprietary) and private nonprofit agencies. Finally, it seems probable that applying the nominality test separately to DME charges and costs and on an aggregate basis for all other HHA charges and costs would result in a greater number of HHAs being excepted from the LCC principle for the latter costs.

3. Potential Changes in Provider Behavior

We do not expect the expanded nominal charge provisions to result in any general changes in provider behavior. For the most part, common business practices ensure that a provider would try to avoid having charges at 60 percent or less of its costs. Nearly all providers have substantial numbers of non-Medicare patients. A provider that depended on non-Medicare revenue would be at risk of losing money on its non-Medicare patients even if it met the nominal charge test and was excepted from the LCC principle.

There may be instances, of course, of providers that have such a high percentage of Medicare patients that they would be advanataged by setting their charges low enough to meet the nominal charge test. We would expect this to happen only if a potential, and otherwise unavoidable, LCC disallowance would be greater than a provider's anticipated resulting loss of non-Medicare revenue, HHAs would be more likely than other providers to fall into these situations, since HHAs typically have 70 percent or more Medicare patients, and HHAs with 100 percent Medicare patients are known.

We are requiring providers to show that charges below the nominality threshold are related to patients' ability to pay. Therefore, a provider that reduced its charges without regard to patients' ability to pay would not qualify. Thus, we expect any situation of providers reducing charges to qualify would be anamalies. We therefore expect the potential costs resulting from them to be negligible.

4. Impact on Beneficiaries and Other Patients

We expect the nominal charge provisions to have no adverse effects on beneficiaries or other patients. Patients would be affected only by changes in charge schedules prompted by this provisions. The effect of the proposal would be to enable certain providers to avoid LCC disallowances, whereas disallowances ordinarily would give the providers a strong incentive to increase their charges. Therefore, to the extent that the proposal permits some providers to retain relatively low charge schedules, it would benefit patients subject to those charges.

5. Paperwork burden

At the present time, intermediaries must determine the relations of costs and charges in the ICC process, and must determine if public providers meet the nominality test. Changing the threshold test from less than 50 percent to 60 percent or less will not result in any increased burden or administrative costs.

Under the proposed rule, a nonpublic provider that wished to be excepted from the LCC principle because it believed it met the nominal charge provisions would be required to show that its customary practice was to charge its patients based on their ability to pay. Section 405.455(c)(1)(iii) of the proposed rule contains information collection requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980. When approval is obtained, we will publish a notice in the **Federal Register** to that effect.

D. Impact of Elimination of the Carryover Provision

1. Providers Affected

Elimination of the carryover provision would affect providers only to the extent that they lose an opportunity to carry forward unreimbursed costs. Providers that regularly experience costs in excess of charges from year to year have not had the opportunity to recover costs disallowed as a result of the LCC principle, and, therefore, would not be adversely affected by the elimination of the carryover provision. However, a provider that experienced an LCC disallowance as a result of nonrecurring costs (such as the start-up costs of a new provider, capital improvements, or unanticipated expenses) in a single cost reporting period, and that would otherwise expect to have an excess of charges over costs for future periods, could be significantly affected by this change.

Recovery of prior years' carryover amounts is limited to the amount by which the current year's aggregate customary charges exceed the aggregate reasonable costs. The proposed carryover revisions would not affect the normal recovery periods with respect to unreimbursed costs for cost reporting periods beginning prior to the effective date of the final rule.

We expect that elimination of the carryover provision would primarily affect hospitals and HHAs. (See Appendix II for a discussion of the data relevant to these types of providers.) Although SNFs and OPTs would also be affected to the extent that they have LCC disallowances and lose opportuntities to recover them, they would not be significantly affected as a group because SNFs and OPTs have few LCC disallowances.

We expect that, although this change will affect relatively few providers, the impact may be viewed as substantial by those providers that are affected. However, to the extent that providers may be able to avoid or reduce LCC disallowances, their need for recoveries would be obviated. For example, a provider can anticipate capital expenditures and generally can build them into its charge structure. Similarly, a provider could create allowances within its charge structure for unanticipated expenditures.

Although our available data do not permit us to estimate with confidence the numbers of HHAs that would be affected by elimination of the carryover provision, or the magnitude of that impact, we believe, based on our program experience, that a significant percentage of them benefit from later year recoveries, and that all major categories of HHAs (governmental, voluntary nonprofit, proprietary, and private nonprofit) would be affected by

the proposed elimination of the carryover.

Perhaps the greatest potential impact would be on new HHAs. HHAs are generally much smaller than hospitals and other providers, and often do not have as great financial resources in their start-up period. In addition, HHAs have shown significant growth since 1978, increasing from 2500 to over 5000 HHAs participating in the Medicare program.

It is more difficult to analyze the effect that elimination of the carryover would have on hospitals. Because the elimination of the aggregation method could increase the LCC disallowances experienced by hospitals, continuation of the carryover provision could result in increases in carryover amounts and recoveries for those providers that do not experience recurring LCC disallowances. Thus, the delay in effective date for elimination of the carryover provision for two years after implementation of elimination of the aggregation method would result in a temporary increase of carryover amounts. We estimate the effect of eliminating the carryover provision for cost reporting periods beginning on or after October 1, 1986 [1] (assuming the aggregation method is eliminated for cost reporting periods beginning on or after October 1, 1984) would be as follows:

Fiscal year	Increased carryover costs from fiscal year 85 & 86 disallowances	Savings from elimination 10/01/86	Net cost/ savings
	(amounts given in millions)		
1985	0	0	0
1986	+$10	0	+$10
1987	+20	0	+20
1988	+10	−$20	−10
1989		−30	−30

Note that disallowances for both FY 1985 and FY 1986 would be carried forward into two subsequent fiscal years. Also, savings would not begin to accrue until FY 1988, because the disallowances that we would not allow to be carried forward would not be determined until the end of cost reporting periods beginning in FY 1987.

2. Impact on Beneficiaries and Other Patients

The proposal to eliminate the carryover provision would not directly affect beneficiaries or other patients. Carryover recoveries do not occur in the same cost reporting period as that in which the underlying services were furnished. Provider behavior has probably been affected by the opportunity for such recoveries only to the extent that a provider makes a decision in a given year with the expectation that a resulting LCC disallowance will be recoverable in later years. Thus, the major behavioral changes caused by this proposal would result ultimately from the changed expectations of providers, due to their having a stronger incentive than previously to avoid LCC disallowances. The means chosen by a provider to avoid such disallowances would affect beneficiaries and other patients in the manner discussed above with respect to the proposal to eliminate the aggregation method.

3. Paperwork Burden

This proposed change would have a minimal impact on the administrative costs and nature of provider and intermediary operations. It would not increase any paperwork burden. We are not proposing to impose any related information collection requirements that must be approved by EOMB in accordance with the Paperwork Reduction Act of 1980.

E. Alternatives Considered

1. Retain the Aggregation Method, or Eliminate it Only for Hospitals

As a result of the enactment of section 2308(a) of Pub. L. 98–369, there are no alternatives to our proposal to eliminate the aggregation method.

2. Eliminate the Aggregation Method but Retain Carryover Provision

The primary effect of eliminating the aggregation method would be to substantially increase the incidence and amounts of costs in excess of charges disallowed from hospital Part B services. This could create a significant LCC problem for hospitals and other providers that, having consistently subsidized Part B services with Part A revenues, have not had such a problem before. Simultaneous elimination of the carryover provision would prevent providers from recovering these new and larger disallowances in later years, and thus magnify the impact of the elimination of the aggregation method.

We considered retaining the carryover provision to afford those hospitals with no prior history of LCC problems an opportunity to adjust their charge schedules and reduce their Part B costs. Retaining the carryover provision could also benefit those hospitals that experience an LCC problem for a brief time due to circumstances beyond their control.

However, we believe that there have been strong past incentives for hospitals to conform their charge patterns to their service costs. For both management and market considerations, it is desirable to limit subsidization of service costs. For the most part, standards of productivity and efficiency suggest that a service be priced below cost only to the extent that resulting increased utilization of that service also increases the utilization and revenues of other services that are priced sufficiently above costs to cover the loss. We believe that Federal subsidization of this sort of "loss leader" marketing strategy is not appropriate.

In addition, if we were to eliminate the aggregation method but retain the carryover provision, it would result in additional costs, which would reduce the savings estimated as resulting from eliminating aggregation. We estimate the additional costs, from FY 1987 on, would be as follows:

Fiscal year	Cost (in millions)
1987	+20
1988	+20
1989	+30
1990	+30

Based on the above, we have concluded that the major effect of eliminating the carryover provision would be to compel hospitals to make their charge schedules more realistic. Therefore, we have not adopted the alternative of eliminating the aggregation method and retaining the carryover provision.

3. Eliminate Carryover Provision for Cost Reporting Periods Beginning on or After October 1, 1984

We consider eliminating the carryover provision effective with the same cost reporting periods as we were proposing to eliminate the aggregation method. This would have maximized our savings and may have afforded some administrative simplicities. However, it would have created transition problems for affected providers. By delaying the elimination of the carryover provision, to be effective for cost reporting periods beginning on or after the effective date of the final rule, we allow an adjustment period for providers that experience new or increased LCC disallowances as a result of elimination of the aggregation method.

4. Continue Carryover Provision Only for New Providers

The major type of nonrecurring costs that are subject to LCC computations are the start-up costs experienced by new providers. We have considered continuing the carryover only for these

[1] For purposes of estimating the savings that would result from eliminating the carryover provision, we are assuming an effective date of October 1, 1986, although we are proposing that the actual effective date would be the effective date of the final rule.

providers, perhaps for a reduced period of two or three years, rather than the five years permitted under current rules.

We do not have sufficient data to assess the impact of this alternative because the available data do not permit us to separately identify new providers. We recognize that eliminating the carryover provision for new providers makes circumstances less favorable for some of them. However, the special extended carryover was established some time ago, when it was reasonable to believe that such a provision would serve to permit improved access to care as new providers entered the program. At this time, we do not believe it is necessary to give new providers a preferred status.

Rather, recognition of costs in excess of charges merely because a provider is "new", expecially among HHAs, which require less initial expenditure than other providers, may give new providers an unnecessary competitive advantage.

As discussed above, the most rapidly growing provider type is HHAs, which have increased in number from 2500 to over 5000 since 1978. Given this growth, we believe that a sufficient number of HHAs are participating in the Medicare program to ensure the availability of care for beneficiaries. There is no compelling reason to afford new ones a preferred reimbursement status. For these reasons, as well as for reasons of administrative consistency and efficiency, we are proposing to eliminate the carryover provision entirely.

5. Establish More Restrictive Criteria for Identifying Hospitals, SNFs, or HHAs With a Significant Portion of Low-Income Patients

We considered establishing a more restrictive standard for identifying nonpublic providers that serve sufficiently large numbers of low-income patients to qualify for exception from the LCC principle under the nominal charge provision. For example, we considered using Medicaid admissions as a percentage of total admissions as a proxy measure for proportion of low-income patients. However, Medicaid eligibility varies by State; therefore, it may not properly reflect the proportion of low-income individuals served for all States or institutions. Moreover, this is a measure of inpatient utilization, which is almost all paid for under part A.

Another problem related to admissions-based measures is that the nominal charge provision applies to other providers in addition to hospitals, and an admission or discharge based unit of measure would not be appropriate for those providers. SNFs generally experience lower rates of patient turnover than do hospitals, as a result of the much longer average length of stay. Therefore, some other measure, perhaps related to days of care, rather than admissions, would be more appropriate for SNFs. Similarly, a visit-based measure might be more appropriate for HHAs and OPTs.

However, even though we can discuss which units of measure may be most appropriate for each type of provider, after review of the available data, we have determined that we do not have a sound quantitative basis for setting specific thresholds. As discussed above, we are proposing instead to permit a nonpublic provider to be excepted from the LCC principle if its charges are 60 percent or less of its reasonable costs, and it shows that its charges are less than costs because its customary practice is to charge patients based on their ability to pay. In the absence of data supporting some other type of threshold, we believe this is the best alternative available.

F. Summary

As already noted, the proposed elimination of the aggregation method and revisions to the nominal charge provisions are mandated by Pub. L. 98–369. We are, however, exercising our discretionary authority in proposing to eliminate the carryover provision. We also have authority to propose a definition, for purposes of the nominal charge provisions, of a provider serving a significant portion of low-income patients.

The following table summarizes the savings that would result from reductions in part B payments to hospitals as a result of implementation of these proposals. Almost all the savings would be related to services paid for from the Medicare Part B trust fund. However, some minor Part A savings may also result, due to the effect of these changes on Part A payments to SNFs and HHAs.

ESTIMATED EFFECTS OF THESE PROPOSALS ON MEDICARE PROGRAM EXPENDITURES

Fiscal year (Costs (+) and savings (−) in millions)	Provisions				
	1985	1986	1987	1988	1989
Elimination of Aggregation [3]	−$80	−$110	−$130	−$150	$170
Elimination of Carryover (10/1/86) [3]	0	+10	+20	−10	−30
Revision of Nominality Rule [4]	+20	+20	+20	+20	+20
Net total	−60	−80	−90	−140	−180

[1] This summary is based on actuarial estimates. Since we do not have a basis for such estimates on the effect of these provisions for nonhospital providers, we have included only the hospital portion of the impact in this table.

[2] For purposes of computing the above dollar estimate of the impact on program expenditures, we assumed that potentially affected hospitals would be able to avoid 50 percent of the loss in Medicare reimbursement that would result from LCC disallowances by changing their current practices.

[3] These are net cost/savings estimates that reflect increased carryover costs from FY 1985 and FY 1986 disallowances. The estimates assume an effective date of October 1, 1986, although we are proposing that the actual effective date of eliminating the carryover provision would be the effective date of the final rule.

[4] This estimate reflects the maximum cost that we expect would result from our proposed definition of nonpublic providers serving a significant portion of low-income patients.

These savings would benefit the Medicare program, protect the integrity of the prospective payment system and rate of increase limits for Part A inpatient services, and create incentives for providers to establish more realistic charge schedules, reduce their costs, or otherwise improve their cost/charge ratio. We believe that these secondary benefits, though difficult to quantify, would be substantial.

The Medicare program savings may be perceived by affected providers as a loss of potential revenue. However, we wish to point out that by far the greatest portion of the reduction in projected Medicare expenditures would result from statutorily mandated provisions, and we would still be reimbursing those providers according to their own charge practices for the services they furnish to beneficiaries. Other potential costs would be largely nonquantifiable, including effects on beneficiaries and other patients resulting from changes in hospital behavior, such as increased charges. However, other changes in hospital behavior, such as reduced costs or improved efficiency, would benefit patients, too.

In view of the statutory requirements, we believe that these proposals represent the best balance of costs and benefits available to us. Therefore, we believe that these proposed regulations meet the objectives of E.O. 12291 and the RFA.

IV. Response to Public Comments

Because of the large number of items of correspondence that we receive on proposed regulations, we cannot acknowledge or respond to them individually. However, we will consider all comments received timely and, if we proceed with a final rule, we will respond to those comments in the preamble of that rule.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

We are proposing to amend 42 CFR 405.455 as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart D—Principles of Reimbursement for Providers, Outpatient Maintenance Dialysis, and Services by Hospital-Based Physicians

1. The authority citation for Subpart D continues to read as follows:

Authority: Secs. 1102, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, 1886, and 1887 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395g, 1395l(a), 1395x(v), 1395hh, 1395rr, 1395ww, and 1395xx).

2. Section 405.455 is revised to read as follows:

§ 405.455 Amount of payment if customary charges for services furnished are less than reasonable cost.

(a) *Definitions.*

As used in this section—

"Fair compensation" means, for the purpose of providers that meet the nominal charge provisions in paragraph (f) of this section, the reasonable cost of covered services furnished to beneficiaries.

"New provider" means a provider that has operated as the type of facility for which it is Medicare-certified (or the equivalent thereof) under present and previous ownership for less than three full years.

"Provider with a significant portion of low-income patients" means a non-public provider whose charges are 60 percent or less of the reasonable cost represented by the charges, and that demonstrates, as provided in paragraph (c)(1)(iii) of this section, that its charges are less than costs because its customary practice is to charge patients based on their ability to pay.

"Public provider" means a provider operated by a Federal, State, county, city, or other local government agency or instrumentality.

(b) *Application of the principle of lesser of costs or charges*—(1) *General rule.* Except as provided in paragraph (c) of this section, effective with cost reporting periods beginning on or after January 1, 1974, hospitals, SNFs, HHAs, and OPTs are paid the lesser of the reasonable cost of covered services (as described in paragraph (d) of this section) furnished to beneficiaries or the customary charges (as defined in paragraph (e) of this section) made by the provider for the same services. This lesser of costs or charges principle ensures that Medicare payments to a provider do not exceed the customary charges made by the provider to the general public for the same services. The carryover of unreimbursed reasonable costs from previous cost reporting periods is recognized, in accordance with the provisions of paragraph (h) of this section.

(2) *Example.* A provider's reasonable cost for covered services furnished to Medicare beneficiaries during a cost reporting period is $125,000. The customary charges to those beneficiaries for these services is $110,000. The provider is to be reimbursed $110,000 less deductible and coinsurance amounts that the beneficiaries are charged.

(c) *Providers and services not subject to the principle*—(1) *Providers.* (i) *CORFs.* Payment to CORFs is based on the reasonable cost of the services.

(ii) *Public providers.* Public providers furnishing services free of charge or at a nominal charge (as specified in paragraph (f) of this section) are paid fair compensation for services furnished to beneficiaries.

(iii) *Providers furnishing services to a significant portion of low-income patients.* Effective with cost reporting periods beginning on or after October 1, 1984, providers furnishing services to a significant portion of low-income patients are paid fair compensation, upon request, for services furnished to beneficiaries if a provider can demonstrate to its intermediary that its charges are less than costs because its customary practice is to charge patients based on their ability to pay.

(2) *Services*—(i) *Part A inpatient hospital services.* The lesser of costs or charges principle does not apply to Part A inpatient hospital services subject to—

(A) The rate of increase ceiling under § 405.463, effective with cost reporting periods beginning on or after October 1, 1982; or

(B) The prospective payment system under Part 412 of this chapter, effective with cost reporting periods beginning on or after October 1, 1983.

(ii) *Durable medical equipment furnished by HHAs*—(A) *General.* Except as provided in paragraph (c)(2)(ii)(B) of this section, for durable medical equipment furnished by an HHA as a home health service on or after July 18, 1984, HHAs are paid the lesser of the reasonable cost of the equipment or the customary charges (less a 20 percent coinsurance as provided in section 1866(a)(2)(A)(ii) of the Act), not to exceed 80 percent of the reasonable cost of the equipment.

(B) *HHAs meeting the nominal charge provisions.* Public HHAs and HHAs that furnish services or items to a significant portion of low-income patients and that meet the nominal charge provisions as provided in paragraph (f)(2) of this section, are paid 80 percent of fair compensation for durable medical equipment furnished as a home health service.

(d) *Exclusions from reasonable cost.* For purposes of comparison with customary charges under this section, reasonable cost does not include—

(1) Payments made to a provider as reimbursement for bad debts arising from noncollection of Medicare deductible and coinsurance amounts (§ 405.420);

(2) Amounts that represent the recovery of excess depreciation resulting from termination or a decrease in Medicare utilization (§ 405.415(d)(3)) applicable to prior cost reporting periods;

(3) Amounts that result from a disposition of depreciable assets (§ 405.415(f)) applicable to prior cost reporting periods; and

(4) Payments to funds for the donated services of teaching physicians (§ 405.421).

(e) *Customary charges*—(1) *General.* As used in this paragraph (e), customary charges means the chargs for services, as defined in § 405.452(b), furnished to beneficiaries. These charges must be recorded on all bills submitted for program reimbursement.

(2) *Special situations in which customary charges are reduced.* Customary charges are reduced in proportion to the ratio of the aggregate amount billed to charge-paying non-medicare patients to the amount that would have been realized had customary charges been paid in one of the following situations:

(i) The provider does not actually impose charges in the case of most patients liable for payment for its services on a charge basis; or

(ii) The provider fails to make a reasonable effort to collect those charges.

(f) *Nominal charges*—(1) *Cost reporting periods beginning before October 1, 1984.* Except for durable medical equipment furnished by HHAs as provided in paragraph (c)(2)(ii) of this section, if a public provider's total charges, for cost reporting periods beginning before October 1, 1984, are less than one-half of the reasonable cost of services or items represented by these charges, then the provider is reimbursed fair compensation.

(2) *Cost reporting periods beginning on or after October 1, 1984.* For Cost reporting periods beginning on or after October 1, 1984, the following provisions apply in determining nominal charges:

(i) *Reimbursement of fair compensation.* Except for the limitations

on reimbursement for durable medical equipment furnished by HHJAs as provided in paragraph (c)(2)(ii) of this section, public providers, and providers that furnish services or items to a significant portion of low-income patients and that request payment under this paragraph, are reimbursed fair compensation if total charges are 60 percent or less of the reasonable cost of services or items represented by these charges.

(ii) *Separate determination of nominal charges.* Except as provided in paragraph (f)(2)(iii) of this section, the determination of nominal charges, which is based on charges actually billed to charge-paying, non-Medicare patients, is made separately with respect to Part A and Part B services (other than clinical diagnostic laboratory tests that are paid under section 1833(h) of the Act) unless the intermediary decides that the determination must be made separately with respect to inpatient and outpatient services.

(iii) *Determination of nominal charges in special situations.* (A) For providers that have a sliding scale or discounted schedule of charges based on patients' ability to pay, the determination of nominal charges is based on charges billed to all charge-paying patients. This determination is made using the sliding scale or discounted schedule and aggregating the charges paid.

(B) For HHAs, the determination of nominal charges is made on an aggregate basis for durable medical equipment separately from other items or services furnished by HHAs.

(g) *The aggregation method*—(1) *Cost reporting periods beginning before October 1, 1984—Application.* In comparing costs and charges under the lesser of costs or charges principle, the reasonable cost for items and services and the customary charges for those same items and services are to the aggregated (that is, totalled and compared) without regard to whether the services are reimbursable under Part A or Part B of Medicare. This aggregation method is to be applied after the provider's charges and costs have been adjusted to exclude the amounts describe in paragraph (d) of this section and to exclude the following amounts—

(i) Any amounts attributable to physicians' services not reimbursable to the provider on a reasonable cost basis as described in §§ 405.480 through 405.482; and

(ii) All costs and charges for noncovered provider services.

(2) *Cost reporting periods beginning on or after October 1, 1984.* Effective with cost reporting periods beginning on or after October 1, 1984, the aggregation method used for computing the lesser of costs or charges, as set forth in paragraph (g)(1) of this section, may not be used. For covered items and services furnished during these periods, total reasonable cost of covered items and services is compared with total customary charges for those items and services, separately for Part A and for Part B.

(h) *Accumulation of unreimbursed costs and carryover to subsequent periods*—(1) *General rule.* A provider whose charges are lower than its reasonable cost for those services in any cost reporting period beginning on or after January 1, 1974 but before [the effective date of the final rule] may carry forward costs that are unreimbursed under paragraph (b) of this section for the two succeeding cost reporting periods. However, no recovery may be made in any period in which costs are unreimbursed because a provide's costs exceed the limitations on reimbursable costs (§ 405.460) or the ceiling on the rate of hospital cost increases (§ 405.463)).

(2) *Reimbursement as a result of carryover.* The provider is reimbursed for the costs that are carried forward to a succedding cost reporting period—

(i) If charges for services provided in that subsequent period exceed the reasonable cost of the services; and

(ii) To the extent that accumulation of the costs being carried forward and the costs for the services provided in that subsequent period to not exceed the customary charges for those services.

(3) *Two succeeding periods less than 24 months.* If the two succeeding cost reporting periods are less than 24 full calendar months, the provider may carry forward the unreimbursed costs for one additional cost reporting period.

(4) *Example.* In the cost reporting period ending September 30, 1982, a provider's rseasonable costs were $100,000. The provider's customary charges for those services were $90,000. The provider is reimbursed $90,000 less any deductible and coinsurance amounts but is permitted to carry forward the unreimbursed resonable costs of $10,000 for the next two succeeding cost reporting periods. If, in the cost reporting period ending September 30, 1983, customary charges to beneficiaries exceeded the reasonable costs for those services by $10,000 or more, and the provider had no costs unreimbursed under § 405.460 or § 405.463, the provider would recover the entire $10,000 previously not reimbursed. If, however, beneficiary charges for that cost reporting period exceeded costs by only $8,000, this amount ($8,000) would be added to the balance of the unreimbursed amount ($2,000) would be carried forward to the next cost reporting period.

(5) *New providers*—(i) *General rule.* A new provider whose cost reporting period begins before [the effective date of the final rule] may carry foward costs that are unreimbursed from previous periods, as described in paragraph (b) of this section, during a provider's base period. The base period includes any cost reporting period beginning on or after January 1, 1974, and ending on or before the last day of its third year of operation. The unreimbursed costs may be carried forward for the five succeeding cost reporting periods.

(ii) *Reimbursement as a result of carryover.* The new provider is reimbursed for the costs that are carried forward to a succeeding cost reporting period—

(A) If charges for the services provided in that subsequent period exceed the reasonable cost of the services; and

(B) To the extent that accumulation of the costs being carried forward and the costs for the services provided in that subsequent period do not exceed the customary charges for those services.

(iii) *Five succeeding periods less than 60 months.* If the five succeeding cost reporting periods are less than 60 full calendar months, the provider may carry forward the unreimbursed costs for one additional cost reporting period.

(iv) *Example.* A provider begins its operations on March 5, 1972. However, it begins to participate in the Medicare program as of January 1, 1973, and reports on a calendar year basis. Because the provider would be subject to the lesser of cost or charges principle for its cost reporting period beginning with January 1, 1974, it would be permitted to accumulate any unreimbursed costs (excess of costs over its charges) incurred during this reporting period. Therefore, because this cost reporting period ends before the end of the third year of operation, its carryover period would be the succeeding five cost reporting periods ending with December 31, 1979. If this provider had begun its operation on July 1, 1973, and become a participating provider as of the same date (with a fiscal year ending June 30), it would have been able to accumulate any unreimbursed costs for the two cost reporting periods ending June 30, 1975, and June 30, 1976. Its carryover period would then be the five cost reporting periods ending no later than June 30, 1981, in the case of costs unreimbursed

in either of the reporting periods ending June 30, 1975, or June 30, 1976.

(v) *Unreimbursed costs during the base period.* For cost reporting periods beginning before [the effective date of the final rule], a new provider's costs that are unreimbursed may be recovered during any cost reporting period in the base period or the carryover period. The recovery amount is limited to the amount by which the aggregate customary charges applicable to Medicare beneficiaries exceed the aggregate costs during those periods. However, no recovery may be made in any period in which costs are unreimbursed because a provider's costs exceed the limitations on reimbursable costs (§ 405.460) or the ceiling on the rate of hospital cost increases (§ 405.463).

(Catalog of Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance; and No. 13.774, Medicare-Supplementary Medical Insurance)

Dated: September 5, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: September 11, 1986.

Otis R. Bowen,

Secretary.

Appendix I—Data on the Impact on Hospitals of the Proposed Revision of the Nominal Charge Provisions

In September 1984, we did a special study of the effect of revisions to the nominality test to comply with Pub. L. 98-369.[1] We used a data base of 1980 cost reports that we used earlier for other special studies, because other data sources available did not include sufficient information on LCC disallowances. In this study, we identified hospitals that would meet the nominality test under existing regulations, and hospitals that would meet the nominality test under the revisions we are proposing. We then estimated the increased program expenditures that would result from the proposed changes.

We were able to use only 909 of the 1048 hospital records in the file. Sixty-five hospitals were excluded because their records were missing data or key information, or included data values that were highly suspect. An additional 74 hospitals located in Maryland, Massachusetts, and New Jersey were excluded because, for the period of the study, those States had Medicare reimbursement waivers that exempted them from the LCC principle. Hospitals in New York State were included because, under the terms of that waiver, New York hospitals were subject to the LCC principle.

[1] The data extractions, analysis, and report were performed by Applied Management Sciences, Inc. under purchase order No. HCFA-84-0955. The project officer was J. Michael Fitzmaurice, Office of Research, Office of Research and Demonstrations, HCFA, 2-B-14 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

For each of the 909 hospitals, we determined—

- Total Part A customary charges;
- Total Part A reasonable costs;
- The difference between Part A reasonable costs and customary charges;
- Total Part B customary charges;
- Total Part B reasonable costs;
- The difference betwen Part B reasonable costs and customary charges;
- Total reasonable costs (sum of Parts A and B);
- Total customary charges (sum of Parts A and B);
- The ratio of total costs to total charges; and
- The ratio of Part B costs to Part B charges.

The hospitals were also stratified according to the following characteristics.

- Bed-size;
- Type of control (public, nonprofit, profit);
- Region; and
- Teaching status.

We were not able to incorporate all the proposed changes into our study metholdology. The available data did not permit us to exclude the cost and charges for diagnostic clinical laboratory tests paid under section 1833(h) of the Act or to reflect the use of sliding charges or discounted charges, since such use was not permitted in the determination of customary charges for the cost reports in the data base. Therefore, our study focused only on the three major proposed changes: the determination of nominality separately for Part A and Part B; the increase of the nominality threshold from charges that are less than 50 percent to charges that are 60 percent or less of the costs related to the services represented by the charges; and the extension of the provision to nonpublic providers that furnish services to a significant portion of low-income patients.

We began our study by estimating the potential subsidization of Part B costs by Part A charges under existing regulations (which is the same amount as the program savings that would result if Part A and Part B disallowances were calculated separately), and the cost of reimbursement under the existing nominality provisions. We then measured separately the effects of:

- Disaggregating Part A and Part B nominality determinations;
- Increasing the nominal charge threshold from less than 50 percent to 60 percent; and
- Extending the nominal charge provisions to include qualified nonpublic providers.

The first of these measurements was a straightforward calculation based on the data extracted from the cost reports. For the second measurement, we divided each hospital's total Part B customary charges by its total Part B reasonable costs, and ranked the resulting ratios in descending order. (We ignored Part A costs and charges since the LCC principle does not apply to hospital inpatient operating costs subject to either the prospective payment system (42 CFR Part 412) or the rate of increase ceiling (§ 405.463).

The following table summarizes the relative impact of each of the proposed changes to the nominal charge provisions. As the table shows, the cost of the current nominality rule appears to be trivial. Only one of the hospitals in the sample subject to a Part B disallowance would be exempted from that disallowance on the basis of the current nominal charges provision.

Impact of Changes to the Nominal Charge Provision

Provision	Hospitals affected		Percent of Sample (n/909)	Potential Program Cost [1]	
	Total	Added		Total	Incremental
Existing rules	1		0.1	$11	
Separate calculation of part B LCC	3	2	0.3	29	$19
Increasing nominal charge threshold to 60 percent	6	3	0.7	1,522	1,493
Extending to all nonpublic hospitals meeting 60 percent nominal charge threshold	19	13	2.1	4,018	2,496

[1] To nearest thousand dollars. In determining these figures for the sample population, we have assumed that all of the Part B excess of costs over charges which otherwise would be disallowed, would be paid to hospitals meeting the nominal charge test.

Appendix II—Data on the Impact on HHAS and Hospitals of Elimination of the Carryover Provision

Home Health Agencies

In December 1982, we reviewed 1981 cost reports for about 300 HHAs. The purpose of this review was to determine whether we had a probable basis for implementing section 1814(j) of the Act (originally enacted as section 1886(d) of the Act by section 110 of Pub. L. 97-248 and redesignated as section 1814(j) under Pub. L. 98-21) for HHAs as a whole or a sub-category of HHAs. Section 1814(j) of the Act provides that the lower of cost or charges provision can be eliminated with respect to a class of providers ("class" is undefined) if the Secretary determines and certifies to Congress that the elimination of LCC disallowances for that class of providers will not increase Medicare outlays.

Because we received many inquiries regarding section 1814(j) from HHAs and associations representing them, we decided it was desirable to review cost reports selected from all major categories of HHAs (governmental, voluntary nonprofit, proprietary and private nonprofit) to determine whether any of these categories were generally unaffected by LCC disallowances. Therefore, we selected 300 of the most recent available cost reports for review, ensuring that all categories were reasonably represented. Although the data collected during this review were the best available for this analysis without incurring considerable delay and expense, the sample was not scientifically chosen, and the data

we extracted cannot be generalized to all HHAs.

Of the 300 HHAs reviewed, 286 submitted sufficient data to identify LCC disallowances. Of these, 164 (57 percent) had LCC disallowances, for a total of over $2 million. In addition, 16 percent had a recovery of an LCC disallowance for a prior year, totaling over $325,000. Other program data, collected as part of a program validation initiative, suggest that this arbitrary sample may overstate the number of HHAs experiencing disallowances—the actual percentage may be closer to 30 percent instead of nearly 60 percent.

Nevertheless, it is clear that a substantial number of the over 5000 HHAs participating in Medicare do experience LCC disallowances, and, of these, perhaps as many as a sixth of them benefit from later year recoveries. Although our available data do not permit us to estimate with confidence the numbers of HHAs that would be affected by elimination of the carryover provision, or the magnitude of that impact, HHAs in a variety of categories (governmental, voluntary nonprofit, proprietary, and private nonprofit) could be affected, since cost reports from each category showed disallowances.

Although we do not have a sound basis for an actuarial estimate, we believe, based on our sample of 300 cost reports, that total annual HHA carryover amounts are at least $500,000 and probably no more than $1.5 million.

Hospitals

We have much more data available on hospitals than on other types of providers. In addition to the database used for prospective payment rate setting, we have available numerous special studies and other data sources, including the sample of hospitals' 1980 cost reports that we used to assess the impact of the proposed changes of the nominal charge provisions. However, nearly all the hospital data currently available to us are time specific rather than historical—that is, each data source gives us a cross-section of a particular point in time, but does not reflect changes over time. Further, because of changes in format and reporting from year to year, it has not always been feasible to combine data sources to achieve a good historical perspective. Nonetheless, we do have several sources that have allowed us to review for particular years the amounts of LCC disallowances that hospitals have been able to carry forward and recapture in a subsequent year's reimbursement. The data have been sufficient to permit our actuaries to project the effect of continuing the carryover provisions while eliminating the aggregation method.

[FR Doc. 86-20961 Filed 9-16-86; 8:45 am]

BILLING CODE 4120-03-M

42 CFR Parts 405 and 447

45 CFR Parts 1 and 19

[BERC-356-N]

Medicare and Medicaid Programs; Limits on Payments for Drugs; Extension of Comment Period, Availability of Data, and Clarification

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule; extension of comment period, availability of data, and clarification.

SUMMARY: This notice extends the comment period and supplements the August 19, 1986, Notice of Proposed Rulemaking (NPRM) (51 FR 29560) concerning setting limits on payments for drugs supplied under certain Federal health programs as follows:

• The following associations requested an extension of the comment period: The National Association of Chain Drug Stores, The American College of Apothecaries, the Pharmaceutical Manufacturers Association, the American Society of Hospital Pharmacist, National Wholesale Druggists' Association, American Society of Consultant Pharmacists, and National Association of Retail Druggists. The extension was requested because these organizations believed that analyzing the multi-option proposal and preparing a meaningful recommendation was impossible within the time provided.

DATE: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on October 20, 1986.

ADDRESS: Mail comments in writing to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-356-N, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-356-N. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION ON THE NEW DATA CONTACT: Walton Francis, 447D Hubert H. Humphrey Building, Washington, DC 20201, (202) 245-0291.

SUPPLEMENTARY INFORMATION:

• The NPRM presented three major alternative approaches to reform. At that time, we had savings estimates available for only one of these (PhIP), but explained that our intention was to conduct further analysis and calibrate the three proposals so that they would result in savings roughly equal to those achieved under the present regulation, plus the additional $80 million in Federal/State savings expected under PhIP.

We have now obtained a substantial data set covering the 100 largest since source and the 50 largest volume multiple source drugs in 15 States. Including generic equivalents, these data cover almost 1500 actual brands and almost one-half million prescriptions. This data set includes substantial data on each drug, scuh as retail and wholesale prices and volume of prescriptions by brand and dosage size, as of March 1985. We are now analyzing the data and will be preparing projections for present policies and the three proposed options.

We would welcome independent review of the contractor's data and of the contractor's analysis of the data. Further, commenters may wish to suggest additional variations or to attempt to model alternatives using our data set. Therefore, we will make available upon request the data and analysis provided by the contractor and, for those able to use large, computerized data sets, a copy of the data tape. In addition, the computer program (written in SAS) used to analyze the data will be available and may be of particular interest to States in examining the approach used by the contractor to calculate CIP screens from retail price data and the model State-specific policies such as "mini-MAC" programs.

• We have discovered two ambiguities in the handling of multiple source drugs under the Competitive Incentive Program (CIP) option as originally presented in the NPRM. Under CIP, the NPRM states that the upper limit would be the lowest of: "A mandatory discount (for example, 25 percent) applied to the individual provider's charges to private, retail customers for the leading brand name that corresponds to the multiple source drug;" the charges to these same

customers for the multiple source drug dispensed less the discount applied to all drugs; or the results of a screen of Statewide charges for "all generic equivalents of the multiple source drug dispensed."

This language presents two problems. First, in a case in which a generic equivalent is normally priced at roughly the same level (possible even higher) then the leading brand, it would appear possible that CIP would allow a *higher* payment for the generic equivalent than for the leading brand. This result would be both anomalous and unfair. One solution would be to develop a screen (not an additional discount) limiting reimbursement to all generic competitors. This screen could be calculated as a percentage (for example, 75 percent) of the median leading brand prices for all providers submitting claims for that drug. Alternatively, if the application of the 25 percent discount would force the leading brand name reimbursement below that of the highest priced generic carried by the individual provider, the allowable reimbursement for the leading brand 25 percent discount could be waived, and limited to the lower of the charge to private retail customers for that generic competitor less the discount applied to all drugs, the leading brand price less the discount applied to all drugs, or the results of the screen applied to the generic competitor.

Second, the NPRM states that the CIP screen would be applied to "all generic equivalents of the multiple source drug dispensed." This language is ambiguous as to whether the screen would be calculated for each generic equivalent *individually* or for all generic equivalents taken as a *group*. The former intepretation was intended, since the latter would have the potential effect of forcing a substantial loss on the dispensing of all but the lower priced generic in cases in which that generic had a majority of the market and others were generally more than 25 percent higher in price while still well below the price of the leading brand.

With respect to both problems, we request comments on these or other options to assure that the handling of multiple source drugs under CIP is both workable and fair.

For these reasons, we believe that the quality of the final rule will be enchanced by extending the public comment period. Therefore, the comment period is extended until October 20, 1986.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; 13.773, Medicare—Hospital Insurance; 13.774, Medicare—Supplementary Medical Insurance)

Dated: September 16, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: September 16, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-21318 Filed 9-17-86; 10:05 am]

BILLING CODE 4120-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 215, and 230

Department of Defense Federal Acquisition Regulation Supplement; DoD Profit Policy

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comments.

SUMMARY: Comments are solicited on this proposed rule which revises the DoD profit policy on negotiated defense contracts.

The proposed rules reform DoD's method of establishing prenegotiation profit objectives on negotiated defense contracts.

DATE: Comments on the proposed rule should be submitted in writing to the address shown below no later than (November 17, 1986) to be considered in the formulation of the final rule.

ADDRESS: Interested parties should submit written comments to: Lieutenant Colonel Richard J. Wall, USAF, Chairman, Joint Implementation Committee, ODASD(P)/CPF, Room 3D1082, Pentagon, Washington, DC, 20301-3062.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Richard J. Wall, USAF, Chairman, Joint Implementation Committee, (202) 695-9764.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed rule revises the DoD profit policy on negotiated defense contracts. These revisions were the result of a Joint-Service study of DoD's contract financing and profit policies entitled, "Defense Financial and Investment Review" (know simply as DFAIR). In addition to revising DoD's contract financing policies, DFAIR called for a major restructuring of the Weighted Guidelines Method which is used by contracting officers to develop prenegotiation profit objectives. The principal reforms made through this proposed rule accomplish the following: (1) Eliminate the separate profit policies for manufacturing, research and development, and service contracts which had been issued under Defense Acquisition Circular 76-23, (2) redirect the performance risk assessment to technical criteria rather than cost mix criteria, (3) integrate contract financing considerations as part of contract type risk analysis, (4) increase emphasis on facilities capital, and (5) eliminate performance and contract type risk profit attributable to contractor general and administrative (G&A) expenses and independent research and development/bid and proposal (IR&D/B&P) cost. The structure of Weighted Guidelines Method and related management information systems have also been simplified.

B. Regulatory Flexibility Act Information

The proposed rules reform DoD's method of establishing prenegotiation profit objectives on negotiated defense contracts. The proposed rule will apply only to those small business which meet the criteria for applying a structured approach to developing prenegotiation profit objectives. Since the threshhold is $100,000 and applies to negotiated contracts, the small business involvement is not expected to be significant as the majority of contracts awarded at this level are to other than small businesses. Therefore, Regulatory Flexibility Act Requirements do not apply.

C. Paperwork Reduction Act Information

The changes to the Weighted Guideline Method are expected to reduce the volume of paperwork. First, the DD Form 1547 and DD Form 1499 are combined into one form. Second, the volume of data elements collected under DoD's management information system on profit are reduced. The DD Form 1861 has been expanded into two parts, but this will not have major impact. The new portion of the DD Form 1861 will be completed only once a year from available information. Forms are being revised as necessary, and the proper justification is being processed for OMIS approval on the information collection requirements.

List of Subjects in 48 CFR Parts 204, 215 and 230

Government procurement

Charles W. Lloyd

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR Parts 204, 215 and 230 be amended as follows:

1. The authority citation for 48 CFR Parts 204, 215 and 230 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 204—ADMINISTRATIVE MATTERS

2. Sections 204.673 and 204.673–1 through 204.673–4 are revised to read as follows:

204.673 Record of Weighted Guidelines Method Application (DD Form 1547).

204.673–1 Purpose.

The DD Form 1547 is the principal source document for maintaining a DoD-wide management information system on profit and fee statistics, as required under DoD Instruction 7730.27, "Reporting of Planned and Negotiated Contract Profit Rates," (see 215.970). The management information system is extensively used within the Office of the Secretary of Defense to serve a wide variety of purposes ranging from evaluating profit and fee policies to responding to information requests received from all Branches of the Government, Congress, and the public.

204.673–2 Responsibilities.

The Heads of the Military Departments shall develop the necessary policies, procedures, and internal controls for implementing this reporting system. The contracting officer is responsible for properly preparing the DD Form 1547 and forwarding a copy of it to the designated office within 30 calendar days after the date of contract award. The contracting officer is also responsible for the correction of any errors detected by the system's auditing processes.

204.673–3 Applicability.

For the field contracting offices specified below, a copy of the completed DD Form 1547 shall be forwarded to the office designated for all contract actions values $500,000 or more where the contracting officer employed either the Weighted Guidelines Method (215.970), an alternate structured approach (215.971), or the Modified Weighted Guidelines Method (215.972). Offices located outside the United States, its possessions, and Puerto Rico are exempt from this reporting requirement.

(a) *Army:*

(1) Selected Field Contracting Offices—

(i) Army Materiel Command;

(ii) Strategic Defense Command;

(iii) Defense Supply Service, Washington, D.C.; and

(iv) U.S. Army Corps of Engineers.

(2) Designated Office—HQDA (DALO–CSZ–SM), Washington, DC 20310–0600 through intermediate offices if shown below.

(i) For Army Materiel Command field contracting offices, send through Army Materiel Command, ATTN: AMCPP–SC, 5001 Eisenhower Avenue, Alexandria, Virginia 22333–0001; and

(ii) For U.S. Army Corps of Engineers contracting offices, send through Office of the Chief of Engineers, HQDA (DAEN–PRP), Washington, DC 20314–1000.

(b) *Navy:*

(1) Selected Field Contracting Offices—

(i) Naval Air Systems Command;

(ii) Naval Sea Systems Command;

(iii) Space and Naval Warfare Systems Command;

(iv) Naval Facilities Engineering Command; and

(v) The following field offices of the Naval Supply systems Command: Navy Aviation Supply Office, Philadelphia; Navy Ships Parts Control Center, Mechanicsburg; Naval Regional Contracting Center, Long Beach; and Naval Regional Contracting Center, Philadelphia.

(2) Designated Office: Commander Naval Supply Systems Command (SUP 024B), Washington, DC 20376.

(c) *Air Force:*

(1) Selected Field Contracting Offices—

(i) Air Force Systems Command; and

(ii) Air Force Logistics Command.

(2) Forwarding Office—HQ AFLC/LMSC/SORS, Wright-Patterson Air Force Base, Ohio 45433.

204.673–4 Procedures.

(a) All elements of the DD Form 1547 shall be completed by the contracting officer as instructed in 215.970–2, 215.971–3, and 215.972–2.

(b) Completed forms shall be sent to the designated office, as an unclassified document, within 30 days after contract award. Classified information shall not be entered into the management information system or profit. The designated office will perform the necessary audit tests to ensure that the information on the DD Form 1547 is accurate. Use of mechanized or automated systems is desirable.

(c) The designated offices shall transmit the DD Form 1547 information in the manner and format specified in DoD Instruction 7730.27.

(d) The reporting requirements of this section have been assigned RCS: A&L(Q) 1077.

PART 215—CONTRACTING BY NEGOTIATION

3. Subpart 215.9, consisting of Sections 215.900 through 215.973, is revised to read as follows:

Subpart 215.9—Profit

Sec.

Subpart 215.9—Profit

215.900 Scope of subpart.

This subpart prescribes additional policies and procedures which DoD contracting officers shall use in developing prenegotiation profit or fee objectives (hereafter collectively called "profit objectives") on negotiated defense contracts.

215.902 Policy.

(a)(1) The Weighted Guidelines Method described in 215.970 is DoD's structured approach for performing a profit analysis. Its principal purpose is to achieve uniformity and consistency in the manner DoD contracting officers develop prenegotiation profit objectives. This method is structured to ensure that the key factors which motivate efficient contract performance and encourage facilities capital investment in the defense industrial base are the main determinants of profit objectives. The contracting officer shall use the Weighted Guidelines Method in performing a profit analysis prior to the negotiation of any contract action requiring cost analysis (see 215.805–3), including contract actions involving existing contracts. Exceptions to this requirement are set for in 215.902(a)(2). It is DoD's policy that the Weighted Guidelines Method or alternate structured approaches used under authorized exceptions be applied by the

contracting officer in a credible manner. Practices which produce an arbitrary profit objective or accomplish a profit analysis on an after-the-fact basis are unacceptable.

(2) The Weighted Guidelines Method is not required for the types of contract actions listed immediately below as (a)(2) (i) through (viii). In such cases, an alternate structured approach which specifically addresses performance risk, contract type risk (including contractor working capital), and contractor facilities capital shall be used (see 215.971–1). The contracting officer shall also adhere to the offset policy for facilities capital cost of money described in 215.971–2.

(i) Architect-engineering contracts;

(ii) Management contracts for operation and maintenance of Government facilities;

(iii) Construction contracts;

(iv) Contracts primarily requiring delivery of material supplied by subcontractors;

(v) Termination settlements;

(vi) Cost-plus-award-fee contracts;

(vii) Contracts not expected to exceed $500,000; and

(viii) Although it is intended that the Weighted Guidelines Method be applied to most contract actions, there may be unusual situations where this method may not produce a reasonable overall prenegotiation profit objective. An alternate structured approach may be used by the contracting officer, *Provided*, that approval has been obtained in writing from the head of the contracting activity.

(S–70) *Structured Approaches for Subcontracts.* The prime contractor should be encouraged to use the Weighted Guidelines Method or a similar structured approach in developing profit objectives on negotiated subcontracts.

215.903 Contracting officer responsibilities.

(e) The contractor should be encouraged to present on a voluntary basis the details of proposed profit amounts in the format described in 215.970, if application of the Weighted Guidelines Method is anticipated. This would facilitate a more complete discussion of the individual factors which will determine the overall profit objective. The contracting officer is not expected to attempt to reach agreement with the contractor on either the individual factors or the total profit amount.

(S–70) The contracting officer's price negotiation memorandum shall describe the profit analysis performed, whether it be accomplished through the Weighted Guidelines Method or an alternate structured approach.

(S–71) The contracting officer is responsible for the accuracy and timeliness of profit reporting under DoD's management information system (see 204.673). In general, such reporting should be accomplished within 30 calendar days after the date of contract award. The contracting officer is also responsible for the correction of any errors detected by the system's auditing processes.

215.905 Profit-analysis factors.

215.905–1 Common factors.

The Weighted Guidelines Method and alternate structured approaches provide sufficient means for the contracting officer to consider the common profit analysis factors. It is not necessary for the contracting officer to give consideration to the common factors beyond these means.

215.970 Weighted Guidelines Method.

The Weighted Guidelines Method requires application of a DD Form 1547, "Record of Weighted Guidelines Method Application" (see 53.303–70–DD–1547). This method is DoD's a structured approach to be used by the contracting officer for (a) performing the profit analysis necessary to develop a prenegotiation objective, (b) summarizing profit amounts subsequently negotiated as part of the contract price, and (c) serving as the principal source document for reporting profit statistics through DoD's management information system. The Weighted Guidelines Method expressly takes into account the contractor's degree of performance risk in producing the goods or services purchased under the contract action, the contract type risk assumed by the contractor under varied contract and incentive arrangements, the level of working capital needed for contract performance, and the nature of facilities capital to be employed by the contractor. The considerations that must be made by the contracting officer when developing a profit objectives are described below. The normative value for each profit factor is the value to be assigned by the contracting officer in the majority of contract actions. However, a different value may be assigned by the contracting officer, within the designated range of minimum and maximum values, if considered appropriate under the conditions described.

215.970–1 Procedures for establishing profit objectives.

(a) *Performance Risk (Designated Range 2% to 4%; Normal Value 3%).* This factor addresses the contractor's degree of performance risk in producing the goods and services purchased under the contract. It is to be evaluated by the contracting officer within three broad categories of considerations: Technical, management, and cost. The normative value to be assigned to each of these categories is 3%, although the contracting officer may assign a higher or lower value within a designated range of 2% to 4%. The overall value to be assigned for performance risk shall be the arithmetic average of three categories (each has equal weighting). The profit amount for performance risk is computed by multiplying the composite value assigned times total contract costs, *excluding* general and administrative (G&A) expenses, contractor independent research and development/bid and proposal (IR&D/B&P) expenses, and facilities capital cost of money. Each category is discussed below along with a description of above and below normal conditions.

(1) *Technical Considerations.* This category focuses on the technical risks assumed by the contractor in fully satisfying the requirements specified by the contract. The contracting officer's evaluation should address the technology being applied by the contractor, program maturity, performance specifications and tolerances, and delivery schedule. The contracting officer may, however, consider other factors which substantially bear on the contractor's ability to meet the technical aspects of the contract. The contracting officer is expected to carefully review the contract requirements and focus on the critical performance elements in the statement of work and related specifications. The normative value to be assigned in developing a composite value for technical considerations is 3%. Conditions which might justify higher or lower values are discussed immediately below in (a)(1) (i) and (ii).

(i) *Above Normal Conditions.* The contracting officer may assign a value up to 4% if the contractor is either developing or applying advanced technologies. Higher technical risk might be present on a new weapon system, particularly if performance or quality specifications are tight. Manufacturing specifications that have stringent tolerance limits might also impose an above normal condition for technical considerations. The extent of a warranty or guarantee pledged by the contractor should also be considered. Contractors who are willing to accept an accelerated delivery schedule to meet DoD

requirements should be considered for higher profit under this factor.

(ii) *Below Normal Conditions.* If the technical considerations reflect a low degree of performance risk, the contracting officer may assign a value of not-less-than 2%. For example, a relatively simple requirement where there is little application of complex technology would justify a lower profit assignment. This would generally be the case on a relatively mature weapon system or one where the contractor is employing commercial specifications. Follow-on effort to existing contracts should also be an indication of lower technical risk, if design has remained stable.

(2) *Management Considerations.* This category considers the management effort involved on the part of the contractor to integrate the many resources necessary to meet contract requirements. Resources include raw materials, labor, technology, and capital. The contracting officer's assessment should not only embrace a broad perspective of the contractor's management and internal control systems but also assess management involvement that is expected on the individual contract action. The contracting officer should consider the degree of cost mix as an indication of the types of resources applied and value-added by the contractor. The cost elements should not, themselves, be a basis for profit assignment. In evaluating management efforts, the contracting officer should use reviews made by the field contract administration office or other pertinent DoD field offices. The contracting officer should also give consideration to the contractor's support of federal socioeconomic programs, such as support to small business concerns and labor surplus areas. The normative value to be assigned in developing a composite value for management considerations is 3%. Conditions which might justify higher or lower values are discussed immediately below in (a)(2) (i) and (ii).

(i) *Above Normal Conditions.* The contracting officer may assign a value up to 4% if the size or nature of the item or service being acquired requires a substantial amount of management involvement. This might be the case on a contract action where the value-added by the contractor is both considerable and reasonably difficult. Additional profit should be assigned for management considerations if the contractor has a proven record of significant active participation to the federal socioeconomic programs.

(ii) *Below Normal Conditions.* It there is a low degree management involvement, then the contracting officer may assign a value of not-less-than 2%. A comparably mature program where many end item deliveries have been previously made might justify a lower profit assignment. If minimum value-added is accomplished by the contractor, a lower profit should be assigned. A lower profit would be appropriate if reviews performed by the field contract administration offices disclose unsatisfactory management and internal control systems which relate to significant elements of contract performance (e.g., quality assurance, property control, safety, security).

(3) *Cost Considerations.* This category focuses on cost aspects beyond those addressed under contract type risk. The principal areas for evaluation are the expected reliability of cost estimates, cost reduction initiatives, and cost control. Other factors which bear on the contractor's ability to meet the cost targets, such as foreign currency exchange rates and inflation rates, may also be considered. The contracting officer should examine the reliability of the contractor's estimating system. Cost reduction initiatives are those actions taken by the contractor to reduce program costs. Some examples may be the existence of competition advocacy programs, spare pricing reforms, and value engineering. The cost control assessment should address the contractor's overall record of meeting cost goals. The normative value to be assigned in developing a composite value for cost considerations is 3%. Conditions which might justify higher or lower values are discussed immediately below in (a)(3) (i) and (ii).

(i) *Above Normal Conditions.* A value up to 4% may be assigned by the contracting officer if costs considerations reflect above normal circumstances. Higher profit should be assigned in those instances where contractors provide fully documented and reliable cost estimates. Higher profit should also be assigned if the contractor has an aggressive cost reduction program that has demonstrable benefits to the individual contract action. The degree of subcontract competition should influence this evaluation. The contracting officer should also consider higher profit on contracts awarded to a contractor with a proven record of cost control.

(ii) *Below Normal Conditions.* If little effort has been made to initiate cost reduction programs, the contracting officer may assign a value of not-less-than 2%. A lower profit assignment shoud be made if the contractor has a marginal cost estimating system. A lower profit assignment would be appropriate if contractor proposal submissions are inadequate or late. It the contractor has a record of cost overruns or other indications of unrealiable cost estimates and lack of cost control, the contracting officer might be justified in a lower profit assignment.

Example

The following example demonstrates the method for assigning a composite factor for performance risk. Suppose Acme Manufacturing is to be awarded a negotiated contract to develop a prototype end item for a major weapon system. Through analysis performed by the contracting officer, the following values were assigned for each category of consideration: technical=3.6% (advanced technology), management=3.3% (somewhat high degree of management involvement), and cost=2.7% (somewhat unreliable cost estimating system). To compute a composite value, the sum of these factors (9.6%) is divided by 3 to yield 3.2% overall. This percentage would be applied to total allowable costs, *excluding* G&A expenses, IR&D/B&P expenses, and facilities capital cost of money.

(4) *Adjustment for Low Facilities Capital.* It is recognized that there are some R&D and service contractors that have minimum facilities capital but are still faced with substantial performance risk. It is DoD's intent that its profit policies recognize the effort involved in creating and sustaining an organization of highly skilled technicians that perform scientific, analytical, and specialized support services. For such contractors, the contracting officer may assign a value for performance risk up to 6% based on an overall assessment. The contractor would still be permitted profit for facilities capital employed and facilities capital cost of money. This assignment must be approved by a management level above the contracting officer and is restricted to those contracts that meet all of the criteria specified below.

(i) Contracts which have facilities capital employed allocations for buildings and equipment in an amount less than 2% of total contract costs (*including* G&A expenses and IR&D/B&P expenses);

(ii) Contracts with business segments where it would not be in DoD's interests to place substantial incentive on facilities capital investment; and

(iii) Contracts involving highly skilled and complex effort, such as state-of-the art R&D or highly specialized technical services to Government-owned

equipment or facilities. This would not be expected to include janitorial services, security services, or professional service contracts for studies or general services.

(b) *Contract Type Risk.* This profit factor focuses on the degree of cost responsibility accepted by the contractor under varying contract structures and incentive arrangements. The recognition under the Weighted Guidelines Method gives the highest value to a firm fixed-price contract and the lowest value to a cost-plus-fixed-fee contract. The guidelines below describe the considerations that should be applied to each contract type, along with conditions that would indicate above or below normal risk. The amount of profit for contract by risk is computed by multiplying the value assigned by the contracting officer times all allowable costs *excluding* G&A expenses, IR&D/B&P expenses, and facilities capital cost of money. An adjustment to the profit factor for contract type risk shall be made on all firm fixed-price and fixed-price incentive contracts as shown in 215.970–1(c) to take working capital requirements into account.

(1) *Firm Fixed-Price Contract (Designated Range 5% to 7%; Normal Value 6%).* The firm fixed-price contract presents the highest degree of contract type risk for the contractor. Although this contract type is normally applied on mature product lines with reasonably predictable cost estimates, many factors can affect the degree of risk assumed by the contractor. These factors include length of contract, economic environment, availability of cost history, extent of effort subcontracted under fixed-price arrangements, and protection provided by the contracting officer under other contract provisions (e.g., economic price adjustment). The normative value is 6%, but the contracting officer may assign a higher or lower value if risk is substantially more or less than normal, as shown immediately below in (b)(1) (i) and (ii).

(i) *Above Normal Conditions.* A value up to 7% may be assigned by the contracting officer is a particular factor or combination of factors creates a reasonably high degree of cost uncertainty under this contract type. For example, higher than normal contract type risk might occur if there is minimal cost history on effort to be performed by the contractor. Above normal risk might also be present on long-term contracts, particularly if there is considerable economic uncertainty and no provision protecting the contractor.

(ii) *Below Normal Conditions.* A value of not-less-than 5% may be assigned by the contracting officer if the risk is substantially lower than normal. For example, a very mature product line with a large volume of cost history would be expected to have less risk. Contracts with short periods of performance should be assigned lower profit values for contract type risk. In addition, the contracting officer should give full consideration to protection afforded the contractor under other contract provisions.

(2) *Fixed-Price Incentive Contracts (Designated Range 3% to 5%; Normative Value 4%).* The profit factor for fixed-price incentive contracts not only focuses on the degree of contract type risk, but it also recognizes the contractor's willingness to accept performance and cost incentives. The normative value is 4%. Adjustments within the designated range would be affected by the same considerations that affect risk on firm fixed-price contracts. However, additional considerations are necessary with respect to the type of incentive or combination of incentives, using the guidance shown immediately below in (b)(2) (i) and (ii).

(i) *Above Normal Conditions.* A value up to 5% may be assigned if an incentive provision or combination of incentive provisions (e.g., cost and performance incentives) places a higher degree of risk on the contractor than normal. This might include performance incentives on tasks with relatively difficult levels of achievement or tasks critical to contract completion. This might also include cost incentives where the contractor assumes a large percentage of the overtarget cost risk (e.g., contractor share is 50% or more). This would also include consideration of ceilings above which the contractor accepts full responsibility (e.g., 120% or less). Above normal risk should also include consideration of the guidance contained for firm fixed-price contracts.

(ii) *Below Normal Conditions.* A minimum value of not-less-than 3% may be assigned where cost risk assumed by the contractor under an incentive provision or combination of incentive provisions is lower than normal. For example, a lower value might be assigned if the contractor accepts minimum responsibility for over-target cost risk (e.g., contractor share is 30% or less; ceiling is 125% or more). Below normal risk should also include consideration of the guidance contained for firm fixed-price contracts. Fixed-price contracts with redeterminable provisions should be considered as an incentive contract with below normal contract type conditions.

(3) *Cost-Plus-Incentive-Free Contracts (Designated 1% to 3%; Normative Value 2%).* The profit factor for cost-plus-incentive-fee contracts also addresses the contractor's willingness to accept performance and cost incentives. The contracting officer should consider the impact of multiple incentives. The normative value for cost-plus-incentive-fee contracts is 2%, but the contracting officer may adjust this value within the designated range using the same guidance as described immediately above in (b)(2)(i) and (ii) for fixed-price incentive contracts. However, it must be recognized that some factors affect the contractor's cost responsibility more on fixed-price type contracts than on cost type contracts. Examples include contract length, economic environment, and program maturity.

(4) *Cost-Plus-Fixed-Fee Contracts (Designated Range 0% to .5%; Normative Value 0%).* There is generally no contract type risk associated with a cost-plus-fixed-fee contract; therefore, the normal value has been set at 0%. A value up to .5% may be assigned by the contracting officer if the contractor's cost responsibility as influenced by technical considerations is more than normal.

(5) Regardless of contract type, the contracting officer shall consider the extent of costs already incurred by the contractor under an undefinitized contract action. The profit value for the portion of costs incurred should be 0% because the contractor has minimum risk. The remaining portion of effort to be performed under a definitive contract may receive profit values equating to the contract type.

(6) Time and material contracts; labor hour contracts; overhaul contracts priced on a time and material basis; and firm fixed-price-level-of-effort-term contracts shall be considered to be cost-plus-fixed-fee contracts for the purpose of establishing a profit value for contract type risk.

(7) In determining contract type risk, it is appropriate to consider additional risks associated with contracts for foreign military sales (FMS) which are not funded by United States appropriations. For example, a contract containing an offset arrangement with the foreign country may expose the contractor to additional risk. The contracting officer may recognize additional risk if the contractor can demonstrate that there are substantial risks above that normally present in DoD contracts for similar items. If an additional risk factor is recognized, the total profit factor for cost risk shall not exceed the designated range limits established for each contract type. The additional assigned value for contract type shall not apply to FMS sales made

from United States Government inventories or stocks nor to acquisitions made under DoD cooperative logistics support arrangements.

(c) *Working Capital Adjustment Factor (As Computed; Upward Adjustment Limit 3%.)* This adjustment shall be made by the contracting officer on all fixed-price price type contracts in order to consider contractor working capital needs. No profit adjustment is to be made for working capital requirements on cost type contracts. The working capital adjustment factor employs a formula approach that takes into account the amount of contract effort financed by the contractor, interest rate, and length of contract. The formula is based on the same method used for computing simple interest (Interest = Principal × Rate × Time). The working capital adjustment factor is computed as follows (see reference for detailed description):

	Reference
Costs Financed by Contractor	(1)
Multiplied by Interest Factor	(2)
Annual Working Capital Costs	(3)
Multiplied by Contract Length	(4)
Contract Working Capital Costs	(5)
Less Adjustment Baseline	(6)
Working Capital Adjustment	(7)

(1) *Costs Financed by Contractor.* This represents all allowable costs, *including* contractor G&A expenses and IR&D/B&P expenses (but not facilities capital cost of money), that are financed by the contractor. The contractor's share of financing requirements is generally computed by multiplying total allowable costs time the portion not covered by progress payments. The portion not covered by progress payments will typically be 100% minus the customary progress payment rate (see 232.501–1). For example, if the contract provides for progress payments at 80%, then the contractor's share of financing would be 20% (100% minus 80%). At 85% progress payments the contractor's share would be 15% (100% minus 85%). On fixed-price contracts with either no progress payments, limited progress payments (e.g., first article financing), or flexible progress payments (252.232–7004), the contractor's share shall be computed as 100% minus the customary progress payment rate for large business. The amount of costs financed by the contractor may be reduced by other factors, as well. For example, the contracting officer should reduce costs financed by contractor to the extent that the prime contractor has an unreimbursed investment in subcontractors or when the contract includes provisions for advance payments.

(2) *Current Interest Factor.* The interest factor shall be 7.5%. This rate is subject to change by the Assistant Secretary of Defense for Acquisition and Logistics or designee, as economic conditions warrant. No other interest rate or factor is authorized.

(3) *Annual Working Capital Costs.* Multiply costs financed by contractor (1) by the interest factor (2).

(4) *Contract Length Factor.* This factor represents the length of contract, as determined by the contracting officer. It is not the period of time between contract award and close-out. Instead, it is the period of actual effort for performing the substantive portion of the work required under the contract. It should not include periods for performance contained in option provisions. Periods of little or no effort should be excluded from contract length. A composite length factor should be developed for contracts with multiple deliveries. In order to translate contract length into the mid-point of effort in terms of years, the number of months must be divided by 24 (by 2 to get mid-point of effort and by 12 to convert months to years).

(5) *Contract Working Capital Costs.* Multiply the annual working capital costs (3) by the contract length factor (4).

(6) *Adjustment Baseline.* The adjustment baseline reflects the Office of the Secretary of Defense's policy on the portion of working capital costs that may be recognized in the prenegotiation profit objective. The baseline amount is computed by multiplying total allowable contract costs, *including* G&A expenses and IR&D/B&P expenses (but not facilities capital cost of money), times 2.5%. This computation shall not be subject to modification by the contracting officer. Considerations applied in arriving at costs financed by the contractor in (1) shall not be applied in establishing baseline amounts.

(7) *Working Capital Adjustment.* The adjustment baseline (6) is subtracted from the contract working capital costs (5).

The net result is applied to the contract type risk amount. To the extent that the contract working capital costs exceed the adjustment baseline, the contract type risk amount is increased. Conversely, if the contract working capital costs are less, then the difference is subtracted from the profit amount for contract type risk.

The following examples are used to demonstrate the method for computing the working capital profit factor.

Example 1

Suppose Acme Manufacturing is to be awarded a negotiated contract for four assemblies costing $500,000 each (profit is to be excluded). The period of performance is 40 months with all assemblies being delivered at the end of the contract. Acme Manufacturing will receive progress payments at 80%, and the current interest factor is 7.5%.

Costs Financed by Contractor	[1] $400,000
Multiplied by Current Interest Factor (percent)	7.5
Annual Working Capital Costs	$30,000
Multiplied by Contract Length Factor (years)	[2] 1.67
Contract Working Capital Costs	$50,000
Less Adjustment Baseline	[3] (50,000)
Working Capital Adjustment	[4] $0

[1] $2,000,000 multiplied by (100% minus 80%).
[2] 40 months divided by 24.
[3] $2,000,000 multiplied by 2.5%.
[4] No adjustment needed to contract type risk amount.

Example 2

Suppose Acme Manufacturing delivered the four assemblies over a period of time (e.g., one each in the 34th, 36th, 38th, and 40th month). In this case the contract length factor should be weighted by the different delivery events. Assuming equal deliveries, the contract length factor should be 1.54 (weighted average contract length of 37 divided by 24).

Costs Financed by Contractor	[1] $400,000
Multiplied by Current Interest Factor (percent)	7.5
Annual Working Capital Costs	$30,000
Multiplied by Contract Length Factor (years)	[2] 1.54
Contract Working Capital Costs	$46,200
Less Adjustment Baseline	[3] (50,000)
Working Capital Adjustment	[4] ($3,800)

[1] $2,000,000 multiplied by (100% minus 80%).
[2] 37 months divided by 24.
[3] $2,000,000 multiplied by 2.5%.
[4] $3,800 subcontracted from contract type risk amount.

Example 3

Suppose 20% of Acme Manufacturing's effort involves subcontractor deliveries that commence immediately prior to Acme's four deliveries to the Government (e.g., contractor had no unreimbursed investment). The costs financed by the contractor should be proportionately reduced.

Costs Financed by Contractor	[1] $320,000
Multiplied by Current Interest Factor (percent)	7.5
Annual Working Capital Costs	$24,000
Multiplied by Contract Length Factor (years)	[2] 1.67

Contract Working Capital Costs..	$40,000
Less Adjustment Baseline..	[3] (50,000)
Working Capital Adjustment.....	($10,000)

[1] $2,000,000 multiplied by (100% minus 80%) reduced by 20%.
[2] 40 months divided by 24.
[3] $2,000,000 multiplied by 2.5%.
[4] $10,000 subcontracted from contract type risk amount.

(d) *Facilities Capital Employed.* This profit factor recognizes the facilities capital to be employed by the contractor in the performance of the contract. The amount of recognition is differentiated among asset categories in proportion to the potential for productivity. The amount of profit is computed by multiplying the value assigned by the contracting officer times the net book value of facilities capital employed in each asset category, as derived in DD Form 1861-2, "Contract Facilities Capital Cost of Money." In addition to the net book value of facilities capital employed, the contracting officer may consider facilities capital that is part of an approved investment plan, if the contractor submits reasonable evidence that achievable benefits to the Government will result from the investment and unrecorded investment is included in the forward pricing structure covering periods when the planned facilities will have been acquired and used.

(1) The normative values of profit recognition, along with the designated range of minimum and maximum values, for each asset category are shown below.

Asset type	Normative value (percent)	Designated range (percent)
Land	0	0 to 0
Buildings	25	20 to 30
Equipment	45	40 to 50

(2) The contracting officer's assessment should relate the usefulness of the facilities capital to the goods or services being acquired under the individual contract action, as well as to the broader perspective of defense programs. The contracting officer should examine the direct and identifiable benefits of facilities capital employed to productivity or other industrial base considerations. The assessment should consider the economic value of the facilities capital, such as physical age, undepreciated value, idleness, and expected contribution to future defense needs. The contracting officer should consider any special protection provisions that may be included in the contract which reduce the contractor's risk of investment recovery (termination protection clauses, capital investment indemnification). Typically, the normative value should be assigned by the contracting officer. However, a higher or lower value may be justified as indicated immediately below in (d)(2) (i) and (ii).

(i) *Above Normal Conditions.* The contracting officer may assign a higher than normative profit (up to 5% points more) where facilities capital investments are a substantial benefit to defense contracts. For example, a higher value might be justified for new investment in robotic technology which reduces unit costs of production. Investments in new equipment for research and development applications might also justify a higher profit assignment. Investments that are program unique and the contractor assumes a higher degree risk of recovery might represent above normal conditions.

(ii) *Below Normal Conditions.* Conversely, the contracting officer might assign a lower profit (up to 5% points less) where the capital employed provides little tangible benefit to defense contracts. This might be the case for allocations of capital which are predominantly applied to commercial product lines. A lower profit assignment might be justified on furniture and fixtures, home or group level administrative offices, corporate aircraft and hangars, gymnasiums, etc. Old facilities or extensive idle facilities should be considered.

(3) The contracting officer should ensure that increases in facilities capital investments are not merely asset revaluations attributable to mergers, stock transfers, takeovers, sales of corporate entities, or similar actions.

§ 15.970-2 Instructions for completing DD Form 1547.

The DD Form 1547 not only assists the contracting officer in establishing profit objectives under the Weighted Guidelines Method, it also serves as the principal source document for reporting profit statistics to DOD's management information system. It is essential that this form be prepared accurately on all contract actions employing the Weighted Guidelines Method.

(a) *General Guidance.* The items contained on the DD Form 1547 shall be completed as shown below. All amounts are those related to the price of the contract action without regard to funding status (e.g., amounts obligated). Amounts related to options for additional quantities shall be handled as a separate contract action when exercised. Items marked with an asterisk (*) do not have to be completed by field contracting officers that have been exempted from the profit reporting requirement (204.673-3). All dollar values shall be expressed to nearest whole value (e.g., $200,008.55 = $200,009). All factors and percentages shall be expressed to nearest hundredth of a percent (e.g., 1.67 years of 7.50%). In some cases, the information required will be identical to information provided on the related DD Form 350, "Individual Contracting Action Report."

(1) *Item 1—Report Number **. For each field contracting office identified in Item 5 below that is designated for profit reporting, a control system shall be established for consecutively numbering completed DD Forms 1547. A number does not have to be assigned until contract negotiations have been completed. This number is intended to identify the specific DD Form 1547 in DoD's management information system and will be used for follow-up actions. The contracting office shall assign a four-digit number starting with 0001 at the beginning of each fiscal year. This four-digit number shall be followed by a dash and the last two digits of the fiscal year (e.g., 0004-87 for 4th action in 1987). Numbers less than 1000 shall still be assigned four digits (e.g., 0004, 0055, 0123).

(2) *Item 2—Basic Procurement Instrument Identification No. (PIIN).* This is a four-part designation in the manner prescribed in 204.671-5(b)(1) for completing DD Form 350. The parts are as follows:

Subitem A—Purchasing Office;
Subitem B—Fiscal Year (FY);
Subitem C—Type Procurement Instrument Code (TPIC); and
Subitem D—Procurement Instrument Serial Number (PRISN).

(3) *Item 3—Supplemental Procurement Instrument Identification No. (SPIIN).* Enter supplemental agreement or other modification number in the manner prescribed for the DD Form 350 in 204.671-5(b)(2).

(4) *Item 4—Date of Action **. Enter the date when the price of the contract action was negotiated (e.g., 87-03 for March 1987).

(5) *Item 5—Name of Purchasing Office **. Enter the name of the contracting office using the same name as reported on the related DD Form 350.

(6) *Item 6—Federal Supply Class or Service **. Enter the appropriate Federal Supply Class or Service Code in accordance with instruments shown in 204.671-5(b)(8)(i).

(7) *Item 7—DoD Claimant Code **. Enter the appropriate code from the DoD Procurement Coding Manual, Volume 1, Section III, that describe the commodity or services being acquired under the contract.

(8) *Item 8—Type of Contract Code.* Enter the appropriate code as shown on the DD Form 1547.

(9) *Items 9 thru 15—Cost Category.* Enter the dollar values for the contracting officer's prenegotiation objectives for each applicable cost category. The amount for G&A expenses in Item 14 shall also include contractor IR&D/B&P expenses.

(10) *Item 16—Type Effort Code.* Enter the appropriate code as shown on the DD Form 1547.

(11) *Item 17—Weighted Guidelines Use Code *.* Enter the appropriate code as shown on the DD Form 1547.

(12) *Items 18 thru 25—Weighted Guidelines Profit Factors.* Enter whole dollar values and factors to nearest hundredth of a percent, as appropriate.

(13) *Items 22 thru 25—Negotiation Summary.* Enter dollar values for contractor proposed, contracting officer prenegotiation objective, and negotiated amounts.

(14) *Items 30 thru 33—Contracting Officer Approval.* All forms should be signed by the contracting officer. Include complete commercial telephone number (e.g., area code) so that follow-up actions can be accomplished quickly.

(b) *Special Guidance.*

(1) While it is recognized that fixed-price type contract actions are negotiated on the basis of total price, the negotiation summary portion of the DD Form 1547 shall be prepared showing the contracting officer's best estimates of cost and profit.

(2) Where multiple profit rates apply to a single negotiation, a consolidated DD Form 1547 shall be prepared.

(3) The profit analysis for indefinite delivery-type contracts is generally based on the annual requirements. The DD Form 1547 summarizing cost and profit estimates for the annual requirement shall be submitted with the first delivery order that exceeds $100,000.

215.971 Alternate approaches to Weighted Guidelines Method.

As provided in 215.902(a)(2), alternate structured approaches may be used in lieu of the Weighted Guidelines Method, on an exception basis. The contracting officer shall adhere to the provisions on profit factors and offset policy described below. See also guidance on cost-plus-award-fee contracts in 215.973.

215.971-1 Recognized profit factors.

The basic structure of the Weighted Guidelines Method establishes a uniform approach for examining the three components of profit: Performance risk, contract type risk (including working capital), and facilities capital employed. Alternate approaches should also consider these factors using the general principles described in 215.970.

215.971-2 Offset policy for facilities capital cost of money.

The values of the profit factors used in the Weighted Guidelines Method have been adjusted to recognize the shift in facilities capital cost of money from an element of profit to an element of contract cost (231.205-10). Reductions have been made directly to the profit factors for performance risk. In order to assure that this policy is applied to all DoD contracts which allow facilities capital cost of money, similar adjustments shall be made to contracts which use alternative structured approaches. Therefore, the contracting officer shall reduce the overall prenegotiation profit objective derived from alternate structured approaches by 1% (of total cost) or the amount of facilities capital cost of money, whichever is less.

215.971-3 Instructions for completing DD Form 1547.

For all selected field contracting offices identified in 204.673-3, the contracting officer shall report Items 1 through 8, 16 and 17, and 26 through 33 on all contract actions of $500,000 or more. A DD Form 1547 is necessary, even where an alternate structured approach is used because it is the principal source document for DoD's management information system on profit. Profit amounts in the negotiation summary shall be net of offset (215.971-2). Only the base fee shall be reported on cost-plus-award-fee contracts.

215.972 Modified Weighted Guidelines Method for nonprofit organizations.

215.972-1 Procedures for establishing profit objectives.

It is DoD's policy to establish the profit objective on defense contracts with nonprofit organizations in a manner that will stimulate efficient contract performance. To achieve this, the contracting officer shall use the Modified Weighted Guidelines Method described below. For purposes of applying this method, a nonprofit organization is a business entity which operates exclusively for charitable, scientific, or educational purposes; whose earnings do not benefit any private shareholder or individual; whose activities do not involve influencing legislation or political campaigning for any candidate for public office; and is exempted from Federal income taxation under section 501 of the Internal Revenue Code.

(a) The contracting officer shall use the guidelines described in 215.970 but make the following adjustments to the profit objective:

(1) The performance risk profit factor shall be reduced by 1% of total costs, *excluding* G&A expenses and IR&D/B&P expenses.

(2) The designated range for the contract type risk profit factor on a cost-plus-fixed-fee shall be −1% to 0% of total costs, *excluding* G&A expenses and IR&D/B&P expenses, for contracts with nonprofit organizations or elements that have been identified by the Secretary of Defense or Secretary of a Department, or their designees, as receiving sustaining support on a cost-plus-fixed-fee basis from a particular Department or Agency of the Department of Defense.

(b) In addition to the profit amounts computed in (a) above, the contracting officer shall consider the need for profit on contracts to be awarded to a nonprofit organization designated as a Federally Funded Research and Development Center (FFRDC). Such consideration shall include the FFRDC's proportion of retained earnings, as established under generally accepted accounting methods, that is relatable to DoD contracted effort. The need for profit may be based on the FFRDC's facilities capital acquisition plans, working capital funding as assessed on operating cycle cash needs, contingency funding, and provision for funding unreimbursed costs deemed ordinary and necessary to the FFRDC.

215.972-2 Instructions for completing DD Form 1547.

A DD Form 1547 shall be prepared on all contract actions using the Modified Weighted Guidelines Method if the applicability criteria specified for structured approaches in 215.902 are met. The instructions contained in 215.970-2 should be applied. Profit amounts included in the negotiation summary shall be net of offsets and need-for-profit considerations.

§ 215.973 Cost-plus-award-fee contracts.

The policies and procedures for establishing fee provisions on cost-plus-award-fee contracts are contained in 216.404-2. Although these procedures prohibit application of the Weighted Guidelines Method to cost-plus-award-fee contracts, and similarly the general guidance on alternate structured approaches contained in 215.971-1, the offset policy for facilities capital cost of money shall apply. Therefore, the contracting officer shall reduce the base fee on cost-plus-award-fee contracts by the lesser of 1% of total costs or the

amount of facilities capital cost of money.

PART 230—COST ACCOUNTING STANDARDS

4. Subpart 230.70, consisting of sections 230.7001 through 230.7007, is revised to read as follows:

Subpart 230.70—Facilities Capital Employed for Facilities In Use

Sec.
230.7001 Policy.
230.7002 Definitions, measurement, and allocation.
230.7003 Estimating business unit facilities capital and cost of money.
230.7004 Contract facilities capital estimates.
230.7005 Preaward facilities capital applications.
230.7006 Postaward facilities capital applications.
230.7007 Administrative procedures.

§ 230.7001 Policy.

(a) It is the policy of the Department of Defense to recognize facilities capital employed as an element in establishing the price of certain negotiated defense contracts when such contracts are priced on the basis of cost analysis. The inclusion of this recognition is intended to reward contractor investments, motivate increased productivity and reduced costs through the use of modern manufacturing technology, and to generate other efficiencies in the performance of defense contracts. The recognition of contractor investments in the development of the profit objective will result in a profit objective based on a combination of effort, risk, and investment factors.

(b) Separate recognition shall be given to the cost of capital and the special risk associated with the facilities capital employed for defense contractor purposes.

(1) The risk aspects of facilities capital employed shall be recognized as a part of profit when the profit objective is established in accordance with the guidelines set forth in 215.970–1(d).

(2) Cost of money for facilities capital will be recognized as an allowable cost in those negotiated defense contracts priced on the basis of cost analysis (see FAR 31.205–10(a)).

§ 230.7002 Definitions, measurement, and allocation.

Cost Accounting Standard (CAS) No. 414, "Cost of Money as an Element of the Cost of Facilities Capital" (See Appendix 0), establishes criteria for the measurement and allocation of the cost of capital committed to facilities, as an element of contract cost for historical cost determination purposes. Important features of the CAS are its definitions, techniques for application, and a prescribed Form CASB–CMF with instructions. This Subpart adopts techniques of CAS 414 as the approved methods of measurement and allocation of facilities cost of money to overhead pools at the business unit level, and adds only such supplementary procedures as are necessary to extend those techniques to contract forward pricing and administration purposes. Therefore, these procedures are intended to be completely compatible with, and an extension of, the definitions, criteria and techniques of CAS 414. Contractors who computerize their financial data are encouraged to meet the requirements of both CAS 414 and this Subpart from the same data bank and programs.

§ 230.7003 Estimating business unit facilities capital and cost of money.

The method of estimating the business unit facilities capital and cost of money utilizes the techniques of CAS 414. Cost of money factors (CMF) by overhead pools at the business unit are developed using Form CASB–CMF. Three elements are required to develop cost of money factors: business unit facilities capital data, overhead allocation base data, and the interest rate promulgated by the Secretary of the Treasury pursuant to Pub. L. 92–41. These elements are discussed below.

(a) *Business Unit Facilities Capital Data.* The net book value (acquisition cost less accumulated depreciation) is used for each cost accounting period. The net book value used is the total of:

(1) The net book value of facilities recorded on the accounting records of the business unit,

(2) The capitalized value of leases (see FAR 31.205–2 and FAR 31.205–36), and

(3) The net book value of facilities at the corporate or group level that support depreciation charges allocated to the business unit in accordance with the provisions of CAS 403. Projections of facilities capital will be supported by budget plans and/or similar type documentation and the estimated depreciation will be the same as used in projected overhead rates. Projections will accommodate changes in the level of facilities net book value, e.g., facilities additions, deletions of facilities by sale, abandonment or other disposal, idle facilities (See FAR 31.205–17).

(b) *Overhead Allocation Bases.* The base data used to compute the CMF must be the same as that used to compute the proposed overhead rates. CMF's should be submitted and evaluated as part of the proposal.

(c) *Interest Rate.* For purpose of projection, the most recent interest rate promulgated by the Secretary of the Treasury will be used as the cost of money rate in Column 1 of Form CASB–CMF and the same rate must be used on the DD Form 1861–2, "Contract Facilities Capital Cost of Money" (see 230.7004 below). Where actual costs are used in definitization actions, the actual treasury rate(s) applicable to the period(s) of the incurred cost will be recognized by development of a composite rate.

(d) *Determination of Final Cost of Money.* CMF's estimated in accordance with the above procedures are used to develop the facilities investment base used in the prenegotiation profit objectives. Actual CMF's are required when it is necessary to determine final allowable costs for cost settlement and/or repricing in accordance with CAS 414 and FAR 31.205–10.

230.7004 Contract facilities capital estimates.

(a) After the appropriate Forms CASB–CMF have been analyzed and CMF's have been developed, the contracting officer is in a position to estimate the facilities capital cost of money and capital employed for a contract proposal. Two forms have been provided for linking the Form CASB–CMF and DD Form 1547, "Record of Weighted Guidelines Method Application": DD Form 1861–1, "Facilities Capital Cost of Money—Distribution of Asset Types," and DD Form 1861–2. This is necessary to provide the degree of differentiation sought in the profit to be established for varying asset types (land, buildings, equipment). An evaluated contract cost breakdown, reduced to the contracting officer's prenegotiation cost objective, must be available. The procedure is similar to applying overhead rates to appropriate overhead allocation bases to determine contract overhead costs.

(b) Both DD Form 1861–1 and DD Form 1861–2 provide for listing overhead pools and direct-charging service centers (if used) in the same structure they appear on the contractor's cost proposal and Form CASB–CMF. The structure and allocation base units-of-measure must be compatible on all three displays. The base for each overhead pool must be broken down by year to match each separate Form CASB–CMF. Appropriate contract overhead allocation base data are extracted by year from the evaluated cost breakdown or prenegotiation cost objective, and are listed against each separate Form CASB–CMF. Each allocation base is

multiplied by its corresponding cost of money factor to get the Facilities Capital Cost of Money estimated to be incurred each year. The sum of these products represents the estimated Contract Facilities Capital Cost of Money for the year's effort. Total contract facilities cost of money is the sum of the yearly amounts.

(c) Since the Facilities Capital Cost of Money Factors reflect the applicable cost of money rate in Column 1 of Form CASB–CMF, the Contract Facilities Capital Employed can be determined by *dividing* the contract Cost of Money by that same rate. Both DD Form 1861–1 and DD Form 1861–2 have been designed to record and compute all the above in the most direct way possible, and the end result is the Contract Facilities Capital Cost of Money and Capital Employed which is carried forward to DD Form 1547.

230.7005 Preaward facilities capital applications.

Facilities Capital Coat of Money and Capital Employed as determined above, are applied in establishing cost and price objectives as follows:

(a) *Cost of Money.—(1) Cost Objective.* This special, imputed cost of money shall be used, together with normal, booked costs, in establishing a cost objective or the target cost when structuring an incentive type contract Target costs thus establshed at the outset, shall not be adjusted as actual cost of money rates become available for the periods during which contract performance takes place.

(2) *Profit Objective.* Cost of money shall not be included as part of the cost base when measuring the contractor's effort in connection with establishing a prenegotiation profit objective. The cost base for this purpose shall be restricted to normal, booked costs.

(b) *Facilities Capital Employed.* The profit objective as it relates to the risk associated with facilities capital employed shall be assessed and weighted in accordance with the profit guidelines set forth in 215.970–1(d).

230.7006 Postaward facilities capital applications.

(a) *Interim Billings Based on Cost Incurred.* Contract Facilities Capital Cost of Money may be included in cost reimbursement and progress payment invoices. The amount that qualifies as cost incurred for purposes of the "Cost Reimbursement, Fee and Payment" or "Progress Payment" clause for the contract is the result of multiplying the incurred portions of the overhead pool allocation bases by the latest available Cost of Money Factors. Like applied overhead at forecasted overhead rates, such computations are interim estimates subject to adjustment. As each year's data are finalized by computation of the actual Cost of Money Factors under CAS 414 and FAR 31.205–10, the new factors should be used to calculate contract facilities cost of money for the next account period.

(b) *Final Settlement.* Contract facilities capital cost of money for final cost determination or repricing is based on each year's final Cost of Money Factors determined under CAS 414 and supported by separate Forms CASB–CMF. Contract cost must be separately computed in a manner similar to yearly final overhead rates. Also like overhead costs, the final settlement will include an adjustment from interim to final contract cost of money. However, estimated or target cost will not be adjusted.

230.7007 Administrative procedures.

(a) Contractor submission of Forms CASB–CMF will normally be initiated under the same circumstances as Forward Pricing Rate Agreements (see FAR 15.809), and evaluated as complementary documents and procedures. Separate forms are required for each prospective cost accounting period during which Government contract performance is anticipated. If the contractor does not annually negotiate FPRA's, submissions may nevertheless be made annually *or* with individual contract pricing proposals, as agreed to by the contractor and the cognizant ACO. The cognizant ACO shall, with the assistance of the cognizant auditor, evaluate the cost of money factors, and retain proposed factors with other negotiated forward pricing data and rates.

(b) The contracting officer using the Weighted Guidelines Method under 215.970 will complete DD Form 1861–1 and DD Form 1861–2 only after evaluating the contractor's cost proposal and establishing negotiation objectives on cost. These forms are, however, a prerequisite to completing the DD Form 1547. Computer generated forms for completing DD Form 1861–1 and DD Form 1861–2 are acceptable, provided all essential data elements are adequately identified. The contracting officer may also request completion of these forms in connection with normal field pricing support under 215.805 by the cognizant contract administration office.

(c) A final Form CASB–CMF must be submitted by the contractor under CAS 414 as soon after the end of each cost accounting period as possible, for the purpose of final cost determinations and/or repricing. The submission should accompany the contractor's proposal for actual overhead costs and rates, and be evaluated as complementary documents and procedures.

PART 253—FORMS

5. The list of forms following section 253.270 is amended by removing 253.303–70–DD–1499 DD Form 1499: Report of Individual Contract Profit Plan; by revising 253.303–70–DD–1547, the title for DD Form 1547 to read "Record of Weighted Guidelines Method Application" in lieu of "Weighted Guidelines Profit/Fee Objective"; by removing 253.303–70–DD–1861 DD Form 1861: Contract Facilities Capital and Cost of Money; and by adding 253.303–70–DD–1861–1 DD Form 1861–1: Facilities Capital Cost of Money—Distribution of Asset Types and 253.303–70–DD–1861–2 DD Form 1861–2: Contract Facilities Capital Cost of Money.

[FR Doc. 86–21120 Filed 9–17–86; 8:45 am]
BILLING CODE 3810–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearings and Reopening of Comment Period on Proposed Endangered Status and Critical Habitat for the Virgin River Chub

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service gives notice that a public hearing will be held on the proposed determination of endangered status and critical habitat for the Virgin River chub (*Gila robusta seminuda*) and that the comment period on the proposal is reopened. The hearing and the reopening of the comment period will allow comments on this proposal to be submitted from all interested parties.

DATES: The public hearing will be held from 7 to 10 p.m., Wednesday, October 15, 1986, in St. George, Utah. The comment period on this proposal is reopened on October 15, 1986. The comment period which originally closed on August 25, 1986, now closes December 15, 1986. Comments received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: The public hearing will be held at the following location: St. George, Utah, Sun Room, Student Union Building, Dixie College—October 15, 1986.

Written comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Service's Regional Endangered Species Office, 500 Gold Avenue SW., Room 4000, Albuquerque, NM.

FOR FURTHER INFORMATION CONTACT: For information on the public hearings contact Gerald Burton, Endangered Species Biologist, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103 (505/766–3972 or FTS 474–3972).

SUPPLEMENTARY INFORMATION:

Background

The Virgin River chub is found only in the Virgin River in Arizona, Nevada, and Utah. The fish is threatened by water diversion, desalination, urban growth, impoundment, pollution, sedimentation, and by competition and predation by exotic fish species. A proposal of endangered status with critical habitat for the Virgin River chub was published in the **Federal Register** (51 FR 22949) on June 24, 1986.

Section 4(b)(5)(E) of the Endangered Species Act of 1973, as amended, required that a public hearing be held, if requested within 45 days of the publication of a proposed rule. That 45 day period, for this proposal, ended on August 8, 1986. The Service received six requests for a public hearing in St. George, Utah on this proposal. Requests were received from John S. Williams, Executive Director, Five County Association of Governments, St. George, Utah, on July 11, 1986; Jerry B. Lewis, Chairman, Washington County Commission, St. George, Utah, on August 1, 1986; Fred W. Finilinson, Callister, Duncan and Nebeker, Attorneys-at-Law, Salt Lake City, Utah, on August 5, 1986; Tom Hatch, Chairman, Color Country Resource Conservation and Development, Cedar City, Utah, on August 7, 1986; Norman H. Bangerter, Governor, State of Utah, Salt Lake City, on August 7, 1986; and Robert A. Stark, Mayor, Washington City, Utah, on August 20, 1986.

The Service has scheduled a public hearing for October 15, 1986, from 7:00 to 10:00 p.m., Sun Room, Student Union Building, Dixie College, 225 South 700 East, St. George, Utah. Those parties wishing to make statements for the record should have available a copy of their statements to be presented to the Service at the start of the hearing. Oral statements may be limited to 5 or 10 minutes, if the number of statements to be presented necessitates some limitation. There are no limits to the length of written comments presented at the hearing or mailed to the Service during the comment period.

The comment period on the proposal originally closed August 25, 1986. To accommodate the hearings, the Service is reopening the public comment period. Written comments will now be received from October 15 until December 15, 1986, at the Service office in the ADDRESSES section.

Author

This notice was prepared by Gerald L. Burton, Endangered Species Biologist, U.S. Fish and Wildlife Service, Albuquerque, MN.

The authority for this action is as follows:

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. 1225; 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: September 11, 1986.

Michael J. Spear,

Regional Director.

[FR Doc. 86–21113 Filed 9–18–86; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 51, No. 181
Thursday, September 18, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Housing Guaranty Program; Investment Opportunity, Portugal

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan for the Government of Portugal as part of A.I.D.'s development assistance program. The proceeds of this loan will be used to finance shelter projects for low income families in Portugal. The Government of Portugal has authorized A.I.D. to request proposals from eligible investors. The name and address of representative of the Borrower to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

Government of Portugal

Project: 150–HG–003—$12,500,000
Attention: Dr. J. Coutinho Pais, President, Instituto Nacional de Habitacao, Av Columbano Bordalo Pinheiro, 5, 1093 Lisboa Codex, Portugal, Telephone: 726–6552 or 726–4944, Telex: 64641 INH P.

Interested investors should telegram their bids to the Borrower's representative on October 8, 1986 but no later than 9:00 p.m. New York Time. Bids should be open at least 48 hours. Copies of all bids should be simultaneously sent to the following addresses:

Mr. David Leibson, Housing Officer, Embaixada dos Estados Unidos, Av. das Forcas Armadas, 1507 Lisboa Codex, Telex: 12528 AMEMB P, Telephone: 726–6600 or 726–8880

Michael G. Kitay, Agency for International Development, GC/PRE, Room 3208 N.S., Washington, DC 20523, Telex No.: 892703 AID WSA, Telefax No. 202/647–1805.

Each proposal should consider the following terms:

(a) *Amount:* U.S. $12.5 million.

(b) *Term:* Up to 30 years.

(c) *Grace Period on Principal:* 10 years.

(d) *Interest Rate:* Proposals will be made on the basis of fixed or variable rate with Borrowers option to convert to fixed rate.

(e) *Draw Down:* Net proceeds from borrowing should be disbursed to Borrower upon signing.

(f) *Prepayment:* Proposals should include the possibility of partial or total prepayment of the loan by Borrower.

(g) *Fees:* Payable at closing from proceeds of loan.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. The lender and A.I.D. shall enter into a Contract of Guaranty, covering the loan. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in section 238(c) of the Act. They are: (1) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from: Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, Room 6212 N.S., Washington, DC 20523, Telephone: (202) 647–9506.

Dated: September 12, 1986.

Mario Pita,

Deputy Director, Office of Housing and Urban Programs.

[FR Doc. 86–21077 Filed 9–17–86; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Access to Golden Bear Claims in the Frank Church-River of No Return Wilderness, Payette National Forest, Valley County, ID; Environmental Impact Statement Cancellation Notice

The Notice of Intent, published in the Federal Register of November 29, 1985, is hereby rescinded (45 FR 54386).

The Department of Agriculture, Forest Service, has completed a Mineral Report on the validity of the Golden Bear Claims and is contesting the validity of the claims. The need to prepare an environmental impact statement for a proposal to permit the maintenance of a 10-mile section of the Big Creek mining road and the construction of 1.5 mile section for the purpose of vehicular access to the Golden Bear Claims is moot. The environmental impact statement would have addressed access to a valid claim. The environmental impact statement is, therefore, suspended, and no further consideration will be given to access and road construction until valid claims can be established according to law.

For further information, contact: Earl Kimball, Krassel District Ranger, P.O. Box 1026, McCall, Idaho, 83638; telephone 208–634–8151.

Dated: September 11, 1986.

T. A. Roederer,

Deputy Regional Forester, Resources.

[FR Doc. 86–21078 Filed 9–17–86; 8:45 am]

BILLING CODE 3410–11–M

Rural Electrification Administration

Brazos Electric Power Cooperative, Inc., Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and REA Environmental Policy and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact (FONSI) with respect to the construction of a 138 kV transmission line and substation in Kent and Scurry Counties, Texas, by Brazos Electric Power Cooperative, Inc. (Brazos).

FOR FURTHER INFORMATION CONTACT: REA's FONSI and Environment Assessment (EA) and Brazos Environmental Analysis (EVAL) may be reviewed at the office of the Director, Southwest Area-Electric, Room 0207 South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, Telephone (202) 382–8848, or at the office of Brazos Electric Power Cooperative, Inc., (Richard E. McCaskill, Manager), 2404 La Salla Avenue, Waco, Texas 76706–0296, Telephone (817) 752–2501, during regular business hours.

Copies of the EA and FONSI can be obtained from either of the contacts listed above. Any comments or questions should be directed to the REA contact.

SUPPLEMENTARY INFORMATION: REA, in conjunction with a request for construction approval from Brazos, has reviewed the EVAL submitted by Brazos and has determined that it represents an accurate assessment of the environmental impacts of the proposed project. The project consists of constructing 64.4 km (40 mi) of 138 kV transmission line within a 30 meter (100-ft.) right-of-way between the existing Texas Utility Electric Company Sun Switching Station in Scurry County and a proposed 138/12.5 kV Salt Creek Substation west of Clairemont in Kent County.

REA determined that the proposed project will have no effect on wetlands, floodplains, prime forestland or rangeland, threatened and endangered species or critical habitat, and any property listed or eligible for listing in the National Register of Historic Places. Approximately 55 percent of the study area contains soils that are classified as prime farmland. Regardless of the route selected, approximately 0.13 ha (0.33 ac) of important farmland will be impacted by the wood H-frame structures and less than 0.81 ha (2 ac) will be impacted at the substation site. There is no practiable alternative that would avoid or reduce the small amount of important farmland that would be converted or encroached upon.

No other matters of potential environmental concern have been identified.

Alternatives examined for the proposed transmission line and substation include no action and alternative line routes. REA determined that construcing the proposed project along the preferred route and at the preferred substation site is an environmentally acceptable alternative for Brazos to serve the new load.

Based upon the EVAL, REA prepared an EA concerning the proposed project and its impacts. REA has independently evaluated the proposed project and has concluded that project approval would not constitute a major Federal action significantly affecting the quality of the human environment. Consequently, no environmental impact statement is required.

In accordance with REA Environmental Policy and Procedures (7 CFR Part 1794), Brazos advertised and requested comments on the environmental aspects of the proposed project in local newspapers. There were no comments.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.850—Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the final rule related notice to 7 CFR Part 3015 Subpart V., this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

Dated: September 12, 1986.

Jack Van Mark,

Acting Administrator.

[FR Doc. 86–21036 Filed 9–17–86; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–565–501]

Certain Small Diameter Welded Carbon Steel Pipes and Tubes From the Philippines; Final Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that certain small diameter welded carbon steel pipes and tubes (pipes and tubes) from the Philippines are being, or are likely to be, sold in the United States at less than fair value. We have notified the United States International Trade Commission (ITC) of our determination and the ITC will determine within 45 days of publication of this notice whether these imports are materially injuring or threatening material injury to a U.S. industry. We have directed the U.S. Customs Service to continue to suspend liquidation on all entries of the subject merchandise as directed in the "Continuation of Suspension of Liquidation" section of this notice and to require a cash deposit or posting of a bond for each such entry in amounts equal to the estimated dumping margins as described in the "Continuation of Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: September 18, 1986.

FOR FURTHER INFORMATION CONTACT: Mary J. Jenkins or John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230: telephone (202) 377–1756 or 377–3965.

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation, we have determined that pipes and tubes from the Philippines are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The weighted-average margin of sales at less than fair value is listed in the "Suspension of Liquidation" section of this notice.

Case History

On November 13, 1985, we received a petition filed in proper form from tne Standard Pipe Subcommittee of the Committee on Pipe and Tube Imports and by each of the member companies who produce the standard pipe and tube on behalf of the U.S. industry producing pipes and tubes. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of pipe and tube from the Philippines are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673), and that these imports are materially injuring, or threatening material injury to, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated the investigation on December

3, 1985 (50 FR 51274, December 16, 1986), and notified the ITC of our action.

On December 30, 1985, the ITC found that there is a reasonable indication that imports of standard pipe and tube from the Philippines are threatening material injury to a U.S. industry (U.S. ITC Pub. No 1796, Dec. 1985).

On February 3, 1986, a questionnaire was presented to Goodyear Steel Pipe Corporation (Goodyear) and on February 18, 1986, a questionnaire was sent to Mitsubishi International Corporation.

On Marcn 18, 1986, Mitsubishi submitted a response to our questionnaire. On April 15, 1986, Mitsubishi submitted a supplemental response. Goodyear, the Philippine producer of the majority of imports of pipe and tube to the United States from the Philippines, submitted responses to our questionnaire on May 12, June 23, and July 7, 1986. After receipt of the May 12 and June 23 responses, we analyzed their content and sent our deficiency letters. However, despite these repeated requests, Goodyear's response, as supplemented, did not provide sufficient actual cost data to determine fabrication costs in the home market, and failed to list actual home market sales. Accordingly, we determined that any additional submissions would not allow the Department sufficient time to analyze and verify the data prior to our final determination.

On April 22, 1986, we preliminarily determined that pipe and tube from the Philippines are being or are likely to be, sold in the United States at less than fair value (51 FR 15940, April 29, 1986).

On May 9, 1986, we issued a postponement of the final antidumping duty determination until not later than September 11, 1986 (51 FR 17784, May 15, 1986).

On July 23 and 24, 1986, we verified Mitsubishi's questionnaire response.

Scope of Investigation

The products covered by this investigation are small diameter welded carbon steel pipe and tube of circular cross-section, 0.375 inch or more but not over 16 inches in outside diameter, currently classifiable in the *Tariff Schedules of the United States Annotated* (TSUSA), under items 610.3231 and 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258 and 610.4925. These products are commonly referred to in the industry as standard pipes or tubes produced to various ASTM specifications, most notably A–120, A–53 and A–135.

Because Goodyear accounted for the majority of the exports of this merchandise to the United States, we limited our investigation to that firm. We investigated sales of pipe and tube for the period June 1, 1985 through November 30, 1985.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

Goodyear, the manufacturer under investigation, engaged in a different type of sales transaction of pipe and tube in each market. In the home market, Goodyear's sales consisted entirely of non-tolled sales wherein Goodyear produced pipe and tube from its own stocks of hot-rolled coil. In the U.S. market, Goodyear's sales of pipe and tube consisted entirely of tolled sales wherein Mitsubishi, the U.S. importer, provided Goodyear with the basic raw material for the manufacture of pipe and tube, which it had purchased from another source, and contracted with Goodyear to convert it into the pipe and tube.

We compared the tolled sales to the United States with the non-tolled sales in the home market, since there were no tolled sales in the home market. We made an adjustment for raw material costs in the home market to arrive at the price of a tolled sale in the Philippines using the best information available as required by section 776(b) of the Act, because Goodyear did not provide an adequate response for the determination of foreign market value of a tolled sale.

We made comparisons of virtually all of the sales of pipe and tube to the United States during the period June 1, 1985 through November 30, 1985.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise imported by Mitsubishi, the U.S. importer, to represent the United States price because the merchandise was sold prior to the date of importation. Since Mitsubishi provided the raw material to Goodyear which Goodyear used to manufacture the pipe and tube, United States price is the price per metric ton of pipe and tube agreed to in the contract between Goodyear and Mitsubishi.

Foreign Market Value

Goodyear did not submit either home market sales data or the actual cost data necessary to determine manufacturing costs in the home market. In accordance with section 776(b) of the Act, we used best information available to determine foreign market value. We used the information supplied by the petitioners as the prices at which Goodyear sold or offered for sale its products in the home market during October 1985. From the home market price, we subtracted the cost of raw materials, as reported by Mitsubishi, to arrive at home market price of tolled sales of black plain-ended, and coupled and threaded standard pipe and tube.

Because we made fair value comparisons on the basis of prices of tolled sales in the home and U.S. markets, the resulting differences have been multiplied by a coefficient representing the proportion of manufacturing cost to the value of pipe and tube delivered to Mitsubishi to arrive at the margins for individual sales.

Verification

In accordance with section 776(a) of the Act, we verified information submitted by Mitsubishi as to the price it paid for raw materials and for processing. Their data were used in making our final determination. We were granted access to the books and records of the company. We used standard verification procedures including examination of accounting records and other selected documents containing relevant material.

Petitioners' Comments

Comment 1: Petitioners argue that Mitsubishi has a conversion contract with Goodyear and that Mitsubishi is the producer/exporter of Philippine pipe and tube in this case. If the Department uses Mitsubishi's partial information, it must determine foreign market value using constructed value.

DOC Response: We disagree. While Mitsubishi provided the raw materials to Goodyear for the manufacture of the pipe and tube under investigation, Goodyear is the manufacturer of the product exported to the United States, and is, therefore, the appropriate subject of our investigation. The contract between Mitsubishi and Goodyear establishes the purchase price per unit for an agreed upon number of tolled sales of pipe and tube to Mitsubishi in the United States. The appropriate foreign market value is, therefore, Goodyear's home market prices, adjusted to account for the fact that Goodyear's home market sales are untolled sales.

Comment 2: Petitioners state that standard pipe and tube other than that reported by Mitsubishi entered the United States from the Philippines. Therefore, pipe and tube under investigation may have been transshipped from a third country.

DOC Response: Based on information gathered by the Department from the U.S. Customs Service Special Steel Summary Invoices (SSSIs), the imports for 1985 from the Philippines were in agreement with those reported by the respondent. Our SSSI report provides country of origin for pipe and tube exported to the United States. We have no indication that pipe and tube has been transshipped from another country.

Respondent's Comments

Comment 1: Respondent, Goodyear, argues that petitioners' presentation of Philippine home market prices for Goodyear's pipe and tube were gross prices which included a 10 percent domestic sales tax required by the government.

DOC Response: Based on our analysis of home market prices reported by Goodyear and prices reported by petitioners, we could not determine whether the 10 percent tax was included in the prices used. Actual home market sales transactions for the period under investigation were not reported by Goodyear.

Continuation of Suspension of Liquidation

In accordance with section 733(b) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of pipes and tubes from the Philippines entered, or withdrawn from warehouse, for consumption on or after April 29, 1986. The U.S. Customs Service will require the posting of a cash deposit, bond, or other security in amounts based on the following weighted-average margin.

Manufacturers/sellers/exporters	Weighted-average margin (percent)
Goodyear Steel Pipe Corporation	10.2%
All others	10.2%

ITC Notification

Pursuant to section 733(f) of the Act, we will notify the ITC and make available to it all non privileged and non proprietary information relating to this determination. We will allow the ITC access to all privileged and proprietary information in our files, provided it confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days of the date of this determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs offices to assess an antidumping duty on pipes and tubes from the Philippines that are entered, or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

September 11, 1986.

[FR Doc. 86-21165 Filed 9-17-86; 8:45 am]

BILLING CODE: 3510-DS-M

[A-559-502]

Certain Welded Carbon Steel Small Diameter and Light-Walled Rectangular Pipes and Tubes From Singapore; Final Determination of Sales at Less Than Fair Value

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

ACTION: Notice.

SUMMARY: We have determined that certain welded carbon steel small diameter and light-walled rectangular pipes and tubes (small diameter and LWR pipes and tubes, respectively) from Singapore, are being, or are likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determinations. We have also directed the U.S. Customs Service to continue to suspend the liquidation of all entries of small diameter and LWR pipes and tubes from Singapore that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margins as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: September 18, 1986.

FOR FURTHER INFORMATION CONTACT: Francis R. Crowe or Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-4087, or (202) 377-1769.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that small diameter and LWR pipes and tubes from Singapore are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The margins found for the individual products under investigation are listed in the "Suspension of Liquidation" section of this notice.

Case History

On November 13, 1985, we received a petition filed in proper form from the Standard Pipe and Tube Subcommittee of the Committee on Pipe Tube Imports (CPTI) and by each of the individual manufacturers of these products that are members of each respective subcommittee on behalf of the U.S. industry producing small diameter, LWR and heavy-walled rectangular pipes and tubes. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of small diameter, LWR and heavy-walled rectangular pipes and tubes from Singapore are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry. The petition also alleged that the subject merchandise is being sold at prices below the cost of production in the home market.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate antidumping duty investigations. We initiated the investigations on December 3, 1985 (December 11, 1985, 50 FR 50653), and notified the ITC of our actions.

On December 30, 1985, the ITC found that there is a reasonable indication that imports of small diameter and LWR pipes and tubes from Singapore are materially injuring a U.S. industry. It also found that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Singapore of heavy-walled rectangular pipes and tubes (U.S. ITC Pub. No. 1796, December 1985).

On January 22, 1986, a questionnaire was presented to Steel Tubes of Singapore (PTE), Ltd. (STS) On April 14, 1986, STS filed a response to our questionnaire. On April 22, 1986, we made affirmative preliminary determinations (April 29, 1986, 51 FR 15941).

On April 25, 1986, the respondent in these investigations asked us to postpone the final determinations until not later than the 135th day after the date of publication of our preliminary determinations. We granted that request on May 8, 1986 (May 20, 1986, 51 FR 18475) and postponed the final determinations until not later than September 11, 1986.

Scope of Investigations

The products covered by these investigations are described below.

Small diameter welded carbon steel pipes and tubes are pipes and tubes of circular cross-section, 0.375 inch or more but not over 16 inches in outside diameter, currently classifiable in the *Tariff Schedules of the United States Annotated* (TSUSA), under items 610.3231 and 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258 and 610.4925. These products are commonly referred to in the industry as standard pipes or tubes produced to various ASTM specifications, most notably A–120, A–53 or A–135.

The light-walled rectangular pipes and tubes are mechanical pipes and tubes or welded carbon steel pipes and tubes of rectangular (including square) cross-section having a wall thickness of less than 0.156 inch as provided for in item 610.4928 of the TSUSA.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price based upon purchase price with the foreign market value based upon home market sales or constructed value as described below.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold prior to the date of importation to unrelated purchasers in the United States. We calculated the purchase price based on the delivered price to unrelated purchasers in the United States. We made deductions for foreign inland freight and port charges, ocean freight, insurance, U.S. import duty and port charges, as applicable.

Foreign Market Value

Petitioners alleged that sales in the home market were made at prices which were below the cost of production over an extended period of time and were at prices which did not permit recovery of all costs within a reasonable period of time in the normal course of trade. Therefore, we compared home market prices to the cost of production of the merchandise.

For certain categories of such or similar merchandise, we calculated foreign market value based on constructed value in accordance with section 773(e) of the Act, because there were not sufficient home market sales of such or similar merchandise above the cost of production. Because the general expenses reported were above the statutory minimum of 10 percent of the sum of material and production costs, we used the actual general expenses. For purposes of this determination, we are using the statutory minimum of eight percent for profit because STS's profit for the period of investigation was less than that amount. We added packing costs for sales to the United States.

For the remainder of the merchandise, we based foreign market value on sales in the home market of such or similar merchandise in accordance with section 773(a)(1)(A) of the Act. Home market sales were made to unrelated purchasers on an ex-factory or delivered basis. From the home market prices we deducted freight expenses, as applicable. We also deducted home market packing costs and added U.S. packing costs.

For both types of foreign market value, whether based on home market sales or constructed value, we made adjustments for differences in circumstances of sale based on differences in credit costs and commissions in the foreign and U.S. markets in accordance with § 353.15 of our regulations (19 CFR 353.15).

Where commissions were paid in one of the markets and not the other, we made an allowance for the commission in the market in which it was paid and made an allowance for other selling expenses in the other market in accordance with § 353.15(c) of our regulations.

We made currency conversions in accordance with § 353.56(a)(1) of the Commerce Regulations, using certified exchange rates as furnished by the Federal Reserve Bank of New York.

Verification

As provided in section 776(a) of the Act, we verified all information provided by the respondents using standard verification procedures, including on-site inspection of STS's operations and examination of accounting records and randomly selected documents.

Petitioners' Comments

Comment 1: Petitioners argue that, when determining whether home market sales are made at less than the cost of production, the Department should determine the actual costs for products that are sold during the period of investigation. Further, they argue that because a significant portion of home market sales during the period of investigation are sold from inventory and produced prior to the period of investigation, the Department should use an earlier time period for determining costs than the period of investigation. They urge the Department to assume at least a two-month time lag between production and sale in the home market. They prefer the use of a six-month time lag. They state that these two actions, *i.e.* the elimination of production run cost data subsequent to the sales of certain sizes of pipe and the shifting of the time period for determining costs, would eliminate certain distortions caused by the use of third, and fourth quarter 1985 production data for determination of the cost of producing the products being sold during the period of investigation.

DOC Response: Other than for products not produced during the period of investigation, we have found no reason to depart from the usual practice of using the average cost for the product during the period of investigation.

Comment 2: Petitioners urge the Department to calculate average cost of production figures for broad product categories, *i.e.*, standard pipe, rectangular tubing made from cold-rolled coil, and rectangular tubing made from hot rolled coil, rather than to calculate costs on the basis of individual production runs because of wide variations in yields. They state that the use of weighted-average calculations provides a more accurate measure of determining whether home market sales are above the cost of production because such calculations avoid variations which appear when using costs of individual production runs They allege that the use of disaggregated production run data masks dumping when determining whether sales are below cost. They state that the use of aggregate costs would make it less necessary to have cost information for every single product if the Department were to disregard third or fourth quarter 1985 costs as suggested in Comment 1.

DOC Response: The Department cannot compare the costs of broad product categories to prices for specific products because these costs would, in effect, not adequately reflect the cost incurred for the merchandise under investigation. To account for the variations caused by different production runs, the Department averaged the yields for product groups. Refer to our response to Petitioners' Comment 4.

Comment 3: Petitioners advocate the addition of foreign exchange losses to the cost of materials because of alleged lags between purchases of coil and use of the coil.

DOC Response: In the final determination, because the Department used the costs for all materials denominated in Singapore dollars as shown in STS's books and records, the foreign exchange net losses related to these material purchases were included.

Comment 4: Petitioners allege that STS's yield rates, reflecting allowance for scrap, are not accurate. They claim that certain yield rates reported by STS are impossible unless the pipe does not meet specifications and that the magnitude of yield rates for standard pipe production compared to light-walled production are contrary to usual experience. They request that the respondent explain these anomalies on the record.

DOC Response: The yield rates reported by STS have been reviewed by a Department industry expert. On an average basis, the yield rates of STS are in accordance with industry norms. Where the individual yield rates were not, and could not be sufficiently verified because such yield rates were based on theoretical input and output weights, the Department used the average yield rates of STS for the subject products in the calculation of cost of production rather than the rates reported.

Comment 5: Petitioners note certain quarterly variations in labor costs. They question whether the Department has obtained sufficient information with which to confirm STS's reported costs per ton of the products under investigation.

DOC Response: The Department obtained such information and performed such tests as were deemed necessary at verification, as detailed in the cost verification report.

Comment 6: Petitioners advocate the allocation of factory overhead over manhours per ton as being more consistent with standard costing practice than allocation by tonnage as reported by STS.

DOC Response: In this final determination, factory overhead expenses have been allocated between STS's tube mills based on labor usage as the best information available. The resulting allocation pool for each mill was allocated over machine hours. Refer also to our response to Respondent's Comment 6.

Comment 7: Petitioners claim that STS (and the Department as noted in its verification report) erroneously reduced selling expenses to account for the exclusion of salaries related to export sales from home market selling expenses because STS's cost of goods sold includes export sales. They urge the Department to recalculate selling expenses to include all expenses.

DOC Response: In determining selling, general and administrative expenses, we segregated home market selling expenses and allocated them to home market sales.

Comment 8: Petitioners question respondent's provision of cost information with respect to production for U.S. sales. Petitioners state that, if constructed value is used as the basis of foreign market value, the Department should base it upon the cost of producing home market merchandise.

DOC Response: Constructed value information is based on the cost of manufacture of the U.S. products and the general, selling and administrative expenses of the home market product, where such information is available.

Comment 9: Petitioners claim that the reporting of indirect selling expenses for home market sales by STS was unnecessary because commissions are paid in both the home market and on sales to the United States. Therefore, they state that the special rule allowing adjustments for indirect selling expenses does not apply. However, they further state that if such adjustments are made, they should be limited to the total amount of the commissions reported on U.S. sales as reported by STS.

DOC Response: Commissions were not paid on all sales in either market. Therefore, the reporting of indirect selling expenses in both markets for use as offsets under § 353.15(c) of the Department s regulations was appropriate. Such offsets were made, where applicable, in accordance with the limitations stated in § 353.15(c).

Comment 10: Petitioners state that STS has not provided the Department with sufficient data on credit costs for U.S. sales and urge the Department to make no adjustment to the foreign market value for home market credit costs.

DOC Response: As noted in the sales verification report, STS provided adequate data upon which to calculate credit costs on sales to the United States. Therefore, we made circumstances of sale adjustments for credit costs.

Respondent's Comments

Comment 1: STS argues that the Department should use the "special rule" noted in 19 CFR 353.56(b) in selecting the exchange rate for currency conversions on sales made in the fourth quarter 1985. They cite an eight percent decrease in the value of the U.S. dollar against the Singapore dollar from the third quarter to the fourth quarter Because of this decrease, they urge the Department to use the third quarter 1985 exchange rate for currency conversions on sales made in the last quarter of 1985.

DOC Response: We note that the decrease in the value of the U.S. dollar against the Singapore dollar from the third quarter to the fourth quarter 1985 was only 4.6 percent based upon the certified exchange rates used in accordance with § 353.56(a)(1) of our regulations. An analysis of the certified exchange rates for 1985 showed no evidence of temporary fluctuations in the exchange rates which would warrant the use of the special rule contained in § 353.56(b) of the regulations.

Comment 2: STS urges the Department not to adjust U.S. prices for certain commissions discovered at verification to have been paid to a related party.

DOC Response: Although we would not adjust U.S. prices if we considered the commissions to be between unrelated parties, we agree with the respondent's comment that the parties are related and have made no circumstances of sale adjustments or offsets for these commissions under § 353.15 of our regulations.

Comment 3: STS argues that the Department should adjust home market prices for certain home market sales commissions paid to a company which, like STS, is partially owned by a third party. They claim that the common ownership of minority shares by the third party does not establish a relationship under the antidumping duty law and, further, that even if the two companies were considered to be related, the commissions were made at arm's length.

DOC Response: We agree and have treated the commission as a sales expense subject to circumstances of sale adjustment or offset under § 353.15, as applicable. The commission was also included in selling expenses when calculating cost of production for determining whether sales including

these commissions were being made at less than the cost of production.

Comment 4: STS argues that the Department should make an adjustment to home market prices to account for quantity discounts given on its larger quantity U.S. sales.

DOC Response: At verification we found no sales documentation to indicate that any such discounts are given. Therefore, we made no such adjustments.

Comment 5: STS claims that purchases of materials from a related supplier should be considered arm's length transactions and that the "prediscounted" prices paid in such transactions should be used in calculating STS's cost of production.

DOC Response: The Department reviewed the prices of raw materials purchased from related and unrelated suppliers and determined that the prices of purchases from a related supplier were representative of arm's length prices. The prices reviewed and used by the Department in this determination are the "prediscount" prices as reported by the respondent and advocated by the petitioners.

Comment 6: STS advocates the allocation of factory overhead costs over production tonnage. However, it urges that, because the Department has verified the data necessary to allocate these costs using alternate methodologies, even if the Department chooses an alternate methodology, it base its calculations on STS's data rather than on "best information otherwise available."

DOC Response: The Department believes that allocation of factory overhead over tonnage produced is not appropriate in this case. The absorption of overhead by different products is more accurately reflected using an allocation method which accounts for the different amounts of machine time required to produce a ton of various products. The allocation pool of factory overhead expenses was based on the verified information submitted by the respondent.

Comment 7: STS claims that the Department erred in its application of the cost test under section 773(b) of the Act when making its preliminary determination. It states that the Department based the cost test on the comparison of the price and cost of particular sizes of pipes and tubes rather than on the percentage of total sales represented by below cost sales of each product. It urges the Department to perform the cost test by first making a "threshold determination" whether the total weighted-average price of a product (standard or LWR pipes and tubes) is above or below the total weighted-average cost of the product. If this price is below the cost, then they advocate that the cost of production investigation proceed by analyzing the percentage of below cost sales of each product.

DOC Response: The cost test performed for the preliminary determination was not based upon individual cost tests for each size or subgroup. While prices and costs of particular sizes were compared, the overall cost test was based on the percentage that below cost sales represented when compared to total sales of standard or LWR products. We disagree that a threshold test, or the cost test, should be performed using weighted-average prices. We believe that when testing for below cost of production sales, we should examine individual sales prices rather than a weighted-average price for a class or kind of merchandise under investigation. Using respondents' proposed threshold test, if the average price exceeded the average cost, all home market sales would be included in the determination of foreign market value. However, for certain products within the class or kind there could be considerable individual sales at less than the cost of production. This would be inconsistent with the statutory requirement that the ITA disregard those sales made at less than cost of production which are made over an extended period of time, and in substantial quantity and not at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade. Concerning the use of a weighted-average cost for each class or kind of merchandise, refer to our response to Petitioners' Comment 2.

For the final determination we performed the cost test in the same manner as in the preliminary determination. We based the inclusion or rejection of below cost sales on the total number of all below cost sales of LWR or standard products, taken as a percentage of total sales of LWR or standard pipes and tubes.

Comment 8: STS argues that if the Department uses constructed value as the basis of foreign market value in these investigations, it must make all necessary circumstances of sale adjustments to that value.

DOC Response: The Department has done so. See the section on Foreign Market Value.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to continue to suspend liquidation of all entries of small diameter and LWR pipes and tubes from Singapore that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register.** The United States Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin percentage
Steel Tubes of Singapore (PTE), Ltd.:	
Small Diameter Pipes and Tubes	6.76
Light-Walled Rectangular Pipes and Tubes	12.60
All Others:	
Small Diameter Pipes and Tubes	6.76
Light-Walled Rectangular Pipes and Tubes	12.60

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to these investigations. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or canceled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on small diameter and LWR pipes and tubes from Singapore entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

September 11, 1986.

[FR Doc. 86-21168 Filed 9-17-86; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be issued.

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted not later than October 8, 1986 to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 86-00007."

Applicant: East West Trade Association, Inc., 15207 Frederick Road, Rockville, Maryland 20850

Application #: 86-00007

Date Deemed Submitted: September 9, 1986.

Members (in addition to applicant): Kanney H. Choi and Young C. Lee of Rockville, Maryland.

Summary of the Application:

The East West Trade Association ("East West") seeks certification for the following export-related activities:

A. Export Trade

Products

(a) Food and related products;
(b) Tobacco products;
(c) Textile mill products;
(d) Apparel and other finished products made from fabrics and similar materials;
(e) Lumber and wood products;
(f) Furniture and fixtures;
(g) Paper and allied products;
(h) Printing and publishing products;
(i) Chemical and allied products;
(j) Primary metals (ferrous and non-ferrous metals and their alloys);
(k) Non-electrical machinery and equipment;
(l) Electrical and electronic equipment;
(m) Transportation equipment;
(n) Measuring, analyzing and controlling instruments, photographic, medical, and optical goods, watches and clocks;
(o) Storage and handling equipment, including refrigeration and dispensing equipment;
(p) Vending machines;
(q) Ventilating system, including industrial and kitchen fan;
(r) Cash registers;
(s) Waste compactors;
(t) Garbage disposals;
(u) Sinks;
(v) Nuclear Fission Equipment;
(w) Aircraft;
(x) Armaments and weapons;
(y) Scrap metal;
(z) Automobiles and trucks;
(aa) Satellite communications equipment;
(bb) Computers, software, and accessories;
(cc) Manufacturing equipment of all kinds;
(dd) Construction equipment and supplies
(ee) Miscellaneous manufactured products;

Services

Technical assistance in the areas of education, management, agriculture, urban development, manufacturing, and related areas.

Export Trade Facilitation Services (as they relate to the export of Products)

Consulting, international market research, advertising, marketing, insurance, product research and design, transportation, trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods.

B. Export Markets

Worldwide.

C. Export Trade Activities and Methods of Operation

East West seeks certification to: (1) Enter into exclusive or nonexclusive agreements with individual suppliers of Products or Services to act as an Export Intermediary wherein:

(a) Last West agrees not to represent any competitors of a supplier in any Export Market unless authorized by that supplier; and/or

(b) The supplier agrees not to sell, directly or indirectly through any other intermediary, into the Export Markets in which East West represents the supplier as an Export intermediary, and, if such sales occur, to pay a commission to East West.

(2) Enter into exclusive and nonexclusive agreements with individual Export Intermediaries for the sale of Products or Services in the Export Markets, whereby:

(a) East West agrees to deal in Products or Services only through that Export Intermediary in particular Export Markets, and/or

(b) That Export Intermediary agrees not to deal with East West's competitors in the sale of Products or Services in particular Export Markets.

The agreements described in paragraphs 1 and 2 may contain price, territorial, quantity, and customer restrictions for the Export Markets, and may provide for termination on the grounds that these terms have not been adhered to.

(3) Enter into agreements with individual purchasers of Products, including foreign governmental entities, to act as an exclusive or nonexclusive Purchasing Agent for purchases of Products or Services in the Export Markets.

(4) Respond to sales opportunities in the Export Markets, including invitations to bid, by:

(a) Distributing information on an individual basis to suppliers concerning

export trade generally or concerning specific sales opportunities;

(b) Soliciting and receiving independent quotations for the Products or Services from individual suppliers; and/or

(c) Entering into agreements with individual suppliers, whereby East West will submit a response to the invitation to bid or other sales opportunity on behalf of the supplier.

Dated: September 12, 1986.

James V. Lacy,

Director, Office of Export Trading Company Affairs.

[FR Doc. 86-21142 Filed 9-17-86; 8:45 am]

BILLING CODE 3510-DR-M

[A-412-013 and A-588-020]

Merchandise Entered Under TSUSA Items 832, 833, and 834: Determination of Antidumping, Countervailing Duty Waiver

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY The International Trade Administration has determined that the policy of waiving antidumping and countervailing duties on articles entering under item 832 of the Tariff Schedules of the United States (TSUS) should continue and should extend to articles entering under TSUS items 833 and 834.

EFFECTIVE DATE: September 18, 1986.

FOR FURTHER INFORMATION CONTACT: Gilbert B. Kaplan, Deputy Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230; (202) 377-1780.

SUPPLEMENTARY INFORMATION:

Determination

We have completed our review of the Department of Commerce's (the Department's) policy permitting the waiver of antidumping and countervailing duties, in addition to tariff rates of duty, on emergency war materials purchased abroad and entered under TSUS item 832. We conclude that this policy has the status of law. We also conclude that the waiver practice should cover duty-free imports for the National Defense Stockpile under TSUS item 833 and national security source materials imported duty-free under item 834. We reached this conclusion because Congress has given tacit approval to this longstanding administrative practice, despite numerous opportunities to clarify legislatively that antidumping and countervailing duties may not be waived by government agencies.

Background

On February 8, 1985, the International Trade Administration held a hearing to solicit views on whether the duty waiver for merchandise entered under TSUS items 832, 833 and 834 should include antidumping and countervailing duties.

The issue arose in the context of the Department's antidumping investigations of titanium sponge from Japan and the United Kingdom. In its final determinations of sales at less than fair value, the Department excluded specific sales under TSUS item 833, imports by the General Services Administration for the National Defense Stockpile. We explained that because two federal agencies maintained an unbroken practice for more than 20 years and Congress had acquiesced in that practice, it had been reasonable for the importer of the titanium sponge under the particular procurement contracts to rely on the administrative practice of exempting merchandise imported for defense purposes under TSUS 832. We cautioned against future reliance, however, and announced our intention to review the antidumping and countervailing duty waiver policy. 49 FR 38684 and 38687 (Oct. 1, 1984). Notice of the hearing was published in the **Federal Register.** 50 FR 986 (Jan. 8, 1985). Comments were accepted into the record until February 22, 1985.

Discussion

The waiver issue has two components, policy and law.

Policy considerations .

Proponents of the waiver practice contend that the United States defense budget should not be burdened by the added expense of paying antidumping or countervailing duties, particularly after Congress provided for waiver of normal duties. Another comment is that discontinuation of the antidumping and countervailing duty waiver practice would jeopardize relations with our NATO and other allies with which we have Memoranda of Understanding establishing duty-free treatment for defense-related imports. Also, some assert that we would risk losing our positive defense trade balance if those allies began to assess such duties in retaliation.

The policy considerations advanced by proponents of the waiver should be measured against the effect on U.S. producers of continuing the waiver. We do not believe the United States Government as an importer should benefit from unfairly traded imports that injure the competing domestic industry, despite the potential inflation of the defense budget. We also believe that domestic defense suppliers who export should not be immune from the consequences of unfair trade. Thus, from our perspective as administrator of the antidumping and countervailing duty laws, we find no overriding policy considerations in favor of continuing the waiver for imports under TSUS item 832 and extending it to TSUS items 833 and 834.

Legal Considerations

The waiving of antidumping and countervailing duties on imports under TSUS items 832, 833 and 834 derives from an administrative practice developed around 1961, in a series of legal memoranda prepared in the Treasury Department, which then administered the antidumping and countervailing duty laws. These memoranda expressed the opinion that antidumping duties and, by analogy, countervailing duties, are "regular duties" for all purposes. The duty-waiver provided to defense procurement by TSUS 832 therefore would cover antidumping and countervailing duties as well. For this proposition, the memoranda relied upon a 1934 appellate decision, *C.J. Tower and Sons v. United States.* 71 F.2d 438, 21 CCPA 417. Following the transfer of responsibility for administering the antidumping and countervailing duty laws from Treasury to Commerce in 1980, the Department perpetuated Treasury's approach.

The antidumping and countervailing duty laws do not expressly permit waiver for defense-related imports. Under the Tariff Act of 1930, as amended, antidumping and countervailing duties apply to classes or kinds of merchandise rather than to individual tariff items or federal procurement classifications. The statute contains no exceptions and there is nothing in the legislative history to indicate that national defense related imports are not liable for antidumping or countervailing duties. Such special duties do specifically apply to otherwise non-dutiable goods, such as articles listed as duty-free in the TSUSA or which are on the Generalized System of Preferences list.

Commenters favoring the waiver practice look beyond the Tariff Act of 1930. Specifically, they cite the classification of these items in schedule 8 of the TSUS, which is described as "special exemption" from duty, and the statutes authorizing duty-free

treatment for each of the three items in question. They contend that these considerations compel us to continue the waiver on imports under TSUS 832 and to extend the waiver to imports under TSUS items 833 and 834.

Upon analysis, we do not find these arguments to be dispositive of the issue. The "special exemption" heading for schedule 8 is undefined. The statutes authorizing duty-free treatment for TSUS items 832, 833, and 834 refer only to "duties" generically. We see no evidence that the legislators contemplated extending this special exception to application of antidumping and countervailing duties.

Moreover, we find the reasoning behind the original decision to waive these duties to be erroneous. The language Treasury relied upon from the court of appeals opinion is dictum. If we had been deciding this issue in 1961, we would have found that the better interpretation of the law is that antidumping and countervailing duties should apply.

Despite these conclusions, we are swayed by the fact that Congress has acquiesced in the practice since 1961, giving it the imprimatur of law. The deliberation and passage of major trade bills in 1974 and 1979 afforded opportunity to change the administrative practice. Congress extensively amended the antidumping and countervailing duty statute in 1984, while this review concerning Sections 832 and 833 was in progress, without eliminating the waiver practice. In addition, correspondence indicates that members of Congress have been aware of the special duty waiver at least since 1978. Indeed, members of both houses expressed their views in response to our solicitation this year. Because of this tacit approval by the Congress, we are permitting antidumping and countervailing duties to be waived on certified imports under TSUS items 832, 833, and 834.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-21164 Filed 9-17-86; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Canceling Staged Entry for Certain Cotton Textile Products Produced or Manufactured in Portugal

September 12, 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 September 18, 1986. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

Background

On June 26, 1986 a notice was published in the **Federal Register** (51 FR 23258), which established staged entry periods for imports of women's, girls' and infants' cotton knit shirts in Category 339 and men's and boys' woven cotton shirts in Category 340, produced or manufactured in Portual and exported during the twelve-month period which began on June 26, 1985 and extended through June 25, 1986. Inasmuch as it has been determined that these staged entry periods are no longer needed, they are being canceled.

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).

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

United States Department of Commerce

International Trade Administration

Washington, D.C. 20230

September 12, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: To facilitate implementation of the U.S. textile and apparel import restraint program, I request that, effective on September 18, 1986, you cancel the staged entry periods established in the directive of June 24, 1986 for cotton textile products in Categories 339 and 340, produced or manufactured in Portugal and exported during the twelve-month period which began on June 26, 1985 and extended through June 25, 1986.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-21141 Filed 9-17-86; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF ENERGY

Proposed Subsequent Arrangement; USA and Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves the reprocessing of U.S.-supplied fuel at the Tokai reprocessing facility in Japan. This subsequent arrangement would extend the U.S.-Japan Joint Determination that safeguards may be effectively applied to the reprocessing at the Tokai facility of U.S. supplied fuel, from December 31, 1986 to December 31, 1987.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the approval of this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

For the Department of Energy.

David B. Waller,

Assistant Secretary for International Affairs and Energy Emergencies.

September 12, 1986.

[FR Doc. 86-21088 Filed 9-17-86; 8:45 am]

BILLING CODE 6450-01-M

Procurement and Assistance Management Directorate

AGENCY: DOE.

ACTION: Notice of Restriction of Eligibility for Grant Award.

SUMMARY: DOE announces that it plans to award a grant to the National Coal Association in the amount of $24,830 in partial support of the ICCR/Clean Coal Technology Congress. Pursuant to § 600.6(b) of the Financial Assistance Rules, 10 CFR Part 600 DOE has determined the eligibility for this grant award shall be limited to the National Coal Association.

Procurement Request No. 01–86FE61108.000.

Project scope: The National Coal Association is hosting a three day International Conference on Coal Research (ICCR) and First International Clean Coal Technology Congress in St. Louis, Missouri, October 19–21, 1986.

Twenty-five foreign delegates who are members of the ICCR will be attending. The ICCR group will present papers on various aspects of coal extraction, preparation and combustion in such countries as the United Kingdom, France, Australia, Canada, Spain, Germany, Japan, and the United States.

The DOE is vitally interested in increased coal use, as it is an objective of the National Energy Plan, and has determined that this award to National Coal Association on a restricted eligibility basis is appropriate.

FOR FURTHER INFORMATION CONTACT: Shirely Jones, MA–452.1, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue, SW., Washington, DC 20585.

Issued in Washington, DC, on September 5, 1986.

Robert J. Walsh,

Acting Director, Contract Operations Division "A", Office of Procurement Operations.

[FR Doc. 86–21183 Filed 9–17–86; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 86–35–NG]

Hadson Canada, Inc.; Order Approving Blanket Authorization To Import and Export Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Order Approving Blanket Authorization to Import Canadian Natural Gas, and to Export Natural Gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order to Hadson Canada, Inc. granting authorization to import up to 50 Bcf of natural gas from Canada, and to export up to 20 Bcf of natural gas to Canada, over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 252–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 10, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–21184 Filed 9–17–86; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Energy Research Advisory Board—Physics Review Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: Physics Review Panel of the Energy Reseach Advisory Board (ERAB)

Date and Time: October 7, 1986: 8:30 a.m.–5 p.m.

Place: O'Hare Hilton Hotel, Chicago O'Hare International Airport, Chicago, IL 60666, (312) 686–8000

Contact: William L. Woodard, Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–5767

Purpose of the Parent Board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Purpose of the Panel: The Physics Review Panel is a subgroup of ERAB and reports to the parent Board. The Physics Review Panel will review the National Research Council's report, "Physics through the 1990's" and, in particular, assess its specific suggestions for initiatives that are recommended for the Department of Energy.

Tentative Agenda:

October 7, 1986

- Reports on six sections of National Research Council's "Physics Through the 1990s"
- Discussion of recommendations and priorities
- Future schedule
- Public Comment (10 minute rule)

Public Participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William Woodard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitiate the orderly conduct of business.

Minutes of the Meeting: Available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Friday holidays.

Issued at Washington, DC, on September 5, 1986.

Charles E. Cathey,

Deputy Diector, Science and Technology Affairs, Office of Energy Research.

[FR Doc. 86–21175 Filed 9–17–86; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket Nos. 86–44–NG, 86–45–NG, 86–46–NG and 86–48–NG]

Brooklyn Union Gas Co. et. al.; Applications To Import Natural Gas

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of applications for authorizations to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on August 1, 1986, of four applications from a total of 18 gas distribution companies (herein called the "Repurchasers") to import a combined total of 359,000 Mcf per day of natural gas from Canada. A joint notice is being issued to avoid confusion and because the ERA feels that the similarities in the applications make a joint notice appropriate.

In each of the applications the natural gas would be exported from Canada and sold to the Repurchasers by Alberta Northeast Gas, Ltd. (ANE), a Canadian corporation established by the Repurchasers. Except for 41,500 Mcf per day, all of the gas would be transported to the Repurchasers through the proposed Iroquois Gas Transmission System (IGTS), which will extend from a yet to be established export point on the international border near Iroquois,

Ontario through the states of New York and Connecticut.

The remaining 41,500 Mcf per day, a portion of the 200,000 Mcf per day requested in ERA Docket No. 86–48–NG, may be transported to the Repurchasers by IGTS or by Tennessee Gas Transmission System (TGTS) from TGTS's existing Niagara import point.

The applications are filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments should be filed in the specific docket no later than 4:30 p.m., on October 20, 1986.

FOR FURTHER INFORMATION CONTACT:

Lot Cooke, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA–076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252–8116.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252–6667.

SUPPLEMENTARY INFORMATION: The applicants in ERA Docket Nos. 86–44–NG, 86–45–NG, and 86–46–NG are The Brooklyn Union Gas Company, Connecticut Light and Power Company, Connecticut Natural Gas Corporation, Southern Connecticut Gas Company, Long Island Lighting Company, Consolidated Edison Company of New York, Inc., New Jersey Natural Gas Company, and South Jersey Gas Company. In addition to the above named companies, ERA Docket No. 86–48–NG applicants also include National Fuel Gas Supply Corporation, Colonial Gas Company, Elizabethtown Gas Company, Essex County Gas Company, Gas Service, Inc., Manchester Gas Company, Valley Gas Company, Fitchburg Gas and Electric Light Company, Public Service Electric and Gas Company, and Boston Gas Company.

In all of the applications the prices of the imports will be indexed to the price of competing fuels in the market served by the Repurchasers. Under each authorization requested, the Repurchasers will be entitled to receive a predetermined portion of the imported gas but would be authorized to purchase additional gas, not to exceed the total amount authorized, if any of the Repurchasers takes less than their allotted share.

In ERA Docket No. 86–44–NG the applicants request authorization to import 75,000 Mcf per day to be sold to ANE by TransCanada Pipelines Limited (TCPL). In ERA Docket No. 86–48–NG the applicants request authorization to import 200,000 Mcf per day to be sold to ANE by TCPL. The terms of the above two authorization requests would be for 15 years, from November 1, 1988, through November 1, 2003.

In ERA Docket No. 86–45–G the requested authorization is for 66,000 Mcf per day to be sold to ANE by ProGas Limited (ProGas). In ERA Docket No. 86–46–NG the requested authorization is for 18,000 Mcf per day to be sold to ANE by ATCOR Limited (ATCOR). The terms of the above two authorizations would run for 15 years based on the Canadian export authorization sought by ANE/ProGas and ANE/ATCOR, pursuant to their respective gas purchase agreements, or until the first November 1st occurring 15 years after the conclusion of the first contract year, whichever occurs the earliest.

Other than the variations in the length of the terms of the applications noted above, the contracts between ANE and the various Repurchasers, and ANE and the Canadian sellers are virtually identical. The border price as established in the gas purchase agreements between ANE and its Canadian sellers is determined by indexing a base border price ($3.90 per MMBtu for the months of November through March; $3.30 per MMBtu for the months of April through October) to the weighted average prices for natural gas, No. 2 fuel oil and No. 6 fuel oil in New York City. The border price would be adjusted whenever the indexing formula indicates more than a 5 percent change. The border price includes both demand and commodity charges. The monthly demand charge consists of the respective seller's allowable demand rate for transportation of the gas on the seller's system to the export point, and the demand toll as billed to the individual seller by its supplier. The commodity charge is determined by subtracting the demand charge from the adjusted border price. The applicants state that through the operation of the indexing provisions the price as of August 1, 1986, would be $2.21 per MMBtu on an average annual basis. Either party may require that the price and contract reduction provisions for any contract year be determined by renegotiation, or failing agreement, by arbitration. The minimum bill is the monthly demand charge and there are no take-or-pay requirements. Under ANE's gas sale agreements with the individual Repurchasers, the demand and commodity charges would be passed through as-billed, on a pro rata basis, to the Repurchasers.

In support of the applications the Repurchasers maintain that the import transactions are fully consistent with the Secretary of Energy's import policy because the purchase contracts (1) were negotiated at arms-length to meet the discrete requirements of the Repurchasers' markets and (2) are flexible with respect to both volume and price, and thus assure that the gas supply can be marketed competitively over the life of the contracts. The Repurchasers state further that the marketability and flexibility of the arrangements are enhanced by allowing gas not taken by one Repurchaser to be sold to other Repurchasers. This allows for a reduction of individual Repurchasers' minimum bills and for seasonal load balancing by the Repurchasers.

The decisions on these applications to import natural gas will be made consistent with the DOE's import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose any of these applications should address their responses on the issue of competitiveness as set forth in the policy guidelines. The applicants assert that these arrangements are competitive. Parties opposing these arrangements bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to any of these proceedings and to have written comments considered as the basis for any decision on the applications must, however, file in the specific docket, a motion to intervene or notice of intervention, as applicable. The filing of a protest with respest to any application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of

intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed in the specific docket with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076–A, RG–23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252–9478. They must be filed no later than 4:30 p.m. e.d.t., October 20, 1986.

The Administrator intends to develop a decisional record on these applications through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures by provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, final opinions and orders may be issued based on the official records, including the applications and responses filed by parties pursuant to this notice, in accordance with 10 CFR § 590.316.

Copies of the applications are available for inspection and copying in the Natural Gas Division Docket Room, GA–076, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday, except Federal holidays.

Issued in Washington, DC, on September 10, 1986.

Barton R. House,

Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–21089 Filed 9–17–86; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. EL85–19–111]

Federal Energy Regulatory Commission

Request for Comments on the Cumulative Environmental Impacts of Proposed Hydropower Development in the Yuba River Basin, California

September 12, 1986.

The Federal Energy Regulatory Commission (Commission) is requesting comments regarding cumulative environmental impacts [1] that may occur as a result of multiple hydropower developments proposed for the Yuba River Basin, located in Yuba, Sierra, and Nevada Counties, California.

Information Requested

Interested persons and agencies are invited to identify those target resources that may be at risk, to describe the distribution of these resources, and to include substantive evidence documenting the interaction between the target resources and the proposed hydropower projects described in this notice.[2] Substantive evidence should include, but should not be limited to, the results of studies, natural resource management policies, and reports from state and local resource agencies.

The staff will evaluate those target resources included in this notice, and any additional target resources identified by interested persons and agencies.

Pending License Applications

As of August 1, 1986, the following eight applications for hydropower projects were pending before the Commission.

Project No.	Project name	Type of application
5841–001	North Yuba River Project	Major license.
6780–000	Deadwood Creek Project	Do.
9072–000	East Fork Creek Project	Do.
9073–001	Lavezzola Creek Project	Do.
9086–000	Excelsior Project	Do.
9093–001	Downie Project	Do.
9723–000	Fall Creek Project	Do.
9756–000	Deer Creek Project	Do.

A map of the Yuba River Basin shows the locations of these pending and existing projects, and is included in this notice (figure 1).

[1] A cumulative impact is the impact on the environment which results from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency (federal or nonfederal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time (40 FR 1508.7).

[2] A target resource is an important resource that could be adversely affected to two or more proposed hydropower projects.

Descriptions of Proposed Projects

North Yuba River Project: The project would be located on the North Yuba River, within the Sierra National Forest, and would consist of: (1) A 6-foot-high, 80-foot-long, concrete diversion structure; (2) a 3,200-foot-long, 58-inch-diameter, low pressure conduit; (3) a 7,300-foot-long, 54-inch-diameter, steel penstock; (4) a powerhouse containing one generating unit with an installed capacity of 7,500 kilowatts (kW); (5) a 45-foot-long tailrace conduit; (6) a 1.3-mile-long, 12 kilovolt (kV), underground transmission line, connecting the powerhouse to a proposed Southern Pacific Land Company, 60-kV transmission line; and (7) related facilities. The applicant estimates that the average annual energy production would be 16 gigawatthours (GWh).

Deadwood Creek Project: The project would be located on Deadwood Creek, a tributary of the North Yuba River. The proposed run-of-river project would consist of: (1) A 3-foot-high, 60-foot-wide diverson structure, located on Deadwood Creek, 1 mile upstream from its confluence with the North Yuba River: (2) a 42-inch-diameter, 4,700-foot-long, steel pipeline; (3) a 42-inch-diameter, 1,500-foot-long, steel penstock; (4) a powerhouse containing a single turbine-generator unit with an installed capacity of 3,000 kW and an average annual generation of 10.5 GWh; (5) a 10-foot-wide, 50-foot-long, open channel tailrace; (6) 2.5 miles of primary 12-kV transmission line; and (7) related facilities. Project power would be sold to Pacific Gas and Electric Company (PG&E). The project would affect 9.0 acres of Plumas National Forest lands.

East Fork Creek Project: The project would be located within the Tahoe National Forest on East Fork Creek, a tributary to the South Fork Yuba River. The proposed project would consist of: a 6-foot-high, 70-foot-long diversion dam, located 800 feet downstream from the junction of Weaver Creek and East Fork Creek; (2) a 48-inch-diameter, 5,620-foot-long conduit; (3) a 36-inch-diameter, 5,550-foot-long penstock; (4) a powerhouse containing a single generating unit with a rated capacity of 4,950 kW, when operating under a head of 925 feet; and (5) a 4.2-mile-long, 60-kV transmission line, connecting with a PG&E system via Nevada Irrigation District's proposed 60-kV Bowman-Spaulding transmission line. No recreational facilities are proposed. The estimated 9.2 GWh generated annually would be sold to PG&E.

Lavezzola Creek Project: The project would be located within the Tahoe

National Forest on Lavezzola Creek, a tributary to Downie River, which is a tributary to the North Fork Yuba River. The proposed run-of-the-river project would consist of: (1) A 6-foot-high, 70-foot-long, concrete and steel diversion structure at elevation 4,560 feet mean sea level (msl); (2) a 6-foot-high, 9-foot-wide, 1,200-foot-long tunnel; (3) a 42-inch-diameter, 11,200-foot-long, steel penstock; (4) a powerhouse containing a single turbine-generator unit with a rated capacity of 4,660 kW, when operating under a head of 710 feet; and (5) a 60-kV, 5-mile-long transmission line, interconnecting the project to an existing PG&E substation. The project's estimated average annual generation of 9.5 GWh would be sold to PG&E.

Excelsior Project: The project would be located on the South Yuba River and would use federal lands managed by the Bureau of Land Management. The proposed development, to be located at Roger Hodgson's Excelsior Ditch Diversion Dam, would consist of: (1) The existing, 16-foot-high, 120-foot-long Excelsior Ditch Diversion Dam, to be repaired; (2) a tunnel intake structure at elevation 1,509 feet msl; (3) a 15-foot-diameter, 3,700-foot-long power tunnel; (4) a 9-foot-diameter, 800-foot-long penstock; (5) a powerhouse containing one generating unit with a rated capacity of 14,000 kW, when operating under a head of 143 feet; and (6) a 2.9-mile-long, 60-kV transmission line connecting to an existing PG&E line. The estimated annual generation of 25 GWh would be sold to PG&E.

Downie Project: The project would be located within the Tahoe National Forest on Oregon Creek, a tributary to the Middle Yuba River. The proposed run-of-the-river project would consist of: (1) A 12-foot-high, 80-foot-long, reinforced concrete diversion structure at elevation 3,100 feet msl; (2) a 72-inch-diameter, 11,300-foot-long, low pressure conduit; (3) a 54-inch-diameter, 1,500-foot-long, steel penstock; (4) a powerhouse containing a single turbine-generator unit with a rated capacity of 7,500 kW, when operating under a head of 810 feet; and (5) a 60-kV, 1-mile-long transmission line, interconnecting the project to an existing PG&E line. The project's estimated average annual generation of 17 GWh would be sold to PG&E.

Fall Creek Project: The project would be located within the Tahoe National Forest, on the Bowman-Spaulding Canal between Bowman Lake and Lake Spaulding, within the Fall Creek watershed. Fall Creek is a tributary to the South Yuba River. The proposed powerhouse would discharge into the South Yuba River. The proposed project would use excess flows within the canal system that are typically spilled at various places along the length of the canal. The proposed project would consist of: (1) An offtake structure on an existing canal; (2) a 7,700-foot-long, 54-inch-diameter, low pressure conduit; (3) a 5,800-foot-long, 54-inch-diameter penstock; (4) a powerhouse containing one generating unit with an installed capacity 25,800 kW; and (5) a 11,500-foot-long, 60-kV transmission line. The project's estimated annual generation would be 44.2 GWh.

Deer Creek Project: The project would be located on Deer Creek, a tributary to the Yuba River downstream of Englebright Reservoir, and Squirrel Creek, a tributary to Deer Creek. The project would use a portion of the existing, abandoned China Ditch. Water would be diverted from Deer and Squirrel Creek through a common forebay and penstocks to a powerhouse on Squirrel Creek. The proposed project would consist of: (1) An existing concrete diversion dam, 60 feet long, 3 feet high, and with a crest elevation of 1,130 feet msl, on Deer Creek; (2) an existing concrete diversion dam, 70 feet long, 18 feet high, and with a crest elevation of 1,100 feet msl, on Squirrel Creek; (3) two existing, gated, power canal intakes with spillways; (4) two existing power canal sections totaling 11,500 feet in length; (5) a 4-foot-deep forebay with a surface area of 0.25 acres; (6) a gated penstock intake; (7) two 850-foot-long steel penstocks, one 60 and one 48 inches in diameter; (8) a concrete and wood powerhouse, at elevation 840 feet msl, containing three generating units with combined rated capacity of 4,800 kW, when operating at a net head of 248 feet; (9) a 30-foot-long tailrace, terminating at Squirrel Creek; (10) a 1,200-foot-long, 21-kV transmission line, connecting to a PG&E distribution line; and (11) related facilities. The applicant estimates the average annual energy generation at 7.9 GWh. The existing facilities, abandoned by the Nevada Irrigation District, would be rehabilitated by the applicant.

Preliminary Review of Target Resources

The staff has examined the eight applications for hydropower development and has studied comments from federal and state natural resource agencies concerning the potential for cumulative impacts from the proposed projects. The staff's preliminary analysis has identified migratory deer, resident rainbow trout, and visual quality as target resources in the Yuba River Basin.

Black-tailed deer: Migratory deer of the Downiesville and Nevada City Herds occur within the Yuba River Basin. Above ground portions of pipeline and penstock or open canals could block deer migration routes and hinder movement of deer between summer and winter ranges. Deer also could be adversely affected by disturbance from construction activities, and are more likely to be hunted illegally where access to project areas is improved.

Rainbow trout: The Yuba River and its major tributaries support self-sustaining resident rainbow trout populations, except for Deer Creek, where trout occur only occasionally because of elevated water temperatures. The North Yuba River is the largest and most important trout stream within the Yuba River Basin. The California Department of Fish and Game supplements wild trout populations in the North Yuba River with hatchery-reared catchable trout during the summer months. Feeder streams such as Fall Creek are important sources of wild trout in the South Yuba River. Because of elevated water temperatures that favor warm-water species, the rainbow trout population decreases substantially in the downstream reach of the South Yuba River.

Visual quality: Adverse impacts to visual quality from the proposed projects would be related primarily to the creation of new linear, man-made features, such as piplelines or penstocks, access roads, and transmission lines, that cross slopes in an otherwise natural setting. Scenic vistas that are visible from State Highway 49, which has been designated a scenic highway corridor by the state, are particularly sensitive to alterations in visual quality.

Assessment of Cumulative Impacts

In addition to the information available on the eight proposed projects in the Yuba River Basin, the staff will review any data provided by interested persons and agencies addressing how these pending projects may have cumulative impacts on migratory deer, resident rainbow trout, visual quality, or other target resources of the region not yet identified by the staff.

Comments should be filed by the close of business October 27, 1986 and be addressed to Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Docket No. EL85–19–111 on all comments.

For further specific information please contact Kathleen L. Sherman, River Basin Coordinator, at (202) 376–9848.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–21116 Filed 9–17–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI78–226–004, et al.]

Exxon Corp.; Applications To Amend Certificates To Establish Entitlement To Section 109 Price [1]

September 12, 1986.

Take notice that each of the Applicants listed herein has either filed a petition to amend certificate pursuant to section 7 of the Natural Gas Act or a notice of change in rate which is being treated as a petition to amend certificate to establish Applicant's right to collect the section 109 price consistent with the court order issued in *Tenneco Exploration Ltd.* v. *FERC*, 649 F2d 376, all as more fully described in the respective applications and amendments which are open file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before September 29, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). 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.

Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft [3]	Pressure base
CI78–226–004, Aug. 28, 1986	Exxon Corporation, P.O. Box 2180, Houston, Texas 77252–2180.	Northern Natural Gas Company, West Cameron Block 630, Offshore Louisiana.	(–[1]–)	
CI79–552–001, Aug. 28, 1986	do	Northern Natural Gas Company, Vermilion Block 372, Offshore Louisiana.	(–[1]–)	
CI79–553–001, Aug. 28, 1986	do	Columbia Gas Transmission Corporation, Vermilion Block 372, Offshore Louisiana.	(–[1]–)	
CI79–620–003, Aug. 28, 1986	do	Southern Natural Gas Company, Mississippi Canyon Blocks 268 and 312, Offshore Louisiana.	(–[1]–)	
CI–59–004, Aug. 28, 1986	do	Transcontinental Gas Pipe Line Corp., High Island Block 179, Offshore Texas.	(–[1]–)	

[1] Applicant proposes to amend certificate to establish Applicant's entitlement to collect NGPA section 109 price consistent with court order issued in *Tenneco Exploration, Ltd.* v. *FERC*, 649 F.2d. 376.

Filling Code: A—Initial Service, B—Abandonment, C—Amendment to add acreage D—Amendment to delete acreage, E—Total Succession, F—Partial Succession.

[FR Doc. 86–21118 Filed 9–17–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP86–704–000 et al.]

Natural Gas Certificate Filings; Florida Gas Transmission Co. et al

Take notice that the following filings have been made with the Commission:

1. Florida Gas Transmission Company

[Docket No. CP86–704–000]

September 11, 1986.

Take notice that on August 29, 1986, Florida Gas Transmission Company (Florida Gas), P.O. Box 1188, Houston, Texas 77251, filed in Docket No. CP86–704–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing (1) the construction and operation of facilities, (2) firm transportation services on behalf of Florida Power and Light Company (FPL) and FPL Energy Services Inc. (ESI), (3) the revision of Annual Volumetric Entitlements (AVE) for existing resale customers, (4) the implementation of a new partial requirements sales service under proposed Rate Schedule PS and a new firm transportiaton service under proposed Rate Schedule FTS–1, (5) the abandonment of service under Rate Schedule T–3, and (6) certain revisions to various sections under the General Terms and Conditions of its FERC Gas Tariff and to its existing services under Rate Schedules G and I, all as more fully set forth in the application on file with the Commission and open to public inspection.

Florida Gas states that the proposal to construct the facilities in Docket No. CP86–704–000 is predicated upon the approval and construction of the facilities as filed in its pending Docket No. CP74–192–009.[1] Florida Gas further states that the facilities proposed in Docket No. CP74–192–009 and CP86–704–000 would increase its system design day capacity to 926,500 Mcf and its maximum system design day capacity to 960,200 Mcf. The facilities which Flordia Gas proposes to construct and operate in Docket No. CP86–704–000 are:

1. Approximately 43 miles of 30-inch pipeline and related appurtenances to loop its existing pipeline in three segments between Compressor Stations 11 and 12, 12 and 13, and 14 and 15, and additional compressor units to add a total of approximately 16,000 horsepower at mainline Compressor Stations 11, 12, 13, 14, 15, and 16, all in order to increase Florida Gas' mainline capacity by the dt equivalent of approximately 100,000 Mcf per day by June 10, 1988;

2. Approximately 149.4 miles of varying diameter pipelines, measurement and regulating station equipment, and related appurtenances, and three additional compressor units to add a total of approximately 4,000 horsepower at existing Compressor

[1] Filed on April 9, 1986, Florida Gas proposed the construction of 51 miles of pipeline and related modifications at a cost of $28,400,000. It is alleged that the proposals in Docket No. CP74–192–009 would add aproximately 100,000 Mcf per day to Florida Gas' system capacity. On August 19, 1986, the Commission issued a "Notice of Inforaml Technical Conference" in Docket No. CP74–192–009. Such notice stated that a conference would take place on September 17, 1986, at 9 a.m. at the offices of Florida Gas, 1560 Orange Avenue, Winter Park, Florida. All interested parties are invited to attend. it was stated.

Stations 16 and 30 and new Compressor Station 33, all in order to increase the capacity of various delivery laterals by January 1, 1988;

3. Approximately 37 miles of 30-inch pipeline (Martin Lateral), measurement and regulating station equipment, and related appurtenances, all in order to deliver up to 16 bilion Btu equivalent of natural gas per hour and up to 130 billion Btu equivalent of natrual gas per day (deliverable within a continuous fourteen hour period) to FPL's Martin Plant by June 10, 1988; and

4. Approximately 39.7 miles of 24-inch pipeline (Southend facilities), related appurtenances and additional compressor units to add a total of 24,000 horsepower at existing Compressor Stations 19 and 21, all in order to provide 130 billion Btu equivalent of natural gas per day (deliverable within a continuous fourteen hour period) at FPL's facilities south of its Martin Plant by June 10, 1988.

Florida Gas estimates that the total coat to construct the above facilities would be $160,000,000. For the facilities proposed in item 2 above, Florida Gas proposes that the related costs be treated on a rolled-in basis rather than an incremental basis, and as such requests waiver of section 14(b) of the General Terms and Condition of its FERC Tariff.

Florida Gas concurrently proposes to revise existing AVE's for existing resale customers. Florida Gas asserts that each customer's proposed AVE would accommodate Priorities 1 through 9 and that the revised amounts are based upon the higher of each customer's existing AVE or a revised AVE which includes an allowance for growth in Priorities 1 through 4 and an incremental growth in demand for Priorities 5 through 9. The proposed AVE levels are shown in Appendix A.

Florida Gas asserts that it has entered into letters of intent to transport natural gas on a firm basis for FPL and ESI. On behalf of FPL, Florida Gas proposes an initial service period of fifteen years whereby it would transport up to 430 billion Btu equivalent of natural gas per day during the months of May, June, July, August, and September and up to 280 billion Btu equivalent of natrual gas per day for the remaining months of the year. Under the terms of the letter of intent, FPL has the option to extend the transportation at up to 280 billion Btu per day for an additional fifteen years, it is stated. Florida Gas states that FPL would purchase gas directly from Enron Corp. and that Florida Gas would receive such natural gas at various points of receipt on its system. Redeliveries back to FPL would be at FPL's Martin County plant and at existing points of delivery to FPL (as provided for under existing Rate Schedule T-3). Florida Gas states that no initial rates are currently proposed for the service under Rate Schedule T-4. Instead, Florida Gas asserts that it would file an initial rate before the in-service date which would reflect FPL's agreement to pay a charge based on the actual costs of the proposed Martin Lateral and Southend facilities, plus a commodity charge to recover any FERC allocated cost of service attributable to the annual quantity of gas transported by Florida Gas for FPL. Florida Gas states that FPL has agreed to reimburse Florida Gas for the costs associated with the proposed Martin Lateral and Southend facilities either through a direct payment or through a monthly charge which would amortize the cost of such facilities over fifteen years. Since the Rate Schedule T-4 service is intended to provide FPL with its full requirements, Florida Gas proposes to abandon an existing transportation service for FPL under Rate Schedule G-3. This abandonment request is proposed to be effective June 10, 1988, and is contingent upon commencement of service under Rate Schedule T-4, it is stated.

Florida Gas proposes in Docket No. CP86-704-000 to perform a firm transportation service on behalf of ESI under the terms of a new Rate Schedule T-5. The proposed service would transport natural gas to be utilized in congeneration facilities and would initially transport up to 25 billion Btu equivalent of natural gas per day commencing the later of (1) January 1, 1987, (2) the completion and in-service date of the facilities requested in Docket No. CP74-192-009, or (3) such later date as requested by ESI, it is stated. Upon completion of the facilities proposed in Docket No. DP 86-704-000, Florida Gas proposed to increase the quantity transported for EIS up to 50 billion Btu equivalent of natural gas per day. As proposed, Rate Schedule T-5 service would be provided by Florida Gas for gas purchased directly by ESI and made available to Florida Gas' system at mutually agreed points of receipt and redelivered to ESI or its assignees at various points of redelivery also to be mutually agreed upon. No initial rates are currently proposed for Rate Schedule T-5, instead, Florida Gas asserts that ESI has agreed to pay for such service through a commodity charge designed to recover the FERC allocated cost of service for the capacity attributable to the annual contracted quantity of natural gas delivered to EIS. Florida Gas further asserts that such charge would be billed monthly as a firm reservation charge.

Additionally, Florida Gas proposes in Docket No. CP86-704-000 to restructure existing services to customers purchasing volumes under Rate Schedules G and I and to implement a new partial requirement sales service under Rate Schedule PS and a corresponding firm transportation service under Rate Schedule FTS-1.

Florida Gas proposes to provide each of its existing resale customers the option, which would be over a five-year period, commencing the later of October 1, 1987, or the October 1st immediately following final approval of Docket No. CP86-704-000, to (1) remain a full requirements customer under Rate Schedules G and I with the AVE's proposed in Appendix A, (2) reduce its total AVE's under Rate Schedules G and I, or (3) convert to a partial requirements customer under proposed Rate Schedule PS and the firm transportation service under Rate Schedule FTS-1. Any customer who elects service under Rate Schedules PS and FTS-1 would have the further option to reduce or to convert contract entitlements under Rate Schedule PS to transportation entitlements under Rate Schedule FTS-1, it is alleged. The reduction option for Rate Schedules G, I, and PS and the conversion option under Rate Schedule PS to Rate Schedule FTS-1, would not exceed twenty percent per year for a period of five years, it is explained.

For those chosing to become partial requirements customers under Rate Schedule PS, Florida Gas proposes to access a two-part demand/commodity rate structure. Florida Gas asserts that the demand charge would recover all allocated fixed costs except equity return, associated income taxes and certain fixed costs related to its gas supply function. Florida Gas requests that Rate Schedule PS become effective by October 1, 1987, and asserts that it would file the initial rates for Rate Schedule PS by September 1, 1987, provided Commission approval has been obtained.

For the corresponding transportation service under Rate Schedule FTS-1, Florida Gas proposes a two-part rate structure. Florida Gas states that a monthly reservation charge would be assessed each month to recover the fixed costs allocated to this service and a "transport" charge would be applied each month to recover the variable costs associated with the transportation service. Florida Gas proposes to make Rate Schedule FTS-1 effective by October 1, 1987, and asserts that it will file the initial rate for Rate Schedule

FTS–1 by September 1, 1987, provided Commission approval has been obtained.

Lastly, Florida Gas proposes to implement various changes and additions to its FERC Gas Tariff: (1) Section 9, *Priority to Service,* (2) a new section 9A, *Priorities of Service—Pipeline Capacity;* (3) Section 14, *Procedure For New and Existing Service;* (4) Section 16, *Schedule of Effective Minimum Annual Contract Quantity;* (5) a new section 16(a), *Reduction and Conversion of Service;* (6) Section 17, *Unauthorized Over-Run Provisions;* (7) Section 20, *Maximum Hourly and Daily Volumes;* and (8) other changes and revisions to its *General Terms and Conditions.*

APPENDIX A.—ANNUAL VOLUMETRIC ENTITLEMENTS

[Volumes in MMBtu]

Resale customers	1981 requirements in MMBtus			9/22/83 entitlements	Proposed entitlements	Increase in entitlements	
	G	I	Total			Due to growth	Due to increm load
Blountstown, City of	79,400	476,420	555,820	397,000	556,000	17,200	141,800
Central Florida Gas Corp	1,357,300	10,124,400	11,481,700	6,225,400	11,602,000	411,800	4,964,800
Chattahoochee, City of	47,700		47,700	111,900	111,900		
Chipley, City of	78,200		78,200	109,700	109,700		
City Gas Company of Florida	5,441,700	1,721,500	7,163,200	13,022,080	13,022,080		
Clearwater, City of	1,215,100	296,300	1,511,400	1,949,900	1,949,900		
Crescent City, City of	57,500		57,500	101,700	101,700		
Florida Public Utilities Co	3,508,800	3,021,800	6,530,600	6,366,000	6,531,000	165,000	
Ft. Meade, City of	35,600	5,100	40,700	103,800	103,800		
Ft. Pierce Utilities Auth	396,800	1,701,150	2,097,950	852,000	2,098,000	150,400	1,095,600
Gainesville Gas Company	1,950,100	2,911,200	4,861,300	3,648,500	4,862,000	492,800	720,700
Geneva County Gas District	161,100	34,800	195,900	360,300	360,300		
Indiantown Gas Company	15,300	245,600	260,900	855,700	855,700		
Jay, Town of	32,800		32,800	55,900	55,900		
Lake Apopka Natural Gas Dist	474,600	312,700	787,300	1,479,600	1,479,600		
Lake City, City of	699,100		699,100	373,200	700,000	170,000	156,800
Leesburg, City of	392,900	265,300	658,200	1,454,900	1,454,900		
Live Oak, City of	111,600	20,300	131,900	159,890	159,890		
Madison, City of	290,000		290,000	184,200	290,000	101,600	4,200
Mariana, City of	196,700	125,700	322,400	326,800	326,800		
Miller Gas Company	158,800	400,000	558,800	487,000	567,000		80,000
Palatka Gas Authority	222,600	29,200	251,800	404,780	404,780		
Palm Beach County Utilities Corp	122,800		122,800	117,800	123,000	5,200	
Peoples Gas Systems, Inc	23,551,200	29,645,800	53,197,000	44,090,597	53,677,000	2,220,200	7,366,203
Perry, City of	321,200		321,200	229,200	321,200	86,700	5,300
Plant City Natural Gas Co	130,600	551,400	682,000	686,500	698,400	9,400	2,500
Reedy Creek Utilities Co., Inc	825,200		825,200	560,900	825,200	10,400	253,900
St. Joe Natural Gas Co	204,200	2,917,055	3,121,255	922,100	3,122,000	71,500	2,128,400
South Florida Natural Gas Co	221,700	148,100	369,800	888,300	888,300		
Southern Gas Company	942,300	3,710,400	4,652,700	4,131,400	4,714,300	148,900	434,000
Starke, City of	110,700		110,700	108,100	111,000	2,900	
Sunrise, City of	353,800		353,800	272,177	354,000	48,600	33,223
Utilities Board, City of Florida	43,300		43,300	75,900	75,900		
West Florida Natural Gas Co	3,424,300	3,393,700	6,818,000	4,238,800	6,818,000	951,400	1,627,800
Williston, City of	57,100		57,100	45,000	57,100	7,900	4,200
Resale total	47,232,100	62,057,925	109,290,025	95,397,024	119,.488,350	5,071,900	19,019,426

ANNUAL VOLUMETRIC ENTITLEMENTS

[Volumes in MMBtu]

Direct sale customers firm and interruptible	1981 Requriements in MMBtu			9/22/83 Entitlements	Proposed entitlements	Increase in entitlements	
	Firm	Interruptible	Total			Due to growth	Due to increm load
Adams Packing		228,800	228,800	684,000	684,000		
Aluminum Co. of America		130,200	130,200	211,200	211,200		
Amax Chemical Corporation		1,119,500	1,119,500	3,086,000	3,086,000		
Basic Magnesia, Inc		211,300	211,300	1,950,000	1,950,000		
Buckeye Cellulose Corp		2,860,800	2,860,800	5,600,000	5,600,000		
CF Chemicals, Inc		605,200	605,200	1,751,700	1,751,700		
Citrus World, Inc		741,300	741,300	992,880	992,880		
Coca-Cola Company		877,400	877,400	1,115,000	1,115,000		
Deseret Ranches of Florida	900		900	2,000	2,000		
Dixie Lime (Amcar)		266,500	266,500	52,242	340,000		287,758
Edgar Brick				300,000	300,00		
Estech, Inc		432,200	432,200	1,336,000	1,336,000		
Farmland Industries		257,900	257,900	1,422,000	1,422,000		
Feldspar Corpoation		152,800	152,800	122,800	164,600		41,800
Florida Hydrocarbons Company[1]		7,086,800	7,086,800	7,611,667	7,611,667		
Fort Pierce Utilities Auth (Elec)		1,474,500	1,474,500	3,337,000	3,337,000		
Gainesville, City of		3,850,600	3,850,600	8,400,000	8,400,000		
Gardinier, Inc	384,000		384,000	5,491,250	5,491,250		
Georgia Pacific Corp. (Hudson)	138,700	4,973,700	5,112,400	227,100	5,112,400		4,885,300
Gold Bond Building Products		1,241,100	1,241,100	900,000	1,241,100		341,100
Grace, W.R. & Company		3,484,400	3,484,400	1,500,000	3,485,000		1,985,000
Homestead, City of		575,000	575,000	2,270,000	2,270,000		
Intn't Minerals & Chemicals Co		604,400	604,400	980,000	980,000		
Kissimmee, City of		1,109,600	1,109,600	2,325,000	2,325,000		
Lakeland, City of		3,839,000	3,839,000	9,125,000	9,125,000		
Orlando Utilities Commission		11,481,100	11,481,100	14,600,000	14,600,000		
Plymouth Citrus Coop				800,000	800,000		
Pratt & Whitney Aircraft Co	166,800		166,800	717,860	717,860		

ANNUAL VOLUMETRIC ENTITLEMENTS—Continued

[Volumes in MMBtu]

Direct sale customers firm and interruptible	1991 Requriements in MMBtu			9/22/83 Entitlements	Proposed entitlements	Increase in entitlements	
	Firm	Interruptible	Total			Due to growth	Due to increm load
Raiford Division of Corrections	43,700	135,800	179,500	280,800	280,000		
Reedy Creek Utilities Co., Inc		2,838,000	2,838,000	2,560,000	2,838,000		278,000
Rinker Materials Corporation		42,400	42,400	31,150,000	3,150,000		
Sebring Utilities Commission		422,000	422,000	928,300	928,300		
Starke, City of (Elec)		100,200	100,200	400,500	400,500		
Tallahassee, City of		11,344,600	11,344,600	11,952,000	11,952,000		
US Agri-Chemicals, Inc		510,300	510,300	1,300,000	1,300,000		
USS Chemicals-Polyester Unit	44,900		44,900	42,000	45,000		3,000
Vero Beach, City of		1,007,500	1,007,500	3,690,000	3,690,000		
Wenczel Title Company of Florida	29,900	63,600	93,500	128,330	128,330		
White Meat Packers of Florida				70,000	70,000		
Total direct firm & interrup	808,900	64,068,500	64,877,400	101,412,629	109,234,587		7,821,958

Comment date: October 3, 1986, in accordance with Standard Paragraph F at the end of this notice.

Kentucky West Virginia Gas Company

[Docket No. CP86-710-000]

September 12, 1986.

Take notice that on September 4, 1986, Kentucky West Virginia Gas Company (Kentucky West) 17th Street, Ashland, Kentucky 41105-1388, filed in Docket No. CP86-710-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon sales and deliveries of natural gas to East Kentucky Utilities, Inc. (East Kentucky), a wholesale distributor customer of Kentucky West, because of a long standing delinquent balance of payments in East Kentucky's purchased gas account, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

East Kentucky is a non-profit corporation, which leases a natural gas distribution system from Floyd County, Kentucky, that serves approximately 1,300 homes, six elementary schools, a nursing home and a truck body manufacturing company. East Kentucky receives approximately 80 percent of its gas requirements from Kentucky West pursuant to Rate Schedule GSS-1 in Kentucky West's FERC Gas Tariff, First Revised Volume No. 1, with the remaining 20 percent being supplied by Southeastern Gas Company.

Kentucky West requests permission to abandon the sale and delivery of gas to East Kentucky stating that it has since November 1982, consistently maintained a delinquent balance in its purchased gas account with Kentucky West. Kentucky West further alleges that as of August 29, 1986, East Kentucky was delinquent in its payments of a total of $358,477.68 which includes interest accrued at a rate of 7 percent per annum [1] on the unpaid balance. The application states that East Kentucky does not contest the delinquency of its account.

Kentucky West states that throughout the delinquent period it has made numerous efforts to resolve the problem including correspondence, telephone calls and meetings with representatives of both East Kentucky and the Floyd County Government. Kentucky West has also informed the Kentucky Public Service Commission that abandonment of service would be sought unless the matter of the delinquent payments were resolved.

Kentucky West stated that it was reluctant to seek a solution to the matter, by requesting permission to abandon service to East Kentucky, but in consideration of the probability that the delinquency will increase in the future concluded the proposed abandonment of service the only alternative.

Comment date: October 3, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Texas Eastern Transmission Corp.

[Docket No. CP86-82-002]

September 12, 1986

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on September 5, 1986 tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1 the following sheets:

Revised Eighty-first Revised Sheet No. 14
Original Sheet Nos. 74N through 74T
Original Sheet Nos. 172F through 172K

In accordance with the Certificate of Public Convenience and Necessity issued by the Commission's order dated July 31, 1986 in Docket No. CP86-82-000, Texas Eastern is authorized to construct and operate pipeline facilities and to provide a firm transportation service pursuant to Rate Schedule FTS-II consisting of the receipt, transportation, and delivery of quantities of gas for certain customers designated as the "Keystone Shippers" up to their Maximum Daily Transportation Quantities and such additional quantities of gas on an interruptible basis, as are mutually agreed upon. Original Sheet Nos. 74N through 74T and 172F thorugh 172K set forth Rate Schedule FTS-II and the Form of Service Agreement.

Pursuant to Ordering Paragraph F (6) of the July 31, 1986 Commission order, Texas Eastern is filing revised tariff sheets to remove section 3.4 from the pro forma Rate Schedule FTS-II filed October 29, 1985 and to revise section 4.1 in accordance with such ordering paragraph. These tariff changes have been agreed to by the individual Keystone Shippers. On August 29, 1986 Texas Eastern filed a "Motion for Clarification or, in the Alternative, Request for Rehearing" in Docket No. CP86-82-000 which requests clarification of Ordering Paragraph F (6) of the Commission's July 31, 1986 Order.

In the event the Commission rules favorably on Texas Eastern's motion, Texas Eastern herewith submits for filing as a part of its FERC Gas Tariff, Fourth Revised Volume No. 1, six copies of the following tariff sheet:

Alternate Original Sheet No. 74P

Texas Eastern respectfully requests that Alternate Original Sheet No. 74P be approved in lieu of Original Sheet No. 74P. Alternate Original Sheet No. 74P is identical to Original Sheet No. 74P except for the deletion of the requirement that the Keystone Shippers

[1] Interest is accrued pursuant to section 7.3 of the General Terms and Conditions of Kentucky West's gas tariff.

tender gas on the date that all facilties are completed and placed into service.

The above listed Revised Eighty-first Revised Sheet No. 14 is being filed to set forth the initial estimated demand rates as shown in Texas Eastern's application filed October 29, 1985 in Docket No. CP86–82–000 and approved by the Commission in its July 31, 1986 order. In addition, as required by Ordering Paragraph F (7), the FTS–II commodity rate has been shown at a rate equal to the fully allocated rate under Rate Schedule TS–3. This tariff sheet also reflects the out-of-cycle PGA rates filed August 5, 1986 and revised rates for Rate Schedule FTS filed September 2, 1986, both of which have not been approved by the Commission. In the event the sheets filed on August 5, 1986 and September 2, 1986 are not approved or are revised in any way, Texas Eastern will refile Sheet No. 14 to reflect the final determination of Texas Eastern's August 5, 1986 and September 2, 1986 filings.

The proposed effective date of these tariff sheets is November 1, 1986, the date that all facilities authorized in Docket No. CP86–82–000 are scheduled to be completed and in-service and the date requested by the Keystone Shippers as an effective date.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Comment date: September 22, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Northwest Pipeline Corporation

[Docket No. CP86–707–000]

September 12, 1986.

Take notice that on September 2, 1986, Northwest Pipeline Corporation (Applicant), 295 Chipeta Way, Salt Lake City, Utah 84108, filed at Docket No. CP86–707–000, an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the transportation of natural gas in interstate commerce for the account of Development Associates, Inc. (Development), with pre-granted abandonment; all as more fully set forth in the application which is on file and open to public inspection.

Applicant proposes to transport up to 50 billion Btu equivalent of natural gas per day on an interruptible basis for the account of Development, for a term commencing with initial delivery and terminating on October 31, 1989, pursuant to a gas transportation agreement dated August 22, 1986 which provides for transportation under Rate Schedules T–4 and T–5 of Applicant's FERC Gas Tariff, Volume No. 1–A. Applicant also requests blanket authority to add and delete delivery points under the agreement.

It is stated that Development, acting as agent for various end-users served by The Washington Water Power Company (Water Power), has procured supplies of natural gas which it will cause to be delivered to Applicant at various existing receipt points on Applicant's transmission system.

Applicant proposes to transport Development's gas through its transmission system and redeliver thermally equivalent amounts of gas, less transmission fuel, to Water Power, for the account of Development, at certain existing sales meter stations in Idaho and Washington.

It is further stated that Water Power will subsequently deliver this gas to certain specified end-users on its distribution system.

Applicant proposes to charge Development for all amounts of gas transported and delivered under the agreement at either the interruptible, incremental on-system transportation rate or the interruptible, replacement on-system transportation rate as set forth, respectively, in Applicant's Rate Schedules T–4 and T–5, FERC Gas Tariff, Volume No. 1–A. The T–4 transportation rate will apply to gas transported during any month which is incremental to the corresponding 1984 monthly quantities of gas for the end-users. The T–5 transportation rate will apply to all gas which is not incremental to these quantities of gas. It is stated that the currently effective T–4 transportation rate is .02 cents per billion Btu equivalent, plus a GRI charge of .00131 cents per billion Btu equivalent and a fuel reimbursement charge, and the currently effective T–5 transportation rate is .03797 cents per billion Btu equivalent plus a GRI charge of .00131 cents per billion Btu equivalent, a fuel reimbursement charge, and, if applicable, a take-or-pay cost reimbursement fee of .024 cents per billion Btu equivalent and/or a gathering payment credit of .03091 cents per billion Btu equivalent.

Comment date: October 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–21115 Filed 9–17–86; 8:45 am]

BILLING CODE 6717–01–M

Determinations Under the Natural Gas Policy Act for OCS Leases Issued on or After April 20, 1977

Issued: September 12, 1986.

On September 27, 1983, the Federal Energy Regulatory Commission (Commission) issued Order No. 336 under Docket Nos. RM83–3 and RM81–12 (48 FR 44508 September 29, 1983). In that order, the Commission amended its regulations relating to filing requirements for well category applications under the Natural Gas Policy Act of 1978 (NGPA). The determination process for natural gas produced from a new lease, i.e., a lease entered into on or after April 20, 1977, on the Outer Continental Shelf (OCS), and qualifying as new natural gas under section 102 of the NGPA, was amended in two respects. First, the Commission eliminated the requirement that a

determination be made for each well producing gas from a new OCS lease. Second, in lieu of filing an application for each well, the Commission now permits the grant of a new OCS lease to constitute the requisite jurisdictional agency determination that the gas is produced from a new OCS lease.

Under the revised procedures, the U.S. Department of Interior, Minerals Management Service (MMS), must file within 60 days of the grant of the lease a notice of determination which includes the lease number, the area and block number, and the date on which the OCS lease was issued by the Secretary of the Interior. This determination is subject to Commission review in the same manner as other jurisdictional agency determinations.

On September 2, 1986, the Commission received notice from MMS, Gulf of Mexico OCS Region, that 30 leases were issued as a result of OCS Sale 94 for the Eastern Gulf of Mexico on December 18, 1985. Gas produced from the following leases have been determined to be gas produced from a new OCS lease under NGPA Section 102:

OCS-G Lease No.	Area and block	Effective date
8355	DSC—249	Jan. 1, 1986
8356	DSC—250	Do.
8303	PEN—837G	Feb. 1, 1986.
8314	PEN—925	Do.
8320	DES—12	Do.
8369	PR—65	Do.
8370	PR—108	Do.
8371	PR—109	Do.
8372	PR—828	Do.
8373	PR—829	Do.
8374	PR—872	Do.
8375	PR—873	Do.
8376	PR—953	Do.
8377	PR—954	Do.
8378	PR—955	Do.
8379	PR—956	Do.
8380	PR—957	Do.
8381	PR—998	Do.
8316	PEN—971	Mar. 1, 1986.
8321	DES—15	Do.
8322	DES—16	Do.
8335	DES—96	Do.
8336	DES—97	Do.
8347	DES—639	Do.
8348	DES—683	Do.
8349	DES—684	Do.
8357	DSC—251	Do.
8358	DSC—338	Do.
8359	DSC—339	Do.
8360	DSC—744	Do.

The complete list of OCS leases submitted by the MMS for this sale, with area and block descriptions, is available for inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, DC. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within twenty days after this notice is issued by the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-21117 Filed 9-17-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-10672-000 et al.

Sun Exploration and Production Co. et al.; Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates [1]

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission open to public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protests with reference to said application should on or before September 25, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rule of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to 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 petition to intervene in accordance with the Commission's Rules.

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.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft [3]	Pressure base
G-10672-000, D Sept. 8, 1966	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	Colorado Interstate Gas Company, Hugoton Field, Kearney County, Kansas.	(1)	
CI62-462-002, D, Sept. 8, 1986	do	Northern Natural Gas Company, Sitka Field, Clark County, Kansas.	(1)	
CI62-1251-002, D, Sept. 8, 1986	do	Arkla Energy Resources, Red Oak Field, Latimer County, Oklahoma.	(2)	
CI63-1407-003, D, Sept. 8, 1986	do	Kansas-Nebraska Natural Gas Company, Syracuse and Bradshaw Fields, Hamilton County, Kansas.	(1)	
CI66-1215-001, Sept. 8, 1986	do	Natural Gas Pipeline Company of America North Farnsworth Field, Ochiltree County, Texas.	(3)	
CI86-712-000, Sept. 2, 1986	do	Natural Gas Pipeline Company of America North Government Wells Field, Duval County, Texas.	(4)	
CI64-71-003, D, Sept. 5, 1986	Texaco Inc., P.O. Box 52332 Houston, Texas 77052	Panhandle Eastern Pipeline Company, N.W. Midwell Field, Cimarron County, Oklahoma.	(5)	
CI86-719-000 (CI66-124), B, Sept. 8, 1986	Texaco Producing Inc., P.O. Box 52332, Houston, Texas 77052	Trunkline Gas Company, South Thronwell Field Area, Jefferson Davis Parish, Louisiana.	(1)	
CI86-721-000, B, Sept. 8, 1986	do	Phillips Petroleum Company, Eunice Plants and Skaggs Drinkard Field, Lea County, New Mexico.	(6)	
CI86-715-000, (G-18209), B, Sept. 5, 1986	Champlin Petroleum Company, Four Allen Center, 1400 Smith Street Suite 1500, Houston, Texas 77002.	West Lake Natural Gasoline Company, *Et al*, Nena Lucia Field, Nolan County, Texas.	(8)	
CI86-718-000, (G-5214), B, Sept. 5, 1986	SALVEX, Inc., P.O. Box 51946 Lafayette, La. 70505	Tennessee Gas Pipeline Company, Div. of Tenneco Inc., Hog Bayou Field, Cameron Parish, Louisiana.	(10)	
CI86-722-000 (CI78-1039), B, Sept. 8, 1986	Bill J. Graham Oil and Gas (Succ. to ARCO Oil and Gas) P.O. Box 7037, Midland, Texas 79708.	Northern Natural Gas Company Eldorado Southwest (Strawn), Schleicher County, Texas.	(12)	

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft [3]	Pressure base
CI86-723-000 (G-14852), B, Sept. 8, 1986.	....do	El Paso Natural Gas Company, Eldorado Southwest (Strawn), Schleicher County, Texas.	([11])	
CI86-724-000 (G-45249), B, Sept. 8, 1986.	Bill J. Graham Oil and Gas (Succ. to Exxon Corporation).	....do	([12])	
CI86-725-000, Sept. 8, 1986	Shell Offshore Inc., P.O. Box 4480, Houston, Texas 77210.	Transcontinental Gas Line Corp., Vermilion Block 76, Offshore Louisiana.	([13])	
CI86-728-000, B, Sept. 8, 1986	Texaco Inc., P.O. Box 52332, Houston, Texas 77052.	Warren Petroleum Company, McClain County, Oklahoma.	([14])	
CI88-727-000 (G-18614), D, Sept. 10, 1986.	Sun Exploration and Production Co	Colorado Interstate Gas Company Hugoton Field, Kearney County, Kansas.	([15])	
CI86-726-000, F, Sept. 10, 1986	Amoco Production Company (Succ. in Interest to Sun Exploration and Production Company) 1670 Broadway, Room 1754, Denver, Colorado 80202.	Arkla Energy Resources, Inc., Red Oak Field, Latimer County, Oklahoma.	([16])	
CI86-717-000 (CI73-142), B, Sept. 2, 1986.	Sun Exploration and Production Co.	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Waveland Field, Hancock County, Mississippi.	([17])	
G-4544-001 D, Aug. 28, 1986	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	Transcontinental Gas Pipe Line Corp., Clayton, Coquat, Karon, *et al.* Fields Live Oak County, Texas.	([18])	

[1] Property sold to Kenworthy Operating Company.
[2] Property sold to Amoco Production Company.
[3] Property sold to Berenergy Corporation.
[4] Contract expired under its own terms on 1-1-84. Purchaser is not taking gas due to depletion of reserves, now estimated to be one (1) Mcf per month.
[5] Not used.
[6] By assignment executed 5-19-86, but effective as of 5-1-86, Texaco assigned the Raymond Smaltz Lease to Longhorn Oil Company.
[7] By assignment dated 7-3-85, but effective 6-1-85, Texaco Producing Inc., assigned all of its remaining interest in certain properties under the 8-4-64 contract to Vernon E. Faulconer, small producer certificate under Docket No. CS74-147.
[8] The terms of Applicant's contracts with Phillips expired 6-1-86 and 8-5-85, with day-to-day sales thereafter. Applicant intends to enter into a percentage-of-Proceeds type arrangement to provide for the processing at TPI's Eunice Plant of the gas from the leases previously contracted and delivered to Phillips. After processing, 60% of the residue gas would continue to be sold to El Paso by TPI at its Eunice, New Mexico Plant but under TPI's G.R.S. No. 390, Certificate No. CI72-771 and 40% of the residue gas would be sold to Northern Natural Gas Company by TPI at its Certificate No. CI72-762.
[9] Champlin has entered into a percentage-of-proceeds contract.
[10] Salvex, Inc., purchased the subject property from Sohio Petroleum Company, *et al.* in February, 1985. There were (3) wells on the property but only one was capable of production. Salvex Inc., contacted Tennessee and requested a delivery point and an allowable. Tennessee has declined and agreed to release the gas and Salvex, Inc., has contracted (2) other gas Companies, Texas Gas Company and ANR Gathering Company and requests it be allowed to sell their gas to either one of the two Companies.
[11] Not used.
[12] Well can no longer produce against current line pressure and purchaser will not accept gas due to market conditions.
[13] Applicant is filing to cover their 11.25% working interest which they acquired on Payout occurred on 3-19-85.
[14] The tems of Applicant's contract with Warren Petroleum Company expired 4-1-84. There has been no production since 1983. Warren has concurred in the termination by letter dated 5-30-86.
[15] Property sold to Cities Service Oil and Gas Corporation effective 11-1-84.
[16] By an assignment dated 10-16-85, and made effective as of 8-1-85, Sun Exploration and Production Company assigned to Amoco a specified leasehold interest ("the Asigned Interest") in certain acreage lying in Latimer and LeFlore Counties, Oklahoma.
[17] Leases expired by their own terms and contract canceled 8-3-86.
[18] By assignment dated 11-27-85, as amended 1-2-86, Applicant assigned certain interests to TXO Production Corp.
Filing Code: A—Initial Services B—Abandonment, C—Amendment to add acreage, D—Amendment to delete acreage, E—Total Succession F—Partial Succession.

[FR Doc. 86-21155 Filed 9-17-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP85-128-001 et al.]

Equitable Gas Co. et al.; Filing of Pipeline Refund Reports

September 12, 1986.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports. The date of filing and docket number are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before September 22, 1986. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

Appendix

Filing date	Company	Docket No.
7-31-86	Equitable Gas Co.	RP85-128-001.
7-31-86	Tennessee Gas Pipeline Co.	RP84-441-016.
8-4-86	Columbia Gas Transmission Corp.	RP78-20-025.
8-18-86	Mountain Fuel Resources, Inc.	RP85-208-001.
8-26-86	Algonquin Gas Transmission Co.	RP72-110-042.
9-2-86	Southwest Gas Corp.	RP86-9-004.

[FR Doc. 86-21119 Filed 9-17-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER86-608-000]

Iowa Power and Light Co.; Amendment to Filing

September 15, 1986.

Take notice that on August 14, 1986, Iowa Power and Light Company tendered for filing an amendment to its filing in this docket of July 23, 1986. The amendment consists of a description of how the energy charge in the rate schedule was determined.

Iowa Power and Light Company requests that the Commission waive its prior notice requirements to accept the filing with an effective date of June 29, 1986.

Iowa Power and Light Company states that copies of the amendment have been served upon Union Electric Company and the Iowa State Commerce Commission.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-21151 Filed 9-17-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER86-591-000]

Northern States Power Co.; Amending Filing

September 15, 1986.

Take notice that on August 11, 1986, Northern States Power Company (Minnesota), on behalf of both Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin), tendered for filing additional information intended to supplement the filing made on July 3, 1986 in the above referenced docket number concerning the Transmission Agreement Between Wisconsin Public Power, Inc. System (WPPI), Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin).

The agreement filed in the above referenced docket number contains a negotiated non-firm wheeling rate for deliveries from Basin Electric Power Cooperative, Inc. to the Wisconsin Electric Power Company transmission facilities for ultimate delivery to WPPI. The parties to the agreement freely negotiated the filed rate and find it mutually beneficial. The filed agreement also contains a negotiated loss compensation value of 6% effective until such time that studies can be conducted on actual incremental losses experienced due to transactions under the agreement.

Northern States Power Company (Minnesota) renewed the requests for an effective date of June 19, 1986, and a waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 22, 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-21149 Filed 9-17-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-533-000]

Northern States Power Co.; Amended Filing

September 15, 1986.

Take notice that on August 11, 1986, Northern States Power Company (Minnesota), on behalf of both Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin), tendered for filing additional information intended to supplement the filing made on June 11, 1986 in the above referenced docket number concerning the Transmission Agreement Between Wisconsin Public Power, Inc. System (WPPI), Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin).

The agreement filed in the above referenced docket number contains a negotiated non-firm wheeling rate for deliveries from Minnesota Power to the Wisconsin Electric Power Company transmission facilities for ultimate delivery to WPPI. The parties to the agreement freely negotiated the filed rate and find it mutually beneficial. The filed agreement also contains a negotiated loss compensation value of 6% effective until such time that studies can be conducted on actual incremental losses experienced due to transactions under the agreement.

Northern States Power Company (Minnesota) renewed the requests for an effective date of May 1, 1986, and a waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 22, 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-21150 Filed 9-17-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-437-000]

Southern Indiana Gas & Electric Co.; Amendment to Filing

September 12, 1986

Take notice that on August 20, 1986, Southern Indiana Gas and Electric Company tendered for filing an amendment to its filing of Modification No. 5 to its November 27, 1972 Interconnection Agreement with the City of Jasper, Indiana.

The filing company states that the purpose of this filing is to revise Service Schedule A—Contract Power—and Schedule B—Emergency Power—and Schedule C—Maintenance Power—as contained in its original Modification No. 5. The filing company proposes that various charges in the schedules be revised. The contract term is also to be extended to ten years from the date of Modification No. 5. The filing company also withdraws the proposed Modification No. 6 that was originally part of its filing.

The filing company requests waiver of the notice requirements of the Commission's regulations to permit an effective date of August 1, 1986. The filing company states that copies of the filing have been served upon the City of Jasper, Indiana.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-21152 Filed 9-17-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-15153-001 et al.]

Texaco Inc. et al.; Application

September 15, 1986.

Take notice that on August 27, 1986, Texaco Inc. (Applicant), of P.O. Box 52332, Houston, Texas 77052, Acting on its own behalf and as representative of

GREATER ANETH AREA PRODUCERS under certificated sales from the Greater Aneth Area, San Juan County, Utah, filed an application to Amend Certificates of Public Convenience and Necessity heretofore issued in Dockets listed on Exhibit "A" to provide for a change in delivery point, which is on file with the Commission and open to public inspection.

The new delivery point has been necessitated by a pending transfer of El Paso Natural Gas Company's Aneth Plant in San Juan County, Utah, to Texaco Inc., as Operator and representative of all Greater Aneth Area Producers who elect to obtain ownership in the Aneth Plant.

Texaco Inc. and the Greater Aneth Area Producers, under certificated sales in Dockets listed on Exhibit "A", and El Paso Natural Gas Company (EPNG) have entered into an Agreement amending their respective Certificates to provide for deliveries of natural gas to EPNG at the tailgate of the Aneth Plant.

Any person desiring to be heard or to make any protest with reference to said application should, on or before September 29, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). 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 the proceeding herein must file a petiton to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

EXHIBIT "A".—PRODUCER CERTIFICATE AND FERC GAS RATE SCHEDULES ON CONTRACTS IN THE ANETH AREA

Producer name	Contract date	Certificate docket No.	FERC gas rate schedule No.
Chevron USA Inc	11-06-58	G-16949	285
	3-01-59	G-18030	98
Union Oil Company of California.	11-29-57	G-14158	117
Sun Exploration and Production Company.	12-03-57	G-14403	95
Texaco Inc	5-12-59	CI62-1315	298
	4-15-58	G-15153	183
Shell Western E&P Inc.	11-04-57	G-13876	40

EXHIBIT "A".—PRODUCER CERTIFICATE AND FERC GAS RATE SCHEDULES ON CONTRACTS IN THE ANETH AREA—Continued

Producer name	Contract date	Certificate docket No.	FERC gas rate schedule No.
Phillips Petroleum Company.	11-22-57	G-13963	305
Conoco, Inc	9-02-57	CI64-1301	275
	12-02-57	G-14396	159
The Superior Oil Company.	6-11-58	G-15431	77
	12-02-57	CI60-259	285
	10-29-57	CI64-397	284
Exxon Corporation	11-25-57	G-14369	212
Southland Royalty Company.	10-29-57	G-13946	49
Marathon Oil Company.	12-02-57	G-14441	44
Tenneco Oil Company	9-02-57	G-14800	159
Monsanto Oil Company [1].	8-31-61	CI62-347	51
	8-01-66	CI67-347	84
Amoco Production Company.	9-18-62	CI63-390	346

[1] By application dated June 6, 1986, BHP Petroleum Company Inc, filed with the Federal Energy Regulatory Commission as successor-in-interest to Monsanto Oil Company.

[FR Doc. 86-21154 Filed 9-17-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-30-044]

Transcontinental Gas Pipe Line Corp.; Proposed Change in FERC Gas Tariff

September 12, 1986.

Take notice that on September 8, 1986, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 2:

Tariff sheet	Proposed effective date
Second Revised Sheet No. 2328-A	Apr. 1, 1986.
Original Sheet No. 2702-A	Do.
Original Sheet No. 2756-A	May 1, 1986.

Transco states that the subject tariff sheets provide for changes in the rates contained in Schedules X-235 (transportation agreement dated November 28, 1980, as amended April 2, 1982 between Transco and United Gas Pipe Line Company); X-259 (transportation agreement dated February 5, 1985 between Transco and Tennessee Gas Pipeline Company) and X-262 (transportation agreement dated July 1, 1985 between Transco and Southern Natural Gas Company). Transco further states that the tariff filing is being made to bring the subject rate schedules into harmony with Transco's uniform production area rate methodology resulting from the proceedings and settlement in Docket No. RP83-30.

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 September 22, 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-21114 Filed 9-17-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA86-25-000]

Robert White; Petition for Adjustment From the 150-Day Filing Requirement of § 271.805(f)(1)

September 15, 1986.

On June 26, 1986 Robert F. White, an independent small producer of oil and gas, filed with the Federal Energy Regulatory Commission, pursuant to § 271.805(f)(1) of the Commission's regulations, a petition requesting waiver of the 150-day time limit for filing applications for continued stripper well status for wells which overproduce because of enhanced recovery operations. Approval of such an application permits an applicant to continue to collect the maximum lawful price for previously qualified stripper well gas sold under section 108 of the Natural Gas Policy Act of 1978 (NGPA).

On July 10, 1963, the Belcher No. 1 gas well was completed in Edwards County, Kansas. On July 26, 1979, the well was designated a stripper well under NGPA section 108(c) by the Kansas Corporation Commission. Mr. White states through the fall of 1983 the well produced small amounts of gas which, coupled with declining deliverability, sporadic takes by pipelines and increases in pipeline pressure, resulted in both low sales and low rates of production.

Mr. White further states that in July 1984 he decided to apply enhanced recovery techniques to the well (a fracture treatment and the installation of a compressor). As a result of the enhancement work and a lower line pressure the well overproduced during the 90-day production period from August 1 through October 31, 1984. Mr. White claims he was unaware that the well had become disqualified until July

25, 1985, when KN Energy, the pipeline purchaser, informed him and demanded a refund due to the excess production. Under § 271.805(f)(1) of the Commission's rules Mr. White would be ineligible to collect a section 108 price because an application for enhanced recovery was not filed within 150-days of the last day of the 90-day production period in which the well disqualified. Later, on August 14, 1985, Mr. White filed an enhanced recovery application with the Kansas Corporation Commission which granted the application on February 11, 1986.

Mr. White, requests that the Commission grant his petition for adjustment by waiving the 150-day application filing requirement of § 271.805(f)(1) and to allow the Belcher No. 1 well to qualify for the section 108 price from October 31, 1984, through August 14, 1985, when the application was filed with the Kansas Corporation Commission.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest in accordance with Rules 214 or 211 of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, not later than 30 days following publication of this notice in the **Federal Register.** All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of this petition are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-21153 Filed 9-17-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $910,062.21 (plus accrued interest) obtained from Mountain Fuel Supply Company, Case No. KEF-0025 and J.N. Abel, Inc., Case No. KEF-0034. The OHA has decided that the funds will be distributed in accordance with the DOE Policy of Restitution for Crude Oil Overcharges, as modified by the Stripper Well Settlement Agreement.

DATE AND ADDRESS: Applications for refund must be filed in duplicate by [90 days from date of publication in the **Federal Register**] and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All applications should display a reference to Case Nos. KEF-0025 and KEF-0034.

FOR FURTHER INFORMATION CONTACT: Thomas Wieker, Deputy Director or Irene Bleiweiss, Attorney Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252-2390 (Wieker) or (202) 252-2400 (Bleiweiss).

SUPPLEMENTARY INFORMATION:

In accordance with § 205.282(c) of the procedural regulations of the Department of Energy (DOE), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute monies obtained from Mountain Fuel Supply Company (Mountain Fuel) and J.N. Abel, Inc. (Abel). Each firm remitted monies to the DOE to settle possible pricing violations with respect to its sales of crude oil. The firms' payments are being held in an interest-bearing escrow account pending distribution by the DOE.

The DOE has decided that distribution of the monies received from Mountain Fuel and Abel will be governed by the DOE Policy of Restitution for Crude Oil Overcharges, as modified. 51 Fed. Reg. 27899 (August 4, 1986). That policy states that crude oil overcharge monies will be divided among the states, the federal government, and eligible pruchasers of crude oil and refined products.

Refunds to the states will be distributed in proportion to each state's consumption of petroleum products. Refunds to eligible purchasers will be based on the number of gallons of crude oil which they purchased and the extent to which they can demonstrate injury.

Applications for refund may now be filed. Applications will be accepted provided they are filed at the address set forth at the beginning of this notice, no later than 90 days after publication of this notice in the **Federal Register.** Additional information is provided in the Decision and Order.

Dated: September 11, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Department of Energy

September 11, 1986.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Cases: Mountain Fuel Supply Company, J.N. Abel, Inc.

Dates of Filings: April 3, 1986, April 18, 1986

Case Numbers: KEF-0025, KEF-0034

This Decision and Order establishes the procedures by which the Office of Hearings and Appeals (OHA) will distribute $910,062.21 remitted to the Department of Energy (DOE) by two crude oil producers: Mountain Fuel Supply Company (Mountain Fuel) and J.N. Abel, Inc. (Abel).[1] Both firms allegedly violated the DOE's Mandatory Petroleum Price Regulations in their sales of crude oil. The DOE's dispute with Mountain Fuel was settled through a Stipulation of Settlement signed on March 25, 1985. The dispute between the DOE and Abel was settled through an Agreed Final Judgment entered into on February 6, 1984. The firms' payments are being held in an interest-bearing escrow account pending distribution.

In June 1986, the OHA proposed that the Mountain Fuel and Abel monies be distributed in accordance with the DOE Policy of Restitution for Crude Oil Overcharges and solicited public comments to that proposal. 51 FR 21399 (June 12, 1986). (Mountain Fuel); *id.* at 21401 (Abel). The DOE Policy has since been modified. Therefore, we will discuss the Policy and the modifications to it in greater detail before addressing the public comments to the OHA's proposals.

The DOE Crude Oil Policy

At the time when the OHA issued its Proposed Decisions concerning the Mountain Fuel and Abel monies, the DOE Policy was to hold all crude oil

[1] Under the DOE procedural regulations, the Economic Regulatory Administration (ERA) may request that the OHA formulate and implement special refund procedures to distribute funds received from enforcement proceedings. *See* 10 CFR Part 205, Subpart V. The ERA has requested that the OHA formulate such procedures to distribute $669,697.92 (plus accrued interest) received from Mountain Fuel and $240,364.29 (plus accrued interest) received from Abel. Both firms remitted monies to the ERA to settle alleged violations of DOE crude oil regulations. As of August 31, 1986 the Abel fund contained $306,781.34 (including interest) and the Mountain Fuel fund contained $778,174.04 (including interest).

overcharge funds in escrow to afford Congress the opportunity to select a means of making indirect restitution to injured parties. *See* 50 FR 27400 (July 2, 1985) (the 1985 Policy). If Congress did not act, the 1985 Policy contemplated that the funds would be deposited in the U.S. Treasury.

On July 28, 1986, as the result of a court-approved Settlement Agreement in *The Department of Energy Stripper Well Litigation,* the DOE modified its policy of restitution. *See* 51 FR 27899 (August 4, 1986) (the Modified Policy). Under the Modified Policy, crude oil overcharge monies will be divided among the states, the U.S. Treasury, and eligible purchasers of crude oil and refined products.[2] On August 8, 1986 the OHA announced its intention to follow the Modified Policy. *Notice of Order Implementing Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges,* 51 FR 29689 (August 20, 1986).[3]

The Modified Policy provides that up to 20 percent of crude oil overcharge funds will be reserved for direct restitution to injured parties. The funds in this reserve will be distributed in accordance with the existing DOE refund regulation codified at 10 CFR Part 205, Subpart V. Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the crude oil overcharge monies received by the total U.S. Consumption of Petroleum Products during the period of price control. Using this method, the volumetric refund amount in this case is $.0000004536 per gallon.[4]

The 80 percent of the crude oil funds which are not reserved for direct restitution, as well as any portion of the 20 percent reserve which is not distributed, will be divided between the states and the federal government for indirect restitutionary purposes. Half of these funds will go to the states, in proportion to each state's consumption of petroleum products, and the other half will go to the federal government.[5] *See* "Calculation of Ratios For Distribution to States and Territories," *Final Settlement Agreement,* Exhibit H, *In Re: Department of Energy Stripper Well Exemption Litigation,* M.D.L. 378, (D. Kan. 1986) (attached to this Decision as the Appendix).

With this background in mind, we turn to the comments submitted to our proposal to distribute the Mountain Fuel and Abel monies in accordance with DOE Policies.

Comments to the Proposed Decisions

In response to the Proposed Decision and Order in this case, the OHA received comments from three parties. Two of these parties, the States of California and Pennsylvania, argue that state governments are the most appropriate recipients of refund monies not designated for readily indentifiable injured parties. However, both of these states were parties to the Stripper Well Settlement Agreement and they are now bound by the Modified Policy established in the course of that proceeding. Pursuant to the terms of the Settlement Agreement and the DOE Modified Policy we will order that 80 percent of the monies in this case be divided between the state and federal governments.[6]

The final party who submitted comments to our Proposed Decision is Mobil Oil Corporation. The ERA's dispute with Abel was based on Abel's alleged overcharges in its sales of crude oil to Mobil. Therefore, Mobil argues that it should be able to recover a portion of the Abel settlement fund.

The letter in which Mobil made its comments to the Proposed Decision was written prior to the effective date of the Order approving the Settlement Agreement in M.D.L. 378. Pursuant to that Settlement Agreement, the DOE modified its restitutionary policy, as discussed above. Also under the terms of that Settlement Agreement, the refiner parties, including Mobil, agreed to waive and release claims such as the one Mobil asserts in its comments in this case. Accordingly, Mobil's comments appear to require no further consideration in this proceeding.

Refund Procedures

After considering the comments received, we have concluded that the monies received from Mountain Fuel and Abel should be distributed in the following manner. Eighty percent of the funds shall be distributed to the state and federal governments and up to 20 percent of the funds will be available for direct restitution. Persons who believe they were injured by crude oil overcharges may not file claims for direct restitution.

The process which the OHA will use to evaluate claims based on crude oil overcharges will be modeled after the process the OHA has used to evaluate claims based on refined product overcharges pursuant to 10 CFR Part 205, Subpart V. As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured by the alleged overcharges (i.e., that they did not pass the overcharges on to their own customers). The standards for showing injury which the OHA has developed in non-crude oil claims will also apply to claims based on crude oil overcharges. *See, e.g., Dorchester Gas Corp.,* 14 DOE ¶ 85,240 (1986).

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by Mountain Fuel Supply Company pursuant to a Stipulation of Settlement signed on March 25, 1985 and from the funds remitted to the Department of Energy by J.N. Abel, Inc. pursuant to an Agreed Final Judgment signed on February 6, 1984 may now be filed. Twenty percent of the funds, plus interest, shall be reserved for satisfying such claims. The dollar amount of this reserve shall be $216,991.08 plus interest from September 1, 1986 through the date of disbursement.[7]

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the Federal Register.

(3) The remaining 80 percent of the funds ($867,964.30) plus interest from September 1, 1986 through the date of disbursement shall be distributed to state and the federal governments in the manner set out in paragraphs (4) and (5) below.

(4) The Director of Special Accounts and Payroll, Office of Departmental

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[2] For a detailed discussion of the events in the Stripper Well Litigation which brought about the DOE Policy see the OHA's recent decision, *Stripper Well Exemption Litigation,* 14 DOE ¶ 85,382 (1986).

[3] The OHA is seeking comments to that notice and will issue a modification if appropriate.

[4] We derived this figure by dividing the monies received from Mountain Fuel and Abel ($910,062.21) by an estimate of the number of gallons of petroleum products consumed in the United States during the period August 1973 through January 1981 (2,020,997,335,000). *Cf.* "Petroleum Consumption for OECD Countries," *Monthly Energy Review,* Energy Information Administration, April 1986, page 109. Successful applicants will also receive their proportion of interest accrued.

[5] In this case the actual distribution will reflect a ratio of 25 percent to the state governments and 75 percent to the Federal government. Under the terms of the Stripper Well Settlement Agreement, the states received an advance of $200 million from funds which would otherwise have been disbursed to the DOE. In order to reimburse the DOE for this advance, the Settlement Agreement provides that for amounts which the OHA transfers to the state and federal governments in excess of $100 million, the DOE shall receive 75 percent and the states shall receive 25 percent. *Settlement Agreement,* Paragraph II.B.3.c.ii. This arrangement shall continue until the OHA has distributed $400 million under the 75/25 arrangement.

[6] *But see* note 5, *supra.*

[7] On August 31, 1986 the monies in the Abel and Mountain Fuel funds, including interest accrued through that date, totalled $1,084,955.38.

Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall transfer $216,991.08 plus interest from September 1, 1986 through the date of disbursement into a subaccount denominated the "Crude Tracking-State" subaccount, No. 999DOE003WO.

(5) The Director of Special Accounts and Payroll shall transfer $650,973.22 plus interest from September 1, 1986 through the date of disbursement into a subaccount denominated the "Crude Tracking-Federal" subaccount, No. 999DOE002WO.

(6) This is a final order of the Department of Energy.

Dated: September 11, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

APPENDIX.—SETTLEMENT EXHIBIT H

CALCULATION OF RATIOS FOR DISTRIBUTION TO STATES AND TERRITORIES—M.D.L. 378

State	Consumption	Ratio
Alabama	626,803,520	0.01534512450
Alaska	158,047,980	.00386926023
American Samoa	7,275,000	.00017810331
Arizona	418,994,930	.01025764719
Arkansas	519,811,670	.01272579770
California	3,739,318,300	.09154432453
Colorado	439,201,380	.01075233249
Connecticut	693,689,220	.01698259040
Delaware	193,932,730	.00474777469
District of Columbia	97,574,660	.00238877935
Florida	1,887,260,600	.04620307312
Georgia	909,619,880	.02226890861
Guam	60,196,000	.00147369165
Hawaii	280,655,260	.00687087703
Idaho	167,643,790	.00410418057
Illinois	1,876,159,080	.04593129065
Indiana	1,006,156,560	.02463227660
Iowa	532,229,530	.01302980621
Kansas	457,905,310	.01121023378
Kentucky	523,601,010	.01281856663
Louisiana	971,591,210	.02378606310
Maine	300,279,730	.00735131456
Maryland	731,363,020	.01790490359
Massachusetts	1,398,309,100	.03423278036
Michigan	1,391,772,090	.03407274419
Minnesota	708,814,590	.01735288297
Mississippi	557,786,510	.01365548081
Missouri	086,514,320	.01974472423
Montana	184,882,510	.00452621123
Nebraska	301,217,700	.00737427752
Nevada	165,454,200	.00405057600
New Hampshire	190,375,330	.00466068401
New Jersey	1,507,862,710	.03691482302
New Mexico	267,574,460	.00655063871
New York	3,162,994,520	.07743502253
No. Mariana Islands	3,763,000	.00009212409
North Carolina	916,800,700	.02244470625
North Dakota	149,717,090	.00366530709
Ohio	1,534,904,170	.03757684000
Oklahoma	504,488,400	.01235066023
Oregon	404,894,790	.00991245384
Pennsylvania	1,901,863,900	.04656058461
Puerto Rico	389,132,000	.00952655624
Rhode Island	161,953,570	.00396487514
South Carolina	486,978,650	.01192199923
South Dakota	146,053,670	.00357562087
Tennessee	660,920,850	.01618036977
Texas	3,013,545,120	.07377626891
Utah	240,978,330	.00589952410
Vermont	97,762,860	.00239338678
Virgin Islands	188,953,000	.00462586316
Virginia	1,048,324,650	.02566461699
Washington	623,786,920	.01527127344
West Virgina	244,121,480	.00597647330
Wisconsin	718,698,070	.01759484593
Wyoming	166,569,650	.00407788395

APPENDIX.—SETTLEMENT EXHIBIT H—Continued

State	Consumption	Ratio
Totals	40,847,079,460	1.00000000000

[FR Doc. 86-21138 Filed 9-17-86; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of July 21 Through July 25, 1986

During the week of July 21 through July 25, 1986, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Ivan Von Zuckerstein, 7/24/86; KFA-0040

Ivan Von Zuckerstein filed an Appeal from a denial by the Chicago Operations Office of a Request for Information which he had submitted under the Privacy Act. Specifically, he requested copies of memoranda discussing his performance as an economist for the Argonne National Laboratory (ANL), a DOE contractor. In considering the Appeal, the DOE pointed out that the only systems of records at ANL that are DOE records for the purposes of the Privacy Act are the four systems that ANL agreed to maintain as part of its contract with the DOE: (i) A medical history system; (ii) personnel radiation exposure information; (iii) a government driver's license file; and (iv) a firearms qualification record. Since the requested memoranda evaluating Mr. Von Zuckerstein's performance were not part of any of these systems, the DOE found no basis for releasing them. Accordingly, the Appeal was denied.

Remedial Order

Texaco Inc., 7/23/86; HRO-0272

The Economic Regulatory Administration issued a Proposed Remedial Order to Texaco, Inc., alleging that the firm used excessive May 15, 1973 selling prices in computing its maximum allowable prices for sales of middle distillates and motor gasoline to customers that purchased those products on or before May 15, 1973 pursuant to variable-priced contracts. In its Statement of Objections, Texaco, maintained that it should be permitted to use, as its May, 15, 1973 selling price for a given customer, the price that the firm was entitled to charge in a sale on May 15, 1973, even though the firm never actually charged that price in a sale on or before that date. In rejecting Texaco's position, the DOE held that, under the express terms of Ruling 1979-1, Texaco could not ignore the prices charged in actual sales on or before May 15, 1973. The DOE further held that the use of an excessive May 15, 1973 selling price was a per se violation of the price rule for which a refund based on the difference between the incorrect and correct May 15, 1973 selling price was appropriate. Accordingly, Texaco was directed to remit $1,489,715.89 plus interest to the DOE.

Motions for Discovery

Cities Service Oil and Gas Corporation Economic Regulatory Administration, 7/21/86; KRD-0019; KRZ-0033; KRZ-0034; KRD-0018; KRD-0020

The DOE issued a Decision and Order considering five procedural motions filed in connection with a PRO issued to Cities Service Oil and Gas Corporation by the Economic Regulatory Administration. Cities filed requests for discovery concerning (i) the reasons that it was offered discounts on purchases of uncontrolled crude oil; (ii) prices of various types of crude oil prior to decontrol; and (iii) the practices of other refiners. The DOE denied the requests, finding that receiving the information would not advance the proceeding. In response to the ERA's requested discovery concerning Cities' corporate state of mind, the DOE found that this information could be obtained through questioning at an evidentiary hearing that had previously been scheduled. In denying a Cities Motion to Dismiss the PRO, the DOE found that ERA had satisfactorily established a prima facie case of regulatory violation. In considering Cities' motion to strike information provided by ERA concerning whether the firm's crude oil certifications were proper, the DOE elected to use its discretion and conditionally allowed the material to remain in the record. The DOE found, however, that if the material was not used in a probative manner at the evidentiary hearing, the firm could renew its motion to strike.

Hideca Petroleum Corporation, 7/24/86; HRD-0157

Hideca Petroleum Corporation filed a Motion for Discovery is connection with its Statement of Objections to a Proposed Remedial Order issued to it by the Economic Regulatory Administration. Hideca sought (1) agency documents relating to the term "layering" as used in the heading of 10 CFR 212.186; (2) documents relating to the term "permissible average markup" as used in 10 CFR 212.182, 212.183(c); and (3) all documents considered in connection with the drafting of 10 CFR 212.182 and 212.183. The DOE found that Hideca had failed to show that the regulations were sufficiently ambiguous to warrant contemporaneous construction discovery or that administrative record discovery outside the publicly available official record should be granted. Accordingly, the DOE concluded that Hideca's discovery request should be denied.

Implementation of Special Refund Procedures

Marine Petroleum Company and Mars Oil Company, 7/23/86; HEF-0122

The DOE issued a Decision and Order implementing a plan for the distribution of $216,196.10, plus accrued interest, received as a result of a consent order it entered into

with Marine Petroleum Company and Mars Oil Company (Marine). The DOE determined that the Marine settlemant fund should be distributed both to customers already identified in the ERA's audit and as yet unidentified purchasers, that were injured as a result of purchases of Marine motor gasoline during the period November 1, 1973 through April 30, 1974. The Decision stated that in order to obtain a refund, claimants would be required to document their monthly purchases from Marine and demonstrate injury. The Decision sets forth the specific information to be included in refund applications.

Refund Applications

Atlanta Petroleum Production, Inc./Warren Petroleum Company, E.I. DuPont de Nemours & Co., 7/23/86; RF57-1, RF57-2

Warren Petroleum Company filed an Application for Refund, seeking a portion of the funds remitted by Atlanta Petroleum Production, Inc. pursuant to a consent order that Atlanta entered into with the DOE. Warren purchased 664,681 gallons of natural gas liquid proucts from Atlanta during the consent order period. The DOE found that for a portion of the NGLPs that it purchased, Warren was charged prices above the average market price levels prevailing at the time of sale. The DOE granted a refund to Warren in an amount equal to the number of gallons that Warren purchased at above market prices multiplied by the per gallon refund rate. The total amount of refund granted to Warren was $6,031, which included $3,119.63 in principal and $2,911.37 in accrued interest.

E.I. duPont de Nemours & Co. (DuPont) also filed an Application for Refund in the Atlanta refund proceeding on the basis that it purchased an average of 8.1 percent of the propane and ethane sold by Warren. The DOE therefore found it likely that 8.1 percent of products Warren purchased from Atlanta or 20,224 gallons was sold to DuPont. Since DuPont was an end-user of these products, the DOE determined that the firm should receive a refund in its full volumetric amount without a detailed showing of injury. The amount of refund granted to DuPont was $159.66 in principal and $149.34 in accrued interest.

Conoco Inc./Gramco, Ltd., et al., 7/24/86; RF220-1, et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by resellers or retailers of Conoco Inc. refined products seeking a portion of a settlement fund made available by that firm. All of the 24 firms applied for refunds based upon the procedures for filing small claims outlined in *Conoco Inc.*, 13 DOE ¶ 85,316 (1985). After examining the applications, the DOE concluded that each of the 24 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 $36,550, including $26,106 in principal and $10,444 in interest.

Gulf Oil Corporation/A.N. Rusche Distributing Company, 7/24/86; RF40-919

The DOE issued a Decision and Order concerning an Application for Refund filed by A.N. Rusche Distributing Company, a retailer/wholesaler of Gulf motor gasoline and middle distillates. The DOE rejected Rusche's argument that in assessing its eligibility for a refund, the DOE should consider the value of the firm's unrecouped non-product costs as well as its unrecouped product costs. Rusche was granted a refund solely for the portion of the consent order period during which it had banks of unrecovered product costs. The total refund granted consisted of $4,292 principal and $880 interest.

Gulf Oil Corporation/Gilbert Enterprises Inc., S.H. Trevis & Son, Inc., C.R. Hill Oil Co., 7/21/86; RF40-933, RF40-934, RF40-1004

The DOE issued a Decision and Order concerning the Applications for Refund filed by three consignees of Gulf motor gasoline. Each applicant demonstrated that overall motor gasoline consumption in the state in whch it was located had increased during the consent order period, while its own total sales volume of motor gasoline during that period had declined. The DOE therefore determined that each applicant was injured by Gulf's allegedly uncompetitive prices. Each applicant's refund was calculated by multiplying the number of gallons of motor gasoline Gulf consigned to it during the consent order period, by the percentage loss of potential sales, and the Gulf volumetric refund amount of $.00122. The total refund granted in this case is $19,754 principal and $4,049 interest.

Gulf Oil Corporation/Sutton Oil Company, Hess Oil Company, 7/21/86; RF40-3201, FR40-3202

The DOE issued a Decision and Order concerning the Applications for Refund filed by two resellers of Gulf motor gasoline and middle distillates, Sutton Oil Company and Hess Oil Company. The DOE found that the applicants demonstrated that they would not have been required to reduce selling prices to their customers by an amount equal to the refund claimed. The total refund granted in this case is $4,123 principal and $845 interest.

Hicks Oil and Hicks Gas Company, Inc./Allerton Supply Company, 7/23/86; RF237-3

The DOE issued a Decision and Order concerning the Application for Refund filed by Allerton Supply Company for a portion of a settlement fund made available by Hicks Oil and Hicks Gas Company, Inc. In denying the refund request, the DOE determined that Allerton passed on all of the alleged overcharges and therefore suffered no injury.

Hunt Industries, Inc./Tenneco Oil Company, 7/21/86; RF114-0001

Tenneco Oil Company filed an Application for Refund seeking a portion of the funds obtained by the DOE pursuant to a consent order with Hunt Industries, Inc. Tenneco puchased NGLPs at a gas processing plant operated and partly owned by Hunt. The DOE assessed the impact of Hunt's alleged overcharges on Tenneco using a three-step competitive disadvantage methodology. Extrapolating from a comparison between the prices Tenneco paid for Hunt propane and average market prices, the DOE found that Tenneco always paid prices below the market average. Accordingly, Tenneco was found not to have suffered injury as a result of Hunt's alleged overcharges, and the Application for Refund was denied.

Marathon Petroleum Company/Paul's Marathon, et al. 7/22/86; RF250-100, et al.

The DOE issued a Decision and Order concerning the Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $33,831 in principal and $1,087 in interest.

Mobil Oil Corporation/B&W Service Co., et al., 7-25-86; RF225-3670, et al.

The DOE granted 33 Applications for Refund from a fund obtained through a Consent Order that the DOE entered into with Mobil Oil Corporation. All the applicants were end-users who purchased directly from Mobil and therefore were eligible for refunds equivalent to their full allocable shares based on a volumetric approach. The total amount of the refunds granted was $7,763, consisting of $6,598 in principal and $1,165 in interest.

Mobil Oil Corporation/Chapman Service Center, et al., 7/22/86; RF225-404, et al.

The Department of Energy issued a Decision and Order granting refunds from the Mobil Oil Corporation deposit fund escrow account to 52 purchasers of Mobil motor gasoline. All of the refund applicants are retailers of motor gasoline who elected to apply for refunds under the retailer level-of-distribution percentage outlined in *Mobil Oil Corp.*, 13 DOE ¶ 85,399 (1985). The refunds totaled $21,271, including $18,120 in principal and $3,151 in accrued interest.

Nielsen Oil and Propane, Inc./Fisca Oil Company, 7/23/86; RF141-11

Fisca Oil Company, a purchaser of refined petroleum products from Nielsen Oil and Propane, Inc., filed an Application for Refund seeking a portion of the settlement fund obtained by the DOE through a consent order entered into with Nielsen. The applicant had also been identified in the DOE's audit files as a Nielsen purchaser. Although the applicant applied for a refund of $10,880.49, the full amount specified in the audit file, it failed to supply the information establishing that it experienced injury as a result of the alleged Nielsen overcharge. Therefore, the applicant's claim was limited to the $5,000 small claims amount. After examining the application submitted by the firm, the DOE granted the applicant a refund of $8,563, representing $5,000 in principal and $3,563 in accrued interest.

South Hampton Refining Company/Tenneco Oil Company, 7/23/86; RF230-3

The DOE issued a Decision and Order concerning an Application for Refund filed by Tenneco Oil Company in the South Hampton Refining Company special refund proceeding. Tenneco applied for a refund based on its

purchases of 9,234,096 gallons of South Hampton No. 6 fuel oil. A comparison of the prices Tenneco paid South Hampton with the prevailing prices in the market in which Tenneco competed demonstrated that the firm did not pay greater than average prices in every purchase from South Hampton. The DOE found that Tenneco was entitled to a refund for only 7,636,552 gallons of its purchases from South Hampton. Based on that gallonage, the total refund granted to Tenneco was $20,794, representing $11,707 in principal and $9,087 in accrued interest.

Dismissals

The following submissions were dismissed.

Name	Case No.
A-A-A Tool and Machine Co	RF225-4126
Advance Tool & Die Co	RF225-4153
Agripac	RF225-4127
Alden Press, Inc	RF225-4164
All Tools Co	RF225-3744
Allied Printing Services	RF225-3671
Alpha Lehigh Tool & Machine Co., Inc	RF225-4146
American Linen Supply Co	RF225-3332
American Stencil Mfg. Co	RF225-3657
Astech	RF225-4156
Barber-Greene Co	RF225-3603
Chester Transmission Shop	RF225-4193
City of New Bedford Park Board Office	RF225-3005
City of Osborne	RF225-4151
Darnell Corp. Ltd	RF225-3677
Deltrol Controls	RF225-4134
Dundee Central School District No. 1	RF225-3697
Dura Company	RF225-3796
Earle M. Jorgenson Co	RF225-4139
Guiou Excavating, Inc	RF225-4175
J.I. Case Co	RF225-3589
Jackes-Evans Mfg. Co	RF225-3802
John Lund	RF225-3690
Kester Solder	RF225-3614
Louis A. Serianni Gulf Servicenter	RF225-1578
Lynch Motor, Inc	RF225-4162
MacLean Fogg Co	RF225-4138
Metal Forming & Coining Corp	RF225-4150
Midcoast	RF225-4130
Modern Hydraulics, Inc	RF225-3395
New Orleans Public Service	RF225-12620
North Hollywood Printing Co., Inc	RF225-4148
Oakwood Nurseries	RF225-3801
Opitz Transmission Inc	RF225-5600
PHC Industries Inc	RF225-4155
Pasadena Star-News	RF225-4140
Powerex, Inc	RF225-4147
Public Service Electric & Gas Co	RF225-12621
Ray Johnson Imports	RF225-54
Rock Island County Highway Dept	RF225-3606
Schaevitz Engineering	RF225-4184
Service Web Offset Corp	RF225-3583
Setzer Machining Inc	RF225-3585
Supreme Oil Co., Inc	KEE-0058
Swingline Inc	RF225-4168
Tele-Sheen Corp	RF225-4149
Terrazzo Machine and Supply Co., Inc	RF225-4136
The Sectional Die Co	RF225-4129
Thermotech Division	RF225-4142
Timberland Machines, Inc	RF225-4161
Tools, Inc	RF225-4167
Unified School Dist. No. 352	RF225-3612
Victory Markets, Inc	RF225-4128
Wauesha Engine Servicenter Inc	RF225-3365 RF225-3368
Wheaton Plastics Co	RF225-3622
Wilcox Electric, Inc	RF225-4049 RF225-4050
Young Radiator Co	RF225-4182

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, Forestal 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.

September 10, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86-21137 Filed 9-17-86; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decisions and Orders; Week of August 4 Through August 8, 1986

During the week of August 4 through August 8, 1986, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be demed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed 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.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 9, 1986.

Moonlight Oil Company, Tonasket, Washington; KEE-0056, Crude Oil

Moonlight Oil Company filed an Application for Exception from the reporting requirements of Form EIA-782B. The exception request, if granted, would excuse Moonlight Oil Company from filing Form EIA-782B, "Resellers'/Retailers' Monthly Petroleum Report." On August 5, 1986, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

Park Corner Oil Company, Lodi, Wisconsin; KEE-0047, Crude Oil

Park Corner Oil Company filed an Application for Exception from the provisions of the Form EIA-782B and Form EIA-863 reporting requirements. The exception request, if granted, would exempt Park Corner Oil Co. from filing Form EIA-782B on a monthly basis and from filing Form EIA-863 in 1986. On August 5, 1986, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 86-21136 Filed 9-17-86; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of August 8 Through August 15, 1986

During the Week of August 8 through August 15, 1986, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

September 9, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of August 8 through August 15, 1986]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 12, 1986	Gulf/Rusche Distributing Company, Washington, DC	RR40-2	Modification/rescission in the gulf refund proceeding. If granted: The July 24, 1986 Decision and Order (Case No. RF40-919) issued to Rusche Distributing Company would be modified regarding the firm's application for refund submitted in the gulf refund proceeding.
Aug. 13, 1986	Ted True, Inc. Washington, DC	KRD-0270	Motion for discovery. If granted: Discovery would be granted to G. Michael Curran in connection with the Statement of Objections submitted in response to the December 20, 1985 proposed remedial order (Case No. HRO-0270) issued to G. Michael Curran.

REFUND APPLICATIONS RECEIVED

8/8/86	Gulf/Bill's Gulf	RF40-3252
8/11/86	Aminoil-/Gulf States Oil and Refining.	RF139-156
8/11/86	Beacon Oil Company/Calif-Fresno Oil.	RF238-72
8/11/86	E.B. Lynn/Park Hill Garage	RF246-8
8/7/86	Sigmor/Fuel Distributors	RF242-20
8/7/86	Conoco/George Jaekel	RF220-389
8/7/86	Sid Richardson/Brodersen Oil Co.	RF26-48
8/16/86	Marine/Star Service and Petroleum Co.	RF257-3
8/16/86	Navajo/Star Service and Petroleum Co.	RF203-9
8/12/86	A. Tarricone/Wyatt, Inc	RF155-4
8/13/86	LARCO/Lakeland Oil and Tire Co.	RF112-194
8/13/86	Gulf/Trailways Lines, Inc	RF40-3254
8/13/86	Gulf/Holiday Inn	RF40-3255
8/13/86	Gulf/Pearland Gulf	RF40-3256
8/13/86	Gulf/Iras Gulf	RF40-3257
8/13/86	Gulf/Town and Country	RF40-3258
8/13/86	Gulf/Stice Gulf	RF40-3259
8/13/86	Gulf/J&K Gulf	RF40-3260
8/13/86	Gulf/Gilbert Jones Gulf	RF40-3261
8/12/86	Gulf/Braddy's Auto Servicenter	RF40-3253
8/13/86	LARCO/Star Service and Petroleum Co.	RF112-193
8/13/86	Gulf/Kiger's Gulf Service	RF40-3264
8/14/86	Gulf/Prestons Gulf	RF40-3265
8/14/86	Gulf/Prestons Gulf	RF40-3266

REFUND APPLICATIONS RECEIVED—Continued

8/14/86	Gulf/Georgia Pacific Corp	RF40-3267
8/14/86	Marine/Saveway Oil Co	RF257-4
8/13/86	Gulf/Arnold W. Dyer, Inc	RF40-3263
8/13/86	Gulf/Don N. Lee Dist.	RF40-3262
8/14/86	Gulf/Lon T. Allen	RF258-1
8/14/86	Gulf/Lon T. Allen	RF259-1
8/8/86 to 8/15/86	Mobil Refund Applications	RF225-10032 thru RF225-10075
8/8/86 to 8/15/86	Marathon Refund Applications	RF250-927 thru RF250-1042

[FR Doc. 86-21133 Filed 9-17-86; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of August 15 Through August 22, 1986

During the week of August 15 through August 22, 1986, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585

George B. Breznay,

Director, Office of Hearings and Appeals.

September 12, 1986.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Aug. 15, 1986 through Aug. 22, 1986]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 15, 1985	Leonard E. Belcher, Inc./Somers Oil Service, Washington, DC	RF227-1	Request for modification/rescission in the Leonard E. Belcher refund proceeding. If granted: The July 1, 1986 Decision and Order (Case No. RF227-41) issued to Somers Oil Service would be modified regarding the firm's Application for Refund submitted in the Leonard E. Belcher, Inc. refund proceeding.
Aug. 19, 1986	Multinational Monitor, Washington, DC	KFA-0050	Appeal of an information request denial. If granted: Multinational Monitor would receive a waiver of all fees incurred in the processing its information request for certain DOE information.
Aug. 21, 1986	A. Tarricone, Inc., Washington, DC	KEF-0049	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the Consent Judgment, No. 84, Civ. 783 (KTD), issued to Tarricone, Inc.
Do	Atlantic Richfield Company, Washington, DC	KEF-0051	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the Consent Order entered into by the DOE with Atlantic Richfield Company on January 22, 1986.
Do	Avant Petroleum, Inc., Washington, DC	KEF-0052	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the Consent Order entered into by the DOE with Avant Petroleum, Inc.
Do	Baribault Oil Co., Inc., Oakville, Connecticut	KEE-0062	Exception to the reporting requirements. If granted: Baribault Oil Co., inc. would no longer be required to file Form EIA-782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report."
Do	Bass Enterprises Production Co., Washington, DC	KEF-0053	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the Consent Order entered into by the DOE with Bass Enterprises Production Co.
Do	Coastal Petroleum Refiners, Inc., Washington, DC	KEF-0054	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the Consent Order entered into by the DOE with Coastal Petroleum Refiners, Inc.
Do	Condor Operating Company, Washington, DC	KEF-0055	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the Consent Order entered into by the DOE with Condor Operating Company.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Aug. 15, 1986 through Aug. 22, 1986]

Date	Name and location of applicant	Case No.	Type of submission
Do	Corpening Enterprises, Washington, DC	KEF-0056	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the Consent Order entered into by the DOE with Corpening Enterprises.
Do	Cox, Edwin L. & Berry R., Washington, DC	KEF-0057	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the Consent Order entered into by the DOE with Edwin L. & Berry R. Cox.
Do	Crestmont Oil & Gas Company, Washington, DC	KEF-0058	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the Consent Order entered into by the DOE with Crestmont Oil & Gas Company.
Do	Danielson Oil Co., Inc., Danielson, Connecticut	KEE-0061	Exception to the reporting requirements. If granted: Danielson Oil Co., Inc. would no longer be required to file Form EIA-782B, the "Resellers'/Retailer's Monthly Petroleum Product Sales Report."
Do	Dorchester Exploration, Inc., Washington, DC	KEF-0059	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the Consent Order entered into by the DOE with Dorchester Exploration, Inc..
Do	Double U Oil Company and Jack E. Guenther, Washington, DC.	KEF-0060	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the Consent Order entered into by the DOE with Double U Oil Company and Jack E. Guenther.
Do	Enstar Corporation, Washington, DC	KEF-0061	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the Consent Order entered into by the DOE with Enstar Corporation.
Do	Franks Petroleum, Inc., Washington, DC	KEF-0062	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the Consent Order entered into by the DOE with Franks Petroleum, Inc.
Do	Gregg R. Potvin, Washington, DC	KFA-0051	Appeal of an information request denial. If granted: The August 11, 1986 Freedom of Information Request Denial issued by the Office of Management and Information Systems would be rescinded and Gregg R. Potvin would receive access to information regarding reseller-retailers currently undergoing compliance audits by the Economic Regulatory Administration for transactions during all or any part of 1980.
Do	Hirschburg, Peter L., Washington, DC	KEF-0063	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the Consent Order entered into by the DOE with Peter L. Hirschburg.
Do	Alliance Trading Companies, Inc., Washington, DC	KEF-0050	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the Consent Order entered into by the DOE with Alliance Trading Companies, Inc.
Do	IU International Oil & Gas, Inc., Washington, DC	KEF-0064	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the Consent Order entered into by the DOE with IU International Oil & Gas, Inc.
Do	JM Petroleum Corporation, Washington, DC	KEF-0065	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the Consent Order entered into by the DOE with JM Petroleum Corporation.
Do	Jones, L.E. Production Company, Washington, DC	KEF-0066	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the Agreed Final Judgment, No. CIV-82-2149-T, issued to L.E. Jones Production Company.
Do	Kilroy Company of Texas, Inc., Washington, DC	KEF-0067	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the Consent Order entered into by the DOE with Kilroy Company of Texas, Inc.
Do	Lunday Thagard Oil Corporation, Washington, DC	KEF-0068	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the Stipulation of Settlement and Dismissal and Order, No. CV-78-1159MRP, issued to Lunday Thagard Oil Corporation.
Do	Mar-Low Corporation, Washington, DC	KEF-0069	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the Consent Order entered into by the DOE with Mar-Low Corporation.
Do	Minro Oil, Inc., Washington, DC	KEF-0071	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the Compromise Agreement and Bankruptcy Court Authorization, No. 80-01850-H2-0, issued to Minro Oil, Inc.
Do	Oxy Petroleum, Inc., Washington, DC	KEF-0072	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the Consent Order entered into by the DOE with Oxy Petroleum, Inc.
Do	Sabine Corporation, Washington, DC	KEF-0073	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the Consent Order entered into by the DOE with Sabine Corporation.
Do	Sierra Petroleum Company, Inc., Washington, DC	KEF-0074	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the Federal Energy Regulatory Commission's Affirmation of the Remedial Order issued to Sierra Petroleum Company, Inc.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Aug. 15, 1986 through Aug. 22, 1986]

Date	Name and location of applicant	Case No.	Type of submission
Do	Southwestern Refining Co., Inc., Washington, DC	KEF-0075	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the Supplemental Order issued by the Office of Hearings and Appeals to Southwestern Refining Co., Inc.
Do	Texakota, Inc., Washington, DC	KEF-0076	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the Consent Order entered into by the DOE with Texakota, Inc.
Do	Texas Pacific Oil Co., Inc., Washington, DC	KEF-0077	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the Consent Order entered into by the DOE with Texas Pacific Oil Co., Inc.
Do	McMoran Oil & Gas, Washington, DC	KEF-0070	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the Consent Order entered into by the DOE with McMoran Oil & Gas.
Aug. 22, 1986	ScotRick Corp., Clinton, Connecticut	KEE-0063	Exception to the reporting requirements. If granted: The ScotRick Corporation would no longer be required to file Form EIA-782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report."

REFUND APPLICATIONS RECEIVED

[Week of Aug. 15, 1986 to Aug. 22, 1986]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
8/7/86	Amoco/Lower Brule Sioux Tribes.	RQ21-322, RQ251-323
8/15/86	Gull/R.B. Seoflein	RF260-1
8/15/86	Plateau/Kar Kwik, Inc	RF204-9
8/15/86	Plateau/Stimson's, Inc	RF204-10
8/15/86 thru 8/22/86	Mobil Refund Applications	RF225-10076 thru RF225-10114
8/15/86 thru 8/22/86	Marathon Refund Applications	RF250-1043 thru RF250-1119
8/18/86	Howell Quintana/Chevron, USA	RF245-13
8/18/86	Crystal/Caceres Oil Co	RF233-40
8/18/86	Eastern NJ/H&H Provision	RF232-418
8/18/86	Aminoil/Progas, Inc	RF157-3
8/18/86	Van Gas/Blu-Gas Service, Inc	RF68-23
8/18/86	Tenneco/Blu-Gas Service, Inc	RF7-138
8/18/86	Gulf/Blu-Gas Service, Inc	RF40-3268
8/18/86	Gulf/Arkansas Electric Cooperatives.	RF40-3269
8/18/86	Gulf/Monhagen Gulf Station	RF40-3270
8/18/86	Gulf/Lewis Gulf Station	RF40-3271
8/18/86	Gulf/Chica's Gulf Station	RF40-3272
8/18/86	Gulf/Thames Gulf Station	RF40-3273
8/19/86	Cibro/Kimberly-Clark	RF184-5
8/19/86	Sid Richardson/Barnes Energy Service.	RF26-49
8/20/86	Amoco/Yankton Sioux Tribe	RF251-320
8/20/86	Beacon/Antonia Van Dewalk	RF238-73

REFUND APPLICATIONS RECEIVED—Continued

[Week of Aug. 15, 1986 to Aug. 22, 1986]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
8/20/86	Conoco/Percifull Oil Company	RF220-392
8/20/86	Conoco/Astroline Corp	RF220-391
8/20/86	Conoco/Rhodes Oil Co., Inc	RF220-390
8/20/86	Crystal/E. Munoz Service Station.	RF233-41
8/20/86	Pride/West Texas Utilities Co	RF235-19
8/21/86	Husky/Otero Oil Co., Inc	RF161-95
8/21/86	Quaker State/Mid-Penn Refining.	RF213-212
8/22/86	Beacon/Foothills Oil Co	RF238-74
8/22/86	Marine/Midwest Petroleum	RF257-5
8/22/86	Conoco/Stephens Miller Co	RF220-393
8/22/86	Gulf/Astroline Corporation	RF40-3274
8/22/86	Gull/Disman Gull Service	RF260-2

[FR Doc. 86-21134 Filed 9-17-86; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of August 22 Through August 29, 1986

During the week of August 22 through August 29, 1986, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay

Director, Office of Hearings and Appeals.

September 12, 1986.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Aug. 22 through Aug. 29, 1986]

Date	Name and location of applicant	Case No.	Type of submission
Jan. 14, 1986	Kenneth Walker, Abilene, Texas	KRR-0012	Request for modification/rescission. If granted: The December 30, 1985 Decision and Order issued to Kenneth Walker (Case Nos. HRD-0268 & HRH-0268) would be modified regarding Mr. Walker's Motion for Discovery.
Do	Kenneth Walker, Abilene, Texas	KRR-0011	Request for modification/rescission. If granted: The December 30, 1985 Decision and Order (Case Nos. HRD-0268 & HRH-0268) issued to Kenneth Walker would be modified regarding the rejection of two of Mr. Walker's defenses.
Aug. 26, 1986	Jasper Oil Company, Jasper, Texas	KEE-0066	Exception to the reporting requirements. If granted: Jasper Oil Company would no longer be required to file Form EIA-782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report."
Aug. 27, 1986	Belcher Oil Company, Inc., Murray, Kentucky	KEE-0065	Exception to the reporting requirements. If granted: Belcher Oil Co., Inc. would no longer be required to file Form EIA-782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report."
Do	Simmons Oil Company, Louisville, Kentucky	KEE-0064	Exception to the reporting requirements. If granted: Simmons Oil Company would no longer be required to file Form EIA-782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report."
Do	Union Texas/Arrow Enterprises, Inc., San Antonio, Texas	RR104-1	Request for modification/rescission. If granted: The August 15, 1986 Decision and Order (Case No. RF104-5) issued to Arrow Enterprises, Inc. would be modified regarding the firm's Application for Refund submitted in the Union Texas Refund Proceeding.
Do	Rocket Oil Company, Madisonville, Kentucky	KEE-0067	Exception to the reporting requirements. If granted: Rocket Oil Company would not be required to file Form EIA-782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report."

REFUND APPLICATIONS RECEIVED

[Week of Aug. 22 to Aug. 29, 1986]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
8/25/86	Tesoro Petroleum Corporation	RF270-1
8/25/86	Gulf/Sylvan Park Service Station.	RF40-3276
8/25/86	Gulf/Frankline Gulf Service	RF40-3275
8/25/86	Gulf/A-1 Gas Station	RF40-3277
8/25/86	Conoco/Chumbley & Jones Oil Co.	RF220-394
8/27/86	Eastern N.J./Alberta Poskanzer	RF232-419
8/26/86	Dalco/Home Petroleum Corporation.	RF248-3
8/26/86	Earth/Home Petroleum Corporation.	RF239-17
8/26/86	Union Texas/Mellon Enterprises, Inc.	RF140-46
8/26/86	Union Texas/Home Petroleum Corporation.	RF140-45
8/26/86	Conoco/Home Petroleum Corporation.	RF220-395
8/26/86	Oneok/Home Petroleum Corporation.	RF212-2
8/26/86	Petrolane/Home Petroleum Corporation.	RF208-6
8/26/86	Grimes/Home Petroleum Corporation.	RF123-2
8/26/86	Northwest/Home Petroleum Corporation.	RF116-8
8/26/86	MAPCO/Mellon Enterprises, Inc.	RF108-19
8/26/86	MAPCO/Home Petroleum Corporation.	RF108-18
8/26/86	APCO/Home Petroleum Corporation.	RF83-151
8/26/86	J.M. Huber/Home Petroleum Corporation.	RF64-2
8/26/86	Apache/Home Petroleum Corporation.	RF55-2
8/26/86	Texas Gas/Home Petroleum Corporation.	RF44-5
8/26/86	Tenneco/Home Petroleum Corporation.	RF7-139
8/26/86	Sid Richardson/Mellon Enterprises.	RF26-50
8/26/86	Sid Richardson/Home Petroleum Corp.	RF26-51
8/26/86	Gulf/Richmond County, Georgia	RF40-3278
8/18/86	Gulf/Preston's Gulf	RF40-3279
8/26/86	Gulf/Home Petroleum Corporation.	RF40-3280
8/26/86	Gulf/Mellon Enterprises, Inc	RF40-3281
8/26/86	Dorchester/Home Petroleum Corp.	RF253-2
8/26/86	Gulf/Fred Wambaugh	RF248-2
8/18/86	Amoco/Standing Rock Sioux Tribe.	RQ251-324
8/28/86	Greater Richmond Transit Company.	RF272-1
8/28/86	Pioneer/Vanguard Petroleum Company.	RF52-5
8/28/86	Saber/Mellon Enterprises, Inc	RF192-20
8/28/86	Larco/Iowa Power & Light Company.	RF112-195
8/28/86	Conoco/Iowa Power & Light Company.	RF220-396
8/25/86 to 8/29/86	Mobil Refund Applications	RF225-10115 thru RF225-10141
8/25/86 to 6/29/86	Marathon Refund Applications	RF250-1120 thru RF250-1198

[FR Doc. 86-21135 Filed 9-17-86; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Floodplain/Wetlands Involvement Determination for the Liberty-Parker No. 2 230-KV Transmission Line Project, La Paz and Maricopa Counties, AZ

AGENCY: Western Area Power Administration, DOE.

ACTION: Floodplains/Wetlands Involvement and Opportunity to Comment.

SUMMARY: The Western Area Power Administration (Western) is proposing to remove the existing Liberty-Parker No. 2 161 kilovolt (kV) Transmission Line and rebuild the line to 230-kV specifications. Pursuant to the requirements of the Department of Energy's (DOE) "Compliance with Floodplains/Wetlands Environmental Review Requirements," 10 CFR Part 1022, Western has determined that the proposed project would be affected by the proposed action. The transmission line is located in La Paz and Maricopa Counties, Arizona, and connects Parker Dam on the Colorado River with the Phoenix area near Liberty Substation. The existing transmission line is constructed on wood pole H-frame structures, and parallels its sister Liberty-Parker No. 1 Transmission Line for most of its approximately 120 mile length.

The Liberty-Parker No. 1 line was rebuilt to 230-kV specifications on lattice steel structures in 1980. Western proposes to reconstruct the No. 2 line on similar lattice steel structures in its existing right-of-way (ROW). It will be necessary to acquire 40 feet of additional ROW, 20 feet on either side of the existing ROW, for most of the length of the line. This ROW is required to provide room for construction equipment to operate away from the No. 1 line, which will remain in service. The existing ROW will only be effectively widened by 20 feet, as the inside 20 feet will overlap with the parallel No. 1 line's ROW. The existing ROW has been in use for over 40 years.

The floodplain maps prepared by the Federal Emergency Management Agency for the project area show that the first 4.7 miles of the route east from Parker Dam lie within a Zone B floodplain associated with the Colorado River. Zone B floodplains are defined as areas between the limits of the 100- and 500-year flood, or certain areas subject to 100-year flooding with average depths of less than 1 foot. As this portion of the Liberty-Parker line is located just downstream of Parker Dam, which regulates flows in the Colorado River, it is assumed that the risk of flooding of this magnitude is remote.

The majority of the line route is classified as Zone D, or areas of undetermined but possible flood hazards. Visual inspection of the area indicates flooding would be limited to the many dry washes that traverse the region. Western's standard procedure is to span such washes, locating structures on the highest possible ground. The proposed project will allow for longer maximum spans between structures, as lattice steel structures would replace the existing wood pole H-frames. This should help to reduce any flood hazard to the line from the present situation. One major wash, Centennial Wash, has a Zone A floodplain that the transmission line would traverse for approximately .85 miles. Zone A indicates a 100-year floodplain.

Once structure locations are established in this area, some of these structures may be designed with floodproofing measures, such as deeper footings, to prevent washout.

At the eastern end near Liberty Substation, the last 18.8 miles of the transmission line ROW passes through Zone B floodplain associated with the Salt and Gila Rivers. This area, like that at the Parker Dam end, falls in the 100- to 500-year floodplain. Both of these areas would be expected to have shallow standing water during a major flood event, a situation not expected to significantly affect the transmission line.

Further information on this proposed action is available from the addresses provided below. Public comments or suggestions on Western's proposal in the floodplain area are invited.

DATE: Comments must be submitted on or before October 3, 1986.

ADDRESS: Send written comments or suggestions to:

Mr. Thomas A. Hine, Area Manager, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 477-3200.

FOR FURTHER INFORMATION CONTACT:

Mr. Charles W. Saylor, Environmental Specialist, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 477-3244

Mr. Gary W. Frey, Director of Environmental Affairs, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231-1527

Issued at Golden, Colorado, September 4, 1986.

William H. Clagett,

Administrator.

[FR Doc. 86-21185 Filed 9-17-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OW-4-FRL-3077-1 Permit No. GMG280000]

NPDES General Permit for the Outer Continental Shelf (OCS) of the Gulf of Mexico

AGENCY: Environmental Protection Agency.

ACTION: Emergency suspension of toxicity limitation.

SUMMARY: The Regional Administrators of EPA Regions IV and VI are issuing a temporary suspension of a toxicity limitation in NPDES Permit No. GMG280000 until December 31, 1986. They are taking this action because there is an unanticipated shortage of bioassay test organisms (*Mysidopsis bahia*). By reducing the current demand for the organisms, EPA is providing a period in which the population of *M. bahia* can be increased to a level sufficient for conducting the bioassays required by the permit.

EFFECTIVE DATE: The suspension is effective August 29, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Earline Hanson, Water Management Division, EPA Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, (404) 347-7554.

Ms. Ellen Caldwell, Water Permits Branch, EPA Region VI, 1201 Elm Street, Dallas, Texas 75270, (214) 767-2765.

SUPPLEMENTARY INFORMATION:

A. Toxicity Limitations of the General Permit

EPA Regions IV and VI (the Regions) issued a general National Pollutant Discharge Elimination System permit (the Permit) regulating oil and gas exploration, development, and production activities in the Gulf of Mexico seaward of the outer boundary of the territorial Seas of the States of Florida, Alabama, Mississippi, Louisiana, and Texas. See 51 FR 24897 (July 9, 1986). Among other things, the Permit imposed a new regulatory framework controlling the discharge of drilling fluids to the Gulf.

Drilling fluids, commonly known as "muds," are specially formulated fluids used for subsurface lubrication, cooling, and cleaning of the drill string during oil and gas drilling operations. They are "custom" formulated for compatibility with specific drilling operations and each fluid is thus toxic to a different degree, depending on its particular formulation. Different types of fluids are subject to different discharge requirements under the Permit.

Generally, the most toxic drilling fluids used by OCS operators are oil-based. The Permit bans any discharge of oil-based drilling fluids without regard to their toxicity. The Permit does not, however, impose such an absolute "no discharge" limit on less toxic water-based drilling fluids. Instead, it regulates them on the basis of best available technology. Because there is no treatment technology for removing toxic constituents from used drilling fluids, the only available technologies for reducing the amount of toxicity of water-based drilling fluids are (1) controlling toxic additives during their formulation and (2) barging them ashore for disposal. The Permit takes both technologies into account, essentially requiring that operators either use the least toxic drilling fluid appropriate in a specific drilling operation or barge them ashore for disposal.

At the low end of the spectrum, the Permit generally allows the discharge of relatively nontoxic water-based fluids having a 96 hour LC50 toxicity of no less than 30,000 ppm. Most OCS operations can be performed with such fluids. To establish that a specific fluid meets this standard, an operator must subject samples to bioassay once a month during drilling operations and on completion of drilling.

Diesel oil has historically been added to water-based drilling fluids as a lubricity agent. The Regions regard diesel oil as an indicator of toxic pollutants and, because there is a less toxic substitute, i.e., mineral oil, the Permit generally prohibits discharge of fluids to which diesel oil has been added. If diesel oil is added to a fluid as a "pill," then removed, however, the remaining fluid may be discharged in accordance with other Permit conditions. The Regions anticipate that a few operators will discharge water-based drilling fluids after removal of a diesel pill in accordance with this exception. To gather information for use in future regulatory efforts, the Permit requires that such operators participate in EPA's Diesel Pill Monitoring Program.

The Permit regulates the discharge of remaining water-based drilling fluids on a case-by-case basis. It establishes an alternative toxicity request (ATR) procedure under which an operator intending to discharge a fluid with a 96 hour LC50 more toxic than 30,000 ppm must submit bioassay results on that fluid together with information on the specific need for its use and the specific site at which it is to be used. If the use of the fluid is justified, the Regions will issue an alternate toxicity limitation to the requestor. If not, the operator must either change its choice of drilling fluid or barge it ashore for disposal.

In addition to these limits on the discharge of drilling fluids, the permit also prohibits their discharge in areas of biological concern. Operators discharging within "544 meters" of such areas or of the territorial sea of the State of Mississippi must meet additional Permit provisions concerning rate and manner of discharge. Compliance with those provisions, and even calculating the "544 meter" distance, requires that operators use bioassay toxicity information.

Assuring compliance with the Permit thus requires that OCS operators consider the toxicity of their water-based fluids well before they commence drilling operations. In most cases, data on the toxicity of drilling fluids and additives thereto is available for such consideration. If it desires to use a fluid with an unpredictable toxicity in a particular drilling operation, however, the operator formulates samples and submits them to a testing lab, a process that takes about a week. Under normal circumstances, the lab should be able to provide results in about two weeks. If the samples indicate a 96 hour LC50 more toxic than 30,000 ppm, the operator may prepare an ATR request and submit it to the appropriate Region, a process which will take about one week. The Region may take as long as eight weeks to review the ATR and render a decision. If the Region denies the ATR, another two weeks may be required for the operator to arrange for barging and disposal of the fluids. Hence, an operator planning for the worst case would normally allow about fourteen weeks of lead time between the time it chooses fluid formulations and commences drilling.

B. Mysidopsis bahia

The permit requires that bioassays of water-based drilling fluids use *Mysidopsis bahia* as the test organism. *M. bahia* is a small shrimp-like crustacean which is sensitive to the presence of toxic substances in its environment. EPA has recommended its use for toxicity testing for at least ten years, and it is widely used as a test organism in a number of water quality protection programs, including some administered by EPA, the U.S. Army Corps of Engineers, and the States of New Jersey and Florida. The Regions chose *M. bahia* as the appropriate test organism for implementing the Permit because the toxicity data on which it is based was compiled from bioassays using that species.

Currently, there are at least 20 labs performing bioassays with *M. bahia* in the United States. Commercial supplies culture the test organisms in captivity and sell them to testing labs, which either use them for testing or for breeding their own captive populations.

The *M. bahia* are cultured in carefully controlled aquariums. Females start showing signs of reproduction when they are about 14 days old and release their first brood of 2 to 3 young soon thereafter. Until their death, which occurs at an age of about 60 days, females continue to produce increasingly larger broods (up to 14) of offspring.

Each aquarium population includes animals of various ages, but only those between 3 and 6 days old may be used for bioassays. Although little is known about the population dynamics of *M. bahia*, reducing the number of organisms in an individual aquarium beyond a certain point may affect the reproduction rate of those remaining. Thus, in determining how many *M. bahia* to remove for use in bioassays, breeders must balance the immediate profits afforded by sales or testing against the risk that production rates may decline.

C. The Petition of the American Petroleum Institute

On August 13, 1986, the American Petroleum Institute and fifteen of its member OCS operators (API) filed an emergency petition with the Regions requesting a stay of the Permit's toxicity limitations until December 31, 1986. According to API, lab turnaround time for toxicity bioassays has increased to the extent that operators subject to the Permit are unable to obtain bioassay results in time to plan their operations or submit ATRs to the Regions. API attributes the increased lab turnaround time to alleged operator inability to predict the toxicity of water-based drilling fluids prior to bioassay, a factor it asserts has increased the number of preoperational bioassays to a level beyond current lab capacity.

The petition requested the Regions to administratively "stay" the toxicity provisions of the Permit through December 31, 1986, to allow an increase in the lab population of *M. bahia* sufficient to meet projected testing demand. It further alleged that, absent such a stay, OCS operators would incur millions of dollars in barging costs in the first year of the Permit's effectiveness which might be unnecessary if labs could meet the demand for bioassays.

Region VI immediately met with API representatives to discuss the matter. At the meeting, API indicated it would seek a judicial stay of the Permit's toxicity limitations if the Agency did not provide administrative relief in two days. In response, Region VI explained that the Agency could not possibly meet such a schedule and indicated it would need about two weeks for consideration of the matter.

Because the information provided by API was insufficient for determining the extent of the alleged test organism shortage, EPA conducted a telephone survey of bioassay labs and commercial suppliers of *M. bahia*. Although the Agency was unable to contact all labs performing bioassays of drilling fluids, the Agency discussed the matter with a respresentative sampling and has a general understanding of current market conditions.

While they were considering API's petition, the Regions received comments thereon from the Natural Resources Defense Council (NRDC), a public interest environmental organization. Those comments opposed issuance of the requested stay, asserting that API had failed to demonstrate the existence of a *M. bahia* shortage, its causes or effects. The comments also suggested several alternative EPA responses to the shortage, if any.

D. Agency Findings

The Regions have considered API's petition, NRDC's comments, and the information obtained in the telephone survey. Although they do not agree with all allegations of either API or NRDC, the Regions are suspending the Permit's toxicity limitation as API requested.

Generally, the testing labs EPA contacted reported a shortage of test organisms affecting their ability to conduct timely bioassays of drilling fluids. Although many of them culture *M. bahia* for testing purposes, they have been unable to keep up with bioassay demand and are having difficulty obtaining supplemental test organisms. Those still able to meet current orders in relatively timely fashion are accepting few new orders, instead concentrating on expanding their culture facilities. Similarly, labs which have been formed in response to the bioassay demand created by the Permit are having difficulty obtaining *M. bahia* with which to establish in-house populations for testing.

No lab contacted by EPA reported as much difficulty as ERCO, which provided an affidavit attached to API's petition. Because it was performing drilling fluid bioassays for OCS operators even before issuance of the Permit, however, it is probable that ERCO received much of the initial bioassay work associated with the Permit and thus felt the increased demand earlier than other labs. Its experience may thus be a prognosis of the future if current demand for bioassays continues. ERCO reports that a shortage of test organisms has increased its mean turnaround time for bioassays from 14 to 63 days.

Commercial suppliers have already begun reacting to the shortage. Of five suppliers EPA contacted, three have recently discontinued all sales of *M. bahia* and are concentrating on replenishing and/or expanding their brood stocks, predicting they can begin supplying test animals again in about two months. One other supplier is low on *M. bahia* as a result of increased demand but is still selling them. The last of the five is selling some *M. bahia*, but is devoting more juveniles than previously to expansion, intending to quadruple its stock in about 6 weeks.

As a result of the survey and the information submitted by API, the Regions conclude that there is in fact a shortage of test organisms adversely affecting OCS operators' ability to comply with the permit's toxicity limitations. In some instances, the intense competition among labs for additional test organisms may have decreased the rate at which they can be produced. One commercial supplier indicated its *M. bahia* production rate has recently decreased to 25% of normal, attributing that decrease to possible viral disease, polyp parasitism, or pesticide contamination of lab food. Although such causes may reduce production rates, the Regions believe the supplier may have culled too many juvenile organisms from its aquiria. Because of the increased demand for *M. bahia*, other breeders may also have overculled, lowering their production rates and further contributing to the present shortage.

The reason for the magnitude of the current demand for drilling fluid bioassays is not clear. In the Regions' opinion, it is not solely attributable to the number of additional bioassays required by the Permit to date. Although API asserts that many preoperational predictions of drilling fluid toxicity are impossible without bioassays, the information it submitted to support that contention was compiled prior to the issuance of the Permit and indeed, was included in the data EPA used to "predict" that OCS operators could use water-based drilling fluids with a 96 hours LC50 no more toxic than 30,000 ppm for most drilling operations when it issued the Permit. The Regions simply do not agree with API that a large number of OCS operators need to use

the ATR procedure. There is sufficient data for OCS operators to make reasonable business judgments on the potential toxicity of most water-based fluids without subjecting them to bioassays far in advance of commencing operations.

The Regions realize, however, that all OCS operators do not share this opinion at this early stage in the Permit's five year life. It thus seems likely that some OCS operators may be requesting more bioassays than are actually needed as a result of the Permit. Although they have little information on the magnitude of this "unnecessary" demand, the Regions suspect it may be occurring in connection with three categories of bioassays:

(1) Although the Regions have received very few ATRs to date, many OCS operators may be conservatively assuming that their own water-based drilling fluids can not be discharged in compliance with the Permit without an approved ATR. They may thus have sought many more preoperational bioassays than EPA believes are required by the Permit. As previously noted, the necessity for many of these bioassays is a matter of dispute between EPA and API.

(2) Although the Permit only requires that operators sample their water-based drilling fluids once a month and on completion of drilling, EPA may use each monthly sample as the basis for determining compliance for the entire month. Some operators may be attempting to limit their exposure to enforcement penalties by more frequent sampling. If each OCS operator took this approach to the extreme, it would increase the demand for *M. bahia* by as much as thirty times that required by the permit.

(3) Some OCS operators and drilling fluid companies are engaged in research and development efforts to formulate less toxic drilling fluids.

The Regions of course believe that Permit compliance is necessary and agree it is desirable to develop less toxic drilling fluids. In their efforts to attain these goals, however, OCS operators may inadvertently have created an inflated demand for *M. bahia* which is currently undermining the regulatory framework established by the Permit and creating real business problems for some OCS operators. If so, the adversely affected operators are not necessarily the same ones creating the demand, a factor which complicates the situation.

E. The Temporary Suspension

Regardless of the reasons for the shortage, it is apparent that continuation of current demand will result in continued deterioration of bioassay turnaround time while many labs and commercial suppliers withhold *M. bahia* from the market in an effort to increase production. Absent some form of relief, affected OCS operators would have to choose between postponing drilling operations (some of which are necessary to retain leases and/or use previously leased drilling rigs), incurring additional costs for barging operations, or risking permit violations and attendant liability.

Moreover, the effects of the shortage may not be limited to OCS operators covered by the permit and the Regions regulating them. Because other environmental protection programs depend on bioassays using *M. bahia*, many other parties may be adversely affected. Indeed, it is too early to tell how far the effects of the *M. bahia* shortage may extend.

The Regions believe that the only immediately effective solution to the *M. bahia* shortage is a temporary reduction in demand for bioassays to allow labs and commercial suppliers "breathing space" in which to increase their stock, followed by a period in which the market can adjust to the new demands imposed on it. Accordingly, they are suspending the permit's toxicity limitations. By temporarily suspending the compliance date for those limitations, the Regions will eliminate the current backlog of bioassay requests submitted by OCS operators intending to commerce drilling operations during the period of the suspension and those required for compliance monitoring of those operations. Although this action will not, by itself, eliminate all excess demand for *M. bahia*, it will enable OCS operators to moderate their own demands to stablize this unfortunate situation.

It should be noted that this suspension does not apply to all Permit related demand for *M. bahia*. Any operator intending to discharge water-based drilling fluids within a calculated "544 meters" of an area of biological concern or of the territorial sea of the State of Mississippi will still have to comply with all limitations of the permit, including limitations which the Regions are otherwise suspending. The bioassay demand generated by such operators is a relatively small portion of the total number of bioassays required by the permit, however, and should not greatly affect the recovery of the *M. bahia* market. After weighing the marginal benefits associated with elimination of this minor demand against the environmental harm which might be occasioned by suspending the toxicity limitations in these environmentally sensitive areas, the Regions concluded that the Permit provisions protecting them should not be suspended.

Likewise, some bioassays will be required for the Diesel Pill Monitoring Program. Again, however, this represents a very minor portion of the total current demand and the information on effectiveness of pill recovery which this program will provide is necessary to continuing orderly development of regulatory controls on toxic discharges.

After elimination of most current demand for most Permit related bioassays the Regions believe that labs will be able to meet their other commitments in timely fashion and begin increasing their test populations of *M. bahia*. Because the actual (as opposed to required) demand OCS operators may make on lab bioassay capabilities is unknown, however, it is not now possible for the Regions to accurately predict the time at which the *M. bahia* supply will be sufficient to meet it.

The period of suspension requested by API, i.e., until December 31, 1986, does not appear unreasonably long, however. Given restored lab turnaround times, that date will require at least nine OCS operators which intend to commence drilling in January 1987, to begin submission of any necessary preoperational drilling mud samples to labs about the end of September 1986, to assure adequate lead time for worst case operational planning. Accordingly, they will have about one month to determine which, if nay, operations will actually require such planning, a period which also appears reasonable. Moreover, temporarily suspending implementation of the Permit's technology based toxicity limitations and associated monitoring requirements through December 31, 1986, will cause no significant degradation of the marine environment, particularly as all other Permit limitations will remain in effect, including those which provide protection to environmentally sensitive areas and prohibit the discharge of oil-based drilling fluids and those containing diesel oil.

Although they are accordingly granting API's request for relief, the Regions do not intend to repeat this exercise. In its current form, the Permit is a practical regulatory framework which provides as much flexibility to OCS operators as is consistent with the Agency's administrative resources and Congressional mandate. The Regions believe that OCS operators have the capability to adjust to its new requirements without major disruption and today's suspension should give

them sufficient opportunity to do so. Indeed, operators believing they need more bioassays than independent labs can efficiently provide could be well along in developing in-house bioassay facilities by December 31, 1986, if they started today.

F. Rejected Alternatives

Before issuance of the suspension, the Regions considered and rejected other alternative actions they might take to reduce the demand for *M. bahia:*

(1) Allowing OCS operators to use another species, *Mysidopsis almyra*, for bioassays. The agency rejected this alternative because insufficient *M. almyra* are now available in laboratories to offer significant relief to OCS operators. Even if they could be quickly obtained, lab facilities which could be used for breeding *M. bahia* would have to be devoted to *M. almyra* instead. This alternative would not, therefore, attain the Regions' goal, an adequate population of *M. bahia* to implement the permit as intended and restore stability to the marketplace.

(2) Allowing operators to submit discharge monitoring reports and ATRs based on bioassays performed with a reduced number of *M. bahia*. As noted at 51 FR 24906, reducing the number of test organisms results in significant variations in bioassay results. Bioassays performed with reduced numbers of *M. bahia* would thus be a poor indicator of Permit violations and subject OCS operators to unwarranted liability risks.

(3) Allowing the current situation to continue and exercising enforcement discretion to make individual allowances for operators who had unsuccessfully tried to obtain bioassays for compliance monitoring and/or ATR submissions. This alternative would not, however, eliminate the present bioassay demand, restore stability to the marketplace, or allow implementation of the permit as intended. Indeed, it might operate as an incentive for some OCS operators to use only overloaded or inefficient labs for bioassays in an effort to inhibit effective enforcement of the Permit.

(4) Allowing all operators to submit ATRs without supporting toxicity information until the market recovers. Although this would have the same effects on the market as the suspension, processing the ATRs would simply waste the Regions' administrative resources.

(5) Suspending compliance with the permit's toxicity limitations, but requiring OCS operators to monitor their drilling fluid discharges (at a reduced frequency, perhaps) for informational purposes. Because drilling fluid samples may be retained up to 90 days before testing without affecting the integrity of bioassay results, OCS operators and labs would have some flexibility in assigning priorities among competing test demands. After retaining each sample for up to three months, however, labs would have to test them and that demand might occur at the worst possible time, i.e., when M. bahia was beginning to reemerge in the marketplace, driving the population of test organisms into another decline.

G. Administrative Procedure Act Compliance

Generally, Section 4(b) of the Administrative Procedure Act, 5 U.S.C. 553(b), requires that federal agencies provide public notice prior to adoption of a substantive rule to allow interested parties adequate opportunity for comment. The Act provides an exception to this requirement, however, "when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 USC 553(b)(B). This suspension falls within the ambit of that exception.

Had the Regions provided the public opportunity for comment before promulgation of this temporary suspension, the intense demand for test organisms during the comment period would further reduce the number of M. bahia available for breeding purposes, thus postponing effective implementation of the Permit's toxicity limitations even further and subjecting OCS operators commencing drilling during the comment period to unwarranted liability risks and/or unnecessary expense. Because M. bahia are also used in a number of other water quality protection programs administered by state and federal agencies, the "ripple" effect occurring during a comment period might also adversely affect those programs and the parties regulated thereunder.

Under such circumstances, any further delay in issuance of the suspension would be manifestly impracticable and contrary to the public interest. For the same reasons and because it "relieves a restriction" imposed by the Permit, this suspension is immediately effective on signing pursuant to 5 U.S.C. 553(d) (1) and (3).

Dated: August 29, 1986.

Lee A. DeHihns,

Deputy Regional Administrator, EPA Region IV.

Frances E. Phillips,

Deputy Regional Administrator, EPA Region VI.

In NPDES permit number GMG280000, the toxicity limitation of Part I.A.1 is suspended for discharges from drilling operations commenced (spudded in) on or before December 31, 1986, except for discharges from drilling operations which are also subject to permit Part I.A.1(g).

[FR Doc. 86-20459 Filed 9-17-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51636; FRL-3067-8]

Certain Chemicals Premanufacture Notices

Correction

In FR Doc. 86-18760, beginning on page 29695, in the issue of Wednesday, August 20, 1986, make the following corrections:

1. On page 29695, second column, in **"DATES"**, twelfth line, "and" should be removed.

2. On the same page, third column, in the **"ADDRESS"**, eighth line, "Agency" was mispelled.

3. On page 29696, first column, under "P 86-1462", third line, "ethylhexanoate" was mispelled, and in the ninth line, "days" should read "day".

4. On the same page, first column, under "P 86-1463", second line, "Epoxy" was mispelled.

5. On the same page, first column, under "P 86-1466", sixth line, "commercial" was misspelled.

6. On page 29697, first column, under "P 86-1477", fifth line, "Dispersant" should be capitalized.

7. On the same page, second column, under "P 86-1485", ninth line, "<8 mg/kg" should read ">8 gm/kg".

8. On the same page, under "P 86-1486", third column, seventh line, "oil" should read "oral".

BILLING CODE 1505-01-M

FEDERAL HOME LOAN BANK BOARD

Metropolitan Federal Savings & Loan Association; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owner's Loan

Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Metropolitan Federal Savings and Loan Association, Hialeah, Florida on August 27, 1986.

Dated: September 11, 1986.

Jeff Sconyers,

Secretary.

[FR Doc. 86-21140 Filed 9-17-86; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No. 202-006400-024.

Title: Inter-American Freight Conference Pacific Coast Area

Parties:

Companhia De Navegacao Lloyd Brasileiro

Empresa Lineas Maritimas Argentinas Sociedad Anonima (ELMA S/A)

Nedlloyd Lijnen B.V.

Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations.

Agreement No. 202-010790-002.

Title: Israel Eastbound Conference.

Parties:

Farrell Lines, Inc.

Lykes Bros. Steamship Company, Inc.

Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendment would exclude from the scope of the agreement bulk cargoes shipped without mark or count and full shipload cargoes carried under charter terms.

Agreement No. 204-010986-001.

Title: U.S. Peru/Equal Access Agreement.

Parties:

Compania Peruana De Vapores

Lykes Bros. Steamship Co., Inc.

Naviera Neptuno, S.A.

Coordinated Caribbean Transport, Inc.

Empresa Naviera Santa, S.A. (Santa)

Synopsis: The proposed amendment would admit Santa as a party to the agreement. The parties have requested a shortened review period.

Agreement No. 224-010998.

Title: Charleston Terminal Agreement.

Parties:

South Carolina State Ports Authority (Port)

Sea-Land Service, Inc. (Sea-Land)

Synopsis: The proposed agreement would permit Sea-Land to use container slots at the Port's Columbus Street Terminal for the purpose of parking and assembling containers used in its operations and to perform all other acts incidental to its container shipping terminal operations. The parties have requested a shortened review period.

Dated: September 15, 1986.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 86-21123 Filed 9-17-86; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Privacy Act of 1974; Report of New and Amended Routine Uses

AGENCY: Health Care Financing Administration (HCFA), HHS

ACTION: Notification of new and amended routine uses.

SUMMARY: In accordance with 5 U.S.C. 552a (e)(11), we are proposing to amend all of our Privacy Act systems notices to add a new routine use which will permit disclosure to HCFA contractors in order to more efficiently and effectively carry out program purposes. At the same time, the existing routine use disclosure statement for litigation purposes is being revised, or a new one is being added, for all our systems notices, largely as recommended by the Executive Office of Management and Budget in its supplementary guidelines dated May 24, 1985, for implementing the Privacy Act.

EFFECTIVE DATES: The proposed new and amended routine uses shall take effect without further notice (October 20, 1986) unless comments received on or before that date cause a contrary decision. If, based upon our review of comments received, changes are made, we will publish a new final notice.

ADDRESS: Please address comments to Mr. Richard A. DeMeo, Privacy Act Officer, Office of Management and Budget, Health Care Financing Administration, Room G-A-1, East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207. We will make comments received available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Mr. Glenn J. Martin, Bureau of Data Management and Strategy, Health Care Financing Administration, Room G-A-2, Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207, telephone: 301-594-7170.

SUPPLEMENTARY INFORMATION: The Privacy Act allows us to disclose information routinely without an individual's consent if the information is to be used for a purpose which is compatible with the purpose for which the information was collected. We disclose information for "routine uses" when it is necessary to carry out our programs. In evaluating the benefit of a proposed use, we consider whether the data will be protected once released. We believe that the new and amended routine uses which we are proposing meet these criteria.

To comply with the technical requirements of the Privacy Act, HCFA is proposing to amend all of its systems of records by adding a new or amended routine use to each. The affected systems of records and proposed routine use(s) for each system are printed below. For simplicity, we have listed each system sequentially along with the date last published in the **Federal Register**, with each routine use appropriately numbered for the system. In addition, we are also making minor editorial changes to some notices to enhance clarity and specificity. In those cases, we will reprint the affected part of the system notice as appropriate.

We are also taking this opportunity to eliminate one notice of a system of records from our inventory: "Recovery of Medicare Payments on Workers' Compensation Claims," HHS/HCFA/BPO, No. 09-70-0523. This system has been discontinued and the records no longer maintained. All records will be destroyed in compliance with the "Retention and Disposal" section of the notice.

The following routine use for release of records to contractors will be added to HCFA's current systems of records notices. In addition, it will be included in all future systems notices.

- To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records

in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidential to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications systems containing or supporting records in the system.

The following routine use for release of records in the event of litigation will replace the routine use currently being used or added if appropriate. In addition, it will be included in all future systems notices.

• To the Department of Justice,to a court or other tribunal, or to another party before such tribunal, when

(a) HHS, or any component thereof; or

(b) any HHS employee in his or her official capacity; or

(c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

None of the amended systems which follow require an altered system report as required by 5 U.S.C. 552a(o).

The specific changes to the notices being amended are set forth below followed by the particular notice as amended.

Dated: September 12, 1986.

William L. Roper,

Administrator, Health Care Financing Administration

System No. and system name	Date last published in the FEDERAL REGISTER
09-70-0001 Medicare Second Surgical Opinion Experiments, HHS/HCFA/ORD.	47 FR 45694; October 13, 1982.
● Routine Use No. 3—Litigation (Revised) ● Routine Use No. 4—Contractors (New) ● System manager(s) and address—Updated below	
09-70-0004 Durable Medical Experiment, Equipment HHS/HCFA/ORD.	47 FR 45695; October 13, 1982.
● Routine Use No. 3—Litigation (Revised) ● Routine Use No. 4—Contractors (New) ● System name—modified below ● System location—Updated below ● System manager(s) and address—Updated below	
09-70-0005 Medicare Bill File (Statistics), HHS/HCFA/BDMS.	49 FR 49942, December 24, 1984, Amended 50 FR 27407, July 2, 1985.
● Routine Use No. 3—Litigation (Revised) ● Routine Use No. 5—Clarified below ● Routine Use No. 6—Contractors (New)	
09-70-0006 Medicare Enrollment Records (Statistics), HHS/HCFA/BDMS.	47 FR 45697; October 13, 1982.
● Routine Use No. 4—Litigation (Revised) ● Routine Use No. 5—Contractors (New)	
09-70-0007 Health Insurance Enrollment Statistics, General Enrollment Period, HHS/HCFA/BDMS.	47 FR 45698; October 13, 1982.
● Routine Use No. 2—Litigation (Revised) ● Routine Use No. 3—Contractors (New)	
09-07-0008 Supplementary Medical Sample Bill Summary File of Medicare Utilization (Statistics), HHS/HCFA/BDMS.	47 FR 45698; October 13, 1982.
● Routine Use No. 2—Litigation (Revised) ● Routine Use No. 4—Contractors (New)	
09-70-0011 Evaluation of the Impact of Surgical Screening Based Upon Union Member Utilization of the Pre-Surgical consultant Benefit (Statistics), HHS/HCFA/ORD.	47 FR 45700; October 13, 1982.
● Routine Use No. 3—Litigation (Revised) ● Routine Use No. 4—Contractors (New) ● System manager(s) and address—Updated below	
09-70-0013 Annual 5 Percent Summary File of Services Reimbursed Under the Medicare Program (Statistics), HHS/HCFA/BDMS.	47 FR 45701; October 13, 1982.
● Routine Use No. 2—Litigation (Revised) ● Routine Use No. 3—Contractors (New)	
09-70-0014 Survey of Physicians' Administrative and Practice Costs and Medicaid Participation, HHS/HCFA/ORD.	47 FR 45701; October 13, 1982.
● Routine Use No. 2—Litigation (Revised) ● Routine Use No. 3—Contractors (New) ● System manager(s) and address—Updated below	
09-70-0015 Ambulatory Surgery Research Project, HHS/HCFA/ORD.	47 FR 45702; October 13, 1982.
● Routine Use No. I—Existing routine use needs numbering ● Routine Use No. 2—Congressional office (Add) see below ● Routine Use No. 3—Litigation (Add) ● Routine Use No. 4—Contractors (New) ● System manager(s) and address—Updated below	
09-70-0019 Actuarial Sample Hospital Stay Record Study, HHS/HCFA/BDMS.	47 FR 45704; October 13, 1982.
● Routine Use No. I—Litigation (Revised); needs number ● Routine Use No. 2—Congressional office (Add) see below ● Routine Use No. 3—Contractors (New) ● Categories of Individuals Covered by the System—Clarified below	
09-70-0020 Actuarial Sample of Supplementary Medical Insurance Payments, HHS/HCFA/BDMS.	47 FR 45705; October 13, 1982.
● Routine Use No. 2—Litigation (Revised) ● Routine Use No. 3—Contractors (New) ● Categories of Individuals Covered by the System—Clarified below ● System location—Updated below ● System manager and address—Updated below	
09-70-0021 Health Maintenance Organization Prospective Reimbursement Demonstrations, HHS/HCFA/ORD.	47 FR 45706; October 13, 1982.
● Routine Use No. 3—Litigation (Revised) ● Routine Use No. 4—Contractors (New) ● System manager and address—Updated below	
09-70-0022 Municipal Health Services Program, HHS/HCFA/ORD.	47 FR 45706; October 13, 1982.
● Routine Use No. 3—Litigation (Revised) ● Routine Use No. 4—Contractors (New) ● System manager and address—Updated below	
09-70-0023 Evaluation of Home Dialysis Aide Demonstration, HHS/HCFA/ORD.	47 FR 45708; October 13, 1982.
● Routine Use No. 3—Litigation (Add) ● Routine Use No. 4—Contractors (New) ● System manager and address—Updated below	
09-70-0024 Medicare/Medicaid Hospice Demonstration, HHS/HCFA/ORD.	47 FR 45710; October 13, 1982.
● Routine Use No. 4—Litigation (Revised) ● Routine Use No. 6—Contractors (New) ● System manager and address—Updated below	
09-70-0025 Evaluation of the Long-Term Health Care Program, HHS/HCFA/ORD.	47 FR 45713; October 13, 1982.
● Routine Use No. 3—Litigation (Revised) ● Routine Use No. 4—Contractors (New) ● System manager and address—Updated below	
09-70-0026 Study of the Comparative Effectiveness of State Approaches to Regulation of Medicare Supplemental Policies: Medigap, HHS/HCFA/ORD.	50 FR 27361; July 2, 1985.
● Routine Use No. 3—Litigation (Revised) ● Routine Use No. 4—Contractors (New) ● System manager and address—Updated below	
09-70-0027 Evaluation of the HMO Capitation Demonstrations, HHS/HCFA/ORD.	47 FR 45715; October 13, 1982.
● Routine Use No. 3—Litigation (Revised) ● Routine Use No. 4—Contractors (New) ● System manager and address—Updated below	
09-70-0028 Study of the Social, Ethical, and Economic Consequences of Medicare Coverage for Heart Transplants, HHS/HCFA/ORD.	47 FR 45716; October 13, 1982.
● Routine Use No. 3—Litigation (Revised) ● Routine Use No. 4—Contractors (New) ● System manager and address—Updated below	
09-70-0029 Evaluation of Medicare Competition Demonstrations, HHS/HCFA/ORD.	48 FR 56645; December 22, 1983.
● Routine Use No. 3—Litigation (Revised) ● Routine Use No. 4—Contractors (New) ● System manager and address—Updated below	
09-70-0030 National Long-Term Care Survey Follow-Up, HHS/HCFA/ORD.	49 FR 2961; January 24, 1984.
● Routine Use No. 3—Litigation (Revised) ● Routine Use No. 4—Contractors (New) ● System Location—Updated below ● System manager and address—Updated below	
09-70-0031 Evaluation of the HCFA Alcoholism Services Demonstration, HHS/HCFA/ORD.	49 FR 9474, March 13, 1984.
● Routine Use No. 3—Litigation (Revised) ● Routine Use No. 4—Contractors (New) ● System manager and address—Updated below	
09-70-0032 Physicians' Practice Costs and Incomes Survey, HHS/HCFA/ORD.	49 FR 14442; April 11,1984, Amended 51 FR 18044; May 16, 1986.
● Routine Use No. 3—Litigation (Revised) ● Routine Use No. 4—Contractors (New) ● System manager and address—Updated below	
09-70-0033 Person-Level Medicaid Data System, HHS/HCFA/ORD.	49 FR 47573, December 5, 1984.
● Routine Use No. 2—Litigation (Revised) ● Routine Use No. 4—Contractors (Revised)	
09-70-0034 Evaluation of Social/Health Maintenance Organization (S/HMO) Demonstrations, HHS/HCFA/ORD.	50 FR 29766; July 22, 1985.

System No. and system name	Date last published in the FEDERAL REGISTER
• Routine Use No. 3—Litigation (Revised) • Routine Use No. 4—Contractors (New)	
09-70-0036 Evaluation of Competitive Bidding for Durable Medical Equipment Demonstration, HHS/HCFA/ORD.	51 FR 6597; February 25, 1986.
• Routine Use No. 5—Contractors (New)	
09-70-0501 Carrier Medicare Claims Records, HHS/HCFA/BPO.	51 FR 11643; April 4, 1986.
• Routine Use No. 21—Contractors (New)	
09-70-0502 Health Insurance Master Record, HHS/HCFA/BPO.	51 FR 11643; April 4, 1986.
• Routine Use No. 8—Contractors (New)	
09-70-0503 Intermediary Medicare Claims Records, HHS/HCFA/BPO.	51 FR 11643; April 4, 1986.
• Routine Use No. 19—Contractors (New)	
09-70-0504 Beneficiary Parts A and B Uncollectible Overpayment File, HHS/HCFA/BPO.	47 FR 45722; October 13, 1982.
• This system has been automated. A report of an altered system will be prepared and published separately in the FEDERAL REGISTER.	
09-70-0505 Supplemental Medical Insurance Accounting Collection and Employment System, HHS/HCFA/BPO.	47 FR 45723; October 13, 1982.
• System location—Updated below • Categories of Records in the System—Typographical error corrected • Routine Use No. 3—Litigation (Revised) • Routine Use No. 4—Contractors (New) • Retention and Disposal—Updated below • System Manager and Address—Updated below • Notification Procedure—Updated below • Record Source Categories—Typographical error corrected • System Exempted from Certain Provisions of the Act—Not included in original	
09-70-0506 Group Health Plan System, HHS/HCFA/BPO.	50 FR 46352; November 7, 1985.
• Categories of Individuals Covered by the System—Updated below • Routine Use No. 2—Litigation (Revised) • Routine Use No. 5—Contractors (Substituted) • Storage—Correction • System Manager and Address—Updated below • Notification Procedure—Clarified below • Record Source Categories—Updated below	
09-70-0507 Health Insurance Utilization Microfilm, HHS/HCFA/BPO.	47 FR 45724; October 13, 1982.
• System location—Updated below • Categories of Individuals Covered by the System—Clarified below • Purpose—Clarified below • Routine Use No. 2—Litigation (Revised) • Routine Use No. 3—Contractors (New) • Safeguards—Updated below • System Manager and Address—Updated below • Record Source Categories—Clarified below	
09-70-0508 Reconsideration and Hearing Case Files (Part A) Hospital Insurance Program, HHS/HCFA/BPO.	47 FR 45725; October 13, 1982.
• System location—Updated below • Routine Use No. 2—Litigation (Revised) • Routine Use No. 3—Contractors (New) • System Manager and Address—Updated below	
09-70-0509 Medicare Beneficiary Correspondence Files, HHS/HCFA/BPO.	47 FR 45726; October 13, 1982.
• Will be updated at a later date.	
09-70-0512 Review and Fair Hearing Case Files—Supplementary Medical Insurance Program, HHS/HCFA/BPO.	47 FR 45727; October 13, 1982.
• Routine Use No. 2—Litigation (Revised) • Routine Use No. 3—Contractors (New) • System Manager and Address—Updated below	
09-70-0513 Explanation of Medicare Benefit Records, HHS/HCFA/BPO.	47 FR 45728; October 13, 1982.
• Routine Use No. 2—Litigation (Revised)	

System No. and system name	Date last published in the FEDERAL REGISTER
• Routine Use No. 3—Contractors (New) • System Manager and Address—Updated below	
09-70-0516 Medicare Physician Supplier Master File, HHS/HCFA/BPO.	47 FR 45729; October 13, 1982.
• Routine Use No. 4—Litigation (Revised) • Routine Use No. 5—Contractors (New) • System Manager and Address—Updated below	
09-70-0517 Physician/Supplier 1099 File (Statement for Recipients of Medical and Health Care Payments), HHS/HCFA/BPO.	47 FR 45730; October 13, 1982.
• System Number—Corrected below • Routine Use No. 3—Litigation (Revised) • Routine Use No. 4—Contractors (New) • System Manager and Address—Updated below	
09-70-0518 Medicare Clinic Physician-Supplier Master File, HHS/HCFA/BPO.	47 FR 45730; October 13, 1982.
• Routine Use No. I—Delete word • Routine Use No. 5—Litigation (Revised) • Routine Use No. 6—Contractors (New) • System Manager and Address—Updated below	
09-70-0520 End Stage Renal Disease (ESRD) Program Management and Medical Information System (Registry), HHS/HCFA/BDMS.	47 FR 45731; October 13, 1982.
• Routine Use No. 3—Litigation (Revised) • Routine Use No. 5—Contractors (New) • System Manager and Address—Updated below • Record Source Categories—Clarified below	
09-70-0521 Medicare Beneficiary Claims for Emergency Services, HHS/HCFA/BPO.	47 FR 45732; October 13, 1982.
• Routine Use No. 2—Litigation (Revised) • Routine Use No. 3—Contractors (New)	
09-70-0522 Billing and Collection Master Records System, HHS/HCFA/BPO.	47 FR 45733; October 13, 1982.
• System location—Updated below • Routine Use No. 2—Litigation (Revised) • Routine Use No. 4—Contractors (New) • System Manager and Address—Updated below	
09-70-0524 Payments for Interns and Residents, HHS/HCFA/BPO.	50 FR 6395; February 15, 1985.
• System location—Updated below • Categories of Records in the System—Clarified below • Routine Use No. 2—Clarified below • Routine Use No. 5—Litigation (Revised) • Routine Use No. 6—Contractors (New) • System Manager and Address—Updated below	
09-70-1509 Complaint Files on Nursing Homes, HHS/HCFA/HSQB.	47 FR 45736; October 13, 1982.
• *Routine Use No. I—Add number* • Routine Use No. 2—Litigation (Revised) • Routine Use No. 3—Contractors (New) • Safeguards—Expanded below • System Manager and Address—Updated below • Notification Procedure—Clarified below	
09-70-2003 Completion of State Medicaid Quality Control (MQC) Reviews, HHS/HCFA/BQC.	49 FR 37851; September 26, 1984.
• Routine Use No. 5—Litigation (Revised) • Routine Use No. 6—Contractors (New)	
09-70-2004 Credit Reports for Medicaid Recipients (Credit Bureaus), HHS/HCFA/BQC.	50 FR 14457; April 12, 1985.
• Routine Use No. 4—Litigation (Revised) • Routine Use No. 5—Contractors (New)	
09-70-3001 Record of Individuals Authorized Entry to HCFA Buildings via A Card Key Access System, HHS/HCFA/OMB.	50 FR 21356; May 23, 1985.
• Routine Use No. 5—Litigation (Revised) • Routine Use No. 6—Contractors (New)	
09-70-3002 HCFA Employee Building Pass Files, HHS/HCFA/OMB.	51 FR 25405; July 14, 1986.
• Routine Use No. 3—Contractors (Revised)	

09-70-0001

SYSTEM NAME:

Medicare Second Surgical Opinion Experiments

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Remove the entire entry and substitute with the following: Director, Office of Research and Demonstrations, Health Care Financing Administration, Room 2230, Oak Meadows Building, 6325 Security Blvd., Baltimore, Maryland 21207,

* * * * *

09-70-0004

SYSTEM NAME:

Durable Medical Equipment Experiment.

* * * * *

SYSTEM NAME:

Change the word "Experiment" to "System." Durable Medical Equipment System

* * * * *

SYSTEM LOCATION:

Remove the entire entry and substitute with the following: Health Care Financing Administration, Office of Research and Demonstrations, Room 2230, Oak Meadows Building, 6325 Security Blvd., Baltimore, Maryland 21207.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Remove the entire entry and substitute with the following: Director, Office of Research and Demonstrations, Health Care Financing Administration, Room 2230, Oak Meadows Building, 6325 Security Blvd., Baltimore, Maryland 21207.

* * * * *

09-70-0005

Medicare Bill File (Statistics).

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

No. 5—In line 17, remove the word * * * The * * * and add the following: "Each of the Medicare Provider Analysis and Review (MEDPAR) files—short-stay hospital services file, long-

term hospital services file, skilled nursing facility services file, and other provider services file—will be modified in accordance with the foregoing provisions for release."

In line 18, add the word "The" before "entity must agree:"

* * * * *

09-70-0011

SYSTEM NAME:

Evaluation of the Impact of Surgical Screening Based Upon Union Member Utilization of the Pre-Surgical Consultant Benefit (Statistics).

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Remove the entire entry and substitute with the following: Director, Office of Research and Demonstrations, Health Care Financing Administration, Room 2230, Oak Meadows Building, 6325 Security Blvd., Baltimore, Maryland 21207.

* * * * *

09-70-0014

SYSTEM NAME:

Survey of Physicians' Administrative and Practice Costs and Medicaid Participation.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Remove the entire entry and substitute with the following: Director, Office of Research and Demonstrations, Health Care Financing Administration, Room 2230, Oak Meadows Building, 6325 Security Blvd., Baltimore, Maryland 21207.

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09-70-0015

SYSTEM NAME:

Ambulatory Surgery Research Project.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Number existing routine use as No. 1. Add standard routine use for Congressional offices as routine use No. 2 as follows: "To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Remove the entire entry and substitute with the following: Director, Office of Research and Demonstrations, Health Care Financing Administration, Room 2230, Oak Meadows Building, 6325 Security Blvd., Baltimore, Maryland 21207.

* * * * *

09-70-0019

SYSTEM NAME:

Actuarial Sample Hospital Stay Record Study.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Number existing routine use as No. 1. Add standard routine use for Congressional offices as routine use No. 2 as follows: "To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Remove entire entry and substitute with the following: "A sample of persons who have received hospital insurance benefits as follows: 0.1% of aged; 1% of disabled; and 100% End Stage Renal Disease."

* * * * *

09-70-0020

SYSTEM NAME:

Actuarial Sample of Supplementary Medical Insurance Payments.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: .

Remove entire entry and substitute with the following: "A sample of records for persons who have received benefits under the supplementary medical insurance provisions of the Medicare program as follows: 0.1% of aged; 1% of disabled; and 100% End Stage Renal Disease."

* * * * *

09-70-0021

SYSTEM NAME:

Health Maintenance Organization Prospective Reimbursement Demonstrations.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Remove the entire entry and substitute with the following: Director, Office of Research and Demonstrations, Health Care Financing Administration, Room 2230, Oak Meadows Building, 6325 Security Blvd., Baltimore, Maryland 21207.

* * * * *

09-70-0022

SYSTEM NAME:

Municipal Health Services Program.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Remove the entire entry and substitute with the following: Director, Office of Research and Demonstrations, Health Care Financing Administration, Room 2230, Oak Meadows Building, 6325 Security Blvd., Baltimore, Maryland 21207.

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09-70-0023

SYSTEM NAME:

Evaluation of Home Dialysis Aide Demonstration.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Remove the entire entry and substitute with the following: Director, Office of Research and Demonstrations, Health Care Financing Administration, Room 2230, Oak Meadows Building, 6325 Security Blvd., Baltimore, Maryland 21207.

* * * * *

09-70-0024

SYSTEM NAME:

Medicare/Medicaid Hospice Demonstration.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Remove the entire entry and substitute with the following: Director, Office of Research and Demonstrations, Health Care Financing Administration, Room 2230, Oak Meadows Building, 6325 Security Blvd., Baltimore, Maryland 21207.

* * * * *

09-70-0025

SYSTEM NAME:

Evaluation of the Long-Term Health Care Program.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Remove the entire entry and substitute with the following: Director, Office of Research and Demonstrations, Health Care Financing Administration, Room 2230, Oak Meadows Building,

6325 Security Blvd., Baltimore, Maryland 21207.

* * * * *

09-70-0026

SYSTEM NAME:

Study of the Comparative Effectiveness of State Approaches to Regulation of Medicare Supplemental Policies: Medigap.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Remove the entire entry and substitute with the following: Director, Office of Research and Demonstrations, Health Care Financing Administration, Room 2230, Oak Meadows Building, 6325 Security Blvd., Baltimore, Maryland 21207.

* * * * *

09-70-0027

SYSTEM NAME:

Evaluation of the HMO Capitation Demonstrations.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Remove the entire entry and substitute with the following: Director, Office of Research and Demonstrations, Health Care Financing Administration, Room 2230, Oak Meadows Building, 6325 Security Blvd., Baltimore, Maryland 21207.

* * * * *

09-70-0028

SYSTEM NAME:

Study of the Social, Ethical, Economic Consequences of Medicare Coverage for Heart Transplants.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Remove the entire entry and substitute with the following: Director, Office of Research and Demonstrations, Health Care Financing Administration, Room 2230, Oak Meadows Building, 6325 Security Blvd., Baltimore, Maryland 21207.

* * * * *

09-70-0029

SYSTEM NAME:

Evaluation of Medicare Competition Demonstrations.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Remove the entire entry and substitute with the following: Director, Office of Research and Demonstrations, Health Care Financing Administration, Room 2230, Oak Meadows Building, 6325 Security Blvd., Baltimore, Maryland 21207.

* * * * *

09-70-0030

SYSTEM NAME:

National Long-Term Care Survey Follow-Up.

* * * * *

SYSTEM LOCATION:

Removethe entire entry and substitute with the following: Health Care Financing Administration, Office of Research and Demonstrations, Room 2230, Oak Meadows Building, 6325 Security Blvd., Baltimore, Maryland 21207.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Remove the entire entry and substitute with the following: Director, Office of Research and Demonstrations, Health Care Financing Administration, Room 2230, Oak Meadows Building, 6325 Security Blvd., Baltimore, Maryland 21207.

* * * * *

09-70-0031

SYSTEM NAME:

Evaluation of the HCFA Alcoholism Services Demonstration.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Remove the entire entry and substitute with the following: Director, Office of Research and Demonstrations, Health Care Financing Admninistration, Room 2230, Oak Meadows Building, 6325 Security Blvd., Baltimore, Maryland 21207.

* * * * *

09-70-0032

SYSTEM NAME:

Physicians' Practice Costs and Incomes Survey.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Remove the entire entry and substitute with the following: Director, Office of Research and Demonstrations, Health Care Financing Administration, Room 2230, Oak Meadows Building, 6325 Security Blvd., Baltimore, Maryland 21207.

* * * * *

09-70-0505

SYSTEM NAME:

Supplemental Medical Insurance Accounting Collection and Employment System.

* * * * *

SYSTEM LOCATION:

In line 2, remove the word "Support" and in line 3, remove the word "Services" and add the phrase "Data Management and Strategy,".

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

In line 5, change the word "of" to "or."

* * * * *

RETENTION AND DISPOSAL:

In line 1, change the "comma" at the end of the line to a "period." Remove lines 2 and 3 and line 4 up to the word "discarded." In line 5, change "1 year" to read "3 years."

SYSTEM MANAGER(S) AND ADDRESS:

In line 2, remove "Director, Bureau of" and in line 3, remove "Program Operations,". Add "Bureau of Program Operations, Director, Division of Entitlement Requirements,".

NOTIFICATION PROCEDURE:

Remove line 5. Remove "Eligibility Systems." from line 6 and add "Program Operations Procedures, Division of Entitlement Requirements."

* * * * *

RECORD SOURCE CATEGORIES:

In line 4, change "Administration." to read "Administration's."

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Add the word "None."

* * * * *

09-70-0506

SYSTEM NAME:

Group Health Plan System.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

In line 3, remove the period and add "enrolled in a group health plan."

* * * * *

STORAGE:

Remove "paper listing" and add "microfilm".

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

In line 2, remove "Director, Bureau of" and in line 3, remove "Program

Operations". In line 2 after "Administrator," add "Bureau of Program Operations, Director of Group Health Plans Operations".

NOTIFICATION PROCEDURE:

In line 4, between the words "the" and "Group" add "Division of". In Line 5, remove the word "Staff".

RECORD SOURCE CATEGORIES:

At the end of line 4, remove ")" and add "and from the Health Insurance Master Record)".

* * * * *

09-70-0507

SYSTEM NAME:

Health Insurance Utilization Microfilm.

* * * * *

SYSTEM LOCATION:

In line 2, remove the word "Support". In line 3, remove the word "Services". In its place, add the phrase "Data Management and Strategy".

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Remove the entire entry and substitute with the following: Records are maintained of transactions for individuals who are entitled or who applied for and were entitled to Medicare benefits or who applied for and were disallowed medicare benefits.

* * * * *

PURPOSE:

Remove the last two words in line 2, "can be" and all of line 3 and line 4. After the word "that" in line 2, add "establishes and or maintains a beneficiaries Medicare record.".

* * * * *

SAFEGUARDS:

Remove the word "Support" at the end of line 2 and the word "Services" at the beginning of line 3. In its place, add "Data Management and Strategy".

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

In line 2, remove "Director, Bureau of" and in line 3, delete "Program Operations". Add "Bureau of Program Operations, Director, Division of Entitlement Requirements".

* * * * *

RECORD SOURCE CATEGORIES:

At the end of line 5, remove "(e.g.,) and "physicians)." in line 6. Add instead, "and from the Social Security Administration's Master Beneficiary Record system; from the U.S. Department of Labor; from the Veteran's Administration; and from various State Medicaid agencies.".

* * * * *

09-70-0508

SYSTEM NAME:

Reconsideration and Hearing Case Files (Part A) Hospital Insurance Program.

* * * * *

SYSTEM LOCATION:

Remove the entire entry and substitute with the following: Health Care Financing Administration, Bureau of Program Operations, 6325 Security Blvd., Baltimore, Maryland 21207.

In addition, intermediaries under contract to the Health Care Financing Administration and the Social Security Administration.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

In line 2, remove "Director, Bureau of" and in line 3, remove "Program Operations". Add in its place, "Bureau of Program Operations, Director, Division of Reimbursement, Recovery and Reconsideration Evaluation,".

* * * * *

09-70-0512

SYSTEM NAME:

Review and Fair Health Case Files—Supplementary Medical Insurance Program.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

In line 2, remove "Director, Bureau of" and in line 3, remove "Program Operations". Add "Bureau of Program Operations, Director, Division of Entitlement Requirements,".

* * * * *

09-70-0513

SYSTEM NAME:

Explanation of Medicare Benefit Records.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

In line 2, remove "Director, Bureau of" and in line 3, remove "Program Operations". In its place add "Bureau of Program Operations, Director, Division of Carrier Procedures".

* * * * *

09-70—0516

SYSTEM NAME:

Medicare Physician Supplier Master File.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Remove all of line 2. Add "Bureau of Program Operations, Director, Division of Carrier Procedures,".

* * * * *

09-70-0517

Note.—System number corrected from "09-07-0517."

SYSTEM NAME:

Physician/Supplier 1099 File (Statement for Recipients of Medical and Health Care Payments).

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

In line 2, remove "Director, Bureau of". In line 3, remove "Program Operations". In its place add "Bureau of Program Operations, Director, Division of Carrier Procedures".

* * * * *

09-70-0518

SYSTEM NAME:

Medicare Clinic Physician Supplier Master File.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In line 2, remove the word "Review."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

In line 2, remove "Director, Bureau of". In line 3, remove "Program Operations". In its place add "Bureau of Program Operations, Director, Division of Carrier Procedures".

* * * * *

09-70-0520

SYSTEM NAME:

End Stage Renal Disease (ESRD) Program Management and Medical Information System (Registry).

Note.—After system name, correct to read "HHS, HCFA, BDMS."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Remove the entire entry and substitute with the following: Health Care Financing Administration, Bureau of Data Management and Strategy, Office of Statistics and Data Management, Division of Information

Analysis, ESRD Systems Branch, 6325 Security Blvd., Baltimore, Maryland 21207.

* * * * *

RECORD SOURCE CATEGORIES:

In line 2, after the word "reports" add "ESRD transplant information; ESRD beneficiary selection information;".

* * * * *

09-70-0522

SYSTEM NAME:

Billing and Collection Master Records System.

* * * * *

SYSTEM LOCATION:

In line 4, remove "Support Services" and add "Data Management and Strategy". In line 7, remove "User Requirements and" and add "Claims and Payment Requirements". In line 8, remove "Validations".

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Remove line 1. In line 2, remove "Operations, HCFA" and insert "Health Care Financing Administration, Bureau of Program Operations, Director, Division of Entitlement Requirements".

* * * * *

09-70-0524

SYSTEM NAME:

Payments for Interns and Residents.

* * * * *

SYSTEM LOCATION:

Remove entire entry and substitute with the following: Contact System Manager for exact location of records.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

In line 3, remove "actual hours worked per month" and add "physician specialty code.".

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In routine use No. 2, line 3, after the word "by" insert "hospitals on". In line 4, remove the period and add "furnishing patient care services at that hospital.".

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Remove the entire entry and substitute with the following: Health Care Financing Administration, Bureau of Program Operations, Director, Division of Provider Procedures, 6325 Security Blvd., Baltimore, Maryland 21207.

* * * * *

09-70-1509

SYSTEM NAME:

Complaint Files on Nursing Homes.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Number the existing routine use as "No. 1."

* * * * *

SAFEGUARDS:

Add "Information kept in locked file cabinets. Documents only available to State and Federal employees officially acting on complaint or performing authorized disclosures.".

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Remove line 2 and add "Division of Institutional and Ambulatory Services". Delete line 3 and add "Office of Survey and Certification".

NOTIFICATION PROCEDURE:

At the end of line 4, add "Request should include: name of complainant (if known), and name and address of nursing home.".

* * * * *

[FR Doc. 86-21076 Filed 9-17-86; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-6647-B]

Alaska Native Claims Selection; Akutan Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that the decision to issue conveyance (DIC) to Akutan Corporation, notice of which was published in the **Federal Register** 51 FR 17107, on May 8, 1986, is modified by addition of ANCSA Section 22(g) requirements to the "Subject to" paragraph.

A notice of the modified DIC will be published once in the Aleutian Eagle and once a week for four (4) consecutive weeks in the Anchorage Daily News. Copies of the modified DIC may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until October 20, 1986 to file an appeal on the issue in the modified DIC. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Except as modified, the decision, notice of which was given May 8, 1986, is final.

Helen Burleson,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-21080 Filed 9-17-86; 8:45 am]

BILLING CODE 4310-JA-M

[AA-6650-A]

Alaska Native Claims Selection; Belkofski Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that the decision to issue conveyance (DIC) to Belkofski Corporation, notice of which was published in the **Federal Register**, 51 FR 12931, on April 16, 1986, is modified to more correctly describe easements EIN 102 J and EIN 104 J.

A notice of the modified DIC will be published once in the Aleutian Eagle, once a week for four (4) consecutive weeks in the Anchorage Daily News. Copies of the modified DIC may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

Any party claiming a property interest which is adversely affected by the decision shall have until October 20, 1986 to file an appeal on the issue in the modified DIC. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Except as modified, the decision, notice of which was given April 16, 1986, is final.

Helen Burleson,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-21079 Filed 9-17-86; 8:45 am]

BILLING CODE 4310-JA-M

[AA-6652-A]

Alaska Native Claims Selection; Far West Inc.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Far West, Inc., for approximately 6 acres. The lands involved are in the vicinity of Chignik, Alaska.

Seward Meridian, Alaska

T. 45 S., R. 58 W. (Unsurveyed)
Sec. 5, those lands within Sec. 3(e) application AA-13906 (Executive Order No. 4257) excluded from Interim Conveyance No. 081, dated February 7, 1978.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Anchorage Times.* Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until October 20, 1986, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Joe J. Labay,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-21081 Filed 9-17-86; 8:45 am]

BILLING CODE 4310-JA-M

[F-14854-A]

Alaska Native Claims Selection; Iqfijouaq Co.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Iqfijouaq Company for approximately 0.99 acre. The lands involved are in the vicinity of Eek, Alaska.

U.S. Survey No. 2021

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Tundra Drums.* Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until October 20, 1986, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Steven L. Willis,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-21082 Filed 9-17-86; 8:45 am]

BILLING CODE 4310-JA-M

[AA-6680-E]

Alaska Native Claims Selection; Paug-Vik Inc., Ltd.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Paug-Vik Incorporated, Limited, for approximately 2 acres. The lands involved are in the vicinity of Naknek, Alaska.

Seward Meridian, Alaska

T. 15 S., R. 46 W. (Unsurveyed)
Sec. 32, those lands within Sec. 3(e) application AA-12832 excluded from Interim Conveyance No. 265, dated November 27, 1979.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Anchorage Times.* Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until October 20, 1986, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Joe J. Labay,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-21097 Filed 9-17-86; 8:45 am]

BILLING CODE 4310-JA-M

[CO-010-06-4322-02]

Colorado; Craig District Grazing Advisory Board Meeting

Notice is hereby given that the September 30, 1986, meeting of the Craig District Grazing Board has been rescheduled to October 10, 1986. The meeting will convene at 10:00 a.m. at the Craig District Office of the Bureau of Land Management, 455 Emerson Street, Craig, Colorado. The agenda items will remain as previously published.

Dated: September 8, 1986.

William J. Pulford,

District Manager.

[FR. Doc. 86-21100 Filed 9-17-86; 8:45 am]

BILLING CODE 4310-JB-M

[MT-060-06-4410-08]

Resource Management Plan; Havre and Great Falls Resource Area, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Supplement to notice of intent.

SUMMARY: This notice supplements the "Notice of Intent for Planning Activity

for the Resource Management Plan (RMP) in the Bureau of Land Management's Havre and Great Falls Resource Areas, Montana" published in the **Federal Register**, Volume 48, No. 235, page 54723 on Tuesday, December 6, 1983. This supplement to the West Hi-Line RMP changes the boundary by extending the geographic area covered by this planning effort. The new boundaries will include the lands important to management of the Upper Missouri National Wild & Scenic River in the Judith and Phillips Resource Areas.

In addition, this supplement identifies four alternatives to be considered in detail during the preparation of the RMP and accompanying Environmental Impact Statement (EIS). The four alternatives will be based on the general themes of no action, resource production, resource protection and resource production/protection.

DATE: Public meetings will be scheduled and announced in the local news media and alternatives brochure.

FOR FURTHER INFORMATION CONTACT: Wayne Zinne, District Manager, BLM, Lewistown District Office, Airport Road, Lewistown, Montana 59457, Phone (406) 538–7461.

SUPPLEMENTARY INFORMATION: The lands in Judith and Phillips Resource Areas involved in the management of the Upper Missouri National Wild & Scenic River were not included in the original "Notice of Intent." They are included at this time to provide management direction for the "River" in one document. The planning area includes 42,588 acres in the Judith Resource Area of which 9,995 acres are in southern Chouteau County and 32,593 acres are in Fergus County. An additional 4,603 acres were added in the Phillips Resource Area in Phillips County.

The four alternatives were not included in the original "Notice of Intent" for the West Hi-Line RMP. These alternatives have been designed to present a range of feasible management actions which address the management issues of land tenure adjustment, off-road vehicle use, rights-of-way corridors, special management areas, and management of the Upper Missouri National Wild & Scenic River.

The "No Action Alternative" is included in accordance with 43 CFR 1502.14(d); it represents the continuation of current management. The "Resource Production Alternative" favors the use of public land resources over extensive natural and cultural resource protection. The "Resource Protection Alternative" goes beyond legal mandates of resource protection, allowing the protection of natural and cultural resources to dictate other allowable uses. Management under the resource production/protection alternative would balance use of the public land resources with protection of valuable and/or sensitive natural and cultural resources.

An alternatives brochure will be mailed in mid-September to everyone on the mailing list. If you wish to receive the brochure contact Wayne Zinne, District Manager, Lewistown District Office, Airport Road, Lewistown, Montana 59457.

Dean Stepanek,

State Director.

September 12, 1986.

[FR Doc. 86–21103 Filed 9–17–86; 8:45 am]

BILLING CODE 4310-DN-M

[WY-040-06-4322-02]

Wyoming; Rock Springs District Grazing Advisory, Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Rock Springs District Grazing Advisory Board.

SUMMARY: This notice sets forth the schedule and agenda of a meeting of the Rock Springs District Grazing Advisory Board.

DATE: October 30, 1986, 9:30 a.m. until 4 p.m.

ADDRESS: Bureau of Land Management, Conference Room, Hwy. 191 North, Rock Springs, Wyoming 82901.

FOR FURTHER INFORMATION CONTACT: Donald H. Sweep, District Manager, Rock Springs District Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902–1869, (307) 382–5350.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Introduction and opening remarks.
2. Election of a Chairman and Vice Chairman.
3. Review of minutes from August 1, 1985 meeting.
4. Improvements proposed for completion in FY 87 with Range Betterment (8100) funds.
5. Pinedale Resource Area Resource Management Plan/Livestock Grazing Progress Report.
6. Update on wild horse gathering.
7. Allotment Management Plan development and rangeland monitoring in the Green River Resource Area.
8. Rock Creek Allotment Management Plan—Kemmerer Resource Area.
9. Public comment period.
10. Arrangements for the next meeting.

The meeting is open to the public, interested persons may make oral statements to the Board between 3–3:30 p.m. or file written statements for the Board's consideration. Anyone wishing to make an oral statement should notify the District Manager, Bureau of Land Management, Highway 191 North, P.O. Box 1869, Rock Springs, Wyoming 82902, by October 29, 1986.

Depending on the number of persons wishing to make oral statements, a time limit per person may be established by the District Manager.

Donald H. Sweep,

District Manager.

[FR Doc. 86–21101 Filed 9–17–86; 8:45 am]

BILLING CODE 4310-22-M

[UT-050-4410-08]

Availability of Final Environmental Impact Statement; House Range Resoure Area Proposed Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of final environmental impact statement (EIS) for the House Range Resource Area (HRRA) proposed resource management plan (RMP) including proposed areas of critical environmental concern (ACECs).

SUMMARY: This Proposed RMP/Final EIS defines the proposed plan for management of resources on the 2.2 million acres of public lands in the HRRA in Juab and northern Millard Countries, Utah. The proposed plan was, with minor changes, additions, or corrections, the preferred alternative in the HRRA Draft RMP/EIS which was distributed for public review and comment in March 1986.

The Proposed RMP/Final EIS includes the comments received on the Draft RMP/EIS and responses to those comments.

The plan proposes levels of grazing for livestock, big game wildlife, and wild horses. Overall management prescriptions for the multiple-use management of all resources are proposed, as are management designations including special management areas (including ACECs), recreation areas, off-road vehicles use designations, fluid mineral leasing categories, and proposed mineral withdrawals.

Areas proposed for ACEC designation are:

Gandy Mountain Cave (1,120 acres) would be designated to protect unique cave mineral deposits in pristine condition. A management plan would be prepared, the present oil and gas Category 3 designation would be expanded, and the area would be withdrawn from mineral entry.

Rockwell Natural Area (9,630 acres) would be designated to protect the dune's topography and associated unique ecology. A management plan would be prepared, the area withdrawn from mineral entry, and 4,880 acres placed in oil and gas leasing Category 3 and 4,750 acres kept in oil and gas leasing Category 4.

Any person who participated in the planning process and has an interest which may be adversely affected by approval of the proposed plan may protest approval. A protest may raise only those issues which were submitted for the record during the planning process. Protests must be in writing and filed with the Director at the following address: Director, Bureau of Land Management, 18th and C Street NW., Washington, DC 20240.

The protest must be filed within 30 days of the Environmental Protection Agency's Federal Register publication of the Notice of Availability of the Final EIS. A protest must contain:

—The name, mailing address, telephone number, and interest of the person filing the protest.
—A statement of the issue(s) being protested.
—A statement of the part(s) of the plan being protected.
—A copy of all documents addressing the issue(s) that were submitted during the planning process by the protesting individual, or an indication of the date the issue(s) were discussed for the record.
—A concise statement explaining why the State Director's proposed decision is believed to be wrong.

SUPPLEMENTARY INFORMATION: Copies of the Proposed RMP/Final EIS may be obtained at the following BLM offices: Richfield District Office, 150 East 900 North, Richfield, Utah 84701; Bureau of Land Management, Washington Office, 18th and "C" Street NW., Washington, DC 20240; or Bureau of Land Management, Utah State Office, 324 South State Street, Suite 301, Salt Lake City, UT 84111-2303.

Any comments and requests for further information on the Proposed RMP/Final EIS received will be considered in the decision-making process, which will follow the Governor's consistency review and the comment/protest period. Comments should be addressed to: Alan Partridge, Bureau of Land Management, 150 East 900 North, Richfield, UT 84701.

Donald L. Pendleton,

District Manager.

September 9, 1986.

[FR Doc. 86-21099 Filed 9-17-86; 8:45 am]

BILLING CODE 4310-DQ-M

Filing of Plat of Survey Santa Fe, NM

September 9, 1986.

The plat of survey described below, in four sheets, was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on September 9, 1986.

A survey representing the dependent resurvey and survey of lots in Township 2 South, Range 1 West, New Mexico Principal Meridian, New Mexico, under Group 768.

The survey was requested by the District Manager, Las Cruces, New Mexico.

The plat will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Gary S. Speight,

Chief, Branch of Cadastral Survey.

[FR Doc. 86-21106 Filed 9-17-86; 8:45 am]

BILLING CODE 4310-FB-M

Filing of Plat of Survey, Santa Fe, NM

September 12, 1986.

The plat of survey described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on September 12, 1986.

A survey representing the dependent resurvey of portions of the east and north boundaries, a portion of the subdivisional lines, a portion of the subdivisional lines of sections 1 and 3, the subdivision of sections 1 and 3 and the survey of a portion of the take line of the Grand River Dam Authority, and a portion of the centerline of a county road in section 3, Township 26 North, Range 24 East, of the Indian Meridian, in the State of Oklahoma.

The survey was requested by Bureau of Indian Affairs, Muskogee Area Office, Muskogee, Oklahoma.

The plat will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Gary S. Speight,

Chief, Branch of Cadastral Survey.

[FR Doc. 86-21107 Filed 9-17-86; 8:45 am]

BILLING CODE 4310-FB-M

[UT-060-06-4212-14]

Final Decision on Plan Amendment; Grand Resource Area; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Final Decision on Plan Amendment for Grand Resource Area Resource Management Plan.

SUMMARY: Notice is given to the public that the Bureau of Land Management has made the final decision to amend the Grand Resource Area Resource Management Plan. The plan amendment changes the management actions found at page 22 (LANDS ACTIONS) by the addition of the following statement:

The following lands meet the criteria set forth at section 203(a) of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1713) and are determined suitable for disposal.

Salt Lake Meridian

T. 21 S., R. 20 E.,
Sec. 20, SW¼SW¼;
Sec. 28, lots 1 and 2;
Sec. 29, lots 1, 2, 3, 4, and 5.

SUPPLEMENTARY INFORMATION: The lands compromise 210.82 acres in the vicinity of Thompson, Grand County, Utah.

DATES: Protests on the plan amendment may be filed within 30 days of this date.

This decision will become final 60 days from this date, allowing for consistency review by the Governor of Utah, provided protests are not received or inconsistencies identified by the Governor.

ADDRESSES: Protests on the plan amendment shall be sent to: Director, Bureau of Land Management, 18th and C Street NW., Washington, DC 20240.

The environmental assessment prepared for the plan amendment is available at the Grand Resource Area, P.O. Box M, Sand Flats Road, Moab, Utah 84532, and at the Moab District Office, P.O. Box 970, 82 E. Dogwood, Moab, Utah 884532.

FOR FURTHER INFORMATION CONTACT: Colin P. Christensen, Grand Resource Area Manager, (801) 259-8193.

Dated: September 8, 1986.

Gene Nodine,

District Manager.

[FR Doc. 86-21102 Filed 9-17-86; 8:45 am]

BILLING CODE 4310-DQ-M

[MT-920-06-4520-11]

Land Resource Management Plat Survey, Garnet Resource Area, 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 August 18, 1986, were officially filed in the Montana State Office effective 10 a.m. on September 2, 1986.

Principal Meridian, Montana

T. 9 N., R. 9 E.

The supplemental plat of section 24, Township 9 North, Range 9 East, Principal Meridian, Montana, is based upon the plat approved May 17, 1917, showing amended lottings created by the segregation of forest Homestead Entry Survey No. 392, approved June 16, 1916. The area described is in Meagher County.

Principal Meridian, Montana

T. 9 N., R. 10 E.

The supplemental plat of section 19, Township 9 North, Range 10 East, Principal Meridian, Montana, is based upon the plat approved July 6, 1905, showing amended lottings created by the segregation of forest Homestead Entry Survey No. 392, approved June 16, 1916. The area described is in Meagher County.

These plats were prepared at the request of the U.S. Forest Service, Region 1, to facilitate a land exchange.

Principal Meridian, Montana

T. 12 N., R. 17 W.

The supplemental plat showing amended lottings created by the segregation of Mineral Surveys Nos. 8809, 9300, and 9472, in section 13, Township 12 North, Range 17 West, Principal Meridian, Montana, is based upon the plat approved November 13, 1911, and the plat accepted July 17, 1973. The area described is in Missoula County.

This plat was prepared at the request of the Garnet Resource Area, Butte District Office, to facilitate a land exchange with the State of Montana.

EFFECTIVE DATE: September 2, 1986.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Dated: September 8, 1986.

Dean Stepanek,

State Director.

[FR Doc. 86-21105 Filed 9-17-86; 8:45 am]

BILLING CODE 4310-DN-M

[MT-920-06-4520-11]

Land Resource Management, Plat Survey, Miles City, Montana

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of Filing of Plat of Survey.

SUMMARY: Plat of survey of the lands described below accepted August 11, 1986, were officially filed in the Montana State Office effective 10 a.m. on August 26, 1986.

Principal Meridian, Montana

T. 8 S., R. 48 E.

The plat, in two sheets, represents the dependent resurvey of portions of the south boundary, the subdivisional lines, and the adjusted original meanders of the Powder River; and the survey of sections 27, 28, 29, and 33, portions of the present meanders of the Powder River, and certain division of accretion lines, Township 8 South, Range 48 East, Principal Meridian, Montana. The area described is in Powder River County.

This survey was executed at the request of the Miles City District Office for the administrative needs of the Bureau.

EFFECTIVE DATE: August 26, 1986.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Dated: September 8, 1986.

Dean Stepanek,

State Director.

[FR Doc. 86-21104 Filed 9-17-86; 8:45 am]

BILLING CODE 4310-DN-M

[NV-050-06-4830-13]

Las Vegas District Advisory Council; Meeting

Las Vegas District Advisory Council meeting notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Las Vegas District Advisory Council will be held Wednesday, October 15 at 8:00 a.m. at the V.F.W. Hall, 190 Dixon Street, Caliente, Nevada. The agenda will be as follows: (1) Approval of minutes for the preceeding meeting; (2) Aerojet Exchange update; (3) Discussion of water availability in the Pahranagat area; (4) Wild horse management in the Caliente Resource Area; (5) New business; (6) Public comments or statements; (7) Field tour; (8) Adjourn.

The meeting is open to the public. Interested persons may make oral comments to the Board during the public comment period. Those wishing to make comments to the Council should notify the Las Vegas District Manager, BLM, 4765 W., Vegas Drive, (P.O. Box 26569), Las Vegas, Nevada 89126, (702) 388-6403, by October 12, 1986.

The District Manager may establish a per-person time limit for those making statements to the Council.

Summary minutes of the council meeting will be maintained at the Las Vegas District Office and will be available for public inspection during regular office hours (7:30 a.m. to 4:15 p.m.) within 30 days after the meeting.

Ben F. Collins,

District Manager.

[FR Doc. 86-21170 Filed 9-17-86; 8:45 am]

BILLING CODE 4310-HC-M

[NM NM 38572]

New Mexico; Proposed Reinstatement of Terminated Oil and Gas Lease

United States Department of the Interior, Bureau of Land Management, Santa Fe, New Mexico 87504. Under the provisions of 43 CFR 3108.2-3, Champlin Petroleum Company, 75 percent, and Chorney Oil Company, 25 percent, petitioned for reinstatement of oil and gas lease NM NM 38572 covering the following described lands located in Sandoval County, New Mexico:

T. 21 N., R. 2 W., NMPM, New Mexico
Sec. 21: W½.
Containing 320.00 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $5.00 per acre per year and royalties shall be at the rate of 16⅔ percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, March 1, 1986.

Dated: September 5, 1986.

Tessie R. Anchondo,

Chief, Adjudication Section.

[FR Doc. 86-21174 Filed 9-17-86; 8:45 am]

BILLING CODE 4310-FB-M

[NM NM 57241]

New Mexico; Proposed Reinstatement of Terminated Oil and Gas Lease

United States Department of the Interior, Bureau of Land Management, Santa Fe, New Mexico 87504. Under the provisions of 43 CFR 3108.2–3, John Savasta petitioned for reinstatement of oil and gas lease NM NM 57241 covering the following described lands located in Eddy County, New Mexico:

T. 19 S., R. 27 E., NMPM, New Mexico
Sec. 4: N½SE¼, SE¼SE¼.
Containing 120.00 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $5.00 per acre per year and royalties shall be at the rate of 16⅔ percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination. May 1, 1986.

Dated: August 29, 1986.

Dolores L. Vigil,

Acting Chief, Adjudication Section.

[FR Doc. 86–21173 Filed 9–17–86; 8:45 am]

BILLING CODE 4310–FB–M

[CO–050–06–4212–14; C–42680]

Realty Action, Segregation From Certain Public Land Laws and Direct Sale of Public Land to Lindsay Moore

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action: Segregation from certain Public Land Laws and Direct Sale of Public Land to Lindsay Moore.

SUMMARY: The following described Public Land has been examined and found suitable for disposal by sale at no less than fair market value under section 203 of the Federal Land Policy and Management Act of 1979 (90 Stat. 2750; 43 U.S.C. 1713):

T. 1 N., R. 71 W., 6th P.M.
Sec. 6, Lots 62 and 63.
Containing 4.63 acres in Boulder County, Colorado.

These lands are hereby segregated from appropriation under the Public Land laws, including the mining laws, pending decision and action on the sale proposal.

DATE: Comment period ends November 3, 1986. Sale will be no sooner than November 17, 1986.

For further information and public comment: Contact the District Manager, Canon City District Office, 3080 East Main Street, P.O. Box 311, Canon City, Colorado, 81212, Comments will be evaluated by the District Manager, who may cancel or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

Stuart A. Parker,

Acting District Manager.

[FR Doc. 86–21172 Filed 9–17–86; 8:45 am]

BILLING CODE 4310–JB–M

[UT–040–06–4410–12]

Vermilion Cliffs Plan Amendment: ACEC and RNA Proposed: Kane County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Plan amendment; designation of Area of Critical Environmental Concern (ACEC) and Research Natural Area (RNA).

SUMMARY: The Cedar City District of the Bureau of Land Management has finalized an amendment to the Vermilion Cliffs Management Framework Plan (1979) authorizing designation of the Water Canyon/South Fork Indian Canyon ACEC and the No Mans Mesa RNA. See notice of intent in June 2, 1986 **Federal Register**, page 19798.

The ACEC is located in portions of sections 17, 20, 21, 29 and 30 of Township 43 South, Range 7 West, Salt Lake Base and Meridian (SLB&M). It covers 225 acres of public lands and has unique vegetative values. Within its boundaries, the ACEC has a municipal water source for the town of Fredonia, Arizona. The area will be withdrawn from mineral location under the 1872 Mining Law, and will continue to be limited to ORV use on existing roads and trails only. Future oil and gas leases in the area will be in a no surface occupancy category.

The RNA encompasses 1,335 acres of public lands and is located in sections 9, 10, 14, 15, 22, 23, 26 and 27 of Township 40 South and Range 3 West, SLB&M. The RNA is an isolated mesa three miles in length. The area is valuable as a scientific reference point for its "relict" plant communities. The area will be closed to location under the 1972 Mining Law and all oil and gas leases will be in a no surface occupancy category. The entire area is closed to ORV use.

DATE: A 30 day protest period will begin upon the date of publica tion of this notice. Unless a protest is received, designation will become final on September 30, 1986. Protests must be in writing and must be sent to the Director of the Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: Ken Knowles, Assistant Area Manager at the Kanab Resource Area Office, P.O. Box 459, Kanab, Utah 84741.

Dated: August 29, 1986.

Roland G. Robison,

State Director.

[FR Doc. 86–21098 Filed 9–17–86; 8:45 am]

BILLING CODE 4310–DQ–M

Bureau of Reclamation

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and the Officer of Management and Budget Interior Desk Office at a.c. 202 395–7340.

Title: 43 CFR Part 426 Acreage Limitation—Bureau of Reclamation Rules and Regulations.

Abstract: Respondents to this information collection include landholders who own the lease irrigation land, as defined in 43 CFR Part 426, and water user districts, which must summarize the information received from the landholders. Landholders are required to submit relevant information concerning their irrigation landholdings in order to establish their compliance with Reclamation law, and to determine the appropriate water rate for each landholding.

Bureau Form Numbers: 7–1781A, 7–1781B, 7–2178 through 7–2181, 7–2183 through 7–2185, 7–2187 through 7–2191, 7–2193 through 7–2195, and 7–2197 through 7–2199.

Frequency: Annually, and when a landholding change occurs.

Description of Respondents: Owners and Lessees of Land on Federal

Reclamation Projects, and Water User Organizations.

Annual Responses: 55,727.

Annual Burden Hours: 49,363.

Bureau Clearance Officer: Alma Gonzales, a.c. 202 343–4249.

Dated: August 18, 1986.

C. Dale Duvall,

Commissioner, Bureau of Reclamation.

[FR Doc. 86–21111 Filed 9–17–86; 8:45 am]

BILLING CODE 4310-09-M

Minerals Management Service

Development Operations Coordination Document; Brooklyn Union Exploration Co., 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 Brooklyn Union Exploration Company, Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 2598, Block 252, 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 September 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, 1420 South Clearview Pkwy., Room 114, New Orleans, Louisisana (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, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 736–2867.

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: September 12, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86–21109 Filed 9–17–86, 8:45 am]

BILLING CODE 4310-MR-M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Managment and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395–7313; with copies to Norman J. Hess; Chief, Rules, Orders, and Standards Branch; Offshore Rules and Operations Division; Mail Stop 646, Room 6A110; Minerals Management Service; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: Reduction of royalty or net profit share, 30 CFR 203.150.

Abstract: Respondents provide the Minerals Management Service (MMS) with information that enables MMS to decide whether to reduce or eliminate any royalty or net profit share on an entire leasehold, or any deposit, tract, or portion thereof that is segregated for royalty purposes.

Bureau For Number: None.

Frequency: Annual.

Description of Respondents: Federal OCS lessees and operators.

Annual Responses: 163.

Annual Burden Hours: 18,880.

Bureau Clearance Officer: Dorothy Christopher, (703) 435–6213.

Dated: August 11, 1986.

Richard B. Krahl,

Associate Director for Offshore Minerals Management.

[FR Doc. 86–21108 Filed 9–17–86, 8:45 am]

BILLING CODE 4310-MR-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; American National Standards Institute et al.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice.

SUMMARY: The Minerals Management Service [MMS] proposes to incorporate by reference into Outer Continental Shelf (OCS) Order No. 5 for all OCS Regions the 1985 Edition of the American National Standards Institute/American Society of Mechanical Engineers (ANSI/ASME), Safety Pollution Prevention Equipment (SPPE)–1, and the 1984 Editions of the American Petroleum Institute [API] Specifications (Spec) 14A and 14D. The proposed incorporation by reference would bring OSC Order No. 5 up to date with current industry recommended practices.

The MMS also proposes to delete from OCS Order No. 5 for all OCS Regions the current incorporation by reference of ANSI/ASME SPPE–2. The proposed deletion eliminates requirements dealing with accreditation of testing facilities.

DATE: Comments must be hand-delivered or postmarked no later than October 20, 1986.

ADDRESS: Comments should be mailed or hand-delivered to the Department of the Interior; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646, Room 6A110; Reston, Virginia 22091; Attention: Norman J. Hess.

FOR FURTHER INFORMATION CONTACT: Norman J. Hess, Telephone: (703) 648–7816 or (FTS) 959–7816.

SUPPLEMENTARY INFORMATION:

Proposed Incorporation by Reference

The MMS is proposing to incorporate by reference in OCS Order No. 5 for all Regions the following documents:

1. The 1985 Edition of ANSI/ASME SPPE–1, "Quality Assurance and Certification of Safety and Pollution Prevention Equipment Used in Offshore Oil and Gas Operations," in Paragraph 2, "Quality Assurance and Performance of Safety and Pollution-Prevention Equipment," in lieu of the 1977 Edition currently incorporated in the Atlantic, Gulf of Mexico, and Pacific OCS Regions and the 1982 Edition currently incorporated in the Alaska OCS Region;

2. The 1984 Edition of the API Spec, 14A, "API Specification for Subsurface Safety Valve Equipment," in Subparagraph 3.2 "Specification for Subsurface-Safety Valves," in lieu of the 1979 Edition currently incorporated in

the Atlantic, Gulf of Mexico, and Pacific OCS Regions and the 1981 Edition currently incorporated in the Alaska OCS Region; and

3. The 1984 Edition of the API Spec 14D, "API Specification for Wellhead Surface Safety Valves and Underwater Safety Valves for Offshore Service," in Subparagraphs 4.2 (Alaska and Atlantic OCS Regions) and 4.3 (Gulf of Mexico and Pacific OCS Regions), "Specification for Wellhead Surface-Safety Valves," in lieu of the 1977 Edition currently incorporated in the Atlantic, Gulf of Mexico, and Pacific OCS Regions and the 1982 Edition currently incorporated in the Alaska OCS Region.

The 1985 Edition of ANSI/ASME SPPE–1 reflects the latest advances in practice concerning quality assurance programs for safety pollution-prevention equipment, accreditation of manufacturers of safety and pollution-prevention equipment, and equipment malfunction/failure reporting by offshore operators of safety and pollution-prevention equipment.

The 1984 Eddition of the API Spec 14A reflects the latest advances in technology, equipment, and practice concerning subsurface safety valves, safety locks, and safety valve landing nipples to be used on offshore wells.

The 1984 Edition of the API Spec 14D reflects the latest advances in technology, equipment, and practice concerning wellhead surface safety valves with flanged or other industry-accepted nonthreaded end connections and heat sensitive lock-open devices to be used on offshore wells. Those advances in technology, equipment, and practice include requirements for underwater safety valves.

The MMS has concluded that these additional requirements increase safety in the operation of production safety systems and keep the OCS Order No. 5 up to date with current industry recommended practices.

Therefore, MMS proposes to incorporate by reference the 1985 Edition of ANSI/ASME SPPE–1 and the 1984 Editions of the API Spec 14A and 14D into OCS Order No. 5.

The ANSI/ASME SPPE–1 without identification of the specific edition is also incorporated by reference, partially or in total, as applicable, in subparagraphs 3.11 and 5.6.1. The MMS proposes to revise paragraph 2 by incorporating by reference the 1985 Edition in lieu of the 1977 and 1982 Editions currently incorporated and by adding the words "hereinafter referred to as ANSI/ASME SPPE–1" immediately after the incorporation. This will cause all subsequent references to ANSI/ASME SPPE–1 in OCS Order No. 5 to apply to the 1985 Edition.

The MMS proposes to revise subparagraph 3.2 for the Atlantic, Gulf of Mexico, and Pacific OCS Regions by incorporating by reference the 1984 Edition of API Spec 14A in lieu of the 1979 and 1981 Editions and the 1982 Supplement currently incorporated and by deleting the phrase "or subsequent revisions which the Deputy Chief, Conservation Division—Offshore Minerals Regulation, has approved for use at the time of installation."

The MMS also proposes to revise subparagraph 4.2 in the Alaska and Atlantic OCS Regions and subparagraph 4.3 in the Gulf of Mexico and Pacific OCS Regions by incorporating by reference the 1984 Edition of API Spec 14D in lieu of the 1977 and 1982 Editions and the 1978 Supplement currently incorporated and by deleting the phrase "or subsequent revisions which the Chief, Conservation Division, has approved for use at the time of installation."

The MMS has revised the wording concerning the incorporation by reference of subsequent editions of references to clarify that new editions of documents incorporated by reference will replace editions previously incorporated by revising the OCS Order.

The MMS also proposes to delete from OCS Order No. 5 for all OCS Regions the ANSI/ASME SPPE–2, "Accreditation of Testing Laboratories for Safety and Pollution Prevention Equipment Used in Offshore Oil and Gas Operations," currently incorporated by reference in paragraph 2. The proposed deletion eliminates requirements dealing with accreditation of testing facilities. Requirements for testing of safety and pollution-prevention equipment are contained in SPPE–1 and its references, and incorporation by reference of SPPE–2 directly into OCS Order No. 5 is not necessary.

Executive Order 12291

This proposal is not expected to cause an increase in cost to consumers, industry, or governmental entities. Based on this assessment, the Department of the Interior (DOI) has determined that this document does not constitute a major rule under Executive Order 12291; therefore, a Regulatory Impact Analysis is not required.

Regulatory Flexibility Act

The DOI has also determined that this document will not have significant economic effect on a substantial number of small entities since offshore activities are complex undertakings generally engaged in by enterprises that are not considered small entities.

Paperwork Reduction Act

The information collection requirements contained in OCS Order No. 5 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. There are no new information collection requirements proposed in this notice.

Author

The document was prepared by Mario Rivero, Offshore Rules and Operations Division, Minerals Management Service.

Dated: August 11, 1986.

William D. Bettenburg,

Director, Minerals Management Service.

For the reasons set out above, OCS Order No. 5 for all OCS Regions is proposed to be revised as follows:

1. Paragraph 2 for the Alaska and Atlantic OCS Regions is revised to read as follows:

2. *Quality Assurance and Performance of Safety and Pollution-Prevention Equipment.* Safety and Pollution Prevention Equipment (SPPE) shall conform to the American National Standards Institute/American Society of Mechanical Engineers (ANSI/ASME) SPPE–1–1985 standard, "Quality Assurance and Certification of Safety and Pollution Prevention Equipment Used in Offshore Oil and Gas Operations," hereinafter referred to as ANSI/ASME SPPE–1. The applicable SPPE components and the applicable SPPE specifications are identified in subparagraphs 3.2 and 4.2.

2. Paragraph 2 for the Gulf of Mexico and Pacific OCS Regions is revised to read as follows:

2. *Quality Assurance and Performance of Safety and Pollution-Prevention Equipment.* Safety and Pollution Prevention Equipment (SPPE) shall conform to the American National Standards Institute/American Society of Mechanical Engineers (ANSI/ASME) SPPE–1–1985 standard, "Quality Assurance and Certification of Safety and Pollution Prevention Equipment Used in Offshore Oil and Gas Operations," hereinafter referred to as ANSI/ASME SPPE–1. The applicable SPPE components and applicable SPPE specifications are identified in subparagraphs 3.2 and 4.3.

3. In subparagraph 3.2 for the Alaska OCS Region, the phrase "API Spec 14A, Fifth Edition, April 1981, and Supplement 1, February 1982" is proposed to be replaced with the phrase "API Spec 14A, Sixth Edition, April 30, 1984."

4. In subparagraph 3.2 for the Atlantic, Gulf of Mexico, and Pacific OCS Regions, the phrase "API Spec 14A, Fourth Edition, November 1979, or subsequent revisions which the Deputy Chief, Conservation Division—Offshore

Minerals Regulation, has approved for use at the time of installation" is proposed to be replaced with the phrase "API Spec 14A, Sixth Edition, April 30, 1984."

5. In subparagraph 4.2 for the Alaska OCS Region, the document "API Spec 14D, Fourth Edition, February 1982" is proposed to be replaced with the document "API Spec 14D, Sixth Edition, April 30, 1984."

6. In subparagraph 4.2 for the Atlantic OCS Region and subparagrah 4.3 for the Gulf of Mexico and Pacific OCS Regions, the phrase "API Spec 14D, Second Edition, November 1977, as amended by Supplement 2, November 1978, or subsequent revisions which the Chief, Conservation Division, has approved for use at the time of installation" is proposed to be replaced with the phrase "API Spec 14D, Sixth Edition, April 30, 1984."

(43 U.S.C. 1334)

[FR Doc. 86-21110 Filed 9-17-86; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-19 (Sub-122X)]

The Baltimore and Ohio Railroad Co., Abandonment Exemption, in Ross County, OH

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by The Baltimore and Ohio Railroad Company of its 0.98-mile line of railroad, at or near Chillicothe, in Ross County, OH, subject to standard employee protective conditions.

DATES: This exemption is effective on October 20, 1986. Petitions to stay must be filed by October 3, 1986, and petitions for reconsideration must be filed by October 14, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB-19 (Sub-No. 122X):

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representatives: Peter J. Schudtz, Lawrence H. Richmond, 100 North Charles Street, Baltimore, MD 21201.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7693.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: September 11, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 86-21217 Filed 9-17-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-18 (Sub-88X)]

The Chesapeake and Ohio Railway Co., Abandonment Exemption, Saginaw County, MI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by The Chesapeake and Ohio Railway Company of 1.88 miles of track in Saginaw County, MI, subject to standard labor protection.

DATES: This exemption is effective on October 23, 1986. Petitions to stay must be filed by October 3, 1986, and petitions for reconsideration must be filed by October 14, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB-18 (Sub-No. 88X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Lawrence H. Richmond, The Chesapeake and Ohio Railway Company, 100 North Charles Street, Baltimore, MD 21201.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7693.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area), or toll-free (800) 424-5403.

Decided: September 9, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 86-21218 Filed 9-17-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30890]

Chicago, Central & Pacific Railroad Co., Trackage Rights, Manufacturers Junction Railroad Co.; Exemption

Manufacturers Junction Railroad Company has agreed to grant overhead trackage rights to Chicago, Central & Pacific Railroad Company to Cicero, IL, for a distance of approximately 400 feet. The trackage rights will be effective on September 1, 1986.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry. Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: September 5, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86-21219 Filed 9-17-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30891]

Paducah & Louisville Railway, Inc., Acquisition and Operation Exemption, Illinois Central Gulf Railroad Co.

Paducah & Louisville Railway, Inc. (P&L), a subsidiary of CG&T Industries, Inc., has filed a notice of exemption to acquire and operate Illinois Central Gulf Railroad Company's lines from Paducah, KY to Louisville, KY, including two parallel lines between Dawson Springs and Central City, KY, and branch lines to Kevil, Clayburn and Elizabethtown, KY. The transaction involves approximately 305 route miles of rail line. Any comments must be filed with the Commission and served on: R. Lawrence McCaffrey, Jr., Weinder, McCaffrey, Brodsky & Kaplan, P.C., Suite 800, 1350 New York Avenue, NW., Washington, DC 20005-4797, (202) 628-2000 and Robert R. Fowler, General Attorney, Illinois Central Gulf Railroad Company, Two Illinois Center, 233 North Michigan Avenue, Chicago, ILL 60601-5799, (312) 565-1600. This transaction will also involve the issuance of securities by P&L which will be a Class II carrier. The issuance of these securities is an exempt transaction

under 49 CFR 1175.1 (51 FR 4928 (February 10, 1986)).

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: September 3, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86-21220 Filed 9-17-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Direct Mail of Applications and Petitions to the Regional Adjudications Center in Lincoln, NE

Correction

In FR Doc. 86-19996 appearing on page 31850 in the issue of Friday, September 5, 1986, make the following correction:

In the second column, in the second entry under "Applications and Petitions", "Finance" should read "Fiance".

BILLING CODE 1505-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted on or before October 20, 1986.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-786-0233) and Ms. Judy McIntosh, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503 (202-395-6880).

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-786-0233) from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Revisions

Title: Centers for Advanced Study Category: Application Instructions, interim reports, and annual performance reports for centers; fellows' final reports; guidelines for site visitors
Form Number: Not applicable
Frequency of Collection: Annual
Respondents: Independent centers for advanced research, American research centers overseas, independent research libraries, and research museums; humanities scholars
Use: Application for funding; application evaluation; performance evaluation
Estimated Number of Respondents: 87
Estimated Hours for Respondents to Provide Information: 10.2 per respondent

Susan Metts,

Director of Administration.

[FR Doc. 86-21122 Filed 9-17-86; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing in Walker, CA, Highway Accident

In connection with its investigation of the accident involving a tour bus loss of control and rollover near Walker, California, on May 30, 1986, the National Transportation Safety Board will convene a public hearing at 9 a.m. (local time) on September 23, 1986, in the John Ascuaga's Nuggett Hotel, Mt. Rose Room, 1100 Nugget Avenue, Sparks, Nevada. For more information contact Mike Benson, Office of Government and Public Affairs, National Transportation Safety Board, 800 Independence Ave., SW., Washington, DC 20594, telephone (202)382-6607.

Ray Smith,

Federal Register Liaison Officer.

September 15, 1986.

[FR Doc. 86-21139 Filed 9-17-86; 8:45 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements Submitted to the Office of Management and Budget for (OMB) Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: Confidential Statement of Employment and Financial Interests.

3. The form number if applicable: NRC Form 443.

4. How often the collection is required: Occasional.

5. Who will be required or asked to report: Special Government Employees.

6. An estimate of the number of responses: 180.

7. An estimate of the total number of hours needed to complete the requirement or request: 360.

8. An indication of whether section 3504(h), Pub. L. 96-511 applies: Not Applicable.

9. Abstract:

"Financial disclosure reporting" information is required to determine possible employment conflicts of interest and professional qualifications.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer Jefferson B. Hill, (202) 395-7340.

The NRC Clearance Officer is R. Stephen Scott, (303) 492-8585.

Dated at Bethesda, Maryland this 3rd day of September, 1986.

For the Nuclear Regulatory Commission.
Patricia G. Norry,
Director, Office of Administration.
[FR Doc. 86-21177 Filed 9-17-86; 8:45 am]
BILLING CODE 7590-01-M

Privacy Act of 1974; Notices of Systems of Records; Minor Changes

AGENCY: Nuclear Regulatory Commission.

ACTION: Notices of Systems of Records: Minor Changes.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552a(e)(4)) requires each Federal agency to publish notices of the existence and character of its systems of records upon establishment or revision. This notice clarifies and updates the NRC Systems of Records. This compilation includes 34 Systems of Records as well as the Prefatory Statement of General Routine Uses.

FOR FURTHER INFORMATION CONTACT: Sarah Wigginton, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555: Telephone (301) 492-7752.

SUPPLEMENTARY INFORMATION: The NRC Systems of Records was last published in the **Federal Register** on September 30, 1982 (47 FR 43212). Since that time, several of the Systems of Records have undergone minor changes. NRC-18 has been revised to include both NRC Investigative Offices' records under one system notice. The Office of Investigations' records, prior to the consolidation, formerly had been placed under NRC-33. The consolidation will make it easier to locate all records pertaining to investigations. In addition, six of the Systems of Records are being revoked for the following reasons:

1. NRC-1, Appointment and Promotion Certificate Records: These records have always been actually retrieved by a vacancy announcement number and not by any personal identifiers;

2. NRC-3, Byproduct Material License Records: Individuals in this system are NRC licensees who are acting in an entrepreneurial, rather than personal, capacity in accordance with OMB Circular A-108 (40 FR 28951; July 9, 1975).

3. NRC-6, Development and Advancement for Regulatory Employees (DARE): These records are covered under NRC-28, Recruiting, Examining, and Placement Records;

4. NRC-7, Division of Technical Information and Document Workload Assignment and Production Records: These records are covered under NRC-22, Personnel Performance Appraisals; and

5. NRC-23, Personnel Research and Test Validation Records: There have never been any records in this system, and there is no reason to believe that there will be any records in the future.

6. NRC-32, Source and Special Nuclear Material License Records: Individuals in this system are NRC licensees who are acting in an entrepreneurial, rather than personal, capacity in accordance with OMB Circular A-108 (40 FR 28951; July 9, 1975).

NRC Systems of Records

1. [Revoked.]
2. Biographical Information Records—NRC.
3. [Revoked.]
4. Conflict of Interest Files—NRC.
5. Contracts Records Files—NRC.
6. [Revoked.]
7. [Revoked.]
8. Employee Appeals, Grievances, and Complaints Records—NRC.
9. Equal Employment Opportunity Records Files—NRC.
10. Freedom of Information Act (FOIA) and Privacy Act (PA) Requests Records—NRC.
11. General Personnel Records (Official Personnel Folder and Related Records)—NRC.
12. Government Motor Vehicle Operators License Files—NRC.
13. Incentive Awards Files—NRC.
14. Employee Alcoholism and Drug Abuse Program Files—NRC.
15. National Standards Committee Membership Files—NRC.
16. Facility Operator Licensees Record Files (10 CFR Part 55)—NRC.
17. Occupational Injuries and Illness Records—NRC.
18. Investigative Offices Index, Files, and Associated Records—NRC.
19. Official Personnel Training Records Files—NRC.
20. Official Travel Records—NRC.
21. Payroll Accounting Records—NRC.
22. Personnel Performance Appraisals—NRC.
23. [Revoked.]
24. Property and Supply System (PASS)—NRC.
25. Oral History Program—NRC.
26. [Revoked.]
27. Radiation Exposure Information and Reports System (REIRS) Files—NRC.
28. Recruiting, Examining, and Placement Records—NRC.
29. Document Control System—NRC.
30. Manpower System (MPS) Records—NRC.
31. Correspondence and Records Branch, Office of the Secretary—NRC.
32. [Revoked.]
33. Special Inquiry File—NRC.
34. Advisory Committee on Reactor Safeguards (ACRS) Correspondence Index and Associated Records—NRC.
35. [Revoked.]
36. Employee Locator Records Files—NRC.
37. Information Security Files and Associated Records—NRC.
38. Mailing Lists—NRC.
39. Personnel Security Files and Associated Records—NRC.
40. Facility Security Support Files and Associated Records—NRC.

These systems of records are those systems maintained by the Nuclear Regulatory Commission (NRC) which contain personal information about individuals, and from which personal information can be retrieved by reference to an individual identifier.

The notice for each system of records states the name and location of the record system, the authority for and manner of its operation, the categories of individuals that it covers, the types of records that it contains, the sources of information in those records, and the proposed "routine uses" of each system of records. Each notice also includes the business address of the NRC official who will inform interested persons of the procedures whereby they may gain access to and correct records pertaining to themselves.

One of the purposes of the Privacy Act, as stated in section 2(b)(4), is to provide certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies to "* * * disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information." The NRC intends to follow these principles in transferring information to another agency or individual as a "routine use," including assurance that the information is relevant for the purposes for which it is transferred.

PREFATORY STATEMENT OF GENERAL ROUTINE USES

The following routine uses apply to each system of records notice set forth below which specifically references this Prefatory Statement.

1. In the event that a system of records maintained by the NRC to carry out its functions indicates a violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rules, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the

statute, or rule, regulation, or order issued pursuant thereto.

2. A record from this system of records may be disclosed, as a routine use, to a Federal, State, local, or foreign agency, if necessary, to obtain information relevant to an NRC decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

3. A record from this system of records may be disclosed, as a routine use, to a Federal, State, local, or foreign agency in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. A record from this system of records may be disclosed, as a routine use, in the course of discovery and in presenting evidence to a court, magistrate, administrative tribunal, or grand jury, including disclosures to opposing counsel in the course of settlement negotiations.

5. Disclosure may be made, as a routine use, to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

6. A record from this system of records may be disclosed, as a routine use, to an NRC contractor on a "need-to-know" basis for a purpose within the scope of the pertinent NRC contract. Such access will be granted to an NRC contractor by a system manager only after satisfactory justification has been provided to the system manager.

NRC-1—[Revoked]
NRC-2

SYSTEM NAME:

Biographical Information Records—NRC.

SYSTEM LOCATION:

Office of Public Affairs, NRC, 7735 Old Georgetown Road, Bethesda, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Commissioners, members of the Atomic Safety and Licensing Board and Appeal Board Panels, and senior NRC staff members.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to education and training, employment history, and other general biographical data relating to the Commissioners, members of the Atomic Safety and Licensing Board and Appeal Board Panels, and senior NRC staff members.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2241, 5841, 5843(a), 5844(a), 5845(a), and 5849 (1976).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To provide information to the press;

b. To provide information to other persons and agencies requesting this information; and

c. For the routine uses specified in paragraph numbers 5 and 6 of the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Paper records are maintained in file folders.

RETRIEVABILITY:

Records are accessed by name.

SAFEGUARDS:

Maintained in unlocked file cabinets. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Retained until updated or association with NRC is discontinued, then destroyed through regular trash disposal system.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Public Affairs, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

NOTIFICATION PROCEDURE:

Director, Division of Rules and Records, Office Of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by each individual and approved for use by the individual involved.

NRC-3—[Revoked]
NRC-4

SYSTEM NAME:

Conflict of Interest Files—NRC.

SYSTEM LOCATION:

Primary system—Office of the General Counsel, NRC, 1717 H Street, NW, Washington, DC.

Duplicate systems—duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are employees, special employees, and consultants of NRC.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to:

a. General biographical data (i.e., name, birth date, home address, position title, home and business telephone numbers, citizenship, educational history, employment history, professional society memberships, honors, fellowships received, publications, licenses, and special qualifications);

b. Financial status (i.e., nature of financial interests and in whose name held, creditors, character of indebtedness, interest in real property, monthly U.S. Civil Service Annuity, and status as Uniformed Services Retired Officer);

c. Certifications by employees that they and members of their families are in compliance with the Commission's stock ownership regulations;

d. Requests for approval of outside employment by NRC employees and NRC responses thereto;

e. Determination (i.e., no conflict or apparent conflict of interest, questions requiring resolution, steps taken toward resolution); and

f. Information pertaining to appointment (i.e., proposed period of NRC service, estimated number of days of NRC employment during period of service, proposed pay, clearance status, description of services to be performed and explanation of need for the services, justification for proposed pay, description of expenses to be reimbursed and dollar limitation, and description of government-owned property to be in possession of appointee).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

a. 18 U.S.C. 201 (1976);

b. Executive Order 11222, May 8, 1965;
c. 10 CFR 0.735–29; 10 CFR 0.735–40.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To provide the Department of Justice, Office of Personnel Management, and/or Merit Systems Protection Board with information concerning an employee in instances where this office has reason to believe a Federal law may have been violated or where this office desires the advice of the Department, Office, or Board concerning potential violations of Federal law; and

b. For any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders.

RETRIEVABILITY:

Records are accessed by name.

SAFEGUARDS:

Maintained in locked file cabinets.

RETENTION AND DISPOSAL:

Retained in office file for 2 years after employee leaves position in which statement is required, or for 2 years after separation, whichever is earlier, then forwarded to the Federal Records Center in Suitland, Maryland.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

NOTIFICATION PROCEDURE:

Director, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system of records either comes from the individual to whom it applies, or is derived from information he or she supplied, or comes from the office to which the individual is to be assigned.

NRC–5

SYSTEM NAME:

Contracts Records Files—NRC.

SYSTEM LOCATION:

Primary system—Division of Contracts, NRC, 4550 Montgomery Avenue, Bethesda, Maryland.

Duplicate systems—duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are employed as NRC consultants or contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain personal information (such as technical qualifications, education, rates of pay, employment history) of contractors and their employees, and other contracting records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2051, 2201, and 5845 (1976).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To provide information to the Department of Health and Human Services, Defense Contract Audit Agency, General Accounting Office, and other Federal agencies for audits and reviews; and

b. For any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Accessed by contract number and purchase order number; cross-referenced with the name of the consultant, contractor, or vendor.

SAFEGUARDS:

Maintained in unlocked conserver files. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Contracts greater than $10,000 are destroyed 6 years and 3 months after final payment; $10,000 or less—3 years after final payment. Records are destroyed through regular trash disposal system, except for confidential business (proprietary) information which is destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Contracts, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

NOTIFICATION PROCEDURE:

Director, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure." Some information was received in confidence and will not be disclosed to the extent that disclosure would reveal confidential business (proprietary) information.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the contractor or potential contractor.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k) (1) and (5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). The exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

NRC–6—[Revoked]
NRC–7—[Revoked]
NRC–8

SYSTEM NAME:

Employee Appeals, Grievances, and Complaints Records—NRC.

SYSTEM LOCATION:

Primary system—Division of Organization and Personnel, Office of Administration, NRC, 8120 Woodmont Avenue, Bethesda, Maryland.

Duplicate systems—duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for NRC employment, current and former NRC employees, and annuitants who have filed complaints or initiated grievance or appeal proceedings as a result of a determination made by the NRC, Office of Personnel Management and/or Merit Systems Protection Board, or a Board or other entity established to adjudicate such grievances and appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Includes all documents related to grievances, arbitrations, negative determinations regarding within-grade salary increases, and exit interviews. It contains information relating to determinations affecting individuals made by the NRC or Office of Personnel Management and/or Merit Systems Protection Board. The records consist of the initial appeal or complaint, letters or notices to the individual, record of hearings when conducted, materials placed into the record to support the decision or determination, affidavits or statements, testimony of witnesses, investigative reports, instructions to an NRC office or division concerning action to be taken to comply with decisions, and related correspondence, opinions, and recommendations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2201(d) (1976).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To furnish information to the Office of Personnel Management and/or Merit Systems Protection Board pursuant to applicable requirements related to grievances and appeals;

b. To provide appropriate data to union representatives and third parties (that may include the Federal Services Impasses Panel and Federal Labor Relations Authority) in connection with grievances, arbitration actions, and appeals; and

c. For any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, binders, and index cards.

RETRIEVABILITY:

These records are indexed by the names of the individuals on whom they are maintained.

SAFEGUARDS:

Maintained in locked file cabinets. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Retained 3 years after case is closed, then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Labor Management and Employee Relations Branch, Division of Organization and Personnel, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

NOTIFICATION PROCEDURE:

Director, Division of Rules and Records, Office of Administration, U.S Nuclear Regulatory Commission, Washington, DC 20555.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure." Some information was received in confidence and will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Individuals to whom the record pertains, NRC, Office of Personnel Management and/or Merit Systems Protection Board officials; affidavits or statements from employees, union representatives, or other persons; testimony of witnesses; official documents relating to the appeal, grievance, or complaint; Official Personnel Folder; and other Federal agencies.

NRC-9

SYSTEM NAME:

Equal Employment Opportunity Records Files—NRC.

SYSTEM LOCATION:

Office of Small and Disadvantaged Business Utilization/Civil Rights, NRC, 7735 Old Georgetown Road, Bethesda, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for NRC employment and current and former NRC employees who have filed a complaint of discrimination with the Office of Small and Disadvantaged Business Utilization/ Civil Rights.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains copies of written reports by counselors; the investigative file; documentation of withdrawn, cancelled, rejected, and/or adjusted discrimination complaints; complainant's name, title, and grade; kind of discrimination alleged; description of action, decision, or condition giving rise to the complaint; description of remedial action; description of disciplinary action, if any; copy of the letter of proposed disposition of the complaint and right to a hearing; and record of appeals examiner's finding, analysis, and recommended decision.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

a. 42 U.S.C. 2000e and 5891 (1976);

b. Executive Orders 11246, September 24, 1965; 11375, October 13, 1967; and 11478, August 8, 1969.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To furnish information related to EEO matters to the Equal Employment Opportunity Commission and the Office of Personnel Management and/or Merit Systems Protection Board in accordance with applicable requirements; and

b. For any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, binders, index cards, and on computer tapes (minority code only).

RETRIEVABILITY:

Accessed by name.

SAFEGUARDS:

Maintained in locked file cabinets. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Small and Disadvantaged Business Utilization/ Civil Rights, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

NOTIFICATION PROCEDURE:

Director, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure." Some information was received in confidence and will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains, counselors, NRC, the Office of

Equal Employment Opportunity Commission, the Office of Personnel Management and/or Merit Systems Protection Board Officials, affidavits or statements from employees, testimony of witnesses, and official documents relating to the complaints.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552(c)(3), (d), (e)(4)(G), (H), and (I), and (f). The exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

NRC–10

SYSTEM NAME:

Freedom of Information Act (FOIA) and Privacy Act (PA) Requests Records—NRC.

SYSTEM LOCATION:

Primary system—Division of Rules and Records, Office of Administration, NRC, 7735 Old Georgetown Road, Bethesda, Maryland.

Duplicate systems—duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2; and at the Contractor Site, 7101 Wisconsin Avenue, Suite 1400, Bethesda, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have made FOIA or PA requests for NRC records.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains copies of the letters from requesters, the NRC response letters, and related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552 and 552a (1976); 42 U.S.C. 2201 (1976).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. If an appeal or court suit is filed with respect to any records denied;

b. For preparation of annual reports required by 5 U.S.C. 552 and 5 U.S.C. 552a; and

c. For any of the routine uses specified in the Prefatory Statement. Most of the FOIA records are placed in the NRC Public Document Room and made available to the public.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Records are maintained in file folders and on microfiche.

RETRIEVABILITY:

Accessed by chronologically assigned number and individual's name.

SAFEGUARDS:

Privacy Act records are maintained in locked file cabinets. Access to and use of these records are limited to those persons whose official duties require such access. Copies of most of the FOIA records are publicly available in the NRC Public Document Room.

RETENTION AND DISPOSAL:

PA records are retained in hard copy for 2 years from date of reply if request is granted, 5 years if denied, and 4 years from date of appeal, if appealed. The FOIA official files are retained on microfiche and may be destroyed after six years. Except for classified, proprietary, and other sensitive information which is destroyed by shredding, records are disposed of through regular trash disposal system.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

NOTIFICATION PROCEDURE:

Director, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Requests are made by individuals or other requesters. The response to the request is based upon information contained in NRC records.

NRC–11

SYSTEM NAME:

General Personnel Records (Official Personnel Folder and Related Records)—NRC.

SYSTEM LOCATION:

Primary system—For Headquarters and Region V personnel, Division of Organization and Personnel, Office of Administration, NRC, 8120 Woodmont Avenue, Bethesda, Maryland.

For the remaining Regional personnel, at Regional Offices I - IV listed in Addendum 1, Part 2.

Duplicate systems—Duplicate systems exist, in whole or in part at the locations listed in Addendum I, Parts 1 and 2, and at the National Institutes of Health Computer Facility, Bethesda, Maryland. The duplicate systems maintained in a particular office, division, or branch may contain information of specific applicability to employees in that organization in addition to that information contained in the primary system.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current NRC employees and those formerly employed by the NRC (and terminated through death, resignation, retirement, or separation).

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain Personal Qualifications Statement (SF–171) and related documents such as information about an individual's birth date, social security account number, veteran preference status,tenure, physical handicaps, past and present salaries, grades, position titles, training, test performances, minority group designator, life insurance, health benefits, beneficiaries, academic letters of recommendation, probationary period appraisals, and awards. This system also contains notification of personnel action, (SF–50) and documents supporting the action taken, letters of commendation and reprimand, documentation of charges and decisions on charges, medical records related to initial appointment, notices of reductions-in-force, and locator files. Some duplicate records may contain office-specific applications, personnel qualification statements (SF–171), resumes and conflict of interest correspondence, and other related personnel records in addition to those contained in the primary system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

a. 5 U.S.C. 7901; 21 U.S.C. 1180; and 42 U.S.C. 2201(d) and 4581 (1976);

b. Executive Order 10581, September 15, 1954.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. By the Office of Personnel Management and/or Merit Systems Protection Board for making a decision when an NRC employee or former NRC

employee questions the validity of a specific document in an individual's record;

b. To provide information to a prospective employer of a Government employee. Upon transfer of the employee to another Federal agency, the information is transferred to such agency;

c. To update the Office of Personnel Management systems concerning the Central Personnel Data File (CPDF), the Executive Inventory File, and security investigations index hires, and to update adverse actions and terminations records of the Merit Systems Protection Board;

d. To provide statistical reports to Congress, agencies, and the public on characteristics of the Federal work force;

e. To provide information to the Office of Personnel Management and/or Merit Systems Protection Board for review and audit purposes;

f. To provide members of the public with the names, position titles, grades, salaries, appointments (temporary or permanent), and duty stations of employees;

g. For medical records, to provide information to the Public Health Service in connection with Health Maintenance Examinations and to other Federal agencies responsible for Federal benefit programs administered by the Department of Labor (Office of Workmen's Compensation Programs) and the Office of Personnel Management; and

h. For any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Records are maintained in file folders, magnetic tape, disk, punched cards, and microfilm.

RETRIEVABILITY:

Records are indexed by any combination of name, birth date, social security account number, or identification number.

SAFEGUARDS:

Official Personnel Folders are maintained in lockable cabinets and related documents may be in unlocked file cabinets and electromechanical file organizer. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

The Official Personnel Folder is sent to the next Federal employing office if the employee transfers, or to the National Personnel Records Center within 30 days of the date of the employee's separation from the Federal service. Some records, such as letters of reprimand, indebtedness, and vouchers, are maintained for 2 years, or destroyed by shredding when an individual resigns, transfers, or is separated from the Federal service.

Cooperative Education Program documentation other than that in the Official Personnel Folder is retained until the employee leaves the program. SF–7, "Service Record Card," is retained indefinitely after separation or transfer.

SYSTEM MANAGER(S) AND ADDRESS:

For Cooperative Education Program employees—Chief, Special Employment Programs Section, Staffing and Position Evaluation Branch, Division of Organization and Personnel, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

For all others—Chief, Staffing Section, Staffing and Position Evaluation Branch, Division of Organization and Personnel, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

NOTIFICATION PROCEDURES:

Director, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure." Some information was received in confidence and will not be disclosed to the extent that disclosure would reveal a confidential source. Testing material may not be disclosed to the extent that disclosure would compromise the testing process.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies; is derived from information supplied by that individual; or is provided by agency officials, other Federal agencies, universities, or persons, including references, private and Federal physicians, and medical institutions.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(5) and (6), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I, and (f). The exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

NRC–12

SYSTEM NAME:

Government Motor Vehicle Operators License Files–NRC.

SYSTEM LOCATION:

Primary system—Building and Operations Support Branch, Division of Facilities and Operations Support, Office of Administration, NRC, 8120 Woodmont Avenue, Bethesda, Maryland.

Duplicate systems—duplicate systems exist, in whole, or in part, at the locations listed in Addendum I, Part 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC Headquarters and Regional Office employees licensed to drive government vehicles.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain identifying data on individuals including, but not limited to, name, social security account number, hair color, and sex.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

a. 40 U.S.C. 491 (1976);

b. Executive Order 10579, December 1, 1954.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used for any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on index cards and on paper in file folders.

RETRIEVABILITY:

Indexed alphabetically by employee name.

SAFEGUARDS:

Maintained in locked file cabinets under control of supervisors. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Retained for 3 years or until cancellation of individual license, whichever comes first, then destroyed through regular trash disposal system.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Building and Operations Branch, Division of Facilities and Operations Support, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

NOTIFICATION PROCEDURE:

Director, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Individuals on whom the record is maintained and medical examiners.

NRC-13

SYSTEM NAME:

Incentive Awards Files—NRC.

SYSTEM LOCATION:

Primary system—Division of Organization and Personnel, Office of Administration, NRC, 8120 Woodmont Avenue, Bethesda, Maryland. Duplicate systems—duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees who merit special recognition for achievements either within or outside the employee's job responsibilities and for length of service to the Government. Awards include both NRC awards and awards of other agencies and organizations for which NRC employees are eligible.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains employee's name, title, grade, and salary; justification to support recommendation and authorization for cash award; actions by approving officials; record of individuals receiving awards; suggestions and evaluations of suggestions; citation to be used; and related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 4501–4506, 5336 (1976).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. By the Office of Personnel Management and/or Merit Systems Protection Board to process and approve nominations or awards;

b. By the Office of the Attorney General and the President of the United States in reviewing recommended awards;

c. To make reports to the Office of Personnel Management and/or Merit Systems Protection Board;

d. By other Government agencies to recommend whether suggestions should be adopted in instances where the suggestion made by an NRC employee affects the functions or responsibilities of the agencies; and

e. For any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper in file folders.

RETRIEVABILITY:

Information is accessed by name.

SAFEGUARDS:

Maintained in unlocked file cabinets. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Retained for 2 years, then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Labor Management and Employee Relations Branch, Division of Organization and Personnel, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

NOTIFICATION PROCEDURE:

Director, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Supervisors of employees, individuals submitting suggestions, Division of Organization and Personnel staff, Office of Personnel Management, Merit Systems Protection Board, other Federal agencies, and Official Personnel Folders.

NRC-14

SYSTEM NAME:

Employee Alcoholism and Drug Abuse Program Files–NRC.

SYSTEM LOCATION:

Office of Administration, U.S. Nuclear Regulatory Commission, 7735 Old Georgetown Road, Bethesda, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees and/or family members who have been counseled by or referred to the Manager of the Employee Alcoholism and Drug Abuse Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records of NRC employees and/or their families who have been referred to the Manager of the Employee Alcoholism and Drug Abuse Program for counseling, and the results of any counseling which may have taken place. The records contain information as to the nature of each individual's problem, progress, and subsequent treatment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

21 U.S.C. 1180(1970); 42 U.S.C. 4561 (1970).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. For statistical reporting purposes; and

b. Any disclosure of information pertaining to an individual will be made in compliance with the Confidentiality of Alcohol and Drug Abuse Patient Records regulation, 42 CFR Part 2, as authorized by 21 U.S.C. 1175 and 42 U.S.C. 4582, as amended.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper in file folders.

RETRIEVABILITY:

Information accessed by name of the individual counseled.

SAFEGUARDS:

Files are maintained in a safe under the immediate control of the Manager of the Employee Alcoholism and Drug Abuse Program.

RETENTION AND DISPOSAL:

Retained for 3 years after successful completion of treatment or other termination of contact, then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Employee Alcoholism and Drug Abuse Program, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

NOTIFICATION PROCEDURE:

Director, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information compiled by the Manager of the Employee Alcoholism and Drug Abuse Program during the course of counseling with an NRC employee and/or members of the employee's family.

NRC-15

SYSTEM NAME:

National Standards Committee Membership Files—NRC.

SYSTEM LOCATION:

Primary system—Office of Nuclear Regulatory Research, NRC, 7915 Eastern Avenue, Silver Spring, Maryland.

Duplicate systems—Duplicate systems exist, in whole or in part, at the National Institutes of Health Computer Facility, Bethesda, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees who are serving on committees, subcommittees, working groups, etc., that are developing nuclear standards.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system is a comprehensive record of NRC personnel on the nuclear standards committees and contains members' names, the names of the committees to which they belong, and the names of the NRC offices in which the members work.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2201(b) (1976).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To provide information to persons or agencies requesting this information including, but not limited to, persons using the NRC Public Document Room; and

b. For the routine use specified in paragraph number 5 of the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on lists and computer tape and disk.

RETRIEVABILITY:

Records are indexed by the individual's name, by individual's office or region, and by the committee title.

SAFEGUARDS:

Maintained in unlocked file cabinet.

RETENTION AND DISPOSAL:

Updated when information is out-of-date. The information is retained until the person is no longer a member of the committee or no longer an NRC employee, whichever occurs first. Computer tape and disk are destroyed by computer deletion, and lists are destroyed through regular trash disposal system.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

NOTIFICATION PROCEDURE:

Director, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies or from his or her supervisor.

NRC-16

SYSTEM NAME:

Facility Operator Licensees Record Files (10 CFR Part 55)—NRC.

SYSTEM LOCATION:

Primary system—Appropriate Regional Office at the address listed in Addendum I, Part 2.

Duplicate systems—Duplicate systems exist, in whole or in part, in the Operator Licensing Branch, Division of Human Factors Technology, Office of Nuclear Reactor Regulation, NRC, 4550 Montgomery Avenue, Bethesda, Maryland; and at the National Institutes of Health Computer Facility in Bethesda, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals licensed pursuant to 10 CFR Part 55, new applicants whose applications are being processed, and individuals whose licenses have expired.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to the application for a license, certification of competency, certification of medical history and results of medical examination and related correspondence, operator examination and examination results, and license or denial letter.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2137 and 2201(i) (1976).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To determine if the individual meets the requirements of 10 CFR Part 55 to take an examination or to be issued an operator's license;

b. To provide researchers with information for statistical evaluations related to selection, training, and examination of facility operators;

c. To provide for examination and testing material and obtain results from contractors;

d. To provide facility management with sufficient information to enroll the individuals in the licensed operator requalification program; and

e. For any of the routine uses specified in the Prefatory Statement, except paragraph number 3.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on index cards, paper in file folders, microfiche, and computer storage systems.

RETRIEVABILITY:

Records are accessed by name and docket number.

SAFEGUARDS:

Maintained in file cabinets. Computer access requires password. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Reactor Operator Licensees Records:

a. Medical information: Retained for 4 years after the individual's license expires, then destroyed by shredding;

b. Examination and examination results: Retained for 2 years after the issuance of a license or denial letter. A summary report is retained until 4 years after the individual's license expires;

c. Other information: Destroyed by shredding when it becomes 2 years old; and

d. Docket information: Destroyed by shredding 4 years after an individual's latest license expires.

SYSTEM MANAGER(S) AND ADDRESS:

Appropriate Regional Administrator at the address listed in Addendum I, Part 2.

NOTIFICATION PROCEDURE:

Director, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or Regional Administrator at the address listed in Addendum I, Part 2.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual applying for a license, the facility manager, a licensed physician, members of the Operator Licensing Branch or Regional operator licensing sections, and contractor personnel.

NRC-17

SYSTEM NAME:

Occupational Injuries and Illness Records—NRC.

SYSTEM LOCATION:

Primary system—For Headquarters personnel, Director, Office of Administration, NRC, 7735 Old Georgetown Road, Bethesda, Maryland.

For Regional personnel, at each of the Regional Offices listed in Addendum I, Part 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees who report an occupational injury or illness.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain descriptions of injury or illness, treatment, and disposition. AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

a. 29 U.S.C. 657(c) (1976);

b. Executive Order 12196, February 1980.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. By the Agency Safety and Health Officer and/or Deputy Director, Office of Administration to prepare periodic statistical reports on employees' health and injury status and health and safety hazards in NRC physical structures, all for transmission to and review by the Department of Labor;

b. For transmittal to the Secretary of Labor or an authorized representative in accordance with duly promulgated regulations;

c. For transmittal to the Office of Personnel Management and/or Merit Systems Protection Board as required to support individual claims; and

d. For any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper in file folders.

RETRIEVABILITY:

Indexed by assigned employee case number or name under report category.

SAFEGUARDS:

Maintained in locked file cabinet under visual control of section employees. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Retained for 5 years after date of report, then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

NOTIFICATION PROCEDURE:

Director, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

NRC Public Health Unit, NRC Headquarters and Regional Office feeder reports, and forms with original information largely supplied by employees concerned.

NRC-18

SYSTEM NAME:

Investigative Offices Index, Files, and Associated Records—NRC.

SYSTEM LOCATION:

Part A: Office of Inspector and Auditor, NRC, 4340 East West Highway, Bethesda, Maryland.

Part B: Office of Investigations, NRC, 4340 East West Highway, Bethesda, Maryland.

Duplicate Systems—duplicate system exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals or entities referred to in potential or actual cases and matters of concern to the Investigative Offices and correspondents on subjects directed or referred to the Investigative Offices.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of an alphabetical and/or numerical index file bearing individual names and/or identifiers and a numerical index of case numbers. The indices provide access to associated records which are arranged by subject matter, title, or identifying number(s) and/or letter(s). The system incorporates the records of the Investigative Offices' correspondence, cases, matters, memoranda, materials including, but not limited to, audit reports, investigative reports, inspection reports, confidential source information, correspondence to and from the Investigative Offices, memoranda, fiscal data, legal papers, evidence, exhibits, audit data, technical data, investigative data, work papers, and management information data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2035(c), 2201(c), and 5841(f) (1976).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. A record in the system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency or to an individual or organization if the disclosure is reasonably necessary to elicit information or to obtain the cooperation of a witness or an informant;

b. A record in the system of records relating to a case or matter falling within the purview of the Investigative Offices that has been referred for audit, inspection, or investigation may be

disclosed as a routine use to the referring agency, group, organization, or individual of the status of the case or matter or of any decisions or determinations that have been made;

c. A record in the system of records relating to an individual held in custody pending arraignment, trial, or sentence, or after conviction, may be disclosed as a routine use to a Federal, State, local, or foreign prison, probation, parole, or pardon authority, to any agency or individual concerned with the maintenance, transportation, or release of such an individual;

d. A record in the system of records relating to a case or matter may be disclosed as a routine use to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States;

e. A record in the system of records may be disclosed as a routine use to a Federal, State, local, or foreign law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency;

f. A record in the system of records in the nature of an audit, inspection, or investigation report relating to the integrity and efficiency of the Commission operation and management may be disseminated outside the Commission as part of the Commission's responsibility to inform the Congress and the public about Commission operations; and

g. A record in the system of records may be disclosed for any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information contained in this system is stored manually on index cards and in file jackets and in various ADP storage media.

RETRIEVABILITY:

Information is retrieved from index cards or indices by the name or identifier of the individual or entity and from the jackets or files by number(s) and/or letter(s) assigned and appearing on the index cards or indices.

SAFEGUARDS:

The index is maintained in unlocked file cabinets; and the indices, associated records, discs, tapes, etc., are located in lockable metal filing cabinets, safes, storage rooms, or similar secure facilities. All records are under visual control during duty hours and available only to authorized personnel whose duties require access and a "need to know."

RETENTION AND DISPOSAL:

Retained 15 years in NRC storage from the time the case is closed, then destroyed by shredding or erasure (ADP).

SYSTEM MANAGER(S) AND ADDRESS(ES):

Part A: Director, Office of Inspection and Auditor, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Part B: Director, Office of Investigations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

NOTIFICATION PROCEDURE:

Director, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure." Information classified pursuant to Executive Order 12356 will not be disclosed. Information received in confidence will be maintained pursuant to the Commission's Policy Statement on Confidentiality and NRC Manual Chapter 0517, "Management of Allegations," and will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

The information in this system of records is obtained from sources including, but not limited to, NRC officers and employees; Federal, State, local, and foreign agencies; and other persons.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(6), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). The exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

NRC-19

SYSTEM NAME:

Official Personnel Training Records Files—NRC.

SYSTEM LOCATION:

Primary system—Management Development and Training Staff, Office of Administration, NRC, 7735 Old Georgetown Road, Bethesda, Maryland.

Duplicate systems—duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for or were selected for either NRC or other Government/ non-Government training courses or programs, including the NRC Senior Executive Service Candidate Development Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to the individual's educational background, work experience, performance appraisals, and training courses, including applications for training, training requests, authorizations for training, evaluations, and other related personnel information and correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

a. 5 U.S.C. 4103 (1976), 3396 (October 13, 1978), and 4311 et seq. (1978);

b. Executive Order 11348, April 20, 1967, as amended by Executive Order 12107, December 28, 1978.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be:

a. Extracted from the records and made available to the Office of Personnel Management; other Federal, State, and local Government agencies; and educational institutions for use in training programs related to NRC employees; and

b. Disclosed for the routine uses specified in paragraph numbers 5 and 6 of the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Official forms are maintained on paper in file folders for 5 years; data converted to training within Automated Personnel System.

RETRIEVABILITY:

Information is accessed by name or social security account number.

SAFEGUARDS:

Paper is maintained in locked file cabinets. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Paper forms are retained for 5 years, or until no longer needed, then destroyed by shredding. ADP training

file is maintained indefinitely for statistical and historical reference.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Management Development and Training Staff, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

NOTIFICATION PROCEDURE:

Director, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information is provided by the individual to whom it applies, the employee's supervisor, and training groups, agencies, or educational institutions and learning activities.

NRC-20

SYSTEM NAME:

Official Travel Records–NRC.

SYSTEM LOCATION:

Primary system—Division of Accounting and Finance, Office of Resource Management, NRC, 7735 Old Georgetown Road, Bethesda, Maryland.

Duplicate systems—duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees, prospective NRC employees, consultants, and invitational travelers for NRC programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain Request and Authorization for Official Travel forms and Travel Vouchers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

a. 5 U.S.C. 5701 (1976); 31 U.S.C. 21, 22, 24, 49, 54, 66a, and 952 (1976);

b. Federal Travel Regulations, Federal Property Management Regulations, 41 CFR Part 101–71.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES: INFORMATION IN THESE RECORDS MAY BE USED:

a. For transmittal to the U.S. Treasury for payment;

b. For transmittal to the Department of State or an embassy for passports or visas; and

c. For any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper in file folders, on disks, and on magnetic tape.

RETRIEVABILITY:

Records are accessed by name, social security account number, authorization number, and voucher payment schedule number.

SAFEGUARDS:

Maintained in locked file cabinets in same room as users. For ADP records, an identification number, a password, and assigned access to specific programs are required in order to retrieve information.

RETENTION AND DISPOSAL:

Retained for 5 years, then destroyed through regular trash disposal system.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Accounting and Finance, Office of Resource Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

NOTIFICATION PROCEDURE:

Director, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RECORDS ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information is provided by the individual, the organizational component approving the travel, outside transportation agents, and rate books for cost information.

NRC-21

SYSTEM NAME:

Payroll Accounting Records—NRC.

SYSTEM LOCATION:

Primary system—Division of Accounting and Finance, Office of Resource Management, NRC, 7735 Old Georgetown Road, Bethesda, Maryland.

Duplicate systems—duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees, special Government employees, and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Pay, leave, and allowance histories.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 21, 22, 24, 49, 54, 66a, and 952 (1976).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. For transmittal of data to U.S. Treasury to effect issuance of paychecks to employees and distribution of pay according to employee directions for savings bonds, allotments, financial institutions, and other authorized purposes;

b. For reporting tax withholding to Internal Revenue Services and appropriate State and local taxing authorities;

c. For FICA deductions to the Social Security Administration;

d. For dues deductions to labor unions;

e. For withholding for health insurance to the insurance carriers and the Office of Personnel Management;

f. For charity contribution deductions to agents of charitable institutions;

g. For annual W–2 statements to taxing authorities and the individual;

h. For transmittal to the Office of Management and Budget for review of budget requests;

i. For withholding and reporting of retirement, reemployed annuitants, and life insurance information to the Office of Personnel Management;

j. For transmittal of information to State agencies for unemployment purposes; and

k. For any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, microfiche, magnetic tape, and disks.

RETRIEVABILITY:

Accessed by name and social security account number.

SAFEGUARDS:

File folders, microfiche, tape, and disks, including backup data, are maintained in secured locked rooms after working hours. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

File folders are retained for 3 years after transfer or separation of employee, then destroyed by shredding. ADP information is retained on disks for 1 year, transferred to and retained on magnetic tape for 3 years, then the tape is erased.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Accounting and Finance, Office of Resource Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

NOTIFICATION PROCEDURE:

Director, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information is provided by the individual and the Division of Organization and Personnel.

NRC-22

SYSTEM NAME:

Personnel Performance Appraisals–NRC: Part A, GG–18 employees and below, hourly wage employees, scientific and technical schedule employees, and administratively determined rate employees; Part B, Senior Executive Service and equivalent employees.

SYSTEM LOCATION:

Primary system: Part A: For Headquarters and Region V personnel, Division of Organization and Personnel, Office of Administration, NRC, 8120 Woodmont Avenue, Bethesda, Maryland.

Part B: Chairman, Performance Review Board, 7735 Old Georgetown Road, Bethesda, Maryland.

For the remaining Regional personnel, at the Regional Offices I–IV listed in Addendum I, Part 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains performance appraisals and other related records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C 4301, et seq. and 42 U.S.C. 2201(d) (1976).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used for any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper in folders.

RETRIEVABILITY:

Records are accessed by name.

SAFEGUARDS:

Maintained in lockable file cabinets. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Part A: Records are normally retained for 3 years, then destroyed by incineration.

Part B: Retained for 5 years, or until the fifth annual appraisal is completed, whichever is later, then destroyed by incineration.

SYSTEM MANAGER(S) AND ADDRESS:

Part A: Chief, Staffing Section, Staffing & Position Evaluation Branch, Division of Organization & Personnel, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Part B: Chairman, Performance Review Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

NOTIFICATION PROCEDURE:

Director, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure" for each part.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure" for each part.

RECORD SOURCE CATEGORIES:

Part A: Individual to whom record pertains and employee's supervisors.

Part B: Individual to whom record pertains and employee's supervisors; any documents and sources used to develop critical elements and performance standards for that Senior Executive Service position.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(1) and (5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d)(e)(1), (e)(4)(G), (H) and (I), and (f). The exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

NRC-23—[Revoked]
NRC-24

SYSTEM NAME:

Property and Supply System (PASS)–NRC.

SYSTEM LOCATION:

Property Management Section, Property and Supply Branch, Division of Facilities and Operations Support, Office of Administration, NRC, 8120 Woodmont Avenue, Bethesda, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees, consultants, and contractors who have custody of items of personal property, including major items of equipment (e.g., office furnishings, automobiles, etc.) and items of sensitive property (e.g., cameras, portable calculators, and cassette recorders).

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information about the equipment (type, make, model, serial number, etc.), and information about the custodians of the equipment (social security account number, office, and office location).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 66a(a)(3) (1976) and 40 U.S.C. 483(b) and (c), 487(a) (1976).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To provide information to maintain inventory of equipment;

b. To provide information for clearances of employees who separate from the NRC; and

c. For any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on NRC forms and magnetic tape systems, with history and audit files.

RETRIEVABILITY:

Accessed by social security account number, office, and office location.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Retained for 3 years after an individual's responsibility for the assigned equipment terminates; then destroyed by regular trash disposal system or deleted from the data bank.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Property and Supply Branch, Division of Facilities and Operations Support, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

NOTIFICATION PROCEDURE:

Director, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system of records comes from NRC forms signed by the individuals having custody of the items, or from reports and memoranda received by the Division of Facilities and Operations Support.

NRC-25

SYSTEM NAME:

Oral History Program—NRC.

SYSTEM LOCATION:

Office of the Secretary of the Commission, NRC, 1717 H Street, NW, Washington, DC 20555.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees, former employees, and other individuals who volunteer to be interviewed for the purpose of providing information for a history of the nuclear regulatory program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of interviews on magnetic tape and transcribed scripts of the interviews.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2161b, 541(a) (1976).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. For incorporation in a future publication on the history of the nuclear regulatory program; and

b. To provide information to historians and other researchers.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on magnetic tape and transcripts.

RETRIEVABILITY:

Information is accessed by the name of the interviewee.

SAFEGUARDS:

Maintained in locked file cabinet. Access to and use of these records are limited to those authorized by the Historian or a designee.

RETENTION AND DISPOSAL:

Transcripts are retained indefinitely. Tapes are normally retained until they are transcribed; some may be retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

NRC Historian, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

NOTIFICATION PROCEDURE:

Director, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from interviews granted on a voluntary basis to the Historian and his or her staff.

NRC-26—[Revoked]

NRC-27

SYSTEM NAME:

Radiation Exposure Information Reporting System (REIRS) Files—NRC.

SYSTEM LOCATION:

Primary system—Martin Marietta Energy Systems, Human Resource Systems Department, Radiation Information Systems Section, P.O. Box P, Oak Ridge, Tennessee 37831.

Duplicate systems—duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals monitored for radiation exposure while employed by or visiting or temporarily assigned to certain NRC-licensed facilities; individuals who are exposed to radiation or radioactive materials in incidents required to be reported pursuant to 10 CFR 20.403 and 20.405 by all NRC licensees; individuals who may have been exposed to radiation or radioactive materials off-site from a facility, plant installation, or other place of use of licensed materials, or in unrestricted areas, as a result of an incident involving byproduct, source, or special nuclear material; as then required by NAVMED P-5055, Radiation Health Protection Manual, monitored individuals terminating their service with the Navy prior to 1977; and monitored employees of all the registrants of the State of Illinois prior to 1979.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to an individual's name, sex, social security account number, birth date, job category, period of employment, place and period date of exposure; name, address, and license number of individual's employer; name and number of licensee reporting the information; radiation doses or estimates of exposure received during this period, type of radiation, part(s) or organ(s) exposed, and nuclide(s) involved. Some reports will indicate whether the individual is a contractor or a utility employee. Between January 1972 and May 1974, the following information was also recorded for individuals overexposed to radiation: sex, training experience, regular occupation of the exposed individuals; device or method used to determine dose(s); brief statement describing the incident and the causes; corrective actions taken; status of exposed individual (i.e., medical treatment); type, age, and manufacturer of malfunctioning equipment; and cumulative dose prior to incident.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, and 2201(o) (1976).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To provide data to other Federal and State agencies involved in monitoring and/or evaluating radiation exposure received by individuals as

enumerated in the paragraph "Categories of individuals covered by the system"; and

b. For any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are computerized and maintained on magnetic tape, maintained in log books, and filed as either a computer printout or original paper document.

RETRIEVABILITY:

Records are accessed by individual name, social security account number, and by licensee name or number.

SAFEGUARDS:

Information maintained at the Computing Technology Center is accessible only to the Office of Nuclear Regulatory Research. Reports kept by the Office of Nuclear Regulatory Research are in file cabinets and bookcases in a secured building. A log is maintained of both telephone and written requests for information.

RETENTION AND DISPOSAL:

a. Original paper document—retained 2 years, then destroyed by shredding;

b. Magnetic tape—retained permanently at Computing Technology Center;

c. Log books—retained indefinitely, no names; and

d. Computer printouts—periodically updated, then destroyed through regular trash disposal system.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

NOTIFICATION PROCEDURE:

Director, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system of records either comes from the monitored worker, visitors, worker's employer, or the person in charge of the facility to which the worker has been assigned.

NRC-28

SYSTEM NAME:

Recruiting, Examining, and Placement Records—NRC.

SYSTEM LOCATION:

Primary system—For Headquarters personnel, Division of Organization and Personnel, Office of Administration, NRC, 8120 Woodmont Avenue, Bethesda, Maryland.

For Regional personnel, at each of the Regional offices listed in Addendum I, Part 2.

Duplicate systems—duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have applied for Federal employment with the NRC under general announcement provisions. NRC employees who desire to enhance their training and experience qualifications for movement into administrative, paraprofessional, and professional ranks.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain general application information relating to the education, training, employment history, earnings, past performance, criminal convictions, if any, written achievement tests, honors, awards or fellowships, military service, veteran preference status, birthplace, birth date, social security account number, and home address of persons who have applied for Federal employment with the NRC (SF-171, resumes, and similar documents). The records also contain personnel qualification statements, job descriptions, self-evaluation forms, examination results, supervisory evaluation forms, performance appraisals, DARE counselor's reports, training guides, course plans, and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

a. Section 161(d), Atomic Energy Act of 1954, 42 U.S.C. 2201(d) (1976),

b. 42 U.S.C. 2000e and 5B71 (1976),

c. Executive Order 11478, August 8, 1969.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To furnish information to agencies related to transfer or consideration of employment;

b. To prepare reports for transmittal to the Office of Personnel Management and/or Merit Systems Protection Board; and

c. For any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained primarily on paper, forms, lists, and index cards in file folders. Also, certain data is maintained on magnetic tapes, disks, and punch cards.

RETRIEVABILITY:

Records are indexed by name and an identification number assigned to each individual.

SAFEGUARDS:

Maintained in unlocked file cabinet. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

a. Active records are retained indefinitely;

b. Inactive records are sent to the National Personnel Records Center within 30 days of the date of the employee's separation from Federal service;

c. Register of Eligible Applications — retained for 6 months from date of application or until no longer needed, then destroyed by incineration;

d. Index cards—retained from date application is placed in the review system, then destroyed by incineration when no longer needed; and

e. Other related recruitment and placement documents—destroyed by incineration when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Recruitment Branch, Division of Organization and Personnel, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

NOTIFICATION PROCEDURE:

Director, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure." Some information was received in confidence and will not be disclosed to the extent that disclosures would reveal a confidential source. Testing material may not be disclosed to the extent such disclosure would compromise the testing process.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system of records either comes from the individual to whom it applies or is derived from information supplied by that individual, individual's current and previous supervisor within and outside NRC, DARE counselors and program coordinator, with the exception of reports from medical personnel on physical qualifications, results of examinations, preemployment evaluation data furnished by references and educational institutions whose names were supplied by applicant, and information from other Federal agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). The exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

NRC-29

SYSTEM NAME:

Document Control System—NRC.

SYSTEM LOCATION:

Primary system—Contractor Site, 7101 Wisconsin Avenue, Suite 1400, Bethesda, Maryland.

Duplicate systems—duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2; the NRC Public Document Room (PDR), 1717 H Street, NW, Washington, DC; and the NRC Local Public Document Rooms (LPDRs).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC staff, contractors, subcontractors, licensees, Congressional offices, and other correspondents with the NRC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents both received by and originated by the NRC.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 5841 (1976) and 44 U.S.C. 3101 (1970).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To refer, where appropriate, inquiries to other Federal agencies or persons for their reply or action;

b. To provide information to persons or agencies requesting this information, including provision of Daily Accession Lists in the NRC PDR and LPDRs;

c. To prepare a monthly "Title List of Documents Made Publicly Available";

d. To serve as the NRC's official records for documents placed on the system; and

e. For any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on microfiche, disks, tapes, and paper in file folders. Proprietary and sensitive documents are maintained in secured facilities.

RETRIEVABILITY:

Accessed by name (author or recipient), corporate source, title of document, subject matter, or other identifying document or control number.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Information not exempt from disclosure under the Freedom of Information Act (FOIA) will be publicly available in the NRC PDR and LPDRs.

RETENTION AND DISPOSAL:

Retention is for an indefinite period.

SYSTEM MANAGER(S) AND ADDRESS:

DCS Project Officer, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

NOTIFICATION PROCEDURE:

Director, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure." Information which is classified pursuant to Executive Order 12356 or otherwise exempt from public disclosure under the FOIA will not be disclosed.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the correspondence to and from the NRC, end NRC employees.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k), the Commission has exempted portions of this system of records from 5 U.S.C. 552a.(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f). This exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

NRC-30

SYSTEM NAME:

Manpower System (MPS) Records—NRC.

SYSTEM LOCATION:

Primary system—National Institutes of Health Computer Facility, c/o Division of Automated Information Services, Office of Resource Management, NRC, 7735 Old Georgetown Road, Bethesda, Maryland.

Duplicate systems—duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All NRC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to number of regular and nonregular hours worked, the nature of the work, and work load projections.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

a. 42 U.S.C. 2201(p) (1976);

b. Executive Order 9397, November 22, 1943.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. As a project management tool in various management records throughout the NRC; and

b. For the routine uses specified in paragraph numbers 5 and 6 of the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in computer files, computer records, on tapes, disks, cards, and microfiche.

RETRIEVABILITY:

Accessed by social security account number, project, program, or activity numbers; docket number, TACS, or PPSAS numbers.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Retained indefinitely in computer files.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Automated Information Services, Office of Resource Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

NOTIFICATION PROCEDURE:

Director, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it pertains.

NRC-31

SYSTEM NAME:

Correspondence and Records Branch, Office of the Secretary—NRC.

SYSTEM LOCATION:

Office of the Secretary, Correspondence and Records Branch", NRC, 1717 H Street, NW., Washington, DC 20555. Duplicate system—duplicate system exists, in whole or in part, at the Contractor Site, 7101 Wisconsin Avenue, Suite 1400, Bethesda, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The majority of records in this system consist of internal NRC memoranda between NRC employees and the Chairman, a Commissioner, or the Secretary in the ordinary course of carrying out the official business of the NRC. Records also include correspondence from Members of Congress and their staffs including constituent referrals and White House correspondence referred to the NRC for response as well as correspondence from representatives of industries and other groups affected by NRC regulations, and the general public. Correspondence may identify an individual's social security account number, birth date, address, and employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information concerning all subjects which directly or indirectly relate to the fulfillment of NRC's statutory mandate. Records include information dealing with the policy, legal, administrative, and adjudicatory functions of the NRC.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 5841 (1976) and 44 U.S.C. 3101 (1970).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used for any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The bulk of records is maintained in file folders. Other records are maintained in computer files, computer records, on tapes, disks, cards, and microfiche.

RETRIEVABILITY:

Records may be accessed by subject matter headings, author's last name, activity number, date of document, and date of receipt of document or file location.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Classified materials are maintained in approved safes, and unclassified records are maintained in rolling file equipment.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Correspondence and Records Branch, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

NOTIFICATION PROCEDURE:

Director, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure." Some information is classified pursuant to Executive Order 12356 and will not be disclosed.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system of records comes from communications to the Commission and responses thereto.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(1), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). The exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

NRC-32—[Revoked]
NRC-33

SYSTEM NAME:

Special Inquiry File—NRC.

SYSTEM LOCATION:

Primary system—Special Inquiry Group, NRC, 7920 Norfolk Avenue, Bethesda, Maryland.

Duplicate system—duplicate system exists, in whole or in part, at the Contractor Site, 7101 Wisconsin Avenue, Suite 1400, Bethesda, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals possessing information regarding or having knowledge of matters of potential or actual concern to the Commission in connection with the investigation of an accident or incident at a nuclear power plant or other nuclear facility, or an incident involving nuclear materials or an allegation regarding the public health and safety related to the NRC's mission responsibilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of an alphabetical index file bearing individual names. The index provides access to associated records which are arranged by subject matter, title, or identifying number(s) and/or letter(s). The system incorporates the records of all Commission correspondence, memoranda, audit reports and data, interviews, questionnaires, legal papers, exhibits, investigative reports and data, and other material relating to or developed as a result of the inquiry, study, or investigation of an accident or incident.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2201(c), (i) and (o) (1976); 5841(f) (1974).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To provide information relating to an item which has been referred to the Commission or Special Inquiry Group for investigation by an agency, group,

organization, or individual may be disclosed as a routine use to notify the referring agency, group, organization, or individual of the status of the matter or of any decision or determination that has been made;

b. To disclose a record as a routine use to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States;

c. To provide records relating to the integrity and efficiency of the Commission's operations and management may be disseminated outside the Commission as part of the Commission's responsibility to inform the Congress and the public about Commission operations; and

d. For any of the routine uses specified in paragraph numbers 1, 2, 4, 5, and 6 of the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on microfiche, disks, tapes, and paper in file folders. Documents are maintained in secured vault facilities.

RETRIEVABILITY:

Accessed by name (author or recipient), corporate source, title of document, subject matter, or other identifying document or control number.

SAFEGUARDS:

These records are located in lockable metal filing cabinets or safes in a secured facility and are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Retained and destroyed in accordance with approved records disposal schedules for the various types of records involved.

SYSTEM MANAGER(S) AND ADDRESS:

Records Manager, Special Inquiry Group, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

NOTIFICATION PROCEDURE:

Director, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure." Information classified pursuant to Executive Order 12356 will not be disclosed. Information received in confidence will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

The information in this system of records is obtained from sources including, but not limited to, NRC officers and employees; Federal, State, local, and foreign agencies; NRC licensees; nuclear reactor vendors and architectural engineering firms; other organizations or persons knowledgeable about the incident or activity under investigation; and relevant NRC records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). The exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

NRC-34

SYSTEM NAME:

Advisory Committee on Reactor Safeguards (ACRS) Correspondence Index and Associated Records—NRC.

SYSTEM LOCATION:

Primary system—Advisory Committee on Reactor Safeguards, NRC, 1717 H Street, NW., Washington, DC.

Duplicate system—duplicate system exists, in whole or in part, at the National Institutes of Health Computer Facility, Bethesda, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons providing information to or requesting information from the ACRS.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to incoming requests and correspondence from individuals and replies thereto and a listing of technical information by authors' names.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101 (1970).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used for any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Indexing is maintained on computer tapes and disks and individual materials are located in ACRS files.

RETRIEVABILITY:

Indexed by one or more of the following categories: author and addressee's name, subject title using the Key Word Out of Context (KWOC) index, and issuing organization or agency.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Technical Information Branch, Advisory Committee on Reactor Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

NOTIFICATION PROCEDURE:

Director, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Records contain information prepared by private individuals or organizations, government agencies and their contractors, companies, and other groups such as the American National Standards Institute (ANSI).

NRC-35—[Revoked]

NRC-36

SYSTEM NAME:

Employee Locator Records Files—NRC.

SYSTEM LOCATION:

Primary system—Telecommunications Branch, Division of Facilities and Operations Support, Office of Administration, NRC, 7920 Norfolk Avenue, Bethesda, Maryland.

Duplicate systems—duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to name, address (home and business), telephone numbers (home and business), organization, persons to be notified in case of emergency, and other related records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101 (1970).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used for the routine use specified in paragraph number 6 of the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on index cards.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Maintained in controlled access room under 24-hour visual control of NRC operators. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Retained until 6 months after association with NRC is discontinued, then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Telecommunications Branch, Division of Facilities and Operations Support, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

NOTIFICATION PROCEDURE:

Director, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained, general personnel records, and other related records.

NRC-37

SYSTEM NAME:

Information Security Files and Associated Records—NRC.

SYSTEM LOCATION:

Primary system—Division of Security, Office of Administration, NRC, 7915 Eastern Avenue, Silver Spring, Maryland.

Duplicate systems—duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2; and at the National Institutes of Health Computer Facility, Bethesda, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons including present or former NRC employees, contractors, consultants and licensees; other Government agency personnel; and other cleared persons.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include information regarding:

a. Personnel who are authorized access to specified levels, categories and types of information, the approving authority, and related documents; and

b. Names of individuals who classify documents (e.g., for the protection of information relating to the U.S. national defense and foreign relations) as well as information identifying the document.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

a. 42 U.S.C. 2165 and 2201(i) (1976);

b. Executive Order 12356, April 2, 1982.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this system may be used for any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained primarily in file folders, on disk, and index cards.

RETRIEVABILITY:

Indexed and accessed by name and/or assigned number.

SAFEGUARDS:

Maintained in locked buildings, containers, or security areas under guard and/or alarm protection, as appropriate.

RETENTION AND DISPOSAL:

a. Classified documents, administrative correspondence, document receipts, destruction certificates, classified document inventories, and related records—retained 2 years, then destroyed by shredding;

b. Top Secret Accounting and Control files: Registers—retained 5 years after documents shown on form are downgraded, transferred, or destroyed by shredding; Accompanying forms—retained until related document is downgraded, transferred, or destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

NOTIFICATION PROCEDURE:

Director, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure." Some information is classified pursuant to Executive Order 12356 and will not be disclosed. Other information has been received in confidence and will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Persons, including NRC employees, contractors, consultants, and licensees, as well as information furnished by other Government agencies or their contractors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k) (1) and (5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f). The exemption rule is contained in 10 CFR 9.95 of NRC regulations.

NRC-38

SYSTEM NAME:

Mailing Lists—NRC.

SYSTEM LOCATION:

Primary System—U.S. Government Printing Office, Superintendent of Documents, 941 North Capitol Street, NW. Union Center Plaza, 4th Floor, Washington, DC 20402.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals with an interest in receiving information from the NRC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Mailing lists include primarily the individual's name and address. Some lists also include title, occupation, and institutional affiliation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101 (1970).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. For distribution of documents to persons and organizations listed on the mailing lists; and

b. For the routine use specified in paragraph number 6 of the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic tape.

RETRIEVABILITY:

Records are accessed by company name and then individual name.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Documents requesting changes are retained 3 months, then destroyed through regular trash disposal system; lists are retained until cancelled or revised, then destroyed through regular trash disposal system.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Technical Information and Document Control, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

NOTIFICATION PROCEDURE:

Director, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

NRC licensees and individuals expressing an interest in NRC activities and publications.

NRC-39

SYSTEM NAME:

Personnel Security Files and Associated Records—NRC.

SYSTEM LOCATION:

Primary system—Division of Security, Office of Administration, NRC, 7735 Old Georgetown Road, Bethesda, Maryland.

Duplicate systems—duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2; and the Department of Energy, Headquarters Building, Germantown, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons including NRC employees, employment applicants, consultants, contractors, and licensees; other government agency personnel (e.g., General Services Administration personnel), other persons who have been considered for a personnel clearance or special nuclear material access authorization; aliens who visit at NRC's facilities; and actual or suspected violators of laws administered by NRC.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to personnel, including name, address, date and place of birth, social security account number, citizenship, residence history, employment history, foreign travel, education, personal references, organizational membership, and security clearance history. These records also contain copies of personnel security investigative reports from other agencies (primarily from the Office of Personnel Management or the Federal Bureau of Investigation), summaries of investigative reports, results of Federal agency indices checks, reports of personnel security interviews, clearance actions information (e.g., grants and terminations), violations of laws, reports of security infraction, "Request for Visit or Access Approval" (Form NRC-277), and other related personnel security processing documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

a. 42 U.S.C. 2165 and 2201(i) (1976);

b. Executive Order 12356, April 2, 1982;

c. Executive Order 10865, February 20, 1960;

d. Executive Order 10450, April 27, 1953.

e. 10 CFR Part 11 (1981).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used by the Division of Security and on a need-to-know basis by appropriate NRC officials, Hearing Examiners, Personnel Security Review Examiners, Office of Personnel Management, Federal Bureau of Investigation, and other Federal agencies:

a. To determine clearance or access authorization eligibility;

b. To certify clearance or access authorization;

c. To maintain the NRC personnel security program; and

d. For any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained primarily in file folders, on tape, disk, microfiche, and index cards.

RETRIEVABILITY:

Indexed and accessed by name, social security account number, or case file number of a combination thereof.

SAFEGUARDS:

File folders and computer printouts are maintained in security or controlled areas under guard and/or alarm protection, as appropriate.

RETENTION AND DISPOSAL:

a. Personnel security clearance/access authorization files—retained 5 years from date of termination of access authorization or final administrative action, then may be destroyed by an approved method of destruction;

b. Request for Visit or Access Approval—Maximum security areas retained 5 years after final entry or after date of document, as appropriate; Other areas: Retained 2 years after final entry or after date of document, then destroyed by shredding; and

c. Other security clearance/access authorization administration files—retained 2 years after final entry or after date of document, then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

NOTIFICATION PROCEDURE:

Director, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure." Some information is classified pursuant to Executive Order 12356 and will not be disclosed. Other information has been received in confidence and will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Persons including NRC applicants, employees, contractors, consultants, licensees, and visitors as well as information furnished by other Government agencies or their contractors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a (k)(1), (k)(2), and (5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f). The exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

NRC-40

SYSTEM NAME:

Facility Security Support Files and Associated Records–NRC.

SYSTEM LOCATION:

Primary system—Division of Security, Office of Administration, NRC, 7735 Old Georgetown Road, Bethesda, Maryland.

Duplicate systems—duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons including present or former NRC employees, consultants, contractors, and licensees; other government agency personnel; and actual and suspected violators of laws relating to the NRC's activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include information regarding NRC, NRC contractor, and NRC licensee facilities, security programs, and associated records; individuals visiting NRC facilities; NRC employees and NRC-related identification files maintained for access purposes; actual or suspected violations of laws of security interest administered by NRC, including copies of investigative reports from other Government agencies; and other documents relating to the safeguards of National Security Information (NSI) and Restricted Data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

a. 42 U.S.C. 2165 and 2201 (i) and (p) (1976);

b. Executive Order 12356, April 2, 1982.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To provide licensees and contractors with the information necessary to maintain an adequate security program; and

b. For any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained primarily in file folders, on disk, and related forms.

RETRIEVABILITY:

Indexed and accessed by name, facility, badge number, identification card number, chronologically, or a combination thereof.

SAFEGUARDS:

Maintained in security containers or security areas under guard and/or alarm protection, as appropriate.

RETENTION AND DISPOSAL:

a. Survey and inspection files and records pertaining to NRC, NRC contractors, and NRC licensees, facility security programs—Government-owned facilities: Retained 2 years after discontinuance of facility; Privately owned facilities: Retained 2 years after security cognizance is terminated, then destroyed by shredding or pulping;

b. NRC employee and NRC-related identification files—retained 2 years following employee's termination, then destroyed by shredding or pulping;

c. Security interest violation and investigative report files—retained indefinitely;

d. Other documents relating to NSI and Restricted Data safeguards and other security and protective service files—retained 2 years from date of document, then destroyed by shredding or pulping.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

NOTIFICATION PROCEDURE:

Director, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure." Some information is classified pursuant to Executive Order 12356 and will not be disclosed. Other information has been received in confidence and will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Persons including NRC employees, contractors, consultants, licensees, and visitors, as well as information furnished by other government agencies or their contractors.

SYSTEMS EXEMPT FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(5) and (6), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f). The exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

Addendum I—List of U.S. Nuclear Regulatory Commission Locations

Part 1—NRC Headquarters Offices

a. Air Rights III Building, 4550 Montgomery Avenue, Bethesda, Maryland.

b. East-West/South Towers Building, 4340 East West Highway, Bethesda, Maryland.

c. East-West/West Towers Building, 4350 East West Highway, Bethesda, Maryland.

d. Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland.

e. Matomic Building, 1717 H Street, NW, Washington, DC.

f. Nicholson Lane Building, 5650 Nicholson Lane, Rockville, Maryland.

g. Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland.

h. Willste Building, 7915 Eastern Avenue, Silver Spring, Maryland.

i. Woodmont Building, 8120 Woodmont Avenue, Bethesda, Maryland.

Part 2—NRC Regional Offices

a. NRC Region I, 631 Park Avenue, King of Prussia, Pennsylvania 19406.

b. NRC Region II, 101 Marietta Street, NW, Suite 2900, Atlanta, Georgia 30323.

c. NRC Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

d. NRC Region IV, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011.

e. NRC Region IV Uranium Recovery Field Office, 730 Simms Street, P.O. Box 25325, Denver, Colorado 80225.

f. NRC Region V, 1450 Maria Lane, Suite 210, Walnut Creek, California 94596.

Dated at Bethesda, Md., this 11th day of September 1986.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 86-21179 Filed 9-17-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-320]

Advisory Panel for the Decontamination of Three Mile Island, Unit 2, GPU Nuclear Corp.; Meeting

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Panel for the Decontamination of Three Mile Island Unit 2 (TMI-2) will be meeting on October 8, 1986, from 7:00 p.m. to 10:00 p.m. at the Holiday Inn, 23 S. Second Street, Harrisburg, Pennsylvania. The meeting will be open to the public.

At this meeting, the Panel will receive a status report on the progress of defueling from the licensee, General Public Utilities Nuclear Corporation. The panel will also be briefed by the licensee on the status of funding for the remainder of the cleanup. The Environmental Protection Agency will present the results of its recent review of the TMI off-site radiation monitoring program. Members of the public will be given the opportunity to address the Panel.

Further information on the meeting may be obtained from Dr. Michael T. Masnik, Three Mile Island Cleanup Project Directorate, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: 301/492-7743.

Dated at Bethesda, Maryland, this 12th day of September 1986.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Advisory Management Officer.

[FR Doc. 86-21178 Filed 9-17-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. STN 50-528 and STN 50-529]

Arizona Public Service Co., et al.; (Palo Verde Nuclear Generating Station, Units 1 and 2); Exemption

I

On December 31, 1984 and December 9, 1985, the Commission issued Facility Operating License Nos. NPF-34 and NPF-46, respectively, to Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Public Service Company of New Mexico, Southern California Edison Company, Los Angeles Department of Water and Power, and Southern California Public Power Authority for Palo Verde Nuclear Generating Station, Units 1 and 2, (facilities).* These licenses provide, among other things, that the facilities are subject to all rules, regulations and Orders of the Commission.

II

Section 50.71(e)(3)(i) of 10 CFR Part 50 requires the licensees of nuclear power reactors to submit an Updated Final Safety Analysis Report (UFSAR) within 24 months of either July 22, 1980, or the date of issuance of the operating license, whichever is later. The above regulation would have required submittal of the UFSAR for Palo Verde Unit 1 by December 31, 1986 and for Palo Verde Unit 2 by December 9, 1987.

By letter dated January 30, 1986, supplemented by letter dated March 18, 1986, the licensees requested an exemption from 10 CFR 50.71(e) which would defer submittal of the UFSAR until one year following receipt of a low-power operating license for Palo Verde Unit 3. The licensees state that they will amend the current FSAR, which applies to all three Palo Verde units, twice a year until Unit 3 receives an operating license to assure that the FSAR will contain accurate information regarding all three units on a timely basis. The latest Amendment (No. 15) to the FSAR was submitted on April 28, 1986.

III

The NRC staff has reviewed the licensees' request for an extension of the Palo Verde UFSAR submittal date. 10 CFR 50.34 requires that, until Palo Verde Unit 3 receives an operating license, the information contained in the FSAR docketed with the operating license application be maintained current. Hence, if an extension to the submittal date for the UFSAR is not granted, the licensees would be required to maintain current both the present FSAR as well as the USFAR until Palo Verde Unit 3 is licensed. Maintaining two versions of the same document for the three Palo Verde units would cause a hardship, could lead to ambiguities or confusion, and would serve no useful purpose if the existing FSAR is maintained up-to-date until Unit 3 is licensed.

Therefore an extension is needed to eliminate the hardship of maintaining two versions of the same document. Until Palo Verde Unit 3 receives an operating license, the licensees have committed to maintain the present FSAR current for all three units by amending the document twice a year.

For these reasons, the staff finds that the licensees have some good cause for the requested extension of the date for submittal of the Updated Final Safety Analysis Report. Therefore, the requested extension to no later than one year after issuance of a low power license for Palo Verde Unit 3 is acceptable.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(iii), are present justifying the exemption. The application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule in that the licensees have updated the Palo Verde FSAR in support of licensing Palo Verde Unit 3 by submittal of Amendment No. 15 on April 28, 1986 and will continue to update it at least twice a year until Unit 3 is licensed.

Furthermore, the exemption would provide only temporary relief from the applicable regulation in that only a limited time extension is requested, and a good faith effort to comply with the regulation was made by the submittal of Amendment No. 15 to the Palo Verde FSAR.

Accordingly, the Commission hereby grants an exemption as described in Section III above from § 50.71(e)(3)(i) of 10 CFR Part 50 to extend the date for submittal of the updated FSAR to no later than one year after initial licensing of Palo Verde Unit 3.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (51 FR 31853).

Dated at Bethesda, Maryland this 12th day of September, 1986.

This Exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Frank Schroeder,

Acting Director, Division of PWR Licensing-B, Office of Nuclear Reactor Regulation.

[FR Doc. 86-21180 Filed 9-17-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-424 and 50-425]

Georgia Power Co., et al.; (Vogtle Electric Generating Plant, Units 1 and 2); Assignment of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the

* These licenses were superseded by Facility Operating License Nos. NPF-41 and NPF-51, issued June 1, 1985 and April 24, 1986, respectively for the facilities.

Atomic Safety and Licensing Appeal Panel has assigned the following Panel members to serve as the Atomic Safety and Licensing Appeal Board for this operating license proceeding:

Gary J. Edles, Chairman,
Christine N. Kohl
Howard A. Wilber

Dated: September 12, 1986.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 86-21181 Filed 9-17-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-443 and 50-444]

Public Service Co. of New Hampshire, et, al.;* Issuance of Amendment to Construction Permits

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 9 to Construction Permits Nos. CPPR-135 and CPPR-136 for the Seabrook Station, Units 1 and 2, to show a change in ownership shares.

By letters, dated March 26, 1986, June 1, 1986, July 22, 1986, and September 2, 1986, Public Service Company of New Hampshire requested partial transfer of Construction Permit Nos. CPPR-135 and CPPR-136 for the Seabrook Station, Units 1 and 2, to reflect a reallocation of ownership interests from Bangor Hydro-Electric Company, Central Maine Power Company, Central Vermont Public Service Corporation, Fitchburg Gas & Electric Company and Maine Public Service Company to EUA Power Corporation in an aggregate ownership share of 12.13240%.

The issuance of this amendment to Construction Permit Nos. CPPR-135 and CPPR-136 complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which is set forth in Amendment No. 9. Prior public notice of Amendment No. 9 was not required, since the amendment does not involve a significant hazards consideration.

For further details with respect to this action see (1) the applications for amendment, dated March 26, 1986, June 2, 1986, July 22, 1986, and September 2, 1986, (2) Amendment No. 9 to Construction Permit Nos. CPPR-135 and CPPR-136, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Local Public Document Room at Exeter Public Library, Front Street, Exeter, New Hampshire 03833.

In addition, a copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of PWR Licensing-A, Office of Nuclear Reactor Regulation.

Dated At Bethesda, Maryland, this 12th day of September, 1986.

For the Nuclear Regulatory Commission.

N. Prasad Kadambi,

Acting Director, PWR Project Directorate No. 5, Division of PWR Licensing-A.

[FR Doc. 86-21182 Filed 9-17-86; 8:45 am]

BILLING CODE 7590-01-M

* The current Construction Permit holders for the Seabrook Station are: Canal Electric Company, Connecticut Light and Power Company, EUA Power Corporation, Hudson Light and Power Department, 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 and Vermont Electric Generation and Transmission Cooperative, Inc.

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2245; Amdt. 1]

New York

The above numbered declaration (51 FR 29042) is hereby amended to extend the incidence date to August 1, 1986. All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on October 6, 1986, and for economic injury until the close of business on May 6, 1987.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: September 11, 1986.

Charles L. Heatherly,

Acting Administrator.

[FR Doc. 86-21186 Filed 9-17-86; 8:45 am]

BILLING CODE 8025-01-M

Presidential Advisory Committee on Small and Minority Business Ownership; Public Meeting

The Presidential Advisory Committee on Small and Minority Business Ownership, located in Washington, DC, will meet on Thursday, September 22, 1986, from 9:30 a.m. until 5:00 p.m., at the Small Business Administration, 1441 L St. NW., 2nd Floor Conference Room, Washington, DC, 20416, with Committee Members to review their 1985 Annual Report to the President and the U.S. Congress, as well as, to plan their FY 87 agenda.

The meeting will be open to all interested persons, however, space is limited.

Persons wishing to obtain further information should contact Milton Wilson, Jr., Office of Private Industry Programs, Small Business Administration, 1441 L St., NW., Room 602, Washington, DC 20416, telephone (202) 653-6526.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 5, 1986.

[FR Doc. 86-21094 Filed 9-17-86; 8:45 am]

BILLING CODE 8025-01-M

Region III Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region III Advisory Council, located in the geographical area of Richmond, Virginia, will hold a public meeting at 10:00 a.m., Wednesday, October 8, 1986, through 4:00 p.m., at the Hotel Roanoke, Roanoke, Virginia, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call Catherine S. Marschall, District Director, SBA, P.O. Box 10126, Federal Building, Richmond, Virginia 23240—(804) 771-2741.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 9, 1986.

[FR Doc. 86-21093 Filed 9-17-86; 8:45 am]

BILLING CODE 8025-01-M

Region VII Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region VII Advisory Council, located in the geographical area of Des Moines, will hold a public meeting at 9:30 a.m. on Tuesday, October 7, 1986, at the Norwest Bank Des Moines, 7th and Walnut, Des Moines, Iowa, Boardroom, 2nd Floor, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call Conrad Lawlor, District Director, U.S.

Small Business Administration, at the address above, (515) 284–4567

Jean M. Nowak,

Director, Office of Advisory Councils.

September 9, 1986.

[FR Doc. 86–21092 Filed 9–17–86; 8:45 am]

BILLING CODE 8025–01–M

Region IX Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region IX Advisory Council located in the geographical area of Los Angeles, will hold a public meeting at 9:00 a.m. on Tuesday, October 16, 1986, at the Bank of America Executive Board Room, 555 South Flower Street, Los Angeles, California 90071, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call M. Hawley Smith, District Director, U.S. Small Business Administration, 350 South Figueroa Street, Suite #600, Los Angeles, California 90071. (213) 894–2977.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 9, 1986.

[FR Doc. 86–21091 Filed 9–17–86; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD3- 86–59]

New York Harbor Traffic Management Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the New York Harbor Traffic Management Advisory Committee to be held on October 9, 1986, in the Conference Room, second floor, U.S. Coast Guard Marine Inspection Office, Battery Park, New York, New York, beginning at 10:00 a.m.

The agenda for this meeting of the New York Harbor Traffic Management Advisory Committee is as follows:

1. Introduction of Committee Sponsor, Committee members, and Coast Guard officers.

2. Election by popular vote of Committee Vice Chairperson.

3. Presentation by appointed subcommittee on the length and content of vessel traffic summaries.

4. Presentation by the Coast Guard on the feasibility of placing additional transceivers throughout the harbor to facilitate communications.

5. A report from the Coast Guard in response to the Committee's recommendation to move the Newark Bay boundary up to the Lehigh Valley Drawbridge.

6. A report from the Chairman regarding the nature of port mobilization activities during past periods of national emergency.

7. Other topics which might arise and the committee agrees should be addressed at the time.

8. Review of agenda topics and selection of date for next meeting.

The New York Harbor Traffic Management Advisory Committee has been established by Commander, Third Coast Guard District to provide information, consultation, and advice with regard to port development, maritime trade, port traffic, and other maritime interests in the harbor. Members of the Committee serve voluntarily without compensation from the Federal Government.

Attendance is open to the interested public. With advance notice to the Chairperson, members of the public may make oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: Captain R.J. Heyn, USCG, Executive Secretary, NY Harbor Traffic Management Advisory Committee, New York Vessel Traffic Service, Governors Island, New York, NY 10004; or by calling (212) 668–7954.

Dated: September 10, 1986.

J.C. Uithol,

Captain, U.S. Coast Guard, Chief of Staff, Third Coast Guard District.

[FR Doc. 86–21158 Filed 9–17–86; 8:45 am]

BILLING CODE 4910–14–M

[CGD 86–052]

Coast Guard Academy Advisory Committee; Open Meeting

AGENCY: Coast Guard, DOT.

ACTION: Open meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a change to a meeting of the Coast Guard Academy Advisory Committee originally scheduled to be held in Hamilton Hall at the U.S. Coast Guard Academy, New London, CT, on Wednesday and Thursday, October 8 and 9, 1986. The meeting will now be held on Thursday and Friday, October 9 and 10, 1986. The open session on Thursday will be held from 1:30 p.m. to 3:30 p.m. Another open session will be held on Friday from 9:00 a.m. to 11:00 a.m. The agenda for this meeting remains:

1. Faculty
2. Curricula

The Coast Guard Academy Advisory Committee was established in 1937 by Pub. L. 75–38 to advise on the course of instruction at the Academy and to make recommendations as necessary. Attendance is open to the interested public. With advance notice, members of the public may present oral statements at the meeting. Persons wishing to attend or present oral statements at the meeting should notify the U.S. Coast Guard Academy not later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: CAPT David A. Sandell, USCG, Dean of Academics/Executive Secretary of the Academy Advisory Committee, U.S. Coast Guard Academy, New London, CT 06320, phone (203) 444–8275.

Issued in Washington, DC, on September 11, 1986.

Henry H. Bell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Personnel.

[FR Doc. 86–21160 Filed 9–17–86; 8:45 am]

BILLING CODE 4910–14–M

Maritime Administration

Change of Name of Approved Trustee; MBank Houston

Notice is hereby given that effective October 11, 1984, the Bank of the Southwest National Association, Houston, Texas, changed its name to MBank Houston, National Association.

Dated: September 11, 1986.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 86–21112 Filed 9–17–86; 8:45 am]

BILLING CODE 4910–81–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Applicable Rate of Interest on Nonqualified Withdrawals from a Capital Construction Fund

AGENCY: Departments of Transportation; Commerce; Treasury; Maritime Administration; National Oceanic and Atmospheric Administration; Internal Revenue Service.

SUMMARY: The Secretaries of Transportation, Commerce and the Treasury, as required by the Merchant Marine Act, 1936, as amended, have determined and are jointly publishing the interest rate that shall apply during taxable year 1986 to "nonqualified withdrawals" made from a Capital Construction Fund.

DATES: The rate of interest that has been determined will apply to all nonqualified withdrawals from a Capital Construction Fund made between January 1, 1986 and December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Russell Bigelow, Division of Capital Assets and Management, Maritime Administration, 400 Seventh Street SW., Washington, DC 20590, Tel. (202) 366–1908.

SUPPLEMENTARY INFORMATION: The Capital Construction Fund (CCF) Program, is authorized by section 607 of the Merchant Marine Act (Act). The Act provides for the deferment of Federal income taxes on deposits of income in a CCF. The deposited funds are for the purpose of providing capital for the construction or reconstruction of vessels. The Maritime Administration (MARAD) administers the CCF program, under authority delegated by the Secretary of Transportation, for all vessels other than fishing vessels. The National Oceanic and Atmospheric Administration (NOAA) administers the CCF program for fishing vessels on behalf of the Secretary of Commerce. The Act requires the Secretaries of Transportation, Commerce and the Treasury, annually, to determine jointly and publish in the Federal Register the rate of interest that is applicable to all "nonqualified withdrawals" from a CCF (46 U.S.C. 1177(h)(4)(B), together with the tax. A nonqualified withdrawal is a withdrawal of funds not authorized by section 607. This annual determination is made in accordance with the procedure described at 46 CFR 394.7(e)(2)(ii) of the joint regulations that have been issued by MARAD, NOAA and the Internal Revenue Service. The applicable rate of interest for "nonqualified withdrawals", made in the taxable year 1986, shall be 11.09 percent, determined to the nearest one-hundredth of one percent. The determination was computed by multiplying eight percent by the ratio that the average yield on 5-year Treasury securities for the calendar year, immediately preceding the beginning of such taxable year, bears to the average yield on 5-year Treasury securities for the year 1970.

Dated: September 10, 1986.

John Gaughan,

Maritime Administrator.

Anthony J. Calio,

Administrator, National Oceanic and Atmospheric Administration.

J. Rober Mentz,

Assistant Secretary for Tax Policy.

James E. Saari,

Secretary, Maritime Administration, Maritime Subsidy Board.

[FR Doc. 86–21171 Filed 9–17–86; 8:45 am]

BILLING CODE 4910–81–M

VETERANS ADMINISTRATION

Scientific Review and Evaluation Board for Health Services Research and Development and Scientific Review and Evaluation Board for Rehabilitation Research and Development; Charter Renewals

This is to give notice in accordance with the Federal Advisory Committee Act (Pub. L. 92–463) that the charters for the Scientific Review and Evaluation Board for Health Services Research and Development and the Scientific Review and Evaluation Board for Rehabilitation Research and Development have been renewed by the Administrator of Veterans Affairs for a two year period effective September 5, 1986 to September 5, 1988.

Dated: September 9, 1986.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 86–21083 Filed 9–17–86; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 181
Thursday, September 18, 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).

CONTENTS

1

FEDERAL MARITME COMMISSION

TIME AND DATE: 10:00 a.m., September 24, 1986.

PLACE: Hearing Room One–1100 L Street, NW., Washington, DC 20573

STATUS: Open.

MATTERS TO BE CONSIDERED: Portions open to the public.

1. Petition of National Customs Brokers and Forwarders Association of America, Inc. for Rulemaking—Licensing of Independent Ocean Freight Forwarders (46 CFR Part 510).
2. Agreement Processing; Delegation of Authority.
3. Marine Terminal Service Agreements; Notice of Waiver of Penalties and Petitions of New Orleans Steamship Association and National Association of Stevedores for Exemption.
4. Award of Attorney's Fees in Reparations Proceedings—Proposed Amendments to Rules of Practice.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary,

Joseph C. Polking,

Secretary.

[FR Doc. 86–21191 Filed 9–16–86; 9:52 am]

BILLING CODE 6730-01-M

2

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting Notice No. 7–86]

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date, Time, and Subject Matter

Tues., September 30, 1986 at 10:30 a.m.—Consideration of claims filed under the Ethiopian Claims Program and final decisions involving claims for prisoner of war compensation.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111–20th Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 1111–20th Street, NW., Room 409, Washington, DC 20579. Telephone: (202) 653–6155.

Dated at Washington, DC, on September 15, 1986.

Judith H. Lock,

Administrative Officer.

[FR Doc. 86–21192 Filed 9–16–86; 10:14 am]

BILLING CODE 4410-01-M

federal register

Thursday
September 18, 1986

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 171

Microwave Landing System Requirements for Non-Federal Navigational Facilities; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 171

[Docket No. 20669; Amdt. 171-14]

Microwave Landing System Requirements for Non-Federal Navigational Facilities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule updates the standards and procedures for the selection and maintenance of a Microwave Landing System (MLS) owned and operated by a private or a non-Federal entity. Since the approval of the original non-Federal MLS regulation, refinements and international standardization have occurred which now make the MLS more widely usable and acceptable to all users worldwide. This final rule incorporates these internationally accepted standards and provides the conformity necessary so that the MLS will be available to all users.

EFFECTIVE DATE: September 18, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Sotires P. Mantis, Program Engineering and Maintenance Service, Maintenance Engineering Division, APM-120, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267-8299.

SUPPLEMENTARY INFORMATION: On December 17, 1981, the FAA issued a new Subpart J, Microwave Landing System, in Part 171 of the Federal Aviation Regulations, 14 CFR Part 171 (46 FR 61560). The new subpart established minimum standards and procedures for the approval, installation, operation, and maintenance of an MLS facility that is not operated and maintained by the FAA. The FAA revised Subpart J in 1982 (47 FR 46259, October 18, 1982) and in 1984 (49 FR 15544, April 19, 1984) to provide changes to those standards.

The MLS is a system designed to take the place of the Instrument Landing System used throughout the world and is projected to meet both civil and military requirements. The MLS has been selected for standardization by the International Civil Aviation Organization (ICAO) and chosen to satisfy the need for a new system to fulfill precision approach and landing guidance requirements. Since these facilities may be operated and maintained by persons other than the FAA, the requisite uniform standards and procedures to operate these facilities in the National Airspace System (NAS) must be provided in regulatory form to govern those activities. This amendment is needed to bring the non-Federal MLS standards into conformity with the Federal and international standards for the MLS.

Currently, there are three sets of standards governing MLS equipment in use in the United States. There is an international standard which all equipment must meet (ICAO International Standards, Recommended Practices and Procedures for Air Navigation Services, Annex 10). There is a federal standard which all FAA equipment must meet (FAA-STD-022b, MLS Interoperability and Performance Requirements). Finally, there is a standard for non-Federal MLS equipment (FAR Part 171) which governs those facilities not operated and maintained by the FAA. Uniform standards must be provided so that there is complete interoperability among all MLS ground and airborne equipment in use throughout the world.

In September of 1984, the tenth meeting of the ICAO All Weather Operations Panel published a report (AWOP/10, September 4-20, 1984, ICAO Document 9449) which included a recommendation to make some changes in the current ICAO standards for MLS. The majority of the recommended changes dealt with the data transmission functions of the MLS. It is expected that these changes will be approved by the ICAO and an amendment to Annex 10 will be published in 1986. In anticipation of that amendment, the FAA has taken action to incorporate these changes in all MLS equipment currently being procured for use in the NAS. These changes will be reflected in FAA-STD-022b which is currently undergoing revision. In light of the above, an amendment to the current non-Federal MLS standard is required so that it may be brought into conformity with the ICAO and FAA standards. Accordingly, the changes listed in this amendment are intended to bring the non-Federal MLS standard into conformity with the pending changes to the ICAO standard and/or the FAA standard. In some cases, where an improvement in performance can be of benefit, the FAA has elected to impose more stringent requirements than those in the ICAO standard. In those instances, the non-Federal standard will conform to the FAA rather than the ICAO standard. This has been done so that all MLS's operating in the United States will conform to one set of standards. A more stringent requirement has not been imposed in any area of the standards which affects equipment interoperability. In those areas, all three standards will be identical.

Cost of Compliance

The cost of compliance with this amendment will be minimal. Non-Federal MLS ground equipment already deployed will require some reprogramming of a device; usually a Programmable Read Only Memory (PROM) in which software coding is stored. There are only five non-Federal MLS ground facilities operating in the United States. There is also a limited number of airborne equipment in use which will be affected by this change. A large number of these are Government owned. The modification to the airborne equipment is similar to that previously described for the ground equipment. In addition, all manufacturers of MLS equipment have been aware of these pending changes since publication of the ICAO AWOP/10 report in September 1984 and, therefore, are prepared to make the appropriate change in their equipment. The FAA has determined that this amendment is necessary in order to comply with international standards.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant a regulatory evaluation as the anticipated impact is so minimal.

As was stated previously, only a very few facilities are affected to a minor degree. Therefore, I certify that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Organizations representing all segments of the aviation industry affected by this amendment, all manufacturers of MLS equipment in the U.S., and the five current operators of non-Federal MLS facilities have participated in or have been made fully aware of the development of the standards adopted. In consideration of the above, I find that notice and public procedures under 5 U.S.C. 553 are unnecessary, because all affected parties have had prior notice of the standards adopted, and are impractible, because any delay in implementation of the standards would permit the

existence of incompatible MLS ground stations and airborne receivers. For the same reason, I find that good cause exists for making this rule effective upon publication.

List of Subjects in 14 CFR Part 171

Air traffic control, Navigation (air), Navigation facilities.

Issued in Washington, DC, on September 15, 1986.

Donald D. Engen,

Administrator.

Adoption of the Amendment

For the reasons set forth above, Part 171 of the Federal Aviation Regulations (14 CFR 171) is amended as follows:

1. The authority citation for Part 171 is revised to read as follows:

Authority: 49 U.S.C. 1343, 1346, 1348, 1354 (a), 1355, 1401, 1421–1430, 1472(c) 1502, and 1522; 49 U.S.C. 106(g) (Revised Public Law 97–449, January 12, 1983).

2. Subpart J is revised to read as follows:

PART 171—[AMENDED]

Subpart J—Microwave Landing System (MLS)

Sec.

Subpart J—Microwave Landing System (MLS)

§ 171.301 Scope.

This subpart sets forth minimum requirements for the approval, installation, operation and maintenance of non-Federal Microwave Landing System (MLS) facilities that provide the basis for instrument flight rules (IFR) and air traffic control procedures.

§ 171.303 Definitions.

As used in this subpart:

"Auxiliary data" means data transmitted in addition to basic data that provide ground equipment siting information for use in refining airborne position calculations and other supplementary information.

"Basic data" means data transmitted by the ground equipment that are associated directly with the operation of the landing guidance system.

"Beam center" means the midpoint between the –3 dB points on the leading and trailing edges of the scanning beam main lobe.

"Beamwidth" means the width of the scanning beam main lobe measured at the –3 dB points and defined in angular units on the boresight, in the horizontal plane for the azimuth function and in the vertical plane for the elevation function.

"Clearance guidance sector" means the volume of airspace, inside the coverage sector, within which the azimuth guidance information provided is not proportional to the angular displacement of the aircraft, but is a constant fly-left or fly-right indication of the direction relative to the approach course the aircraft should proceed in order to enter the proportional guidance sector.

"Control Motion Noise (CMN)" means those fluctuations in the guidance which affect aircraft attitude, control surface motion, column motion, and wheel motion. Control motion noise is evaluated by filtering the flight error record with a band-pass filter which has corner frequencies at 0.3 radian/sec and 10 radians/sec for azimuth data and 0.5 radian/sec and 10 radians/sec for elevation data.

"Data rate" means the average number of times per second that transmissions occur for a given function.

"Differential Phase Shift Keying (DPSK)" means differential phase modulation of the radio frequency carrier with relative phase states of 0 degree or 180 degrees.

"Failure" means the inability of an item to perform within previously specified limits.

"Guard time" means an unused period of time provided in the transmitted signal format to allow for equipment tolerances.

"Integrity" means that quality which relates to the trust which can be placed in the correctness of the information supplied by the facility.

"Mean corrective time" means the average time required to correct an equipment failure over a given period, after a service technician reaches the facility.

"Mean course error" means the mean value of the azimuth error along a specified radial of the azimuth function.

"Mean glide path error" means the mean value of the elevation error along a specified glidepath of the elevation function.

"Mean-time-between-failures (MTBF)" means the average time between equipment failures over a given period.

"Microwave Landing System (MLS)" means the MLS selected by ICAO for international standardization.

"Minimum glidepath" means the lowest angle of descent along the zero degree azimuth that is consistent with published approach procedures and obstacle clearance criteria.

"MLS Approach Reference Datum" is a point at a specified height located vertically above the intersection of the runway centerline and the threshold.

"MLS back azimuth reference datum" means a point 15 meters (50 feet) above the runway centerline at the runway midpoint.

"MLS datum point" means a point defined by the intersection of the runway centerline with a vertical plane perpendicular to the centerline and passing through the elevation antenna phase center.

"Out of coverage indication (OCI)" means a signal radiated into areas outside the intended coverage sector, where required, to specifically prevent invalid removal of an airborne warning indication in the presence of misleading guidance information.

"Path Following Error (PFE)" means the guidance perturbations which could cause aircraft displacement from the desired course or glidepath. It is composed of the path following noise and of the mean course error in the case of azimuth functions, or the mean glidepath error in the case of elevation functions. Path following errors are evaluated by filtering the flight error record with a second order low pass filter which has a corner frequency at 0.5 radian/sec for azimuth data or 1.5 radians/sec for elevation data.

"Path following noise (PFN)" means that portion of the guidance signal error which could cause displacement from the actual mean course line or mean glidepath as appropriate.

"Split-site ground station" means the type of ground station in which the azimuth portion of the ground station is located near the stop end of the runway, and the elevation portion is located near the approach end.

"Time division multiplex (TDM)" means that each function is transmitted on the same frequency in time sequence, with a distinct preamble preceding each function transmission.

§ 171.305 Requests for IFR procedure.

(a) Each person who requests an IFR procedure based on an MLS facility

which that person owns must submit the following information with that request:

(1) A description of the facility and evidence that the equipment meets the performance requirements of §§ 171.309, 171.311, 171.313, 171.315, 171.317, 171.319, and 171.321 and is fabricated and installed in accordance with § 171.323.

(2) A proposed procedure for operating the facility.

(3) A proposed maintenance organization and a maintenance manual that meets the requirements of § 171.325.

(4) A statement of intent to meet the requirements of this subpart.

(5) A showing that the facility has an acceptable level of operational reliability and an acceptable standard of performance. Previous equivalent operational experience with a facility with identical design and operational characteristics will be considered in showing compliance with this subparagraph.

(b) FAA inspects and evaluates the MLS facility; it advises the owner of the results, and of any required changes in the MLS facility or in the maintenance manual or maintenance organization. The owner must then correct the deficiencies, if any, and operate the MLS facility for an in-service evaluation by the FAA.

§ 171.307 Minimum requirements for approval.

(a) The following are the minimum requirements that must be met before the FAA approves an IFR procedure for a non-Federal MLS facility:

(1) The performance of the MLS facility, as determined by flight and ground inspection conducted by the FAA, must meet the requirements of §§ 171.309, 171.311, 171.313, 171.315, 171.317, 171.319, and 171.321.

(2) The fabrication and installation of the equipment must meet the requirements of § 171.323.

(3) The owner must agree to operate and maintain the MLS facility in accordance with § 171.325.

(4) The owner must agree to furnish operational records as set forth in § 171.327 and agree to allow the FAA to inspect the facility and its operation whenever necessary.

(5) The owner must assure the FAA that he will not withdraw the MLS facility from service without the permission of the FAA.

(6) The owner must bear all costs of meeting the requirements of this section and of any flight or ground inspection made before the MLS facility is commissioned.

(b) [Reserved]

§ 171.309 General requirements.

The MLS is a precision approach and landing guidance system which provides position information and various ground-to-air data. The position information is provided in a wide coverage sector and is determined by an azimuth angle measurement, an elevation angle measurement and a range (distance) measurement.

(a) An MLS constructed to meet the requirements of this subpart must include:

(1) Approach azimuth equipment, associated monitor, remote control and indicator equipment.

(2) Approach elevation equipment, associated monitor, remote control and indicator equipment.

(3) A means for the encoding and transmission of essential data words, associated monitor, remote control and indicator equipment. Essential data are basic data words 1, 2, 3, 4, and 6 and auxiliary data words A1, A2 and A3.

(4) Distance measuring equipment (DME), associated monitor, remote control and indicator equipment.

(5) Remote controls for paragraphs (a) (1), (2), (3), and (4) of this section must include as a minimum on/off and reset capabilities and may be integrated in the same equipment.

(6) At locations where a VHF marker beacon (75 MHz) is already installed, it may be used in lieu of the DME equipment.

(b) In addition to the equipment required in paragraph (a) of this section the MLS may include:

(1) Back azimuth equipment, associated monitor, remote control and indicator equipment. When Back Azimuth is provided, a means for transmission of Basic Data Word 5 and Auxiliary Data Word A4 shall also be provided.

(2) A wider proportional guidance sector which exceeds the minimum specified in §§ 171.313 and 171.317.

(3) Precision DME, associated monitor, remote control and indicator equipment.

(4) VHF marker beacon (75 MHz), associated monitor, remote control and indicator equipment.

(5) The MLS signal format will accommodate additional functions (e.g., flare elevation) which may be included as desired. Remote controls for paragraphs (b) (1), (3) and (4) of this section must include as a minimum on/off and reset capabilities, and may be integrated in the same equipment.

(6) Provisions for the encoding and transmission of additional auxiliary data words, associated monitor, remote control and indicator equipment.

(c) MLS ground equipment must be designed to operate on a nominal 120/240 volt, 60 Hz, 3-wire single phase AC power source and must meet the following service conditions:

(1) AC line parameters, DC voltage, elevation and duty:

120 VAC nominal value—102 V to 138 V (±1 V)*
240 VAC nominal value—204 V to 276 V (±2 V)*
60 Hz AC line frequency—57 Hz to 63 Hz (±0.2 Hz)*

*Note: Where discrete values of the above frequency or voltages are specified for testing purposes, the tolerances given in parentheses indicated by an asterisk apply to the test instruments used to measure these parameters.

Elevation—0 to 3000 meters (10,000 feet) above sea level
Duty—Continuous, unattended

(2) Ambient conditions within the shelter for electronic equipment installed in shelters are:

Temperature, −10°C to +50°C
Relative humidity, 5% to 90%

(3) Ambient conditions for electronic equipment and all other equipment installed outdoors (for example, antenna, field detectors, and shelters):

Temperature, −50°C to +70°C
Relative humidity, 5% to 100%

(4) All equipment installed outdoors must operate satisfactorily under the following conditions:

Wind Velocity: The ground equipment shall remain within monitor limits with wind velocities of up to 70 knots from such directions that the velocity component perpendicular to runway centerline does not exceed 35 knots. The ground equipment shall withstand winds up to 100 knots from any direction without damage.
Hail Stones: 1.25 centimeters (½ inch) diameter.
Rain: Provide required coverage with rain falling at a rate of 50 millimeters (2 inches) per hour, through a distance of 9 kilometers (5 nautical miles) and with rain falling at the rate of 25 millimeters (1 inch) per hour for the additional 28 kilometers (15 nautical miles).
Ice Loading: Encased in 1.25 centimeters (½ inch) radial thickness of clear ice.
Antenna Radome De-Icing: Down to −6°C (20°F) and wind up to 35 knots.

(d) The transmitter frequencies of an MLS must be in accordance with the frequency plan approved by the FAA.

(e) The DME component listed in paragraph (a)(4) of this section must comply with the minimum standard performance requirements specified in Subpart G of this part.

(f) The marker beacon components listed in paragraph (b)(4) of this section must comply with the minimum standard performance requirements specified in Subpart H of this part.

§ 171.311 Signal format requirements.

The signals radiated by the MLS must conform to the signal format in which angle guidance functions and data functions are transmitted sequentially on the same C-band frequency. Each function is identified by a unique digital code which initializes the airborne receiver for proper processing. The signal format must meet the following minimum requirements:

(a) *Frequency assignment.* The ground components (except DME/Marker Beacon) must operate on a single frequency assignment or channel, using time division multiplexing. These components must be capable of operating on any one of the 200 channels spaced 300 KHz apart with center frequencies from 5031.0 MHz to 5090.7 MHz and with channel numbering as shown in Table 1a. The operating radio frequencies of all ground components must not vary by more than ±10 KHz from the assigned frequency. Any one transmitter frequency must not vary more than ±50 Hz in any one second period. The MLS angle/data and DME equipment must operate on one of the paired channels as shown in Table 1b.

TABLE 1a.—FREQUENCY CHANNEL PLAN

Channel No.	Frequency (MHz)
500	5031.0
501	5031.3
502	5031.6
503	5031.9
504	5032.2
505	5032.5
506	5032.8
507	5033.1
508	5033.4
509	5033.7
510	5034.0
511	5034.3
* * * * *	
598	5060.4
599	5060.7
600	5061.0
601	5061.3
* * * * *	
698	5090.4
699	5090.7

TABLE 1b.—CHANNELS

Channel pairing				DME parameters					
				Interrogation				Reply	
DME No.	VHF freq. MHz	MLS angle freq. MHz	MLS Ch. No.	Freq. MHz	Pulse codes			Freq. MHz	Pulse codes μs
					DME/N μs	DME/P Mode			
						IA μs	FA μs		
* 1X				1025	12			962	12
** 1Y				1025	36			1088	30
* 2X				1026	12			963	12
** 2Y				1026	36			1089	30
* 3X				1027	12			964	12
** 3Y				1027	36			1090	30
* 4X				1028	12			965	12
** 4Y				1028	36			1091	30
* 5X				1029	12			966	12
** 5Y				1029	36			1092	30
* 6X				1030	12			967	12
** 6Y				1030	36			1093	30
* 7X				1031	12			968	12
** 7Y				1031	36			1094	30
* 8X				1032	12			969	12
** 8Y				1032	36			1095	30
* 9X				1033	12			970	12
** 9Y				1033	36			1096	30
* 10X				1034	12			971	12
** 10Y				1034	36			1097	30
* 11X				1035	12			972	12
** 11Y				1035	36			1098	30
* 12X				1036	12			973	12
** 12Y				1036	36			1099	30
* 13X				1037	12			974	12
** 13Y				1037	36			1100	30
* 14X				1038	12			975	12
** 14Y				1038	36			1101	30
* 15X				1039	12			976	12
** 15Y				1039	36			1102	30
* 16X				1040	12			977	12
** 16Y				1040	36			1103	30
▽ 17X				1041	12			978	12
17Y	108.00			1041	36	36	42	1104	30
17Z	108.05	5043.0	540	1041		21	27	1104	15
18X		5043.3	541	1042	12	12	18	979	12
18W	108.10	5031.0	500	1042		24	30	979	24
18Y		5031.3	501	1042	36	36	42	1105	30
18Z	108.15	5043.6	542	1042		21	27	1105	15
19X		5043.9	543	1043	12			980	12
19Y	108.20			1043	36	36	42	1106	30
19Z	108.25	5044.2	544	1043		21	27	1106	15
20X		5044.5	545	1044	12	12	18	981	12
20W	108.30	5031.6	502	1044		24	30	981	24
20Y		5031.9	503	1044	36	36	42	1107	30
20Z	108.35	5044.8	546	1044		21	27	1107	15
21X		5045.1	547	1045	12			982	12
21Y	108.40			1045	36	36	42	1108	30
21Z	108.45	5045.4	548	1045		21	27	1108	15
22X		5045.7	549	1046	12	12	18	983	12
22W	108.50	5032.2	504	1046		24	30	983	24
22Y		5032.5	505	1046	36	36	42	1109	30
22Z	108.55	5046.0	550	1046		21	27	1109	15
23X		5046.3	551	1047	12			984	12
23Y	108.60			1047	36	36	42	1110	30
23Z	108.65	5046.6	552	1047		21	27	1110	15
		5046.9	553						

TABLE 1b.—CHANNELS—Continued

Channel pairing				DME parameters					
				Interrogation				Reply	
					Pulse codes				
DME No.	VHF freq. MHz	MLS angle freq. MHz	MLS Ch. No.	Freq. MHz	DME/N μs	DME/P Mode		Freq. MHz	Pulse codes μs
						IA μs	FA μs		
24X	108.70	5032.8	506	1048	12	12	18	985	12
24W		5033.1	507	1048		24	30	985	24
24Y	108.75	5047.2	554	1048	36	36	42	1111	30
24Z		5047.5	555	1048		21	27	1111	15
25X	108.80			1049	12			986	12
25Y	108.85	5047.8	556	1049	36	36	42	1112	30
25Z		5048.1	557	1049		21	27	1112	15
26X	108.90	5033.4	508	1050	12	12	18	987	12
26W		5033.7	509	1050		24	30	987	24
26Y	108.95	5048.4	558	1050	36	36	42	1113	30
26Z		5048.7	559	1050		21	27	1113	15
27X	109.00			1051	12			988	12
27Y	109.05	5049.0	560	1051	36	36	42	1114	30
27Z		5049.3	561	1051		21	27	1114	15
28X	109.10	5034.0	510	1052	12	12	18	989	12
28W		5034.3	511	1052		24	30	989	24
28Y	109.15	5049.6	562	1052	36	36	42	1115	30
28Z		5049.9	563	1052		21	27	1115	15
29X	109.20			1053	12			990	12
29Y	109.25	5050.2	564	1053	36	36	42	1116	30
29Z		5050.5	565	1043		21	27	1116	15
30X	109.30	5034.6	512	1054	12	12	18	991	12
30W		5034.9	513	1054		24	30	991	24
30Y	109.35	5050.8	566	1054	36	36	42	1117	30
30Z		5051.1	567	1054		21	27	1117	15
31X	109.40			1055	12			992	12
31Y	109.45	5051.4	568	1055	36	36	42	1118	30
31Z		5051.7	569	1055		21	27	1118	15
32X	109.50	5035.2	514	1056	12	12	18	993	12
32W		5035.5	515	1056		24	30	993	24
32Y	109.55	5052.0	570	1056	36	36	42	1119	30
32Z		5052.3	571	1056		21	27	1119	15
33X	109.60			1057	12			994	12
33Y	109.65	5052.6	572	1057	36	36	42	1120	30
33Z		5052.9	573	1057		21	27	1120	15
34X	109.70	5035.8	516	1058	12	12	18	995	12
34W		5036.1	517	1058		24	30	995	24
34Y	109.75	5053.2	574	1058	36	36	42	1121	30
34Z		5053.5	575	1058		21	27	1121	15
35X	109.80			1059	12			996	12
35Y	109.85	5053.8	576	1059	36	36	42	1122	30
35Z		5054.1	577	1059		21	27	1122	15
36X	109.90	5036.4	518	1060	12	12	18	997	12
36W		5036.7	519	1060		24	30	997	24
36Y	109.95	5054.4	578	1060	36	36	42	1123	30
36Z		5054.7	579	1060		21	27	1123	15
37X	110.00			1061	12			998	12
37Y	110.05	5055.0	580	1061	36	36	42	1124	30
37Z		5055.3	581	1061		21	27	1124	15
38X	110.10	5037.0	520	1062	12	12	18	999	12
38W		5037.3	521	1062		24	30	999	24
38Y	110.15	5055.6	582	1062	36	36	42	1125	30
38Z		5055.9	583	1062		21	27	1125	15
39X	110.20			1063	12			1000	12
39Y	110.25	5056.2	584	1063	36	36	42	1126	30
39Z		5056.5	585	1063		21	27	1126	15
40X	110.30	5037.6	522	1064	12	12	18	1001	12
40W		5037.9	523	1064		24	30	1001	24
40Y	110.35	5056.8	586	1064	36	36	42	1127	30
40Z		5057.1	587	1064		21	27	1127	15
41X	110.40			1065	12			1002	12
41Y	110.45	5057.4	588	1065	36	36	42	1128	30
41Z		5057.7	589	1065		21	27	1128	15
42X	110.50	5038.2	524	1066	12	12	18	1003	12
42W		5038.5	525	1066		24	30	1003	24
42Y	110.55	5058.0	590	1066	36	36	42	1129	30
42Z		5058.3	591	1066		21	27	1129	15
43X	110.60			1067	12			1004	12
43Y	110.65	5058.6	592	1067	36	36	42	1130	30
43Z		5058.9	593	1067		21	27	1130	15
44X	110.70	5038.8	526	1068	12	12	18	1005	12
44W		5039.1	527	1068		24	30	1005	24
44Y	110.75	5059.2	594	1068	36	36	42	1131	30
44Z		5059.5	595	1068		21	27	1131	15
45X	110.80			1069	12			1006	12
45Y	110.85	5059.8	596	1069	36	36	42	1132	30
45Z		5060.1	597	1069		21	27	1132	15
46X	110.90	5039.4	528	1070	12	12	18	1007	12
46W		5039.7	529	1070		24	30	1007	24
46Y	110.95	5060.4	598	1070	36	36	42	1133	30
46Z		5060.7	599	1070		21	27	1133	15
47X	111.00			1071	12			1008	12
47Y	111.05	5061.0	600	1071	36	36	42	1134	30
47Z		5061.3	601	1071		21	27	1134	15
48X	111.10	5040.0	530	1072	12	12	18	1009	12

TABLE 1b.—CHANNELS—Continued

Channel pairing				DME parameters					
				Interrogation				Reply	
					Pulse codes				
DME No.	VHF freq. MHz	MLS angle freq. MHz	MLS Ch. No.	Freq. MHz	DME/N μs	DME/P Mode		Freq. MHz	Pulse codes μs
						IA μs	FA μs		
48W		5040.3	531	1072		24	30	1009	24
48Y	111.15	5061.6	602	1072	36	36	42	1135	30
48Z		5061.9	603	1072		21	27	1135	15
49X	111.20			1073	12			1010	12
49Y	111.25	5062.2	604	1073	36	36	42	1136	30
49Z		5062.5	605	1073		21	27	1136	15
50X	111.30	5040.6	532	1074	12	12	18	1011	12
50W		5040.9	533	1074		24	30	1011	24
50Y	111.35	5062.8	606	1074	36	36	42	1137	30
50Z		5063.1	607	1074		21	27	1137	15
51X	111.40			1075	12			1012	12
51Y	111.45	5063.4	608	1075	36	36	42	1138	30
51Z		5063.7	609	1075		21	27	1138	15
52X	111.50	5041.2	534	1076	12	12	18	1013	12
52W		5041.5	535	1076		24	30	1013	24
52Y	111.55	5064.0	610	1076	36	36	42	1139	30
52Z		5064.3	611	1076		21	27	1139	15
53X	111.60			1077	12			1014	12
53Y	111.65	5064.6	612	1077	36	36	42	1140	30
53Z		5064.9	613	1077		21	27	1140	15
54X	111.70	5041.8	536	1078	12	12	18	1015	12
54W		5042.1	537	1078		24	30	1015	24
54Y	111.75	5065.2	614	1078	36	36	42	1141	30
54Z		5065.5	615	1078		21	27	1141	15
55X	111.80			1079	12			1016	12
55Y	111.85	5065.8	616	1079	36	36	42	1142	30
55Z		5066.1	617	1079		21	27	1142	15
56X	111.90	5042.4	538	1080	12	12	18	1017	12
56W		5042.7	539	1080		24	30	1017	24
56Y	111.95	5066.4	618	1080	36	36	42	1143	30
56Z		5066.7	619	1080		21	27	1143	15
57X	112.00			1081	12			1018	12
57Y	112.05			1081	36			1144	30
58X	112.10			1082	12			1019	12
58Y	112.15			1082	36			1145	30
59X	112.20			1083	12			1020	12
59Y	122.25			1083	36			1146	30
** 60X				1084	12			1021	12
** 60Y				1084	36			1147	30
** 61X				1085	12			1022	12
** 61Y				1085	36			1148	30
** 62X				1086	12			1023	12
** 62Y				1086	36			1149	30
** 63X				1037	12			1024	12
** 63Y				1087	36			1150	30
** 64X				1088	12			1151	12
** 64Y				1088	36			1025	30
** 65X				1089	12			1152	12
** 65Y				1089	36			1026	30
** 66X				1090	12			1153	12
** 66Y				1090	36			1027	30
** 67X				1091	12			1154	12
** 67Y				1091	36			1028	30
** 68X				1092	12			1155	12
** 68Y				1092	36			1029	30
** 69X				1093	12			1156	12
** 69Y				1093	36			1030	30
70X	112.30			1094	12			1157	12
** 70Y	112.35			1094	36			1031	30
71X	112.40			1095	12			1158	12
** 71Y	112.45			1095	36			1032	30
72X	112.50			1096	12			1159	12
** 72Y	112.55			1096	36			1033	30
73X	112.60			1097	12			1160	12
** 73Y	112.65			1097	36			1034	30
74X	112.70			1098	12			1161	12
** 74Y	112.75			1098	36			1035	30
75X	112.80			1099	12			1162	12
** 75Y	112.85			1099	36			1036	30
76X	112.90			1100	12			1163	12
** 76Y	112.95			1100	36			1037	30
77X	113.00			1101	12			1164	12
** 77Y	113.05			1101	36			1038	30
78X	113.10			1102	12			1165	12
** 78Y	113.15			1102	36			1039	30
79X	113.20			1103	12			1166	12
** 79Y	113.25			1103	36			1040	30
80X	113.30			1104	12			1167	12
80Y	113.35	5067.0	620	1104	36	36	42	1041	30
80Z		5067.3	621	1104		21	27	1041	15
81X	113.40			1105	12			1168	12
81Y	113.45	5067.6	622	1105	36	36	42	1042	30
81Z		5067.9	623	1005		21	27	1042	15
82X	113.50			1106	12			1169	12
82Y	113.55	5068.2	624	1106	36	36	42	1043	30

TABLE 1b.—CHANNELS—Continued

Channel pairing				DME parameters					
				Interrogation				Reply	
DME No.	VHF freq. MHz	MLS angle freq. MHz	MLS Ch. No.	Freq. MHz	Pulse codes			Freq. MHz	Pulse codes μs
					DME/N μs	DME/P Mode			
						IA μs	FA μs		
82Z		5068.5	625	1106		21	27	1043	15
83X	113.60			1107	12			1170	12
83Y	113.65	5068.8	626	1107	36	36	42	1044	30
83Z		5069.1	627	1107		21	27	1044	15
84X	113.70			1108	12			1171	12
84Y	113.75	5069.4	628	1108	36	36	42	1045	30
84Z		5069.7	629	1108		21	27	1045	15
85X	113.80			1109	12			1172	12
85Y	113.85	5070.0	630	1109	36	36	42	1046	30
85Z		5070.3	631	1109		21	27	1046	15
86X	113.90			1110	12			1173	12
86Y	113.95	5070.6	632	1110	36	36	42	1047	30
86Z		5070.9	633	1110		21	27	1047	15
87X	114.00			1111	12			1174	12
87Y	114.05	5071.2	634	1111	36	36	42	1048	30
87Z		5071.5	635	1111		21	27	1048	15
88X	114.10			1112	12			1175	12
88Y	114.15	5071.8	636	1112	36	36	42	1049	30
88Z		5072.1	637	1112		21	27	1049	15
89X	114.20			1113	12			1176	12
89Y	114.25	5072.4	638	1113	36	36	42	1050	30
89Z		5072.7	639	1113		21	27	1050	15
90X	114.30			1114	12			1177	12
90Y	114.35	5073.0	640	1114	36	36	42	1051	30
90Z		5073.3	641	1114		21	27	1051	15
91X	114.40			1115	12			1178	12
91Y	114.45	5073.6	642	1115	36	36	42	1052	30
91Z		5073.9	643	1115		21	27	1052	15
92X	114.50			1116	12			1179	12
92Y	114.55	5074.2	644	1116	36	36	42	1053	30
92Z		5074.5	645	1116		21	27	1053	15
93X	114.60			1117	12			1180	12
93Y	114.65	5074.8	646	1117	36	36	42	1054	30
93Z		5075.1	647	1117		21	27	1054	15
94X	114.70			1118	12			1181	12
94Y	114.75	5075.4	648	1118	36	36	42	1055	30
94Z		5075.7	649	1118		21	27	1055	15
95X	114.80			1119	12			1182	12
95Y	114.85	5076.0	650	1119	36	36	42	1056	30
95Z		5076.3	651	1119		21	27	1056	15
96X	114.90			1120	12			1183	12
96Y	114.95	5076.6	652	1120	36	36	42	1057	30
96Z		5076.9	653	1120		21	27	1057	15
97X	115.00			1121	12			1184	12
97Y	115.05	5077.2	654	1121	36	36	42	1058	30
97Z		5077.5	655	1121		21	27	1058	15
98X	115.10			1122	12			1185	12
98Y	115.15	5077.8	656	1122	36	36	42	1059	30
98Z		5078.1	657	1122		21	27	1059	15
99X	115.20			1123	12			1186	12
99Y	115.25	5078.4	658	1123	36	36	42	1060	30
99Z		5078.7	659	1123		21	27	1060	15
100X	115.30			1124	12			1187	12
100Y	115.35	5079.0	660	1124	36	36	42	1061	30
100Z		5079.3	661	1124		21	27	1061	15
101X	115.40			1125	12			1188	12
101Y	115.45	5079.6	662	1125	36	36	42	1062	30
101Z		5079.9	663	1125		21	27	1062	15
102X	115.50			1126	12			1189	12
102Y	115.55	5080.2	664	1126	36	36	42	1063	30
102Z		5080.5	665	1126		21	27	1063	15
103X	115.60			1127	12			1190	12
103Y	115.65	5080.8	666	1127	36	36	42	1064	30
103Z		5081.1	667	1127		21	27	1064	19
104X	115.70			1128	12			1191	12
104Y	115.75	5081.4	668	1128	36	36	42	1065	30
104Z		5081.7	669	1128		21	27	1065	19
105X	115.80			1129	12			1192	12
105Y	115.85	5082.0	670	1129	36	36	42	1066	30
105Z		5082.3	671	1129		21	27	1066	15
106X	115.90			1130	12			1193	12
106Y	115.95	5082.6	672	1130	36	36	42	1067	30
106Z		5082.9	673	1130		21	27	1067	15
107X	116.00			1131	12			1194	12
107Y	116.05	5083.2	674	1131	36	36	42	1068	30
107Z		5083.5	675	1131		21	27	1068	15
108X	116.10	508		1132	12			1195	12
108Y	116.15	5083.8	676	1132	36	36	42	1069	30
108Z		5084.1	677	1132		21	27	1069	15
109X	116.20			1133	12			1196	12
109Y	116.25	5084.4	678	1133	36	36	42	1070	30
109Z		5084.7	679	1133		21	27	1070	15
110X	116.30			1134	12			1197	12
110Y	116.35	5085.0	680	1134	36	36	42	1071	30
110Z		5085.3	681	1134		21	27	1071	15

TABLE 1b.—CHANNELS—Continued

Channel pairing				DME parameters					
				Interrogation				Reply	
DME No.	VHF freq. MHz	MLS angle freq. MHz	MLS Ch. No.	Freq. MHz	Pulse codes			Freq. MHz	Pulse codes μs
					DME/N μs	DME/P Mode			
						IA μs	FA μs		
111X	116.40			1135	12			1198	12
111Y	116.45	5086.6	682	1135	36	36	42	1072	30
111Z		5085.9	683	1135		21	27	1072	15
112X	116.50			1136	12			1199	12
112Y	116.55	5086.2	684	1136	36	36	42	1073	30
112Z		5086.5	685	1136		21	27	1073	15
113X	116.60			1137	12			1200	12
113Y	116.65	5086.8	686	1137	36	36	42	1074	30
113Z		5087.1	687	1137		21	27	1074	15
114X	116.70			1138	12			1201	12
114Y	116.75	5087.4	688	1138	36	36	42	1075	30
114Z		5087.7	689	1138		21	27	1075	15
115X	116.80			1139	12			1202	12
115Y	116.85	5088.0	690	1139	36	36	42	1076	30
115Z		5088.3	691	1139		21	27	1076	15
116X	116.90			1140	12			1203	12
116Y	116.95	5088.6	692	1140	36	36	42	1077	30
116Z		5088.9	693	1140		21	27	1077	15
117X	117.00			1141	12			1204	12
117Y	117.05	5089.2	694	1141	36	36	42	1078	30
117Z		5089.5	695	1141		21	27	1078	15
118X	117.10			1142	12			1205	12
118Y	117.15	5089.8	696	1142	36	36	42	1079	30
118Z		5090.1	697	1142		21	27	1079	15
119X	117.20			1143	12			1206	12
119Y	117.25	5090.4	698	1143	36	36	42	1080	30
119Z		5090.7	699	1143		21	27	1080	15
120X	117.30			1144	12			1207	12
120Y	117.35			1144	36			1081	30
121X	117.40			1145	12			1208	12
121Y	117.45			1145	36			1082	30
122X	117.50			1146	12			1209	12
122Y	117.55			1146	36			1083	30
123X	117.60			1147	12			1210	12
123Y	117.65			1147	36			1084	30
124X	117.70			1148	12			1211	12
** 124Y	117.75			1148	36			1085	30
125X	117.80			1149	12			1212	12
** 125Y	117.85			1149	36			1086	30
126X	117.90			1150	12			1213	12
** 126Y	117.95			1150	36			1087	30

Notes:
* These channels are reserved exclusively for national allotments.
** These channels may be used for national allotment on a secondary basis. The primary reason for reserving these channels is to provide protection for the secondary Surveillance Radar (SSR) system.
▽ 108.0 MHz is not scheduled for assignment to ILS service. The associated DME operating channel No. 17X may be assigned to the emergency service.

(b) *Polarization.* (1) The radio frequency emissions from all ground equipment must be nominally vertically polarized. Any horizontally polarized radio frequency emission component from the ground equipment must not have incorrectly coded angle information such that the limits specified in paragraphs (b) (2) and (3) of this section are exceeded.

(2) Rotation of the receiving antenna thirty degrees from the vertically polarized position must not cause the path following error to exceed the allowed error at that location.

(c) *Modulation requirements.* Each function transmitter must be capable of DPSK and continuous wave (CW) modulations of the RF carrier which have the following characteristics.

(1) DPSK. The DPSK signal must have the following characteristics:

bit rate	15.625 KHz
bit length	64 microseconds
logic "0"	no phase transition
logic "1"	phase transition
phase transition	less than 10 microseconds
phase tolerance	±10 degrees

The phase shall advance (or retard) monotonically throughout the transition region. Amplitude modulation during the phase transition period shall not be used.

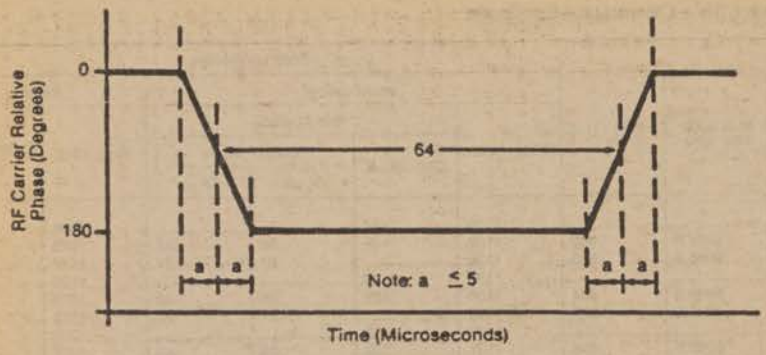


Figure 1.-DPSK Phase Characteristic

(2) CW. The CW pulse transmissions and the CW angle transmissions as may be required in the signal format of any function must have characteristics such that the requirements of paragraph (d) of this section are met.

(d) *Radio frequency signal spectrum.* The transmitted signal must be such that during the transmission time, the mean power density above a height of 600 meters (2000 feet) does not exceed -100.5 dBW/m^2 for angle guidance and -95.5 dBW/m^2 for data, as measured in a 150 KHz bandwidth centered at a frequency of 840 KHz or more from the assigned frequency.

(e) *Synchronization.* Synchronization between the azimuth and elevation components is required and, in split-site configurations, would normally be accomplished by landline interconnections. Synchronization monitoring must be provided to preclude function overlap.

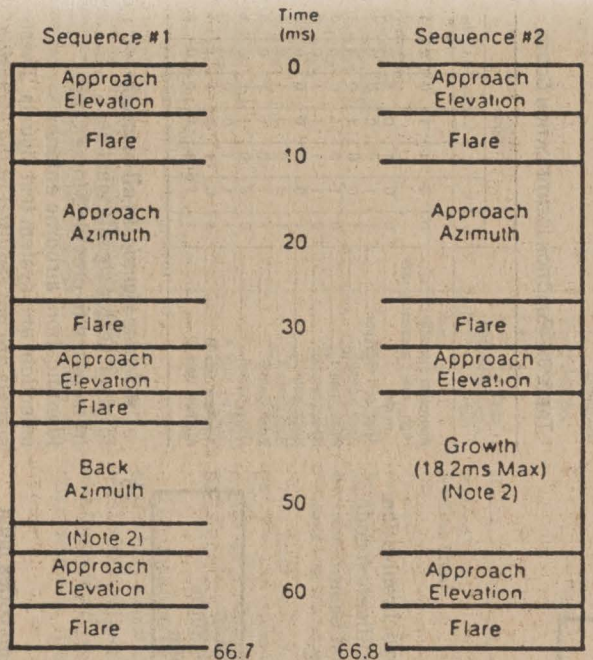
(f) *Transmission rates.* Angle guidance and data signals must be transmitted at the following average repetition rates:

Function	Average data rate (Hertz)
Approach Azimuth	13±0.5
High Rate Approach Azimuth	[1] 39±1.5
Approach Elevation	39±1.5
Back Azimuth	6.5±0.25
Basic Data	[2]
Auxiliary Data	[3]

[1] The higher rate is recommended for azimuth scanning antennas with beamwidths greater than two degrees. It should be noted that the time available in the signal format for additional functions is limited when the higher rate is used.
[2] Refer to Table 8a.
[3] Refer to Table 8c.

(g) *Transmission sequences.* Sequences of angle transmissions which will generate the required repetition rates are shown in Figures 2 and 3.

BILLING CODE 4910-13-M



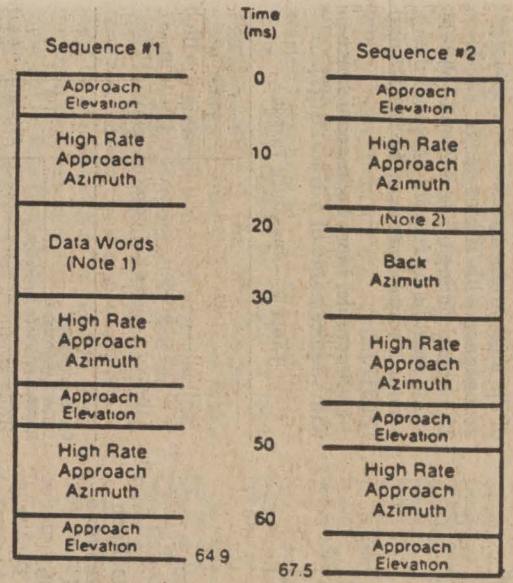
(Note 3)

Notes:

1. When Back Azimuth is Provided, Basic Data Word # 2 Must Be Transmitted Only In This Position.
2. Data Words May Be Transmitted In Any Open Time Periods.
3. The Total Time Duration of Sequence #1 Plus Sequence #2 Must Not exceed 134 ms.

Figure 2. Transmission sequence pair which provides for all MLS angle guidance functions.

BILLING CODE 4910-13-C



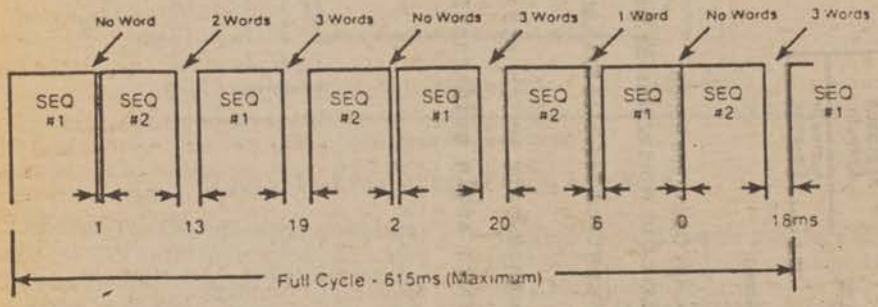
(Note 3)

Notes:

1. Data Words May Be Transmitted In Any Open Time Period.
2. When Back Azimuth Is Provided, Basic Data Word #2 Must Be Transmitted Only In This Position.
3. The Total Time Duration Of Sequence #1 Plus Sequence #2 Must Not Exceed 134 ms.

Figure 3. Transmission sequence pair which provides for the MLS high rate approach azimuth angle guidance function.

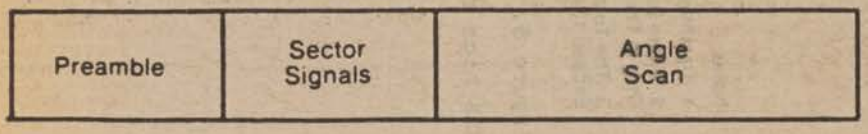
(h) *TDM cycle.* The time periods between angle transmission sequences must be varied so that exact repetitions do not occur within periods of less than 0.5 second in order to protect against synchronous interference. One such combination of sequences is shown in Figure 4 which forms a full multiplex cycle. Data may be transmitted during suitable open times within or between the sequences.



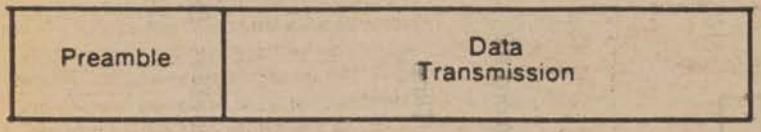
Note: Angle Sequence Are Those From Figure 2 Or 3. Do Not Mix Sequences.

Figure 4. A complete function multiplex cycle.

(i) *Function Formats (General).* Each angle function must contain the following elements: a preamble; sector signals; and a TO and FRO angle scan organized as shown in Figure 5a. Each data function must contain a preamble and a data transmission period organized as shown in Figure 5b.



(a) Angle Function



(b) Data Function

Figure 5 - Function format.

(1) *Preamble format.* The transmitted angle and date functions must use the preamble format shown in Figure 6. This format consists of a carrier acquisition period of unmodulated CW transmission followed by a receiver synchronization code and a function identification code. The preamble timing must be in accordance with Table 2.

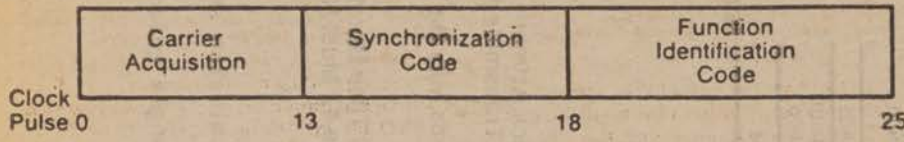


Figure 6 - Preamble organization.

(i) *Digital codes.* The coding used in the preamble for receiver synchronization is a Barker code logic 11101. The time of the last phase transition midpoint in the code shall be the receiver reference time (see Table 2). The function identification codes must be as shown in Table 3. The last two bits (I_{11} and I_{12}) of the code are parity bits obeying the equations:

$I_6+I_7+I_8+I_9+I_{10}+I_{11}=\text{Even}$

$I_6+I_8+I_{10}+I_{12}=\text{Even}$

(ii) *Data modulation.* The digital code portions of the preamble must be DPSK modulated in accordance with § 171.311(c)(1) and must be transmitted throughout the function coverage volume.

(2) *Angle function formats.* The timing of the angle transmissions must be in accordance with Tables 4a, 4b, and 5. The actual timing of the TO and FRO scans must be as required to meet the accuracy requirements of §§ 171.313 and 171.317.

(i) Preamble. Must be in accordance with requirements of § 171.311(i)(1).

TABLE 2.—PREAMBLE TIMING [1]

Event	Event time slot begins at— 15.625 kHz clock pulse (number)	Event time slot begins at— Time (milliseconds)
Carrier acquisition:		
(CW transmission)	0	0
Receiver reference time code:		
$I_1=1$	13	0.832
$I_2=1$	14	0.896
$I_3=1$	15	0.960
$I_4=0$	16	1.024
$I_5=1$	17	[2] 1.088
Function identification:		
I_6	18	1.152
I_7	19	1.216
I_8	20	1.280
I_9	21	1.344
I_{10} (see table 1)	22	1.408
I_{11}	23	1.472
I_{12}	24	1.536
END PREAMBLE	25	1.600

[1] Applies to all functions transmitted.
[2] Reference time for receiver synchronization for all function timing.

TABLE 3.—FUNCTION IDENTIFICATION CODES

Function	Code I_6	I_7	I_8	I_9	I_{10}	I_{11}	I_{12}
Approach azimuth	0	0	1	1	0	0	1
High rate approach azimuth	0	0	1	0	1	0	0
Approach elevation	1	1	0	0	0	0	1
Back azimuth	1	0	0	1	0	0	1
Basic data 1	0	1	0	1	0	0	0
Basic data 2	0	1	1	1	1	0	0
Basic data 3	1	0	1	0	0	0	0
Basic data 4	1	0	0	0	1	0	0
Basic data 5	1	1	0	1	1	0	0
Dasic data 6	0	0	0	1	1	0	1
Auxiliary data A	1	1	1	0	0	1	0
Auxiliary data B	1	0	1	0	1	1	1
Auxiliary data C	1	1	1	1	0	0	0

(ii) *Sector signals.* In all azimuth formats, sector signals must be transmitted to provide Morse Code identification, airborne antenna selection, and system test signals. These signals are not required in the elevation formats. In addition, if the signal from an installed ground component results in a valid indication in an area where no valid guidance should exist, OCI signals must be radiated as provided for in the

signal format (see Tables 4a, 4b, and 5). The sector signals are defined as follows:

(A) *Morse Code.* DPSK transmissions that will permit Morse Code facility identification in the aircraft by a four letter code starting with the letter "M" must be included in all azimuth functions. They must be transmitted and repeated at approximately equal intervals, not less than six times per minute, during which time the ground subsystem is available for operational use. When the transmissions of the ground subsystem are not available, the identification signal must be suppressed. The audible tone in the aircraft is started by setting the Morse Code bit to logic "1" and stopped by a logic "0" (see Tables 4a and 4b). The identification code characteristics must conform to the following: the dot must be between 0.13 and 0.16 second in duration, and the dash between 0.39 and 0.48 second. The duration between dots and/or dashes must be one dot plus or minus 10%. The duration between characters (letters) must not be less than three dots. When back azimuth is provided, the code shall be transmitted by the approach azimuth and back azimuth within plus or minus 0.08 seconds.

(B) *Airborne antenna selection.* A signal for airborne antenna selection shall be transmitted as a "zero" DPSK signal lasting for a six-bit period (see Tables 4a and 4b).

TABLE 4a.—APPROACH AZIMUTH FUNCTION TIMING

Event	Event time slot begins at—	
	15.625 kHz clock pulse (number)	Time (milliseconds)
Preamble	0	0
Morse code	25	1.600
Antenna select	26	1.664
Rear OCI	32	2.048
Left OCI	34	2.176
Right OCI	36	2.304
To test	38	2.432
To scan [1]	40	2.560
Pause		8.760
Midscan point		9.060
FRO scan [1]		9.360
FRO test		15.560
End Function (Airborne)		15.688
End guard time; end function (ground)		15.900

[1] The actual commencement and completion of the TO and the FRO scan transmissions are dependent on the amount of proportional guidance provided. The time slots provided shall accommodate a maximum scan of plus or minus 62.0 degrees. Scan timing shall be compatible with accuracy requirements.

TABLE 4b.—HIGH RATE APPROACH AZIMUTH AND BACK AZIMUTH FUNCTION TIMING

Event	Event time slot begins at—	
	15.625 kHz clock pulse (number)	Time (milliseconds)
Preamble	0	0
Morse Code	25	1.600
Antenna select	26	1.664
Rear OCI	32	2.048
Left OCI	34	2.176
Right OCI	36	2.304
To test	38	2.432
To scan [1]	40	2.560
Pause		6.760
Midscan point		7.060
FRO scan [1]		7.360
FRO test pulse		11.560
End function (airborne)		11.688
End guard time; end function (ground)		11.900

[1] The actual commencement and completion of the TO and the FRO scan transmissions are dependent on the amount of proportional guidance provided. The time slots provided will accommodate a maximum scan of plus or minus 42.0 degrees. Scan timing shall be compatible with accuracy requirements.

(C) *OCI.* Where OCI pulses are used, they must be: (1) greater than any guidance signal in the OCI sector; (2) at least 5 dB less than the level of the scanning beam within the proportional guidance sector; and (3) for azimuth functions with clearance signals, at least 5 dB less than the level of the left (right) clearance pulses within the left (right) clearance sector.

TABLE 5.—APPROACH ELEVATION FUNCTION TIMING

Event	Event time slot begins at:	
	15.625 kHz clock pluse (number)	Time (milliseconds)
Preamble	0	0
Processor pause	25	1.600
OCI	27	1.728
To scan [1]	29	1.856
Pause		3.406
Midscan point		3.606
FRO scan [1]		3.806
End function (airborne)		5.356
End guard time; end function (ground)		5.600

[1] The actual commencement and completion of the TO and FRO scan transmissions are dependent upon the amount of proportional guidance provided. The time slots provided will accommodate a maximum scan of −1.5 degrees to +29.5 degrees. Scan timing shall be compatible with accuracy requirements.

The duration of each pulse measured at the half amplitude point shall be at least 100 microseconds, and the rise and fall times shall be less then 10 microseconds. It shall be permissible to sequentially transmit two pulses in each out-of-coverage indication time slot. Where pulse pairs are used, the duration of each pulse shall be at least 50 microseconds, and the rise and fall times shall be less then 10 microseconds. The transmission of out-of-coverage indication pulses radiated from antennas with overlapping coverage patterns shall be separated by at least 10 microseconds.

Note.—If desired, two pulses may be sequentially transmitted in each OCI time slot. Where pulse pairs are used, the duration of each pulse must be 45 (±5) microseconds and the rise and fall times must be less than 10 microseconds.

(D) *System test.* Time slots are provided in Tables 4a and 4b to allow radiation of TO and FRO test pulses. However, radiation of these pulses is not required since the characteristics of these pulses have not yet been standardized.

(iii) *Angle encoding.* The encoding must be as follows:

(A) *General.* Azimuth and elevation angles are encoded by scanning a narrow beam between the limits of the proportional coverage sector first in one direction (the TO scan) and then in the opposite direction (the FRO scan). Angular information must be encoded by the amount of time separation between the beam centers of the TO and FRO scanning beam pulses. The TO and FRO transmissions must be symmetrically disposed about the midscan point listed in Tables 4a, 4b, 5, and 7. The midscan point and the center of the time interval between the TO and FRO scan transmissions must coincide with a tolerance of ±10 microseconds. Angular coding must be linear with angle and properly decoded using the formula:

$$\theta = \frac{V}{2}(T_o - t)$$

where:

θ = Receiver angle in degrees.
V = Scan velocity in degrees per microsecond.
T_o = Time separation in microseconds between TO and FRO beam centers corresponding to zero degrees.
t = Time separation in microseconds between TO and FRO beam centers.

The timing requirements are listed in Table 6 and illustrated in Figure 7.

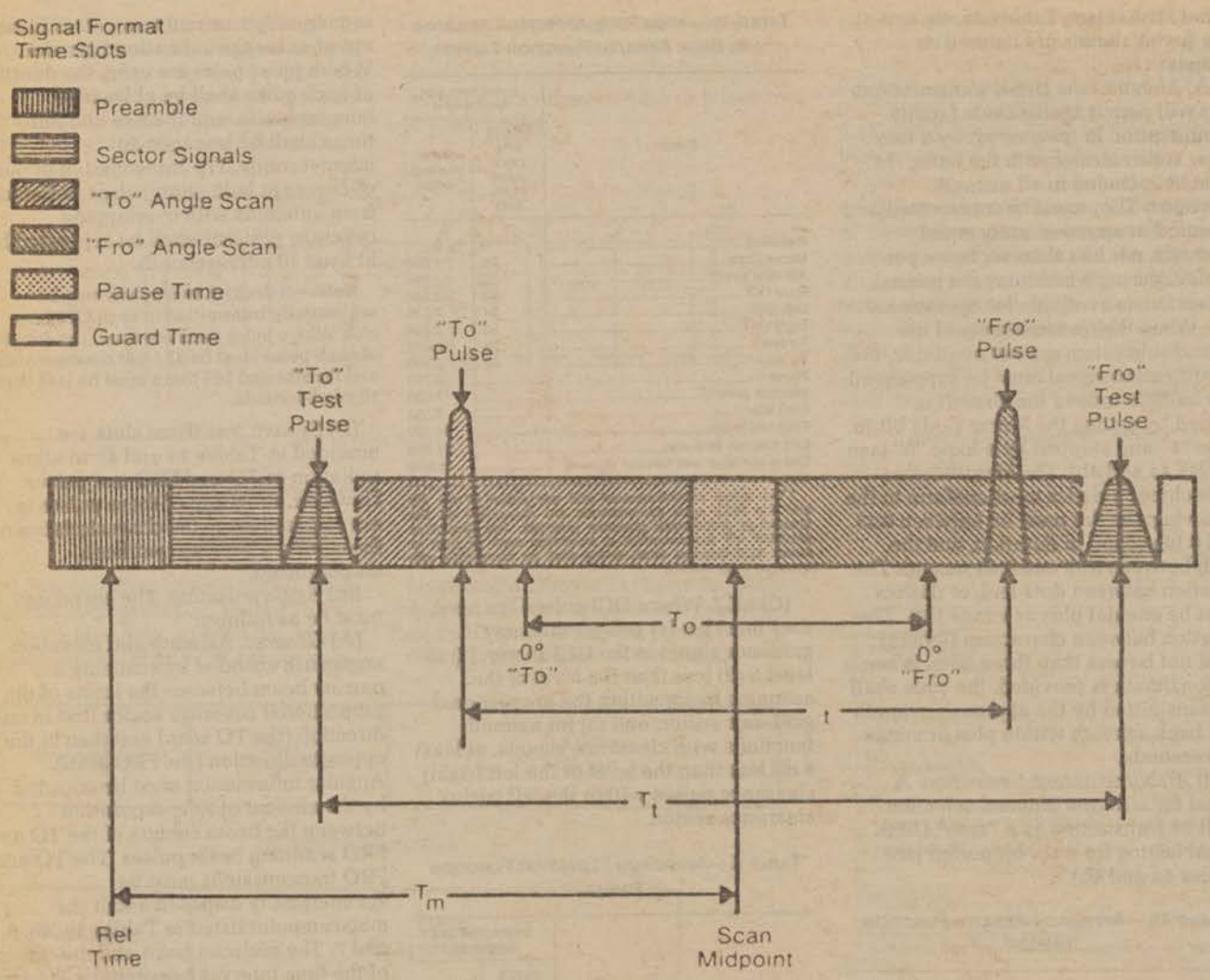


Figure 7. Azimuth Angle Scan Timing (Not to Scale)

(B) *Azimuth angle encoding.* Each guidance angle transmitted must consist of a clockwise TO scan followed by a counterclockwise FRO scan as viewed from above the antenna. For approach azimuth functions, increasing angle values must be in the direction of the TO scan; for the back azimuth function, increasing angle values must be in the direction of the FRO scan. The antenna has a narrow beam in the plane of the scan direction and a broad beam in the orthogonal plane which fills the vertical coverage.

(C) *Elevation angle encoding.* The radiation from elevation equipment must produce a beam which scans from the horizon up to the highest elevation angle and then scans back down to the horizon. The antenna has a narrow beam in the plane of the scan direction and a broad beam in the orthogonal plane which fills the horizontal coverage. Elevation angles are defined from the horizontal plane containing the antenna phase center; positive angles are above the horizontal and zero angle is along the horizontal.

(iv) *Clearance guidance.* The timing of the clearance pulses must be in accordance with Figure 8. For azimuth elements with proportional coverage of less than ±40 degrees (±20 degrees for back azimuth), clearance guidance information must be provided by transmitting pulses in a TO and FRO format adjacent to the stop/start times of the scanning beam signal. The fly-right clearance pulses must represent positive angles and the fly-left clearance pulses must represent negative angles. The duration of each clearance pulse must be 50 microseconds with a tolerance of ±5 microseconds. The transmitter switching time between the clearance pulses and the scanning beam transmissions must not exceed 10 microseconds. The rise time at the edge of each clearance pulse must be less than 10 microseconds. Within the fly-right clearance guidance section, the fly-right clearance guidance signal shall exceed scanning beam antenna sidelobes and other guidance and OCI signals by at least 5 dB; within the fly-left clearance guidance sector, the fly left clearance guidance signal shall exceed scanning beam antenna sidelobes and all other guidance and OCI signals by at least 5 dB; within the proportional guidance sector, the clearance guidance signals shall be at least 5dB below the proportional guidance signal. Optionally, clearance guidance may be provided by scanning throughout the approach guidance sector. For angles outside the approach azimuth proportional coverage limits as set in Basic Data Word One (Basic Data Word 5 for back azimuth), proper decode and display of clearance guidance must occur to the limits of the guidance region. Where used, clearance pulses shall be transmitted adjacent to the scanning beam signals at the edges of proportional coverage as shown in

Figure 8. The proportional coverage boundary shall be established at one beamwidth inside the scan start/stop angles, such that the transition between scanning beam and clearance signals occurs outside the proportional coverage sector. When clearance pulses are provided in conjunction with a narrow beamwidth (e.g., one degree) scanning antenna, the scanning beam antenna shall radiate for 15 microseconds while stationary at the scan start/stop angles.

(3) *Data function format.* Basic data words provide equipment characteristics and certain siting information. Basic data words must be transmitted from an antenna located at the approach azimuth or back azimuth site which provides coverage throughout the appropriate sector. Data function timing must be in accordance with Table 7a.

TABLE 6.—ANGLE SCAN TIMING CONSTANTS

Function	Max value of θ (usec)	T_a (usec)	V(deg/usec)	T_m (usec)	Pause time (usec)	T_s (usec)
Approach azimuth	13,000	6,800	0.02	7,972	600	13,128
High rate approach azimuth	9,000	4,800	0.02	5,972	600	9,128
Approach elevation	3,500	3,350	0.02	2,518	400	N/A
Back azimuth	9,000	4,800	−0.02	5,972	600	9,128

TABLE 7a.—BASIC DATA FUNCTION TIMING

Event	Event time slot begins at:[1]	
	15.625 kHz clock pulse (number)	Time (milliseconds)
Preamble	0	0
Data transmission (bits I_{12}–I_{30})	25	1.600
Parity transmission (bits I_{31}–I_{32})	43	2.752
End function (airborne)	45	2.880
End guard time: end function (ground)		3.100

[1] The previous event time slot ends at this time.

TABLE 7b.—AUXILIARY DATA FUNCTION TIMING—(DIGITAL)

Event	Event time slot begins at:	
	15.625 kHz clock pulse (number)	Time (milliseconds)
Preamble	0	0
Address transmission (bits I_{12}–I_{20})	25	1.600
Data transmission: (bits I_{21}–I_{68})	33	2.112
Parity transmission (bits I_{69}–I_{76})	82	5.248
End function (airborne)	89	5.696
End guard time; end function (ground)		5.900

TABLE 7c.—AUXILIARY DATA FUNCTION TIMING—(ALPHANUMERIC)

Event	Event time slot begins at:	
	15.615 kHz clock pulse (number)	Time (milliseconds)
Preamble	0	0
Address transmission (bits I_{13}–I_{20})	25	1.600
Data transmission: (bits I_{21}–I_{76}	33	2.112
End function (airborne)	89	5.696
End guard time; (end function ground)		5.900

(i) *Preamble.* Must be in accordance with requirements of § 171.311(i)(1).

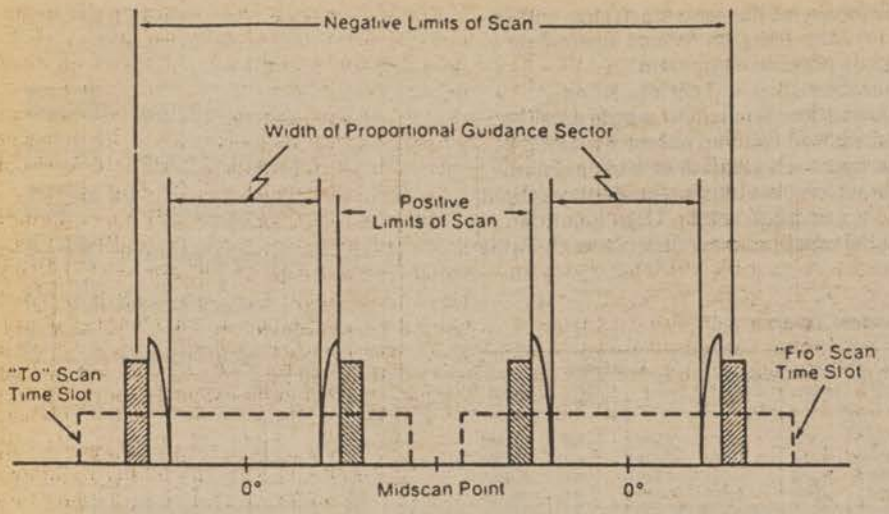
(ii) *Data transmissions.* Basic data must be transmitted using DPSK modulation. The content and repetition rate of each basic data word must be in accordance with Table 8a. For data containing digital information, binary number 1 must represent the lower range limit with increments in binary steps to the upper range limit shown in Table 8a. Data containing digital information shall be transmitted with the least significant bit first.

(j) *Basic Data word requirements.* Basic Data shall consist of the items specified in Table 8a. Basic Data word contents shall be defined as follows:

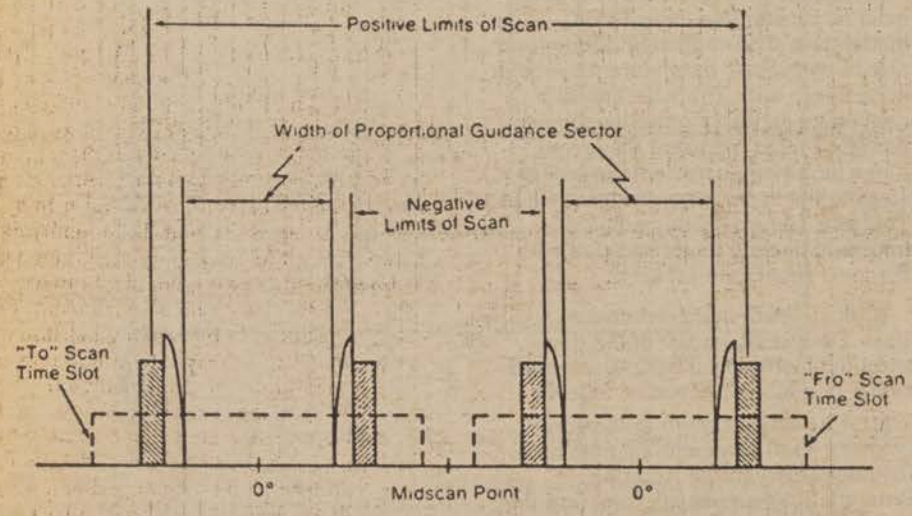
(1) *Approach azimuth to threshold distance* shall represent the minimum distance between the Approach Azimuth antenna phase center and the vertical plane perpendicular to the centerline which contains the landing threshold.

(2) *Approach azimuth proportional coverage limit* shall represent the limit of the sector in which proportional approach azimuth guidance is transmitted.

(3) *Clearance signal type* shall represent the type of clearance when used. Pulse clearance is that which is in accordance with § 171.311 (i) (2) (iv). Scanning Beam (SB) clearance indicates that the proportional guidance sector is limited by the proportional coverage limits set in basic data.



(a) APPROACH AZIMUTH



(b) BACK AZIMUTH

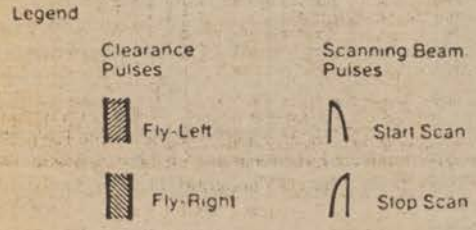


Figure 8. Clearance Pulse Timing for Azimuth Functions

TABLE 8a.—BASIC DATA WORDS

Data bit #	Data item definition	LSB value	Data bit value
	Basic Data Word No. 1		
1	Preamble	N/A	1
2			1
3			1
4			0
5			1
6			0
7			1
8			0
9			1
10			0
11			0
12			0
13	Approach azimuth to threshold distance (Om–630m).	100m	100m
14			200m
15			400m
16			800m
17			1600m
18			3200m
19	Approach azimuth proportional coverage limit (negative limit) (0° to −62°).	2°	−2°
20			−4°
21			−8°
22			−16°
23			−32°
24	Approach azimuth proportional coverage limit (positive limit) (0° to +62°).	2°	2°
25			4°
26			8°
27			16°
28			32°
29	Clearance signal type	N/A	0=pulse; 1=SB
30	Spare		Transmit zero
31	Parity: (13+14+15. . .+30 +31=odd).	N/A	N/A
32	Parity: (14+16+18. . .+30 +32=odd).	N/A	N/A

Note 1: Transmit throughout the Approach Azimuth guidance sector at intervals of 1.0 seconds or less.

Note 2: The all zero state of the data field represents the lower limit of the absolute value of the coded parameter unless otherwise noted.

TABLE 8a.—BASIC DATA WORDS—Continued

Data bit #	Data item definition	LSB value	Data bit value
	Basic Data Word No. 2		
1	Preamble	N/A	1
2			1
3			1
4			0
5			1
6			0
7			1
8			1
9			1
10			1
11			0
12			0
13	Minimum glide path (2.0° to 14.7°).	0.1°	0.1°
14			0.2°
15			0.4°
16			0.8°
17			1.6°
18			3.2°
19			6.4°
20	Back azimuth status		see note 4
21	DME status		see note 6
22			
23	Approach azimuth status		see note 4
24	Approach azimuth status		see note 4
25	Spare		Transmit zero
26	do		Do.
27	do		Do.
28	do		Do.
29	do		Do.
30	do		Do.
31	Parity: (13+14+15. . .+30 +31=odd).	N/A	N/A
32	Parity: (14+16+18. . .+30 +32=odd).	N/A	N/A

Note 1: Transmit throughout the Approach Azimuth guidance sector at intervals of 0.16 seconds or less.
Note 2: The all zero state of the data field represents the lower limit of the absolute range of the coded parameter unless otherwise noted.

	Basic Data Word No. 3		
1	Preamble	N/A	1
2			1
3			1
4			0
5			1
6			1
7			0
8			1
9			0
10			0
11			0
12			0
13	Approach azimuth beamwidth (0.5°–4.0°) See note 7.	0.5°	0.5°
14			1.0°
15			2.0°
16	Approach elevation beamwidth (0.5° to 2.5°) See note 7.	0.5°	0.5°
17			1.0°
18	Note: values greater than 2.5° are invalid.		2.0°
19	DME distance (0m to 6387.5m.	12.5m	12.5m
20			25.0m
21			50.0m
22			100.0m
23			200.0m
24			400.0m
25			800.0m
26			1600.0m
27			3200.0m
28	Spare		Transmit zero
29	do		Do.
30	do		Do.
31	Parity: (13+14+15. . .+30 +31=odd).		

TABLE 8a.—BASIC DATA WORDS—Continued

Data bit #	Data item definition	LSB value	Data bit value
32	Parity: (14+16+18. . .+30 +32=odd).	N/A	N/A

Note 1: Transmit throughout the Approach Azimuth guidance sector at intervals of 1.0 seconds or less.
Note 2: The all zero state of the data field represents the lower limit of the absolute range of the coded parameter unless otherwise noted.

	Basic Data Word No. 4		
1	Preamble	N/A	1
2			1
3			1
4			0
5			1
6			1
7			0
8			0
9			0
10			1
11			0
12			0
13	Approach azimuth magnetic orientation (0° to 359°).	1°	1°
14			2°
15			4°
16			8°
17			16°
18			32°
19			64°
20			128°
21			256°
22	Back azimuth magnetic orientation (0° to 359°).	1°	1°
23			2°
24			4°
25			8°
26			16°
27			32°
28			64°
29			128°
30			256°
31	Parity: (13+14+15. . .+30 +31=odd).	N/A	N/A
32	Parity: (14+16+18. . .+30 +32=odd).	N/A	N/A

Note 1: Transmit at intervals of 1.0 second or less throughout the Approach Azimuth guidance sector, except when Back Azimuth guidance is provided. See Note 8.
Note 2: The all zero state of the data field represents the lower limit of the absolute range of the coded parameter unless otherwise noted.

	Basic Data Word No. 5		
1	Preamble	N/A	1
2			1
3			1
4			0
5			1
6			1
7			1
8			0
9			1
10			1
11			0
12			0
13	Back azimuth proportional coverage negative limit (0° to −42°).	2°	−2°
14			−4°
15			−8°
16			−16°
17			−32°
18	Back azimuth proportional coverage positive limit (0° to +42°).	2°	2°
19			4°
20			8°
21			16°
22			32°
23	Back azimuth beamwidth (0.5° to 4.0°) See note 7.	0.5°	0.5°

TABLE 8a.—BASIC DATA WORDS—Continued

Data bit #	Data item definition	LSB value	Data bit value
24			1.0°
25			2.0°
26	Back azimuth status		See Note 10
27	do		Do.
28	do		Do.
29	do		Do.
30	do		Do.
31	Parity: (13+14+15. . .+30 +31=odd).	N/A	N/A
32	Parity: (14+16+18. . .+30 +32=odd).	N/A	N/A

Note 1: Transmit only when Back Azimuth guidance is provided. See note 9.
Note 2: The all zero state of the data filed represents the lower limit of the absolute range of the coded parameter unless otherwise noted.

	Basic Data Word No. 6		
1	Preamble	N/A	1
2			1
3			1
4			0
5			1
6			0
7			0
8			0
9			1
10			1
11			0
12			1
(13–30)	MLS ground equipment identification (Note 3).		
13	Character 2	N/A	B1
14			B2
15			B3
16			B4
17			B5
18			B6
19	Character 3	N/A	B1
20			B2
21			B3
22			B4
23			B5
24			B6
25	Character 4	N/A	B1
26			B2
27			B3
28			B4
29			B5
30			B6
31	Parity: (13+14+15. . .+30 +31=odd).	N/A	N/A
32	Parity: (14+16+18. . .+30 +32=odd).	N/A	N/A

Note 1: Transmit at intervals of 1.0 second or less throughout the Approach Azimuth guidance sector, except when Back Azimuth guidance is provided. See note 8.

Note 3: Characters are encoded using the International Alphabet Number 5, (IA–5):
Note 4: Coding for status bit:
0=Function not radiated, or radiated in test mode (not reliable for navigation).
1=Function radiated in normal mode (for Back Azimuth, this also indicates that a Back Azimuth transmission follows).
Note 5: Date items which are not applicable to a particular ground equipment shall be transmitted as all zeros.
Note 6: Coding for status bits:

I_{b1}	I_{b2}	
0	0	DME transponder inoperative or not available.
1	0	Only IA mode or DME/N available.
0	0	FA mode, Standard 1, available.
1	1	FA mode, Standard 2, available.

Note 7: The value coded shall be the actual beamwidth (as defined in § 171.311 (j)(9) rounded to the nearest 0.5 degree.
Note 8: When back Azimuth guidance is provided, Data Words 4 and 6 shall be transmitted at intervals of 1.33 seconds or less throughout the Approach Azimuth coverage and 4 seconds or less throughout the Back Azimuth coverage.
Note 9: When Back Azzimuth guidance is provided, Data Word 5 shall be transmitted at an interval of 1.33 seconds or less through out the Back Azimuth coverage sector and 4 seconds or less throughout the Approach Azimuth coverage sector.
Note 10: Coding for status bit:
0=Function not radiated, or radiated in test mode (not reliable for navigation).
1=Function radiated in normal mode.

(4) *Minimum glidepath* the lowest angle of descent along the zero degree azimuth that is consistent with published approach procedures and obstacle clearance criteria.

(5) *Back azimuth status* shall represent the operational status of the Back Azimuth equipment.

(6) *DME status* shall represent the operational status of the DME equipment.

(7) *Approach azimuth status* shall represent the operational status of the approach azimuth equipment.

(8) *Approach elevation status* shall represent the operational status of the approach elevation equipment.

(9) *Beamwidth* the width of the scanning beam main lobe measured at the -3 dB points and defined in angular units on the antenna boresight, in the horizontal plane for the azimuth function and in the vertical plane for the elevation function.

(10) *DME distance* shall represent the minimum distance between the DME antenna phase center and the vertical plane perpendicular to the runway centerline which contains the MLS datum point.

(11) *Approach azimuth magnetic orientation* shall represent the angle measured in the horizontal plane clockwise from Magnetic North to the zero-degree angle guidance radial originating from the approach azimuth antenna phase center. The vertex of the measured angle shall be at the approach azimuth antenna phase center.

Note.—For example, this data item would be encoded 090 for an approach azimuth antenna serving runway 27 (assuming the magnetic heading is 270 degrees) when sited such that the zero degree radial is parallel to centerline.

(12) *Back azimuth magnetic orientation* shall represent the angle measured in the horizontal plane clockwise from Magnetic North to the zero-degree angle guidance radial originating from the Back Azimuth antenna. The vertex of the measured angle shall be at the Back Azimuth antenna phase center.

Note.—For example, this data item would be encoded 270 for a Back Azimuth Antenna serving runway 27 (assuming the magnetic heading is 270 degrees) when sited such that the zero degree radial is parallel to centerline.

(13) *Back azimuth proportional coverage limit* shall represent the limit of the sector in which proportional back azimuth guidance is transmitted.

(14) *MLS ground equipment identification* shall represent the last three characters of the system identification specified in § 171.311(i)(2). The characters shall be encoded in accordance with International Alphabet No. 5 (IA–5) using bits b_1 through b_6.

Note.—Bit b_7 of this code may be reconstructed in the airborne receiver by taking the complement of bit b_6.

(k) *Residual radiation.* The residual radiation of a transmitter associated with an MLS function during time intervals when it should not be transmitting shall not adversely affect the reception of any other function. The residual radiation of an MLS function at times when another function is radiating shall be at least 70 dB below the level provided when transmitting.

(l) *Symmetrical scanning.* The TO and FRO scan transmissions shall be symmetrically disposed about the mid-scan point listed in Tables 4a, 4b and 5. The mid-scan point and the center of the time interval between the TO and FRO scan shall coincide with a tolerance of plus or minus 10 microseconds.

(m) *Auxiliary data*—(1) *Addresses.* Three function identification codes are reserved to indicate transmission of Auxiliary Data A, Auxiliary Data B, and Auxiliary Data C. Auxiliary Data A contents are specified below, Auxiliary Data B contents are reserved for future use, and Auxiliary Data C contents are reserved for national use. The address codes of the auxiliary data words shall be as shown in Table 8b.

(2) *Organization and timing.* The organization and timing of digital auxiliary data must be as specified in Table 7b. Data containing digital information must be transmitted with the least significant bit first. Alphanumeric data characters must be encoded in accordance with the 7-unit code character set as defined by the American National Standard Code for Information Interchange (ASCII). An even parity bit is added to each character. Alphanumeric data must be transmitted in the order in which they are to be read. The serial transmission of a character must be with the lower order bit transmitted first and the parity bit transmitted last. The timing for alphanumeric auxiliary data must be as shown in Table 7c.

(3) *Auxiliary Data A content:* The data items specified in Table 8c are defined as follows:

(i) *Approach azimuth antenna offset* shall represent the minimum distance between the Approach Azimuth antenna phase center and the vertical plane containing the runway centerline.

(ii) *Approach azimuth to MLS datum point distance* shall represent the minimum distance between the Approach Azimuth antenna phase center and the vertical plane perdenicular to the centerline which contains the MLS datum point.

(iii) *Approach azimuth alignment with runway centerline* shall represent the minimum angle between the approach azimuth antenna zero-degree guidance plane and the runway certerline.

(iv) *Approach azimuth antenna coordinate system* shall represent the coordinate system (planar or conical) of the angle data transmitted by the approach azimuth antenna.

(v) *Approach elevation antenna offset* shall represent the minimum distance between the elevation antenna phase center and the vertical plane containing the runway centerline.

(vi) *MLS datum point to threshold distance* shall represent the distance measured along the runway centerline from the MLS datum point to the runway threshold.

(vii) *Approach elevation antenna height* shall represent the height of the elevation antenna phase center relative to the height of the MLS datum point.

(viii) *DME offset* shall represent the minimum distance between the DME antenna phase center and the vertical plane containing the runway centerline.

(ix) *DME to MLS datum point distance* shall represent the minimum distance between the DME antenna phase center and the vertical plane perpendicular to the centerline which contains the MLS datum point.

(x) *Back azimuth antenna offset* shall represent the minimum distance between the back azimuth antenna phase center and the vertical plane containing the runway centerline.

(xi) *Back azimuth to MLS datum point distance* shall represent the minimum distance between the Back Azimuth antenna and the vertical plane perpendicular to the centerline which contains the MLS datum point.

(xii) *Back azimuth antenna alignment with runway centerline* shall represent the minimum angle between the back azimuth antenna zero-degree giudance plane and the runway centerline.

§ 171.313 Azimuth performance requirements.

This section prescribes the performance requirements for the azimuth equipment of the MLS as follows:

(a) *Approach azimuth coverage requirements.* The approach azimuth equipment must provide guidance information in at least the following volume of space (see Figure 9):

TABLE 8b.—AUXILIARY DATA WORD ADDRESS CODES

No.	I_{13}	I_{14}	I_{15}	I_{16}	I_{17}	I_{18}	I_{19}	I_{20}
1.	0	0	0	0	0	1	1	1
2.	0	0	0	0	1	0	1	0
3.	0	0	0	0	1	1	0	1
4.	0	0	0	1	0	0	1	1
5.	0	0	0	1	0	1	0	0
6.	0	0	0	1	1	0	0	1
7.	0	0	0	1	1	1	1	0
8.	0	0	1	0	0	0	1	0
9.	0	0	1	0	0	1	0	1
10.	0	0	1	0	1	0	0	0
11.	0	0	1	0	1	1	1	1
12.	0	0	1	1	0	0	0	1
13.	0	0	1	1	0	1	1	0
14.	0	0	1	1	1	0	1	1
15.	0	0	1	1	1	1	0	0
16.	0	1	0	0	0	0	1	1
17.	0	1	0	0	0	1	0	0
18.	0	1	0	0	1	0	0	1
19.	0	1	0	0	1	1	1	0
20.	0	1	0	1	0	0	0	0
21.	0	1	0	1	0	1	1	1
22.	0	1	0	1	1	0	1	0
23.	0	1	0	1	1	1	0	1
24.	0	1	1	0	0	0	0	1
25.	0	1	1	0	0	1	1	0
26.	0	1	1	0	1	0	1	1
27.	0	1	1	0	1	1	0	0
28.	0	1	1	1	0	0	1	0
29.	0	1	1	1	0	1	0	1
30.	0	1	1	1	1	0	0	0
31.	0	1	1	1	1	1	1	1
32.	1	0	0	0	0	0	1	0
33.	1	0	0	0	0	1	0	1
34.	1	0	0	0	1	0	0	0
35.	1	0	0	0	1	1	1	1
36.	1	0	0	1	0	0	0	1
37.	1	0	0	1	0	1	1	0
38.	1	0	0	1	1	0	1	1
39.	1	0	0	1	1	1	0	0
40.	1	0	1	0	0	0	0	0
41.	1	0	1	0	0	1	1	1
42.	1	0	1	0	1	0	1	0
43.	1	0	1	0	1	1	0	1
44.	1	0	1	1	0	0	1	1
45.	1	0	1	1	0	1	0	0
46.	1	0	1	1	1	0	0	1
47.	1	0	1	1	1	1	1	0
48.	1	1	0	0	0	0	0	1
49.	1	1	0	0	0	1	1	0
50.	1	1	0	0	1	0	1	1
51.	1	1	0	0	1	1	0	0
52.	1	1	0	1	0	0	1	0
53.	1	1	0	1	0	1	0	1
54.	1	1	0	1	1	0	0	0
55.	1	1	0	1	1	1	1	1
56.	1	1	1	0	0	0	1	1
57.	1	1	1	0	0	1	0	0
58.	1	1	1	0	1	0	0	1
59.	1	1	1	0	1	1	1	0
60.	1	1	1	1	0	0	0	0
61.	1	1	1	1	0	1	1	1
62.	1	1	1	1	1	0	1	0
63.	1	1	1	1	1	1	0	1
64.	0	0	0	0	0	0	0	0

Note 1.—Parity bits I_{19} and I_{20} are chosen to satisfy the equations:

$I_{13}+I_{14}+I_{15}+I_{16}+I_{17}+I_{18}+I_{19}=\text{EVEN}$

$I_{14}+I_{16}+I_{18}+I_{20}=\text{EVEN}$

TABLE 8c.—AUXILIARY DATA

Word (See note 6)	Data content	Type of data	Maximun time between transmissions (Seconds)	Bits used	Range of values	Least significant bit
A1	Preamble	Digital	1.0	12		
	Address			8		
	Approach azimuth antenna offset			10	−511 m to +511 m (See note 3)	1 m
	Approach azimuth to MLS datum point distance			13	0 m to 8 191 m	1 m
	Approach azimuth antenna alignment with runway centerline			12	−20.47° to 20.47° (See note 3)	0.01°
	Approach azimuth antenna coordinate system			1	(See note 2)	
	Spare			13		
	Parity			7	(See note 1)	
A2	Preamble	Digital	1.0	12		
	Address			8		
	Approach elevation antenna offset			10	−511 m to +511 m (See note 3)	1 m
	MLS datum point to threshold distance			10	0 m to 1 023 m	1 m
	Approach elevation antenna height			7	−6.3 m to +6.3 m (See note 3)	0.1 m
	Spare			22		
	Parity			7	(See note 1)	
A3	Preamble	Digital	(See note 4)	12		
	Address			8		
	DME offset			10	−511 m to +511 m	1 m
	DME to MLS datum point distance			14	−8 191 m to +8 191 m (See note 3)	1 m
	Spare			25		
	Parity			7	(See note 1)	
A4	Preamble	Digital	(See note 5)	12		
	Address			8		
	Back azimuth antenna			10	−511 m to +511 m (See note 3)	1 m
	Back azimuth to MLS datum point distance			11	0 m to 2 047 m	1 m
	Back azimuth antenna alignment with runway centerline			12	−20.47° to 20.47° (See note 3)	0.01°
	Spare			16		
	Parity			7	(See note 1)	

Note 1: Parity bits I_{70} to I_{76} are chosen to satisfy the equations which follow:

For BIT I_{70}:

$\text{Even}=(I_{13}+\ldots+I_{18})+I_{20}+I_{22}+I_{24}+I_{25}+I_{28}+I_{29}+I_{31}+I_{32}+I_{33}+I_{35}+I_{36}+I_{38}+I_{41}+I_{44}+I_{45}+I_{46}+I_{50}+(I_{52}+\ldots+I_{55})+I_{58}+I_{60}+I_{64}+I_{65}+I_{70}$

For BIT I_{71}:

$\text{Even}=(I_{14}+\ldots+I_{19})+I_{21}+I_{23}+I_{25}+I_{26}+I_{29}+I_{30}+I_{32}+I_{33}+I_{34}+I_{36}+I_{37}+I_{39}+I_{42}+I_{45}+I_{46}+I_{47}+I_{51}+(I_{53}+\ldots+I_{56})+I_{59}+I_{61}+I_{65}+I_{66}+I_{71}$

For BIT I_{72}:

$\text{Even}=(I_{15}+\ldots+I_{20})+I_{22}+I_{24}+I_{26}+I_{27}+I_{30}+I_{31}+I_{33}+I_{34}+I_{35}+I_{37}+I_{38}+I_{40}+I_{43}+I_{46}+I_{47}+I_{48}+I_{52}+(I_{54}+\ldots+I_{57})+I_{60}+I_{62}+I_{66}+I_{67}+I_{72}$

For BIT I_{73}:

$\text{Even}=(I_{16}+\ldots+I_{21})+I_{23}+I_{25}+I_{27}+I_{28}+I_{31}+I_{32}+I_{34}+I_{35}+I_{36}+I_{38}+I_{39}+I_{41}+I_{44}+I_{47}+I_{48}+I_{49}+I_{53}+(I_{55}+\ldots+I_{58})+I_{61}+I_{63}+I_{67}+I_{68}+I_{73}$

For BIT I_{74}:

$\text{Even}=(I_{17}+\ldots+I_{22})+I_{24}+I_{26}+I_{28}+I_{29}+I_{32}+I_{33}+I_{35}+I_{36}+I_{37}+I_{39}+I_{40}+I_{42}+I_{45}+I_{48}+I_{49}+I_{50}+I_{54}+(I_{56}+\ldots+I_{59})+I_{62}+I_{64}+I_{68}+I_{69}+I_{74}$

For BIT I_{75}:

$\text{Even}=(I_{13}+\ldots+I_{17})+I_{19}+I_{21}+I_{23}+I_{24}+I_{27}+I_{29}+I_{30}+I_{31}+I_{32}+I_{34}+I_{35}+I_{37}+I_{40}+I_{43}+I_{44}+I_{45}+I_{49}+(I_{51}+\ldots+I_{54})+I_{57}+I_{59}+I_{63}+I_{64}+I_{69}+I_{75}$

For BIT I_{76}:

$\text{Even}=I_{13}+I_{14}+\ldots+I_{75}+I_{76}$

Note 2: Code for I_{66} is: 0 = conical; 1 = planar.

Note 3: The convention for the coding of negative numbers is as follows: −MSB is the sign bit; 0 = +; 1 = −.
−Other bits represent the absolute value.
The convention for the antenna location is as follows: As viewed from the MLS approach reference datum looking toward the datum point, a positive number shall represent a location to the right of the runway centerline (lateral offset) or above the runway (vertical offset), or towards the stop end of the runway (longitudinal distance).
The convention for the antenna alignment is as follows: As viewed from above, a positive number shall represent clockwise rotation from the runway centerline to the respective zero-degree guidance plane.

Note 4: Data Word A3 is transmitted at intervals of 1.0 seconds or less throughout the approach Azimuth coverage sector, except when back Azimuth guidance is provided. Where back Azimuth is provided transmit at intervals of 1.33 seconds or less throughout the approach Azimuth sector and 4.0 seconds or less throughout the back Azimuth coverage sector.

Note 5: When back Azimuth guidance is provided, transmit at intervals of 1.33 seconds or less throughout the back Azimuth coverage sector and 4.0 seconds or less throughout the approach Azimuth coverage sector.

Note 6: The designation "A1" represents the function identification code for "Auxiliary Data A" and address code number 1.

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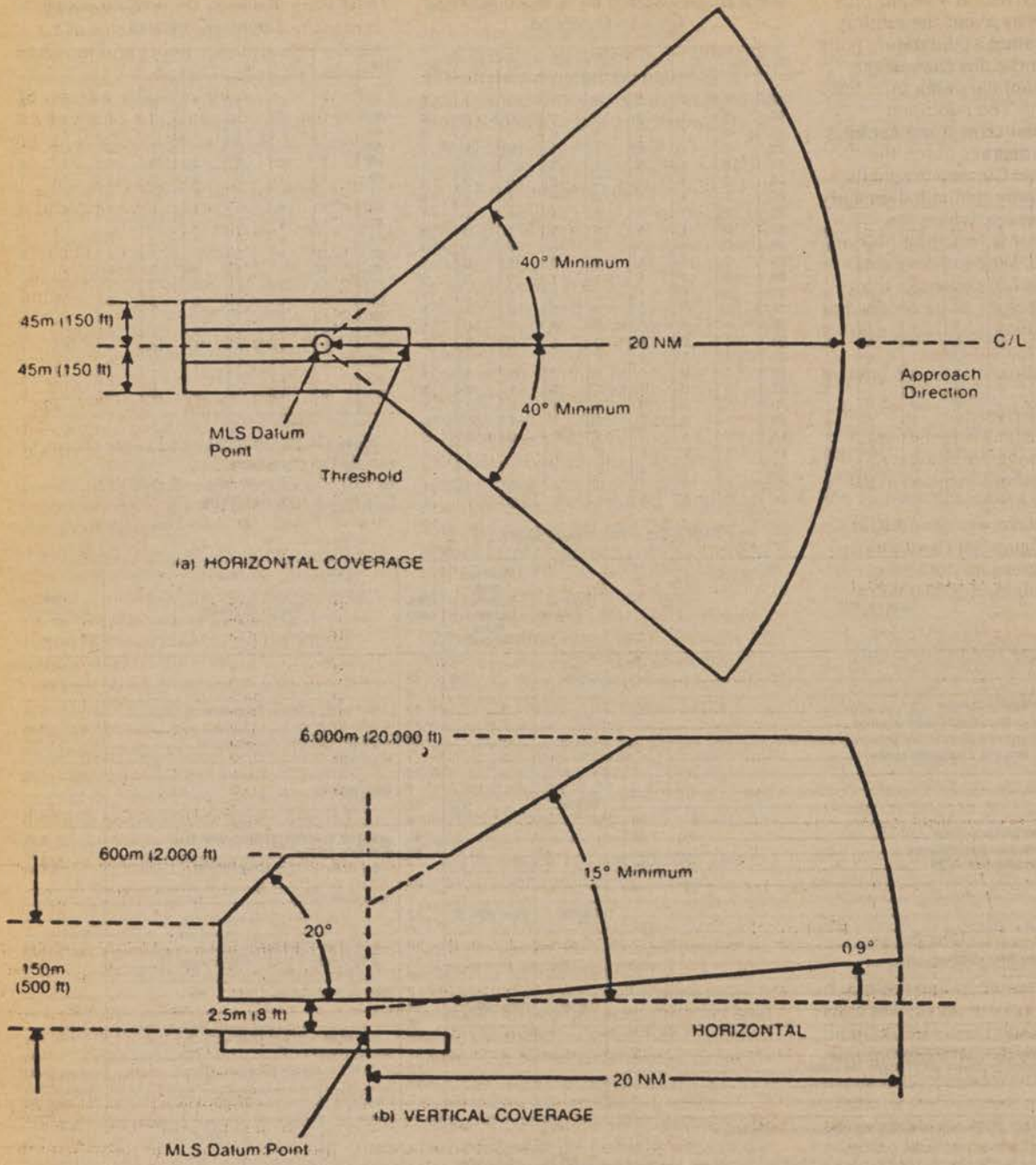

Figure 9. Approach Azimuth/Data Coverage

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(1) Horizontally within a sector plus or minus 40 degrees about the runway centerline originating at the datum point and extending in the direction of the approach to 20 nautical miles from the runway threshold. The minimum proportional guidance sector must be plus or minus 10 degrees about the runway centerline. Clearance signals must be used to provide the balance of the required coverage, where the proportional sector is less than plus or minus 40 degrees. When intervening obstacles prevent full coverage, the ±40° guidance sector can be reduced as required. For systems providing ±60° lateral guidance the coverage requirement is reduced to 14 nm beyond ±40°.

(2) Vertically between:

(i) A conical surface originating 2.5 meters (8 feet) above the runway centerline at threshold inclined at 0.9 degree above the horizontal.

(ii) A conical surface originating at the azimuth ground equipment antenna inclined at 15 degrees above the horizontal to a height of 6000 meters (20,000 feet).

(iii) Where intervening obstacles penetrate the lower surface, coverage need be provided only to the minimum line of sight.

(3) Runway region:

(i) Proportional guidance horizontally within a sector 45 meters (150 feet) each side of the runway centerline beginning at the stop end and extending parallel with the runway centerline in the direction of the approach to join the approach region. This requirement does not apply to offset azimuth installations.

(ii) Vertically between a horizontal surface which is 2.5 meters (8 feet) above the farthest point of runway centerline which is in line of sight of the azimuth antenna, and in a conical surface originating at the azimuth ground equipment antenna inclined at 20 degrees above the horizontal up to a height to 600 meters (2000 feet). This requirement does not apply to offset azimuth installations.

(4) Within the approach azimuth coverage sector defined in paragraphs(a) (1), and (2) and (3) of this section, the power densities must not be less than those shown in Table 9 but the equipment design must also allow for:

(i) Transmitter power degradation from normal by −1.5 dB;

TABLE 9.—MINIMUM POWER DENSITY WITHIN COVERAGE BOUNDARIES (dBW/m²)

Function	Data signals	Angle signals for various antenna beamwidths				Clearance signals
		1°	1.5°	2°	3°	
Approach azimuth	−89.5	−88	.....	−85.5	−82	−88
High rate approach azimuth	−89.5	−88	.....	−88	−86.5	−88
Back azimuth	−89.5	−88	.....	−85.5	−82	−88
Approach elevation	−89.5	−88	−88	−88	.....	.....

(ii) Rain loss of −2.2 dB at the longitudinal coverage extremes.

(b) *Siting requirements.* The approach azimuth antenna system must, except as allowed in paragraph (c) of this section:

(1) Be located on the extension of the centerline of the runway beyond the stop end;

(2) Be adjusted so that the zero degree azimuth plane will be a vertical plane which contains the centerline of the runway served;

(3) Have the minimum height necessary to comply with the coverage requirements prescribed in paragraph (a) of this section;

(4) Be located at a distance from the stop end of the runway that is consistent with safe obstruction clearnace practices;

(5) Not obscure any light of an approach lighting system; and

(6) Be installed on frangible mounts or beyond the 300 meter (1000 feet) light bar.

(c) On runways where limited terrain prevents the azimuth antenna from being positioned on the runway centerline extended, and the cost of the land fill or a tall tower antenna support is prohibitive, the azimuth antenna may be offset.

(d) Antenna coordinates. The scanning beams transmitted by the approach azimuth equipment within ±40° of the centerline may be either conical or planar.

(e) Approach Azimuth accuracy. (1) The system and subsystem errors shall not exceed those listed in Table 10 at the approach reference datum.

At the approach reference datum, temporal sinusoidal noise components shall not exceed 0.025 degree peak in the frequency band 0.01 Hz to 1.6 Hz, and the CMN shall not exceed 0.10 degree. From the approach reference datum to the coverage limit, the PFE, PFN and CMN limits, expressed in angular terms, shall be allowed to linearly increase as follows:

(i) With distance along the runway centerline extended, by a factor of 1.2 for the PFE and PFN limits and to ±0.10 degree for the CMN limits.

(ii) With azimuth angle, by a factor of 1.5 at the ±40 degree and a factor of 2.0 at the ±60 degree azimuth angles for the PFE, PFN and CMN limits.

(iii) With elevation angle from +9 degrees to +15 degrees, by a factor of 1.5 for the PFE and PFN limits.

(iv) Maximum angular limits. The PFE limits shall not exceed ±0.25 degree in any coverage region below an elevation angle of +9 degrees nor exceed ±0.50 degree in any coverage region above that elevation angle. The CMN limits shall not exceed ±0.10 degree in any coverage region within ±10 degrees of runway centerline extended nor exceed ±0.20 degree in any other region within coverage.

Note.—It is desirable that the CMN not exceed ±0.10 degree throughout the coverage.

(f) Approach azimuth antenna characteristics are as follows:

(1) *Drift.* Any azimuth angle as encoded by the scanning beam at any point within the proportional coverage must not vary more than ±0.07 degree over the range of service conditions specified in § 171.309(d) without the use of internal environmental controls. Multipath effects are excluded from this requirement.

(2) *Beam pointing errors.* The azimuth angle as encoded by the scanning beam at any point within ±0.5 degree of the zero degree azimuth must not deviate from the true azimuth angle at that point by more than ±.05 degree. Multipath and drift effects are excluded from this requirement.

TABLE 10.—APPROACH AZIMUTH ACCURACIES AT THE APPROACH REFERENCE DATUM

Error type	System	Angular error (degrees)	
		Ground subsystem	Airborne subsystem
PFE	±20 ft. (6.1m) [1,2]	±0.118° [3]	±0.017°
CMN	±10.5 ft. (3.2m) [1,4]	±0.030°	±0.050°

Notes:
[1] Includes errors due to ground and airborne equipment and propagation effects.
[2] The system PFN component must not exceed ±3.5 meters (11.5 feet).
[3] The mean (bias) error component contributed by the ground equipment should not exceed ±10 feet.
[4] The system control motion noise must not exceed 0.1 degree.
[5] The airborne subsystem angular errors are provided for information only.

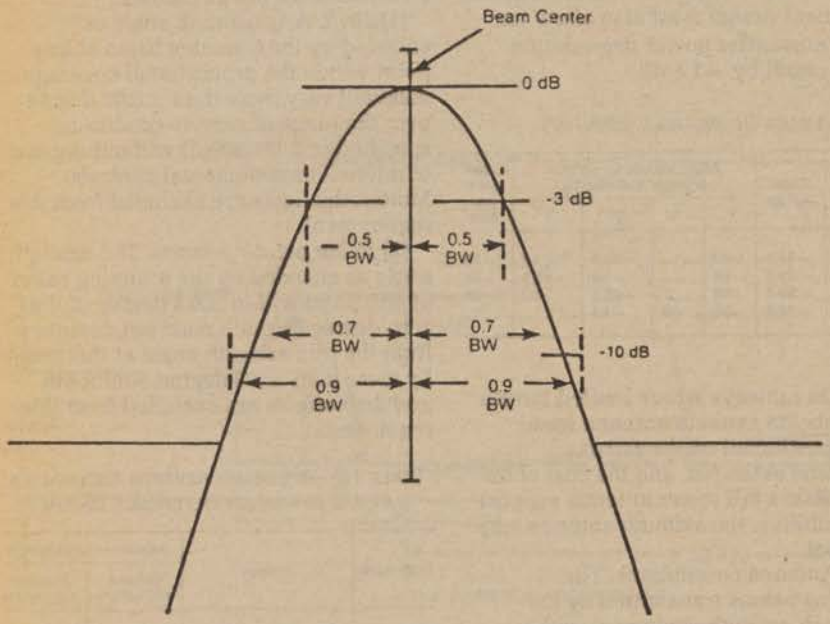
(3) *Antenna alignment.* The antenna must be equipped with suitable optical, electrical or mechanical means or any combination of the three, to bring the zero degree azimuth radial into coincidence with the approach reference datum (for centerline siting) with a

maximum error of 0.02 degree. Additionally, the azimuth antenna bias adjustment must be electronically steerable at least to the monitor limits in steps not greater than 0.005 degree.

(4) *Antenna far field patterns in the plane of scan.* On boresight, the azimuth antenna mainlobe pattern must conform to Figure 10, and the beamwidth must be such that, in the installed environment, no significant lateral reflections of the mainlobe exist along the approach course. In any case the beamwidth must not exceed three degrees. Anywhere within coverage the −3 dB width of the antenna mainlobe, while scanning normally, must not be less than 25 microseconds (0.5 degree) or greater than 250 microseconds (5 degrees). The antenna mainlobe may be allowed to broaden from the value at boresight by a factor of $1/\cos\theta$, where θ is the angle off boresight. The sidelobe levels must be as follows:

(i) Dynamic sidelobe levels. With the antenna scanning normally, the dynamic sidelobe level that is detected by a receiver at any point within the proportional coverage sector must be down at least 10 dB from the peak of the main beam. Outside the coverage sector, the radiation from the the scanning beam antenna must be of such a nature that receiver warning will not be removed or suitable OCI signals must be provided.

(ii) Effective sidelobe levels. With the antenna scanning normally, the sidelobe levels in the plane of scan must be such that, in the installed environment, the CMN contributed by sidelobe reflections will not exceed the angular equivalent of 9 feet at approach reference datum over the required range of aircraft approach speeds.



NOTES: 1. The beam envelope is smoothed by a 26 kHz video filter before measurement.
2. BW = Beamwidth.

Figure 10. Far Field Dynamic Signal in Space

(5) Antenna far field pattern in the vertical plane. The azimuth antenna free space radiation pattern below the horizon must have a slope of at least −8 dB/degree at the horizon and all sidelobes below the horizon must be at least 13 dB below the pattern peak. The antenna radiation pattern above the horizon must satisfy both the system coverage requirements and the spurious radiation requirement.

(6) Data antenna. The data antenna must have horizontal and vertical patterns as required for its function.

(g) Back azimuth coverage requirements. The back azimuth equipment where used must provide guidance information in at least the following volume of space (see Figure 11):

(1) Horizontally within a sector ±40 degrees about the runway centerline originating at the back azimuth ground equipment antenna and extending in the direction of the missed approach at least to 20 nautical miles from the runway stop end. The minimum proportional guidance sector must be ±10 degrees about the runway centerline. Clearance signals must be used to provide the balance of the required coverage where the proportional sector is less than ±40 degrees.

(2) Vertically in the runway region between:

(i) A horizontal surface 2.5 meters (8 feet) above the farthest point of runway centerline which is in line of sight of the azimuth antenna, and,

(ii) A conical surface originating at the azimuth ground equipment antenna inclined at 20 degrees above the horizontal up to a height of 600 meters (2000 feet).

(3) Vertically in the back azimuth region between:

(i) A conical surface originating 2.5 meters (8 feet) above the runway stop end, included at 0.9 degree above the horizontal, and,

(ii) A conical surface orginating at the missed approach azimuth ground equipment antenna, inclined at 15 degrees above the horizontal up to a height of 1500 meters (5000 feet).

(iii) Where obstacles penetrate the lower coverage limits, coverage need be provided only to minimum line of sight.

(4) Within the back azimuth coverage sector defined in paragraph (q) (1), (2), and (3) of this section the power densities must not be less than those shown in Table 9, but the equipment design must also allow for:

(i) Transmitter power degradation from normal −1.5 dB.

(ii) Rain loss of −2.2 dB at the longitudinal coverage extremes.

(h) Back azimuth siting. The back azimuth equipment antenna must:

(1) Normally be located on the extension of the runway centerline at the threshold end;

(2) Be adjusted so that the vertical plane containing the zero degree course line contains the back azimuth reference datum;

(3) Have minimum height necessary to comply with the course requirements prescribed in paragraph (g) of this section;

(4) Be located at a distance from the threshold end that is consistent with safe obstruction clearance practices;

(5) Not obscure any light of an approach lighting system; and

(6) Be installed on frangible mounts or beyond the 300 meter (1000 feet) light bar.

(i) Back azimuth antenna coordinates. The scanning beams transmitted by the back azimuth equipment may be either conical or planar.

(j) Back azimuth accuracy. The requirements specified in § 171.313(e) apply except that the reference point is the back azimuth reference datum.

(k) Back azimuth antenna characteristics. The requirements specified in § 171.313(f) apply.

(l) Scanning conventions. Figure 12 shows the approach azimuth and back azimuth scanning conventions.

(m) False guidance. False courses which can be acquired and tracked by an aircraft shall not exist anywhere either inside or outside of the MLS coverage sector. False courses which exist outside of the minimum coverage sector may be suppressed by the use of OCI.

Note.—False courses may be due to (but not limited to) MLS airborne receiver acquisition of the following types of false guidance: reflections of the scanning beam, scanning beam antenna sidelobes and grating lobes, and incorrect clearance.

§ 171.315 Azimuth monitor system requirements.

(a) The approach azimuth or back azimuth monitor system must cause the radiation to cease and a warning must be provided at the designated control point if any of the following conditions persist for longer than the periods specified:

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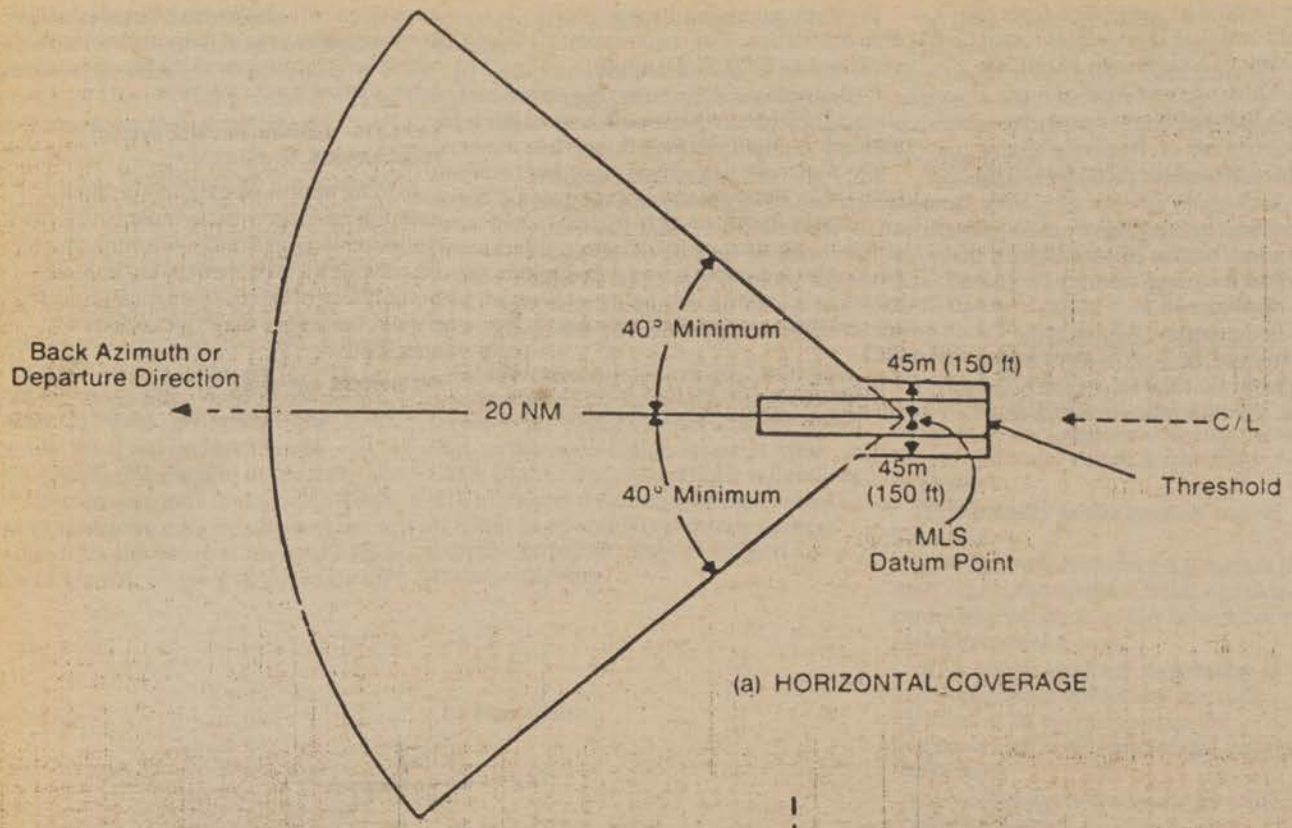
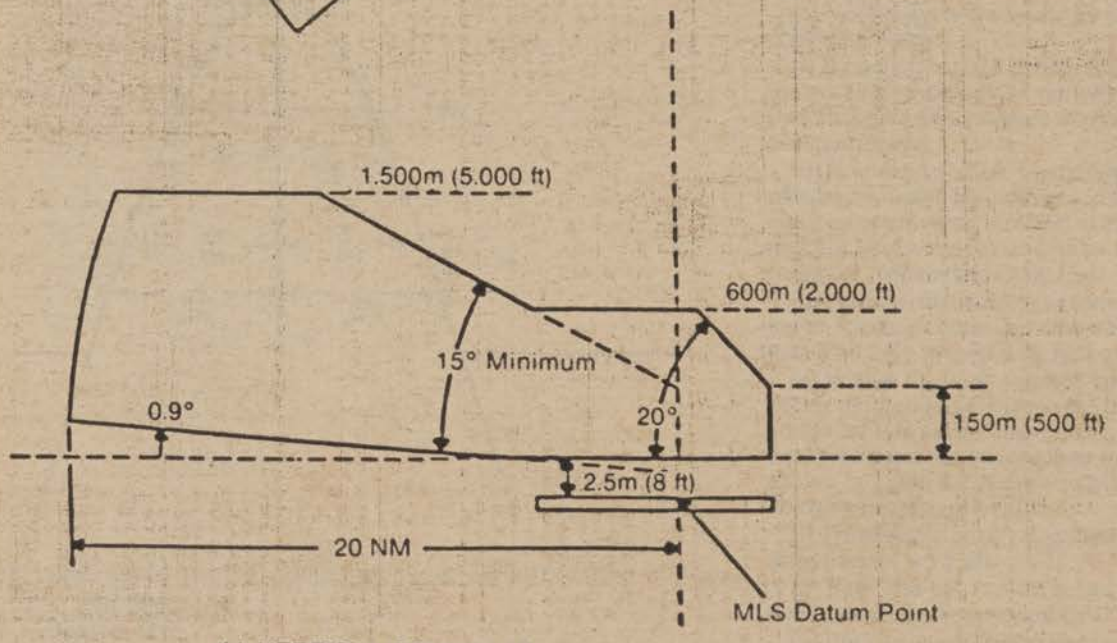


(a) HORIZONTAL COVERAGE



(b) VERTICAL COVERAGE

Figure 11. Back Azimuth/Data Coverage

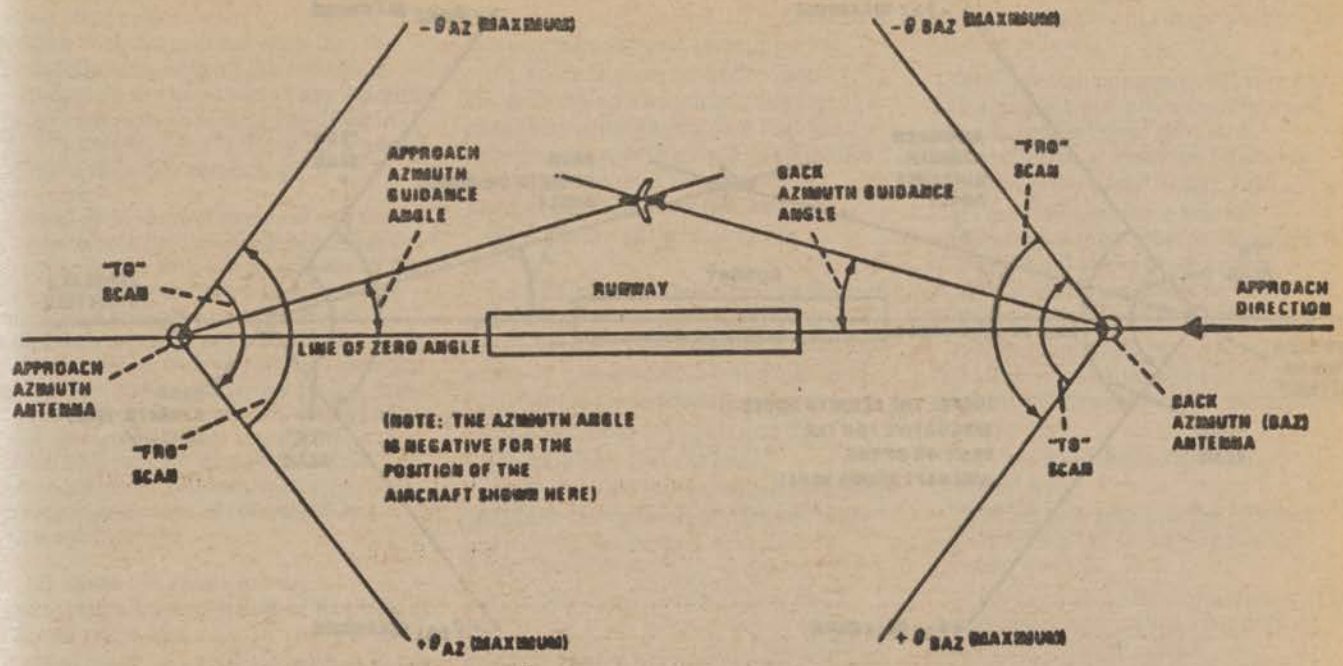


Figure 12. Azimuth Guidance Functions Scanning Conventions

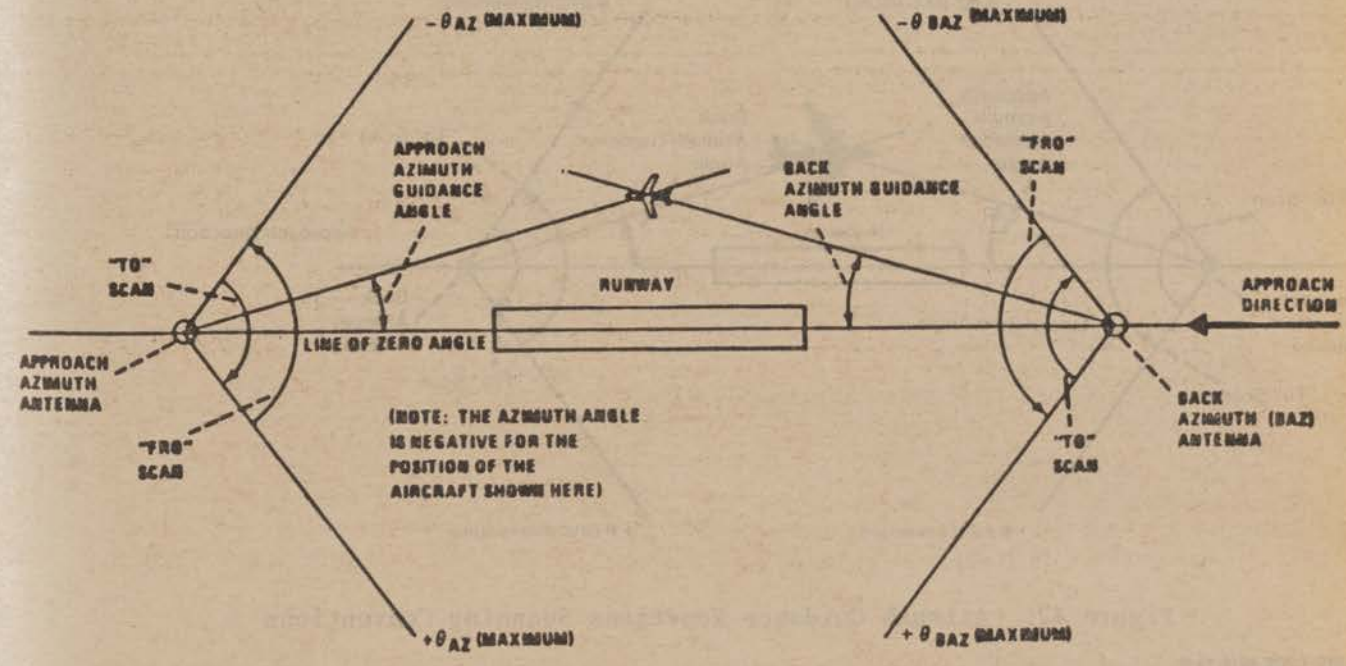


Figure 12. Azimuth Guidance Functions Scanning Conventions

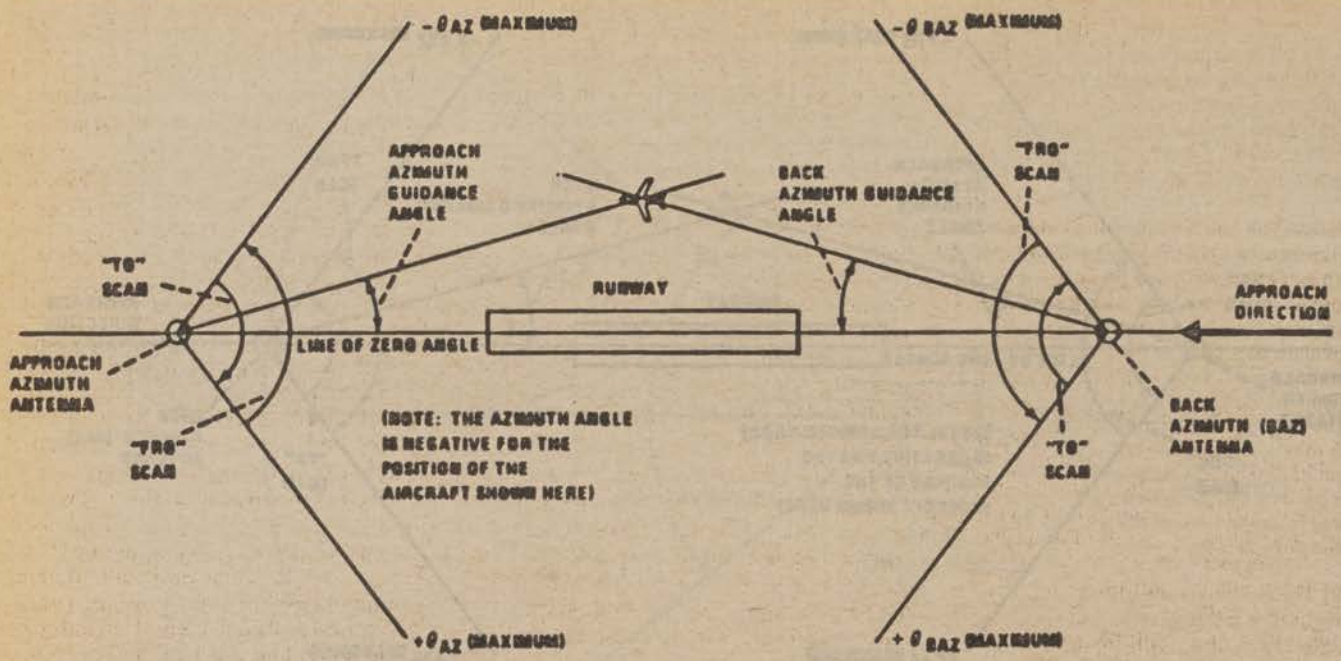


Figure 12. Azimuth Guidance Functions Scanning Conventions

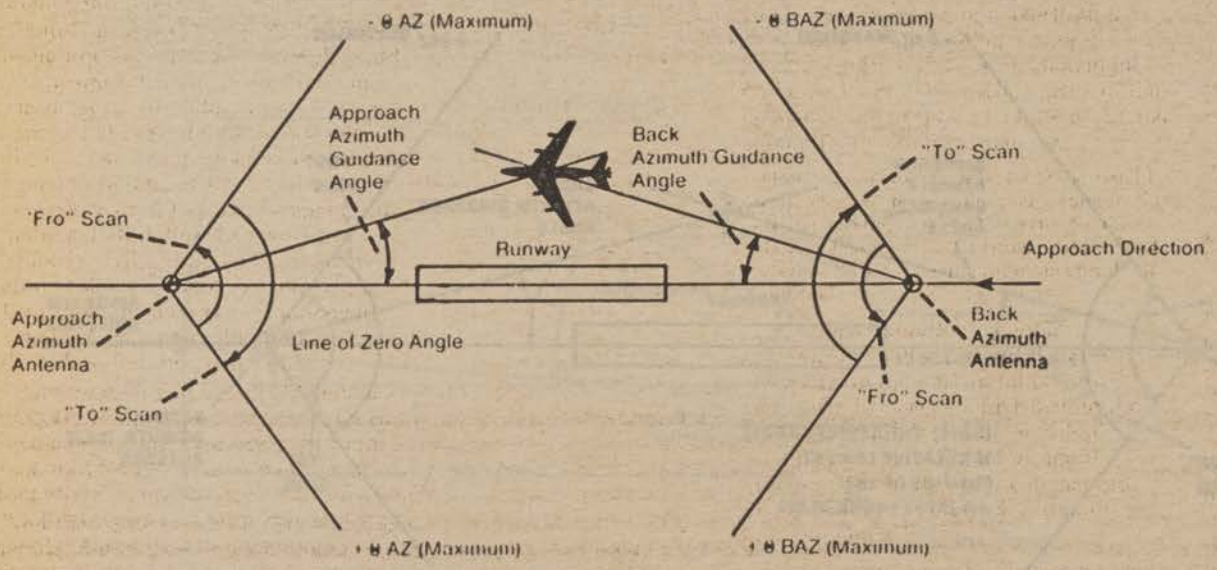


Figure 12. Azimuth Guidance Functions Scanning Conventions

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(1) There is a change in the ground equipment contribution to the mean course error component such that the path following error at the reference datum or in the direction of any azimuth radial, exceeds the limits specified in §§ 171.313(e)(1) or 171.313(j) for a period of more than one second.

Note.—The above requirement and the requirement to limit the ground equipment mean error to ±10 ft. can be satisfied by the following procedure. The integral monitor alarm limit should be set to the angular equivalent of ±10 ft. at the approach reference datum. This will limit the electrical component of the mean course error to ±10 ft. The field monitor alarm limit should be set such that with the mean course error at the alarm limit the total allowed PFE is not exceeded on any commissioned approach course from the limit of coverage to an altitude of 100 feet.

(2) There are errors in two consecutive transmissions of Basic Data Words 1, 2, 4 or 5.

(3) There is a reduction in the radiated power to a level not less than that specified in §171.313(a)(4) or § 171.313(g)(4) for a period of more than one second.

(4) There is an error in the preamble DPSK transmissions which occurs more than once in any one second period.

(5) There is an error in the time division multiplex synchronization of a particular azimuth function that the requirement specified in § 171.311(e) is not satisfied and if this condition persists for more than one second.

(6) A failure of the monitor is detected.

(b) Radiation of the following fuctions must cease and a warning provided at the designated control point if there are errors in 2 consecutive transmissions:

(1) Morse Code Identification,

(2) Basic Data Words 3 and 6,

(3) Auxiliary Data Words.

(c) The period during which erroneous guidance information is radiated must not exceed the periods specified in § 171.315(a). If the fault is not cleared within the time allowed, the ground equipment must be shut down. After shutdown, no attempt must be made to restore service until a period of 20 seconds has elapsed.

§ 171.317 Approach elevation performance requirements.

This section prescribes the performance requirements for the elevation equipment components of the MLS as follows:

(a) *Elevation coverage requirements.* The approach elevation facility must provide proportional guidance information in at least the following volume of space (see Figure 13):

(1) Laterally within a sector originating at the datum point which is at least equal to the proportional guidance sector provided by the approach azimuth ground equipment.

(2) Longitudinally from 75 meters (250 feet) from the datum point to 20 nautical miles from threshold in the direction of the approach.

(3) Vertically within the sector bounded by:

(i) A surface which is the locus of points 2.5 meters (8 feet) above the runway surface;

(ii) A conical surface originating at the datum point and inclined 0.9 degree above the horizontal and,

(iii) A conical surface originating at the datum point and inclined at 15.0 degrees above the horizontal up to a height of 6000 meters (20,000 feet).

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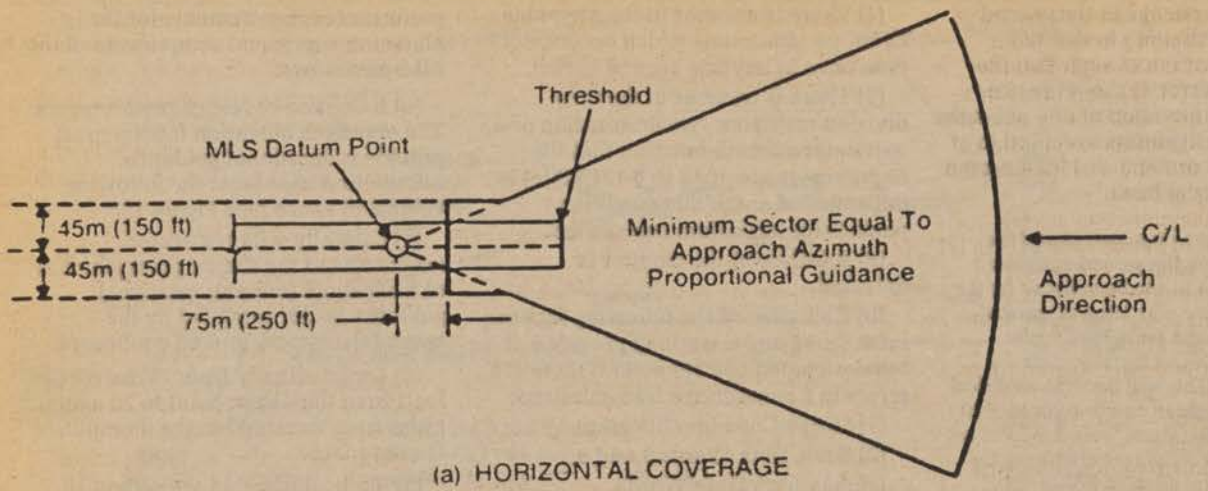
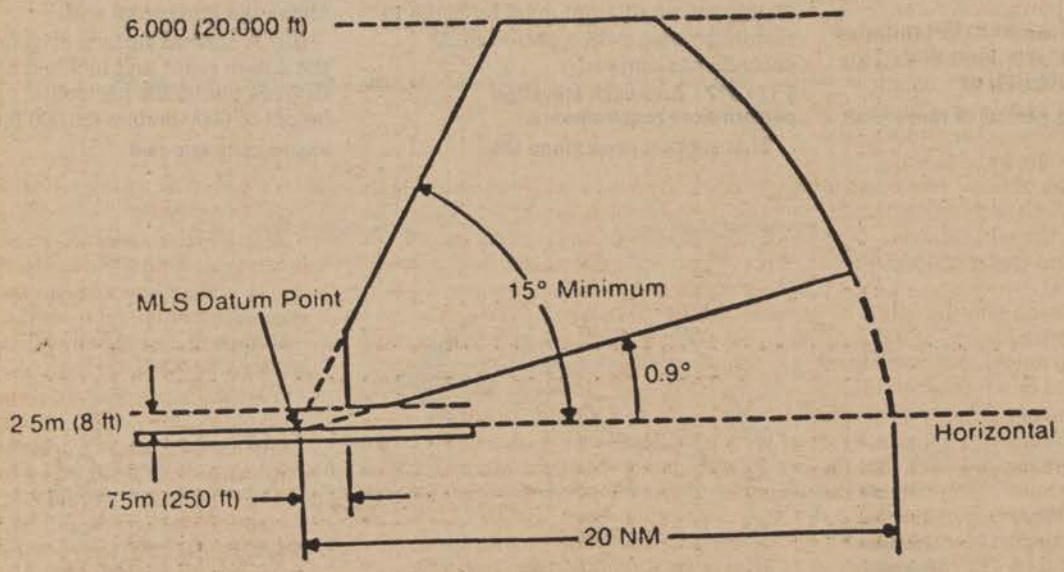


(a) HORIZONTAL COVERAGE



(b) VERTICAL COVERAGE

Figure 13. Approach Elevation Coverage

BILLING CODE 4910-13-C

Where the physical characteristics of the approach region prevent the achievement of the standards under paragraphs (a) (1), (2), and (3) of this section, guidance need not be provided below a conical surface originating at the elevation antenna and inclined 0.9 degree above the line of sight.

(4) Within the elevation coverage sector defined in paragraphs (a) (1), (2) and (3) of this section, the power densities must not be less than those shown in Table 9, but the equipment design must also allow for:

(i) Transmitter power degradation from normal by −1.5 dB.

(ii) Rain loss of −2.2 dB at the coverage extremes.

(b) *Elevation siting requirements.* The Elevation Antenna System must:

(1) Be located as close to runway centerline as possible (without violating obstacle clearance criteria).

(2) Be located near runway threshold such that the asymptote of the minimum glidepath crosses the threshold of the runway at the Approach Reference Datum height. Normally, the minimum glidepath should be 3 degrees and the Approach Reference Datum height should be 50 feet. However, there are circumstances where other glideslopes and reference datum heights are appropriate. Some of these instances are discussed in FAA Order 8260.34 (Glide Slope Threshold Crossing Height Requirements) and Order 8260.3 (IFR Approval of MLS.)

(3) Be located such that the MLS Approach Reference Datum and ILS Reference Datum heights are coincident within a tolerance of 3 feet when MLS is installed on a runway already served by an ILS. This requirement applies only if the ILS glide slope is sited such that the height of the reference datum meets the requirements of FAA Order 8260.34.

(c) *Antenna coordinates.* The scanning beams transmitted by the elevation subsystem must be conical.

(d) *Elevation accuracy.* (1) The accuracies shown in Table 13 are required at the approach reference datum. From the approach reference datum to the coverage limit, the PFE, PFN and CMN limits shall be allowed to linearly increase as follows:

(i) With distance along the runway centerline extended at the minimum glide path angle, by a factor of 1.2 for the PFE and PFN limits and to ±0.10 degree for the CMN limits;

(ii) With azimuth angle, from runway centerline extended to the coverage extreme, by a factor of 1.2 for the PFE and PFN limits and by a factor of 2.0 for the CMN limits;

(iii) With increasing elevation angles from +3 degrees to +15 degrees, by a factor of 2.0 for the PFE and PFN limits;

TABLE 13.—ELEVATION ACCURACIES AT THE APPROACH REFERENCE DATUM

Error type	System	Angular error (degrees)	
		Ground subsystem	Airborne subsystem [4]
PFE	[1] [2] ±0.133	([3])	±0.017
CMN	[1] ±0.050	±0.020	±0.010

Notes:
[1] Includes errors due to ground and airborne equipment and propagation effects.
[2] the system PFN component must not exceed ±0.087 degree.
[3] The mean (bias) error component contributed by the ground equipment should not exceed ±0.067 degree.
[4] the airborne subsystem angular errors are provided for information only.

(iv) With decreasing elevation angle from +3 degrees (or 60% of the minimum glide path angle, whichever is less) to the coverage extreme, by a factor of 3 for the PFE, PFN and CMN limits; and

(v) Maximum angular limits. the CMN limits shall not exceed ±0.10 degree in any coverage region within ±10 degrees laterally of runway centerline extended which is above the elevation angle specified in (iv) above.

Note.—It is desirable that the CMN not exceed ±0.10 degree throughout the coverage region above the elevation angle specified in paragraph (d)(1)(iv) of this section.

(2) The system and ground subsystem accuracies shown in Table 13 are to be demonstrated at commissioning as maximum error limits. Subsequent to commissioning, the accuracies are to be considered at 95% probability limits.

(e) Elevation antenna characteristics are as follows:

(1) *Drift.* Any elevation angle as encoded by the scanning beam at any point within the coverage sector must not vary more than 0.04 degree over the range of service conditions specified in § 171.309(d) without the use of internal environmental controls. Multipath effects are excluded from this requirement.

(2) *Beam pointing errors.* The elevation angle as encoded by the scanning beam at any point within the coverage sector must not deviate from the true elevation angle at that point by more than ±0.04 degree for elevation angles from 2.5 ° to 3.5 °. Above 3.5 ° these errors may linearly increase to ±0.1 degree at 7.5 °. Multipath and drift effects are excluded from this requirement.

(3) *Antenna alignment.* The antenna must be equipped with suitable optical, electrical, or mechanical means or any combination of the three, to align the lowest operationally required glidepath to the true glidepath angle with a maximum error of 0.01 degree. Additionally, the elevation antenna bias adjustment must be electronically steerable at least to the monitor limits in steps not greater than 0.005 degrees.

(4) *Antenna far field patterns in the plane of scan.* On the lowest operationally required glidepath, the antenna mainlobe pattern must conform to Figure 10, and the beamwidth must be such that in the installed environment, no significant ground reflections of the mainlobe exist. In any case, the beamwidth must not exceed 2 degrees. The antenna mainlobe may be allowed to broaden from the value at boresight by a factor of $1/\cos\theta$, where θ is the angle of boresight. Anywhere within coverage, the −3 dB width of the antenna mainlobe, while scanning normally, must not be less than 25 microseconds (0.5 degrees) or greater than 250 microseconds (5 degrees). The sidelobe levels must be as follows:

(i) *Dynamic sidelobe levels.* With the antenna scanning normally, the dynamic sidelobe level that is detected by a receiver at any point within the proportional coverage sector must be down at least 10 dB from the peak of the mainlobe. Outside the proportional coverage sector, the radiation from the scanning beam antenna must be of such a nature that receiver warnings will not be removed or a suitable OCI signal must be provided.

(ii) *Effective sidelobe levels.* With the antenna scanning normally, the sidelobe levels in the plane of scan must be such that, when reflected from the ground, the resultant PFE along any glidepath does not exceed 0.083 degrees.

(5) *Antenna far field pattern in the horizontal plane.* The horizontal pattern of the antenna must gradually de-emphasize the signal away from antenna boresight. Typically, the horizontal pattern should be reduced by at least 3 dB at 20 degrees off boresight and by at least 6 dB at 40 degrees off boresight. Depending on the actual multipath conditions, the horizontal radiation patterns may require more or less de-emphasis.

(6) *Data antenna.* The data antenna must have horizontal and vertical patterns as required for its function.

(f) *False guidance.* False courses which can be acquired and tracked by an aircraft shall not exist anywhere either inside or outside of the MLS coverage sector. False courses which exist outside of the minimum coverage sector may be suppressed by the use of OCI.

Note.—False courses may be due to (but not limited to) MLS airborne receiver acquisition of the following types of false guidance: reflections of the scanning beam

and scanning beam antenna sidelobes and grating lobes.

§ 171.319 Approach elevation monitor system requirements.

(a) The monitor system must act to ensure that any of the following conditions do not persist for longer than the periods specified when:

(1) There is a change in the ground component contribution to the mean glidepath error component such that the path following error on any glidepath exceeds the limits specified in § 171.317(d) for a period of more than one second.

Note.—The above requirement and the requirement to limit the ground equipment mean error to ±0.067 degree can be satisfied by the following procedure. The integral monitor alarm limit should be set to ±0.067 degree. This will limit the electrical component of mean glidepath error to ±0.067 degree. The field monitor alarm limit should be set such that with the mean glidepath error at the alarm limit the total allowed PFE is not exceeded on any commissioned glidepath from the limit of coverage to an altitude of 100 feet.

(2) There is a reduction in the radiated power to a level not less than that specified in § 171.317(a)(4) for a period of more than one second.

(3) There is an error in the preamble DPSK transmission which occurs more than once in any one second period.

(4) There is an error in the time division multiplex synchronization of a particular elevation function such that the requirement specified in § 171.311(e) is not satisfied and this condition persists for more than one second.

(5) A failure of the monitor is detected.

(b) The period during which erroneous guidance information is radiated must not exceed the periods specified in Section 171.319(a). If the fault is not cleared within the time allowed, radiation shall cease. After shutdown, no attempt must be made to restore service until a period of 20 seconds has elapsed.

§ 171.321 DME and marker beacon performance requirements.

(a) The DME equipment must meet the performance requirements prescribed in Subpart G of the Part. This subpart imposes requirements that performance features must comply with International Standards and Recommended Practices, Aeronautical Telecommunications, Vol. I of Annex 10 to ICAO. It is available from ICAO, Aviation Building, 1080 University Street, Montreal 101, Quebec, Canada, Attention: Distribution Officer and also available for inspection at the Office of the Federal Register Information Center, Room 8301, 1100 L Street, NW., Washington, DC 20408.

(b) MLS marker beacon equipment must meet the performance requirements prescribed in Subpart H of this Part. This subpart imposes requirements that performance features must comply with International Standards and Recommended Practices, Aeronautical Telecommuncations, Vol. I of Annex 10 to ICAO.

§ 171.323 Fabrication and installation requirements.

(a) The MLS facility must be permanent and must be located, constructed, and installed in accordance with best commercial engineering practices, using applicable electric and safety codes and Federal Communications Commission (FCC) licensing requirements and siting requirements of §§ 171.313(b) and 171.317(b).

(b) The MLS facility components must utilize solid state technology except that traveling wave tube amplifiers (TWTA) may be used. A maximum level of common modularity must be provided along with diagnostics to facilitate maintenance and troubleshooting.

(c) An approved monitoring capability must be provided which indicates the status of the equipment at the site and at a remotely located maintenance area, with monitor capability that provides pre-alarm of impending system failures. This monitoring feature must be capable of transmitting the status and pre-alarm over standard phone lines to a remote section. In the event the sponsor requests the FAA to assume ownership of the facility, the monitoring feature must also be capable of interfacing with FAA remote monitoring requirements. This requirement may be complied with by the addition of optional software and/or hardware in space provided in the original equipment.

(d) The mean corrective maintenance time of the MLS equipment must be equal to or less than 0.5 hours with a maximum corrective maintenance time not to exceed 1.5 hours. This measure applies to correction of unscheduled failures of the monitor, transmitter and associated antenna assemblies, limited to unscheduled outage and out of tolerance conditions.

(e) The mean-time-between-failures of the MLS angle system must not be less than 1,500 hours. This measure applies to unscheduled outage, out-of-tolerance conditions, and failures of the monitor, transmitter, and associated antenna assemblies.

(f) The MLS facility must have a reliable source of suitable primary power, either from a power distribution system or locally generated. Adequate power capacity must be provided for the operation of the MLS as well as the test and working equipment of the MLS.

(g) The MLS facility must have a continuously engaged or floating battery power source for the continued normal operation of the ground station operation if the primary power fails. A trickle charge must be supplied to recharge the batteries during the period of available primary power. Upon loss and subsequent restoration of power, the battery must be restored to full charge within 24 hours. When primary power is applied, the state of the battery charge must not affect the operation of the MLS ground station. The battery must allow continuation of normal operation of the MLS facility for at least 2 hours without the use of additional sources of power. When the system is operating from the battery supply without prime power, the radome deicers and the environmental system need not operate. The equipment must meet all specification requirements with or without batteries installed.

(h) There must be a means for determining, from the ground, the performance of the system including antenna, both initially and periodically.

(i) The facility must have, or be supplemented by ground, air or landline communications services. At facilities within or immediately adjacent to air traffic control areas, that are intended for use as instrument approach aids for an airport, there must be ground air communications or reliable communications (at least a landline telephone) from the airport to the nearest FAA air traffic control or communication facility. Compliance with this paragraph need not be shown at airports where an adjacent FAA facility can communicate with aircraft on the ground at the airport and during the entire proposed instrument approach procedure. In addition, at low traffic density airports within or immediately adjacent to air traffic control zones or areas, and where extensive delays are not a factor, the requirements of this paragraph may be reduced to reliable communications from the airport to the nearest FAA air traffic control or communications facility. If the adjacent FAA facility can communicate with aircraft during the proposed instrument approach procedure down to the airport surface or at least down to the minimum approach altitude, this would require at least a landline telephone.

(j) The location of the phase center for all antennas must be clearly marked on the antenna enclosures.

(k) The latitude, longitude and mean sea level elevation of all MLS antennas, runway threshold and runway stop end must be determined by survey with an accuracy of ±3 meters (±10 feet) laterally and ±0.3 meter (±1.0 foot) vertically. The relative lateral and vertical offsets of all antenna phase centers, and both runway ends must be determined with an accuracy of ±0.3 meter (±1.0 foot) laterally and ±0.03 meter (±0.1 foot) vertically. The owner must bear all costs of the survey. The results of this survey must be included in the "operations and maintenance" manual required by Section 171.325 of this subpart and will be noted on FAA Form 198 required by § 171.327.

§ 171.325 Maintenance and operations requirements.

(a) The owner of the facility must establish an adequate maintenance system and provide MLS qualified maintenance personnel to maintain the facility at the level attained at the time it was commissioned. Each person who maintains a facility must meet the FCC licensing requirements and demonstrate that he has the special knowledge and skills needed to maintain an MLS facility, including proficiency in maintenance procedures and the use of specialized test equipment.

(b) In the event of out-of-tolerance conditions or malfunctions, as evidenced by receiving two successive pilot reports, the owner must close the facility by encasing radiation, and issue a "Notice to Airmen" (NOTAM) that the facility is out of service.

(c) The owner must prepare, and obtain approval of, an operations and maintenance manual that sets forth mandatory procedures for operations, periodic maintenance, and emergency maintenance, including instructions on each of the following:

(1) Physical security of the facility.

(2) Maintenance and operations by authorized persons.

(3) FCC licensing requirements for operations and maintenance personnel.

(4) Posting of licenses and signs.

(5) Relations between the facility and FAA air traffic control facilities, with a description of the boundaries of controlled airspace over or near the facility, instructions for relaying air traffic control instructions and information, if applicable, and instructions for the operation of an air traffic advisory service if the facility is located outside of controlled airspace.

(6) Notice to the Administrator of any suspension of service.

(7) Detailed and specific maintenance procedures and servicing guides stating the frequency of servicing.

(8) Air-ground communications, if provided, expressly written or incorporating appropriate sections of FAA manuals by reference.

(9) Keeping the station logs and other technical reports, and the submission of reports required by § 171.327.

(10) Monitoring of the MLS facility.

(11) Inspections by United States personnel.

(12) Names, addresses, and telephone numbers of persons to be notified in an emergency.

(13) Shutdowns for periodic maintenance and issuing of NOTAM for routine or emergency shutdowns.

(14) Commissioning of the MLS facility.

(15) An acceptable procedure for amending or revising the manual.

(16) An explanation of the kinds of activities (such as construction or grading) in the vicinity of the MLS facility that may require shutdown or recertification of the MLS facility by FAA flight check.

(17) Procedures for conducting a ground check of the azimuth and elevation alignment.

(18) The following information concerning the MLS facility:

(i) Facility component locations with respect to airport layout, instrument runways, and similar areas.

(ii) The type, make and model of the basic radio equipment that provides the service including required test equipment.

(iii) The station power emission, channel, and frequency of the azimuth, elevation, DME, marker beacon, and associated compass locators, if any.

(iv) The hours of operation.

(v) Station identification call letters and method of station identification and the time spacing of the identification.

(vi) A description of the critical parts that may not be changed, adjusted, or repaired without an FAA flight check to confirm published operations.

(d) The owner or his maintenance representative must make a ground check of the MLS facility periodically in accordance with procedures approved by the FAA at the time of commissioning, and must report the results of the checks as provided in § 171.327.

(e) The only modifications permitted are those that are submitted to FAA for approval by the MLS equipment manufacturer. The owner or sponsor of the facility must incorporate these modifications in the MLS equipment. Associated changes must also be made to the operations and maintenance manual required in paragraph (c) of this section. This and all other corrections and additions to this operations and maintenance manual must also be submitted to FAA for approval.

(f) The owner or the owner's maintenance representative must participate in inspections made by the FAA.

(g) The owner must ensure the availability of a sufficient stock of spare parts, including solid state components, or modules to make possible the prompt replacement of components or modules that fail or deteriorate in service.

(h) FAA approved test instruments must be used for maintenance of the MLS facility.

(i) Inspection consists of an examination of the MLS equipment to ensure that unsafe operating conditions do not exist.

(j) Monitoring of the MLS radiated signal must ensure a high degree of integrity and minimize the requirements for ground and flight inspection. The monitor must be checked daily during the in-service test evaluation period (96 hour burn in) for calibration and stability. These tests and ground checks or azimuth, elevation, DME, and marker beacon radiation characteristics must be conducted in accordance with the maintenance requirements of this section.

§ 171.327 Operational records.

The owner of the MLS facility or his maintenance representative must submit the following operational records at the indicated time to the appropriate FAA regional office where the facility is located.

(a) Facility Equipment Performance & Adjustment Data (FAA Form 198). The FAA Form 198 shall be filled out by the owner or his maintenance representative with the equipment adjustments and meter readings as of the time of facility commissioning. One copy must be kept in the permanent records of the facility and two copies must be sent to the appropriate FAA regional office. The owner or his maintenance representative must revise the FAA Form 198 data after any major repair, modernization, or retuning to reflect an accurate record of facility operation and adjustment.

(b) Facility Maintenance Log (FAA Form 6030–1). FAA Form 6030–1 is permanent record of all the activities required to maintain the MLS facility. The entries must include all malfunctions met in maintaining the facility including information on the kind of work and adjustments made, equipment failures, causes (if determined) and corrective action taken. In addition, the entries must include completion of periodic maintenance

required to maintain the facility. The owner or his maintenance representative must keep the original of each form at the facility and send a copy to the appropriate FAA regional office at the end of each month in which it is prepared. However, where an FAA approved remote monitoring system is installed which precludes the need for periodic maintenance visits to the facility, monthly reports from the remote monitoring system control point must be forwarded to the appropriate FAA regional office, and a hard copy retained at the control point.

(c) Technical Performance Record (FAA Form 6830 (formerly FAA Form 418)). This form contains a record of system parameters as specified in the manufacturer's equipment manual. This data will be recorded on each scheduled visit to the facility. The owner or his maintenance representative shall keep the original of each record at the facility and send a copy of the form to the appropriate FAA regional office.

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Thursday
September 18, 1986

Part III

Department of Health and Human Services

Public Health Service

42 CFR Part 124

Medical Facility Construction and Modernization; Requirements for Provision of Services to Persons Unable To Pay; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 124

Medical Facility Construction and Modernization; Requirements for Provision of Services to Persons Unable To Pay

AGENCY: Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: The final rule below amends the existing regulations governing how certain publicly-owned health care facilities assisted under Titles VI and XVI of the Public Health Service Act may fulfill the assurance, given in their application for assistance, that they would provide a reasonable volume of services to persons unable to pay.

DATE: These regulations are effective on September 18, 1986.

ADDRESS: Richard R. Ashbaugh, Assistant Surgeon General, Associate Director for Health Facilities, Bureau of Resources Development, 5600 Fishers Lane, Room 11–03, Rockville, Maryland 20857, Attn: Martin J. Frankel.

FOR FURTHER INFORMATION CONTACT: Martin J. Frankel, 301–443–5656.

SUPPLEMENTARY INFORMATION: On September 6, 1985, the Secretary of Health and Human Services proposed amendments to the rules governing what is popularly known as the Hill-Burton uncompensated services program. 50 FR 36454. Health care facilities covered by the program received construction assistance under two titles of the Public Health Service (PHS) Act—Title VI (the "Hill-Burton Act", 42 U.S.C. 291, *et seq.*) and Title XVI (42 U.S.C. 300q, *et seq.*). As a condition of such assistance, facilities assisted under Title VI were required to give what is now known as the "uncompensated services" assurance. Under section 603(e) of the Act (42 U.S.C. 291c(e)), the Secretary was authorized to issue regulations requiring the following assurance:

> Such regulations may also require that before an application is recommended by a State agency to the Surgeon General for approval under this part, assurance shall be received by the State from the applicant that . . . (2) there will be available in the facility or portion thereof to be constructed or modernized a reasonable volume of services to persons unable to pay therefor, but an exception shall be made if such a requirement is not feasible from a financial viewpoint.[1]

Regulations requiring the assurance were issued shortly after enactment of Title VI in 1946. *See*, 12 FR 6176 (September 16, 1947). The regulatory standard for compliance with the assurance was general. Beginning in 1972, however, a series of regulatory and statutory developments occurred which culminated in the detailed requirements of the present regulations, which were issued in 1979. The objective of the amendments below is to simplify and increase the flexibility of the regulations as they apply to certain publicly-owned facilities. Because the significance of the amendments can be understood only in the context of the requirements of the current regulations, the pertinent sections of the current regulations are summarized below, followed by a discussion of the public comments on the proposed rule and the Department's response thereto.

I. Summary of Existing Regulations

Following extensive public comment, in 1979 the Secretary issued the current rules, which are codified at 42 CFR Part 124, Subpart F. 44 FR 29372 (May 18, 1979). These regulations establish a fixed dollar level compliance standard, which is 3% of the facility's operating costs (less Medicare and Medicaid reimbursement) or 10% of the Federal financial assistance it received, whichever is less. 42 CFR 124.503(a). A facility that does not meet its annual quota is required to make up the deficit in the amount of uncompensated services provided in later years. 42 CFR 124.503(b). In addition, the facility must institute an affirmative action plan designed to prevent recurrence of the deficit. 42 CFR 124.504. A facility may also get credit for "excess"—that is, uncompensated services provided over and above its annual quota—and credit that excess against its quota in a future year. 42 CFR 124.503(c). The 10% compliance level, and the deficits and excesses, are required to be adjusted by a factor that reflects inflation, the so-called "inflation factor." 42 CFR 124.503(d). In each case, however, the facility can only count a portion of the cost of the service provided toward the quota, the so-called "allowable credit." 42 CFR 124.502. Facilities are required to exclude third party payments (including payments from Medicare and Medicaid) from the quota, and also may not count towards the quota the differential between the amount of third party reimbursement and allowable credit where they are required by the third party program to accept the reimbursement as payment in full for service. In addition, services disallowed as unnecessary by Peer Review Organization (PRO) must also be excluded. 42 CFR 124.509.

The current regulations establish national eligibility criteria, based on the poverty income guidelines presently issued by the Department. 42 CFR 124.506. The criteria consider only income, not assets, and a mandatory procedure for calculating income is provided. *Id.* Facilities are given limited discretion to decide how to allocate their quota of uncompensated services among eligible persons. 42 CFR 124.507. Facilities can credit services toward their quota only if they make an eligibility determination within two working days of a request for uncompensated services and meet certain other requirements. 42 CFR 124.508.

The 1979 regulations contain explicit requirements for notice, including that written notice be given to each person seeking service in the facility. 42 CFR 124.505(d). In addition, facilities are required to publish and post notices and under certain circumstances to provide notice to the local health systems agency (HSA). 42 CFR 124.505. The regulations contain a number of reporting and recordkeeping requirements. 42 CFR 124.510.

II. Background and Summary of Public Comments and Policies of the Final Rule.

A. Proposed Rule

The basic objective of the current regulations is to assure that recipients of Titles VI and XVI funds who gave the uncompensated services assurance provide services free or below cost to persons who cannot afford to pay for them within the context of sound planning for and management of the delivery of health care services. Under the regulations, public facilities, including hospitals, public health centers and public health laboratories, are subject to the same procedural requirements as other facilities. Yet many public facilities exist principally to provide services to the indigent or are the principal providers of service to the indigent population of their service area, and either do not charge or provide

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[1] The assurance required by statute of Title XVI-assisted facilities, of which there are only 38, was as follows: . . . reasonable assurance that at all time after such application (for Title XVI assistance) is approved . . . (ii) there will be made available in the facility or portion thereof to be constructed, modernized or converted a reasonable volume of services to persons unable to pay therefor and the Secretary, in determining the reasonableness of the volume of services provided, shall take into consideration the extent to which compliance is feasible from a financial viewpoint.

Section 1621(b)(1)(K), 42 U.S.C. 300s–1(b)(1)(K), as redesignated by Pub. L. 96–79.

services on a subsidized basis. Moreover, they are subject to the laws of the local or State governments which operate them, and often lack flexibility to adjust their operating procedures to accommodate the Hill-Burton requirements. The Secretary believes that it is anomalous to require a facility that is in the business of providing free or below cost care to the indigent to either restructure its entire method of operating or face years of accumulating deficits to accommodate what is often a comparatively small Hill-Burton obligation. Thus, on September 6, 1985, the Department published in the **Federal Register** a proposed compliance alternative for those public facilities which qualify. 50 FR 36454.

Under the proposed rule, a more flexible compliance standard was proposed for those public facilities which met certain qualification requirements. To qualify for certification under the policies of the proposed rule, a public facility would have to submit to the Secretary, at least 90 days prior to the beginning of its fiscal year, specified evidence showing it met the following criteria: (1) Ownership and operation by a unit of State or local government, or status as a quasi-public corporation; (2) existence in major part to serve the indigent, as evidenced by provision in its organizational documents; (3) provision by the facility of free or below cost services to persons who are determined by the facility, based on objective criteria, to be unable to pay therefor; and (4) receipt for the three most recent fiscal years for which audited financial statements are available of at least 10 percent of its operating revenue from State and local government, exclusive of reimbursements claimed or received under Title XIX of the Social Security Act ("Medicaid"). Proposed § 124.513. Certified facilities would be required only to comply with the requirements applicable to the programs upon which the certification was based, along with ancillary reporting and recordkeeping requirements, as long as the certification was in effect. The certification could be withdrawn when the Secretary determined that there had been a material change in the factors the certification was based on or a material failure to comply with the applicable requirements. Proposed § 124.513(d). Deficits incurred under the current regulations could be made up on the basis of one additional year of certification for each year of deficit. *Id.*

B. Public Comments and the Department's Responses

The Department received 121 public comments on the proposed rule. Over half of those came from health care facilities, while approximately 15% came from governmental entities; in general, these comments supported the proposed rule. Approximately one-fourth of the comments were from legal services organizations, other consumer groups, or individual consumers and generally opposed the proposed rule. The substantive concerns raised in the public comments, and the Department's responses thereto, are set out below.

1. Criteria for certification

a. *Public ownership and operation.* Two commenters suggested that the criterion be broadened to include private, non-profit facilities which contract with State or local governments to provide care to the indigent, or otherwise provide a large volume of such care. One private, non-profit hospital stated that it functioned like a public facility because it was the only hospital in its service area, and suggested that the compliance alternative not be limited to publicly owned facilities. While the Department recognizes that a number of private, non-profit hospitals and other facilities provide substantial amounts of indigent care, it has not adopted this suggestion. The purpose of the compliance alternative is only partly to take into account the heavy volume of indigent services provided by certain public facilities. It also seeks to accommodate the special problems that public facilities experience in complying with the Hill-Burton procedural requirements because of the constraints of enabling legislation and their accountability to various governmental bodies, a problem various provider and consumer commenters referred to in several different contexts. Several consumer commenters, for example, pointed out that public facilities are required by law to pursue collection prior to crediting accounts to the Hill-Burton obligation. That a variety of other local or State requirements exist is likewise suggested by the variety of governmental arrangements for indigent care. A survey, "County Legal Liability for Indigent Health Care," conducted by the National Association of Counties, May 1984, found that in 76% of the States, counties are directly responsible for funding indigent health care programs; 17% of the States themselves have the direct responsibility; in 5% of the States, the municipalities have direct responsibility. It also found that 48% of the States place a legal obligation on counties to provide for indigent health care. Since private, non-profit organizations are not typically under such legal obligation, they inherently have more flexibility in operation. Accordingly, the Department does not consider it appropriate to expand the coverage of the compliance alternative as suggested.

Two other commenters asked if publicly-owned facilities leased to, or managed by, private organizations would be eligible for the compliance alternative. Where the lease or management arrangement is such that effective control of the facility has been transferred to the private organization, the Department's statutory right to recover would arise, and as a result the situation would be governed by the regulations set out at 42 CFR 124.701, *et seq.* (51 FR 7939, March 7, 1986.) However, where there has been no such transfer, the considerations outlined above would continue to apply. Accordingly, the language of the proposed criterion should be read as meaning that privately managed facilities are included, so long as they are not subject to the recovery provisions of the Public Health Service Act and continue to be controlled by the unit of State or local government which owns them. See § 124.513(b)(1).

A number of consumer commenters objected to the regulations on the ground that the rule asumes that public facilities are more in compliance with the current regulations than are private facilities, an assumption which they state the Department's compliance data do not support. The Department does not agree, and in any case, the proposed rule was not predicated on this assumption. The assumption underlying the rule below is that compliance with the current regulations is more difficult for many public facilities than it is for their private counterparts, because of the more extensive legal constraints under which they operate, and that the current requirements become anomalous where facilities provide a large volume of service under other indigent care programs. Numerous examples of such anomalies have come to the Department's attention since 1979. For example, some types of facilities, such as many public health centers, do not employ means tests of the type required by § 124.506, yet provide a great deal of indigent care because they provide their services at no or nominal charge to all patients. Others, such as county hospitals which primarily serve the indigent, may be required by local law to charge all patients a minimal fee; this

creates a problem with respect to the current requirements, which do not permit charges to patients whose income is below the poverty line. State health laboratories, in the main, operate with budgetary funding to provide analytic services to facilities such as public health centers, and generally do not provide services directly to patients. Nor does the Department accept the consumers' view of its compliance data. Assessments of compliance covering fiscal years 1980–84 (a total of 1,000 assessment years) show that, typically, public hospitals were credited with 74% of the uncompensated services they claimed to have provided under the regulations; private, non-profit hospitals were credited with 64%. Although the data indicates slightly better compliance by public hospitals, the difference itself does not provide the basis for the regulatory change.

b. *Charitable purposes in organizational documents.* The commenters that addressed this criterion generally opposed it, on several grounds. Some providers stated that they provide a large volume of indigent care but do not have specific statements in their organizational documents meeting the criterion, and questioned the relevance of the criterion. Other providers expressed confusion over the type of documentation required. Consumer commenters criticized the criterion as vague, since in the case of most public hospitals, the facility will have many functions, so that determining what is a "major" function is of dubious validity.

The Department agrees with these points and has accordingly deleted the requirement.

c. *Provision of reduced cost services to persons determined to be eligible based on objective criteria.* The third criterion elicited extensive comment. A number of consumer commenters expressed concern with the "objective criteria" aspect of the third criterion, on several grounds. Objections were raised that the requirement was vague, and would permit or require approval of arbitrary eligibility criteria. Other commenters questioned whether the provision would permit facilities to impose asset-based eligibility criteria. Others questioned whether it would exclude residents of certain geographic areas (*e.g.*, a county hospital might exclude non-residents of the county). A few commenters argued for retention of the current eligibility standards on the ground that eligibility standards may not vary by facility.

The Department agrees that the proposed "objective criteria" standard did not sufficiently describe the type of criteria that must be included in programs submitted for certification and has clarified the requirements to indicate that eligibility criteria must relate to the financial status of the applicants for services. The Department is of the view that this clarification, coupled with the requirement that any other criteria likewise be objective in nature, precludes approval of eligibility criteria that are arbitrary. With respect to the question of whether under this provision facilities may deny uncompensated services to, for example, nonresidents, the answer is that they may. This policy recognizes the fact that many public facilities are required by law to limit services under certain programs to certain classes of individuals (*e.g.*, county residents). The Department is not accepting the suggestion that the current eligibility standards be retained or that other specific financial requirements be imposed, as to do so would be inconsistent with the underlying goal of accommodating public facilities' existing indigent care programs. Thus, under the rule, facilities may utilize financial criteria that consider assets or other financial resources, as well as income. The Department acknowledges that the effect of this policy is that eligibility standards will not be uniform for all facilities, but would point out that the statute does not require national eligibility criteria; indeed, such facility-by-facility variation existed under the pre-1979 regulations in many States. Nor is the Department persuaded by the comments that argue that facility- (or government-) established criteria will set lower financial eligibility limits. Although the Department recognizes that some of these programs may have more limited eligibility standards, individuals eligible under more restrictive income standards also qualify under the existing Hill-Burton criteria.

Other consumer comments objected to this criterion on the grounds that it did not require procedures relating to the delivery of uncompensated services, such as notice and timely eligibility determinations; a number of these objected that the procedures of the current regulations are constitutionally required. There was also an objection that the criterion would permit facilities to satisfy their obligations simply by writing off bad debts. While the Department does not agree that the requirements of the current regulations are the only ones that could satisfy the Due Process Clause of the Constitution, it agrees that the underlying concern is a reasonable one. It has accordingly modified the proposed rule to require that programs, in order to be eligible for certification, provide for effective notice prior to nonemergency service, as well as effective procedures for applying for and obtaining determinations in a timely manner. See § 124.513(b)(2). A provision has been added to make clear that the procedures, in order to be considered effective, must permit persons to request and obtain determinations of their liability for payment prior to service in order to decide whether or not to get the service.

While the Department has accepted the commenters' points to this extent, it is not dictating either the form or content of the notice or the procedures, as advocated by some. To do so would defeat the basic objective of the rule, which is to increase the flexibility of public facilities in fulfilling their obligations. Rather, the approach set out below is to prescribe ascertainable standards which the procedures must meet; where the standards are not met, the facility will not receive certification. With reference to bad debts, the Department agrees that a facility should not be able to satisfy its obligation simply by writing off bad debts. Under the current regulations, facilities are permitted to credit a bad debt to the Hill-Burton obligation where the individual who incurred the debt meets the eligibility standards and has received a favorable eligibility determination in accordance with the procedural requirements of the regulations. 43 FR 49959 (October 25, 1978); 44 FR 29393 (May 18, 1979). The rule below retains these principles.

Two providers suggested that the term "rehabilitative" be added to clarify the kinds of health care services covered by this criterion. The Department believes that it is unnecessary to define the various types of health services provided by public facilities obligated under the Hill-Burton Act. The term "health services," as used in the final rule, is intended to include rehabilitative and other kinds of health services provided by these health facilities.

d. *Receipt of at least 10% of revenue from state or local government.* This provision also elicited substantial comment. The providers were generally in favor of it. However, a provider organization suggested the term "total operating revenue" in the formula in the proposed criterion needed to be clarified, as its usage varies with the hospital community. It also suggested that total operating revenue exclude reimbursement from Medicare, as well as Medicaid, because these programs contribute only to the cost of care provided to Medicare and Medicaid patients and because the exclusion of

both sources of reimbursement would be consistent with the formula in the existing rules for calculating the annual compliance level under the 3% method.

Consumers objected to this criterion on a number of counts. Many argued that there is no causal relationship between indigent care provided and source of funding. In this regard, several commenters (including a provider) pointed out that certain types of public facilities (*e.g.*, county health departments, teaching hospitals) may receive governmental funding for activities other than indigent care, so that the amount of government subsidy received does not necessarily indicate provision of a high volume of indigent care; some consumers in fact argued that teaching hospitals do not provide substantial amounts of indigent care. A frequent and related consumer objection was that the proposed rule does not comply with the statutory requirement to define a "reasonable volume" of care that facilities must provide, while a provider group also urged that the criterion be revised to provide a method of distinguishing between those facilities that do not receive significant governmental funding for indigent care and those that do. One alternative suggested by some consumer organizations was the substitution of a "high volume" requirement for this criterion, particularly for public hospitals, to ensure that a requisite amount of indigent care was provided by certified facilities. Still other consumers challenged the Department's reliance on data supplied by the American Hospital Association (AHA) on the ground that the data was suspect because of the AHA's earlier opposition to the current regulations; the AHA, on the other hand, questioned the derivation of the 10% criterion based on its data, arguing that the data support lowering the threshold to 7%.

The Department agrees that clarification of the term "total operating revenue" is warranted to ensure uniformity among requests for certification. It also agrees that reimbursement from Medicare, as well as Medicaid, should be excluded from the computation for the reasons stated. In defining the term "total operating revenue" in the final rule, generally accepted hospital accounting terminology has been used. See § 124.513(b)(3)(i).

The Department has modified the proposed rule to require that a facility seeking certification show that the governmental subsidy derives from the provision of indigent care or from an operating policy under which services are provided without charge. See §124.513(b)(3)(i). In addition, it has accepted the suggestion made by a number of consumers, and provided for a "high volume" showing as an alternate compliance standard. See § 124.513(b)(3)(ii). In the Department's view, a facility that shows that it meets either the 10% revenue or the high volume test has demonstrated that it is providing a reasonable amount of indigent care.

The Department believes that the criterion set out at § 124.513(b)(3)(i) below constitutes an adequate surrogate for a "reasonable volume" of indigent care. A substantial yearly operating subsidy demonstrates a shortage of revenues in relation to expenses. In the case of a public facility, an annual shortage of the type covered by § 124.513(b)(3)(i) exists because it does not bill for services or because it provides a large amount of indigent care. This assumption is clearly supported by the relevant data and professional literature. Studies have shown that the majority of care to the indigent is provided in public facilities, a fact acknowledged by many consumer comments that complained of the shifting of the indigent onto public facilities by private facilities. See also, for example, "Health Care for the Uninsured," Marion Ein Lewin and Lawrence S. Lewin, *Business and Health*, September, 1984. According to the Center for Health Policy Research of the American Enterprise Institute, in a paper published in the Proceedings of the National Council on Health Planning and Development (1984), public hospitals account for only 17% of the total volume of hospital care provided, yet provide 48% of all the uncompensated care. Further, data from the "Survey of Medical Care for the Poor and Hospitals' Financial Status," conducted by the American Hospital Association and the Urban Institute, indicate that financial stress in hospitals which had negative operating margins is caused principally by the amount of care provided to poor patients and is not attributable to bad management. Nor does the Department agree with the consumer comments arguing that public teaching hospitals do not provide substantial indigent care. According to "Identifying the Issues: A Statistical Profile," Frank Sloan, Joseph Valvona and Ross Mullner, *Uncompensated Hospital Care: Rights and Responsibilities*, The Johns Hopkins University Press, December, 1985, uncompensated care makes up 15% of charges at public teaching hospitals, compared to 4.6% at private, non-profit teaching hospitals. This data bears out the consumer comments with respect to private teaching hospitals, but not with respect to the public teaching hospitals that would be covered by this rule.

The criterion set out at § 124.513(b)(3)(ii) below is likewise clearly an adequate indicator that a facility has provided a reasonable volume of indigent services. Indeed, the criterion itself was suggested by a number of consumer comments as an adequate proxy for the current compliance level. While the Department has accepted the consumers' suggestion, it has done so for a somewhat different purpose. The criterion at § 124.513(b)(3)(ii) is intended to cover a different class of public facilities, *i.e.*, public facilities which, because of exceptionally good management or non-tax revenue sources such as philanthropy, do not require substantial operating subsidies, yet provide large amounts of indigent care. The Department believes that such public facilities should not be excluded from qualification for the compliance alternative solely on the basis of not requiring large subsidies from their State or local government.

The Department rejects the consumer arguments challenging its use of the AHA's 1982 Annual Survey of Hospitals, based on the AHA's position in prior Hill-Burton litigation. The 1982 AHA Survey was conducted for a purpose unrelated to the proposed rule, which is self-evident from the fact that it was conducted over three years prior to publication of the proposed rule. Moreover, according to the AHA, its data base does not distinguish between hospitals with Hill-Burton obligations and those without, which also vitiates the consumer criticism of the data. With respect to the AHA's criticism of the Department's interpretation of the 1982 Survey results, it appears that the comment proceeded from a misconception about the Department's use of the term "tax appropriations" in the preamble to the proposed rules. When the definition in the final rule is used, however, the asserted discrepancy no longer exists.

2. Procedures for certification.

a. *90-day requirement.* In response to some concern expressed by providers, the Department had deleted the 90-day requirement for initial certification. Failure to meet the 90-day deadline could delay initial certification of otherwise eligible facilities for an additional year, a result not intended by the proposed rule. Further, in light of the provision for making up deficits under

§ 124.513(d)(2), discussed below, there is no reason to tie the certification procedure to a facility's fiscal year. It should be pointed out that under the final rule, as under the proposed rule, public facilities are subject to the same reporting and procedural requirements as non-public facilities until they are certified under § 124.513.

b. *Audited financial statements for three most recent fiscal years available.* A number of providers had pragmatic concerns with this requirements. In general, they commented that some public facilities, by virtue of the operating policies of their local or State governments, do not routinely produce audited financial statements as such, and their unavailability could lead to disqualification of otherwise eligible facilities. For example, some noted that county or municipal facilities are often not audited separately from other governmental departments, so that audited financial statements for the facilities as such do not exist; others pointed out that their audits were done on a bi- or tri-ennial basis or were done only on an emergency basis. A few consumer groups also argued that audited financial statements would be inadequate, on the ground that they are not sufficiently detailed to permit the amount of indigent care provided to be ascertained, and urged that facilities be required to submit specific patient accounts or log-books to document their provision of indigent care.

The Department rejects the consumer suggestion that patient accounts or account logs be required, but accepts the underlying point made by both providers and consumers that the audited financial statement requirement is not useful for the purpose of certifying many facilities. It has accordingly revised the requirement to permit the provision of other acceptable documentation which provides the needed information. See § 124.513(c)(1). The changed language, in the Department's view, answers the consumer concern that the documentation provided be sufficient to demonstrate that a certain amount of indigent care was provided by the facility.

c. *Billing and charging policies of the facility.* Consumers generally expressed the view that this requirement would be inadequate to establish the existence of a substantial program of services to the indigent. They argued that because the proposed rule contained no specific standards such programs must meet, such a notice or eligibility determination requirements, this documentation requirement would provide no safeguard against approval of programs with procedures that made application for benefits extremely onerous or unavailable as a practical matter. Consumers also objected to the use of the term "charity care", on the ground that the Hill-Burton obligation should not be regarded as a form of charity.

The Department has generally accepted these comments. This is reflected primarily by the addition in § 124.513(b)(2) of more specific standards for eligibility criteria and the requirement for notice and application and determination procedures. A corresponding change has been made to the language of the proposed documentation requirement. The Department has also deleted the use of the term "charity care" from the final rule. See § 124.513(c)(2).

3. Enforcement

Consumer groups generally objected that the proposed rule would be unenforceable. They argued that because the proposed rule contained such vague standards for compliance, compliance would be difficult to ascertain or monitor. In this regard, some consumers argued that the proposed rule constituted a return to the "open door option" of the pre-1979 regulations (*see*, 42 CFR 53.111(d)(2), 1978 ed.) and asserted that it would be as unenforceable as that option had been. Others contended that the standard of "material failure to comply" was so vague as to be meaningless. Consumer organizations also were concerned that facilities certified would no longer be subject to investigation of complaints brought against them for noncompliance, or subject to remedial action.

The Department believes it has addressed the consumers' basic concern over the enforceability of the rule through the additional procedures it has required under § 124.513(b)(2). While it has not dictated the precise criteria or procedures facilities must employ, it has established general performance standards those criteria and procedures must meet. The effect of certification of a program of discounted services is that the facility must follow the requirements of the program(s) for which it has received certification. If it does not do so, it faces loss of certification. To strengthen the enforcement mechanism, the final rule provides that, where compliance by the facility with its certified program(s) is questioned, either via monitoring by the Department or by complaint, the facility is presumed to be out of compliance with its certification unless it provides documentation that the requirements of the program(s) were met in the matter(s) under investigation. See § 124.511(a)(3). Thus, it is incombent upon the facility to maintain sufficient documentation to show that it is administering its certified program in compliance with its certification.

The complaint and remedial action provisions of the regulations continue to apply to certified facilities. However, findings made and remedial action ordered pursuant to complaints will correspond to and reflect the operational characteristics of the programs of discounted service certified. The final rule clarifies that in cases of substantial noncompliance, the Secretary may disallow credit for the period of noncompliance. If remedial action is taken and if the facility continues to be in compliance, the facility remains obligated to comply with the requirements of § 124.513. If remedial action is required and not taken or if noncompliance otherwise continues, the Secretary may also withdraw certifiication, in which case the requirements of the remainder of Subpart F apply.

The Department disputes the consumer comment that the compliance alternative constitutes a return to the "open door option" of the pre-1979 regulations. Unlike that option, the rule below contains a measurre of volume. It is also materially diferent with respect to enforcement: unlike the open door option, the facility's program must be approved in advance, a process that in itself gives the Secretary a concrete standard against which to measure subsequent compliance. The presumption of § 124.511(a)(3) and the provision enabling the Secretary to direct remedial action likewise had no counterpart in the pre-1979 regulations. Finally, unlike the open door option, the certification can be withdrawn by the Secretary under the final rule and facilities receive no credit for periods of noncompliance with the certification.

The Department likewise does not agree with the comment criticizing the "material failure" or "material change" standards as too vague to permit monitoring of compliance. Any assessment of compliance necessarily involves the making of judgments as to the degree of seriousness of noncompliance. The regulation, as revised, resolves cases of doubt in the complainant's favor where compliance with a certified program is at issue; see § 124.511(a)(3).

Where change in a certified program is at issue, the Department will look at whether the change(s), if submitted as part of the program that was certified, would have made it unapprovable. Where such a finding is made, credit for

the services provided may be disallowed. If appropriate remedial action is not taken or noncompliance otherwise continues, certification may be withdrawn.

4. Deficits

Some providers expressed confusion or disagreement with the provisions of the proposed rule relating to deficits, with some arguing that the Department could not require remedial action or extension of the obligation by the number of years of prior deficits. Others expressed confusion over how the deficit mechanism would work. Consumer comments generally objected that the deficit provision was illusory on the ground that facilities that did not meet their quota when required to do so (thereby incurring a deficit) would certainly not do so if the quota requirement were removed.

The Department disagrees with the provider comments that it cannot require either remedial action or extension of the period of obligation to make up deficits. In this regard, it notes that the current regulations, which provide for both, have been upheld by two U.S. Courts of Appeal. *American Hospital Ass'n* v. *Schweiker*, 721 F.2d 170 (7th Cir. 1983), cert. den. — U.S. —, 104 S. Ct. 2169 (1984); *Wyoming Hospital Ass'n* v. *Harris*, 727 F.2d 939 (10th Cir. 1984). The Department notes, however, that some of the provider opposition to the deficit make-up requirement seems to stem from a reading of the proposed rule to mean that any annual deficit, even though it was made up prior to certification, results in an additional year of obligation. Such a result was not intended. The final rule has been clarified to indicate that any deficit remaining prior to certification will result in a period of additional obligation proportionate to the amount of the deficit. See § 124.513(d)(2)(i). The Department also rejects the consumers' criticism of the deficit make-up requirement as ill-founded, for the reasons more fully described in the preceding sections.

The Department acknowledges the validity of the comments expressing confusion over the operation of the deficit make-up requirement, particularly where a facility's prior years' compliance has not been assessed by the Department or a State agency. It also agrees with those provider comments that argued that facilities that would have qualified for certification in prior years had the requirements of the rule below existed then, should not be considered to have incurred a deficit for such prior years. It has accordingly revised proposed § 124.513(d)(2) to address these issues. First, § 124.513(d)(2)(i) provides that where a facility assisted under Title VI of the Act has been assessed as having a deficit, it may make up that deficit by showing that it met the requirements for certification in the years for which the deficit was assessed; if it cannot make such a showing, it may make up the deficit by continuing to operate under § 124.513 for a period commensurate with the amount of the deficit at the end of its period of obligation. Second, § 124.513(d)(2)(ii) addresses the situation where a Title VI facility's compliance for the period prior to certification has not been completely assessed. In such a situation the facility has two options: (1) It may accept no credit for the unassessed period and proceed to make up the deficit under § 124.513(d)(2)(i); or (2) it may hire an independent auditor to conduct an audit of its compliance for the unassessed period and establish that it had no (or a lesser) deficit for that period. The audit must be sufficient for the Secretary to determine the creditability of individual accounts under § 124.503. The Secretary will make guidance materials available for this purpose. Third, § 124.513(d)(2)(iii) addresses the deficit issue for facilities assisted under Title XVI of the Act. It modifies the policies for Title VI facilities to take account of the fact that Title XVI-assisted facilities do not have a time-limited obligation.

5. Record maintenance for public facilities

The proposed rule retained the same record retention requirement for certified facilities as for other facilities, *i.e.*, until 180 days following the close of the Secretary's investigation under § 124.511(a). A provider pointed out that the investigation process for certified facilities is not analogous. The Department agrees because account-by-account audits to verify dollar amounts of care provided following certification are not needed, and has therefore revised the requirement for certified facilities so that records need be maintained for a maximum of three years, except where a longer period is required as a result of an investigation by the Secretary. In such cases, records must be kept until 180 days after the close of the Secretary's investigation, for which there is no date certain. This removes a potentially burdensome requirement for certified facilities, while providing sufficient time for maintaining records necessary to investigate complaints. See § 124.510(c)(2).

6. Definition of uncompensated services

The definition of this term at § 124.502 has been amended to distinguish between services provided by facilities certified under § 1224.513, and those provided by other obligated facilities. For the latter, the definition is unchanged. For certified facilities, the definition takes into account services provided to the indigent under programs which in part are the basis for certification.

III. Regulatory Flexibility Act and Executive Order 12291

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal Government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. The Secretary certifies that this rule will not have significant economic effect on a substantial number of small entities. Therefore, it does not require a Regulatory Flexibility Analysis.

The Secretary has also determined that this final rule is not a "major rule" as defined under E.O. 12291, because it will not have an annual effect on the economy of $100 million or more, or otherwise meet the criteria for which a regulatory impact analysis is required.

IV. Paperwork Reduction Act

The information collection requirements contained in §§ 124.510(c) and 124.513(c) have been approved by the Office of Management and Budget under section 3504 of the Paperwork Reduction Act of 1980 and have been assigned OMB control number 0915–0103.

List of Subjects in 42 CFR Part 124

Grant programs—Health, Health facilities, Loan programs—Health, Low-income persons, Reporting and recordkeeping requirements.

Accordingly, the Department of Health and Human Services hereby amends 42 CFR Part 124 by amending Subpart F thereto as set forth below.

Dated: July 22, 1986.

Robert E. Windom,

Assistant Secretary for Health.

Approved: August 20, 1986.

Otis R. Bowen,

Secretary.

PART 124—[AMENDED]

1. The authority citation for 42 CFR Part 124, Subpart F, is revised to read as follows:

Authority: Sec. 215, 1620(3), Public Health Service Act, as amended; 58 Stat. 690, 93 Stat 633 (42 U.S.C. 216, 300s(3)).

2. The Table of Contents for 42 CFR Part 124 is amended by adding at the end of the Table of Contents for Subpart F the following:

Sec.

* * * * *

124.513 Public facility compliance alternative.

3. Paragraph (b)(1) of 42 CFR 124.501 is amended by removing the phrase, "Except where the deficit and excess compliance provisions provide for a longer or shorter period," and inserting in lieu thereof, "Except as otherwise herein provided,".

4. The definition of "uncompensated services" in 42 CFR 124.502 is revised to read as follows:

§ 124.502 [Amended]

* * * * *

"Uncompensated services" means:

(1) For facilities other than those certified under § 124.513, services that are made available to persons unable to pay for them without charge or at a charge which is less than the allowable credit for those services. The amount of uncompensated services provided in a fiscal year is the total allowable credit for services less the amount charged for the services following an eligibility determination. In determining the amount of uncompensated services, the Secretary includes only those services provided to individuals with respect to whom the facility has made a written determination of eligibility.

(2) For facilities certified under § 124.513, services as defined in paragraph (1) and services that are made available to persons unable to pay for them under programs described by the documentation provided under § 124.513(c)(2). Excluded are services reimbursed by Medicare, Medicaid or other third party programs, including services for which reimbursement was provided as payment in full, and services disallowed pursuant to § 124.513(d)(1).

§ 124.510 [Amended]

5. 42 CFR 124.510 is amended by revising the heading of paragraph (a) to read as follows: "*Reporting requirements for facilities not covered by § 124.513.*".

6. 42 CFR 124.510 is amended by revising the heading of paragraph (b) to read as follows: "*Record maintenance requirements for facilities not covered by § 124.513.*".

7. 42 CFR 124.510 is amended by adding a new paragraph (c) thereto, to read as follows:

* * * * *

(c)(1) *Reporting requirements for certified public facilities.* A facility certified under § 124.513 shall comply with paragraph (a)(4) of this section and shall submit within 90 days after the close of its fiscal year, as appropriate:

(i) A certification, signed by the responsible official of the facility, that there has been no material change in the factors upon which the certification under § 124.513 was based; or

(ii) A certification, signed by the responsible official of the facility and supported by appropriate documentation, that there has been a material change in the factors upon which the certification under § 124.513 was based.

(2) *Record maintenance requirements for certified public facilities.* A facility certified under § 124.513 shall maintain, make available for public inspection consistent with personal privacy, and provide to the Secretary on request, any records necessary to document its compliance with the requirements of this subpart in any fiscal year, including those documents submitted to the Secretary under § 124.513(c). A facility shall maintain these records for three years except where a longer period is required as a result of an investigation by the Secretary. In such cases, records must be kept until 180 days following the close of the Secretary's investigation under § 124.511(a).

(Approved by the Office of Management and Budget under OMB control number 0915-0103.)

§ 124.511 [Amended]

8. Paragraph (a)(3) of 42 CFR 124.511 is revised to read as follows:

(a) * * *

(3) When the Secretary investigates a facility, the facility, including a facility certified under § 124.513, shall provide to the Secretary on request any documents, records and other information concerning its operations that relate to the requirements of this subpart. A facility certified under § 124.513 will be presumed to be out of compliance with its certification unless it supplies documentation sufficient to show compliance with the programs of discounted health services certified under that section.

9. Paragraph (b)(2) of 42 CFR 124.511 is revised to read as follows:

(b) * * *

(2) A facility, including a facility certified under § 124.513, that has denied uncompensated services to any person because it failed to comply with the requirements of this subpart will not be in compliance with its assurance until it takes whatever steps are necessary to remedy fully the noncompliance.

10. 42 CFR Part 124, Subpart F, is amended by adding at the end thereof a new § 124.513, to read as follows:

§ 124.513 Public facility compliance alternative.

(a) *Effect of certification.* The Secretary may certify a facility which meets the requirements of paragraphs (b) and (c) of this section as a "public facility". A facility which is so certified is not required to comply with this subpart except as otherwise herein provided.

(b) *Criteria for qualification.* A public facility may qualify for certification under this section if all of the following criteria are met:

(1) It is a facility which is owned and operated by a unit of State or local government or a quasi-public corporation as defined at 42 CFR 124.2(m).

(2) It provides health services without charge or at a substantially reduced rate to persons who are determined by the facility to qualify therefor under a program of discounted health services. A "program of discounted health services" must provide for financial and other objective eligibility criteria and procedures, including notice prior to nonemergency service, that assure effective opportunity for all persons to apply for and obtain determination of eligibility for such services, including determination prior to service where requested; *provided that,* such criteria and procedures are not required where the facility makes all services available to all persons at no or nominal charge.

(3)(i) It received, for the three most recent fiscal years, at least 10 percent of its total operating revenue (net patient revenue plus other operating revenue, exclusive of any amounts received, or if not received, claimed, as reimbursement under Titles XVIII and XIX of the Social Security Act) from State and local tax appropriations or other State and local government revenues, or from a quasi-public corporation as defined as 42 CFR 124.2(m), to cover operating deficits attributable to the provision of discounted services; or

(ii) It provided, in each of the three most recent fiscal years, uncompensated services under this subpart or under programs described by the documentation provided under § 124.513(c)(2) in an amount not less than twice the annual compliance level computed under § 124.503(a).

(c) *Procedures for certification.* To be certified under this section, a facility must submit to the Secretary, in addition to other materials that the Secretary

may from time to time require, copies of the following:

(1) Audited financial statements or official State or local government documents (such as annual reports or budget documents), for the three most recent fiscal years, sufficient to show that the facility meets the criteria in paragraphs (b)(3)(i) or (ii) of this section.

(2) A complete description of its program(s) of discounted health services, including charging and collection policies of the facility, and eligibility criteria and notice and determination procedures used under its program(s) of discounted services.

(Approved by the Office of Management and Budget under control number 0915–0103)

(d) *Period of effectiveness.* (1) A certification by the Secretary under this section remains in effect until withdrawn. The Secretary may disallow credit under this subpart when the Secretary determines that there has been a material change in any factor upon which certification was based or substantial noncompliance with this subpart. The Secretary may withdraw certification where the change or noncompliance has not been adequately remedied or noncompliance otherwise continues.

(2) *Deficits*—(i) *Title VI-assisted facilities with assessed deficits.* Where a facility assisted under Title VI of the Act has been assessed pursuant to § 124.511(a) as having a deficit under § 124.503(b) that has not been made up prior to certification under this section, the facility may make up that deficit by either—

(A) Demonstrating to the Secretary's satisfaction, that it met the requirements of paragraph (b) of this section for each year in which a deficit was assessed; or

(B) Providing an additional period of service under this section on the basis of one (or portion of a) year of certification for each year (or portion of a year) of deficit assessed. The period of obligation applicable to the facility under § 124.501(b) shall be extended until the deficit is made up in accordance with the preceding sentence.

(ii) *Title VI-assisted facilities which have not been assessed.* Where any period of compliance under this Subpart of a facility assisted under Title VI of the Act has not been assessed pursuant to § 124.511(a), the facility will be presumed to have no allowable credit for such period. The facility may either—

(A) Make up such deficit in accordance with paragraph (d)(2)(i) of this section; or

(B) Submit an independent certified audit, conducted in accordance with procedures specified by the Secretary, of the facility's records maintained pursuant to § 124.510. If the audit establishes to the Secretary's satisfaction that no, or a lesser, deficit exists for the period in question, the facility will receive credit for the period so justified. Any deficit which the Secretary determines still remains must be made up in accordance with paragraph (d)(2)(i) of this section.

(iii) *Title XVI-assisted facilities.* (A) A facility assisted under Title XVI of the Act which has an assessed deficit pursuant to § 124.511(a) which was not made up prior to certification under this section shall make up that deficit in accordance with paragraph (d)(2)(i)(A) of this section. If it cannot make the showing required by that paragraph, it shall make up the deficit when its certification under this section is withdrawn.

(B) A facility assisted under Title XVI of the Act whose compliance with this subpart has not been completely assessed pursuant to § 124.511(a) will be presumed to have no allowable credit for the unassessed period. The facility may make up the deficit by—

(*1*) Following the procedure of paragraph (d)(2)(iii)(A) of this section; or

(*2*) Submitting an independent certified audit, conducted in accordance with procedures specified by the Secretary, of the facility's records maintained pursuant to § 124.510. If the audit establishes to the Secretary's satisfaction that no, or a lesser, deficit exists for the period in question, the facility will receive credit for the period so justified. Any deficit which the Secretary determines still remains must be made up in accordance with paragraph (d)(2)(iii)(A) of this section.

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Part IV

Department of Education

34 CFR Part 761
Leadership in Educational Administration Development Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 761

Leadership in Educational Administration Development Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary of Education (the Secretary) proposes regulations for the Leadership in Educational Administration Development (LEAD) Program. The LEAD Program assists in the establishment or operation of technical assistance centers in each State to promote the development of leadership skills in elementary and secondary school administrators.

DATES: Comments must be received on or before October 20, 1986.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Hunter Moorman, Department of Education, Office of Educational Research and Improvement, Programs for the Improvement of Practice, 555 New Jersey Avenue, NW., Washington, DC 20208.

A copy of any comments that concern information collection requirements should also be sent to the Office of Mangement and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Hunter Moorman, (202) 357–6173.

SUPPLEMENTARY INFORMATION:

Background

The Leadership in Educational Administration Development Act (the Act) was enacted as Title IX of the Human Services Reauthorization Act of 1984, Pub. L. 98–558. The Act was designed to provide assistance to eligible parties to establish technical assistance centers in each State to upgrade the skills of elementary and secondary school administrators.

Summary of Major Provisions

1. *Definition of State.* Section 902(b) of the Leadership in Educational Administration Development Act provides that "the Secretary shall make available such amount, not less than $150,000 for each State, as may be necessary for establishing and operating a technical assistance center in each State." While this statutory requirement does not restrict eligibility to States or their instrumentalities, it does mandate that the Secretary sponsor technical assistance centers that are located in each State. However, neither the Human Services Reauthorization Act of 1984 nor the Leadership in Educational Administration Development Act provides for a definition of the term "State." The Secretary is thus constrained to interpret the term "State" in accordance with its ordinary and plain meaning. As reflected in proposed § 761.4(b), the term "State" has been defined to mean a State admitted into the Union of the United States of America.

In the Secretary's view, this is the only plausible interpretation. The Secretary must imterpret statutes that he is entrusted to administer in a manner that does not expand the scope of his authority beyond that which Congress has granted. The Secretary does not possess authority to extend Federal sponsorship to technical assistance centers that may be located in jurisdictions that are not States such as the District of Columbia, Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands. By not providing a statutory definition of the term "State" that would embrace other governmental entities (*see, e.g.,* section 595 of the Education Consolidation and Improvement Act of 1981), Congress has precluded the Secretary from sponsoring technical assistance centers that may be located, for example, in the Trust Territory of the Pacific Islands. Indeed, Congress's recent legislative enactment in appropriating funds to implement the LEAD program corroborates the Secretary's view that Congress does not wish Federal sponsorship of centers that may be located in non-States. Title III of the Department of Education Appropriation Act, 1986, Pub. L. 99–178, provides for $7.5 million to implement the LEAD program; this amount, which has been further reduced to $7.176 million by the Balanced Budget and Emergency Deficit Control Act of 1985, Pub. L. 99–177, was the irreducible minimum level of funds that could be appropriated to satisfy an allotment of not less than $150,000 for a technical assistance center in each of the 50 States, as provided in section 902(b) of the Leadership in Educational Administration Development Act.

2. *Types of Awards.* Under proposed § 761.10 the Secretary awards grants in the LEAD program. While the Act uses the term "contracts" to label the type of awards to be made under the Act, it makes clear in sections 901(b), 902(a), 903 (a) and (c), and 904(c) that the Secretary provides funding for improving the leadership skills of school administrators in each State. In addition, there is no evidence in statute or legislative history that indicates Congress intends to limit the LEAD program to a procurement relationship between the Federal Government and recipients. Under the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–6308), the appropriate type of award instrument for an agency to use in establishing an assistance relationship is either grant or cooperative agreement. Since the Department intends to award funds under the LEAD program as assistance to recipients, the regulations specify that grants will be used to make the awards.

3. *Special considerations.* Under proposed § 761.32, in selecting new grants under this program, the Secretary may take into consideration the opportunity to improve the diversity of activities or projects to be funded under a particular competition or the need to assure the distribution of funds on a fair and equitable basis. For example, in order to promote diversity, the Secretary may choose to fund an application for a technical assistance center that proposes not only an acceptable program but also an unusually innovative approach with potential benefit to future leadership development activities across several States. Or, in the event that more than one award per State is to be made under some future competition, the Secretary may choose to fund a combination of technical assistance centers that would provide desirable breadth as well as quality of needed services in a State.

The need to take into account fair and equitable distribution of funds may occur when funds beyond the anticipated $143,500 are available for award in each State. This situation could arise when no award was to be made in one or more States, because of the absence of qualified applicants or fundable applications, or when awards in one or more States were funded for less than the available amount per State. In this situation, the Secretary would have the discretion to select awardees in part on the basis of the extent to which proposed project budgets were consistent with fair and equitable distribution of program funds across the several States.

4. *Funding limitations.* Proposed § 761.33 implements statutorily required funding limitations for this program. As required by the Act, awards are limited to a term of three years. Each year's funding would be subject to satisfactory performance, availability of funds, and other conditions established in EDGAR (34 CFR 75.253). The Act provides that these awards are not renewable; however, the Secretary may issue a three-year supplemental grant under

certain conditions for one-half the amount of the original grant (§ 761.33 (b) and (c)). Proposed § 761.33(d) implements the statutory minimum amount of funds to be made available for awards to establish and operate technical assistance centers under this program.

Finally, under proposed § 761.33(e), the Secretary would provide funds only in amounts equal to matching funds contributed in cash or in kind by the grant recipient. Potential applicants are advised that the amount available for an award as set out in this proposed section has been reduced by the Balanced Budget and Emergency Deficit Control Act of 1985, Pub. L. 99–177. Under current appropriations, approximately $143,500 will be available for award in each State. The amount available in future years may also be affected by other legislation enacted after the Act. Consequently, potential applicants should refer to the notice which the Secretary will publsh in the **Federal Register** for each competition. This notice will state the level of funding actually available in the LEAD program if that information is available at the time.

Additional Information

Private school eligibility. Private schools operated as nonprofit organizations are eligible under § 761.2 to apply for assistance under the LEAD program.

Restriction on certain uses of project funds. Proposed § 761.40(b) would prohibit the use of project funds to supplant present expenditures for services and activities included in a center's program, to purchase equipment, or to construct, repair, remodel, or alter facilities or sites to be used in activities funded under this program. Under proposed § 761.40(c), the Secretary is authorized to restrict the amount of funds used to pay stipends to trainees for their participation in training activities.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the crieteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities.

Only a very small number of grants will be awarded, and these proposed regulations do not impose any excessively burdensome or unnecessary requirements.

Paperwork Reduction Act of 1980

Section 761.31 contains information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: Joseph F. Lackey, Jr.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide an early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 500K, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m. Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would 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 Part 761

Education, Leadership skills, Grant Program Education, Reporting and recordkeeping requirements, Training Centers.

Citation of Legal, Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance number 84.178—Leadership in Educational Administration Development)

Dated: September 15, 1986.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Part 761 to read as follows:

PART 761—LEADERSHIP IN EDUCATIONAL ADMINISTRATION DEVELOPMENT PROGRAM

Subpart A—General

Sec.

Subpart B—What Services Does the Secretary Support Under This Program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Select an Applicant for Funding?

Subpart E—What Conditions Must be Met by a Grantee?

Authority: 20 U.S.C. 4201 to 4206, unless otherwise noted.

Subpart A—General

§ 761.1 What is the Leadership in Educational Administration Development Program?

The Leadership in Educational Administration Development (LEAD) Program provides financial assistance to eligible organizations that establish or operate technical assistance centers. The technical assistance centers funded under this program must promote development of certain leadership skills for school administrators, including attention to increasing access for minorities and women to administrative positions.

(Authority: 20 U.S.C. 4201)

§ 761.2 Who is eligible to apply for assistance under this program?

Local educational agencies, intermediate school districts, State educational agencies, institutions of higher education, private management organizations, nonprofit organizations, or consortia of those entities are eligible to apply for assistance under this program.

(Authority: 20 U.S.C. 4203)

§ 761.3 What regulations apply to this program?

The following regulations apply to the Leadership in Educational Administration Development Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Departmental Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 761.

(Authority: 20 U.S.C. 4205)

§ 761.4 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77.1:

Applicant, Application, Award, Budget period, Department, EDGAR, Equipment, Facilities, Local educational agency (LEA), Nonprofit, Project, Private, Public, Secretary, State educational agency (SEA).

(b) *Other definitions that apply to this part.* The following definitions also apply to this part:

"Consortium" means an association or partnership of eligible parties formed for the establishment or operation of a technical assistance center.

(Authority: 20 U.S.C. 4205)

"Institution of higher education" means a public or private nonprofit institution of higher education as defined in 34 CFR 668.2.

"Leadership skills" means such skills as managerial, executive, administrative, evaluative, communication and disciplinary, and related techniques that enhance an individual's ability to carry out the functions and duties of a school administrator.

"School administrator" means a principal, assistant principal, district superintendent, and other local public or private school or district administrator who exercises supervision and control over the provision of an elementary or secondary education program, including its content, direction , support, facilities and related elements. The term also includes an individual who participates in educational, training, or developmental programs in preparation for responsibility as an elementary or secondary school administrator.

(Authority: 20 U.S.C. 4206)

"State" means a State of the United States of America.

"Technical assistance center" means an organization maintained by the recipient of assistance under the LEAD program to provide services, including training, to others for the purpose of enhancing the leadership skills of elementary and secondary school administrators in a State.

(Authority: 20 U.S.C. 4205, 4206)

Subpart B—What Services Does the Secretary Support Under This Program?

§ 761.10 What assistance does the Secretary provide under this program?

The Secretary provides financial assistance in the form of grants to eligible organizations that establish or operate a technical assistance center.

(Authority: 20 U.S.C. 4201, 31 U.S.C. 6304)

§ 761.11 What services are provided by a technical assistance center funded under the LEAD program?

(a) The Secretary funds technical assistance centers to provide the following services to school administrators in the State served by the center:

(1) Collecting information on school leadership skills.

(2) Assessing the leadership skills of school administrators that participate in programs sponsored by the center based on criteria ralated to effective leadership.

(3) Conducting training programs on leadership skills for new school administrators and for practicing school administrators, with particular emphasis on recruiting women and minority administrators to participate in those programs.

(4) Maintaining consultative programs that provide advice and guidance on leadership skills to clients at sites within school districts, as well as at the center.

(5) Establishing and maintaining training curricula and instructional materials on leadership skills, drawing on expertise in business and industry, educational institutions, civilian and military governmental agencies, and existing effective schools.

(6) Initiating programs that promote the improvement of leadership skills by—

(i) Making available the services of executives from business, scholars from various institutions of higher education, and practicing school administrators; and

(ii) Providing school administrators with internships in business, industry, and effective school districts.

(7) Disseminating information on leadership skills associated with effective schools.

(8) Establishing model projects for administrative leadership development that draw upon the most reliable and valid principles of effective educational administration.

(b) The applicant shall indicate in its application how the resources for which it is applying will be allocated among each of the services in paragraph (a) of this section, based upon the applicant's assessment of the needs of school administrators within its State and of alternative training programs available. In selecting applicants, the Secretary considers the applicant's justification as to why each service would receive the level of support proposed, including reasons for seeking minimal or no Federal funding for any service in paragraph (a) of this section.

(Authority: 20 U.S.C. 4203)

Subpart C—[Reserved]

Subpart D—How does the secretary Select an Applicant for Funding?

§ 761.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application submitted under this program on the basis of the selection criteria in § 761.31.

(b) The Secretary scores an application based on a 100-point scale.

(c) The maximum number of points for each criterion is indicated in

parentheses after the heading of the criterion.

(Authority: 20 U.S.C. 4205)

§ 761.31 What selection criteria does the Secretary use to evaluate an application under this program?

The Secretary uses the following criteria in evaluating an application—

(a) *Plan of operation.* (10 Points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The extent to which the proposed allocation of resources among the services listed in § 761.11(a) will address the needs of school administrators within the State;

(5) How well the project builds upon, complements or otherwise takes into account other related administrator leadership activities in the State; and

(6) The quality of the applicant's plans to use its resources and personnel to achieve each objective.

(b) *Quality of key personnel.* (20 Points)

(1) The Secretary reviews each application to determine the quality of key personnel, including but not restricted to consultants and other contractors, the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The time that these key personnel will commit to the project.

(2) To determine the qualifications of these key personnel, the Secretary considers—

(i) Experience, training, and professional productivity, in fields related to the objectives of the project; and

(ii) Any other qualifications, including credentials relating to the development of human relations skills, that pertain to the quality of the project.

(c) *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) The project supplements other related leadership development activities within the State; and

(3) Costs are reasonable in relation to the objectives of the project.

(d) *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—

(1) The applicant's design for evaluation specifies the relationship of program goals and activities to anticipated outcomes as well as how the outcomes would be assessed; and

(2) The applicant's methods of evaluation are appropriate to the project, and to the extent possible, are objective and produce data that are quantifiable, as well as valid and relevant.

Cross-reference—See 34 CFR 75.590 Evaluation by the grantee.

(e) *Adequacy of organizational resources and commitment.* (20 Points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project and of organizational commitment to carrying out the activities of the technical assistance center, demonstrated through—

(1) Facilities, equipment, and supplies;

(2) Matching funds for the proposed project in cash or in kind at least equal in amount to the amount of Federal funds available to a grant under this program;

(3) Plans and commitment to continue to operate the technical assistance center activities after expiration of Federal funding provided under this program; and

(4) Establishment of a policy advisory committee (including but not limited to members of the business community, private foundations, and local and State educational agencies) representative of groups whose support, guidance, and commitment will promote both accomplishment of the project's goals and continuation of the project after Federal funding terminates.

(Authority: 20 U.S.C. 4204)

(f) *Potential for enhancing the leadership skills of school administrators.* (20 Points) The Secretary reviews each application to determine the potential of the project for enhancing the leadership skills of school administrators, with particular attention to—

(1) The application of information on leadership skill development and executive performance, including but not restricted to information identified by graduate schools of management and information gained from research or knowledge of effective practice, to the design of the project's leadership development activities;

(2) The identification of leadership skills and knowledge pertinent to the needs of school administrators to serve as the focus of project activities;

(3) The extent to which proposed activities will improve leadership skills for project participants;

(4) The extent to which proposed training activities will contribute to increasing access of women and minorities to administrative positions; and

(5) The nature of human relations skills to be developed, their relationship to the problems school administrators face, and the manner in which they will be developed.

(Authority: 20 U.S.C. 4201, 4203, 4204 and 4205)

(g) *Organizational arrangements and capacity.* (15 Points) The Secretary reviews each application to determine the extent to which the applicant's organizational arragements and capacity—

(1) Reveal a record of successful organizational performance on previous activities similar in nature or related to proposed project services;

(2) Are likely to elicit commitment to project goals and services from intended participants and target groups;

(3) Make available to the project the organizational expertise and combinations of staff and organizational resources required for successful provision of project services;

(4) Involve private sector managers and executives in the conduct of the project; and

(5) Ensure that project staff have access to resources and activities needed in developing and providing the project services.

(Authority: 20 U.S.C. 4201, 4203, 4204, and 4205)

§ 761.32 What special considerations may the Secretary use in selecting an application for funding?

In determining the order of selection for new grants under this program, the Secretary may take into consideration the following:

(a) The extent to which an application will enhance the diversity of activities or projects funded under a particular competition.

(b) The need to distribute funds for projects on a fair and equitable basis.

(Authority: 20 U.S.C. 4205)

§ 761.33 What funding limitations apply to awards under this program?

(a) Grants under this program are for a term of three years.

(b) Grants are not renewable, except that a one-time three-year extension may be provided by the Secretary if the grantee maintains the same level of services it provided under the original grant.

(c) If an extension is granted, the Secretary issues a supplemental grant equal to one-half of the amount of the original award provided to the grantee.

(d) Subject to the availability of funds, of the amount appropriated for any fiscal year, the Secretary provides that not less than $150,000 for each State will be available from which to award a grant, in an amount consistent with the intended recipient's application and the provisions of paragraph (e) of this section, to establish or operate a technical assistance center in each State.

(e) The Secretary provides funds for each award in an amount not to exceed the recipient's contribution of matching funds in cash or in kind.

(Authority: 20 U.S.C. 4202, 4204)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 761.40 What restrictions exist on the use of funds awarded under this program?

(a) A technical assistance center funded under this program shall make its services available to school administrators from any of the public and private educational agencies, including local educational agencies, nonpublic school districts, and independent schools, located within the State served by that center.

(b) Funds made available through an award under this program may not be used to—

(1) Supplant funds already used to support services and activities included in a technical assistance center's program;

(2) Purchase equipment; or

(3) Construct, repair, remodel, or alter facilities or sites for use in projects funded under this program.

(c) The Secretary may restrict the amount of funds used to pay stipends for educational personnel to participate in training activities.

(Authority: 20 U.S.C. 4204, 4205)

§ 761.41 What requirements must be met by a grantee?

A technical assistance center funded under this program shall do the following:

(a) Involve private sector managers and executives in the conduct of the center's program.

(b) Provide matching funds for the project in cash or in kind at least equal in amount to the amount of funds awarded under the grant.

(c) Demonstrate a commitment to continue to provide the services and activities of the center after the expiration of Federal funding under this program.

(d) Establish a policy advisory committee including but not limited to members of the business community, private foundations, and local and State educational agencies.

(e) Describe the nature of human relations skills to be developed, their relationship to problems school administrators face, the manner in which they will be developed, and credentials of project staff who may be responsible for developing these skills.

(f) Conduct an evaluation of the project.

(Authority: 20 U.S.C. 4204)

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Part V

Nuclear Regulatory Commission

10 CFR Parts 51 and 171

Annual Fee for Power Reactor Operating Licenses and Conforming Amendment; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 51 and 171

Annual Fee for Power Reactor Operating Licenses and Conforming Amendment

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is adding to its regulations a new regulation that will impose an annual fee on power reactors with operating licenses. This annual fee will recover allowable NRC budgeted costs for providing regulatory services to power reactors with operating licenses and will not alter the existing fee schedule under 10 CFR Part 170. The annual fee is necessary to comply with the statutory mandate of the Consolidated Omnibus Budget Reconciliation Act of 1985.

EFFECTIVE DATE: October 20, 1986.

FOR FURTHER INFORMATION CONTACT: Robert L. Fonner, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–8692.

SUPPLEMENTARY INFORMATION:

Contents

I. Background

A. Authority for the Rule

The Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (Pub. L. 99–272, 1986) requires the Nuclear Regulatory Commission to assess and collect annual charges from persons licensed by the Commission pursuant to the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) in an amount to approximate 33 percent of the Commission's estimated budget.

Section 7601 of the Budget Reconciliation Act states that the charges assessed shall be established by rule and, specifically, in paragraph (b)(I) that:

> * * * the Nuclear Regulatory Commission shall assess and collect annual charges from its licensees on a fiscal year basis, except that—
>
> (A) the maximum amount of the aggregate charges assessed pursuant to this paragraph in any fiscal year may not exceed an amount that, when added to other amounts collected by the Commission for such fiscal year under other provisions of law, is estimated to be equal to 33 percent of the costs incurred by the Commission with respect to such fiscal year; and
>
> (B) any such charge assessed pursuant to this paragraph shall be reasonably related to the regulatory service provided by the Commission and shall fairly reflect the cost to the Commission of providing such service.

The legislative history shows that Congress intended the authority of this mandate to go beyond that contained in the Independent Offices Appropriation Act (IOAA) of 1952 (65 Stat. 290; 31 U.S.C. 9701). The Congressional Managers of COBRA, in describing this legislative provision, asserted:

> The charges assessed pursuant to this authority shall be reasonably related to the regulatory service provided by the Commission and fairly reflect the cost to the Commission of providing such service. This is intended by the conferees to establish a standard separate and distinct from the Commission's existing authority under the Independent Offices Appropriation Act of 1952 in order to permit the Commission to more fully recover the costs associated with regulating various categories of Commission licensees.

See 132 Cong. Rec. H879 (Daily Ed. March 6, 1986); 132 Cong. Rec. S2725 (Daily Ed. March 14, 1986).

The NRC is construing this legislation to permit it to charge licensees not only for special benefits provided to individual licensees, as that term has been used in construing the IOAA, but also to recover the cost of any Commission activity reasonably related to regulating power reactors licensed to operate.

B. Revisions and Effect on Existing Fee Schedule

The proposed rule (July 1, 1986; 51 FR 24078) provided that applicants for power reactor operating licenses or holders of power reactor operating licenses and major material licensees would pay an annual fee in lieu of all other fees.

The final rule will impose an annual fee on power reactors with operating licenses. The annual fee under 10 CFR Part 171 will be based on NRC budgeted costs for providing the following regulatory services to power reactors with operating licenses: (1) Research activities directly related to the regulation of power reactors on a generic basis, (2) power reactor plant regulation (except licensing and inspection activities, and Part 55 operator licensing and instructor certification), and (3) safeguards activities for power reactors (other than those activities directly associated with plant-specific licensing and amendments). This fee will include cost for many operating reactor-related regulatory costs not recovered under NRC's existing fee schedule, 10 CFR Part 170 (49 FR 21293; May 21, 1984), which established fees for some regulatory services that NRC provides its licensees.

The proposed rule provided that Part 170 would be suspended and, therefore, no fees would be collected under the IOAA. This proposal also relieved small materials licensees of all fees. The final rule provides that Part 171 will not affect the existing 10 CFR Part 170 fee schedule. This means that all fees currently collected under 10 CFR Part 170 will continue to be collected, including those from small materials licensees. Thus, under the final rule, holders of power reactor operating licenses will pay an annual charge (COBRA) under Part 171 and IOAA fees under Part 170. Other applicants and licensees will pay fees only under Part 170.

The Commission has placed in its Public Document Room at 1717 H Street, NW., Washington, D.C., data used in developing the proposed 10 CFR Part 171, copies of the comments received, and a separate document that categorizes and summarizes these comments by facilities, Agreement States, and materials licensees.

II. Summary of Comments

Only three commenters supported the proposed rule; the majority of the sixty-one comments discussed eleven common concerns:

1. Constitutionality of the Annual Fee
2. Exclusion of Some Licenses from Fees
3. Collection of One-Third of the NRC Budget
4. Inclusion of Research Costs in Fee Base
5. Fines, Penalties, Interest, and Reimbursements
6. Basing the Fee on Size of Reactor
7. High-Level Waste Fund
8. Exemption Provision
9. Quarterly Assessments
10. Adjustments
11. Comment Period

Twelve commenters thought the proposed fees to be unconstitutional, and four commenters said no annual fees should be assessed to recover NRC costs for providing regulatory services, but, rather that the public, as the real beneficiary of NRC regulatory services, should support the regulatory costs of the NRC. Thirty-four commenters, in opposition to the proposed rule, requested that small materials licenses be subject to fees charged by the NRC.

Two commenters stated that relief should be given from the proposed fees for uranium mills licenses. One commenter thought that suspended license applications, with minimal activity, should not be subject to the proposed annual fee because the fee would be disproportionately large in relation to the profit realized in that circumstance. One commenter also thought that operating license (OL) applicants would not be receiving a benefit from the activities upon which the proposed fee was based and would, in effect, have a double fee burden because they would pay the annual fee in addition to fees previously paid under Part 170. One commenter asserted that "Architect-Engineers, vendors, test reactors, waste repositories and others . . ." should pay annual fees.

Several commenters expressed the view that the NRC was not required to collect a full 33 percent of its budget. Eleven commenters held the view that agency research costs should not be included in the cost basis for determining the annual fee. Two commenters asserted that fines, interest, and penalties should be included in the cost basis for the proposed fees. Ten commenters thought the annual fee should be assessed on the basis of power rating in thermal megawatts (one commenter opposed this suggestion). One commenter thought that the Department of Energy high-level waste program fund should be subject to fees. One commenter said that an exemption provision was needed for small and expensive-to-operate reactors because of the disproportionate burden that the proposed rule would impose on the resources generated from these reactors. Six commenters thought that fees should be collected on a quarterly or a monthly basis. Commenters urged that, should excess fees be collected, a provision for refunds be included in the rule. Finally, several commenters thought that the comment period for the proposed rule was too short.

No comments were received regarding the proposed amendment to 10 CFR Part 51, which provides that promulgation of Part 171, and future amendments thereto, does not require preparation of an environmental impact statement or assessment.

III. Resolution of Comments

1. Constitutionality of the Annual Fee

Comment: Many of the commenters argued that the Commission was imposing an unconstitutional tax.

Response: The thrust of commenters' arguments was that the Commission's proposal violated constraints on user fees established by the Supreme Court in *National Cable Television v. United States*, 415 U.S. 336 (1974) and *Federal Power Commission v. New England Power*, 415 U.S. 345 (1974) and further developed in subsequent decisions by courts of appeals. In *National Cable* and *New England Power*, the Supreme Court examined agency authority to assess fees pursuant to a particular statute, the Independent Officers Appropriation Act of 1952. The Court there adopted a limiting construction of the IOAA to avoid a Constitutional question of whether certain language of the IOAA amounted to a delegation to assess "taxes" rather then "fees." The Court indicated that the legislative history of the IOAA did not reveal an intention on the part of Congress to delegate its taxing authority to Federal agencies. In short, the Court's analysis was largely limited to the IOAA itself. The commenters, however, appear to read these cases as establishing general Constitutional limitations on an agency's power to assess fees. Accordingly, many of the commenters argued that because the NRC was not only charging for "special benefits" provided to identifiable recipients of NRC services, but also recovering the costs of its generic rulemaking and research activities, the NRC was imposing an unconstitutional tax.

The Commission finds these legal arguments to be unpersuasive. The commenters' arguments are based on the faulty premise that the only legally acceptable standard for assessing fees is that contained in the IOAA. In Section 7601(b)(B) of COBRA, Congress provided that annual charges assessed by the NRC ". . . shall be reasonably related to the regulatory service provided by the Commission and shall fairly reflect the cost to the Commission of providing such service." The underlying legislative history makes clear that this provision is intended by the conferees to establish a standard separate and distinct from the Commission's existing authority under IOAA in order to permit the Commission to more fully recover the costs associated with regulating various categories of Commission licensees. Statement of Managers Re NRC Fees, 132 Cong. Rec. H. 879 (Daily Ed. March 6, 1986); 132 Cong. Rec. S. 2725 (Daily Ed. March 14, 1986). Congress undeniably has the authority to provide a fee standard distinct from the IOAA, provided that the standard satisfies Constitutional requirements.

In numerous cases the Supreme Court has addressed the issue of whether Congress has unconstitutionally delegated legislative power to administrative agencies. A reading of those cases indicates that Congress may delegate its authority to administrative agencies provided that it sets forth intelligible standards for the agency to follow in carrying out the Congressionally prescibed policy. *Hampton, Jr. & Co. v. United States*, 276 U.S. 394 (1928). A delegation is not unconstitutional simply because the determination of facts and the inferences to be drawn from them in light of the statutory standards and declaration of policy call for the exercise of judgment and for the formulation of subsidiary administrative policy within the prescribed statutory framework. *Yakus v. United States*, 321 U.S. 414, 425 (1944).

In COBRA, Congress has laid down an intelligible standard for the Commission to apply and has articulated its policy objectives. Simply put, the NRC is to recover approximately 33 percent of its budget from user fees (see Statement of Managers Re NRC Fees) and is to assess fees based on the standard articulated above. We believe this delegation of authority to the NRC satisfies all Constitutional requirements.

The courts have previously considered the issue of whether a fee can be charged for a service provided by the Government that benefits not only the licensee, but also the general public. The Courts have held that the mutual benefit of a Government service to the recipient and to the public is not a legal bar to the imposition of fees. Prorating of costs on the basis of benefit to the public is not required. *Mississippi Power & Light Co. v. U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (1979), *cert. denied* 444 U.S. 1102 (1980).

Thus the only question that remains is whether the fee schedule promulgated by the NRC falls within the parameters authorized by Congress. We believe that it clearly does. Following the Congressional mandate, we are attempting to collect a third of our budget in fees and, as explained elsewhere in this notice, have carefully developed a schedule which ensures that fees assessed are reasonably related to the NRC costs of providing regulatory services.

2. Exclusion of Some Licenses From Fees

Comment: Agreement States and some other commenters asserted that the proposed rule, in eliminating fees for small materials licensees, would have a severe adverse effect on State fee programs and that 10 CFR Part 170

should be retained in order to maintain reasonable fees for materials licensees.

Many commenters asserted that the Commission had misconstrued Congressional intent by proposing the suspension of collections under the IOAA—the authority for the current Part 170. Commenters argued that the Congress contemplated that the NRC would continue to collect fees under the IOAA, as well as CORBA. Specifically, many commenters vigorously argued that Congress contemplated that all licensees should pay fees and that the NRC lacked authority to exempt all small materials licenses from payment of fees.

Response: The Commission believes it did not misread the Congressional intent, and that it has the authority under COBRA to suspend collections under Part 170 and not charge fees to small materials licensees. The Commission, nonetheless, has decided to retain Part 170 as a means of more equitably distributing the agency costs among those receiving services.

The final rule will not affect materials licensees; they will continue to pay only fees chargeable under part 170. Major materials licensees will not be subject to an annual fee, as previously proposed. OL applicants similarly will remain subject only to fees under Part 170. With the issuance of an operating license, a former OL applicant will be subject to the annual fee required under this final rule in addition to the other fees collected for services covered by Part 170. If an OL applicant receives its OL license during the year, it will pay only a prorated annual fee for that year, because, under the final rule, Part 170 will remain in effect, and fees will be collected under Part 170 up to the time of issuance of the OL. The applicants for licenses and holders of these licenses for test and research reactors and waste repositories will also continue to pay fees under that part. Vendors will also continue to pay fees under Part 170.

3. Collection of One-Third of the NRC Budget

Comment: The Commission is not required by Section 7601 of the COBRA to collect the full 33 percent of its budget.

Response: The Budget Reconciliation Act provides that the "maximum amount of the aggregate charges assessed may not exceed an amount that . . . is estimated to be equal to 33 percent of the costs incurred by the Commission with respect to such fiscal year. . . ." On its face, this is a ceiling, i.e., it would permit the Commission to charge user fees of less than 33 percent. However, the legislative history clearly indicates that Congress expected the NRC to charge the full amount authorized by the statute. The Statement of Managers, which was drafted to reflect the views of the Conference Committee that considered the legislation and was inserted into the *Congressional Record* as part of the floor debate on the measure, states:

> The conferees agreed to require the NRC to assess and collect annual charges from its licensees in an amount that, when added to other amounts collected by the Commission shall not exceed 33 percent of the Commission's budget for each fiscal year. Assuming the current level of NRC expenditures, this is expected to result in the collection of additional fees in an amount up to approximately $80 million per year for each fiscal year.

132 Cong. Rec. H. 879 (Daily Ed. March 6, 1986); 132 Cong. Rec. S. 2725 (Daily Ed. March 14, 1986).

We read this limited legislative history as indicating that Congress expected this legislation to result in approximately $80 million in collections each year above that already collected by the NRC under Part 170. To meet this target, collecting a full third of the NRC budget is required.

Such an interpretation is also consistent with the President's request to Congress that the NRC recover a far greater amount of its budget from user fees. The President in his proposed budget to Congress for fiscal year 1987 had suggested that 50 percent of the NRC budget be recovered through user fees, a figure adopted by the House of Representatives, but reduced in Conference Committee.

4. Inclusion of Research Costs in Fee Base

Comment: Commenters argued that the NRC research costs should not be recovered through fees.

Response: Commenters argued for instance that a boiling water reactor (BWR) licensee under the proposed rule would be paying for research on a pressurized water reator (PWR) and vice versa. This could result in one group of licensees subsidizing another. It was also argued that other research costs may be relevant only to future generations of reactors, but of no benefit to the current reactors. The Commission has reviewed again the research portion (as well as the Nuclear Materials Safety and Safeguards, Nuclear Reactor Regulation, Inspection and Enforcement, and Analysis and Evaluation of Operational Data portions) of the cost basis for the annual fee. The purpose of this review was to ensure that only generic costs associated with all power reactors, with operating licenses, regardless of type, were included in the cost basis. Costs for research rulemaking and other activities not relevant to all reactors will not be recovered through fees. A detailed breakdown of costs to be recovered is available in the NRC Public Document Room in Washington, D.C. Based on this review, the cost basis for the annual fee has been revised as follows:

FISCAL YEAR 1987 PROJECTIONS OF NRC COSTS FOR NUCLEAR POWER REACTOR REGULATORY GENERIC PROGRAMS

[Dollars in thousands]

Programs	Costs for regulatory services
Research	$74,356
Safeguards	2,326
Reactor regulation	24,346
Inspection and enforcement	15,482
Analysis and evaluation of operational data	7,720
Total	$124,230

Because the costs listed above apply to all power reactors, the costs have been divided equally for purposes of calculating the annual fee. This approach is consistent with the Congressional directive that all fees be reasonably related to the cost of providing services.

5. Fines, Penalties, Interest, and Reimbursements

Comment: Commenters said that fines, interest, penalties, and reimbursements should be included in the cost basis as collections under other laws.

Response: The commenters argued that COBRA provides that the maximum total of fees to be collected by the NRC may not exceed, when added to other amounts collected by the Commission, 33 percent of the Commission's budget. Accordingly, they believe the 33 percent total is to be derived by adding fees collected to fines, interest, penalties, and reimbursements collected. The Commission rejects this argument. Fines and penalties are charged because of the failure of a licensee to adhere to prescribed standards or requirements. No public policy would be served by reducing a power reactor's annual fee because a utility violated NRC's requirements. We are unwilling to attribute such an intent to Congress. Nor do we believe Congress contemplated reducing fees to account for interest paid to the NRC. Interest is assessed only for late payment of monies due the United States. Accordingly, interest is not included in the cost base.

Finally, the NRC receives reimbursements from other Federal

agencies of approximately $50,000 per year. We have not included this sum in the fee base. The purpose of COBRA was to generate additional Federal revenue as compensation for services rendered by the NRC. The transfer of funds from one Federal agency to another does not result in increased Federal revenue. Accordingly, Congress did not contemplate that reimbursements would be in the fee base.

6. Basing the Fee on Size of Reactor

Comment: The annual fee should be based upon the power rating in thermal megawatts for each reactor.

Response: The Commission has considered calculating the annual fee on power reactors with operating licenses on the thermal megawatt ratings of those reactors. An argument can be made that the larger the reactor, the greater the licensee's ability to generate income to pay the annual fee. The COBRA, however, requires that the fees be reasonably related to the agency's costs of providing services to the licensee. As discussed in the proposed rule (51 FR 24078, 24082–3), the Commission has examined the relationship between megawatt rating and the costs of NRC regulation. The NRC finds no necessary relationship or predictive trend between the thermal megawatt rating of a reactor and NRC regulatory costs (see Memorandum to Files,[1] entitled "Reactor Inspection, Licensing and Part 55 Fees Assessed for One-Year Period," dated July 7, 1986, from James Holloway, Acting Director, License Fee Management Staff, Office of Administration). Accordingly, the Commission has determined that fees should not be based on the size of the reactor. Nevertheless, in recognition of the problem that some licensees of smaller reactors may have in paying substantially increased fees, the Commission has provided for fee exemptions. This issue is discussed in item 8, Exemption Provision.

7. High-Level Waste Fund

Comment: The Department of Energy (DOE) should be assessed fees, payable from the high-level waste fund, for NRC services provided toward high-level waste management.

Response: The Commission has no legal authority to charge the DOE fees for NRC staff work associated with high-level waste. The IOAA and the Atomic Energy Act of 1954, as amended, do not authorize the NRC to charge the DOE fees. The Commission does not construe COBRA as augmenting NRC authority in such a way as to permit the NRC to collect fees from the DOE.

8. Exemption Provision

Comment: One commenter, a holder of a license for a small reactor, requested that provision for exemptions from the full annual fee be included in the final rule.

Response: While the Commission is concerned with recovering its costs, it is not the intent of the Commission to promulgate a fee schedule that would have the effect of imposing fees at such a level that the owners of the handful of small, older reactors would find it in their best economic interest to shut their reactors down. Therefore, the Commission has included an exemption provision that takes reactor size and age and other factors into consideration in determining whether a license should be exempted from the full annual fee.

9. Quarterly Assessments

Comment: Several commenters were concerned with the size of the annual fee and its effect on their cash flow. The commenters also suggested that the NRC not require payment of fees in a single lump sum.

Response: In recognition of these concerns, the Commission will collect the annual fee under Part 171 in equal quarterly installments. Fees collected under Part 170 will continue to be collected under the payment schedule set forth under that part.

10. Adjustments

Comment: Provision should be made for refunds if the total of fees collected exceeds 33 percent of the NRC budget enacted by Congress.

Response: The Commission agrees with commenters that the possibility exists, under both the proposed and final rules, that the aggregate of collections under Parts 170 and 171 could exceed the statutory limit of 33 percent of the NRC budget in a given fiscal year. Therefore, a section has been added to the final rule which requires that any such overpayment be returned on a prorata basis to those who pay fees under Part 171. Provision is also made for adjusting the refund to take into account any power reactors that were given an operating license during the course of the fiscal year and thus did not pay the full fee. If the prorata share of the overpayment is $10,000 or less, it will be credited against the annual fee for the following fiscal year.

Finally, if a final appropriation for the NRC has not been passed at the time the annual fee is set and if the final appropriation is greater or less than the projection, the annual fee would be raised or reduced, as appropriate, and an adjustment to the remaining quarterly installments or a refund would be made, as appropriate.

11. Comment Period

Comment: Some commenters argued that the Commission should have provided for more than a 15-day comment period on the proposed rule.

Response: The Commission was under a statutory mandate to promulgate final fee regulations 45 legislative days after submission of its July 7, 1986, report to Congress on user fees. A longer comment period would have prevented the Commission from meeting the Congressionally mandated deadline. Under the circumstances, the comment period was reasonable, particularly because licensees were on notice in April when COBRA was enacted that the NRC would be proposing substantially higher fees. Moreover, based on the thoroughness of the comments received and the numerous issues raised in them, the Commission is convinced that all relevant issues of importance to this rulemaking have been identified and that the commenters have not demonstrated that they have been prejudiced by the 15-day comment period.

IV. Section-by-Section Revision

Section 171.1 Purpose.

The purpose section is revised to state that Part 171 sets out the fee to be charged persons licensed to operate a power reactor as defined in the new part.

Section 171.3 Scope.

The scope is revised to state that Part 171 applies only to persons licensed to operate a power reactor.

Section 171.5 Definitions.

In the final rule, the definitions for "Materials license," "Source material," and "Special nuclear material" have been deleted because licenses for these materials will remain subject to the appropriate fee schedules under 10 CFR Part 170. The definition for "Nuclear power reactor" has been modified to conform with the definition for "Power reactor" in 10 CFR Part 170.

Section 171.11 Exemption.

As stated in the proposed rule (51 FR 24078, 24082), the Congress urged the Commission to consider the impact of its fee schedule on certain licensees. Based on comments received, the Commission

[1] A copy of this memorandum is available for review at the NRC Public Document Room, 1717 H Street, NW., Washington, DC.

has determined that it is appropriate to take a similar approach in setting the fee schedule for power reactors with operating licenses. Accordingly, the added Exemption section provides that the holder of a license to operate a power reactor who believes that the annual fee is unfair or overly burdensome may apply to the Commission for partial relief from the annual fee. The Commission may grant such relief, if it is persuaded by the licensee that factors such as age and size of the plant and size and impact on its customer rate base substantially reduce the NRC's regulatory costs for that plant and the benefits bestowed on that licensee below that of the other power reactors. Nevertheless, the agency's intent is to grant exemptions sparingly.

Section 171.13 Notice.

This section, which was § 171.11 in the proposed rule, is revised to reflect that only power reactors licensed to operate are covered by the final rule.

Section 171.15 Annual fee: Power reactor operating licenses.

The proposed § 171.15, Annual Fee: Materials Licenses, has been deleted. This renumbered section on computing the annual fee is revised to reflect that only power reactors will be subject to the annual fee under Part 171. The formula was also revised to deduct the estimated fees to be collected under Part 170. The fees under Part 170 are estimated for fiscal year 1987 to be $37 million. It is estimated that approximately $30 million of this amount will come from power reactors with operating licenses. The annual fee will be charged to every power reactor unit licensed to operate as of October 1, 1986 (assumed to be 101 reactors), and, on a prorata basis, to any power reactor licensed to operate during the fiscal year. If a power reactor licensee has only the authority to possess nuclear material and the Commission has received a request from the licensee to amend its license to permanently withdraw its authority to operate the reactor, or the Commission has permanently revoked such authority, the licensee is not subject to the annual fee under this part for that power reactor. Such reactors no longer benefit from the regulatory services that are the basis for the annual fee. Plants within this latter category, such as Dresden 1, Humboldt Bay, Peach Bottom 1, and Indian Point 1 will not be charged fees under this part (though they remain subject to any applicable fees pursuant to Part 170 of this chapter).

The annual fee is calculated as follows:

$405 million (NRC FY 87 budget) × .33 = $133 million (rounded down to the nearest million)

$133 million minus $37 million (est. fees Part 170, FY 87) = $96 million

$96 million divided by 101 licensed reactors = $950 thousand per license (rounded down to the nearest thousand).

Section 171.17 Proration.

Section 171.17 in the proposed rule addressed the annual fee and its calculation for major materials licenses. As they will not be subject to fees under this part, that section is deleted and a new § 171.17 is added to the final rule for the purpose of addressing the issue of prorating fees for power reactors that are licensed to operate after the beginning of a fiscal year. No such provision was necessary in the proposed rule. As revised, applications for operating licenses under review will still be subject to fees chargeable under Part 170. It would not be fair to holders of new operating licenses to charge them the full annual fee in addition to fees which might have accrued under Part 170 during a fiscal year but prior to issuance of an operating license. The annual fee would be prorated by first dividing the annual fee by 365 and then multiplying the quotient by the number of days remaining in the fiscal year after the operating license issuance date. For example, if an operating license were issued on January 15 of fiscal year 1987, the annual fee for that fiscal year would be $950,000 divided by 365, which is $2,603, and then multiplied by 258 (the number of days remaining in FY), which is $671,574.

Section 171.19 Payment.

This section, which was § 171.17 in the proposed rule, is revised in the final rule to allow the NRC to prescribe only those collection mechanisms that are acceptable to the U.S. Treasury Department. At this time, such mechanisms include checks, drafts, money orders, or the Electronic Funds Transfer System. This section also has been revised in the final rule to provide for payment in quarterly installments of the Part 171 fee rather than payment in a single lump sum as proposed.

Section 171.21 Refunds.

Section 171.21, in the proposed rule was Enforcement and is renumbered § 171.23 in the final rule. This new § 171.21 is added to address the contingency that by the end of a given fiscal year, the aggregate of collections under Parts 170 and 171 might exceed the statutory limit on collections of 33 percent of the NRC budget. For example, several plants could be licensed to operate during the fiscal year and thereby pay a prorata share of the annual fee, or the number of amendments, inspections, or other activities subject to fees under Part 170 could be greater than estimated at the beginning of the fiscal year.

The purpose of the annual fee pursuant to Part 171 is to collect that portion of costs to the agency of providing regulatory services to power reactors, but with a ceiling on those collections equal to the difference between collections under Part 170 and 33 percent of the NRC budget. Accordingly, any collection of fees exceeding this ceiling will be refunded under this part. Refunds will be adjusted to allow for the fact that some licenses may only have been subject to a portion of the annual fee because the license to operate was issued during the fiscal year. However, it is anticipated that overpayments will arise under this provision rarely, if at all, and will probably not exceed $10,000 per license. Because of the administrative costs associated with making a refund from the U.S. Treasury, any overpayment of $10,000 or less will be credited against the annual fee for the following year.

Section 171.25 Collection, interest, penalties, and administrative costs.

This renumbered section, which was § 171.23 in the proposed rule, is modified slightly to reflect the requirement under 4 CFR Part 102 that, in addition to interest and penalties, administrative costs of collection also are recoverable by the NRC. The section is also modified in recognition of the authority given under § 171.19 to pay the annual fee in quarterly installments. If the quarterly installment is not paid on time in accordance with the schedule provided in § 171.19, then the full annual fee becomes immediately due and payable. Interest, penalties (if applicable), and administrative costs of collecting the fee will be calculated from the date that the late quarterly installment was due.

Unchanged Sections.

Sections 171.7, Interpretations, 171.9, Communications, and renumbered 171.23, Enforcement, are in this final rule as they were in the proposed rule.

10 CFR 51.22 Categorical exclusion.

The amendment to 10 CFR Part 51 to include Part 171 as a categorical exclusion is unchanged.

Commissioner Thomas M. Roberts abstained. The separate views of

Commissioner Frederick M. Bernthal follow:

While this final rule is a distinct improvement over the Commission's earlier proposed rule, it still suffers from several technical deficiencies, and more importantly, from fundamental infirmities which I noted in my previous views on this subject.

Whether or not the user fee idea is conceptually sound, one cannot justify the assessment of one class of licensee to pay for "services" which benefit another. The user fee concept should be permitted to sink or swim in court on its own merits, unburdened by questions of equity in implementation.

The final rule advanced by the Commission is so burdened to the extent that it (1) singles out one class of licensee for payment of the "extra fee" over and above the Part 170 fee schedule, and (2) charges the same "extra" fee to all holders of operating licenses, despite the fact that good performers will be subsidizing poor performers on whose behalf the NRC must frequently put forth extraordinary efforts.

Further, this final rule does not assess the Department of Energy, via the nuclear waste fund or other appropriate machanism, for NRC services related to the Nuclear Waste Policy Act. Absent extraordinary accounting precaution by Congress in its annual appropriations, the rule would thus indirectly require utilities to subsidize the regulatory costs attendant to the geologic disposal of defense high level waste. If the user fee concept is to be applied at all, it ought to be applied in a manner such that, insofar as possible, all entities which derive a "benefit" from NRC services share equally the costs of providing that benefit.

Technical deficiencies of this rule aside, however, there are elemental reasons for concern with all rules such as this. User fees have an undeniable philosophical and popular appeal—after all, who can be against the benefactors of federal regulatory services paying the cost of such services? But the user fee principle must proceed from a single premise: namely, that such fees be required of *all* entities which are subject to government regulatory activity—in short, that there be a level playing field.

The playing field is not level. Nuclear utilities are now to be singled out for payment of a user fee tax, while Congress has not seen fit to levy corresponding charges on other utilities which are the "beneficiaries" of similar Federal regulatory activity. I make no judgment on the merits of the many and diverse regulatory activities of the Federal Government. But I fail to see how our licensees benefit more from regulatory services than do the coal-burning utilities upon whom the EPA conferred the "benefit" of requirements for scrubber installation to reduce stack emissions, or for that matter, than do the pharmaceutical houses regulated by the FDA, or than do a host of other industries now subject to the regulatory requirements of the government.

Indeed, I question the theory (and the Congress should be concerned, lest the impression be created) that our licensees are the principal beneficiaries of the services provided by this agency; the prime beneficiary is the public at large, whom we are mandated to protect. But if that is so, should our licensees then be required to pay not only for an NRC-mandated nuclear powerplant backfit, for example, but also for the costs of a belated agency decision to require the backfit (because earlier regulatory standards were found to be inadequate)?

In passing the 1954 Atomic Energy Act, Congress found that:

> [R]egulation by the United States of the production and utilization of atomic energy and of the facilities used in connection therewith is *necessary* . . . to *protect the health and safety of the public.* [emphasis added]

In the Energy Reorganization Act of 1974, Congress declared that the promotional and regulatory functions of the Atomic Energy Commission should be separated, because it was "in the public interest", that the purpose of the Act was, among other things, "to assure public health and safety."

These Congressional findings and statements of purpose strongly suggest that the responsibilities of this agency are to be carried out for the benefit of the general public, and not for the benefit of any single enterprise, public or private. If there *were* any direct benefits to be conferred upon those whom we regulate, it seems clear that those vanished (and appropriately so) when the AEC was split and its promotional responsibilities assigned to agencies other than the NRC.

The American public, through its elected representatives, has thus charged the NRC with regulating the nuclear industry to promote safety and security. Yet the Commission is now required to implement legislation, the premise of which appears to be contrary to the stated purposes of this agency's enabling legislation.

I therefore approve this final rule only to permit the Commission to promulgate implementing regulations in fulfillment of its Congressional mandate.

Environmental Impact: Categorical Exclusion

The action required under this final rule is administrative and would not impact the environment. The Commission has determined pursuant to 10 CFR 51.22(a) that this final rule would be the type of action that is described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

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

Regulatory Analysis

The NRC's predecessor, the Atomic Energy Commission, adopted its first license fee schedule in the fall of 1968, as codified in 10 CFR Part 170. The authority to collect fees was based on Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701). That fee schedule covered power reactors, test and research reactors, fuel reprocessing plants, and materials licenses. It was revised and updated in 1978 and 1984.

The license fees were designed to recover a part of the costs of services attributable to identifiable recipients. Only those costs that were associated with the review of a license application and related to a specific identifiable beneficiary were used in the cost base for the establishment of the fee schedule. Certain costs under the Commission's 1984 revised fee schedule in 10 CFR Part 170 (49 FR 21293) continued to be excluded from fees. Some of the costs that were excluded from the fee base were those associated with: (1) Research, (2) generic licensing activities, (3) standards and code development, (4) contested hearings, (5) the Office of International and State programs, (6) the Office of Inspector and Auditor, (7) the Office of Congressional Affairs, and (8) the Office of Public Affairs.

Section 7601 of the Consolidated Omnibus Budget Reconciliation Act of 1985 requires the NRC to establish by rule an annual charge for its licensees that, when added to other amounts collected, is estimated to be equal to 33 percent of the estimated costs incurred by the Commission. This section authorizes NRC to expand its fee base to recover costs previously excluded, such as research and generic licensing activities. This final rule reflects NRC's interpretation of the intent of Section 7601.

Regulatory Flexibility Certification

This rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), and NRC Size Standards (50 FR 50241, December 20, 1985), the Commission hereby certifies that this final rule does not have a significant impact on small business entities. This rule affects only nuclear power plants licensed to operate. The companies that own these companies do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act.

List of Subjects

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear

power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 171

Annual charges, Power plants and reactors, Penalty.

For the reasons set out in the preamble, and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is amending 10 CFR Chapter I as follows:

1. A new Part 171 is added to read as follows:

PART 171—ANNUAL FEE FOR POWER REACTOR OPERATING LICENSES

Sec.

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146; sec. 301, Pub. L. 92–314, 86 Stat. 222, (42 U.S.C. 2201(w)); sec. 201, 82 Stat. 1242, as amended (42 U.S.C. 5841).

§ 171.1 Purpose.

The regulations in this part set out the annual fee charged to persons licensed by the United States Nuclear Regulatory Commission to operate a power reactor as defined in this part.

§ 171.3 Scope.

The regulations in this part apply to any person holding an operating license for a power reactor as defined in this Part.

§ 171.5 Definitions.

"Budget" means the funds appropriated by Congress for the NRC for each fiscal year, and if that appropriation is not passed on or before September 1 for that fiscal year, the funds most recently appropriated by Congress for the most recent fiscal year.

"Commission" means the United States Nuclear Regulatory Commission or its duly authorized representatives.

"Federal fiscal year" means a year that begins on October 1 of each calendar year and ends on September 30 of the following calendar year. Federal fiscal years are identified by the year in which they end (e.g., fiscal year 1987 begins in 1986 and ends in 1987).

"Nuclear reactor" means an apparatus, other than an atomic weapon, used to sustain fission in a self-supporting chain reaction.

"Operating license" means having a license issued pursuant to § 50.57 of this chapter. It does not include licenses that only authorize possession of special nuclear material after the Commission has received a request from the licensee to amend its licensee to permanently withdraw its authority to operate or the Commission has permanently revoked such authority.

"Person" means: (1) Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Commission; any state or any political subdivision of, or any political entity within, a state; any foreign Government or nation or any political subdivision of any such government or nation; or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

"Power reactor" means a nuclear reactor designed to produce electrical or heat energy and licensed by the Commission under the authority of section 103 or subsection 104b of the Atomic Energy Act of 1954, as amended, and pursuant to the provisions of § 50.21(b) or § 50.22 of this chapter.

§ 171.7 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the regulations in this part by an officer or employee of the Commission, other than a written interpretation by the General Counsel, will be recognized as binding on the Commission.

§ 171.9 Communications.

All communications regarding the regulations in this part should be addressed to the Executive Director of Operations, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555. Communications may be delivered in person to the Commission's offices at 1717 H Street NW., Washington, DC.

§ 171.11 Exemption.

The Commission may, upon application, grant an exemption, in part, from the annual fee required pursuant to this part. An exemption under this provision may be granted by the Commission taking into consideration the following factors:

(a) Age of the reactor;
(b) Size of the reactor;
(c) Number of customers in rate base;
(d) Net increase in KWh cost for each customer directly related to the annual fee assessed under this part; and
(e) Any other relevant matter which the licensee believes justifies the reduction of the annual fee.

§ 171.13 Notice.

The first installment of the annual fee for fiscal year 1987 will become due and payable 30 days after the effective date of this final rule. Thereafter, the annual fee, applicable to a power reactor with a license to operate and calculated in accordance with § 171.15 of this part, will be published in the **Federal Register** on or before September 1 each year. The fee will become due and payable to the NRC in accordance with § 171.19 of this part, except as provided in § 171.17 of this part. If the annual fee is based on the amount appropriated by the Congress for the prior fiscal year and Congress, during the fiscal year, enacts an appropriation different from that used in setting the fee, the annual fee will be revised to reflect the actual amount appropriated by Congress for the fiscal year. Notice of this revision will be published in the **Federal Register.**

§ 171.15 Annual Fee: Power reactor operating licenses.

(a) Each person licensed to operate a power reactor shall pay an annual fee for each power reactor unit for which the person holds an operating license at any time during the Federal Fiscal Year (FY) in which the fee is due.

(b) The basis for the annual fee shall be the sum of NRC costs budgeted for each FY for: (1) Research activities directly related to the regulation of power reactors, (2) power reactor regulation (except licensing and inspection activities, and Part 55 operator licensing and instructor certification), and (3) safeguards activities for power reactors (other than those activities directly associated with plant-specific licensing and amendments).

(c) If the basis for the annual fee is greater than 33 percent of the NRC budget less the total estimated fees chargeable under Part 170 of this chapter, then the maximum annual fee for each nuclear power reactor that is licensed to operate shall be calculated as follows:

(NRC FY Budget x.33) minus Est. Fees Part 170 divided by No. of Operating Licenses for Power Reactors equals Fee per License

(d) If the basis for the annual fee is less than the total NRC budgeted costs times 33 percent minus the estimated fees payable under Part 170, then the

annual fee shall be calculated as follows:

Basis for Annual Fee divided by No. of Operating Licenses for Power Reactors equals Fee per License

(e) The annual fee for each power reactor licensed to operate as of October 1, 1986, is $950.00. Thereafter, annual fees will be assessed in accordance with § 171.13.

§ 171.17 Proration.

The annual fee for a power reactor granted its license to operate after October 1 of a FY shall be prorated on the basis of the number of days remaining in that FY. Thereafter, the full fee would be due and payable each subsequent FY. Licenses revoked, suspended, or for which the licensee has requested amendment to permanently withdraw operating authority during the FY will not result in any refund of the annual fee or any portion thereof.

§ 171.19 Payment.

Fee payments may be made in any manner allowed under U.S. Department of Treasury regulations and described in the **Federal Register** notice published pursuant to § 171.13 of this part. The annual fee shall be paid in quarterly installments of 25 percent. A quarterly installment is due on October 1, January 1, April 1, and July 1 of each year.

§ 171.21 Refunds.

If at the end of an FY, the aggregrate of collections under 10 CFR Part 170 and this part exceeds 33 percent of the NRC budget, the overpayment will be refunded on a prorata basis to those licensees who have fees under this part, but with an appropriate adjustment for any reduced payments pursuant to § 171.17 of this part. Any overpayment of $10,000 or less (per license) will be credited against the annual fee for the following FY.

§ 171.23 Enforcement.

If any person required to pay the annual fee fails to pay when the fee is due, the Commission may refuse to process any application submitted by or on behalf of the person with respect to any license issued to the person and may suspend or revoke any licenses held by the person.

§ 171.25 Collection, interest, penalties, and administrative costs.

The annual fee will be collected pursuant to the procedures of 10 CFR Part 15. Interest, penalties, and administrative costs for late payments will be assessed in accordance with 10 CFR Part 15 of this chapter, 4 CFR Part 102, and other relevant regulations of the United States Government, as appropriate. In the event a quarterly installment is not made by the appropriate due date specified in § 171.19, the full fee becomes due and payable, with interest, penalties, and administrative costs of collection calculated from the date that quarterly installment was due.

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

2. The authority citation for Part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); secs. 201, 202, as amended, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Subpart A also issued under National Environmental Protection Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3033–3041. Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021).

3. In § 51.22, the introductory text of paragraph (c) is republished and a reference to Part 171 is added to paragraph (c)(1), which is revised to read as follows:

§ 51.22 Criterion for and identification of licensing and regulatory actions eligible for categorical exclusion.

* * * * *

(c) The following categories of actions are categorical exclusions:

(1) Amendments to Parts 0, 1, 2, 4, 7, 8, 9, 10, 11, 14, 19, 21, 25, 55, 75, 95, 110, 140, 150, 170, or 171 of this chapter, and actions on petitions for rulemaking relating to these amendments.

* * * * *

Dated at Washington, DC, this 16th day of September 1986.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 86–21307 Filed 9–17–86; 8:45 am]

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Federal Register

Vol. 51, No. 181

Thursday, September 18, 1986

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Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

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Laws 523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

31089-31308.....2
31309-31604.....3
31605-31756.....4
31757-31924.....5
31925-32046.....8
32047-32188.....9
32189-32296.....10
32297-32416.....11
32417-32622.....12
32623-32776.....15
32777-32888.....16
32889-33026.....17
33027-33232.....18

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
10450 (See EO 12564).....32889
12333 (See EO 12564).....32889
12356 (See EO 12564).....32889
12532 (See Notice of September 4, 1986).....31925
12563.....32777
12564.....32889
Administrative Orders:
Notice:
September 4, 1986.....31925
Proclamations:
5519.....31309
5520.....31311
5521.....32047
5522.....32417
5523.....32419
5524.....32421
5525.....33027

5 CFR

Ch. XIV.....32623
831.....31927
Proposed Rules:
300.....31954

7 CFR

0.....32904
1.....32189
2.....31757
226.....31313
247.....32895
301.....31605
402.....32903
403.....32903
409.....32903
410.....32903
411.....32903
413-433.....32903
435-451.....32903
729.....32049, 32620
908.....31758
910.....32423
991.....32779
1065.....32623
1136.....31759
1137.....32056
1230.....31898
1421.....32297, 32624, 32626
1427.....32297
1464.....32424
1475.....31316
1747.....32428
Proposed Rules:
17.....32791
68.....32924
246.....32093, 32657
301.....31956
911.....32098, 32924
915.....32098, 32924
981.....32103
989.....32216
1065.....31133
1068.....31133
1079.....31133
1137.....31340
1139.....32104

8 CFR

212.....32294
Proposed Rules:
214.....31637

9 CFR

51.....32574
71.....32574
78.....32574
80.....32574
92.....32574
307.....32301
318.....32301
319.....32057
322.....31937
327.....32903
381.....32301
Proposed Rules:
92.....31637

10 CFR

50.....32904
51.....33224
171.....33224
477.....31316
Proposed Rules:
2.....31340
40.....32217
50.....31341

12 CFR

611.....32431
709.....33029
Proposed Rules:
332.....32336
563.....32925

13 CFR

121.....32197
123.....32197
309.....32628

14 CFR

21.....31317
39.....31089, 31090, 31607, 31608, 32198-32200, 32202, 32780, 32906, 33029-33031
71.....31097
75.....31097
91.....31098
95.....31319

97 ..... 31322, 32782
171 33176
1203 32783
Proposed Rules:
Ch. I 33061
21 ..... 31644, 32927
23 ..... 31644, 32927
39 ..... 31133–31137, 31342, 31343, 31647, 31779, 32480, 33061–33065
71 ..... 31138, 31648, 32410, 32480–32484

15 CFR

4 32204
4b 32206

16 CFR

Proposed Rules:
4 32657
13 32485

17 CFR

200 32630
240 32630
275 32906
Proposed Rules:
30 32929
150 31648
240 32658

18 CFR

389 32784
Proposed Rules:
37 ..... 31651, 31781

19 CFR

6 32448
111 ..... 31760, 32208
171 ..... 31760, 32208
178 ..... 31760, 32208

21 CFR

5 32451
14 32630
73 33032
74 32453
81 31323
175 31098
178 ..... 31099, 31760, 32211
193 31324
331 32212
332 32212
357 31763
369 31763
510 31100
558 ..... 31763, 32631
807 33032

22 CFR

41 32295

23 CFR

11 32453
655 32907

24 CFR

201 32059
511 31764
888 32908
Proposed Rules:
278 32764

25 CFR

5 32631

26 CFR

1 ..... 31610, 31613, 32061, 32633, 33033
20 ..... 31938, 32071
25 31938
602 ..... 31610, 31613, 31938
Proposed Rules:
1 ..... 32664, 32929
602 32929

28 CFR

0 ..... 31939, 31940
2 ..... 32071, 32785
16 32305
544 32602
Proposed Rules:
16 31781

29 CFR

102 ..... 32918, 32919
220 32306
1601 32073
1620 32636
1910 33033
1956 32453
2200 32002
2619 32636
2676 32637
Proposed Rules:
97 32793
516 32744
2676 32637

30 CFR

901 31940
935 33034
938 31942
Proposed Rules:
733 31139
915 32644
917 32336
946 32106
948 ..... 32338, 33066

32 CFR

90 32308
199 31100
205 31325
286g 31103
292 33035
359 32309
706 ..... 31103–31112, 32312–32316
Proposed Rules:
40 31651

33 CFR

110 32317
117 ..... 31112, 31113, 31946, 32318, 32319, 33036
151 33037
158 33037
165 ..... 31113, 31114, 31946, 33039
Proposed Rules:
117 ..... 32339, 33067
161 32489
165 31958

34 CFR

Proposed Rules:
614 31754
761 33218

36 CFR

7 33040
13 31619
251 33040
800 31115
1254 31617

37 CFR

Proposed Rules:
1 32756
202 32665

38 CFR

Proposed Rules:
21 ..... 31782, 32667

39 CFR

10 ..... 31325, 33041
233 31328
Proposed Rules:
111 31673

40 CFR

6 32606
51 32176
52 ..... 31125, 31127, 31129, 31328, 32073, 32075, 32176, 32638, 32640
60 ..... 32454, 32641, 32642, 33041–33046
61 ..... 32642, 33041–33046
81 32640
172 32920
180 32212
261 ..... 31330, 32458
271 31618
716 32720
721 32077
799 ..... 32079, 33047
Proposed Rules:
Ch. I 32668
50 32878
51 32180
52 32180
86 ..... 31783, 31959, 32032
137 32886
260 31783
261 ..... 31140, 31783, 32217, 32670, 32929, 33067
262 31783
264 31783
265 31783
268 31783
270 31783
271 31783
721 32495
799 32107

41 CFR

Proposed Rules:
114–52 32796
201–33 31674

42 CFR

23 31947
124 33208
405 31454
412 31454
Proposed Rules:
57 ..... 31920, 32616
405 ..... 33074, 33086
447 33086

43 CFR

36 31619
2880 31764
Public Land Orders:
6592 (Corrected by PLO 6621) 32920
6621 32920
Proposed Rules:
2800 31886
2880 31886

44 CFR

64 ..... 31330, 33054
65 ..... 31635, 31950
67 31951
205 32642
Proposed Rules:
10 31788
67 ..... 31675, 31678

45 CFR

Proposed Rules:
1 33086
19 33086

46 CFR

97 33056
170 33056
172 33056

47 CFR

Ch. I 32920
0 ..... 31303, 32087
1 ..... 31303, 32087
2 31303
13 31303
21 31303
22 31335
42 32651
63 31303
65 32921
73 ..... 32087, 32089, 32213, 32320, 32653, 32654
74 32087
80 31206
81 31206
83 31206
87 31303
90 31303
94 31303
Proposed Rules:
2 32222
15 ..... 31147, 32222
25 32223
64 32113
67 31149
68 31149
73 ..... 32113, 32114, 32224–32226, 32340
76 31147
80 31306

48 CFR

5 31424
7 31424
13 31424
16 31424
19 31424
24 31424
31 31424
47 31424
50 31424
52 31424
223 31765
228 31765
242 31765
252 31765
522 32654
552 32654
553 32654
914 31335

933.....31335
952.....31335
970.....31335

Proposed Rules:

32.....31194
45.....31196
48.....31197
52.....31194, 31197
204.....33087
215.....33087
230.....33087
515.....31344
538.....31344
542.....32340
552.....31344
970.....32340
1317.....31687
1352.....31687
5316.....32114

49 CFR

1.....32320
571.....31765
1039.....32656, 32922

Proposed Rules

391.....31150
393.....32115
533.....32802
1042.....32500

50 CFR

17.....31412
20.....31430, 32460
23.....31130, 32477
32.....32321
36.....31619, 32329
216.....32786
285.....32478
611.....32089, 32334
655.....31774, 31775
661.....32091
662.....32334
663.....31776
674.....32214, 3247
675.....32334
683.....32215

Proposed Rules

17.....33096
611.....32226, 32808
630.....31151
642.....32816
685.....32808

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List September 5, 1986.

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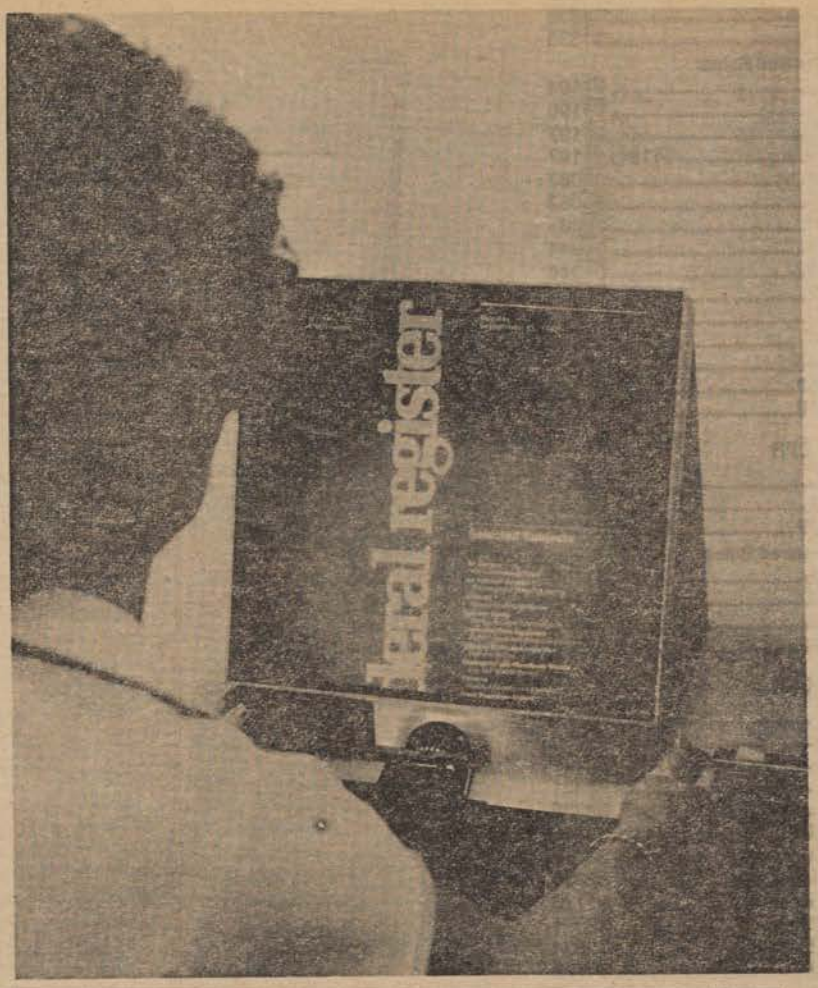

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882

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