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federal register

Tuesday
March 18, 1986

Briefings on How To Use the Federal Register—
For information on briefings in Denver, CO, and Dallas, TX, see announcement on the inside cover of this issue.

Selected Subjects

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Selected Subjects

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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How To Cite This Publication: Use the volume number and the page number. Example: 51 FR 12345.

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

DENVER, CO

WHEN: March 24; at 9 am.

WHERE: Room 239,
Federal Building,
1961 Stout Street, Denver, CO.

RESERVATIONS: Elizabeth Stout,
Denver Federal Information Center.
303-236-7181,
for reservations

DALLAS, TX

WHEN: April 23; at 1:30 pm.

WHERE: Room 7A23,
Earl Cabell Federal Building,
1100 Commerce Street, Dallas, TX.

RESERVATIONS: local numbers:
Dallas 214-767-8585
Ft. Worth 817-334-3624
Austin 512-472-5494
Houston 713-229-2552
San Antonio 512-224-4471,
for reservations

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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.

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Presidential Documents

Title 3—

The President

Proclamation 5447 of March 14, 1986

Freedom of Information Day, 1986

By the President of the United States of America

A Proclamation

A fundamental principle of our Government is that a well-informed citizenry can take part in the important decisions that set the present and future course of the Nation. Our Founding Fathers provided in the Constitution and in the Bill of Rights freedoms for all Americans, many of which are promoted by open access to information. Numerous Acts of Congress, including the Freedom of Information Act, are intended to further this principle. Most Americans, having never known any other way of life, take for granted open access to information about their Federal, State, and local governments. They also understand that some secrecy is necessary to protect both national security and the right to privacy.

March 16 is the anniversary of the birth of James Madison, our fourth President and one of the principal figures in the Constitutional Convention. Madison eloquently expressed the guarantees in the Bill of Rights, in particular in the freedoms of religion, speech, and of the press protected by the First Amendment. He understood the value of information in a democratic society, as well as the importance of its free and open dissemination. He believed that through the interaction of the Government and its citizens, facilitated by a free press and open access to information, the Government could be most responsive to the people it serves. Surely the American experience has proved him right.

This year marks the twentieth anniversary of the enactment by the Federal government of the Freedom of Information Act. On President Madison's birthday, it is particularly fitting that we recognize the value of reasonable access to information in our political process.

The Congress, by House Joint Resolution 371, has designated March 16, 1986, as "Freedom of Information Day" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim March 16, 1986, as Freedom of Information Day, and I call upon the people of the United States and all Federal, State, and local government officials to observe this week with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of March, 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 tenth.

Ronald Reagan

[FR Doc. 86-6073
Filed 3-17-86; 10:59 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Ch. XIV

Office Addresses and Geographic Jurisdictions; Cleveland Sub-Regional Office; Address Change

AGENCY: Federal Labor Relations Authority (including the General Counsel of the Federal Labor Relations Authority) and Federal Service Impasses Panel.

ACTION: Amendment of rules and regulations.

SUMMARY: This document amends Appendix A, paragraph (d)(5)(a) (48 FR 45373) of the rules and regulations of the Federal Labor Relations Authority (Authority), General Counsel of the Federal Labor Relations Authority (General Counsel), and Federal Service Impasses Panel (Panel), published at 5 CFR Part 2400 *et seq.*, (1985) to establish a new location and mailing address for the Authority's Cleveland, Ohio Sub-Regional Office within the Authority's Chicago, Illinois Regional Office. The Cleveland, Ohio Sub-Regional Office telephone numbers have not been changed.

EFFECTIVE DATE: March 12, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald J. Watkins, Deputy to the General Counsel and the Associate General Counsel (202) 382-0744.

SUPPLEMENTARY INFORMATION: Effective January 28, 1980, the Authority, General Counsel and Panel published at 45 FR 3482, January 17, 1980, final rules and regulations to govern the processing of cases by the Authority, General Counsel and Panel under Chapter 71 of Title 5 of the United States Code (5 CFR Part 2400 *et seq.* (1985)). These rules and regulations are required by Title VII of the Civil Service Reform Act of 1978 and are set forth in 5 CFR Part 2400 *et seq.* (1985). Appendix A, paragraph (d) of the foregoing rules and regulations sets forth office addresses and telephone numbers of the Regional Directors of the Authority. This amendment sets forth the new location and mailing address of the Cleveland, Ohio Sub-Regional Office of the Authority. The Cleveland, Ohio Sub-Regional Office telephone numbers have not been changed. Accordingly, in Appendix A to Chapter XIV, paragraph (d)(5)(a) of the Authority, General Counsel, and Panel rules and regulations (5 CFR Part 2400 *et seq.* (1985)) is revised to read as follows:

Appendix A to 5 CFR Ch. XIV—Current Addresses and Geographic Jurisdictions

* * * * *

(d) The Office addresses of Regional Directors of the Authority are as follows:

* * * * *

(5) * * *

* * * * *

(a) *Cleveland, Ohio Sub-Regional Office:* Suite 850, 1 Cleveland Center, 1375 East 9th Street, Cleveland, Ohio 44114. Telephone: FTS-942-2114, Commercial-(216) 522-2114.

(5 U.S.C. 7134)

Dated: March 12, 1986.

John C. Miller,

General Counsel, Federal Labor Relations Authority.

[FR Doc. 86-5859 Filed 3-17-86; 8:45 am]
BILLING CODE 6727-01-M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corpation

7 CFR Part 1468

Payment Program for Mohair (1982-1985)

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to adopt as a final rule without change an interim rule which was published in the **Federal Register** on November 14, 1985 (50 FR 47031). The interim rule amended the regulations at 7 CFR Part 1468 which set forth the requirements governing the Commodity Credit Corporation's (CCC) price support program for mohair. The interim rule amended the program with respect to: (1) Marketings of shorn mohair eligible for price support payments; (2) definitions which are applicable to the program; (3) producer eligibility for price support payments; (4) contents of sales documents which are submitted in support of price support payment applications; and (5) the deletion of certain obsolete references.

EFFECTIVE DATE: Effective March 18, 1986.

FOR FURTHER INFORMATION CONTACT: Jerry W. Newcomb, Director, Emergency Operations and Livestock Programs Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. Telephone (202) 447-5621.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR Part 1468) have been approved by the Office of Management and Budget in accordance with the provisions of 44 U.S.C. Chapter 35 and OMB Number 0560-0023 has been assigned.

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

The title and number of the Federal assistance program to which this notice applies are: Commodity Loans and Purchases; 10.051; as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on

the quality of human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Interim Rule

An interim rule amending the Commodity Credit Corporation's (CCC) price support program for mohair was published in the **Federal Register** on November 14, 1985 (50 FR 47031). This interim rule provided for a 60-day comment period. No comments were received.

The interim rule made several amendments with respect to the terms and conditions of the 1985 price support program for mohair. Most of the changes which were included in the interim rule were the result of a review conducted by the Office of the Deputy Administrator, State and County Operations (DASCO) of the Agricultural Stabilization and Conservation Service (ASCS) of a select number of 1983 shorn wool applications for payment and supporting documentation which revealed marketing practices which defeat the purpose of the program. Since the mohair program is similar to the wool program, ASCS is concerned that mohair producers may adopt marketing practices similar to those which have been adopted by some wool producers and use these practices to defeat the purpose of the mohair price support program. The remaining changes involved the deletion of certain obsolete references.

The interim rule amended the regulations at 7 CFR Part 1468 by: (1) Adding the definitions of "Deputy Administrator", "grease mohair", "mohair incentive payment rate", "shorn mohair", and "family member" and amending the definition of "sales document"; (2) providing that the price support payment rate for shorn mohair shall be determined and announced by the Executive Vice President, CCC, or a designee, at the end of each specified marketing year; (3) clarifying that shorn mohair which has been processed in any manner into a mohair product, as determined by DASCO, shall not be eligible for price support payments; (4) providing that, in order to be considered a bona fide marketing, the mohair must be sold to a person or business engaged in the business of buying and selling grease basis mohair and the sale of the mohair must be based upon a reasonably appraised price of mohair; (5) providing that the sale of mohair by a producer to a family member or to a business in which the producer has more than a 20 percent interest is not considered a bona fide marketing; and (6) providing that any sales documents which are prepared by the purchaser of mohair must have the original signature of the purchaser or authorized representative. The interim rule also deleted obsolete regulations which were applicable to the mohair program for the 1974–1977 marketing years.

No comments were received by the Department with respect to the interim rule. Therefore, after reviewing the provisions of the interim rule, it has been determined that the interim rule should be adopted as a final rule without change.

List of Subjects in 7 CFR Part 1468

Price support programs, Mohair.

Final Rule

Accordingly, the interim rule published at 50 FR 47031, which amended 7 CFR 1468, is hereby adopted as a final rule without change.

Signed at Washington, D.C., on March 11, 1986.

Milt J. Hertz,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 86–5862 Filed 3–17–86; 8:45 am]

BILLING CODE 3410–05–M

Farmers Home Administration

7 CFR Parts 1822, 1872, 1900, 1903, 1924, 1927, 1943, 1945, 1951, 1955, 1962, and 1965

Servicing of Real Estate Security

Correction

In FR Doc. 86–2029 beginning on page 4132 in the issue of Monday, February 3, 1986, make the following corrections:

1. On page 4132, first column, in the **"SUMMARY,"** fourth line, insert "secured" between "loans" and "by".

2. On page 4136, first column, in the section heading following amendatory instruction 26, "§ 1943.135" should read "§ 1945.135".

BILLING CODE 1505–01–M

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7 CFR Part 1955

Property Management; Homestead Protection; Food Security Act of 1985

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Farmers Home Administration amends its regulations to provide for a dwelling retention program for leasing with the right of first refusal, for CONACT residential property with a dwelling to a farmer program borrower. This action is necessary to implement the applicable part of Section 1321 of the "Food Security Act of 1985" (Pub. L. 99–198). The major effect will be to assist certain borrowers that have lost or are losing their farms and have an immediate need for housing with their transition from farming to other occupations.

DATES: Interim rule effective March 18, 1986. Comments must be submitted on or before April 17, 1986.

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

FOR FURTHER INFORMATION CONTACT: William Krause, Director, Emergency Loan Division, Farmers Home Administration, USDA, Room 5420, Washington, DC 20250, Telephone: (202) 382–1632.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor because their will not be an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to Notice 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and

Activities" (December 23, 1983), Emergency Loans, Farm Operating Loans, and Farm Ownership Loans are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loans Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.416—Soil and Water Loans

Environmental Impact Statement

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

Discussion of Interim Rule

FmHA is implementing this interim rule immediately with a 30 day comment period. It is the policy of this Department that rules relating to public property, loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. The "Food Security Act of 1985," Pub. L. 99–198 provided for dwelling retention. It is essential that this provision of the "act" be implemented at once to provide immediate housing assistance for financially stressed farmers who have lost or will lose their farms, and will lose their permanent residential dwelling through foreclosure, voluntary conveyance, or bankruptcy proceeding. Field offices are already receiving requests for this provision. The Agency must provide immediate guidance by revising the regulations. It is urgent that these regulations become effective on publication so these farmers and their families can make plans for the transition to other occupations and have a place to live in the interim period and assist in removing some of the emotional stress involved in such a drastic change in lifestyle. The Government has a social responsibility to immediately assist farmers that have gone broke and would otherwise be forced out of their homes. This provision in the regulations will only provide assistance to those farmers that do not own other suitable housing. Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this interim rule action are impractical, and good cause is found for making this interim rule effective less than 30 days after publication in the **Federal Register.**

Highlights

The Farmers Home Administration amends its farmer program insured loan servicing regulations to implement the applicable provisions of Section 1321 of the "Food Security Act of 1985" (Pub. L. 99–198) to provide a farmer program dwelling reacquisition program. This program applies to CONACT inventory property that was or will be acquired as a result of FmHA foreclosure, voluntary conveyance or voluntary conveyance from a trustee in bankruptcy, with the borrower still in possession of the residence. A farmer program borrower meeting the eligibility requirements may apply to lease, with an option to purchase, the residence and a reasonable amount of adjoining land:

The applicant must have had gross annual farm sales of at least $40,000 in at least 2 calendar years during the 5 year period January 1, 1981, through December 31, 1985.

The applicant and spouse must have received at least 60% of their gross annual income from the farming operation during at least 2 years of the 5 year period.

The applicant must have possessed and occupied the dwelling and engaged in farming or ranching operations during the 5 year period.

The applicant must personally occupy the dwelling as his/her principal residence and must not own other suitable housing. Other eligibility requirements are set out in the regulation.

List of Subjects in 7 CFR Part 1955

Foreclosure, Government acquired property, Government property management, Sale of government acquired property, Surplus government property.

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

PART 1955—PROPERTY MANAGEMENT

1. The authority citation for Part 1955 continues to read as follows:

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

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

2. § 1955.18 is amended by adding paragraph (h) to read as follows:

§ 1955.18 Actions required after acquisition of property.

* * * * *

(h) *Dwelling retention.* All those who were personally liable for a Farmer Program loan will be sent a letter similar to Exhibit G of this Subpart (available in any FmHA office), certified mail, return receipt requested, when CONACT real property with a dwelling is acquired as a result of foreclosure by FmHA, voluntary conveyance, or conveyance by a trustee in bankruptcy. This applies to dwellings located on or off the farm, so long as the dwelling(s) was occupied by those personally liable for the debt during the period from January 1, 1981, through December 31, 1985, and continues to be occupied by them.

Subpart B—Management of Property

3. § 1955.66 is amended by revising paragraph (a)(2)(iii) to read as follows:

§ 1955.66 Lease of real property.

* * * * *

(a) * * *

(2) * * *

(iii) *Farm property.* Any CONACT property with a dwelling (whether located on or off the farm) that is possessed and occupied as a principal residence by one who is personally liable for a Farmer Program loan must be considered for dwelling retention under § 1955.73 of this subpart prior to lease under this section. The County Supervisor may approve the lease of farm property. Special Stipulations will be made a part of farm leases to provide that the Government may terminate the lease in order to sell the farm, but in that event the lessee will retain the right to harvest growing crops. Rental payments will be prorated between the Government and the purchaser of the property. The County Supervisor shall report all leases of farms to the local Agricultural and Stabilization and Conservation Service (ASCS) office and all subsequent changes in leases or sale of the property. Leases for mineral exploration and/or development will be on a form approved by OGC. In approval of a lease for mineral purposes, consideration will be given to impact on the environment, preservation of land for agricultural purposes as

required by Subpart G of Part 1940 of this chapter, as well as effect on sale of the property. The Administrator may issue directives (available in any affected FmHA office) restricting the leasing of property which could be used to produce agricultural products determined to be in surplus supply. Chattel property will not normally be leased unless it is attached to the real estate as a fixture or would normally pass with the land.

* * * * *

4. § 1955.73 is added to read as follows:

§ 1955.73 Farmer Program dwelling retention.

CONACT property that is presently in inventory and available for lease and that was acquired as a result of a foreclosure by FmHA, a voluntary conveyance, or a conveyance to the Government by a Trustee in bankruptcy and is still occupied by the borrower, may be considered for dwelling retention under this section.

(a) *Eligibility.* The County Supervisor will determine that the following eligibility requirements are met:

(1) The applicant must have responded to Exhibit G of Subpart A of this part during the 3-year period commencing on December 22, 1985, and ending at the close of business on December 22, 1988.

(2) The applicant must provide evidence of gross annual farm or ranch sales of at least $40,000 in at least 2 calendar years during the 5-year period beginning on January 1, 1981, and ending December 31, 1985, (or the equivalent crop or fiscal years).

(3) The applicant and any spouse must have received from the farming or ranching operation at least 60 percent of gross annual income during at least 2 years of the 5-year period set forth in § 1955.73(a)(2).

(4) The applicant must have possessed and occupied the dwelling and engaged in farming or ranching operations on adjoining land, or other land controlled by the borrower during the 5-year period set forth in § 1955.73(a)(2), and remain in possession.

(5) The applicant must have sufficient income to make rental payments, maintain the property in good condition and agree to all terms and conditions as set forth in this section and in "Lease of Real Property," Form FmHA 1955–20.

(6) The applicant must be an individual who was personally liable for a Farmer Program loan. The Farmer Program loan could have been made to an individual or an entity, so long as the applicant was personally liable for the debt.

(7) The applicant will personally occupy the dwelling as his/her personal residence and must not own other suitable housing.

(8) The borrower must have exhausted all remedies for restructuring the FmHA loans.

(9) When more than one member of an entity each possessed and occupied a separate dwelling, each may apply for the dwelling retention of their individual dwellings.

(10) The applicant must have been released from liability or have debt settled the FmHA debts or the debts must have been discharged in bankruptcy.

(b) *Appeal rights.* If the County Supervisor determines that the applicant is not eligible for dwelling retention, the County Supervisor will notify, in writing, the applicant of the decision and give the applicant the opportunity to appeal in accordance with Subpart B of Part 1900 of this chapter. The property will not be leased or sold until any appeal is concluded.

(c) *Property requirements.* (1) The lease may cover only the dwelling and a reasonable amount of land that is necessary for family maintenance. Not more than 5 acres of land will be leased with a dwelling unless additional land is needed for access to the property, local codes require a larger size lot, or additional land is needed to assure a source of water or provide for sanitation facilities. Sources of water, power lines, utility lines, sanitation facilities and/or access to the property may be located outside the land to be included with the dwelling provided appropriate rights or easements are obtained. Appropriate arrangements will be made for continued use of water sources, utilities, and sanitation facilities that will be jointly used. A right of entry and egress to a public way must exist or be provided.

(2) No lease will be approved if, upon exercise of the option, the remaining inventory property is not provided with entry and egress to a public way.

(3) A survey and legal description of the property to be leased and/or purchased will be obtained by FmHA. The cost of the survey will be charged to the inventory property account for the entire farm.

(d) *Appraisal.* The market value of the property, as improved, will be determined by an independent appraisal made within 6 months after the borrower responds to Exhibit G of Subpart A of this part. The cost of the appraisal will be charged to the inventory property account for the entire farm.

(e) *Rates and terms.* The lease will be offered with an option to purchase and will be for a period of not less than 3 years or more than 5 years. A lease of less than 5 years may be renewed, but not beyond 5 years from the date of the original lease. This requirement will be added as a stipulation to the lease.

(1) The amount of the lease will be based upon equivalent rents charged for similar residential properties in the area in which the dwelling is located. The County Supervisor will document in the case file a sufficient number of equivalent rents charged in the area for such properties to support the lease amount.

(2) Lease payments will be retained by the Government and remitted according to FmHA Instruction 1951–B (available in any FmHA office).

(3) Failure to make lease payments as scheduled or to maintain the property in good condition shall constitute cause for the termination of all rights of the lessee to possession and occupancy of the dwelling and property under this section.

(4) Any interference by the lessee with the Government's efforts to lease or sell the remainder of the farm property shall constitute cause for the termination of all rights of the lessee to possession and occupancy of the dwelling and property under this section. This stipulation will be added to the lease.

(f) *Exercising the option.* (1) The lessee may exercise the option in writing at any time prior to the expiration date of the lease. Failure to exercise the option within the lease period will terminate the lessee's rights to purchase the property.

(2) The option price to the lessee will be the appraised market value of the dwelling as established by the independent appraisal as set forth in paragraph (d) of this section.

(3) The sale will be handled as a credit sale of surplus CONACT property on ineligible terms under Subpart C of this part.

Subpart C—Disposal of Inventory Property

5. § 1955.105 is revised to read as follows:

§ 1955.105 Real property affected (CONACT).

Sections 1955.106–1955.108 of this subpart prescribe procedures for the sale of inventory real property which secured any of the following type of loans (referred to as CONACT property in this subpart): Farm Ownership (FO); Recreation (RL); Soil and Water (SW);

Operating (OL); Emergency (EM); Economic Opportunity (EO); Economic Emergency (EE); CF; WWD; RC&D; WS; Association Recreation; EOC; Rural Renewal; Water Facility; B&I; Irrigation and Drainage; Shift-in-land Use (Grazing Association); and loans to Indian Tribes and Tribal Corporations. Before property can be sold, § 1955.73 of Subpart B of this part concerning dwelling retention must be followed, if applicable.

6. § 1955.107 is amended by revising the introductory text of the paragraph and revising paragraph (a) to read as follows:

§ 1955.107 Sale of surplus property (CONACT).

Except where a lessee is exercising the option to purchase under § 1955.73 of Subpart B of this part, concerning dwelling retention, surplus property will be offered for public sale by sealed bid or auction in accordance with § 1955.147 or § 1955.148 of this subpart as soon as possible after it has been declared surplus and made available for sale. Suitable property which has been in inventory for 3 years must be offered for sale as surplus; however, if the buyer is eligible for FmHA assistance, any surplus property which is actually suitable will be reclassified to suitable by the authorized official and sold on eligible terms. The basis for this redetermination must be documented in the running record.

(a) *Rates and terms.* Terms for a dwelling retention property where the lessee is exercising the option to purchase under § 1955.73 of Subpart B of this part will not exceed 35 years with equal amortized monthly installments. No down payment will be required. In all other cases, surplus property will be offered for cash or on ineligible terms of not less than a ten percent (10%) down payment with the remaining balance amortized over a period not to exceed 25 years. The interest rate for business and industrial property will be the established insured B&I rate for profit corporations plus ½ percent; for community programs property the interest rate will be the market rate for Community Programs. The interest rate for dwelling retention will be as set forth in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office). The interest rate for all other surplus property will be the current Farmer Program ineligible interest rate set forth in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office). Loans made on ineligible terms will be closed at the interest rate in effect at the time the loan was approved. The State Director will determine the loan terms for surplus property within these limitations. After extensive sales efforts where no acceptable offering has been received, the State Director may request the Administrator to permit offer surplus property for sale on more favorable rates and terms; however, a down payment of not less than ten percent (10%) must be required and the terms may not be more favorable than those legally permissible for eligible borrowers. Surplus property will be offered for sale for cash or terms that will provide the best net return to the Government. The term of any financing extended may not be longer than the period for which the property will serve as adequate security. All credit sales on ineligible terms will be identified as NP loans.

* * * * *

Dated: March 13, 1986.

Kathleen W. Lawrence,

Acting Under Secretary for Small Community and Rural Development.

[FR Doc. 86-5936 Filed 3-17-86; 8:45 am]

BILLING CODE 3410-07-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 545

[No. 86-227]

Powers and Duties of Federal Association as Trustee

Date: March 12, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is revising 12 CFR 545.102 to clarify and expand the limited authority of federally chartered savings and loan associations and savings banks ("Federal associations") to offer self-directed Individual Retirement Accounts ("IRA") and Keogh Plan accounts, to act as trustees of passive trusts, and to invest the funds of such accounts or trusts in assets other than their own accounts, deposits, obligations, or securities without obtaining prior Board approval pursuant to 12 CFR Part 550.

EFFECTIVE DATE: March 18, 1986.

FOR FURTHER INFORMATION CONTACT: Christina M. Gattuso, Attorney, Regulations and Legislation Division, Office of General Counsel, (202) 377-6649, Federal Home Loan Bank Board, 1700 G Street, NW., Washington DC 20552.

SUPPLEMENTARY INFORMATION: Section 545.102 of the Board's regulations authorizes a Federal association to act as a trustee or custodian, without Board approval under 12 CFR Part 550, for IRAs and Keogh Plan accounts, provided that the funds of the trust or account are invested only in the Federal association's savings accounts, deposits, obligations, or securities. Subject to the same proviso, § 545.102 also permits a Federal association to act as a trustee with no active fiduciary duties if state law authorizes a financial institution to act in such capacity. The provison arguably precludes Federal associations not exercising trust powers under Part 550 from acting as trustees or custodians of IRAs and Keogh Plan accounts in which the holder directs investments to be made in assets other than the savings accounts, deposits, obligations, or securities of the custodial institution (collectively, "self-directed retirement accounts").

The Board has recently been asked to amend section 545.102 to permit Federal associations to offer self-directed retirement accounts without obtaining prior Board approval pursuant to Part 550. Federal associations offering such accounts would perform only custodial or ministerial duties without exercising investment discretion, and a variety of other financial institutions not exercising trust powers, including nationally chartered banks, nonmember banks insured by the Federal Deposit Insurance Corporation ("FDIC") and federal credit unions, may offer self-directed retirement accounts. If Federal associations did not possess similar authority, they would be at a competitive disadvantage.

In responding to inquiries from Federal associations as to whether they may offer self-directed retirement accounts without applying for expanded trust powers under Part 550, the Office of General Counsel has taken the position that a Federal association may act as a trustee with no active fiduciary duties for self-directed retirement accounts pursuant to its authority under 12 CFR 545.102 and its implied powers. It is the Board's view that Federal associations are authorized to perform this function pursuant to the authority implicit in the express powers of Federal associations, consistent with the broadening of Federal association powers by the Garn-St Germain Depository Institutions Act of 1982 to include "the deposit or investment of funds" as well as "the extension of credit for homes and other goods and services." 12 U.S.C. 1464(a).

Accordingly, the Board is revising § 545.102 to codify explicity the authority of Federal associations to act as trustees or custodians for self-directed retirement accounts without obtaining prior Board approval.[1] The Board wishes to emphasize that Federal associations may neither exercise investment discretion nor provide investment advice, either directly or indirectly, in connection with such accounts. Specifically, a Federal association's involvement in offering such accounts is limited to accepting IRAs or Keogh Plan funds as time deposits or savings accounts, serving as custodian of the IRAs or Keogh Plan accounts, preparing records and reports, and acting as the agent of IRAs or Keogh Plan customers to transmit customer funds pursuant to the customer's instructions. Additionally, the various agreements between the Federal association, the IRA or Keogh Plan customer, and the broker-dealer may not provide the Federal association with discretionary authority to act in any manner for any purpose or to offer investment advice in any fashion.

The Board notes that a Federal association, in offering self-directed retirement accounts, may utilize the services of either an affiliated [2] or unaffiliated broker-dealer. In the event a Federal association wishes to perform the brokerage function in connection with the offering of self-directed retirement accounts, an appropriate service corporation application and approval by the Board would be required.[3] Additionally, the Board notes that Federal Savings and Loan Insurance Corporation ("FSLIC") insurance coverage is limited to funds invested in accounts of insured institutions.[4] As revised, § 545.102 requires Federal associations to make appropriate written disclosures to ensure that accountholders understands this fact.

The Board wishes to note that a Federal association offering self-directed retirement accounts must operate in accordance with applicable laws and regulations governing IRAs and Keogh Plan accounts. Additionally, Federal associations offering such accounts must operate in a manner consistent with principles of sound trust (custodial) administration, including the segregation and/or adequate identification of corresponding assets of IRAs and Keogh Plan accounts, whether held by the Federal association or, under a contractual safekeeping arrangement, by a third party.

Finally, § 545.102 currently permits a Federal association to serve as the trustee of a passive trust only if the funds of the trust are invested solely in the accounts, deposits, obligations, or securities of the association. The Board is further amending § 545.102 to permit Federal associations to serve as trustees of passive trusts the funds of which are invested in assets other than those of the custodial association, subject to all the requirements of revised § 545.102. This amendment conforms the treatment of self-directed retirement accounts and passive trusts.

Pursuant to 12 CFR 508.11 and 508.14, the Board finds that because the amendment codifies an interpretive clarification of Federal association authority and furthermore relieves a restriction of that authority, notice and public procedure are unnecessary, as is the 30-day delay of the effective date.

List of Subjects in 12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfer, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Board hereby amends Part 545, Subchapter C, Chapter V, Title 12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 545—OPERATIONS

1. The authority citation for Part 545 is revised to read as follows:

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); Reorg. Plan No. 3 of 1947, 3 CFR, 1943–1948 Comp., p. 1071, unless otherwise noted.

2. Section 545.102 is revised to read as follows:

§ 545.102 Trustee.

(a) A Federal association may act as trustee of any trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan qualifying for specific tax treatment under section 401(d) of the Internal Revenue Code of 1954; as trustee or custodian of an Individual Retirement Account within the meaning of section 408(a) of the Internal Revenue Code; or as trustee with no active fiduciary duties if state law authorizes a financial institution to act in such capacity: *Provided,* that the association shall invest the funds of the trust or account only in the association's own accounts, deposits, obligations, or securities or, upon the condition that the association does not exercise any investment discretion or directly or indirectly provide any investment advice with respect to the trust or account assets, in such other assets as the customer may direct. The association shall observe principles of sound trust administration, including those relating to recordkeeping and segregation of assets, and may receive reasonable compensation for acting in any trust capacity authorized by this section.

(b) A Federal association acting as trustee or custodian pursuant to paragraph (a) shall include in bold type on the first page of any contract documents the following language:

"Funds invested pursuant to this agreement are not insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") merely because the trustee or custodian is an institution the accounts of which are covered by such insurance. Only investments *in the accounts* of such an institution are insured by the FSLIC, subject to its rules and regulations."

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[1] The Board notes that Federal associations also may act as trustees or custodians for qualified corporate plans under section 401(a) of the Internal Revenue Code of 1954. 26 U.S.C. 401(a).

[2] The Board notes, however, that utilizing the services of an affiliate may create a potential conflict of interest, and the Federal association should be aware of the Board's policy statement regarding conflicts of interest. *See* 12 CFR 571.7. Additionally, the Board wishes to stress that Federal associations may not directly or indirectly offer or suggest to their IRA or Keogh Plan customers options for investing in persons or concerns affiliated with the Federal association. The Federal association also should take appropriate measures to ensure that the use of an affiliate in offering self-directed retirement accounts is not in violation of the Employees Retirement Income Security Act. *See* 29 U.S.C. 1108(b)(2) and 29 CFR 2550.408b–2; *see also* Prohibited Transaction Exemption 79–1, 44 FR 5963 (Jan. 30, 1979).

[3] The Board wishes to note that if a Federal association becomes involved in the brokerage-related securities activities conducted by a service corportion subsidiary, registration of the association itself as a broker-dealer may be required under Securities and Exchange Commission ("SEC") regulations and Federal securities laws. The SEC does not consider Federal associations to be "banks," and, therefore, Federal associations cannot rely on the bank exclusion from broker-dealer registration under 17 CFR 240.3b–9. *See* Securities Exchange Act Release No. 22205, 50 FR 28385, 28389 n.34 (July 12, 1985). SEC Rule 3b–9 illustrates that if the Federal association actively solicits customers to participate in self-directed retirement accounts and receives transaction-related compensation in connection with any trades, the association may be regarded as a broker-dealer and therefore the required to register with the SEC. *Id.* at 28388.

[4] Also, insurance coverage of such accounts is subject to the basic limit of $100,000 per customer and to the requirements of 12 CFR Parts 561 and 564.

By the Federal Home Loan Bank Board.
Jeff Sconyers,
Secretary.
[FR Doc. 86-5908 Filed 3-17-86; 8:45 am]
BILLING CODE 6720-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 157, and 284

[Docket No. RM83-31-000; Order No. 449]

Emergency Natural Gas Sale, Transportation and Exchange Transactions

Issued: March 12, 1986.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is revising its regulations relating to emergency natural gas transactions that are exempt from the certification requirements of section 7(c) of the Natural Gas Act (NGA), 15 U.S.C. 717f(c). The final rule eliminates unnecessary regulations and consolidates in a new Subpart I of Part 284 revised regulations that provide self-implementing authority for eligible participants, which include interstate pipelines, intrastate pipelines, and local distribution companies, to sell and/or transport natural gas to other eligible participants in emergency situations, as defined in new § 284.262(a).

The final rule generally retains the rate conditions currently applicable to suppliers that provide emergency transportation and sales services. An interstate pipeline's emergency transportation services will be subject, however, to the volumetric rate conditions of § 284.7 of Order No. 436, 33 FERC ¶ 61,007 (1985), 50 FR 41408 (October 18, 1985), if the pipeline is also providing other transportation that is subject to those rate conditions under Order No. 436. The final rule clarifies that, with this exception, transporters will not become subject to the conditions of Order No. 436, including the non-discriminatory access and contract demand reduction/conversion conditions, by reason of qualifying emergency transportation under the revised emergency regulations.

EFFECTIVE DATE: June 2, 1986.

FOR FURTHER INFORMATION CONTACT: Jack O. Kendall, Office of hte General Counsel, 825 North Capitol Street, NW., Washington, D.C. 20426, (202) 357-8565.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

The Federal Energy Regulatory Commission (Commission) is revising its regulations (18 CFR Parts 2, 157, and 284) relating to emergency transactions that are exempt from the certification requirements of section 7(c) of the Natural Gas Act (NGA).[1] The final rule eliminates outdated or unnecessary regulations and consolidates in a new Subpart I of Part 284 the Commission's regulations that provide self-implementing emergency authority to interstate pipelines, intrastate pipelines, and local distribution companies.

The final rule retains the current rate conditions applicable to suppliers providing emergency transportation services, with the exception that an interstate pipeline will be subject to certain of the rate conditions of § 248.7 of Order No. 436,[2] if the pipeline becomes subject to § 284.7 by electing to participate in the new blanket certificate program or to commence or continue after June 30, 1986, any NGPA § 311 transportation arrangements begun after October 9, 1985. Finally, the final rule clarifies that an interstate pipeline, intrastate pipeline, or local distribution company will not become subject to the other conditions of Order No. 436, including the nondiscriminatory access and contract demand reduction/conversion conditions, by reason of qualifying emergency transportation under the revised emergency regulations.

I. Background

A. Natural Gas Act

Section 7(c) of the NGA provides that every jurisdictional natural gas company must obtain a certificate of public convenience and necessity before transporting or selling gas, or constructing or operating facilities for those purposes. However, NGA section 7(c)(1)(B) provides two exceptions to this certificate requirement:[3] one authorizing the issuance of a temporary certificate during emergencies pending a determination of a regular application, and one exempting from certificate requirements "temporary acts or operations for which the issuance of a certificate will not be required in the public interest." The latter exception is the subject of this rulemaking.

Prior to the enactment of the Natural Gas Policy Act of 1978,[4] NGA section 7(c)(1)(B) was the only authority for the sale for resale of surplus intrastate gas into the interstate market without jurisdictional consequences to the seller. Over time, the Commission has used this authority under NGA section 7(c)(1)(B) to promulgate various implementing regulations (§§ 2.68, 157.22, and 157.29). These regulations set forth the Commission's policy of encouraging non-jurisdictional local distribution companies, intrastate pipelines and Hinshaw pipelines[5] to provide temporary emergency gas service in interstate commerce for up to 60 days.[6] They also authorized for 60 days the construction and operation of facilities or the sale or transportation of natural gas without a certificate in certain circumstances of emergency or other special need. The regulations required reports to be filed with the Commission describing the emergency and the transaction involved.[7]

B. The Natural Gas Policy Act

The NGPA had several impacts on the Commission's authority to provide for emergency transactions. Most significantly, sections 311 and 312 of the NGPA[8] provide an alternative to section 7(c)(1)(B) of the NGA for the following transactions in interstate commerce: Sales, assignments, and/or transportation of intrastate natural gas by intrastate pipelines on behalf of interstate pipelines and local distribution companies served by

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[1] 15 U.S.C. 717f(c)(1)(A) provides in relevant part: "No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations . . . ."

[2] 33 FERC ¶ 61,007 (1985), 50 FR 41408 (October 18, 1985).

[3] 15 U.S.C. 717f(c)(1)(B) provides in relevant part: "[T]he Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate, and may by regulation exempt from the requirement of this section temporary acts or operations for which the issuance of a certificate will not be required in the public interest." *See* 18 CFR 157.17 (1983) (requirements for a temporary emergency certificate).

[4] 15 U.S.C. 3301-3342 (1982).

[5] *See* sections 1(b) and 1(c) of the Natural Gas Act, 15 U.S.C. 717(b) and (c) (1982). Generally speaking, these sections exempt intrastate transportation or sale of natural gas, the local distribution of natural gas, the facilities used for such distribution, and the production or gathering of natural gas.

[6] 18 CFR 2.68 (1983).

[7] 18 CFR 157.22 and 157.29 (1983).

[8] 15 U.S.C. 3371 and 3372 (1982).

interstate pipelines and transportation by interstate pipelines on behalf of intrastate pipelines and local distribution companies. Therefore, as a result of the NGPA, these transactions have been authorized to proceed, subject to certain limitations, for longer periods than would be appropriate or permissible under NGA section 7(c)(1)(B).[9]

The Commission's interim regulations [10] implementing the NGPA effected several relevant changes to the emergency regulations. First, the interim regulations phased out the NGA emergency program covered by §§ 2.68, 157.22 and 157.29; these three sections were preserved only to the extent that they applied to then-existing contracts for emergency transactions.

Second, the interim NGPA regulations established new rules for emergency transactions that were designed to be transitional provisions until the Commission gained greater experience with the NGPA regulatory structure. The interim NGPA regulations established new rules implementing the authority provided by NGPA sections 311 and 312 for interstate and intrastate pipelines to provide services on behalf of each other and on behalf of local distribution companies. These regulations, set forth in Subparts B and C [11] of Part 284, have helped interstate pipelines and intrastate pipelines, respectively, to address natural gas emergencies, since they permit service to commence under certain circumstances without prior notice or application to the Commission. The self-implementing authority provided by these Part 284 regulations is not limited to emergency transactions, however.

The interim regulations also defined other emergency transactions that could not be provided under NGPA sections 311 and 312 but which could be authorized to commence on a self-implementing basis pursuant to NGA section 7(c)(1)(B). These are the regulations set forth in Subpart C of Part 157, which are limited to emergency situations.[12]

C. Order No. 436

On October 9, 1985, the Commission issued Order No. 436, a final rule pursuant to the NGA and the NGPA, which establishes a transportation program, including both blanket certificates under section 7 of the NGA and self-implementing transportation under section 311 of the NGPA. Interstate pipelines, intrastate pipelines, and local distribution companies transporting under the revised Order No. 436 self-implementing programs must provide nondiscriminatory access to all shippers. (*See* §§ 284.8, 284.9, and 284.224(e), respectively.) Interstate pipelines that accept blanket certificates or initiate new NGPA section 311 transportation under Order No. 436 are subject to additional conditions. Under § 284.7, rates for transportation service by an interstate pipeline must be volumetric, downwardly flexible, cost-of-service rates. Under § 284.10, an interstate pipeline must offer its firm sales customers an opportunity to reduce their firm sales entitlements and to convert firm sales to firm transportation service.

II. Discussion

A. Overview

On August 30, 1984, the Commission issued a Notice of Proposed Rulemaking (NOPR) in this docket. 49 FR 35135 (Sept. 6, 1984) [FERC Statutes and Regulations ¶ 32385].

The Commission proposed to update, consolidate, and clarify the existing regulations applicable to the movement of natural gas for emergency purposes based on the Commission's experience with its emergency transaction regulations since passage of the NGPA. The NOPR proposed to eliminate unnecessary regulations and consolidate all of the emergency regulations in a new Subpart I of Part 284 of the regulations. Also, the NOPR proposed to add new regulations to new Subpart I. The NOPR was designed so that: (1) Companies engaged in non-certificated transactions would benefit from having to consult only one unified portion of the Commission's regulations; (2) litigation time and expense would be reduced for pipelines and their customers because the consolidation and clarification of the emergency transaction regulations would reduce uncertainty and ambiguity; and (3) the unified regulations would simplify the Commission's administrative responsibilities and reduce the need to expend agency resources on litigation over the application of the emergency transaction rules.

In response to the NOPR, the Commission received 19 comments.[13] Generally, the commenters favored updating and consolidating the regulations but opposed the proposed substantive changes. The Commission is persuaded by the arguments raised by the majority of the commenters and has not adopted many of the substantive proposals in the NOPR. The final regulations adopt the organizational framework of the proposed regulations and some of the proposed language. Where appropriate, in response to the commenters, the final regulations either use the language of the current regulations or modify the language of the proposed regulations.

Furthermore, because the Commission's self-implementing and blanket certificate transportation programs were revised by Order No. 436, the final rule also makes several technical revisions to the proposed emergency transaction regulations and makes certain of the rate conditions of § 284.7 of Order No. 436 applicable to interstate pipelines that transport under both the new Subpart I emergency regulations and Subpart B of Part 284.

The following detailed discussion explains the changes made to the proposal in light of the concerns raised by the commenters and the issuance of

[9] The establishment of a 60-day authorization period in the emergency regulations in Subpart C of Part 157 reflects the holding in *Consumers Federation of America* v. *F.P.C.*, 515 F.2d 347, 352–353 (D.C. Cir. 1975). In that case, the court, stating that section 7(c)(1)(B) allows only a narrow exception to the NGA section 7(c) certificate requirement to deal with temporary emergencies, prohibited, as too long, a 180-day certificate exemption period.

[10] 47 FR 56448 (Dec. 1, 1978) (Docket No. RM79–3–000).

[11] Approximately three months after issuing the interim regulations, the Commission promulgated Subpart D (now Subpart E) of Part 284 which sets forth self-executing regulations providing for intrastate pipeline sales of gas. *See* 44 FR 12406 (Mar. 7, 1979) (Docket No. RM79–20).

[12] 18 CFR 157.46(a) (1983) defines an "emergency" as:

(1) A situation where the gas supply either available or expected to be available would require the interstate pipeline company, distribution company, or person described in section 1(c) of the Natural Gas Act to impose curtailment on its system (including a situation where additional supplies are necessary to maintain deliverability from storage or to replenish storage volumes in order to avoid or alleviate curtailment on its system);

(2) A sudden unanticipated (i) loss of natual gas supply or (ii) increase in demand; or

(3) A situation in which the qualified purchaser, in good faith, determines that immediate action is required or is reasonably anticipated to be required for protection of life or health or for maintenance of physical property.

[13] Timely comments were filed by the American Gas Association, Associated Gas Distributors; Columbia Gas Transmission Corporation; Consolidated Edison Company of New York, Inc.; Equitable Gas Company; Mountain Fuel Resources, Inc.; Montana-Dakota Utilities Company; Northern Illinois Gas Company; Northern Indiana Public Service Company; Pacific Gas and Electric Company; Public Service Electric and Gas Company; Tennessee Gas Pipeline Company, a Division of Tenneco Inc.; United Distribution Companies; and United Gas Pipe Line Company. Panhandle Eastern Pipeline Company and Trunkline Gas Company jointly filed a timely comment. Untimely comments were filed by Monterey Pipeline Company, Natural Gas Pipeline Company of America, Northern Natural Gas Company, and Petrochemical Energy Group.

Order No. 436 and clarifies that implementation of the revised emergency regulations, as proposed, will remove qualifying emergency transactions conducted under new Subpart I from the scope of Order No. 436.

B. Elimination of Outdated Regulations

The Commission proposed to eliminate §§ 2.68, 157.22, and 157.29. These provisions apply to contracts for emergency transactions under the NGA that were executed either before November 9, 1978, in the case of a first sale of gas, or before December 1, 1978, for all other emergency sales. These provisions governing NGA transactions were essentially superseded by passage of the NGPA, and are no longer in use because no pre-NGPA emergency transactions are taking place. Therefore, the provisions pertaining to them are being deleted from the regulations.

The Commission further proposed to eliminate §§ 157.45–157.52 from Subpart C of Part 157 and to replace them with a new Subpart I in Part 284, entitled "Emergency Natural Gas Sale, Transportation, and Exchange Transactions." The commenters raised issues relevant only to a limited number of these new provisions. The new Subpart I of Part 284 revises and updates the existing provisions [14] in Subpart C of Part 157 relating to emergency transactions that involve the construction and operation of facilities, the sale or transportation of natural gas in interstate commerce, or the exchange of gas for emergency purposes.

C. New Subpart I

1. Definition of the Term "Emergency"

The current regulations in Subpart C of Part 157 address emergencies on the systems of interstate pipelines, intrastate pipelines, and local distribution companies. However, the transportation authority provided in Subpart C of Part 157 is limited to transportation by an interstate pipeline of emergency gas supplies to its direct sale customers, its local distribution company customers, and other interstate pipelines. Subpart C of Part 157 explicitly recognizes that an interstate pipeline may need to transport or sell supplies on behalf of an intrastate pipeline or local distributor that is not the interstate pipeline's customer, and that transportation by an intrastate pipeline or local distributor may be necessary to address emergencies as defined in § 157.46(a)(1) of Subpart C. However, the current regulations provide for emergency service in such situations under current Part 284 self-implementing authority (by interstate pipelines under § 284.102 of Subpart B and § 284.222 (previous § 284.221) of Subpart G; intrastate pipelines under § 284.122 of Subpart C; and local distribution companies and Hinshaw pipelines under § 284.224 (previous § 284.222) of Subpart G.

The Commission proposed that in an "emergency" such transportation could be commenced under the new Subpart I. To effect this change, the proposed regulations include additional "covered transactions" (*see* proposed § 284.263(b) and new § 284.263) and add a new definition of qualifying "participants," which includes interstate pipelines, intrastate pipelines, and local distribution companies and Hinshaw pipelines (*see* proposed § 284.262(e) and new § 284.262(f)).

The Commission also proposed to define more narrowly the types of "emergencies" that would trigger an exemption from certificate requirements, stating that the definition under current § 157.46(a) was too broad and was potentially subject to abuse. Under current §157.46(a) an emergency exists when the gas supply that is available or expected to be available would require an affected entity to curtail gas deliveries on its system; when there is a sudden, unanticipated loss of gas supply or increase in demand; or when a qualified purchaser, in good faith, needs gas immediately for the protection of life or health, or the maintenance of physical property.

Under proposed § 284.262, there would have been two categories of emergencies: "pipeline emergency" and "curtailment emergency." A "pipeline emergency" would have been limited to a "sudden, unanticipated loss of a recipient's gas supply" or an "unanticipated situation" in which a participant determines, in good faith, that immediate action is necessary to protect life or health, to maintain physical property, or to maintain scheduled levels of storage inventories. A "curtailment emergency" would have been limited to situations in which a pipeline or distributor would experience actual or imminent curtailment of high priority end users and situations in which the operations of persons unable to use alternative fuels would be impaired without purchase of emergency gas. Emergencies of a purely economic nature, the status of which has been unclear under the current definition, would not have been recognized under the proposed definition.

Many commenters objected to the proposed definition, arguing that it was too restictive. Many urged the Commission to retain the existing definition in § 157.46(a), which they viewed as being more flexible, or to broaden the proposed definition.

With regard to the proposed definition of "curtailment emergency," many commenters objected to the Commission's use of proposed § 284.262(a)(2)(iv) to preclude end users with alternative fuel capabilities from purchasing emergency gas. These commenters maintained that such an "alternative fuel test" would make unavailable, to a wide range of both high and low priority users, emergency gas otherwise currently available under short-term sales and transportation transactions.

Several commenters also asserted that pipelines and distributors would be burdened with compiling inventories of end users with alternative fuel capacity and availability. They further asserted that the benefits of the alternative fuel test did not justify its ultimate cost, because end users with alternative fuel capability benefit all customers on a pipeline's or local distributor's system by typically absorbing a major share of the system's fixed costs. Reducing or disrupting gas service to such "switchable" customers would hurt the remaining system customers by increasing their share of fixed system costs, and hurt the gas supplier by reducing its revenues. One commenter questioned whether some customers would rather opt for an alternative fuel supply simply because of the threat of not being able to obtain gas during an emergency.

One commenter stated that the proposed distinction between curtailments which threaten "life, health and physical property" in a pipeline emergency, versus curtailments of high priority end users in a curtailment emergency, is ambiguous because, under the proposed definition, high priority curtailment entitlements are essentially limited to end users whose curtailment would pose a threat to life, health or physical property.

Finally, another commenter pointed out that the proposed definition of "curtailment emergency" did not conform to the actual priority of end-uses under many curtailment plans. Therefore, the commenter asserted, the proposed definition would needlessly conflict with curtailment plans because

[14] The Commission's existing regulations are prefaced with the designation "current." Regulations that were proposed in the NOPR are prefaced with the designation "proposed." Regulations that are being implemented by this final rule are prefaced with the designation "new."

curtailment plans differ in their definitions of high-priority of uses.

The Commission agrees with the commenters' assertion that the proposed definition of "emergency" would unnecessarily restrict the types of end users on whose behalf pipelines and distributors engage in emergency natural gas transactions. Under the proposed bifurcated definition, during a curtailment emergency all low priority end users would be excluded from receiving emergency gas. Further, emergency transactions could be conducted on behalf of high priority end users only if they had not installed alternative fuel facilities or, if they had, did not have access to adequate supplies of alternative fuels.

The Commission also is persuaded that the proposed differentiation between a "pipeline emergency" and a "curtailment emergency" might have an adverse effect on gas suppliers and their customers, since each pipeline's curtailment plan in its FERC gas tariff was designed to fit the particular circumstances of that pipeline during periods of curtailment, but the proposed definition provided no guidance as to its effect on these plans. Furthermore, pipelines' curtailment plans differ in their definition of high priority uses.

In response to the comments, the Commission is not adopting the proposed distinction between "pipeline emergency" and "curtailment emergency." The final rule adopted herein retains, with certain modifications, the single definition of "emergency" in § 157.46(a) of the current rule, redesignated as § 284.262(a)(1). In so doing, the Commission is resolving some of the specific concerns expressed by the commenters, as discussed below.

By retaining the existing definition of "emergency", the Commission is eliminating the proposed restrictions on emergency transactions for certain classes of end users. However, the Commission has modified the current definition of emergency to clarify in new § 284.262(a)(1)(i) that emergency transactions under Subpart I are to be used only in those instances where they are necessary to maintain projected levels of service to particular customers, unless additional supplies are needed because of "a sudden unanticipated loss of natural gas supply or a sudden unanticipated increase in demand" (*see* new § 284.262(a)(1)(ii)) or the participant, in good faith, determines that additional supplies are required "for protection of life or health or for maintenance of physical property" (*see* new § 284.262(a)(1)(iii)). A company's total projected level of service for all of its customers is reported in its FERC Form No. 16. The company can determine its projected level of service for each customer from the information it uses to compile its total amount reported. Emergency transactions may be used to respond to weather-induced increases in requirements but may not be used to increase service levels to existing customers for any other reason. Further, while the definition adopted herein in § 284.262(a)(1) is broad enough to provide for emergency transactions on behalf of end users with alternative fuel capacity, sales and deliveries of emergency gas still must fall within planned service levels for those customers. This limitation also will avoid the problems inherent in ascertaining alternative fuel capacity and availability.

The revised definition will also accommodate those commenters that believe that the definition of "emergency" should include distribution companies that experience sudden and unanticipated losses of supply due to failure of facilities, so that they may secure emergency supplies for end users, including those users with alternative fuel capacity. The definition of emergency is also responsive to the request by another commenter that the definition include emergency shortages incurred by suppliers other than pipelines. Specifically, the final rule's definition of "emergency" in new § 284.262(a)(1), which is adapted from the current definition of emergency in § 157.46(a)(1), provides that shortages incurred by distribution companies or Hinshaw pipelines may also qualify as emergencies for purposes of the revised regulations.

The definition of emergency, however, does not include economic emergencies, contrary to the request of one commenter. That commenter stated that petrochemical companies are captive customers unable to use alternative fuels because they need the gas for feedstock or process fuel uses. The commenter is concerned that, if confronted with a sharp rise in other suppliers' gas prices, the proposed rule would prevent eligible participants from engaging in short-term emergency transactions on these customers' behalf while the customers negotiate acceptable long-term arrangements with existing or other suppliers.

The Commission has determined that the definition of "emergency" should not encompass "economic" emergencies. Rather, the Commission believes the emergency regulations of Subpart I of Part 284 should facilitate immediate responses to physical shortages of gas, but not situations in which gas is physically available but not at the desired price. In such situations, gas users should seek to obtain less expensive replacement supplies through transporters who either operate under the self-implementing provisions of Subparts B and C of Part 284, hold blanket certificates, or are willing to seek specific authorization under the Natural Gas Act.

Another commenter urged expansion of the definition of emergency to include a loss of a recipient's gas supply caused by other factors beyond pipelines' and distributors' control, such as the implementation by sellers or transporters of *force majeure* clauses, or the shutting-in of wells due either to disputes or low well pressure. The Commission declined to expand the definition in that manner as it would be vague and overly broad. A definition of *force majeure* in a private contract, and a seller's or transporter's unilateral interpretation of such a contractual provision when asserting it, could go well beyond the intended scope of the concept of an "emergency" as contemplated in the rule. Similarly, "disputes" could arise for many reasons, not all of which encompass the situations that the rule is designed to cure.

One commenter objected to the narrowing of the definition of emergency in the proposed rule unless Subparts B and C of Part 284 were concurrently amended to authorize self-implementing transportation directly to specific end users or classes of end users. The commenter's concern has been eliminated by retention of the existing definition of emergency and by providing emergency transportation authority independent of Subparts B and C of Part 284.[15]

Finally, one of the commenters that requested expansion of the term "pipeline emergency" also urged the Commission to distinguish an emergency which, under the proposed regulations, would be exempt from certification from an emergency which forms one aspect of the Commission's consideration of a request for a temporary certificate. As stated in the notice of proposed rulemaking, this proceeding does not relate to the

[15] The Commisson notes that Subparts B and C of Part 284 were amended by Order No. 436 to permit transportation directly to end users, eliminating the condition that gas transported under Subpart B or C of Part 284 must be received into system supply. Transportation under Subparts B and C is still subject to the condition that the transportation, if performed by an interstate pipeline, must be on behalf of an intrastate pipeline or local distribution company, or, if provided by an intrastate pipeline, on behalf of an interstate pipeline or one of its distributor customers.

issuance of a temporary certificate during an emergency pending consideration of an application for certificate authority under § 157.17.[16]

2. Clarification of Gas Storage Policy

Current § 157. 46(a)(1) permits emergency transactions to be used to maintain deliverability from storage or to replenish storage volumes. However, proposed § 284.262(a)(1)(ii) would permit only those emergency transactions necessary to maintain scheduled levels of gas inventory and thereby ensure maintenance of projected service levels, taking into account peak-day and seasonal requirements.

Many commenters expressed concern that they would not be able to maintain scheduled levels of gas inventory without maintaining deliverability and replenishing storage volumes. These commenters contended that replenishing storage volumes should be allowed in an amount at least up to the scheduled inventory level. These points are well taken. The proposed language was ambiguous and contradictory.

The Commission intended to revise § 157.46(a)(1) to permit an "emergency transaction" to maintain levels of storage inventory sufficient to ensure a pipeline's planned level of service, including deliverability needed to meet weather-induced demand, but not to increase the level of service to add new customers or for any other reason except abnormal weather conditions. Certificate authority, rather than emergency authority, should be used to supply gas if market expansion or special sales are being implemented through the use of storage.

In response to the comments, and to implement the Commission's original intent, the phrase "to maintain deliverability from storage or to replenish storage volumes in order to avoid or alleviate curtailment on its system" in proposed § 284.262(a)(1)(ii) has been revised so that new § 284.262(a)(1)(i) reads "to maintain levels of natural gas storage inventories sufficient to ensure a pipeline's projected level of service." Further, "projected level of service." is defined in § 284.262(b) to mean "the level of service projected by the company for each customer which the company uses to compile the total projected level of service that it reports in its FERC Form No. 16 plus any additional supplies needed by a customer due solely to a weather-induced increase in requirements."

[16] *See* 49 FR at 33005

3. Simultaneous Sale and Purchase of Emergency Gas

Both the current and proposed rule provide that participants should make every reasonable attempt to minimize or, if possible, to avoid reliance on emergency natural gas transactions. In the NOPR, the Commission proposed adding three clarifying provisions, §§ 284.264(a)(1)–(3), which were adapted from current § 157.48(a). Proposed subparagraph (4) of § 284.264(a) would have prohibited a participant from selling emergency gas under this subpart if the participant was simultaneously purchasing emergency gas.[17]

Several commenters pointed out that a participant serving a large geographic area might simultaneously need to make an emergency sale at one point on its system (to alleviate someone else's emergency) while making an emergency purchase elsewhere on its system (to avoid disruption or diminution of service at another point on its own system). That is, because of the configuration of the pipeline, it could not use its system supplies to alleviate the emergency in one part of its system, but it could use those supplies to assist someone elsewhere on its system.

The Commission is persuaded that these special circumstances outlined by the commenters could justify a simultaneous purchase and sale of emergency gas on a participant's system. Because the Commission would expect that, in any extended curtailment situation, other sources of supply would be actively pursued, the general prohibition described in subparagraph (4) has been retained in the final rule. However, in order to alleviate the potential problem of a need for emergency gas in one segment of a pipeline's system that cannot be met by moving gas from another part of its system, § 284.264(a)(4) in the final rule has been revised by adding the phrase "except when gas is being purchased to relieve an emergency on another, separate segment of the participant's system."

4. Rates and Costs Treatment

The current regulation, § 157.48(d), authorizes interstate pipelines to purchase emergency gas for system supply, and also authorizes direct assignment of emergency gas volumes and costs to particular customers who need the gas. Proposed § 284.265 provided that an interstate pipeline that puchased emergency gas for a pipeline emergency could roll the costs of that gas into its general system supply. However, during a curtailment emergency, an interstate pipeline would generally not have been allowed to roll the cost of emergency gas into the rates paid by all on-line customers, with the exception of minimal amounts of gas which had been inadvertently purchased in excess of the volumes needed to address the curtailment emergency. Similar to the current regulation, the proposed rule allowed a purchasing interstate pipeline to either directly assign specific emergency gas costs to particular emergency gas customers or to aggregate emergency gas costs and allocate the costs on a weighted-average or "rolled-in" costs basis among all of its emergency gas customers.[18]

Proposed § 284.266, which prescribed the allowable rates and charges for emergency transactions, paralleled current §§ 157.49 and 157.50. However, when possible, the Commission proposed to adopt the same methodology for determining rates and charges for emergency transactions that was applied under the self-implementing procedures of old Subparts B and C and current Subpart D of Part 284. Thus, the Commission proposed that, for the transportation of emergency gas, an interstate pipeline would apply the rate and revenue provisions in then effective § 284.103. An intrastate pipeline, local distribution company, or Hinshaw pipeline would apply the transportation rate and revenue provisions in then effective § 284.123. Accordingly, if one of these nonjursidictional firms had an appropriate existing rate on file with an appropriate state regulatory agency for city-gate services, it would use that rate, unless it filed a new rate for Commission approval. A local

[17] Proposed subparagraph (3) of § 284.264(a) prohibited a participant from engaging in an emergency transaction if this participation would render the participant unable to provide adequate service to its existing customers. This subparagraph has been adopted in the final rule without change. Proposed subparagraph (5) outlined the Commission's general enforcement procedures under proposed Subpart I. This subparagraph has been deleted from the final rule as it stated only the Commission's enforcement position which is applicable to all of the Commission's regulations.

[18] Under a "rolled-in" rate making approach, the costs of all of a pipeline's facilities or gas supplies are aggregated, and are then allocated among the pipeline's various services and customers. This method is generally used where the pipeline's incurrence of the costs under review can reasonably be determined to be the responsibility of and provide benefits for all of the pipeline's customers and services. Under a "direct assignment" approach, the costs of particular facilities or gas supplies are directly assigned to specific services or customers. This latter method is generally used only where a direct cost-causal relationship exists between specific costs incurred by the pipeline and specific beneficiaries of the service which engendered those costs.

distribution company or Hinshaw Pipeline that did not have such a rate on file would apply the transportation rate provisions of then effective § 284.222(e)(2)(ii) (current § 284.224(e)(2)(ii)). Interstate pipelines would have based their rates for sales of emergency gas on applicable or comparable tariff rates. If there was no applicable or comparable tariff rates on file, interstate pipelines would base their sales rates on the methodology used in designing their effective sales rates, including their current purchased gas cost. This was similar to the current methodolgy. (Proposed § 284.264(a)(7), new § 284.264(a)(5), retains the prohibition against an interstate pipeline's receiving compensation for acting as a broker or agent in an emergency transaction.)

Finally, intrastate pipelines, local distribution companies, and Hinshaw pipelines would have set sales rates according to the provisions in current § 284.144 (the self-implementing provisions for gas sales by intrastate pipelines).

Many commenters opposed the direct assignment of costs of emergency purchases to remedy a curtailment emergency. Several contended that the proposed rate treatment of emergency gas purchases during curtailment emergencies contravened the Commission's traditional policy of allocating gas costs among all of a pipeline's customers through use of the rolled-in method. One commenter stated that in light of the differing curtailment plans established based on the differing circumstances of interstate pipelines, the requirement for direct assignment of costs may not be appropriate.

Several commenters added that the direct assignment of costs of emergency purchases should not be automatically required in curtailment emergencies if a pipeline makes such purchases for general system supply to remedy acute curtailment of high-priority end users. One of these commenters stated that this rate treatment would result in the inability of unwillingness of interstate pipelines to purchase emergency gas.

In the NOPR, the Commission stated that the purpose of prohibiting a pipeline from rolling the cost of emergency gas into the rates of all on-line customers was to permit normal "market signals" to flow from the incremental gas customers, who would otherwise face curtailments, to their supplies of emergency gas.[19] One commenter contended that such market signals would not exist where certain interstate pipelines have thousands of end users dependent upon those pipelines' quick responses to emergency shortfalls of gas supplies. This commenter also pointed out that "pipeline" or *force majeure* emergencies are more likely to affect a discrete portion of a pipeline's system than curtailment emergencies. This commenter concluded that the costs associated with all emergency purchases should be permitted to be rolled into the costs of system supplies.

One commenter, however, suggested that in the case of a curtailment emergency, particular recipients should be required either to pay the direct costs related to the discrete emergency gas supply that they receive or to pay the pipeline's weighted average cost of providing service to all customers which received emergency gas.

As noted above, the final rule eliminates the distinction between "pipeline" and "curtailment" emergencies by retaining the current definition of emergency. Under this format, it might be more difficult to determine where the benefits of emergency gas purchases will accrue. Thus, use of the rolled-in method on a systemwide basis would be more practical. Accordingly, with the exception noted below, § 284.265(b) of the final rule provides for rolled-in treatment of emergency gas purchase costs.

The Commission agrees with the commenters that some inequities might result during selected emergencies from allowing only the rolled-in cost allocation method. Further, the Commission also has determined that it would be inappropriate and unnecessarily complicated for an interstate pipeline to aggregate its gas costs in all emergency transactions in a separate account and allocate those costs on a weighted-average basis among customers in different emergency transactions. Accordingly, § 284.265 of the final rule provides that an interstate pipeline, when able to determine that the benefits of a particular purchase of emergency gas accrue only to particular customers, must directly assign the purchase costs of the emergency gas to those customers. Section 285.265 further provides, if the interstate pipeline is unable to determine that an emergency gas purchase benefits only particular customers, that the interstate pipeline must roll the emergency gas costs into general system supply costs.[20]

The proposed rate and revenue conditions applicable to participants that provide emergency transportation or make emergency sales are unchanged, with three exceptions. First, the language of proposed § 284.266(b) has been revised to provide that interstate pipelines that do not have comparable sales rates on file shall determine their emergency sales rates according to the methodology used in designing their currently effective sales rates, including their current purchased gas cost. This revision was made because the proposed language, while it would be substantively the same in most instances, would not be applicable to all interstate pipelines since it provided for every interstate pipeline to design its rates according to "the methodology used in designing rates to recover its transmission and storage costs and its current purchased gas cost."

Second, interstate pipelines that file § 284.7 rates shall be required, after such filings become effective, to apply to any emergency transportation service a volumetric rate based upon the full costs properly allocable to that transportation service. The provisions of § 284.7(b)(5) that provide for rate flexibility will not apply to emergency transactions, since those provisions are intended to permit pipelines to meet competitive pressures. In view of the Commission's determination that qualification as an emergency should not depend on economic considerations, an interstate pipeline should not be allowed to charge a rate less than its properly allocable costs of service. Further, it would not be appropriate for an interstate pipeline to withhold service from a customer experiencing an emergency until the customer agrees to pay a rate higher than the properly allocable costs of service. Moreover, it does not appear appropriate to establish a separate projected level of emergency transportation in order to develop transportation rates. Therefore, an interstate pipeline must charge a volumetric and fully allocated-cost rate, as described in § 284.7(d)(1), adjusted only for time and distance as provided in § 284.7(d)(3). Moreover, since the proposal would have made interstate pipelines' emergency transportation rates subject to § 284.103 by reference, and Order No. 436 deleted § 284.103 from the Commission's regulations, it is necessary in this final rule to include, with certain modifications, the provisions of former § 284.103 in the new Subpart I emergency regulations in

[19] 49 FR at 33009.

[20] Of course, the appropriateness and prudence of any purchases for emergency sales will be subject to scrutiny in the purchasing pipeline's appropriate PGA or general rate change filings.

§ 284.266. The emergency transportation and sales rate conditions applicable to intrastate pipelines and local distributors will be implemented, as proposed, by reference to § 284.123 of Subpart C, § 284.144 of Subpart D, and § 284.224(e)(2)(ii) (previously § 284.222(e)(2)(ii)) of Part 284.

Finally, in recognition that interstate pipelines will generally not include revenues from their emergency gas sales in their Purchased Gas Adjustments, the Commission has added a provision to new § 284.266(c) which clarifies that in such cases interstate pipelines are only required to credit to Account No. 191 those revenues in excess of the sum of their cost of purchased emergency gas and one cent per MMBtu. In addition, since the tariff of a pipeline that provides only transportation service may not provide for Purchased Gas Rate Adjustments, a new paragraph (iii) has been added to § 284.266(c)(1) to require that such pipelines credit emergency transportation revenues in excess of one cent per MMBtu to current bills in order to ensure that such revenues are flowed back to the interstate pipeline's customers.

5. Reporting Requirements

Current § 157.51 requires an interstate pipeline, within 48 hours after commencement of deliveries of emergency natural gas, to notify the Commission in writing of the sale, stating the specific nature and duration of the emergency, the amount of emergency natural gas to be purchased or transported on a daily basis, the name of the seller, the transporter, and any person to whom the emergency natural gas is to be assigned, and the price.

Proposed § 284.267 would have required a telegraphic report, rather than a written report, within 48 hours after deliveries commence under emergency gas sales, transportation, or exchanges by the purchasing participant, the recipient, or the initial recipient, respectively. Much of the same data about each transaction that were required under the proposed rule are currently required under § 157.51. These data include the specific nature and anticipated duration of the emergency, the amount of gas to be purchased or transported on a daily basis, the names of the sellers, the transporters, and any assignee, and the price. The proposed rule also would require the following additional data for each type of transaction. A statement that the report is made under § 284.267 (§ 284.270 in the final rule), the date the transaction began, the total amount of emergency gas expected to be moved in the transaction, and the identity of all participants involved. Proposed § 284.267(a)(3) would require similar data pertaining to exchanges except that instead of reporting the price for the gas, the proposed rule required data on whether the exchange is concurrent or nonconcurrent. The rule also required a statement of the redelivery schedule and any imbalances in the volumes, whether the exchange is on a thermal or volumetric basis, and the rates or charges for the exchange service.

Proposed § 284.267(b) contained a new requirement for a termination report.[21] Three sworn copies of the termination report were required to be filed 30 days after the emergency transaction ends. The report would include the following information: (1) A description of the emergency transaction; (2) the date it began and ended; (3) the date of the 48-hour report; (4) the way the emergency was resolved; (5) any corrections to the initial telegraphic report or a statement that it is correct; (6) the volumes delivered and compensation received for the emergency gas; (7) how the compensation was determined; (8) the volumes of natural gas that were assigned; (9) the total volume in system supply; (10) any information supplied to other participants that an emergency existed or was imminent so as to qualify as an emergency transaction; and (11) that the emergency was carried out under Subpart I. Like the 48-hour report, the 30-day termination report required data that would be readily available to a participant, because it was essentially a final version of the data previously sent in the 48-hour report. The Commission proposed the termination report to assist its effective administration of Part 284 in light of incidents where emergency transactions may have been used improperly to circumvent NGA certificate requirements.

One commenter argued that because telegraph facilities are not always available, the participate be given the option of making a report by telephone, followed by a written report. Another commenter suggested that the method of reporting not be restricted to a telegram, but rather, that any reasonable method of communication that complies with the 48-hour requirement be permitted.

The Commission's intent was to clarify the reporting requirements without increasing the reporting burden. In this context, the Commission believed that it would be less burdensome for a participant to send a telegram than to prepare and send a written report. However, a documented record of some sort is needed—either a written report or a telegram. Forty-eight hour reporting has been a requirement of emergency transactions for many years. The Commission needs such information to keep itself informed of emergency situations as they occur, in order to carry out its regulatory responsibility to ensure reliable service. Nevertheless, in response to the comments, the final rule has been modified in new § 284.270(a) to permit written reports in lieu of telegraphic reports; thus, for the 48-hour report, the reporting participant can send either a written report or a telegram.

One commenter stated that it may not be possible for the reporting participant to specify the actual total amount or average daily amount of emergency natural gas in the 48-hour report. Though the NOPR specified the amount of gas to be purchased or transported on a daily basis, it was not the Commission's intent to require actual volumes in these reports. Therefore, the final rule has been modified in § 284.270(a)(4) of the final rule to include the term "estimated" in the context of total and average daily volumes reported in 48-hour reports.

The Commission also agrees with the commenter's statement that inclusion of a redelivery schedule of the volumes in an exchange transaction is unnecessary and possibly burdensome. This commenter rightly pointed out that the requirement to correct any imbalance in volumes within 180 days was retained in the proposed regulations. This requirement is sufficient to achieve the Commission's objective. Therefore, the redelivery schedule reporting requirement is not included in the final rule.

One commenter suggested that for all parties to an emergency transaction to be kept fully informed, the reporting participant should be further required to serve copies on the other participants. While the Commission agrees that it would be good business practice for the reporting participants to provide copies of the reports to the other parties, and encourages them to do so, it does not wish to codify that practice as a legal requirement.

Finally, the reporting requirements have been revised to clarify that, when required to describe the specific nature of an emergency situation (*see* §§ 284.270 (a)(3), (b)(3), (c)(3), and (d)(1) of the final rule), the respondent should include sufficient information to demonstrate how the situation qualifies

[21] The quarterly report prescribed under current § 157.51(b) is required to be filed only at the end of each calendar quarter in 1979. This report was retained in the proposed rule.

as an emergency under § 284.262 and under the conditions of § 284.264.

6. Relationship Between Emergency Transaction Regulations and Order No. 436

The amended emergency regulations promulgated in this order partially overlap the regulations for the transportation programs in Subparts B, C, G and H of Part 284. To prevent any ambiguity, the Commission clarifies here that the non-discriminatory access, customer contract demand reduction/conversion, and other conditions of Order No. 436 do not apply to emergency transportation performed under Subpart I. (The one exception, as discussed above, is that certain of the rate conditions of § 284.7 will apply to interstate pipelines that also transport under Order No. 436.)

On the other hand, the Commission wishes to clarify that the emergency regulations are not intended as a substitute for transportation authority available through the provisions of Order No. 436. Thus, an interruption of transportation resulting from a pipeline's decision not to participate in the self-implementing transportation provisions of Order No. 436, or not to seek specific authority for transportation or sales under section 7 of the Natural Gas Act, would not of itself constitute an emergency under new § 284.262. Such an interruption, for instance, would not constitute "a sudden unanticipated loss of natural gas supply," a curtailment of deliveries, or a situation requiring protection of life or health or the maintenance of physical property, within the meaning of that section.

III. Regulatory Flexibility Act Statement

The Regulatory Flexibility Act (RFA), section 3, 5 U.S.C. 601–612 (1982), requires agencies to prepare certain statements, descriptions, and analyses of rules that, if promulgated, of small entities." The Commission is not required to make such analyses if a rule would not have such an impact.

Most of the pipeline companies affected by this rule do not fall within the RFA's definition of small entity.[22] Some local distribution companies may meet the small entity definition. However, the accounting, filing, and reporting burdens on all of the entities affected by the rule would either remain about the same or would be increased by a very small degree. The associated costs that would be incurred by participants to emergency transactions are likely to be insignificant. Conversely, the reporting requirements should be easier to understand and complete. The Commission is revising these reporting requirements only where its administrative and enforcement experience has shown a need to do so. In addition, any increased compliance burden should be offset by the clarifications and consolidations made in this rule. For example, a participant's election to file a telegraphic report rather than a more burdensome written report will probably reduce the overall time and resources that must be spent by transaction participants.

For these reasons, the Commission does not believe that the impact of this rule will be economically "significant," at least within the meaning of the RFA. Pursuant to section 605(b) of the RFA, therefore, the Commission certifies that this rule will not have a "significant economic impact on a substantial number of small entities."

IV. Paperwork Reduction Act Statement

The information collection provisions in this final rule are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act [23] and OMB's regulations.[24] Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 (Attention: Talib Shahid, (202) 357–8593). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, D.C. 20503. (Attention: Desk Officer for the Federal Energy Regulatory Commission.)

V. Effective Date

The amendments made by this final rule will be effective on June 2, 1986. If OMB's approval and control number have not been received by this effective date, the Commission will issue a notice temporarily suspending the effective date.

In consideration of the foregoing, the Commission amends Part 2, Part 157, and Part 284, Title 18, Chapter I, Code of Federal Regulations, as set forth below.

[22] 5 U.S.C. 601(c) *citing* section 3 of the Small Business Act, 15 U.S.C. 632 (1982). Section 3 of the Small Business Act defines "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. *See also*, SBA's revised Small Business Size Standards, 49 FR 5024 (Feb. 9, 1984) (to be codified at 13 CFR Part 121).

[23] 44 U.S.C. 3501–3520 (1982).

[24] 5 CFR 1320.13 (1983).

List of Subjects

18 CFR Part 2

Administrative practice and procedure, Electric power, Environmental impact statements, Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 2—[AMENDED]

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

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order No. 12.009, 3 CFR 142 (1978); Federal Power Act, 16 U.S.C. 792–825r (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645 (1982); and the National Environmental Policy Act, 16 U.S.C. 4321–4361 (1978), unless otherwise indicated.

§ 2.68 [Removed]

2. Part 2 is amended by removing § 2.68.

PART 157—[AMENDED]

3. The authority citation for Part 157 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982), as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order No. 12009, 3 CFR 142 (1978).

§§ 157.22 and 157.29 [Removed]

4. Sections 157.22 and 157.29 are removed.

5. The table of contents for Part 157 is amended by removing the title of Subpart C and the section numbers and headings thereunder.

Subpart C (§§ 157.45—157.52)—[Removed]

6. In Part 157, Subpart C (§§ 157.45 through 157.52) is removed in its entirety.

PART 284—[AMENDED]

7. The authority citation for Part 284 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982), as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982);

Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order No. 12,009, 3 CFR 142 (1978).

8. The table of contents of Part 284 is amended by adding a new Subpart I to read as follows:

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

* * * * *

Subpart I—Emergency Natural Gas Sale, Transportation, and Exchange Transactions

Sec.

9. In Part 284, a new Subpart I is added to read as follows:

Subpart I—Emergency Natural Gas Sale, Transportation, and Exchange Transactions

§ 284.261 Purpose.

This subpart exempts a person who engages in an emergency natural gas transaction, as defined for purposes of this subpart, in interstate commerce from the certificate requirements of section 7 of the Natural Gas Act and from the conditions of § 284.7, except as provided in § 284.266, and §§ 284.8–284.13 of Subpart A of this Chapter.

§ 284.262 Definitions.

For purposes of this subpart:

(a)(1) "Emergency" means, except as provided in paragraph (a)(2):

(i) Any situation in which an actual or expected shortage of gas supply would require an interstate pipeline company, intrastate pipeline, local distribution company, or Hinshaw pipeline to curtail deliveries of gas or provide less than the projected level of service to any customer, including any situation in which additional supplies are necessary to maintain levels of natural gas storage inventories sufficient to ensure a pipeline's projected level of service to any customer, but not including any situation in which additional supplies are needed to increase the projected level of service to an existing customer or to provide service to new customers; or

(ii) A sudden unanticipated loss of natural gas supply or a sudden unanticipated increase in demand; or

(iii) Any situation in which the participant, in good faith, determines that immediate action is required or is reasonably anticipated to be required for protection of life or health or for maintenance of physical property.

(2) "Emergency" does not mean any situation under paragraph (a)(1) resulting solely from a failure by any person to transport natural gas under Subpart B, C, G, or H of this part.

(b) "Projected level of service" means the level of service projected level by the company for each customer which the company uses to compile the total projected level of service that it reports in its FERC Form No. 16 and additional supplies needed by a customer due solely to a weather-inducted increase in requirements.

(c) "Emergency natural gas" means natural gas sold, transported, or exchanged in an emergency natural gas transaction.

(d) "Emergency natural gas transaction" means the sale, transportation, or exchange of natural gas (including the construction and operation of necessary facilities) conducted pursuant to this subpart that is:

(1) Necessary to alleviate an emergency; and

(2) Not anticipated to extend for more than 60 days in duration.

(e) "Emergency costs" means the amount paid by a recipient of emergency natural gas and all associated costs, including all transportation costs.

(f) "Participant" means any first seller, interstate pipeline, intrastate pipeline, local distribution company or Hinshaw pipeline that participates in an emergency natural gas transaction under this subpart.

(g) "Recipient" means:

(1) In the case of the sale of emergency natural gas, the purchaser of such gas; or

(2) In the case of a transportation or exchange of emergency natural gas when there is no sale of emergency natural gas under this subpart, the participant who receives the gas.

(h) "Hinshaw pipeline" means a pipeline that is exempt from the Natural Gas Act jurisdiction of the Commission by reason of section 1(c) of the Natural Gas Act.

§ 284.263 Exemption from section 7 of Natural Gas Act and certain regulatory conditions.

Any participant that engages in an emergency natural gas transaction conducted in accordance with this subpart is exempt from the requirements of section 7 of the Natural Gas Act and the conditions of § 284.7, except as provided in § 284.266, and from the requirements of §§ 284.8–284.13 of Subpart A of this part. Participation in any emergency natural gas transaction will not subject any participant to the jurisdiction of the Commission under section 7 of the Natural Gas Act except to the extent such transaction is provided for in this subpart.

§ 284.264 Terms and conditions.

(a) *General conditions.* (1) A participant must make every reasonable attempt to minimize use of emergency natural gas transactions.

(2) Before deliveries of emergency natural gas commence, a responsible official of the recipient must provide any participants in the emergency natural gas transaction sufficient information to enable the participants to form a good faith belief that an emergency exists or is imminent.

(3) No participant may engage in an emergency natural gas transaction if its participation will adversely affect service to its existing customers.

(4) A participant may not sell emergency natural gas if, during the term of the sale, it is also purchasing emergency natural gas under this subpart, except when natural gas is being sold to relieve an emergency on another, separate segment of the participant's system.

(5) An interstate pipeline, acting in an emergency gas transaction as a broker or agent on behalf of another participant or any other person, may not receive compensation for such brokerage or agency service.

(6) A recipient of emergency natural gas that directly benefits from the service must:

(i) Provide line loss and the fuel volumes required to transport the emergency natural gas; and

(ii) Pay for the facilities required to be constructed to conduct the emergency natural gas transaction.

(b) *Duration.—(1) Emergency sale or transportation.* An emergency natural gas transaction is limited to 60 consecutive calender days, except that such transaction may be continued for an additional 60 consecutive days if:

(i) Fifteen days prior to the end of the initial 60-day period, the recipient of

emergency natural gas files a petition that:

(A) Describes fully the continued emergency,

(B) Requests a waiver of the intitial 60-day limitation and permission for an extension of the transaction for an additional 60 days; and

(ii) Within the 15-day period, the Commission does not, by order, prohibit continuation of the emergency natural gas transaction for the additional 60-day period.

(2) *Redelivery in emergency exchange.* The redelivery of emergency natural gas received under an exchange arrangement must occur within 180 consecutive days following the termination of deliveries of the emergency natural gas.

§ 284.265 Cost recovery by interstate pipeline.

(a) Except as provided in paragraph (b), an interstate pipeine that provides emergency natural gas, whether from its system supply or by special purchase, must directly assign the emergency gas costs to the recipient.

(b) If an interstate pipeline cannot identify individual recipients, the interstate pipeline must roll the emergency gas costs into its general system supply costs.

§ 284.266 Rates and charges for Interstate Pipelines.

(a) *Transportation rates.*—(1) *Rate on file.* If an interstate pipeline has on file with the Commission an effective transportation rate schedule that conforms to § 284.7, it must use volumetric rates based upon fully-allocated costs and adjusted only for time and distance.

(2) *Rate not on file.* If an interstate pipeline does not have on file with the Commission a transportation rate schedule that conforms to § 284.7, it may:

(i) Base its rates upon the methodology used in designing rates to recover the transmission and related storage costs included in one of its then-effective sales rates schedules; or

(ii) Use the rates contained in one of its transportation rate schedules on file with the Commission which the interstate pipeline determines covers service comparable to transportation service authorized under this subpart.

(b) *Sales rates.*—(1) *Rate on file.* An interstate pipeline must determine its rates for sales of emergency natural gas under this subpart according to a rate schedule applicable or comparable to this type of service.

(2) *Rate not on file.* If no applicable or comparable rate schedule is on file for this type of service, the interstate pipeline must determine its rates according to the methodology used in designing its then effective sales rates, including its current purchased gas cost.

(c) *Treatment of revenues.* (1) Except as provided in paragraph (c)(2),

(i) All revenues received by an interstate pipeline for transportation or, if the interstate pipeline includes the cost of emergency natural gas in its Purchase Gas Adjustment, for sales authorized under this subpart in excess of an allowance of one cent per MMBtu must be credited to Account No. 191 and flowed back to the interstate pipeline's customers.

(ii) All revenues received by the interstate pipeline for transportation or, if the interstate pipeline does not include the cost of emergency natural gas in its Purchased Gas Adjustment, for sales authorized under this subpart in excess of the sum of (A) the cost of purchased gas plus (B) an allowance of one cent per MMBtu must be credited to Account No. 191 and flowed back to the interstate pipeline's customers.

(iii) If an interstate pipeline's tariff does not provide for Purchased Gas Rate Adjustments, all revenues received by the interstate pipeline for transportation authorized under this subpart in excess of one cent per MMBtu must be flowed back to the interstate pipeline's customers by credits to current bills.

(2) An interstate pipeline is not required to credit revenues received for transportation or sales authorized under this subpart:

(i) If representative levels of revenues attributable to transportation or sales, as applicable, under authority of this subpart have been credited in arriving at a test period cost-of-service; or

(ii) If representative levels of volumes transported or sold, as applicable, under authority of this subpart have been included in billing determinants for the purpose of establishing rates; or

(iii) which, upon application, the Commission finds to have been demonstrated as representing the out-of-pocket expenses of the interstate pipeline in connection with a transaction authorized under this subpart.

(d) *Interstate pipeline costs excluded from rate base.* An interstate pipeline may not include in its jurisdictional rate base any cost associated with facilities installed and operated in connection with an emergency natural gas transaction unless a certificate of public convenience and necessity has been issued authorizing the costs. Absent a certificate, such facilities may only be used to conduct emergency natural gas transactions or transactions authorized under section 311 of the NGPA.

§ 284.267 Intrastate pipeline emergency transportation rates.

General rule. Rates and charges for transportation of emergency gas by intrastate pipelines authorized under this subpart must be determined in accordance with § 284.123 of this chapter.

§ 284.268 Local distribution company emergency transportation rates.

(a) *Rate on file.* A local distribution company that has a rate on file with an appropriate state regulatory agency for city-gate transportation services must determine its rates and charges for transportation of emergency natural gas in accordance with § 284.123 of this chapter.

(b) *Rate not on file.* A local distribution company that does not have a rate on file with an appropriate state regulatory agency for city-gate transportation services must determine its rates and charges for transportation of emergency natural gas (per unit volume of emergency natural gas transported) in accordance with § 284.224(e)(2)(ii) of this chapter.

§ 284.269 Intrastate pipeline and local distribution company emergency sales rates.

An intrastate pipeline or local distribution company must determine its rates for sales of emergency natural gas under this subpart in accordance with § 284.144.

§ 284.270 Reporting requirements.

(a) *Forty-eight hour report for sales transactions.* Within 48 hours after deliveries of emergency natural gas commence, the purchasing participant must notify the Commission by telegraph or other written report of the sale, stating, in the following sequences:

(1) That the report is submitted pursuant to § 284.270 for an emergency natural gas transaction;

(2) The date deliveries commenced;

(3) The specific nature of the situation, explained in sufficient detail to demonstrate how the situation qualifies as an emergency under § 284.262 and under the conditions of § 284.264, and anticipated duration of the emergency;

(4) The estimated total amount and average daily amount of emergency natural gas to be purchased during the term of the transaction;

(5) The purchase price of the emergency natural gas;

(6) The transportation rate; and

(7) The identity of all participants involved in the transaction, including

any customers to whom the emergency natural gas is to be assigned.

(b) *Forty-eight hour report for transportation (excluding exchanges).* Within 48 hours after deliveries commence in an emergency natural gas transaction which does not involve the sale of emergency natural gas, the recipient of emergency natural gas shall notify the Commission by telegram or other written report of the transportation, stating, in the following sequence:

(1) That the report is submitted pursuant to § 284.270 for an emergency transaction;

(2) The date deliveries commenced;

(3) The specific nature of the situation, explained in sufficient detail to demonstrate how the situation qualifies as an emergency under § 284.262 and under the conditions of § 284.264, and anticipated duration of the emergency;

(4) The estimated total amount and average daily amount of emergency natural gas to be transported during the term of the transaction;

(5) The transportation rate; and

(6) The identity of all the participants involved in the transaction.

(c) *Forty-eight hour report for Exchanges.* Within 48 hours after an exchange transaction for emergency natural gas commences, the initial recipient of the exchange volumes must notify the Commission by telegram or other written report of the exchange, stating, in the following sequence:

(1) That the report is for and submitted pursuant to § 284.270 for an emergency transaction;

(2) The date the exchange commenced;

(3) The specific nature of the situation, explained in sufficient detail to clearly demonstrate how the situation qualifies as an emergency under § 284.262 and under the conditions of § 284.264, and anticipated duration of the emergency;

(4) The estimated total amount and average daily amount of emergency natural gas to be exchanged during the term of the transaction;

(5) The identity of all participants involved in the transaction;

(6) Whether the exchange is simultaneous or deferred, or any imbalances in the volumes;

(7) Whether the exchange is on a thermal or volumetric basis; and

(8) The rates or charges, if any, for the exchange service.

(d) *Termination report.* Within thirty days after the emergency natural gas transaction ends, the participant that received the emergency natural gas shall file with the Commission a sworn statement and two conformed copies thereof, which must include the following information in the following sequence:

(1) A description of the emergency natural gas transaction, including sufficient information to clearly demonstrate how the situation qualifies as an emergency under § 284.262 and under the conditions of § 284.264; the commencement and termination dates; the date of the 48-hour report, and the method of resolving the emergency;

(2) Any corrections to the 48-hour report information supplied to the Commission under paragraphs (a) through (c) of this section or a statement that the information was correct;

(3) The volumes of the emergency natural gas delivered during the transaction;

(4) The total compensation received by the seller for the emergency sale;

(5) The total compensation paid for the emergency natural gas transportation or exchange service, if any;

(6) The methods by which such compensation was derived;

(7) The total volumes of natural gas whose cost was assigned to specific customers, and the total volumes whose cost was included in system supply;

(8) The information supplied to any other participant pursuant to § 284.264(a)(2); and

(9) A statement that the emergency natural gas transaction was carried out in accordance with this subpart, and that identifies the circumstances demonstrating an emergency existed or was imminent so as to require an emergency natural gas transaction.

§ 284.271 Waiver.

The Commission may, by order, waive the requirements of this subpart in connection with any emergency natural gas transaction to the extent required by the public interest.

[FR Doc. 86-5910 Filed 3-17-86; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Apramycin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Elanco Products Co. The NADA provides for the safe and effective use of an apramycin sulfate Type A medicated article to make a finished Type C swine feed used for control of porcine colibacillosis (weanling pig scours) caused by susceptible strains of *Escherichia coli*.

EFFECTIVE DATES: This rule is effective March 18, 1986, except that the amendment to § 558.4(d) is effective May 2, 1986.

FOR FURTHER INFORMATION CONTACT: Charles E. Haines, Center for Veterinary Medicine (HFV-133), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3410.

SUPPLEMENTARY INFORMATION: Elanco Products Co., a Division of Eli Lilly & Co., 740 South Alabama St., P.O. Box 1750, Indianapolis, IN 46285, filed NADA 126-050. The NADA provides for use of Apralan® 75, an apramycin sulfate Type A medicated article containing 75 grams of apramycin per pound, to make a Type C swine feed used for control of porcine colibacillosis (weanling pig scours) caused by susceptible strains of *E. coli*. Apramycin is currently approved for use in the drinking water of swine. The NADA is approved and the regulations are amended accordingly. The basis of approval is discussed in the freedom of information summary.

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

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

environmental assessment under 21 CFR 25.31a(a).

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.4 *Medicated feed applications* is amended in paragraph (d) in the table entitled "Category II" by adding a new entry alphabetically to read as follows:

§ 558.4 Medicated feed applications.

* * * * *

(d) * * *

CATEGORY II

Drug	Assay limits: Type A, percent [1]	Type B maximum (100x)	Assay limits (% of labeled amount) type B/C [2]
*	*	*	*
Apramycin	88–112	7.5 g/lb (1.65%).	80–120
*	*	*	*

* * * * *

3. A new § 558.59 is added to read as follows:

§ 558.59 Apramycin.

(a) *Approvals.* Type A articles to sponsors identified in § 510.600(c) of this chapter as follows:

(1) 000986 for 75 grams apramycin (as apramycin sulfate) per pound for use as in paragraph (d)(1) of this section.

(2) [Reserved]

(b) [Reserved]

(c) *Related tolerances.* See § 556.52 of this chapter.

(d) *Conditions of use—(1) Swine*—(i) *Amount.* 150 grams per ton.

(ii) *Indications for use.* For control of porcine colibacillosis (weanling pig scours) caused by susceptible strains of *Escherichia coli.*

(iii) *Limitations.* Use for 14 days. Withdraw 28 days before slaughter.

(2) [Reserved]

Dated: March 12, 1986.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 86-5855 Filed 3-17-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco, and Firearms

27 CFR Parts 25 and 252

[T.D. ATF-224; Reference Notice No. 449]

Beer

Correction

In FR Doc. 86-4369 beginning on page 7666 in the issue of Wednesday, March 5, 1986, make the following corrections:

1. On page 7680, in the first column, in § 25.81(b)(2), in the sixth line, "wall" should read "all".

2. On page 7683, in the second column, in § 25.122, in the second line, "or ATF" should read "on ATF".

3. Also on page 7683, in the third column, in § 25.125, in the second line, "of IRS" should read "on IRS".

4. On page 7691, in the first column, in § 25.221(b), in the last line, "his" should read "this".

5. On page 7695, in the third column, in § 25.286(a), in the sixteenth line, "whey" should read "why".

6. On page 7696, in the third column, in § 25.292(b)(5), in the second line, "removed" should read "removal".

7 On page 7700, in the first column, in the heading for § 252.150, "Changes" should read "Charges".

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[A-7-FRL-2986-5]

Standards for Performance for New Stationary Sources (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS); Delegation of Authority to the State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: This notice announces an extension of previously issued delegations of authority for the implementation and enforcement of the federal Standards of Performance for New Stationary Source (NSPS), 40 CFR Part 60, and the federal National Emission Standards for Hazardous Air Pollutants (NESHAPS), 40 CFR Part 61. The action which involved EPA and the State of Missouri added eight (8) NSPS and three (3) NESHAPS categories to the delegations of authority. The delegations now include all categories for which federal standards have been promulgated by the agency through July 1, 1984.

EFFECTIVE DATE: March 18, 1986.

ADDRESSES: All requests, reports, applications, submittals and such other communications which are required to be submitted under 40 CFR Part 60 or Part 61 (including the notifications required to be submitted under Subpart A of the regulations) for affected facilities or activities in Missouri should be sent to the Missouri Department of Natural Resources (MDNR), P.O. Box 1368, Jefferson City, Missouri 65101. A copy of all Subpart A related notifications must also be sent to the attention of the Director, Air and Toxics Division, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Charles W. Whitmore, Chief, Air Compliance Section, Air Branch, U.S. EPA, Region VII, at the above address (913/236–2896 or FTS: 757–2896).

SUPPLEMENTARY INFORMATION: Sections 111(c) and 112(d) of the Clean Air Act, respectively, allow the Administrator of the Environmental Protection Agency (i.e., EPA or the agency) to delegate to any state government authority to implement and enforce the standards promulgated by the agency under 40 CFR Part 60 and 40 CFR Part 61. When a delegation is issued, the agency retains concurrent authority to implement and enforce the delegated standards. The delegation basically shifts the primary responsibility for implementation and enforcement of the standards for the agency to the state government.

On October 29, 1984, the agency and the State of Missouri entered into a delegation of authority agreement whereby Missouri will automatically receive authority to implement and enforce federal NSPS and NESHAPS standards upon the adoption of the standards by the state government (see 50 FR 933).

Prior to October 29, 1984, Missouri was delegated authority to implement and enforce the standards for numerous categories in various delegation and extension of authority actions. These previous delegation and extension of

authority actions were not affected by the action described below.

Missouri has updated its rules to incorporate, by reference, the provisions of 40 CFR Part 60 and Part 61 as in effect on July 1, 1984. The updating actions, in effect, incorporated the standards for eight (8) additional NSPS and three (3) additional NESHAPS regulations promulgated by the agency. The effective date of the updating actions were August 26, 1985 (NSPS) and October 26, 1985 (NESHAPS). The MDNR informed the agency of the adoption actions in a letter dated January 21, 1986.

The agency subsequently acknowledged the adoption actions and the corresponding delegations of authority in a letter to MDNR on February 19, 1986. The delegations occurred under the terms of the above mentioned October 29, 1984, automatic delegation of authority agreement.

Interested individuals are informed that, as of August 26, 1985, (NSPS) and October 26, 1985 (NESHAPS), the State of Missouri has EPA's authorization to implement and enforce the federally established standards for the following additional categories:

NSPS:

- Subpart LL—Metallic Mineral Processing Plants;
- Subpart RR—Pressure Sensitive Tape and Label Surface Coating Operations;
- Subpart VV—Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry;
- Subpart WW—Beverage Can Surface Coating Industry;
- Subpart XX—Bulk Gasoline Terminals;
- Subpart FFF—Flexible Vinyl and Urethane Coating and Printing;
- Subpart GGG—Equipment Leaks of VOC in Petroleum Refineries; and,
- Subpart HHH—Synthetic Fiber Production Facilities.

NESHAPS:

- Subpart M—Asbestos;
- Subpart J—Equipment Leaks (Fugitive Emissions Sources) of Benzene; and,
- Subpart V—Equipment Leaks (Fugitive Emission Sources).

Effective immediately, all reports, correspondence, and such other communications that are required to be submitted under the NSPS or NESHAPS regulation for facilities or activities in Missouri affected by the amended delegations of authority should be sent to the Missouri Department of Natural Resources at the above address rather than to the EPA Region VII office, *except* as noted below.

A copy of each notification required to be submitted under Subpart A of 40 CFR Part 60 or Part 61, must *also* be sent to the attention of the Director, Air and Toxics Division, U.S. EPA Region VII, at the above address.

Each document and letter mentioned in this notice is available for public inspection at the EPA regional office.

This notice is issued under the authority of sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 7411 and 7412).

Dated: March 6, 1986.

William Rice,

Acting Regional Administrator.

[FR Doc. 86-5881 Filed 3-17-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations; California et al.

Correction

In FR Doc. 86-2413 beginning on page 4347, in the issue of Tuesday, February 4, 1986, make the following correction:

On page 4347, beginning in the second column, the flood elevations in the table are final, and the table heading should be removed.

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

45 CFR Parts 201, 205, 206, 225, 232, 233, 234, 235, 237

Aid to Families With Dependent Children Adult Assistance Programs

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: This final rule amends regulations relating to the Aid to Families with Dependent Children (AFDC) program under title IV-A and the adult categories under titles I, X, XIV, or XVI (AABD) of the Social Security Act to promote fiscal savings, reduce the paperwork burden and increase State flexibility in the administration of these programs. Specifically, regulations at 45 CFR Parts 201, 205, 206, 225, 232, 233, 234, 235, and 237 are amended.

EFFECTIVE DATE: These final regulations are effective March 18, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Levering, Office of Family Assistance, Social Security Administration, Transpoint Building, 2100 Second Street, SW., Washington, DC 20201, telephone (202) 245-2637.

SUPPLEMENTARY INFORMATION: The Social Security Administration (SSA) published a Notice of Proposed Rulemaking on November 16, 1984 (49 FR 45558-45570) proposing regulatory changes that would result in savings to State and Federal governments, provide States greater flexibility, and/or relieve the burden of paperwork on State agencies.

These final regulations are applicable to both the AFDC and adult assistance programs unless otherwise specified. Additionally, some of the changes clarify policy areas as a result of implementation of the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35 (hereinafter referred to as OBRA). Unless otherwise noted, the estimated savings are Federal dollars only. This final rule is made effective upon publication in order to achieve the estimated fiscal savings already incorporated in the Federal budgets for AFDC and the Adult Assistance programs, and because many of these changes also allow States greater flexibility in their administration of these programs.

These final regulations: (1) Provide increased State flexibility by permitting:

- —Telephone hearings in addition to face-to-face hearings;
- —Recipients the option to refuse continued assistance pending a hearing decision;
- —Different time frames for frequencies of eligibility redeterminations.

(2) Provide for more efficient program administration by clarifying:

- —The amounts of income States may allocate and the individuals for whom such amounts may be allocated;
- —How States are to treat windfalls and income tax refunds;
- —What States may exclude as casual and inconsequential income and specifying a dollar limit per recipient, per quarter on such income of $30;
- —The definition of stepparent marriage.

In addition, States can now assure the welfare of dependent children in instances of mismanagement of the AFDC grant, by making it easier in certain cases to make a direct payment of the shelter portion of the grant to the landlord.

Regulatory Procedures

Executive Order 12291

These final regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. Therefore, a regulatory impact analysis is not required because these regulations will not:

(1) Have an annual effect on the economy of $100 million or more. Federal annual savings of these regulatory provisions are estimated to be up to $37 million.

(2) Impose a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Result in significant adverse effects on competition, employment, investment, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

Pursuant to the provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, the Department has determined that this rulemaking will not impose any new recordkeeping, information collection, or reporting requirement requiring OMB approval.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal government to anticipate and reduce the impact of regulations and paperwork requirements on small businesses. For each particular regulation with a "significant impact on a substantial number of small entities" (e.g., small businesses) we must publish an initial analysis describing the regulation's impact on them. This analysis is to indicate the purpose and reason for the regulation and the number of small businesses to which it would apply, to anticipate reporting and recordkeeping requirements, to identify possible overlap and conflict with other Federal regulations and to describe possible alternative means of accomplishing the stated objectives which would minimize the impact on small businesses.

We certify that these regulations will not have any significant economic impact on a substantial number of small entities becasue the primary impact of these regulations is on State governments and individuals. We do not believe that any provision will have direct impact on small businesses or other small entities within the intent of the Regulatory Flexibility Act and therefore, a regulatory flexibility analysis is not required.

Discussion of Major Provisions and Responses to Comments

We received approximately 200 comments from the following sources: Forty-five public interest groups; forty-eight various State agencies; seventy-two private citizens; seven landlords and landlord associations; sixteen tenants associations; thirty-eight lawyers and legal aid groups; and seventeen State and local housing authorities. The majority of these comments were related to the provision on the criteria for use of restricted payments. As a result of our review of these comments, the restricted payments regulation has been substantially amended.

Following is a discussion of the comments and our responses and the rationale for any significant changes from the proposed rulemaking. Based on our own further review, we have also made some minor and technical changes in the final rule.

Optional Telephone Hearings (Section 205.10(a)(2) of the Final Regulations

Current regulations require that each State provide applicants and recipients an opportunity for a hearing where the agency proposes to discontinue, terminate, suspend or reduce assistance or to change the manner or form of payments to a protective, vendor, or two-party payment. We have amended the regulations at § 205.10(a) to specify that States have the option of offering a telephone hearing when mutually agreed upon by the applicant or recipient and the State agency, as an alternative to face-to-face hearings.

One State, New Mexico, operated a demonstration project to study the effects of telephone conferencing as a substitute for in-person hearings under the AFDC program. The experiment was designed based on the following research questions: (1) Are hearings conducted over the telephone perceived to meet due process standards as specified by the courts for administrative hearings? (2) is the quality of the hearing changed by the introduction of telephone conferencing? and (3) are telephone hearings cost-effective?

The results of this study were favorable in response to all three of the research questions and conclusively demonstrated that telephone hearings can generate savings in both hearing officer productivity and travel expenses.

The comments uniformly expressed by both recipients and caseworkers were that fair and impartial hearings were still conducted and that recipients had full opportunity to present testimony. There were no significant differences in outcome results. A higher percentage ended in the recipient's favor and the time frame for handing down the hearing decision was shortened.

During a telephone hearing, for example, the hearing officer can remain at his/her place of employment, while all other pertinent parties can gather at the State agency. Should the recipient for whatever reason be unable to attend at the last moment, the hearing officer has not lost time in travel and is able to continue with routine work. Telephone hearings also make the hearing system more accessible to applicants and recipients. Additionally, the waiting period for a hearing and the hearing decision may also be shortened and thus benefit applicants and recipients.

Under the final regulations, if a recipient chooses a telephone hearing rather than a face-to-face hearing, the State must still assure that all applicable provisons of the hearing process are met. Any request for a telephone hearing must be knowing and voluntary. In addition, the recipient must be given adequate opportunity to be represented, examine and cross-examine witnesses, and examine the contents of the case file, and the hearing must be conducted at a reasonable time and date.

If all States were to allow telephone hearings, savings are estimated to be up to $2 million annually, based on approximately 59 percent of all hearings being conducted by telephone.

Comment: One commenter recommended that "conferencing" or informal procedures be used routinely to resolve general disputes between recipients and State agencies and that telephone, or face-to-face hearings be used only as a last resort.

Response: States currently have the discretion to use informal procedures to resolve general disputes prior to a fair hearing.

Comment: Several commenters expressed concern that the regulation was unclear as to whether a State was required to offer telephone hearings or whether telephone hearings were optional at State discretion. The commenters suggested, therefore, that the regulation be made more explicit to address this issue.

Response: We agree with this recommendation. Accordingly, the language of the regulation at § 205.10(a)(2) has been changed to add the words "at State option" to make clear that telephone hearings are not required. Where the State elects the option, the applicant or recipient must also agree to a telephone hearing.

Comment: One commenter stated that the country was not specifically mentioned as being a party to the agreement to conduct a telephone hearing and expressed opposition to a fair hearing process in which the county's ability to participate would be excluded.

Response: It is the responsibility of States to define the scope of participation by their local agencies in conducting a telephone or fact-to face hearing. States, however, should obviously encourage input and participation from the local level in the development of agency procedures for telephone hearings.

Comment: One commenter questioned the need for a specific regulation on telephone hearings, since current regulations do not explicitly prohibit this form of hearing.

Response: The amendment to current regulations makes it explicit that telephone hearings are a State option.

Aid Paid Pending the Hearing Decision (Section 205.10(a)(4)(i)(B) and (6)(i) and (7) of the Final Regulations)

Current regulations at § 205.10(a)(6)(i) specify, in pertinent part, that if a recipient requests a hearing within the timely notice period, assistance shall not be suspended, reduced, discontinued or terminated until a decision is rendered after a hearing. The regulations do, however, specify two exceptions to the continuation of assistance: (1) A determination made at the hearing that the sole issue is one of State or Federal law or policy, or a change in State or Federal law and not one of incorrect grant computation; and (2) a change affecting the recipient's grant occurs while the hearing decision is pending and the recipient fails to request a hearing after the notice of change. It is further provided in this regulation that if the agency's action is sustained at the hearing the aid pending the hearing is subject to recovery by the agency.

Many States have interpreted the current regulation very narrowly. Aside from the specific exceptions specified in the regulation, States believe they must continue the assistance in all cases, even where the recipient does not want aid paid pending the hearing.

Prior to OBRA, recovery of overpayments was optional under the AFDC program. As such, when an Agency's action was upheld, most States did not recover benefits paid during the period between the hearing request and the decision. However, OBRA now mandates the recovery of such AFDC payments, if the State's proposed action is upheld. Recovery of benefits remains optional for the adult assistance programs.

Because of this, some recipients and States are concerned over requiring the grant to be continued pending a hearing in all instances and then being confronted with recovery of this money when the State's action is upheld. Based on current available data, 58% of the hearing decisions rendered (January-March 1981) upheld the States' proposed actions.

We believe the recipient should be afforded a clear choice to refuse or to receive assistance pending a hearing. The regulations were not intended to preclude such action if requested by the recipient. Aid must be continued where the recipient requests this and it is not otherwise precluded under the regulations. Safeguards should be established in the State to ensure the recipient's decision is informed and not made under duress. Likewise, in the event the hearing decision is favorable to the recipient and he/she has elected not to receive aid paid pending, the State must retroactively pay him/her in accordance with § 205.10(a)(18).

We therefore, are amending the regulations to explicitly allow States to provide the recipient the opportunity to decline receipt of continued assistance, if the hearing is requested within the timely notice period.

This change provides consistency with current policy of two other Federal programs—Food Stamp and SSI. In many instances, the same individuals are receiving benefits from more than one of these programs. This change will clarify that States can coordinate this aspect of the AFDC and adult assistance programs with the Food Stamp and SSI programs.

In addition, we are amending § 205.10(a)(4)(i)(B) to provide where applicable, that the adequate notice inform an AFDC recipient that the assistance must be repaid if the agency action is upheld. Under the adult assistance programs, such notice will be provided where the State has elected to recover when an agency action is upheld.

These clarifications in the final regulations also apply to the adult assistance programs.

We estimate savings of up to $1 million annually.

Comment: One commenter expressed the opinion that by giving recipients the option of declining aid paid pending a hearing decision, they in effect waive their constitutional rights to a fair hearing.

Response: Under this provision, recipients only exercise the option of declining aid paid pending a hearing decision. However, this does not in any way affect the right to seek a fair hearing. The prior policy may have inadvertently prevented those who feared having to repay assistance paid while the hearing was pending from filing for a hearing in the first place.

Comment: Several commenters recommended that, with implementation of this provision, any resulting retroactive AFDC payments payable to such recipients should be exempt from consideration under the lump sum income rule.

Response: Under existing Federal regulations at § 233.20(a)(13)(ii), such retroactive AFDC payments are not considered as income or resources in the month of receipt or the following month. Any amount remaining in subsequent months is regarded as a resource to the AFDC assistance unit.

Comment: One commenter recommended that recipients be required to submit in writing any request that aid not be paid pending hearing decisions in order to ensure a recipient's "knowing and voluntary" declination of such aid.

Response: While a State may decide to require a written statement, the specific methods for ensuring that a decision is "knowing and voluntary" should be based on State law and practice.

Procedures for Issuance of Replacement Checks (Section 205.32 of the Final Regulations)

In a statement before a Congressional subcommittee hearing on fraud and abuse involving several Federal programs in 1981, the Associate Commissioner for the Office of Family Assistance described several initiatives under review including possible rulemaking changes to reduce the incidence of duplicate check issuance as a result of AFDC checks being lost or stolen. Preliminary findings from a study undertaken to gather statistical data on the incidence of duplicate checks showed that, in the 32 States responding, duplicate checks constituted 7.1 percent of all AFDC checks issued in 1979. They are costly, both administratively and from the standpoint of potential fraud.

We have, therefore, amended the regulations to prescribe procedures governing the issuance of duplicate (hereinafter referred to as replacement) checks under the AFDC program.

First, we have established procedures under which a State must, prior to the issuance of a replacement check: (1) Initiate, when appropriate, an immediate stop payment order on the original

check through appropriate banking procedures (such action would not be applicable when the original check is returned by the recipient and a replacement check is issued because of a name change or there is a change in the grantee, etc.); and (2) where the original check is not returned, secure a signed statement from the recipient attesting to the non-receipt, loss or theft of the original check. In this way, an adequate audit trail is established for documenting potential fraud.

We further amended the regulations to provide that States may, at their option, require recipients to report lost or stolen checks to the police or other appropriate authorities. Such investigations would assist in resolving many reports of lost or stolen checks. More importantly, it may deter incidents of fraud. Early investigation of stolen check cases should lead to quicker apprehension and be a significant factor in crime prevention. A State may make filing such a report a prerequisite for issuance of a replacement check in cases of lost or stolen checks. A State may also establish procedures for the verification of such reports. For example, the State may require that the recipient provide a copy of the report made to the police or to other appropriate authorities. In establishing procedures for issuance of replacement checks, States must ensure that no undue delay occurs in issuing a new payment.

Annual savings are estimated at up to $1 million in Federal funds, and up to $5 million in State funds, based on State data relating to the number of replacement checks issued.

Comment: One State agency advocated the availability of Federal matching funds for both the original and replacement checks issued to a recipient which represent the same payment for the same month.

Response: Section 403(a)(1) of the Social Security Act authorizes Federal financial participation (FFP) for an amount expended for the AFDC program under the approved State plan. Whenever an assistance check is cashed by someone other than an authorized person, it is not an amount expended under the approved State plan, and therefore is not eligible for FFP under the provision of section 403(a)(1). Accordingly, only the check which was properly cashed by the authorized person is entitled to Federal matching.

Comment: Several commenters advocated that we require specific time frames ranging from 3 to 30 days, to be imposed on States for issuing replacement checks.

Response: We believe replacing the "undue delay" concept with specific time frames as suggested would remove the necessary flexibility States need in order to successfully implement these basic procedures. Due to operational differences among States, the States can best determine when it becomes necessary to issue a replacement check. Therefore, we have not changed this requirement.

Comment: One State asked whether these procedures are applicable to other types of payments which could be lost or stolen, e.g. the Office of Child Support Enforcement (OCSE) $50 "pass through" payment.

Response: Yes. The rules shall apply to all payments issued by the public assistance State agencies to eligible recipients under title IV–A of the Social Security Act. Since the IV–A agency is responsible for the issuance of OCSE "pass through" payments to ADFC recipients, these procedures also apply to such payments.

Comment: A legal services association and an advocacy group suggested that we drop the optional State provision requiring recipients who request replacement checks to report the theft or lost check to the local authorities. One reason cited is that if a recipient is fraudulently requesting a replacement check, sanctions for making such a false report already exist. Another reason noted was that local police, especially in metropolitan areas, will be inundated with reports of lost and stolen checks.

Response: This procedure is an optional measure because States can best determine whether the incidence of lost and stolen checks warrants exercising this option as a deterrent against fraudulent requests for replacement checks. Although this policy option was not explicitly mentioned in regulations, several State agencies already have this requirement and have not experienced these difficulties.

Comment: One State commented that these procedures should not apply because its State Treasury issues the assistance payments checks and has its own internal audit and fraud investigative procedures.

Response: A recipient requesting a replacement check because of a lost or stolen assistance check makes such a request to the State or local IV–A agency. Any actions taken by the IV–A agency may eventually be coordinated with the State Treasury for the issuance of a replacement check; however, the primary responsibility for authorizing payment lies with the State or local IV–A agency. Therefore, a State Treasury's internal audit and fraud investigative procedure cannot be solely relied upon in lieu of these procedures.

Redeterminations (Section 206.10 (a)(9) and (b)(4) of the Final Regulations)

Current regulations at § 206.10(a)(9) require that AFDC eligibility be redetermined at least every six months. We have amended the regulations to provide that it may take place less frequently than every 6 months but in no case less frequently than every 12 months for those recipients who must report monthly, or where the State has an approved alternative redetermination plan based on an error-prone profiling system under which the State varies redetermination frequencies (i.e., more or less frequent than every six months). In addition, we are requiring that at least one AFDC redetermination in each case each year must be face to face.

The final regulation permits States to schedule their AFDC redeterminations as infrequently as every 12 months, under certain circumstances, for several reasons. First, legislation enacted by OBRA and modified by the Deficit Reduction Act of 1984 provides that States require certain categories of recipients to submit monthly reporting forms. For those cases that must report monthly, whether as a Federal requirement or at State option, the State is reviewing very similar information to that which is secured when the State redetermines eligibility.

Prior to the monthly reporting requirement, States were only required to redetermine eligibility at least every 6 months to assure that no changes in family circumstances had occurred which would affect eligibility and the amount of payment. With monthly reporting, there is sufficient and timely contact with the case situation so that redeterminations may be scheduled less often than every 6 months, at the State's option.

Secondly, we believe cost savings can be maximized by concentrating and directing State efforts to cases which are most likely to have errors. Also, for those cases which are identified as low error-prone based on an approved State error-prone profiling system, the intervals between redeterminations may be as much as 12 months. The savings generated from reviewing less error-prone cases as infrequently as every 12 months will permit States to concentrate on high error-prone cases that are subject to frequent changes in eligibility status or have high average dollar error per case. Thus, under this final rule, intervals between redeterminations in low error-prone cases could be once a year, while high error-prone

redeterminations could be monthly, but more typically, could occur three or four times a year.

The experience of the Supplemental Security Income (SSI) program with error-prone profiles and the results of AFDC demonstration projects in Texas, New Hampshire, South Carolina and West Virginia have shown considerable administrative cost savings can be achieved by concentrating and directing State efforts to cases which are most likely to have errors and, therefore, need more frequent redeterminations. Thus, earlier identification of changes can be made and costly long-term errors can be prevented.

We have also added a requirement that all cases be redetermined face to face at least once every 12 months in order to verify all eligibility factors and to ensure personal contact between the agency and the individual(s). However, if the State redetermines a case more frequently, the additional redeterminations are not required to be face to face. Yearly face-to-face redeterminations are most effective in identifying inconsistencies in the information provided in the monthly reports or in answers provided by the recipient during the interview. Face-to-face contact gives caseworkers an opportunity to restate agency requirements for receipt of AFDC and gives recipients time in which to ask questions and have policies clarified. We believe face-to-face redeterminations are cost effective because increases in administrative costs will be offset by the reduction in erroneous payments. This change also makes the AFDC program consistent with recertification requirements in the Food Stamp Program.

Since we published the proposed rule, we realized that the proposed definition of redetermination could cause confusion and conflict with other sections dealing with redeterminations. Currently, § 206.10(a)(9) requires that eligibility be "reconsidered or redetermined" in the following instances: (1) "when required on the basis of information the agency has obtained previously about anticipated changes . . . (2) promplty, after a report is obtained which indicates changes in the individual's circumstances . . . and (3) periodically, within agnecy-established time standards . . .".

As indicated by the regulations, the term "redetermination" has included both the scheduled re-examination of the case that takes place according to the agency established timetable and the spontaneous review that occurs when the agency discovers new and material information regarding the circumstances of the assistance unit.

In our proposed rule, however, we defined a redetermination as a "periodic, scheduled case folder review of all factors affecting AFDC eligibility and payment amount", thus inadvertently removing the actions termed "redeterminations" which are discussed in the current § 206.10(a)(9) (i) and (ii). Since it was never our intention to limit the definition of redetermination in this way, we have restored this original meaning by deleting the words "periodic" and "scheduled" from the definition. For further clarity, we have also removed the definition of redetermination from the body of the text at § 206.10(a)(9) and placed it with the other definitions at § 206.10(b)(4).

We have also clarified the action a State must take when it receives child support collection reports from the IV–D agency. Under § 232.20(b)(1), the amount of child support must be used to redetermine eligibility for an assistance payment under § 206.10(a)(9). We are concerned that some States may incorrectly believe that the proper action to take with each monthly report of child support collection is to contact the assistance unit and verify all other factors of eligibility such as deprivation, resources, family composition, etc., while other States may believe that the mere receipt of the child support collection report and the recomputation of assistance payments may, in and of itself, constitute a redetermination (thus making other, periodic redeterminations unnecessary).

To remove any doubt concerning the necessary and appropriate action that States must take upon receipt of the child support collection report from the IV–D agency, we have revised the language of § 232.20(b)(1) and deleted the reference to § 206.10(a)(9). This makes clear that we do not expect the State to perform a complete and comprehesive review of all factors of eligibility each month, but rather to review eligibility in light of any change in the single factor of child support. Moreover, the revision makes clear that we do not consider this mere review of child support income to be a redetermination. States may not use the child support review in lieu of the periodic, comprehensive redeterminations required by these regulations.

These final changes only apply to AFDC and not to the adult assistance programs. We estimate savings up to $15 million annually.

Comment: One commenter asked whether the proposed requirement for a face-to-face interview applies to foster care recipients.

Response: The face-to-face redetermination is required only for recipients under the title IV–A program. The administrative requirements for the Foster Care Program under title IV–E are issued by the Office of Human Development Services.

Allocation of Income (Section 233.20(a)(3)(ii)(C) of the Final Regulations)

Current regulations at § 233.20(a)(3)(ii)(C) provide that States may have a policy to allocate a portion of an individual's income to support his or her non-assistance dependents, before counting the remaining income available to the assistance unit. Dependents are not defined by regulation. States define the dependents for whom their allocation policy applies.

We have amended the regulations to address three specific concerns.

A. Some States have been interpreting the provisions to mean that income may be allocated only to an individual's dependents and not to the individual him/herself when such individual is not applying for assistance. The final regulation clarifies that, for purposes of allocating income, a dependent may include the individual, as well as his or her non-assistance dependents if they are not required to be in the assistance unit under section 402(a)(38). States that allocate income to meet the individual's own needs must check the allocation box on the State Plan Preprint.

B. Some States have been permitting income to be allocated to support individuals whose needs have been removed from the grant under the child support enforcement sanction provisions of §§ 232.11(a)(2) and 232.12(d) or because of a sanction for failing to meet the requirements of the WIN, Employment Search or Community Work Experience Programs provisions at §§ 224.51, 238.22 and 240.22. Permitting income to be allocated to the support of a sanctioned individual before counting the remaining income available to the assistance unit has the effect of circumventing the intent of the sanction provisions, i.e., that assistance will be determined without regard to the needs of the sanctioned person. Therefore, to remedy this, the final regulation provides that States may not allocate income to meet the needs of a sanctioned individual. We have also

amended the regulations to prohibit States from allocating income to individuals who are required to be included in the assistance unit but who have failed to cooperate in meeting a condition of eligibility.

C. States have been permitting income to be allocated to meet the need of a wide variety of persons. As a result, in some cases income has been used to support other individuals rather than the individual's own children who are receiving AFDC. In order to assure that an individual's income is used primarily to support the members of his or her own family who are in the assistance unit, we have revised the existing provisions on the amounts of income that may be allocated and the persons for whom income may be allocated. The final regulation restricts the income allocation provision to permit allocation only for the individual's own needs (when he or she is not applying for, required to apply for, or receiving assistance), the needs of others who are or could be claimed as dependents for determining Federal personal income tax liability, or those whom the individual is legally obligated to support. Within this limitation, (and the one set forth in item B above), States may elect which dependents to include for coverage. The amounts which may be allocated and the individuals for whom income may be allocated are consistent with similar provisions regarding the income of stepparents and parents of minor parents (sections 233.20(a)(3) (xiv) and (xviii) and alien sponsors (section 233.51(b)(1))). In specifying the amount of income which would be considered available to an assistance unit, Congress included provisions to assure that these individuals would retain sufficient income to meet their own needs and the needs of their dependents. These amounts reflect the amount that States have determined are necessary to meet current living expenses as well as those amounts that are actually paid to support other individuals and therefore are not available to meet the needs of the assistance unit. Since these are amounts that Congress has determined are reasonable, we have adopted them as the maximum amounts that may be allocated in other similar cicumstances.

We estimate savings of up to $1 million annually.

Comment: One commenter suggested deleting the reference in § 233.20(a)(3)(ii)(C) to "those who are or could be claimed by the individual as dependents for determining Federal personal income tax liability", arguing that this language would require training staff concerning income tax policies which have no other application to the program.

Response: The referenced language does not introduce a new concept to the program. It is the same language used in determining the countable income of stepparents and parents of minor parents (at §§ 233.20(a)(3) (xiv) and (xviii)) and alien sponsors (at § 233.51(b)(1)). Since the preposed language is consistent with these regulatory references, we have not made the suggested change.

Comment: One commenter suggested that we allow the full $75 work expense disregard in allocating the earned income of excluded individuals whether they are employed full-time or part-time before counting the remaining income available to the assistance unit. The commenter also recommended that the $75 be applicable to employed individuals whether sanctioned or not.

Response: While the statute does not specifically address allocation of income, the allocation situation is comparable to that of determining the countable income of stepparents and parents of minor parents who are living in the home with the AFDC family but are not part of the AFDC unit. Therefore, for ease of administration, the work expense disregard at § 233.20(a)(3)(xiv)(A), applicable to stepparents and parents of minor parents, is adopted as the applicable disregard for the allocation policy. For sanctioned individuals, to provide any disregard at all to such an individual, would defeat the purpose of the sanction.

Comment: One commenter suggested changing the stepparent disregard provision at § 233.20(a)(3)(xiv)(B) to provide that the needs of sanctioned individuals cannot be deducted from the stepparents' income in computing the amount of countable income to be consistent with the allocation policy. Otherwise, the commenter argued, in States where the payment standard is less than the need standard, simultaneously deducting their need standard from the stepparents' income results in a grant increase.

Response: We agree with the recommendation and have amended the regulation at § 233.20(a)(3)(xiv)(B) to clarify that the needs of sanctioned individuals and individuals who are required to be in the assistance unit and who have failed to cooperate cannot be deducted from the stepparents' income in computing countable income to the assistance unit.

Counting Windfalls as Income (Section 233.20(a)(3)(ii)(F) of the Final Regulations)

Counting Income Tax Refunds as Resources (Section 233.20(a)(3)(iv)(E) of the Final Regulations)

The general rule in assistance programs is that all earned and unearned funds received by an assistance unit must be counted as income for the month of receipt except funds that are expressly disregarded as income in a Federal statute. However, under longstanding Federal policy for the AFDC and adult assistance programs, a State agency has had the option to treat non-recurring payments which are in the nature of a windfall as resources instead of as income. A windfall is a sum that is not earned, does not occur on a regular basis, and does not represent acuomulated monthly income received in a single sum. A windfall might come from an inheritance, lottery winnings, personal injury awards or an income tax refund, but not title II Social Security or VA benefits. Social Security or VA benefits covering more than one month's benefits are instead examples of accumulated monthly income received in a single lump sum.

In reviewing the legislative history of OBRA, we believe that the Congress intended all lump sum payments (including windfalls) to be treated as income under the AFDC program. The Senate Finance Committee Report, No. 97–139, dated November 17, 1981 (on page 505) indicates that lump sum income should be "considered available to meet the ongoing needs of an AFDC family . . .". Given the intent of the lump sum provision to assure use of available funds in future months, we believe that windfall payments should be considered lump sum income. In the absence of the change, the very type of payments Congress intended to be counted and used to meet the family's future needs may not be budgeted for meeting future needs, if treated initially as a resource and not retained. Accordingly, for AFDC, we have classified payments in the nature of a windfall (with the sole exception of income tax refunds) as unearned income from a non-recurring source and treat them as a lump sum in accordance with § 233.20(a)(3)(ii)(F) unless otherwise disregarded, e.g., under the casual and inconsequential income policy at § 233.20(a)(3)(iv).

With respect to income tax refunds, except for an Earned Income Credit payment, a tax refund recognizes that there was an overwithholding of taxes

during the year. Under the AFDC program, since the $75 standard work expense disregard applies to gross income and represents all work expenses excluding child care, the actual amount of tax withheld has no bearing on the income counted or the amount of actual assistance payable to a recipient. Thus, since some portion of the income tax withholding may have exceeded, in combination with other work expenses, the $75 standard disregard, and therefore may have already been counted as income, it should not again be counted as income when it is returned to the recipient.

Therefore, for the AFDC program we are making an exception in the case of income tax refunds and require States to treat these refunds only as resources (liquid assets). However, any portion of a tax refund which represents an earned income credit (EIC) payment would still be considered as earned income in accordance with § 233.20(a)(6)(ix)(C). The EIC portion of any tax refund (or any EIC payments for that matter) must be treated as earned income because the statute specifically requires that such payments be considered as earned income (section 402(d) of the Social Security Act). When EIC payments are made in a single lump sum they are paid through the income tax collection system. Thus, in those cases, the payments would come in the form of a tax refund.

Neither the lump sum income change nor the $75 standard work expense change applies to the adult assistance programs. Therefore, we are not changing the policy in effect for these programs. At State option, these payments may be considered either as income or as a resource.

We estimate savings of up to $1 million annually.

Comment: Twenty four commenters expressed concern about this provision suggesting that flexibility remain with the States to determine whether to count payments in the nature of a windfall as income or resources. The commenters argue that: (1) There is no inferred or expressed Congressional intent in OBRA's legislative history that HHS should change its longstanding policy of permitting States to count payments in the nature of a windfall as income or resources, i.e., by the OBRA amendments, Congress meant to change the methodology applicable to lump sum income but not the definition of lump sum income; (2) there is logic to treating retroactive benefits in this manner because they are linked to ongoing benefits which can be used to meet future needs, while this is not so with nonrecurring windfall type benefits; (3) the statute provides a $1,000 resource limit and individuals who do not have the maximum resource limit when they come on the rolls but subsequently receive a windfall payment should be allowed to build up their resource limit from nonrecurring lump sum payments; and (4) individuals should be able to set aside the money from windfall payments for items not covered by the AFDC grant or Medicaid such as treatment, special education, special equipment, etc., or simply to build up a cushion for future emergencies.

Response: We have carefully considered the comments received and continue to believe that the provision is not only supportable under the statute but consistent with recent legislative history that large nonrecurring payments be considered available to meet the ongoing needs of an AFDC family. There is no logical basis for distinguishing between one type of large nonrecurring payment and another in determining whether it is income or resources and whether to apply the lump sum rule. From one standpoint, the legislative history expresses concern that considering such payments, prior to OBRA, as income in the month received and a resource thereafter had the perverse effect of encouraging the family to spend the income as quickly as possible in order retain AFDC eligibility. Since some States have always considered such payments as income, there was no specific definition of lump sum income that existed that can be argued that the Congress intended to maintain. Given the Congress' clear intent to have lump sums be used to meet future needs, States should not be allowed to exclude them by calling them resources.

States must disregard from the lump sum payment any amount that is earmarked and used for the purpose for which it is paid, i.e., monies paid for back medical bills resulting from accidents or injury, funeral and burial costs, replacement or repair or resources, etc.

Finally, section 402(a)(17) of the Act, as amended by the Deficit Reduction Act of 1984 (Pub. L. 98–369), permits States to consider hardship situations and recalculate, under certain specified circumstances, the period of ineligibility determined under the lump sum rule.

Comment: There were several comments specifically in relation to personal injury awards and worker compensation payments. One commenter suggested that, because personal injury awards have been the subject of court challenge, we specify in the regulation how personal injury awards are to be treated. This would clarify the policy and avoid future misunderstanding as to their treatment. Several commenters suggested expanding the definition of funds treated as resources to specifically include worker's compensation payments and personal injury settlement payments. One commenter noted that Federal income taxes do not have to be paid on personal injury awards, yet for AFDC purposes such payments are counted as income.

Response: We agree that specifying in regulations how personal injury awards and workers' compensation payments are to be treated is necessary. We, therefore, have amended the regulation to clarify that personal injury awards and worker compensation must be treated as lump sum income. We believe it is consistent with Congressional intent that nonrecurring lump sum payments be used to meet current as well as future needs and that personal injury and worker compensation awards are encompassed by the lump sum rule. States are required to exclude from consideration, in determining the amount of the lump sum, that portion of the money that is earmarked and used for the purpose for which paid.

Casual and Inconsequential Income (Section 233.20(a)(3)(iv) of the Final Regulations)

Until 1975, Federal regulations at § 233.20(a)(3)(ii)(*c*) provided that "only such net income as is actually available for current use on a regular basis will be considered. . ." Even though the regulations were changed in 1975 to require that income available for current use be counted, States were still permitted to exclude income considered "casual and inconsequential." One major reason was to help States avoid administrative complexities associated with budgeting unpredictable income under the prospective budgeting system. This problem has now been eliminated under mandatory retrospective budgeting and monthly reporting in the AFDC program. The provisions for retrospective budgeting and monthly reporting make accurate income information available for determining the benefit amount.

Another consideration behind this policy was to allow some latitude in disregarding small gifts, which do not realistically represent income available to meet the family's living expenses, e.g., Christmas, graduation and birthday gifts, and which are difficult to administratively track. However, there is currently considerable variation in the amounts and types of income that States define as casual and inconsequential,

and exceptionally large non-recurring sums have been disregarded under both the AFDC and adult assistance programs. Currently, 19 States have imposed dollar amounts to be disregarded as casual and inconsequential income.

These amounts include: $60 a quarter, $40 a month, $30 a quarter, or $10 a month. Therefore, we have amended the regulations at section 233.20(a)(3)(iv) to provide that States can optionally exclude gifts which represent reasonable nominal amounts not to exceed $30 for any recipient for any quarter. We selected $30 because it falls within the average range of the dollar amount currently used by States, and because it is the level used in the Food Stamp Program.

We estimate savings of up to $1 million annually.

Comment: Several commenters requested that the definition of casual and inconsequential income be revised to include small loans, earnings from odd jobs and interest on small savings accounts on the basis that this income is unpredictable and the amount is small.

Response: Existing regulations sufficiently address the disregard of loans and earnings. For example, the regulation at § 233.20(a)(3)(iv)(B) provides that loans obtained and used under conditions that preclude their use for current living costs are not counted as available income. Similarly, the regulations at § 233.20(a)(11) provide several earned income disregards. For example, $75 must be disregarded from gross earnings each month in lieu of actual work expenses. When total earnings received during the month do not exceed $75, the income is totally disregarded. Interest on savings accounts is not unpredictable and can be handled easily under the retrospective budgeting system when it is credited. Therefore, interest on savings accounts is treated as unearned income.

Comment: One commenter questioned whether casual and inconsequential income is to be budgeted prospectively or retrospectively.

Response: Casual and inconsequential income, as defined in these regulations, may be disregarded at State option. Other income is budgeted consistent with the prospective/retrospective budgeting rules.

Comment: Seven commenters expressed concern that applying the disregard on a quarterly basis rather than on a monthly basis would be very error prone because the income must be tracked.

Response: The quarterly maximum allows a recipient to receive a larger disregard for one month than would be allowed under a monthly maximum. However, States have the flexibility to establish monthly amounts which in total do not exceed the quarterly maximum, for example $10 per month.

Comment: Some commenters recommended that the regulation be clarified to show that the disregard is applied to each person's income individually.

Response: The regulations already provide that the disregard is for gifts that do not exceed a total of $30 per recipient per quarter.

Comment: Four States suggested that the regulations be revised to clarify whether the definition of "quarter" is calendar quarter, any three month period beginning with the first month in which the recipient receives a gift, or whether States can determine which period to use.

Response: For consistency with the Food Stamps exclusion, States can determine which period they wish to use.

Comment: Several commenters were opposed to limiting the amount of the disregard to $30 per recipient. The commenters would prefer to retain the current flexibility for States to set an amount they believe appropriate for their geographic area. If this isn't possible, they suggest that $50–60 per recipient is more realistic in relation to the cost of buying a gift.

Response: We consider $30 per recipient per quarter to be reasonable because it represents the average amount currently defined by States as casual and inconsequential income, and is consistent with the amount defined as irregular/infrequent income in the Food Stamp Program.

Definition of Stepparent (Section 233.20(a)(3)(xiv)); Section 233.90(a)(1); Section 237.50(b)(3)(ii); and Section 237.50(b)(4)(ii) of the Final Regulations)

Several States have questioned whether the AFDC provision at § 233.90, which specifies that a stepparent must be "ceremonially" married, includes common law marriage in States that recognize a common law marriage as valid under the laws of the State.

We have amended the regulation at § 233.90(a)(1) to remove the word "ceremonially" and clarify that in determining whether a child has been deprived of parental support, the marriage must only be one that is recognized as a valid marriage under the laws of the State. This includes common law marriages. The reason we included the word "ceremonially" was to deter States from counting the income of a "man in the house" as available to the assistance unit. We never intended to exclude the income of a person who was legally and validly married to the parent of an AFDC child under State law. Therefore, we are clarifying the regulations to reflect this intent.

The final regulation at § 233.20(a)(3)(xiv) is amended to clarify that a stepparent is one who is married to the child's parent under State law. We estimate savings up to $1 million annually.

We are also removing the word "ceremonially" from the provisions at § 237.50(b) (3)(ii) and (4)(ii) to conform with these changes.

Comment: Several commenters asked that we set some standards and protections to guide State agencies in establishing the existence of common-law marriages.

Response: Each State has the authority under State law to determine what constitutes a valid and legal marriage. Because States have this responsibility, we cannot establish guidelines in this particular area.

Comment: Several commenters believe that by deleting the term "ceremonially" we weaken the protections provided recipients by Supreme Court decisions such as *King* v. *Smith* against the "substitute parent" and "the man-in-the house" rules.

Response: We disagree. This change in no way provides States authority to consider a person in the home as a "substitute parent" for purposes of AFDC. The deletion of the term "ceremonially" simply means that if under State law a common law marriage is recognized as legal and valid by the State, the spouse of the parent of the AFDC child would be considered a stepparent. The obligation of the stepparent to support the AFDC child would exist only if the family resides in a State which has a law of general applicability. Only then would the stepparent be required to support the child to the same extent as a natural or adoptive parent.

Disregard of Income From VISTA Payments (Section 233.20(a)(4)(ii)(h) of the Final Regulations)

In accordance with section 404(g) of Pub. L. 93–113, the Domestic Volunteer Service Act of 1973, payments received by applicants and recipients participating in the Volunteers in Service to America (VISTA) Program have been disregarded, regardless of the amount of such payments.

On December 13, 1979, Congress enacted Pub. L. 96–143, the Domestic Volunteer Service Act of 1979, which included a provision limiting this

disregard. Section 9 of Pub. L. 96–143 provides that the disregard "shall not apply in case of such payments when the Director determines that the value of all such payments, adjusted to reflect the number of hours such volunteers are serving, is equivalent to or greater than the minimum wage then in effect under the Fair Labor Standards Act of 1938, . . . or the minimum wage, under the laws of the State where such volunteers are serving, whichever is the greater." Since Federal regulations were not revised at that time, we are amending them now to accurately reflect section 9 of Pub. L. 96–143.

Comment: One commenter asked whether the Director of ACTION will notify the States that the value of VISTA payments is equivalent to or greater than the minimum wage.

Response: The ACTION agency has advised that it has no established method for notifying the welfare agency of payments made to VISTA volunteers. Therefore, since it is the responsibility of the ACTION agency to determine whether the VISTA payments equal or exceed the minimum wage, based on the number of hours served, the State agency must request that information directly from the ACTION agency. However, to date, no VISTA payments to volunteers have been determined by the Director of ACTION to equal or exceed the applicable minimum wage.

Criteria for Use of Restricted Payments (Section 234.60(a)(1), (a)(6) of the Final Regulations)

The November 16, 1984, Notice of Proposed Rulemaking proposed several changes in the procedures governing use of restricted payments (use of a protective payee, vendor payments, or two-party checks) in situations where the caretaker relative has demonstrated an inability to manage funds, thereby imperiling the child's welfare. In response to State requests for more flexibility in this area, the NPRM removed specific criteria under which a determination of mismanagement is made and allowed States to establish the criteria for such a determination (with one exception). If States elect to use restricted payments, the NPRM proposed that mismanagement shall be presumed after nonpayment of rent equivalent to two months of rent. This minimum criterion was proposed because the non-payment of rent is a very serious problem as it may place the AFDC recipient family in jeopardy of eviction. We also noted that this new provision may help alleviate the shortage of housing available to AFDC families based on current unwillingness of landlords, in New York City for example, to rent to low income families based on concerns about possible nonpayment of rent.

Several related changes were also proposed, including added State flexibility regarding requirements for social services referrals and the methodology and timing of fair hearings regarding use of restricted payments.

We received numerous comments on these provisions. Some commenters supported the changes and noted the potentially beneficial effect on the availability of affordable housing for AFDC families.

Some commenters believed that waiting for two months nonpayment of rent is not strict enough, and suggested a shorter time period of nonpayment before mismanagement is presumed. Additionally, many of the commenters opposed the mandatory provision for determininig mismanagement, citing among other reasons, the possible increase in administrative costs which could result. Further, although some States provide for shelter costs separate from other needs, many States include shelter costs within a consolidated needs standard or payment standard. Thus, these latter States commented on possible administrative difficulties that may be encountered in determining the amount of the AFDC grant which is devoted to shelter costs and would be subject to the restricted payment rule as proposed.

In response to these comments, as well as our own further review, we have modified the provision for determining mismanagement and instituting vendor or two-party payments. Under the final rule, we have not only removed the specific criteria under which a determination of mismanagement is made, but in addition, have decided not to impose the mandatory minimum criterion of presuming mismanagement after two months nonpayment of rent. These changes, we believe, will provide States maximum flexibility to establish criteria for such a determination based on the circumstances in the individual States. We continue to believe, however, that the nonpayment of rent is a very serious problem because as a consequence, it may place the AFDC recipient family in jeopardy of eviction. Thus, for example, a State could, within the boundary of the final rule, establish as a minimum criterion, the presumption of mismanagement based on the recipient's nonpayment of rent. As is true for all other restricted payments, the institution of such payments in these circumstances will be subject to the normal AFDC administrative costs for which 50% Federal financing is available.

In the NPRM, we also proposed a change in the methodology and timing of fair hearings when mismanagement was presumed after two months nonpayment of rent. In light of our reconsideration of this issue, and of our efforts to increase State flexibility where possible, we have determined that such a change in fair hearings should still be available to States. Therefore, where a State's restricted payments program presumes mismanagement based on nonpayment of rent, such State may, under these limited circumstances, have the option to provide an opportunity for a hearing, where an individual wishes to appeal, either in advance of the State's intended action, or after the action has taken place.

Under previous policy, States were required to make referrals for social services when problems and needs for services and care for the recipients were beyond the ability of the protective payee to handle. The final regulations delete this automatic requirement for social services referral. States will be given flexibility so that they need not refer recipients to social services when they are unnecessary or unwanted. Counseling services, for example, are of little value when the recipient does not seek them.

We estimate savings of up to $1 million annually.

Due to the volume of comments received regarding the restricted payments provision, it is not feasible to respond to each one in the preamble. We have, however, included a discussion of several that are representative of many of the comments received.

Comment: One commenter recommended that the regulation be amended to mandate voluntary vendor payments in all States.

Response: The existing regulatory provision which allows a recipient, at State option, to voluntarily request a restricted payment is statutorily based and is permitted only in States that have elected the vendor payment option under section 406 of the Act. A legislative amendment would be necessary to impose this regulatory mandate on States.

Comment: Several public housing authorities recommended that the regulation be changed to provide that the amount of the AFDC recipient's grant that is designated for housing, be forwarded directly to the public housing authority rather than first requiring a determination of mismanagement by the State agency.

Response: A basic principle of the AFDC program since its inception is that the assistance grant is an unrestricted money payment and that the caretaker relative has the responsibility to manage the funds. The statute has established limited circumstances in which this principle is not applied: when the State determines that the caretaker relative is not managing the funds in the best interest of the child(ren), the grant may be vendored in order to protect the children; and when the recipient voluntarily requests a restricted payment and the State provides for this option. In all other circumstances, however, the basic principle of unrestricted payments still prevails. Therefore, we are not able to accept this recommendation.

Comment: Many commenters were opposed to a finding of automatic mismanagement after two consecutive months of nonpayment of rent without prior rights to a hearing arguing that such action violates the principles of due process enunciated in the Supreme Court case of *Goldberg* v. *Kelly*, 397 US 254 (1970).

Response: The Supreme Court held in *Goldberg* v. *Kelly*, that public assistance may not be terminated without affording the recipient an opportunity for a prior hearing. Since this situation does not involve termination of the grant, but rather diversion of a portion of the grant, *Goldberg* v. *Kelly* need not be viewed as applying to this situation. Given the need for some States to act quickly in order to prevent evictions and the resulting family disruption, the final rule permits states that include a presumption of mismanagement based on nonpayment of rent, under their restricted payments program, the option to provide an opportunity for a hearing either in advance of or after the State's action. The option is limited to those cases involving the application of the presumption of mismanagement based on nonpayment of rent. In all other cases involving mismanagement, the State must continue to provide the opportunity for a fair hearing in advance of any change in the manner or form of payment. We have not extended the option for post hearings to other cases of mismanagement because, as a general rule, we do not believe that the risk of harm to the child or family in these other cases outweight the need for fairness that is afforded by the opportunity for a prior hearing as it does when needy families are evicted and have no place to live.

Comment: Many commenters opposed mandating the automatic mismanagement provision for all States, citing administrative difficulties, increased costs and the nonexistence of serious problems regarding the nonpayment of rent by AFDC recipients.

Response: We are persuaded that mandating the provision would not further the objectives of increasing State flexibility nor of limiting administrative and fiscal burdens on all States. Therefore, we have revised the final rule by deleting any specific criteria for making determinations of mismanagement. This will ensure maximum flexibility to States to establish criteria to tailor their restricted payments programs to the existing conditions and resources in the individual State.

Review of Restricted Payment Cases (Section 234.60(a)(9) of the Final Regulations

Currently, States are required to review restricted payment cases as frequently as indicated by the individual's circumstances and at least every 6 months in the AFDC program. The specified time frame for review was changed in 1980 from 3 months to 6 months to coincide with the time frame for periodic eligibility redeterminations. It was done in response to comments received in relation to the restricted payment NPRM to provide administrative ease in case management.

In light of our decision to not impose, in this final rule, the mandatory automatic mismanagement provision based on two months nonpayment of rent (see discussion governing Criteria for Use of Restricted Payment, § 234.60(a)(2)(ii) and 234.60(a)(6) of this final rule) we have also deleted the companion provision that review of such cases take place not more than once every 12 months. We are, however, retaining the revision which specifies that review of vendor, two-party and protective payments will be made as frequently as indicated by the individual's circumstances, but at least once every 12 months.

This change will enable States to continue to coincide, in the absence of changes in the individual's circumstances, the restricted payment review with the regularly scheduled eligibility redetermination. It will also minimize the number of times the recipient is required to report similar information and permit the State to avoid repetitions and unnecessary reviews.

We estimate saving of up to $1 million annually.

Technical Amendments

A. OBRA extensively revised the title IV–A statute. Because of the major work effort involved in developing regulations and providing guidance to States for implementation of these new provisions, several technical changes to the regulations were inadvertently not made. We have amended these regulations to reflect those technical changes to the Social Security Act.

1. Section 2181 of OBRA repealed section 403(g) of the Social Security Act. The latter section had established a penalty to reduce by 1 percent the quarterly amount payable to a State under title IV–A for failure to inform of and provide and arrange for early and periodic screening, diagnosis and treatment (EPSDT) under title XIX for children receiving assistance under AFDC. The regulations at §§ 201.14(a)(3) and 205.146(c) are removed to reflect this amendment to the Social Security Act.

2. Section 2319 of OBRA repealed section 403(a)(3)(A) of the Act which authorized 75% matching for training, and as a result, we consider training to be an administrative expense under section 403(a)(3)(C) which provides for 50% matching. The regulations at § 205.45 (b) and (c) are amended to reflect this change. This change does not apply to the adult assistance programs.

3. Section 2353(b) of OBRA repealed section 402(a)(5) of the Social Security Act, as in effect with respect to Puerto Rico, Guam, and the Virgin Islands. This provision had related to the establishment and maintenance of personnel standards on a merit basis, and for the training and effective use of paid subprofessional staff. The regulations at 45 CFR Part 225 are now currently applicable only to the adult assistance programs, and have been revised to delete the reference to the AFDC program.

4. Section 2605(f) of OBRA prohibits counting Low Income Home Energy Assistance Program (LIHEAP) benefits as either income or resources for any purpose under any Federal or State law relating to taxation, food stamps, public assistance, or welfare programs.

Although the statute is very clear and leaves no discretion to the Secretary, an amendment is needed to update the list of disregard requirements currently included in the regulations, and to distinguish the permanent and mandatory exclusion of LIHEAP benefits from the temporary and optional exclusion of certain other home energy assistance under sections 233.20(a)(3)(xvi) and 233.53. Therefore,

the regulations at section 233.20(a)(4)(ii) are amended to exclude from income and resources, benefits provided under the Low Income Home Energy Assistance Program.

Additionally, we are making the following changes to conform regulatory policy to existing legislation.

1. Prior to the implementation of the Food Stamp Act of 1977, States could deduct the food stamp purchase price from a recipient's assistance payment, and regulations at section 234.11(b) were promulgated so that the deducted sum could be considered an AFDC payment for purposes of Federal financial participation.

The Food Stamp Act of 1977 eliminated the food stamp purchase requirement effective January 1, 1979. Therefore, the provision at section 234.11(b) is removed as it is now obsolete.

2. Pub. L. 97–34, The Economic Recovery Tax Act of 1981, terminated the separate WIN and Welfare Tax Credits, for providing employment to AFDC recipients, and effective January 1, 1982, added these two groups to the groups provided for in the Targeted Jobs Tax Credit program, i.e., recipents of AFDC for at least 90 days and WIN/WIN Demonstration participants.

Pub. L. 97–34 also provided that certification of AFDC recipient status is now a function of a designated local agency. Under Federal Department of Labor policy, the State Employment Security Agency (SESA) or qualified schools operating qualified cooperative education programs are the only agencies that may issue certifications. The State and local IV–A agency function will be limited to providing verification to the certifying agency that the individual being hired has been an AFDC recipient for at least 90 days or is a participant in the WIN or WIN Demonstration program.

The regulations at 45 CFR 235.40, relating to the certification of AFDC recipients for employment incentive tax credit, are removed as no longer applicable to the title IV–A agency.

The regulations at § 205.50(a)(1)(i)(D) have been revised to provide for the release of information to verify that an individual has been a recipient of AFDC for at least 90 days or is a WIN/WIN Demonstraton participant.

Comment: Concern was raised by a commenter regarding the certification of employees for Targeted Job Tax Credit (TJTC) by State and local agencies. When an employer requested certification for employees who were believed eligible for TJTC, the various State and local agencies were reluctant to provide the data. It was felt that without the necessary interchange between employers and public agencies, the intended results of the WIN program would not be achieved.

Response: The actual certification of employees for TJTC may only be done by the SESA or qualified schools operating a qualified cooperative education program. There is no provision in the IV–A statute to release information on AFDC applicant/recipients to other than the certifying agency (e.g., SESA). The policy which governs the disclosure of AFDC client information (section 402(a)(9) of the Social Security Act and regulations at 45 CFR 205.50), provides protection for the AFDC applicant's/recipient's right to privacy; and as such, States must exercise caution in responding to requests for the release of AFDC identifying information.

3. Pub. L. 92–603, October 30, 1972, provided the Secretary authority to assure that social security account numbers be assigned to, among others, any applicant for or recipient of benefits under federally funded programs. Subsequently, section 7 of Pub. L. 93–579, The Privacy Act of 1974, made it unlawful for any Federal, State, or local government agency to deny any right, benefit or privilege because of an individual's refusal to disclose his social security number, unless such disclosure is required by Federal statute, or the disclosure of the social security number is to a Federal, State, or local agency which maintained a system of records in existence and operating before January 1, 1975, if such disclosure was required by statute or regulation adopted prior to such date to verify the identity of the individual.

As a result of these statutory provisions, Federal regulations were developed (45 CFR 206.10 (b) and (c)); (section 206.10 was completely renumbered under TEFRA implementing regulations). They provide that the State IV–A agency could impose the disclosure as a condition of eligibility for AFDC only if the State had in effect prior to January 1975, a system of welfare or Medicaid records for which disclosure of the SSN was required by statute or regulations, in order to verify the identity of the individual. However, in 1975, Pub. L. 93–647 mandated that as a condition of eligibility for AFDC, all applicants and recipients must furnish the IV–A agency a social security number. Regulations implementing this statutory provision are codified at 45 CFR 232.10. This change in Federal statute and the regulations at 45 CFR 232.10 have rendered obsolete those provisions in 45 CFR 206.10, and they are accordingly removed.

4. Section 101(a) of Pub. L. 96–272 repealed section 408 of the Social Security Act, and established a new Part E under title IV of the Act. The State agency responsible for administering the program authorized by Part B of title IV is to administer or supervise administration of this new Part E, *Federal Payments for Foster Care and Adoption Assistance.* This repeal is effective at the time the State plan under IV–E becomes effective, but not later than September 30.1982. The regulations at 45 CFR 233.110 are revised to reflect this amendment to the Social Security Act. Other references to AFDC Foster Care at 45 CFR 233.90(c), 45 CFR 233.10(b), and 45 CFR 232.10(c) are deleted as well.

5. Section 507 of Pub. L. 94–566 amended section 407 of the Social Security Act to provide for a reduction in the AFDC payment by the amount of unemployment compensation a child's unemployed parent receives and that the family is ineligible if the parent refuses to apply for or accept unemployment compensation. Although the pertinent program policy was amended to reflect this change, the parallel FFP provision was not. The regulation now at § 233.100(c)(1)(v) is amended, therefore, to reflect this change in statute.

Comment: One commenter noted that the proposed change to § 233.100(c)(1)(v) incorrectly omits the parts of Pub. L. 94–566 which provides for the denial of aid when the unemployed parent qualifies for unemployment compensation but refuses to apply for or accept it.

Response: In the publication of the NPRM, language was inadvertently omitted from the proposed regulation which would bring it into conformity with the legislation. This final regulation at § 233.100(c)(1)(v) therefore is amended to conform to Pub. L. 94–566.

6. Section 407(c)(A)(i) of the Social Security Act provides that FFP is not available in any payment of aid made to an unemployed principal earner during the first 30 days of unemployment. The implementing regulation however provides that if the principal earner is "not unemployed" during the 30-day period, there is no FFP. This is a difficult grammatical construction to understand and might be read to mean that if the principal earner is "unemployed" during the 30-day period, FFP is available. Because this would contravene the statute, the regulation now at § 233.100(c)(2)(i) is amended to clarify that FFP is not available for payments that cover the first 30 days of unemployment.

Additionally, those regulatory provisions that still reference the word "father" are amended to substitute the word "parent" as required to eliminate, where possible, gender discrimination.

We have also corrected as a result of our own review, general references and citations. We have deleted some obsolete material from § 205.40(d) and § 233.27(b)(2) and corrected references in § 205.50(a) and § 205.50(a)(2)(i)(A).

These regulations are issued under the authority of section 1102 of the Social Security Act, as amended, 49 Stat. 647, as amended, 42 U.S.C. 1302.

(Catalog of Federal Domestic Assistance Programs No. 13.808, Public Assistance Maintenance (State Aid))

List of Subjects

45 CFR Part 201

Aid to families with dependent children, Family assistance, Grant programs-social programs, Guam, Public assistance, Puerto Rico, Virgin Islands.

45 CFR Part 205

Administrative practice and procedure, Aid to families with dependent children, Family assistance, Grant programs-social programs, Public assistance programs, Reporting requirements.

45 CFR Part 206

Aid to families with dependent children, Family assistance, Grant programs-social programs, Public assistance programs.

45 CFR Part 225

Aid to families with dependent children, Family assistance, Grant programs-social programs Public assistance programs, Volunteers.

45 CFR Part 232

Aid to families with dependent children, Child support, Child welfare, Family Assistance, Grant programs-social programs.

45 CFR Part 233

Aid to families with dependent children, Aliens, Family assistance, Grant programs-social programs, Public assistance programs, Reporting requirements.

45 CFR Part 234

Aid to families with dependent children, Family assistance, Grant programs-social programs, Health facilities, Public assistance, Public housing.

45 CFR Part 235

Aid to families with dependent children, Family assistance, Grant programs-social programs, Public assistance programs.

45 CFR Part 237

Aid to families with dependent children, Family assistance, Grant programs-social programs, Public assistance programs.

Dated: July 18, 1985.

Martha A. McSteen

Acting Commissioner of Social Security.

Approved: February 14, 1986.

Otis R. Bowen,

Secretary of Health and Human Services.

PART 201—[AMENDED]

Part 201 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 201 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302).

§ 201.14 [Amended]

2. Section 201.14 is amended by removing and reserving paragraph(a)(3).

PART 205—[AMENDED]

Part 205 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

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

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302).

2. The Table of Contents in Part 205 is amended by adding § 205.32 to read as follows:

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

* * * * *

Sec.

205.32 Procedures for issuance of replacement checks.

* * * * *

3. Section 205.10 is amended by revising paragraph (a)(2) to read as follows:

§ 205.10 Hearings.

(a) * * *

(1) * * *

(2) Hearing procedures shall be issued and publicized by the State agency. Such procedures shall provide for a face-to-face hearing or, at State option, a hearing by telephone when the applicant or recipient also agrees. Under this provision, the State shall assure that the applicant or recipient is afforded all rights as specified in this section, whether the hearing is face-to-face or by telephone;

* * * * *

4. Section 205.10 is further amended by revising paragraph (a)(4)(i)(B) to read as follows:

§ 205.10 Hearings.

(a) * * *

(4) * * *

(i) * * *

(B) "Adequate" means a written notice that includes a statement of what action the agency intends to take, the reasons for the intended agency action, the specific regulations supporting such action, explanation of the individual's right to request an evidentiary hearing (if provided) and a State agency hearing, the circumstances under which assistance is continued if a hearing is requested, and if the agency action is upheld, that such assistance must be repaid under title IV–A, and must also be repaid under titles I, X, XIV or XVI (AABD) if the State plan provides for recovery of such payments.

* * * * *

5. Section 205.10 is further amended by adding a new paragraph (a)(4)(ii)(J) as follows:

§ 205.10 Hearings.

(a) * * *

(4) * * *

(ii) * * *

(J) The agency has made a presumption of mismanagement as a result of a recipient's nonpayment of rent and provides for post hearings in such circumstances;

* * * * *

6. Section 205.10 is further amended by revising paragraphs (a)(6)(i) (A) and (B), and by adding new paragraphs (a)(6)(i)(C) & (a)(6)(i)(D) to read as follows: The introductory text of paragraph (a)(6)(i) is shown for the convenience of the reader.

§ 205.10 Hearings.

(a) * * *

(6) * * *

(i) Assistance shall not be suspended, reduced, discontinued or terminated (but is subject to recovery by the agency if its action is sustained), until a decision is rendered after a hearing, unless:

(A) A determination is made at the hearing that the sole issue is one of State or Federal law or policy, or change in State or Federal law and not one of incorrect grant computation;

(B) A change affecting the recipient's grant occurs while the hearing decision is pending and the recipient fails to request a hearing after notice of the change;

(C) The recipient specifically requests that he or she not receive continued assistance pending a hearing decision; or

(D) The agency has made a presumption of mismanagement as a result of a recipient's nonpayment of rent and provides for the opportunity for a hearing after the manner or form of payment has been changed for such cases in accordance with §§ 234.60 (a)(2) and (a)(11).

* * * * *

7. Section 205.10 is amended by revising paragraph (a)(7) to read as follows:

§ 205.10 Hearings.

(a) * * *

(7) A State may provide that a hearing request made after the date of action (but during a period not in excess of 10 days following such date) shall result in reinstatement of assistance to be continued until the hearing decision, unless (i) the recipient specifically requests that continued assistance not be paid pending the hearing decision; or (ii) at the hearing it is determined that the sole issue is one of State or Federal law or policy. In any case where action was taken without timely notice, if the recipient requests a hearing within 10 days of the mailing of the notice of the action, and the agency determines that the action resulted from other than the application of State or Federal law or policy or a change in State or Federal law, assistance shall be reinstated and continued until a decision is rendered after the hearing, unless the recipient specifically requests that continued assistance not be paid pending the hearing decision.

* * * * *

8. Part 205 is amended to add a new § 205.32 to read as follows:

§ 205.32 Procedures for issuance of replacement checks.

(a) *State plan requirements.* A State plan under title IV–A of the Social Security Act shall provide that (1) procedures are in effect to ensure that no undue delays occur in issuing a replacement check; and (2) when applicable, prior to the issuance of a replacement check, the State agency must:

(i) Issue a stop payment order on the original AFDC check through appropriate banking procedures; and

(ii) Require recipients to execute a signed statement attesting to the nonreceipt, loss, or theft of the original FDC check. However, if obtaining such a statement from the recipient will cause the issuance of the check to be unduly delayed, the statement may be obtained within a reasonable time after the check is issued.

(b) *State option.* A State plan may provide that as a condition for issuance of a replacement check, a recipient is required to report a lost or stolen AFDC check to the police or other appropriate authorities. Under this provision, the State agency may require that the recipient verify that a report was made to the police or other appropriate authorities and, if so, the agency will establish procedures for such verification.

9. Section 205.40 is amended by removing and reserving paragraph (d) as follows:

10. Section 205.45 is amended by revising paragraphs (b) and (c) to read as follows:

§ 205.45 Federal financial participation in relation to State emergency welfare preparedness.

* * * * *

(b) Federal financial participation is available at 50 percent under title IV–A for providing training in emergency welfare preparedness for all staff and for volunteers.

(c) In Guam, Puerto Rico, and the Virgin Islands, Federal financial participation is available at the rate of 75 percent in expenditures for emergency welfare preparedness under titles I, X, XIV, XVI (AABD) of the Social Security Act.

* * * * *

11. Section 205.50 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 205.50 Safeguarding information for the financial assistance programs.

(a) State plan requirements. A State plan for financial assistance under title IV–A of the Social Security Act, must provide that:

* * * * *

12. Section 205.50 is further amended to revise paragraph (a)(1)(i)(D) to read as follows:

§ 205.50 Safeguarding information for the financial assistance programs.

(a) * * *

(1) * * *

(i) * * *

(D) The verification to the Employment Security Agency, or other certifying agency that an individual has been an AFDC recipient for at least 90 days or is a WIN or WIN Demonstration participant pursuant to Pub. L. 97–34, the Economic Recovery Tax Act of 1981.

* * * * *

(13.) Section 205.50 is further amended by revising paragraph (a)(2)(i)(A) to read as follows:

§ 205.50 Safeguarding information for the financial assistance programs.

(a) * * *

(2) * * *

(i) * * *

(A) The names and addresses of applicants and recipients and amounts of assistance provided (unless excepted under paragraph (a)(1)(iv) of this section):

* * * * *

§ 205.146 [Amended]

(14.) Section 205.146 is amended by removing and reserving paragraph (c) as follows:

PART 206—[AMENDED]

Part 206 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 206 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 206.10 is amended by removing and reserving paragraphs (a)(1)(iv) and (a)(1)(v) as follows:

§ 206.10 Application, determination of eligibility and furnishing of assistance.

(a) * * *

(1) * * *

(iv)–(v) [Reserved]

* * * * *

3. Section 206.10 is amended by revising paragraph (a)(9)(iii) and adding (a)(9)(iv) to read as follows. The introductory text of paragraph (a)(9) is shown for the convenience of the reader.

§ 206.10 Application, determination of eligibility and furnishing of assistance.

(a) * * *

(9) Where an individual has been determined to be eligible, eligibility will be reconsidered or redetermined:

(i) * * *

(ii) * * *

(iii) Periodically, within agency established time standards, but not less frequently than every 12 months in OAA, AB, APTD, and AABD, on eligibility factors subject to change. For recipients of AFDC, all factors of eligibility will be redetermined at least every 6 months except in the case of monthly reporting cases or cases covered by an approved error-prone profiling system as specified in paragraph (a)(9)(iv) of this section. Under the AFDC program, at least one face-to-face redetermination must be conducted in each case once in every 12 months.

(iv) In accordance with paragraph (a)(9)(iii) of this section, under an

alternative redetermination plan based on error-prone profiling, which has been approved by the Secretary, and includes:

(A) a description of the statistical methodology used to develop the error-prone profile system upon which the redetermination schedule is based;

(B) the criteria to be used to vary the scope of review and to assign different types of cases; and

(C) a detailed outline of the evaluation system, including provisions for necessary changes in the error-prone output, such as types of cases, types of errors, frequencies of redeterminations and corrective action.

* * * * *

4. Section 206.10 is amended by adding a new paragraph (b)(4) to read as follows:

§ 206.10 Application, determination of eligibility and furnishing of assistance.

* * * * *

(b) * * *

(4) *Redetermination* is a review of factors affecting AFDC eligibility and payment amount; e.g. continued absence, income (including child and spousal support), etc.

PART 225—[AMENDED]

Part 225 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 225 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 225.2 is amended by revising the introductory paragraph and by revising paragraph (a)(1) to read as follows:

§ 225.2 State plan requirements.

The State plan for financial assistance programs under titles I, X, XIV, or XVI (AABD) of the Social Security Act for Guam, Puerto Rico and the Virgin Islands or for child welfare services under title IV–B of the Act must:

(a) * * *

(1) Such methods of recruitment and selection as will offer opportunity for full-time or part-time employment of persons of low income and little or no formal education, including employment of young and middle aged adults, older persons, and the physically and mentally disabled, and in the case of a State plan for financial assistance under title I, X, XIV, or XVI (AABD), of recipients; and will provide that such subprofessional positions are subject to merit system requirements, except where special exemption is approved on the basis of a State alternative plan for recruitment and selection among the disadvantaged of persons who have the potential ability for training and job performance to help assure achievement of program objectives;

* * * * *

3. Section 225.3 is revised to read as follows:

§ 225.3 Federal financial participation.

Under the State plan for financial assistance programs under titles I, X, XIV, XVI (AABD) or for child welfare services under title IV–B of the Act, Federal financial participation in expenditures for the recruitment, selection, training, and employment and other use of subprofessional staff and volunteers is available at the rates and under related conditions established for training, services, and other administrative costs under the respective titles.

PART 232—[AMENDED]

Part 232 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 232 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 232.20 is amended by revising paragraph (b)(1) to read as follows:

§ 232.20 Treatment of child support collections made in the Child Support Enforcement Program as income and resources in the Title IV–A Program.

* * * * *

(b) * * *

(1) Upon notification by the IV–D agency of the amount of a support collection, the IV–A agency will use such amount to review eligibility of the assistance unit under section 206.10(a)(9)(ii). This use of these amounts so collected shall not be later than the second month after the month in which the IV–A agency received a report of the monthly collections from the IV–D agency. In determining whether a support collection made by the State's IV–D agency, which represents support amounts for a month as determined pursuant to § 302.51(a) of this title, is sufficient to make the family ineligible for an assistance payment for the month to which the redetermination applies, the State will determine if such collection, when treated as if it were income, makes the family ineligible for an assistance payment. If such treatment makes the family ineligible, the IV–A agency will notify the family and the IV–D agency of the effective date of the family's ineligibility. The IV–D agency will treat the support collection that caused ineligibility in accordance with § 302.32. If such treatment does not make the family ineligible for an assistance payment, the assistance payment will be calculated without regard to such collection.

* * * * *

PART 233—[AMENDED]

Part 233 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 233 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302)

2. The Table of Contents in Part 233 is amended by revising the section heading for § 233.110 to read as follows:

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

* * * * *

Sec.

233.110 Foster care maintenance and adoption assistance.

* * * * *

3. Section 233.10 is amended by revising paragraphs (b)(2)(ii)(*a*) (*2*) and (*3*) to read as follows:

§ 233.10 General provisions regarding coverage and eligibility.

* * * * *

(b) * * *

(ii) * * *

(*a*) * * *

(*2*) Deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or unemployment of a principal earner, and

(*3*) Living in the home of a parent or of certain relatives specified in the Act.

* * * * *

4. Section 233.20 is amended by revising paragraph (a)(3)(ii)(C) to read as follows:

§ 233.20 Need and amount of assistance.

(a) * * *

(3) * * *

(ii) * * *

(C) States may have policies which provide for allocating an individual's income for his or her own support if the individual is not applying for or receiving assistance; for the support of other individuals living in the same household but not receiving assistance; and for the support of other individuals living in another household. Such other individuals are those who are or could be claimed by the individual as dependents for determining Federal

personal income tax liability, or those he or she is legally obligated to support. No income may be allocated to meet the needs of an individual who has been sanctioned under sections 224.51, 232.11(a)(2), 232.12(d), 238.22 or 240.22 or who is required to be included in the assistance unit and has failed to cooperate. The amount allocated for the individual and the other individuals who are living in the home must not exceed the State's need standard amount for a family group of the same composition. The amount allocated for individuals not living in the home must not exceed the amount actually paid.

* * * * *

5. Section 233.20 is amended by revising the first sentence of paragraph (a)(3)(ii)(F) to read as follows:

§ 233.20 Need and amount of assistance.

(a) * * *
(3) * * *
(ii) * * *

(F) When the AFDC assistance unit's income, after applying applicable disregards, exceeds the State need standard for the family because of receipt of nonrecurring earned or unearned lump sum income (including for AFDC, title II and other retroactive monthly benefits, and payments in the nature of a windfall, e.g., inheritances or lottery winnings, personal injury and worker compensation awards, to the extent it is not earmarked and used for the purpose for which it is paid, i.e., monies for back medical bills resulting from accidents or injury, funeral and burial costs, replacement or repair of resources, etc.), the family will be ineligible for aid for the full number of months derived by dividing the sum of the lump sum income and other income by the monthly need standard for a family of that size. Any income remaining from this calculation is income in the first month following the period of ineligibility. The period of ineligibility shall begin with the month of receipt of the nonrecurring income or, at State option, as late as the corresponding payment month.* * *

* * * * *

6. Section 233.20 is amended by revising (a)(3)(iv) to read as follows:

§ 233.20 Need and amount of assistance.

(a) * * *
(3) * * *

(iv) Provide that in determining the availability of income and resources, the following will not be included as income (A) Except for AFDC, income equal to expenses reasonably attributable to the earning of income (including earnings from public service employment); (B) loans and grants, such as scholarships, obtained and used under conditions that preclude their use for current living costs; (C) home produce of an applicant or recipient, utilized by him and his household for their own consumption; (D) for AFDC, any amounts paid by a State IV–A agency from State-only funds to meet needs of children receiving AFDC, if the payments are made under a statutorily-established State program which has been continuously in effect since before January 1, 1979; (E) for AFDC, income tax refunds (except the earned income credit (EIC) portion) but such payments shall be considered as resources; and (F) at State option, small nonrecurring gifts, such as those for Christmas, birthdays and graduations, not to exceed $30 per recipient in any quarter.

* * * * *

7. Section 233.20 is amended by revising paragraph (a)(3)(xiv) to read as follows:

§ 233.20 Need and amount of assistance.

(a) * * *
(3) * * *

(xiv) For AFDC, in States that do not have laws of general applicability holding the stepparent legally responsible to the same extent as the natural or adoptive parent, the State agency shall count as income to the assistance unit the income of the stepparent (i.e., one who is married, under State law, to the child's parent) of an AFDC child who is living in the household with the child after applying the following disregards (exception: if the stepparent is included in the assistance unit, the disregard under paragraph (a)(11) (i) and (ii) of this section apply instead:

(A) The first $75 of the gross earned income of the stepparent if he or she is employed full-time. The State agency shall have in place a procedure under which it determines and applies a disregarded amount less than $75 for stepparents who are not employed on a full-time basis or not employed throughout the month;

(B) An additional amount for the support of the stepparent and any other individuals who are living in the home, but whose needs are not taken into account in making the AFDC eligibility determinations except for sanctioned individuals or individuals who are required to be included in the assistance unit but have failed to cooperate and are or could be claimed by the stepparent as dependents for purposes of determining his or her Federal personal income tax liability. This disregarded amount shall equal the State's need standard amount for a family group of the same composition as the stepparent and those other individuals described in the preceding sentence;

(C) Amounts actually paid by the stepparent to individuals not living in the home but who are or could be claimed by him or her as dependents for purposes of determining his or her Federal personal income tax liability; and

(D) Payments by such stepparent of alimony or child support with respect to individuals not living in the household.

* * * * *

8. Section 233.20 is amended by revising paragraph (a)(4)(ii)(*h*) to read as follows:

§ 233.20 Need and amount of assistance.

(a) * * *
(4) * * *
(ii) * * *

(*h*) Payments to applicants or recipients participating in the Volunteers in Service to America (VISTA) Program, except that this disregard will not be applied when the Director of ACTION determines that the value of all such payments, adjusted to reflect the number of hours such volunteers are serving, is equivalent to or greater than the minimum wage then in effect under the Fair Labor Standards Act of 1938, or the minimum wage under the laws of the States where the volunteers are serving, whichever is greater. (Section 404(g) of Pub. L. 93–113, as amended by section 9 of Pub. L. 96–143);

* * * * *

9. Section 233.20 is amended by adding a new paragraph (a)(4)(ii)(*l*) to read as follows:

§ 233.20 Need and amount of assistance.

(a) * * *
(4) * * *
(ii) * * *

(*l*) Benefits paid to eligible households under the Low Income Home Energy Assistance Act of 1981 pursuant to section 2605(f) of Pub. L. 97–35;

* * * * *

10. Section 233.27 is amended by revising paragraph (b)(2) to read as follows:

§ 233.27 Supplemental payments under retrospective budgeting.

* * * * *

(b) * * *

(2) The agency may include as income cash in hand or available in bank accounts. It may also include as income any cash disregarded in determining need or the amount of the assistance payment, but not cash payments that are disregarded by section 233.20(a)(4)(ii), paragraphs (c) on relocation assistance,

(d) on educational grants or loans and (g) on payments for certain services.

11. Section 233.90 is amended by revising paragraph (a)(1) to read as follows. The introductory text of paragraph (a) is shown for the convenience of the reader.

§ 233.90 Factors specific to AFDC.

(a) *State plan requirements.* A State plan under title IV–A of the Social Security Act shall provide that:

(1) The determination whether a child has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or (if the State plan includes such cases) the unemployment of his or her parent who is the principal earner will be made only in relation to the child's natural or adoptive parent, or in relation to the child's stepparent who is married, under State law, to the child's natural or

* * * * *

12. Section 233.90 is amended by revising paragraphs (c)(2)(i) and (c)(2)(ii) to read as follows:

§ 233.90 Factors specific to AFDC.

* * * * *

(c) * * *

(2) Federal financial participation is available in:

(i) Initial payments made on behalf of a child who goes to live with a relative specified in section 406(a)(1) of the Social Security Act within 30 days of the receipt of the first payment, provided payments are not made for concurrent period for the same child in the home of another relative or as foster care under title IV–E;

(ii) Payments made for the entire month in the course of which a child leaves the home of a specified relative, provided payments are not made for a concurrent period for the same child in the home of another relative or as foster care under title IV–E; and

* * * * *

13. Section 233.100 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 233.100 Dependent children of unemployed parents.

(a) Requirements for State Plans. If a State wishes to provide AFDC for children of unemployed parents, the State plan under title IV–A of the Social Security Act must:

* * * * *

14. Section 233.100 is amended by removing paragraphs (a)(7) and (a)(8):

15. Section 233.100 is amended by removing and reserving paragraph (b) as set forth below:

16. Section 233.100 is amended by revising paragraphs (c)(1)(iv) and (c)(1)(v) to read as follows:

§ 233.100 Dependent children of unemployed parents.

* * * * *

(c) * * *

(1) * * *

(iv) Whose parent who is the principal earner (*a*) has six or more quarters of work (as defined in paragraph (a)(3)(iv) of this section) within any 13-calendar-quarter period ending within 1 year prior to the application for such aid, (*b*) within such 1-year period, received unemployment compensation under an unemployment compensation law of a State or of the United States, or was qualified (under the terms of paragraph (a)(3)(v) of this section) for such compensation under the State's unemployment compensation law; and

(v) Whose parent who is the principal earner (*a*) is currently registered with the WIN program unless exempt or is registered with the public employment office in the State if exempt from WIN registration under § 224.20(b)(6) or because there is no WIN program in which he can effectively participate; and (*b*) has not refused to apply for or accept unemployment compensation with respect to any week for which such child's parent qualifies for unemployment compensation under an unemployment compensation law of a State or of the United States.

* * * * *

17. Section 233.100 is amended by revising paragraph (c)(2)(i) to read as follows:

§ 233.100 Dependent children of unemployed parents.

* * * * *

(c) * * *

(2) * * *

(i) For any part of the 30-day period specified in paragraph (a)(3)(i) of this section;

* * * * *

18. Section 233.110 is revised as set forth below:

§ 233.110 Foster care maintenance and adoption assistance.

(a) *State plan requirements.* A State plan under title IV–A of the Social Security Act must provide that the State has in effect a plan approved under Part E, title IV of the Social Security Act, and operates a foster care maintenance and adoption assistance program in conformity with such a plan.

PART 234—[AMENDED]

Part 234 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 234 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 234.11 is amended by revising the section heading and by removing and reserving paragraph (b) as follows:

§ 234.11 Assistance in the form of money payments.

* * * * *

(b) [Reserved.]

3. Section 234.60 is amended to revise paragraph (a)(2)(ii) to read as follows:

§ 234.60 Protective, vendor and two-party payments for dependent children.

(a) * * *

(2) * * *

(ii) States will establish criteria to determine if mismanagement exists. Under this provision, States may elect to use as one criterion a presumption of mismanagement based on a recipient's nonpayment of rent.

* * * * *

4. Section 234.60 is amended to remove and reserve paragraph (a)(6) as follows:

§ 234.60 Protective, vendor and two-party payments for dependent children.

(a) * * *

(6) [Reserved]

* * * * *

5. Section 234.60 is amended by revising the introductory text of paragraph (a)(9) to read as follows:

§ 234.60 Protective, vendor and two-party payments for dependent children.

(a) * * *

(9) Review will be made as frequently as indicated by the individual's circumstances, and at least once every 12 months, of:

* * * * *

6. Section 234.60 is amended by revising paragraph (a)(11) to read as follows:

§ 234.60 Protective, vendor and two-party payments for dependent children.

(a) * * *

(11)(i) Opportunity for a fair hearing pursuant to section 205.10 will be given to any individual claiming assistance in relation to the determination:

(A) That a protective, vendor, and two-party payment should be made or continued.

(B) As to the payee selected.

(ii) In cases where the agency has elected the option to presume mismanagement based on a recipient's nonpayment of rent pursuant to paragraph (a)(2)(ii), the agency may also elect the option to provide the opportunity for a fair hearing pursuant to § 205.10 either before or after the manner or form of payment has been changed for these cases.

* * * * *

PART 235—[AMENDED]

Part 235 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 235 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302).

2. The Table of Contents of Part 235 is amended by removing and reserving § 235.40:

PART 235—ADMINISTRATION OF FINANCIAL ASSISTANCE PROGRAMS

3. Section 235.40 is removed and reserved as follows:

§ 235.40 [Reserved.]

PART 237—[AMENDED]

Part 237 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 237 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302).

2. Section 237.50 is amended by revising paragraph (b)(3)(ii) to read as follows:

§ 237.50 Recipient count, Federal financial participation.

* * * * *

(b) * * *

(3) * * *

(ii) As used in paragraph (b)(3)(i) of this section, the term "parent" means the natural or adoptive parent, or the stepparent who was married under State law to the child's natural or adoptive parent and is legally obligated to support the child under State law of general applicability which requires stepparents to support stepchildren to the same extent that natural or adoptive parents are required to support their children; and the term "spouse" means an individual who is the husband or wife of the child's own parent, as defined above, by reason of a legal marriage as defined under State law.

* * * * *

3. Section 237.50 is amended by revising paragraph (b)(4) to read as follows:

§ 237. Recipient count, Federal financial participation.

* * * * *

(b) * * *

(4)(i) When at least one of the children in a family is eligible due to the unemployment of his or her parent who is the principal earner in the home, the recipient count may include all eligible children, the parent who is the principal earner and spouse with whom the children are living, if the needs of such parent and spouse were included in computing the assistance payment.

(ii) For purposes of paragraph (b(4)(i) of this section, the definitions of the terms "parent" and "spouse" as specified in paragraph (b)(3)(ii) of this section are applicable.

* * * * *

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 221

Blanket Approval for Bareboat Charters of Recreational Vessels to Noncitizens, Sales to Noncitizens and Transfers to Foreign Registry or Flag of Vessels Under 200 Gross Tons

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD) is issuing this final rule under section 9 of the Shipping Act (Act), 1916 (46 U.S.C. 808). That provision makes it unlawful, without the approval of the Secretary of Transportation, to transfer to a noncitizen a vessel or other interests in a vessel owned by U.S. citizens that is documented, or was last documented under U.S. laws. This final rule extends the scope of an existing regulation at 46 CFR 221.7 to grant a general approval, not to exceed six months, to bareboat charters and subcharters to noncitizens of United States vessels that are U.S.-documented to be operated only for recreation. It also grants general MARAD approval of the sale to noncitizens, as well as the transfer to foreign registry or flag, of all vessels under 200 gross tons.

EFFECTIVE DATE: This rule is effective April 17, 1986.

FOR FURTHER INFORMATION CONTACT: Mrs. Jessie Fernanders, Ship Disposals and Foreign Transfers Officer, Maritime Administration, Washington, DC 20590, Telephone (202) 426-5821.

SUPPLEMENTARY INFORMATION:

Background

On September 30, 1985, MARAD published in the **Federal Register** (50 FR 39737) a notice of proposed rulemaking (NPRM). The NPRM proposed two amendments to regulations at 46 CFR Part 221. Those regulations implement a statutory requirement, under 46 U.S.C. 808, that the Secretary of Transportation approve all vessel sales or the transfer of other interests in a vessel, owned by U.S. citizens, that is documented, or was last documented under U.S. laws. The Secretary has delegated this approval authority to MARAD.

Under the existing regulation at 46 CFR 221.7, MARAD grants a general approval, not to exceed six months, of vessel charters to noncitizens. This general approval specifically excludes bareboat charters, charters for the carriage of cargoes to Cuba and specified Communist countries in eastern Europe and southeast Asia, and charters for operation in the fisheries of the United States. A bareboat charter is one where the charterer takes possession of the vessel and exercises direct control over the actual operation of the vessel.

This rule finalizes the proposal to expand the general approval to include bareboat charters and subcharters to noncitizens of U.S. vessels that are documented for recreational purposes and that will be operated only for recreation by the bareboat charterer or subcharterer.

The other amendment proposed in the NPRM and adopted in this final rule grants approval under 46 U.S.C. 808 of the sale to noncitizens, and/or the transfer to foreign registry or flag, of all vessels under 200 gross tons. There is no existing provision in 46 U.S.C. Part 221 that grants a general approval, under 46 U.S.C. 808, of sales to noncitizens and/or the transfer to foreign registry or flag of U.S. vessels.

Bareboat Charters and Subcharters of Recreational Vessels

MARAD proposed the amendment expanding the general approval of charters to recreational vessels at the informal request of vessel owners and their representatives that are in the business of chartering for recreational operation vessels that are documented solely for such use under U.S. laws administered by the Coast Guard.

Owners and operators of recreational vessels receive many charter requests

from noncitizens. These requests for recreational vessel charters are usually for immediate use, and in many cases, for very brief periods of time. A majority of the potential charter opportunities arise on short notice. Since obtaining the prior MARAD approval required under section 9 of the Act typically takes anywhere from 30 to 90 days, the vessel owners and operators have to reject most charter requests by noncitizens. Being unable to comply with 46 U.S.C. 808, they lose chartering opportunities and suffer financial injury. The alternative to rejecting a profitable vessel chartering opportunity is to charter without prior MARAD approval. This is a violation of the Act that subjects the owner to a fine which could amount to $5,000, or to imprisonment of up to five years, or both. Violation of the Act also subjects the vessel to forfeiture to the United States. Thus, many of the recreational vessel charterers are forced to choose between loss of customers and the risk of losing the vessels which are their principal assets.

Based on conservative estimates and assumptions set forth in the NPRM, MARAD determined that its existing approval requirement for bareboat charters to noncitizens could be responsible for lost chartering opportunities representing an annual loss of income of as much as $10.1 million to recreational boat owner/operators. Further, elimination of the required filing fee could save charter boat operators as much as $22.7 million. Elimination of the application process could save MARAD up to $7.3 million, which represents the cost of reviewing 87,600 applications for charter approvals. These calculations are based on estimated maximum costs and on the assumption that for all chartering transactions involving noncitizens, applications for prior approval would be filed with MARAD.

Sales of Vessels to Noncitizens

The NPRM also proposed a new § 221.8 that would grant general approval of the sale to noncitizens, or the transfer to foreign registry or flag, of a vessel of under 200 gross tons owned by a U.S. citizen and presently documented, or last documented under U.S. laws. MARAD proposed this amendment after determining that there is insufficient benefit to MARAD, administrative or otherwise, to be derived from an approval process with estimated annual costs of over $31,000 to an estimated 176 applicants, and of $15,000 to MARAD. Also, there have been negative economic consequences, to both the buyer and seller, during the period consumed by the approval process, that has taken from a minimum of 30 days, to as many as 90 days. The economic consequences include loss of revenue and reduction in business good will.

Discussion of Comments

MARAD received comments from 55 persons, all of whom supported this rulemaking action. Four of these comments concerned the general approval of sales of vessels under 200 gross tons to noncitizens. All the comments were strongly supportive of the proposed provision for general approval of bareboat charters and subcharters of recreational vessels.

Whenever the commenters estimated the percentage of potential business lost because of the inability to quickly and freely charter to noncitizens, the typical range of their estimate was between 10 to 20 percent of all charter opportunities. One Maine commenter stated that about 10 percent of its actual charters were to noncitizens, "particularly, Canadians," and that "at times we lose sales or charters due to the time required for processing an application." Another charterer in Florida commented that her company and other chartering companies are "forced to turn down hundreds of quality foreign charter clients each year." This charterer stated that the losses of the charterers, combined with revenue lost by U.S. airlines, hotels, restaurants and shops, has had an enormous economic impact. Another Florida charterer estimated that, because of the existing charter approval requirement, the yacht chartering business has lost two weeks of charters per month for every year it has operated, which translates into a revenue loss for that business of over $218,000.

For another yacht charterer in Florida, the "red tape" involved in applying for MARAD approval of noncitizen bareboat charters, estimated at 20 percent of its charter applications, has dictated its policy of not accepting any charter requests from noncitizens. This commenter stated that "based on last year's charter revenues, this loss factor results in $30,000 worth of potential charter revenues." A U.S.-owned corporation that owns or is the agent for over 135 vessels from Caribbean and South Pacific bases, measuring from 39 to 51 feet, as well as 12 fully-crewed larger yachts, commented that it has decided to restrict all marketing efforts for bareboat charters to U.S. yachtsmen in the United States. This decision was made to protect itself and its boat owners from penalty. It estimated a loss of charter revenue for 1985 of $1 million by excluding noncitizen applicants.

One charterer estimated an annual loss in charter revenues of $50,000 at its fleet locations in Boston, Fort Lauderdale and St. Thomas, VI. A yacht charterer in Florida commented on being forced to turn down a significant number of noncitizens, particularly Canadians, representing about 10 weeks of charter business valued at $14,500. Another yacht charterer estimated that he turns away 15 to 20 percent of his total charter applicants because they are noncitizens, at a cost of $15,000 annually, further stating that this estimate of lost business does not include those who do not call because "they are aware of the law."

There were also other more specific comments. One commenter noted that MARAD's proposal to deregulate the approval process for bareboat charters to noncitizens of recreational vessels is negated by U.S. Coast Guard requirements that there be a U.S. master on board all U.S.-documented vessels at all times. (46 U.S.C. 12110). He recommended that the Coast Guard facilitate implementation of MARAD's intent administratively under its authority to compromise, modify, or remit, with or without condition, any civil penalty (46 U.S.C. 2107) until the Congress acts to change the law that the Coast Guard implements through regulation.

As stated in the NPRM, the proposed general approval amendments relate only to MARAD's responsibilities under existing law with respect to transfers of vessels and vessel interests to noncitizens. It would have no effect upon the laws and regulations governing vessel documentation and operations that are administered by any other Federal agency. This requirement is within the exclusive authority of the Coast Guard and any requests for administrative action regarding implementation of that authority should be directed to the Coast Guard.

Another commenter who is a yacht broker, as well as a charterer, criticized a "legal requirement" that, to be eligible for U.S. documentation, a vessel must be owned by U.S. citizens (46 U.S.C. 12102), since U.S. financial institutions prefer that a vessel be U.S.-documented in order to obtain preferred status for mortgage purposes. He stated that he has lost potential clients because they were unable to finance purchases of U.S. vessels that were not eligible for U.S. documentation under statutory provisions implemented by the Coast Guard.

The legal requirements for vessel documentation and the vessel financing policies of financial institutions are

subjects that are beyond the scope of this rulemaking.

An owner/operator of a bareboat charter company in St. Thomas, Virgin Islands, supported the rulemaking, but thought that any MARAD regulation on this subject should be further liberalized to: (1) Extend the period of charter approval to 12 months to save both MARAD and the chartering companies time and trouble; and (2) Make the approval applicable to the fleet operated by a charterer, rather than to individual vessels, in view of the cost of $250 per boat for approval.

MARAD does not believe that either of these proposed amendments should be adopted. Irrespective of the chartering season's length, which varies with the climate and weather conditions, it has been our experience that there is a very low incidence of applications for charters for periods in excess of six months. With respect to the fleet approval recommendation, this general approval accomplishes the objective of this commenter, i.e., since the prior approval provision of the proposed rule would apply to each vessel in the fleet, and is not limited to names of specific vessels, it is effectively a fleet approval.

A law firm commenting in behalf of several U.S.-flag charter fleet operators contended that the documentation of a vessel for recreation only should not be a condition for a general approval of a bareboat charter if the vessel is actually chartered only for recreational use. It stated that many vessels that are currently in the charter fleet have been registered, i.e., documented for commercial use in the foreign trade of the United States, in order that they may qualify for investment tax credit under section 48(a) of the Internal Revenue Code, as interpreted by regulations of the Internal Revenue Service and a memorandum decision of the Tax Court of the United States. That commenter argued that the use of the vessel during the charter should be controlling and that the proposed regulation be amended to delete the requirement that a vessel be documented recreational, and require only that the vessel be chartered "to be operated personally by the charterers for recreation only."

MARAD's principal intention in proposing the amendments with respect to bareboat charters was to eliminate an impediment to the conduct of business activities by charterers of small yachts that are primarily intended for recreational purposes, and have been documented as such. Accordingly, MARAD has not incorporated this commenter's proposed amendment in the final rule.

The four comments on the general approval of sales of vessels under 200 gross tons support that amendment. One stated that the amendment "would welcome the avoidance of the filing fee and the time delay in accomplishing the sale." A commenter cited as an example of the consequences of delay in the existing MARAD approval process its inability to draw on a $1.2 million letter of credit for two weeks. It further states that "this proposed rule will enhance our ability to export vessels and could significantly contribute to the recovery of our depressed markets." Another commenter stated that countries without a delay of the type that is inherent in MARAD's existing sales approval process for noncitizens enjoy an advantage in the export market.

Although supporting adoption of the proposed amendments, another Federal agency questioned the selection of a vessel size under 200 gross tons as qualification for a general approval of a sale. The agency argued that most vessels are under that size, under any circumstances. It also recommended that MARAD continue to collect information about the transfer of fishing vessels in order that it could monitor the extent of such activity. MARAD chose 200 gross tons as an upper limit because its experience has shown that the great majority of vessel transfers involve vessels under 200 gross tons. With respect to information collection, MARAD has balanced the need for such information against the burden imposed, and has decided not to impose such a requirement.

E.O. 12291, Statutory Requirements and DOT Procedures

MARAD has made a determination that this final rule is not a major rule under Executive Order 12291. Pursuant to Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), this is a nonsignificant regulation. The economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary.

While this proposed amendment will have some positive impact on small businesses, MARAD anticipates that its primary impact will be on individual owners of recreational boats. Accordingly, the Maritime Administrator certifies that the rulemaking will not exert a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (Pub. L. 96–354). These amendments include amended requirements for the collection of information (Section 221.7(b)), within the scope of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), that have been submitted to the Office of Management and Budget (OMB) for approval. This amendment will cause a large reduction of the existing reporting burden, since it will eliminate an estimated 87,600 applications annually. The basic information collection approval number is OMB Control No. 2133–0006.

List of Subjects in 46 CFR Part 221

Banks, Banking, Charter Citizenship and Naturalization, Foreign Transfer, Maritime Administration, Maritime carriers, Reporting and record keeping requirements, Uniform System of Accounts.

Accordingly, 46 CFR Part 221 is amended as follows:

PART 221—[AMENDED]

1. The authority citation for Part 221 continues to read as follows:

Authority: Secs. 9, 41 and 43, Shipping Act, 1916, as amended (46 U.S.C. 808, 839, 841(a); 49 CFR 1.66.

§ 221.7 [Amended]

2. In paragraph (a)(1) of 46 CFR 221.7, add the following parenthetical phrase before the final period: "(other than bareboat charters or bareboat subcharters of vessels documented recreational and to be operated personally by the charterer for recreation only)."

3. Revise paragraph (b) of 46 CFR 221.7 to read as follows:

* * * * *

(b) Not later twenty (20) days after the beginning of a charter period, the vessel owner or owner's representative shall file with the Maritime Administration a copy of any charter which is approved under paragraph (a) of this section (except a bareboat charter or bareboat subcharter of a vessel documented recreational to be operated personally by the charterer for recreation only). The Maritime Administration may grant a request for an extension of time to file such charter or other agreement. The vessel owner or bareboat charterer (or a representative) who charters a documented recreational vessel to a person not a citizen of the United States, which vessel is to be used personally by the charterer or subcharterer for recreation only, shall retain a copy of such charter for a period of one (1) year after the expiration date, and shall make it available for inspection upon request by the Maritime Administration or its designee.

* * * * *

4. A new § 221.8 is added to read as follows:

§ 221.8 Approval of vessel sale to noncitizens; transfer to foreign registry.

(a) The Maritime Administration hereby approves under sections 9 and 41 of the Shipping Act, 1916, as amended (46 U.S.C. 808, 839), the sale to a noncitizen, and/or the transfer to foreign registry or flag, of a vessel of under 200 gross tons that is owned by a United States citizen and is either documented or was last documented under United States laws. Pursuant to 46 U.S.C. 883, 12106, the sale to a noncitizen and/or the transfer to foreign flag or registry of a vessel terminates the right of such vessel to engage thereafter in the coastwise trade.

(b) The approvals granted in paragraph (a) of this section shall not apply if the vessel's purchaser, or a person (including a corporation or other entity) with a controlling interest in the vessel's purchaser, is a national of Iran, Libya the Union of Soviet Socialist Republics, Latvia, Lithuania, Estonia, Czechoslovakia, Bulgaria, Albania, North Korea, German Democratic Republic (including East Berlin), Laos, Kampuchea, Vietnam, Outer Mongolia, or Cuba, unless such national has been lawfully admitted into, and resides in the United States; and such national does not remove the vessel from the territorial limits of the United States. Also, the approvals shall not apply if the vessel is to be transferred to or placed under the flag of any such country. This list of countries shall be subject to change periodically to conform to the laws and foreign policy of the United States.

Dated: March 13, 1986.

By Order of the Maritime Administrator.

Georgia P. Stamas,

Secretary, Maritime Administration.

[FR Doc. 86-5891 Filed 3-17-86; 8:45 am]

BILLING CODE 4910-81-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84-231; FCC 86-76]

Increasing the Availability of FM Broadcast Assignments

AGENCY: Federal Communications Commission.

ACTION: Summary of Reconsideration of Final Rule.

SUMMARY: This *Memorandum Opinion and Order* denies in part and grants in part various petitions for reconsideration of the *Second Report and Order* in MM Docket No. 84-231. In the *Second Report and Order* (50 FR 15558, April 19, 1985), the Commission added a new attribute under the comparative hearing criterion of securing the best practicable service which would enhance the integration proposal of daytime-only AM licensees applying for FM channels in the same community. The Commission affirmed its determination to award special consideration and that the weight accorded to upgraded enhancement credit should be equal to the credit given for local residence or minority ownership. In addition, the Commission retained the requirement that the credit was only available in the community of license and that the daytime-only licensee would be required to divest within three years of program test authority for the FM station. The Commission also clarified that an applicant for purposes of being granted the special consideration would be the licensee, as an entity and that the term "substantial participation" meant that members of the entity holding cognizable ownership interests spent at a minimum 20 hours per week in the management of the daytime-only station. In order to provide more certainty, the Commission determined that the applicant had to demonstrate that it had owned the daytime-only station for three continuous years prior to filing its application.

EFFECTIVE DATE: March 31, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Robert E. Branson, Mass Media Bureau (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Summary of Memorandum Opinion and Order

In the Matter of Implementation of BC Docket No. 80-90 to Increase the Availability of FM Broadcast Assignments; [MM Docket No. 84-231].

This is a summary of the Commission's *Memorandum Opinion and Order*, MM Docket 84-231.

Adopted February 10, 1986.

Released February 21, 1986.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC dockets branch (room 230), 1919 M Street, Northwest, Washington, D.C. The complete test of this decision may also be purchased from the Commission's

copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, Northwest, Suite 140, Washington, DC. 20037.

The Commission affirmed and clarifed its *Second Report and Order* in this proceeding, which granted special consideration to daytime-only AM licensees when applying for FM broadcast allotments in their community of license and which established the system by which we would begin to accept applications for the 689 recently allotted FM channels. The Commission also concluded that its action in this proceeding rendered moot the National Black Media Coalition's "Motion for Expedited Treatment," with respect to its Petition for Reconsideration, its "Motion for Stay" and "Motion for Expedited Treatment" of that Motion.

Specifically, the Commission determined that daytime-only broadcasters do represent a unique class of licensees. Among other things, they are the only licensees who historically have been unable to provide nighttime service to their community of license. While other licensees, such as Class IV's and other full time AM broadcasters claim that they suffer detriments as well, the Commission continues to believe, that none have been subject to the same degree of limitations on their operations as the daytime-only licensee. As a result of actions by this Commission, most Class IV AM stations were able to increase their nighttime power from 250 watts to 1000 watts. This increase in power has helped them offer effective service at night. Although a small number of other AM stations operate with a lower nighttime power (typically 250 watts) these stations have nighttime protection and thus are able to provide a reliable service. The Commission also noted that as a result of its separate action in the *Report and Order* in MM Docket No. 84–281, many daytime-only broadcasters on the foreign clear channels have been authorized to operate with some level of limited nighttime power. Where the nighttime authority utilized is less than 250 watts of power, such nighttime service is given secondary status. Operating at this level is below the normal minimum nighttime power and the operator is forced to broadcast without signal protections. In these circumstances, the Commission determined it to be in the public interest that these broadcasters continue to be treated as daytime-only licensees for these purposes and be afforded the same upgraded enhancement credit. Accordingly, the Commission concluded that any daytime-only station that, as a result of MM Docket No. 84–281, has accepted authorization to operate at less than 250 watts nighttime power will be eligible for grant of the special consideration. Licensees operating at night with 250 watts or more are full time stations entitled to full time protection and thus, will not be entitled to the credit.

With respect to the weight to be accorded the daytime-only upgraded enhancement credit, the Commission stated that it continues to believe that the correct balance was struck in determining the weight of the special consideration vis-a-vis other comparative factors. In this regard, the Commission noted that it has and continues to support minority ownership of broadcast stations. To this end the Commission awards comparative merit for minority ownership. Similarly, local residence is a comparative criterion upon which the Commission places reliance in choosing between applicants. Enhancement credit for local residence is awarded because "[p]articipation in station affairs . . . by a local resident indicates a likelihood of continuing knowledge of changing local interests and needs." The Commission also is concerned with the plight of the daytime-only broadcaster and sought means to increase its service to its community of license. Weighing these three factors, the Commission determined that the credit accorded the daytime-only licensee should equal the credit given for minority ownership or the credit for local residence.

In light of the weight accorded the upgraded enhancement factor, the Commission deemed it appropriate to establish certain prerequisites. The Commission stated it continued to believe that these conditions are necessary to assure that the benefits upon which the grant is to be based are in fact realized. The decision to grant special consideration was in large part based upon the Commission's belief that these prerequisites reasonably serve to assure the Commission that an applicant will operate the FM facility in the public interest. With respect to the requirement that the credit is only available in the daytime-only licensee/applicant's community of license, the Commission noted that while the daytime-only licensee does in fact often serve surrounding communities, it was the service to the community of license upon which the Commission had determined that the licensee deserved special consideration. Likewise, the Commission's determination to require divestiture was based on the record of this proceeding, Commission policy and

Congressional concerns about diversity. The Commission concluded that in light of its diversification policy it was appropriate that it retain the divestiture requirement where the AM daytime-only licensee wishes to receive an upgraded enhancement credit. Although petitioners suggested many alternatives to divestiture, the Commission determined that none of these would accomplish its diversity concerns as well as divestiture within the three year period.

The Commission clarified the term applicant for purposes of being granted the credit. Specifically, it determined that only the licensee, as an entity, should be eligible for grant of the special consideration. Grant of the special consideration, in situations where individual members of the entity apply, could create administrative problems and thwart our goals in awarding special consideration. In this regard, the Commission noted that if it allowed various factions from the daytime-only facility to be granted the upgraded enhancement credit, the Commission would have difficulty determining which party, in fact, deserved the special consideration. Moreover, the Commission deemed it appropriate to grant the credit solely to the licensee since it was this business enterprise that provided the service to its community of license upon which the Commission based its decision to grant special consideration.

In addition, the Commission clarified what level of participation in the daytime-only station is needed to meet the condition that the applicant have substantially participated in the operation of the daytime-only facility. In this regard the Commission stated that use of the term "substantial participation" in this context relates to the actual past participation in station operations by supervisory personnel whereas integration is based on the amount of proposed future involvement by owners in the management of the station. Upon consideration of its policy objectives, the Commission concluded that to satisfy this requirement, the applicant is not obligated to prove full time participation in the daytime-only facility. The licensee/applicant, however, is required to demonstrate that members of the entity holding cognizable ownership interests spent more than 20 hours per week (either individually or in the aggregate) participating in the management of the daytime-only facility during the three year period.

Finally, the Commission addressed Humes' suggestion that it alter the requirement that the applicant operate the daytime-only station for three continuous years prior to hearing designation for the FM allotment. Upon examination of this condition, the Commission determined that it would be more appropriate to require that the applicant have operated the daytime-only station for three continuous years prior to filing an application for the FM channel. The application stage would allow for more certainty for applicants concerned about when the Commission might designate the FM station for comparative hearing. In this regard, the Commission noted that the application deadline is less susceptible to delay caused by other interested parties. Lastly, the Commission clarified that for purposes of the "three continuous years" requirement the daytime-only licensee must have operated that station in same community as the FM for the entire three year period. Additionally, the Commission determined that NAB's request that it waive the three continuous years as a daytime-only licensee requirement, for the licensees on foreign clear channels if they experiment with nighttime power, should be denied to further the efficient use of this authorization.

Accordingly, it is ordered, That the Petitions for Reconsideration and/or Clarification filed in this docket by Committee for Community Access, WCSV, Inc., Humes Broadcasting Corporation, DAE Broadcasting Company, the National Black Media Coalition, Sarasota-Charlotte Broadcasting Corporation and Crittenden County Broadcasting Company, Inc., William O. Barry, Hancock Communications, Inc., and the National Association of Broadcasters are granted to the extent indicated herein, and in all other respects, are denied.

It is further ordered, That this action is effective March 31, 1986.

Authority for this action is contained in sections 4(i), 301, 303, 308, 309, and 405 of the Communications Act of 1934, as amended, and § 1.429 of the Commission's rules.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-5815 Filed 3-17-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 255

[Docket No. 60102-6002]

Financial Aid to Fisheries; Fisheries Obligation Guarantee Program

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

ACTION: Final rule.

SUMMARY: NOAA issues this rule revising Fisheries Obligation Guarantee Program regulations in order to comply with Office of Management and Budget (OMB) Circular No. A-70. This rule complies with A-70 by increasing the Program's income and decreasing Program risk.

EFFECTIVE DATE: March 18, 1986.

FOR FURTHER INFORMATION CONTACT: Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, Room 312, Page Building 2, 3300 Whitehaven St., NW., Washington, DC 20235, telephone 202-634-7496.

SUPPLEMENTARY INFORMATION: The Fisheries Obligation Guarantee Program, authorized by Title XI of the Merchant Marine Act 1936, as amended, 46 U.S.C. 1271 *et seq.* (the "Act"), authorizes a Federal guarantee of the debt portion of the cost of constructing, reconstructing, reconditioning, or (under limited circumstances) purchasing fishing vessels and fisheries shoreside facilities.

The Agency is authorized by the Act and current Program regulations, 50 CFR 255, to guarantee 100 percent of financings representing up to 87½ percent of the cost of such vessels or facilities. A-70 requires that guarantees be restricted to no more than 80 percent of such financings in those cases where authorizing legislation does not prohibit guarantees of less than 100 percent. The Commerce Department's General Counsel has determined that Title XI does not require guarantees of 100 percent. Consequently, the amount which this Program will guarantee is reduced by this rule revision from 100 percent to 80 percent of the debt involved. Thus, the amount to be guaranteed by the Federal government will be reduced to 70 percent of the cost of the vessel or facilities. All Program applications received after December 9, 1985, will be subject to the new rule in this respect.

A-70 also requires agencies to recover, from guarantee fees, administrative costs plus projected losses. This rule, consequently, raises the Program's guarantee fee for all new financings from ¾ of 1 percent to 1 percent, the maximum allowable by the Act.

A-70 also prohibits Federal financing programs from subordinating their claims on borrowers' assets to other lenders. This Program currently requires primary collateral positions on financings involving new construction, but allows secondary positions, subordinate to primary lenders, where reconstruction or reconditioning financing is involved. This rule revision requires primary collateral positions in return for all new Program financings, regardless of the nature of the project (i.e., new construction, reconstruction, reconditioning, etc.).

This rule revision makes four major changes in the Program:

(1) Program guarantees are restricted to 80 percent of the debt involved;

(2) The application-filing and commitment fee is raised to the statutory maximum of ½ of 1 percent (it presently is ½ of 1 percent on the first $2,000,000 of a proposed financing and ¼ of 1 percent on all amounts over $2,000,000); and

(3) The guarantee fee is raised to its statutory maximum of 1 percent (it is presently ¾ of 1 percent for normal risks); and

(4) Primary collateral positions are required in return for Program financings of all projects.

Classification

The NOAA Administrator determined that this rule revision is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. It is not major within that context because it does not significantly affect the economy, costs or prices, competition, employment, investment or productivity.

This rule revision is not required to be issued as a proposed rule subject to the notice and comment requirements of the Administrative Procedure Act (APA), 5 U.S.C. 553, because it relates to benefits or contracts. Matters "relating to . . . loans, benefits, or contracts" are excepted from the APA, 5 U.S.C. 553(a)(2). The Regulatory Flexibility Act does not apply to this rule because it is not required to be issued as a proposed rule by the APA or any other act or law.

The rule imposes no new collection of information requirement for the purposes of the Paperwork Reduction Act. It continues existing requirements which have been approved by the Office of Management and Budget under control number 0648-0012.

This action does not require an environmental impact analysis because it is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02-10.

The Agency determined that this rule does not directly affect the coastal zone of any state with an approved coastal zone management program.

The Catalog of Federal Domestic Assistance number is 11.410.

List of Subjects in 50 CFR Part 255

Fisheries, Fishing vessels, Fisheries shoreside facilities, Financing, Business.

Dated: March 13, 1986.

J.W. Angelovic,

Deputy Assistant Administrator for Science and Technology.

For the reasons stated in the preamble, 50 CFR Part 255 is amended as follows:

PART 255—[AMENDED]

1. The authority citation for Part 255 is revised to read as follows:

Authority: 46 U.S.C. 1271-1279.

2. Section 255.6(b) is revised to read as follows:

§ 255.6 Guarantee limits, debt maturities, and interest rates.

* * * * *

(b) *Guarantee limits.* The Program shall guarantee 80 percent of financings representing no more than 87½ percent of the actual cost or depreciated actual cost of construction, reconstruction, reconditioning, or (where eligible) purchase of fishing vessels or fisheries shoreside facilities. On a case-by-case basis for vessels or facilities previously guaranteed under the Program, the Program may guarantee 100 percent of financings representing up to 87½ percent of the cost of the vessels or facilities.

* * * * *

4. Section 255.10(a) is revised to read as follows:

§ 255.10 Collateral.

(a) *Mortgages.* The Programs will require a primary pledge, not subordinate to any other party, of the property being financed by the Program guarantee, unless such a primary pledge is available on substitute collateral of equal or greater value. Secondary pledges will be allowed, at the Program's discretion, on supplementary collateral.

* * * * *

5. In § 255.10, paragraph (c), which duplicates the provisions of § 255.7, is removed and paragraphs (d) and (e) are redesignated (c) and (d), respectively.

6. Section 255.12 is revised to read as follows:

§ 255.12 Fees.

(a) *Filing and commitment fees.* The Program's filing and commitment fee will be ½ of 1 percent of the principal amount of the Program guarantee for which application is made. The fee is due at the time an application is submitted, and no application for guarantee will be accepted unless the full filing and commitment fee accompanies it. The filing fee is 50 percent of the filing and commitment fee, and once an application for a guarantee is accepted, no portion of the filing fee will be returned for any reason. The commitment fee is the remaining 50 percent of the filing and commitment fee, and is returnable only if a refund is requested before the Program issues an Approval in Principle letter or if the application is declined.

(b) *Guarantee fee.* The Agency guarantee fee is 1 percent of the average unpaid principal balance of the debt obligation for which the guarantee is outstanding during each year of the life of the guarantee. The guarantee fee is due in advance based upon the debt obligation's amortization schedule. The first annual guarantee fee is due at closing of the guarantee. Each subsequent annual guarantee fee is due on the anniversary date of the closing of the guarantee. No refund of guarantee fees will be made regardless of the status of the financing or the guarantee during the year to which the guarantee fee relates.

(c) *Refinancing/assumption fee.* The Program's refinancing/assumption fee for financings already guaranteed under the Program (other refinancing applicants will be charged fees under paragraph (a) of this section) is ¼ of 1 percent of the principal amount of the debt obligation to be refinanced or assumed, and is due upon application for a guarantee for refinancing/assumption. The refinancing/assumption fee is nonreturnable regardless of the subsequent disposition of an application. The Chief, Financial Services Division, may however:

(1) Waive the refinancing/assumption fee where the refinancing/assumption is primarily to protect the Program's interest, or

(2) Charge an actual cost fee, where the refinancing/assumption does not substitute a wholly different obligor for the initial obligor.

(d) *Where payable.* Fees should be paid by check made payable, and mailed, to: "NMFS/FSFF", U.S. Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 73004, Chicago, Ill. 60673.

[FR Doc. 86-5917 Filed 3-17-86; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 52
Tuesday, March 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Ch. III

Use of Federal Rules of Evidence in Federal Agency Adjudications

Correction

In FR Doc. 86-5424 beginning on page 8328 in the issue of Tuesday, March 11, 1986, make the following corrections:

1. On page 8328:

a. In the first column, under **ADDRESS,** the name of Richard K. Berg was misspelled.

b. In the same column, under **SUPPLEMENTARY INFORMATION,** in the fifth line, "of the use" should read "on the use"

c. In the second column, in the third line, remove "the".

d. In the same column, in the sixth line "practicable" was misspelled.

e. In the same column, in the last line before the footnote, "Presiding" was misspelled.

f. In the third column, in the twenty-fifth line from the bottom, "circumstances" was misspelled.

2. On page 8329:

a. In the first column, in paragraph 3, in the ninth line, "discretion" was misspelled

b. In the same column, in paragraph 4, in the eighth line, "assist" was misspelled

c. In the second column, in paragraph 1, in the fourth line, "It is" should read "Is it"

d. In the same column, in paragraph 3, in the third line, "statute" was misspelled.

e. In the same paragraph, in the seventh line "of" should read "or".

BILLING CODE 1505-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 842 3274]

Blue Lustre Home Care Products, Inc., Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, an Indianapolis, Ind. manufacturer and marketer of chemical products and equipment for home and car care, to cease making unsubstantiated efficacy claims for "Rinsenvac 5", a carpet cleaning fluid sold to retailers in connection with the sale of rental do-it-yourself carpet cleaning machines.

DATE: Comments will be received until May 19, 1986.

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

FOR FURTHER INFORMATION CONTACT: FTC/B-407, Toby M. Levin, Washington, DC 20580. (202) 376-8648.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Carpet cleaning fluid, Trade practices.

Agreement Containing Consent Order to Cease and Desist

In the Matter of Blue Lustre Home Care Products, Inc., a corporation; File No. 842 3274.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Blue Lustre Home Care Products, Inc., and it now appearing that Blue Lustre Home Care Products, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Blue Lustre Home Care Products, Inc., its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Blue Lustre Home Care Products, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 7950 Castleway Drive, in the City of Indianapolis, State of Indiana.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

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

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

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

circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent: (1) Issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

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

Order

I

It is ordered that respondent Blue Lustre Home Care Products, Inc., a corporation, its successors and assigns, and respondent's officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any carpet cleaning product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting, in any manner, directly or by implication, the contents, validity, results, conclusions, or interpretations of any test or study.

B. Representing in any manner, directly or by implication, any performance characteristic, including any comparative performance of any carpet cleaning product, unless at the time of such representation respondent possesses and relies upon a reasonable basis for such representation, consisting of competent and reliable evidence which substantiates such representation; provided, however, that to the extent such evidence consists of any test, experiment, analysis, research, study or other evidence based on the expertise of any professional, such evidence shall be "competent and reliable" only if the test, experiment, analysis, research, study or other evidence is conducted and evaluated in an objective manner by a person qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results; and provided further, that for the purposes of this paragraph, testing conducted in accordance with the protocol ASTM D 3050–75 of the American Society of Testing and Materials shall not constitute competent and reliable evidence to substantiate any performance representation for any carpet cleaning product.

II

It is further ordered that for three years from the date that the representations are last disseminated, respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials relied upon to substantiate any claim or representation covered by this order; and

B. All test reports, studies, surveys or other materials in its possession or control that contradict, qualify, or call into question such representation or the basis upon which respondent relied for such representation.

III

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations under this Order.

IV

It is further ordered that the respondent shall, within sixty (60) days after service of this Order upon it and at such other times as the Commission may require, file with the Commission a written report setting forth in detail the manner and form in which it has complied or intends to comply with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Blue Lustre Home Care Products, Inc. (Blue Lustre).

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

The Commission's complaint in this matter charges Blue Lustre with disseminating advertisements containing false, misleading, and unsubstantiated representations concerning Blue Lustre's carpet cleaning product, Rinsenvac 5. The complaint challenges Blue Lustre's claims that Rinsenvac 5 cleans carpets better in cold water than other steam cleaners do in hot water and that it removes several times more dirt from carpets than two competitors' products. These claims are alleged to be false and unsubstantiated and therefore deceptive because: (1) The test used to substantiate the claims was based on a test protocol, American Society for Testing and Materials (ASTM) D 3050–75, that is inappropriate for those purposes; and (2) certain other carpet cleaning products had actually performed better than Rinsenvac 5 in the test. The complaint also alleges that Blue Lustre falsely represented that the test proves Rinsenvac 5 cleans better.

The consent order contains provisions prohibiting Blue Lustre from making future misrepresentations and

unsubstantiated claims about its carpet cleaning products. Part I of the order prohibits Blue Lustre from misrepresenting any study or test, and requires the company to have a reasonable basis, consisting of competent and reliable evidence, for representations of performance characteristics of any carpet cleaning product. The order specifies that ASTM D 3050–75, the test Blue Lustre used to support the claims the Commission challenges, does not constitute competent and reliable evidence to substantiate performance claims for carpet cleaning products.

Part II of the order requires Blue Lustre to maintain and upon request make available to the Commission all materials that it relied upon to substantiate any representation covered by the order, or which calls into question any such representation. Part III of the order requires Blue Lustre to notify the Commission of any proposed change in its corporate structure. Part IV requires Blue Lustre to file a compliance report within sixty (60) days after service of this Order.

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

Emily H. Rock,

Secretary.

[FR Doc. 86–5853 Filed 3–17–86; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

Social Security Benefits; U.S. Residence Requirements for Non-Resident Aliens and Deductions for Work Outside the U.S.

Correction

In FR Doc. 86–4571, beginning on page 7452, in the issue of Tuesday, March 4, 1986, make the following corrections:

1. On page 7453, first column, twelfth line, after the word "or" insert "(4)".

2. On page 7454, second column, in § 404.460(d)(1)(ii), third line, after the word "each" insert "have".

BILLING CODE 1505–01–M

Food and Drug Administration

21 CFR Parts 606, 610, and 640

[Docket No. 85N–0032]

General Biological Products Standards, Additional Standards for Human Blood and Blood Products; Serologic Test for Antibody to Human T-Lymphotropic Virus Type III (HTLV-III)

Correction

In FR Doc. 86–3820, beginning on page 6362, in the issue of Friday, February 21, 1986, make the following corrections:

1. On page 6364, first column, under B, third paragraph, thirteenth line, "whire" should read "white".

2. On page 6368, third column, in § 640.72(a)(2), fifth line, "640.5" should read "640.65".

BILLING CODE 1505–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 630

[FHWA Docket No. 86–6]

Agreement Provisions Regarding Overruns in Contract Time

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FHWA is requesting comments on proposed revisions to its regulation contained in 23 CFR Part 630 concerning the assessment of liquidated damages on projects where a contractor overruns the contract time. The revised regulations would require each State highway agency (SHA) to keep liquidated damage provisions current so that the amounts recovered through contractor assessments would at a minimum cover the SHA's average daily construction engineering (CE) cost attributable to the contract time overrun. In addition, the FHWA rate table presently in the regulation would be removed, and the provisions for the FHWA recovery of costs would be modified.

DATE: Comments must be received on or before May 2, 1986.

ADDRESS: Submit written comments, preferably in triplicate, to Federal Highway Administration, FHWA Docket No. 86–6, Room 4205, HCC–10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments and suggestions received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., ET Monday through Friday. Those persons desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Myers, Construction and Maintenance Division, Telephone: (202) 426–0392; or Mr. Hugh T. O'Reilly, Office of Chief Counsel, Telephone: (202) 426–0780. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: It is standard operating practice for an SHA to set a time period or limit in which the contractor is to complete the project work. If the contractor overruns this initial time period, and any approved extensions, liquidated damages are to be assessed to recoup the delay-related loss to the SHA.

The current regulation (23 CFR 630.305) prescribes agreement provisions regarding overruns in contract time and provides guidance on the amount of these assessments. However, this guidance has remained unchange since December 1975. At that time, the rate table included in the rule was identical to the table found in the 1972 edition of the American Association of State Highway and Transportation Officials (ASSHTO) *Guide Specifications for Highway Construction.*[1] The figures included in these 1972 tables represented an estimate of the nationwide average CE costs to the SHA. Since that time, CE costs have risen significantly; however, the FHWA rate table has not been updated to take account of the increases. The AASHTO subsequently revised its Guide Specifications in 1979, and increased the rates by an inflationary factor of 1.5. No change was made in the 1984 edition; however, further changes are being considered for future editions.

During audit reviews in several regions of the country, personnel from the Department of Transportation Office of Inspector General (OIG) found that liquidated damage provisions in use by several of the SHAs were not allowing for the full recovery of CE costs due to contractor caused overruns. In several instances, it was found that amounts being assessed were only ⅓ to ½ of the actual incurred CE costs that were attributable to a contract time overrun.

[1] The *Guide Specifications for Highway Construction*, 1984, is published by and available for purchase from the American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol Street, NW., Washington, D.C. 20001.

Many of the provisions were based on either the FHWA or the AASHTO rates.

The FHWA Washington Headquarters subsequently alerted its field offices of the OIG findings and requested that further discussions be held with the SHAs concerning the adequacy of these provisions. In a related informal survey of the State standard specifications, it was found that 16 SHAs still had liquidated damage contract provisions similar to the 1975 FHWA rate table.

The FHWA agrees that the current rate table found in the regulations is outdated and may not allow for full recovery of extra CE costs associated with contract time overruns. While the regulation allows the SHAs to set higher rates based upon CE costs in their States, there has been some reluctance to increase the rates significantly from the FHWA or AASHTO amounts. The FHWA is also aware that a nationwide rate table does not provide adequate guidance to the SHAs concerning liquidated damage assessments for their States. For these reasons, and because it is difficult to update and maintain an ever changing table in a regulatory format, it is being proposed to delete the table from the regulation and, in its place, require each SHA to maintain its own rate schedule(s). It is also proposed to require the rates to be reviewed periodically and updated, as appropriate. The FHWA feels that this is a SHA responsibility and would ultimately provide for better recovery of additional costs attributable to a contract time overrun.

The proposed regulation also addresses the use of liquidated damages to cover anticipated delay-related costs above and beyond those attributed to CE. Such costs to the SHA are those that could be reasonably anticipated if a delay were to occur in project completion, such as costs resulting from winter shutdown, retaining detours for an extended time, or additional demurrage. The amounts would be specified separately in the contract documents to permit a separate accounting of net CE costs to the project for Federal participation purposes.

The portion of the current regulation dealing with the FHWA recovery of the pro rata share of the assessed liquidated damages has been modified slightly in the proposed rule to address cases where assessments include more than CE expense factors. There is also a change concerning how the liquidated damages are credited to the project when the FHWA did not participate in the cost of CE. Whereas the current regulation indicates the amount of liquidated damages is to be credited to the federally participating cost of contract construction before calculating the Federal share, the proposed rule would allow the recovery of the SHA's CE costs first. This revision will correct an inequity in the present regulation.

The proposed regulation would require the SHA's liquidated damage provisions to be approved by the FHWA. By law, all specifications and special provisions have to be approved by the FHWA before use on a Federal-aid project. The only additional "burden" on the SHA will be the periodic review of their CE cost data to determine that the liquidated damage figures are adequate. The FHWA feels this is a SHA responsibility and should be a routine management task.

In addition to the regulatory changes, a definition of incentive/disincentive clauses is added to § 630.302.

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. The proposed revisions will improve the current undesirable situation that has developed and should provide for increased awareness by the SHA of the project related CE costs. Since there is no substantive change in the FHWA approach or procedures concerning liquidated damage assessments, it is anticipated that this action will not have a significant economic impact. Accordingly, for the foregoing reasons and under the criteria of the Regulatory Flexibility Act, it is certified that this action, if promulgated, will not have a significant impact on a substantial number of small entities and that the preparation of a full regulatory evaluation is not required.

In consideration of the foregoing, the FHWA proposes to amend Part 630, Subpart C of Chapter I of Title 23, Code of Federal Regulations as set forth below.

(Catalog of Federal Domestic Assistant Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

List of Subjects in 23 CFR Part 630

Government contracts, Grant programs—Transportation, Highways and roads, Project agreement provisions.

Issued on: March 12, 1986.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

PART 630—PRECONSTRUCTION PROCEDURES

Subpart C—Project Agreements—[Amended]

The Federal Highway Administration (FHWA) proposes to amend Part 630, Subpart C of Chapter I of Title 23, Code of Federal Regulations, as follows:

1. The authority citation for Part 630 continues to read as follows:

Authority: 23 U.S.C. 101(a), 104, 109, 110, 113, 115, 120(f), 121(c), 125, 315, and 320; 23 CFR 1.32; 49 CFR 1.48(b), unless otherwise noted.

2. Section 630.302 is amended by redesignating paragraphs (h), (i), and (j) as (i), (j), and (k), respectively, and by adding a new definition "incentive/disincentive clause" as paragraph (h) as follows:

§ 630.302 Definitions.

* * * * *

(h) The term "incentive/disincentive clause," as used in this subpart, describes a contract provision which reimburses the contractor a certain amount of money for each day the work is completed ahead of schedule and makes a deduction for each day the contractor overruns the completion date. Its use is primarily intended for those projects where traffic inconvenience and delays are to be held to a minimum. The amounts are based upon estimates of such items as traffic safety and motorist delay costs.

* * * * *

3. Section 630.305 is revised to read as follows:

§ 630.305 Agreement provisions regarding overruns in contract time.

(a) Each State highway agency (SHA) will establish specific liquidated damage rates applicable to projects in that State. The rates may be project-specific or may be in the form of a table or schedule developed for a range of project costs or project types. These rates will, as a minimum, be established to cover the average daily construction engineering (CE) costs associated with the type of work encountered on the project. The amounts will be assessed by means of deductions, for each calendar day or workday overrun in contract time, from payments otherwise due to the contractor for performance in accordance with the contract terms.

(b) The rates established will be subject to FHWA approval either on a project-by-project basis, in the case of project-specific rates, or on a periodic basis after initial approval where a rate table or schedule is used. In the latter case, the SHA will periodically review its cost data to ascertain if the rate table/schedule closely approximates the average daily CE costs associated with the type and size of the projects in the State. Where rate schedules or other means are already included in the SHA specifications or standard special provisons, verification by the SHA that the amounts are adequate must be submitted to the FHWA for review and approval. After initial approval by the FHWA of the rates, the SHA will be required to review the rates no less often than every 2 years and provide updated rates, if necessary, for FHWA approval. If updated rates are not warranted, documentation of this fact is to be sent to the FHWA for review and acceptance.

(c) If the FHWA so chooses, additional amounts to cover other anticipated costs of project-related delays or inconveniences to the SHA may be included as liquidated damages in each contract. Costs resulting from winter shutdowns, retaining detours for an extended time, additional demurrage, or similar costs may be included. However, these amounts are to be shown separately from the CE amounts.

(d) In addition to the liquidated damage provisions, the SHA may also include incentive/disincentive clauses in the contract to stimulate work completion and to compensate for increased or decreased road user costs resulting from an increased or decreased contract time period. The incentive/disincentive amounts shall be shown separately from the liquidated damage amounts.

(e) When there has been an overrun in contract time, the following principles apply to determine the reduction in the amount of SHA cost of a project that is eligible for Federal-aid reimbursement:

(1) Where CE costs are claimed as a participating item based upon actual expenses incurred or where CE costs are not claimed as a participating item, and where the liquidated damage rates cover only CE expenses, the total CE costs for the project shall be reduced by the assessed liquidated damage amounts prior to figuring any Federal pro rata share payable. If the amount of liquidated damages assessed is more than the actual CE totals for the project, a proportional share of the excess is to be deducted from the federally participating contract construction cost before determining the final Federal share.

(2) Where the SHA is being reimbursed for CE costs on the basis of an approved percentage of the participating construction cost, the total contract construction amount that would be eligible for Federal participation shall be reduced by a proportion of the total liquidated damage amounts assessed on the project.

(3) Where liquidated damages inlcude extra anticipated non-CE expenses to the SHA due to contractor caused delays, the amount that is assessed is to be used to pay for the actual expenses incurred by the SHA, and if a Federal participating item(s), to reduce the Federal share payable for that item(s). If the amount assessed is more than the actual expenses incurred, a proportional share of the excess is to be credited to the federally participating contract construction cost of the project before the Federal share is figured.

(4) The proportional shares are to be figured as the ratio of final contract construction costs eligible for Federal participation to the final total contract construction costs of the project.

(f) Where incentive/disincentive clauses are used in the contract, a proportion of the increased project costs due to any incentive payments to the contractor are to be added to the federally participating contract construction cost before calculating the Federal share. Where the disincentive portion is applicable, a proportional share of the amount assessed is to be credited to the participating contract construction cost before Federal share calculation. Proportions are to be calculated in the same manner as shown in paragraph (e)(4) of this section.

[FR Doc. 86-5933 Filed 3-17-86; 8:45 am]
BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

Reopening and Extension of Public Comment Period on a Proposed Amendment to the Iowa Permanent Regulatory Program

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

ACTION: Reopening and extension of public comment period.

SUMMARY: By letters dated July 25 and 26, 1985, Iowa submitted proposed program amendments concerning certification and training of blasters, a penalty schedule for violation assessment, and modification of permit requirements and inspections. OSMRE published a notice in the **Federal Register** on October 25, 1985, announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (50 FR 43411).

Following a review of the Iowa amendments, OSMRE notified the State on January 13, 1986, of its concerns about the amendments. On February 13, 1986, the State responded by submitting a letter clarifying the amendments. On March 4, 1986, the State submitted further clarification.

Accordingly, OSMRE is reopening and extending the comment period on Iowa's July 25 and 26, 1985 amendments as modified on February 13, and March 4, 1986. This action is being taken to provide the public an opportunity to reconsider the adequacy of the proposed amendment.

DATES: Written comments, data or other relevant information relating to this rulemaking not received on or before 4:30 p.m., April 2, 1986, will not necessarily be considered in the Director's decision.

ADDRESSES: Written comments, should be mailed or hand delivered to Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, Professional Building, Room 502, 1103 Grand Avenue, Kansas City, Missouri 64106; Telephone: (816) 374-5527.

Copies of the Iowa program, the proposed amendment and modification to the amendment, and all written comments received in response to this notice will be available for public review at the OSMRE Field Office listed above and at the OSMRE Headquarters Office and the Office of State regulatory authority listed below, during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendment by the contacting OSMRE's Kansas City Field Office.

Office of Surface Mining Reclamation and Enforcement, Room 5315A, 1100 "L" Street, NW., Washington, DC 20240

Iowa Department of Soil Conservation, Mines and MInerals Division, Wallace State Office Building, Des Moines, Iowa 50319.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office, Professional Building, Room 502, 1103 Grand Avenue, Kansas

City, Missouri 64106; Telephone: (816) 374–5527.

SUPPLEMENTARY INFORMATION: .

I. Background

The Iowa program was conditionally approved by the Secretary of the Interior on January 21, 1981 (46 FR 5885). The approval was made effective April 10, 1981. Information pertinent to the general background, revisions, modifications, and amendments to the Iowa program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Iowa's program can be found in the January 21, 1981 **Federal Register**.

II. Proposed Amendment

By letters dated July 25, and 26, 1985, Iowa submitted proposed program amendments consisting of:

1. Amendments to IAC Chapter 4 rules for Iowa's Coal Regulatory Program requiring payment of all reclamation fees from previous and existing operations as required by section 402 of SMCRA; modifying the provision for a presiding officer of contested case hearings; correcting the requirements for local filing of permit applications—permit applications will be availabe for public inspection in the county recorder's office; clarifying the provision for incidental boundary changes allowing a total of 20 acres of incidental boundary changes over the life of the permit; modifying requirements for frequency and type of inspections including inactive operations and aerial inspections and establishing the standards for extension of abatement periods for notices of violations beyond 90 days.

2. An amendment establishing IAC Chapter 26 "Blaster Training, Examination and Certification of Coal Mines." This chapter establishes the requirements and the procedures applicable to the development of regulatory programs for training, examination, and certification of persons engaging in or directly responsible for the use of explosives in surface or underground coal mining operations.

3. The Iowa submission included a final rule IR 780–4.61(83) "Penalty Schedule". This was approved by the Office of Surface Mining on May 24, 1985 (50 FR 21440). The changes made to this rule are only minor editorial ones. Therefore, it was not reproposed in the **Federal Register**, but was placed in the Administrative Record.

OSMRE announced receipt of the amendment and initiated a public comment period on October 25, 1985 (50 FR 43411). The comment period closed on November 25, 1985.

During review of the amendments, OSMRE identified several concerns. The concerns involved how aerial inspections were to be counted, the definition of inactive surface coal mining and reclamation operations, and some of the provisions of the blaster training program. OSMRE notified Ohio about these concerns by letter dated January 13, 1986. On February 13, 1986, the State responded providing clarification and explanation of these concerns by letter. On March 4, 1986, the State sent another letter of clarification to OSMRE.

The full text of the proposed amendment and of the subsequent material is available for review at the locations listed above under **"ADDRESSES"**. OSMRE is now seeking public comment on the adequacy of Iowa's July 25 and 26, 1985 amendments in light of the February 13, 1986 and March 4, 1986 modifications. If the Director determines that the proposed amendment is no less stringent than SMCRA and no less effective than the Federal regulations, the amendment will be approved and become part of the approved permanent program.

List of Subjects in 30 CFR Part 915

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

Dated: March 12, 1986.

H. Leonard Richeson,

Acting Assistant Director, Program Operations.

[FR Doc. 86–5894 Filed 3–17–86; 8:45 am]

BILLING CODE 4310–05–M

POSTAL SERVICE

39 CFR Part 111

Post Office Box Fee Group Application

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposd rule change is designed to simplify post office box fee groups in noncity delivery (NCD) offices. The NCD offices have experienced difficulty in administering two or three different fee groups for the same post office box service This proposed rule change will provide that all NCD offices charge only the Group 2 fees. These fees average 76 percent less than the regular Group 1 fees charged at city delivery offices. No changes are proposed to the assignment of Group 3 fees at Community Post Office (CPOs). Certain other minor editorial changes are also proposed.

DATE: Comments must be received on or before April 17, 1986.

ADDRESS: Written comments should be mailed or delivered to the Director, Office of Mail Classification, Rates & Classification Department, Attn: Special Services Division, Room 8430, 475 L'Enfant Plaza, Washington, DC 20260–5371. Copies of all written comments will be available for photocopying between 9 a.m. and 4 p.m. Monday through Friday in Room 8430 at the above address.

FOR FURTHER INFORMATION CONTACT: F.E. Gardner, (202) 268–5178.

SUPPLEMENTARY INFORMATION: Although exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. of 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed amendments of the Domestic Mail Manuel, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C 552(a); 39 U.S.C. 101, 401, 404, 407, 408, 3001–3011, 3201–3219, 3403–3405, 3621; 42 U.S.C. 1973cc–13, 1973cc–14.

PART 951—POST OFFICE BOX (P.O. BOX) SERVICE

2. In 951.2, revise .221, .222, .23 and .24 to read as follows:

* * * * *

951.2 Fees.

* * * * *

951.22 Fee Groups.

.221 General Provisions

Customers at all facilities under the administration of the same post office are subject to the same post office box fees applicable at the main office. This includes any post office which has been discontinued and reestablished as a station or branch of another post office.

.222 Fee Group Application

a. Group 1 Fees

(1) Customers at all facilities of city delivery post offices who are eligible for any kind of delivery by postal carrier will be charged Group 1 fees. Customers may use one box at Group 2 fees if they

are ineligible for any kind of delivery by postal carrier.

(2) All customers who receive mail at a mail processing facility which is not under the administration of a post office must pay Group 1 fees.

b. Group 2 Fees

Customers at noncity delivery (NCD) offices will be charged Group 2 fees.

c. Group 3 Fees

Customers at Community Post Offices (CPOs) will be charged the flat Group 3 fee.

.23 Changes in Fees

Revised post office box fees may be required by a general fee change, by a change in carrier services, or by a change in the status of a postal facility. Revised post office box fees are effective on the date of the action which caused the change, unless another date is specified in an official announcement. If a post office box fee is increased, no customer will be required to pay at the new rate until the end of the period, (annual or semiannual), for which they have already paid.

.24 General Delivery

Customers who are eligible to use a post office box at Group 2 fees, but who, in fact, do not use a box, may receive no more than one separation is general delivery without time limit. Customers who are not eligible to use a post office box at Group 2 fees may not receive general delivery for periods longer than 30 days except as provided in 953.

* * * * *

PART 952—CALLER SERVICES

3. In 952, revise .124 and .222b(2) to read as follows:

952.124 Caller Service at Group 2 Noncity Delivery Offices Is Available Only as Provided by 952.222b(2).

* * * * * * *

952.222 b(2) Caller service will be provided for Group 2 non-city delivery offices only if a customer desires delivery through a post office box and either no post office box or no post office box of appropriate size is available. In that event, a single box number will be assigned and caller service proivided. The caller fee will be the same amount as the box fee for the largest box at the facility. Regular caller service fees are charged for any additional separations requested.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 86-5850 Filed 3-17-86; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50541; FRL-2987-2]

Substituted Benzenes, Halogenated; Proposed Determination of Significant New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for chemical substances which were the subject of premanufacture notices (PMNs) P-84-660 and P-84-704, and a TSCA section 5(e) consent order issued by EPA. The Agency believes that these substances may be hazardous to human health and that the uses described in this proposed rule may result in significant human or environmental exposure.

DATE: Written comments should be submitted by May 19, 1986.

ADDRESS: Since some comments are expected to contain confidential business information, all comments should be sent in triplicate to: Document Control Officer (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. E-209, 401 M St., SW., Washington, DC 20460.

Comments should include the docket control number OPTS-50541. Non-confidential versions of comments received on this proposal will be available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in Rm. E-107 at the address given above. For further information regarding the submission of comments containing confidential business information, see Unit XIII of this preamble.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm E-543, 401 M St., SW., Washington, DC 20460.

Toll Free: (800-424-9065),
In Washington, D.C.: (545-1404),
Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule, after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines a use to be a significant new use, persons must, under section 5(a)(1)(B) of TSCA, submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. Such a notice is subject generally to the same requirements and procedures as a PMN submitted under section 5(a)(1)(A) of TSCA which are interpreted at 40 CFR Part 720, published in the **Federal Register** of May 13, 1983 (48 FR 21722). In particular, these include the information submission requirements of section 5(b) and (d)(1) of TSCA. In addition, such notices are subject to the regulatory authorities of section 5 (e) and (f) of TSCA. If EPA does not take regulatory action under section 5, 6, or 7 of TSCA to control activities on which it has received a SNUR notice, section 5(g) of TSCA requires the Agency to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR Part 707. Persons who intend to import a substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. The EPA policy in support of the import certification requirements appears at 40 CFR Part 707.

II. Applicability of General Provisions

EPA promulgated general provisions applicable to SNURs under 40 CFR Part 721, Subpart A published in the **Federal Register** of September 5, 1984 (49 FR 35011). Interested persons should refer to that document for a detailed discussion of the general provisions. EPA is proposing that these general provisions apply to this SNUR without change except as discussed in this preamble and set forth in § 721.135a.

III. Summary of This Proposed Rule

The chemical substances which are the subject of this proposed rule are identified generally as substituted

benzenes, halogenated. They were the subject of PMNs P–84–660 and P–84–704. EPA is proposing to designate the following as significant new uses of these substances:

1. Use other than as allowed under the terms of the section 5(e) Consent Order issued for the two substances.

2. Manufacturing or importing an aggregate volume of P–84–660 for the uses allowed in the section 5(e) Consent Order greater than that permitted the PMN submitter under the terms of the order.

3. Any manner or method of disposal associated with any use of the substances other than removal from waste streams by carbon bed filtration where the substances are either incinerated with the carbon in a waste incinerator, destroyed during the regeneration of the carbon, or landfilled along with the carbon in a facility permitted under the Resource Conservation and Recovery Act.

4. Any manner or method of manufacturing, importing, or processing associated with any use of the substances without establishing a program whereby:

a. Any person who may be dermally exposed to the substances must wear:

i. Gloves determined to be impervious to the substances.

ii. Clothing which covers any other exposed areas of the arms, legs, and torso.

iii. Chemical safety goggles or equivalent eye protection.

b. Any person who may be exposed to the substances as a vapor must wear a National Institute for Occupational Safety and Health (NIOSH) approved air supplied, positive pressure respirator, excluding single-use or disposable and air purifying respirators in NIOSH approval category 19C and in accordance with 30 CFR 11.110 Subpart J.

c. Potentially exposed individuals are informed of the possible hazards associated with P–84–660 and P–84–704. Such notification are made as part of a training program at which attendance is recorded and by means of a written statement. Both methods of notification must include the statement as provided under proposed § 721.135a(a)(2)(iv)(c).

d. Labels are affixed to each container of the substances distributed in commerce in accordance with proposed § 721.135a(a)(2)(iv)(D).

e. A material safety data sheet (MSDS) is provided when the substances are distributed in commerce. The MSDS must include, at a minimum, the language specified in proposed § 721.135a(a)(2)(iv)(C), and must specify the requirement for protective equipment under proposed § 721.135a(a)(2)(iv) (A) and (B).

IV. Background

On April 26, 1984, EPA received a PMN which the Agency designated P–84–660. EPA announced receipt of the PMN is the **Federal Register** of May 4, 1985 (49 FR 19114). On May 14, 1984, EPA received a PMN which the Agency designated P–84–704. EPA announced receipt of the PMN in the **Federal Register** of May 25, 1984 (49 FR 22130).

The notice submitter claimed the following as confidential business information (CBI): Company identity, the specific chemical identities, the uses, and the estimated production volumes. Under section 14(a)(4) of TSCA, the Agency may disclose CBI relevant in any proceeding. "[D]isclosure in such a proceeding shall be made in such manner as to preserve confidentiality to the extent practicable without impairing the proceeding." EPA is not convinced that this rulemaking will be so impaired by these claims as to justify disclosure of CBI. Therefore, EPA has decided not to disclose any of the CBI at this time. The Agency specifically requests comment on this approach for the SNUR rulemaking. For purposes of clarity, these substances will be referred to by their PMN numbers.

Based upon analogy to compounds with high lipid solubility and low molecular weight, the Agency has determined that the two substances may be readily absorbed by the skin, lungs, and intestines. Based on animal assays on a structurally analogous chemical, both PMN substances may cause chronic liver and kidney effects. In addition, two other analogues of P–84–660 may cause a variety of nervous system effects as well as reproductive failure and teratogenic effects. Therefore, the Agency has determined that P–84–660 may also cause these effects. Because divulging the specific analogues utilized by the Agency in developing its analysis might compromise the confidential identities of P–84–660 and P–84–704, the Agency has elected not to disclose the specific chemical identity of any analogue.

Based upon the available data, the Agency believes P–84–660 may cause liver, kidney, neurotoxic, reproductive, and teratogenic effects. The Agency also believes that P–84–704 may cause liver and kidney effects. During the review of the PMNs, the Agency concluded that the uncontrolled manufacture, import, processing, distribution in commerce, use, and disposal of the substances may present an unreasonable risk of injury to human health. Therefore, EPA regulated the substances under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects.

EPA concluded that the use of appropriate protective equipment will significantly reduce exposure and potential risks to persons. The Agency negotiated a section 5(e) Consent Order with the notice submitter which requires that the submitter manufacture, import, and process the substances solely for the uses described in the PMNs. The aggregate volume from both manufacturing and importing P–84–660 is limited to a specified volume. During manufacturing and processing, or during response to emergencies or spills, the submitter is required to assure that persons who may be dermally exposed to these substances wear: (a) Gloves which have been determined to be impervious to the substance, (b) clothing which covers any other exposed areas of the arms, legs, and torso, and (c) chemical safety goggles or equivalent eye protection. It also requires that persons who may be exposed to the substances as vapors wear NIOSH-approved category 19C air supplied, positive pressure respirators, excluding single-use or disposable and air purifying respirators in accordance with 30 CFR 11.110. Subpart J. In addition, the submitter is required to label products containing P–84–660 and provide a MSDS to accompany the products when distributed in commerce, and notify persons potentially exposed to both substances through the use of specified warning statements. The Order also prohibits distribution of P–84–704 to others beside the PMN submitter. These requirements will remain in place until data are available to more accurately determine the risks associated with the substances. The Order became effective November 15, 1984.

By issuing a section 5(e) consent order which allows controlled commercial production and distribution of the substances, EPA adopted a regulatory approach which is appreciably less burdensome than an order prohibiting manufacture of the substances until additional data are submitted. At the same time, the section 5(e) consent order protects human health by requiring precautionary controls pending the development of the data needed for a reasoned evaluation of the risks associated with the substances.

Section 5(e) orders apply only to the notice submitter. When the notice submitter commences commercial manufacture of the substances and submits a Notice of Commencement of Manufacture or Import to EPA, the

Agency will add the substances to the TSCA Chemical Substance Inventory. When a substance is listed on the Inventory, other persons may manufacture, import, or process the substance without controls. Therefore, EPA is proposing to designate the uses set forth in paragraph (a)(2) of the proposed § 721.135a as significant new uses so that the Agency can review these uses before they occur.

Through a SNUR, the Agency would ensure that all manufacturers, importers, and processors are subject to similar reporting requirements. In addition, a SNUR would afford EPA the opportunity to review exposure and toxicity information on the substances before a significant new use occurs and, if necessary, take action to ensure that persons will not be exposed to levels of P-84-660 and P-84-704 that are potentially hazardous.

V. Determination of Proposed Significant New Uses

To determine what would constitute significant new uses of these chemical substances, EPA considered relevant information about the toxicity of the substances, potential exposures associated with possible uses (such as uses other than those allowed under the section 5(e) consent order), and the four factors listed in section 5(a)(2) of TSCA. In particular, EPA considered the extent to which potential uses might change the magnitude and duration of exposure of humans to P-84-660 and P-84-704. Based on these considerations, EPA proposes to define the significant new uses of P-84-660 and P-84-704 as set forth in paragraph (a)(2) of the proposed § 721.135a.

EPA has already determined in the section 5(e) Order that unrestricted manufacture, import, processing, distribution in commerce, use, and disposal of the substances may present an unreasonable risk of injury to human health. While such a finding is not necessary to promulgate a SNUR, it strongly supports a determination that the new uses of the substances would be significant.

VI. Recordkeeping

To ensure compliance with this proposed rule and to assist enforcement efforts, EPA is proposing, under its authority in sections 5 and 8(a) of TSCA, that in addition to the requirements in § 721.17, persons who manufacture, import, or process P-84-660 and P-84-704 maintain the following records for 5 years from their creation:

1. Any determination that gloves are impervious to P-84-660 or P-84-704.

2. Names of persons who have attended safety meetings in accordance with proposed § 721.135a(a)(2)(iv)(C), dates of such meetings, and copies of any written information provided in accordance with proposed § 721.135a(a)(2)(iv)(C).

3. Dates of shipments of containers which have been labeled in accordance with proposed § 721.135a(a)(2)(iv)(D), copies of the labels, and the identities of persons to whom they have been shipped.

4. Any names used for P-84-660 and P-84-704 and the accompanying dates of use.

5. Documentation of quantities of P-84-660 which are manufactured and imported, with the accompanying dates.

These recordkeeping requirements would apply to small manufacturers, importers, and processors as well because the small business exemption of section 8 of TCSA is not applicable when the chemical substances which are the subject of the rule also are the subject of a section 5(e) order.

The Agency considered omitting these specific recordkeeping requirements, but believes compliance monitoring for this proposed SNUR would be made more difficult without them. The basis for the Agency's recordkeeping requirements has been set forth in the preambles to previously proposed SNURs. Persons interested in a complete discussion of this issue should read the proposed SNUR for P-83-370 published in the **Federal Register** of January 13, 1984 (49 FR 1753).

VII. Exemptions to Reporting Requirements

EPA has codified general exemption provisions covering SNUR reporting under § 721.19. On a case-by-case basis, the Agency may modify these provisions. However, in this case, the Agency is proposing that § 721.19 apply in its entirety.

EPA issued its final premanufacture notification rules under 40 CFR Part 720, published in the **Federal Register** of May 13, 1983 (48 FR 21722), including § 720.36 which contained detailed rules for the section 5(h)(3) exemption for chemical substances manufactured or imported in small quantities solely for research and development. On September 13, 1983 (48 FR 41132), EPA stayed the effectiveness of § 720.36, among other provisions of the PMN rule, pending further rulemaking to revise the provisions. Revisions of § 720.36 and other provisions were proposed on December 27, 1984 (49 FR 50201). Because § 720.36 was not in effect when EPA codified § 721.19, the Agency relied on the general definition of "small quantities solely for research and development" in § 720.3(cc) and section 5(h)(3) of TSCA to determine whether activities qualify under this exemption. Upon promulgation of a revised § 720.36, EPA intends to amend § 721.19 to adopt the provisions of the revised § 720.36.

Section 721.19(g) of the general SNUR provisions exempts persons from SNUR reporting when they manufacture (the term manufacture includes import) or process the substances solely for export and label the substances in accordance with section 12(a)(1)(B) of TSCA. While EPA is concerned about worker exposure during manufacture and processing of the substances, section 12(a) of TSCA prohibits EPA from requiring reporting of such manufacture or processing. However, such persons would be required to notify EPA of such export under section 12(b) of TSCA (see § 721.7 of the general SNUR provisions). Such notification will allow EPA to monitor manufacture and processing activities which are not subject to significant new use reporting.

The term "manufacture solely for export" is defined in the PMN rule (40 CFR 720.3(s)); an amendment clarifying this definition was proposed on December 27, 1984 (49 FR 50208). The term "process solely for export" is defined in § 721.3 of the general SNUR provisions in a similar fashion. Thus, persons would be exempt from reporting under this SNUR if they manufacture or process the substances solely for export from the United States, under the following restrictions: (1) There is no use of the substances in the United States, except in small quantities solely for research and development; (2) processing is restricted to sites under the control of the manufacturer or processor, respectively; and (3) distribution in commerce is limited to purposes of export. If a person manufactured or processed the substances both for export and for use in the United States, such activity would not be "solely for export" because the manufacture and processing would be for use in the United States regardless of whether any quantity of the substances were later exported.

VIII. Applicability of Proposal to Uses Occurring Before Promulgation of Final Rule

To establish a significant new use rule the Agency must, among other things, determine that the use is not ongoing. In this case, the chemical substances in question have just undergone premanufacture review. When the notice submitter begins manufacture of the substances, the submitter will send

EPA a Notice of Commencement of Manufacture, and the substances will be added to the Inventory. The notice submitter is prohibited by the section 5(e) order from undertaking the activities which the Agency is proposing be designated as significant new uses. Therefore, at this time, the Agency has concluded that these uses are not ongoing. However, EPA recognizes that when the chemical substances subject to this SNUR have been added to the Inventory, they may be manufactured, imported, or processed by other persons for a significant new use as defined in this proposal before promulgation of the rule.

If, after publication of this proposal, someone were to undertake the designated significant new uses, they could argue that the uses are not "new" at the time the rule is promulgated, and therefore not significant new uses. EPA finds that the intent of section 5(a)(1)(B) is best served by determining whether a use is a significant new use as of the proposal date of the SNUR. If uses begun during the proposal period were not considered to be significant new uses, it would be almost impossible for the Agency to establish SNUR notice requirements, since any person could defeat the SNUR by initiating the proposed significant new uses before the rule became final. This is contrary to the general intent of section 5(a)(1)(B).

Thus, if the substances are manufactured, imported, or processed between proposal and promulgation for a proposed significant new use, the Agency will consider such use to be a significant new use if it is retained in the final rule. EPA recognizes that this interpretation may disrupt commercial activities of persons who begin manufacture, import, or processing of the substances for a significant new use during the proposal period. However, this proposal constitutes notice of that potential disruption; persons who commence a proposed significant new use do so at their own risk.

The Agency, not wishing to unnecessarily disrupt the commercial activities of persons who engage in a proposed signficant new use prior to promulgation of a final SNUR, is considering amending Subpart A of 40 CFR Part 721 to allow for advance SNUR compliance (i.e., compliance prior to the date of promulgation). EPA will solicit public comment on an advance compliance exemption when such an exemption is proposed in the **Federal Register**.

IX. Determining When Substances are the Subject of This Proposed Rule

Because the identities of P–84–660 and P–84–704 are confidential, any person who proposes to manufacture or import P–84–660 and P–84–704 is unlikely to know that the substances are on the Inventory and, therefore, is likely to submit a *bona fide* request under either 40 CFR 710.7(e) or 720.25(b) to determine whether the substances are on the Inventory. If EPA determines that the person has a *bona fide* intent to manufacture or import the substances and that the substances the person proposes to maufacture or import are P–84–660 and P–84–704, EPA will inform the person that the substances are subject to this proposal. This will give the person notice of this proposal.

X. Determining When Certain Uses Are Subject to This Proposed Rule

EPA has codified procedures at § 721.6 under which any person who intends to manufacture, import, or process a chemical substance within the generic chemical name identified in this proposed rule would be able to ask EPA whether or not their chemical substance is subject to this SNUR. The process for doing so is very similar to the process required for manufacturers and importers to show a *bona fide* intent to manufacture or import under 40 CFR 710.7(q)(2) of the Inventory Reporting Rules and 40 CFR 720.25(b)(2) of the Premanufacture Notification Rules as published in the **Federal Register** of May 13, 1983 (48 FR 21722). The Agency does not intend to modify these procedures for this proposal.

EPA is proposing two confidential significant new uses in this SNUR: use of both substances other than as allowed in the section 5(e) Order, and production of more than a specified amount of P–84–660. The original notice submitter claimed this information as confidential business information. The Agency is proposing that the allowed uses and the production volume remain confidential in the final rule. For the same reasons that EPA believes it is appropriate to keep specific chemical identity confidential, EPA believes it is appropriate to keep this information confidential to protect the interests of the original notice submitter. EPA specifically requests comments on this issue.

As to determining uses other than those allowed in the section 5(e) Order, EPA would allow the person to show a *bona fide* intent to manufacture or import under § 721.6 and to describe the intended uses. If EPA determined that the person had a *bona fide* intent to manufacture or import one of the substances, EPA would inform the person whether the intented use or uses would be significant new uses under paragraph (a)(2)(i).

EPA is also proposing to reveal the specific production volume allowed in paragraph (a)(2)(ii) of proposed § 721.135a only to a manufacturer or importer who demonstrates a *bona fide* intent to manufacture or import P–84–660 under the procedure in § 721.6 of the general SNUR provisions and who describes an intended use or uses that are identical to uses allowed in the section 5(e) Order. Thus, if the manufacturer or importer is told that P–84–660 is on the Inventory and subject to this SNUR and that the proposed use is one allowed in the section 5(e) Order for P–84–660, the person will also be told the specific volume allowed in paragraph (a)(2)(ii). This will enable the manufacturer or importer to determine whether a SNUR notice will be necessary.

As an alternative to this approach, EPA considered requiring a manufacturer or importer to show not only a *bona fide* intent to manufacture or import the substances and to describe the specific uses, but also to identify the specific production volume the person intends for P–84–660. EPA would then tell the manufacturer or importer whether the volume intended would be significant new use under paragraph (a)(2)(ii). EPA has not adopted this approach for the proposal because the Agency believes it would involve a greater burden on manufacturers and importers potentially subject to the SNUR and would provide little additional confidentiality protection.

XI. Test Data and Other Information

EPA recognizes that under TSCA section 5, persons are not required to develop any particular test data before submitting a notice. Rather, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. However, in view of the potential health risks that may be posed by a significant new use of these substances, EPA believes, as a result of its review of the original PMNs for the chemical substances which are the subjects of this SNUR, that a more reasoned evaluation of the risks posed by these substances would require additional data on potential liver, kidney, neurotoxic, reproductive, and teratogenic effects. These data might be generated by a 90-day subchronic oral study on P–84–660. This study may not be the only means of addressing the

potential risks. Since P–84–704 is structurally similar to P–84–660, it would not be necessary to test it if P–84–660 were tested.

EPA encourages potential SNUR notice submitters to test the substances for these concerns. SNUR notices submitted for significant new uses without such test data will increase the likelihood that EPA will take action under section 5(e). Because the original PMN submitter is required to perform testing when the cumulative production volume reaches a specified level, it would be advisable that potential manufacturers, importers, or processors check with the Agency before undertaking any testing. As part of optional prenotice consultation, EPA will discuss the test data it believes necessary to evaluate a significant new use of the substances.

Test data should be developed according to TSCA good laboratory practices regulations at 40 CFR Part 792. Failure to do so may lead the Agency to find such data to be insufficient to reasonably evaluate the health effects of the substances. EPA encourages persons to consult with the Agency before selecting a protocol for testing the substances. EPA urges SNUR notice submitters to provide detailed information on human exposure that will result from the significant new use. In addition, EPA urges persons to submit information on potential benefits of the substances and information on risks posed by the substances compared to risks posed by substitutes.

XII. Economic Analysis

The Agency has evaluated the potential costs of establishing significant new use reporting requirements for these substances. This evaluation is summarized below. The Agency's economic analysis is available in the public file.

The only direct costs that will definitely occur as a result of the promulgation of this SNUR will be EPA's costs of issuing and enforcing the SNUR. It is estimated that the Agency costs of issuing a SNUR are $10,500–$17,600. While enforcement costs may also be incurred, the Agency cannot quantify them at this time.

Subsequent to promulgating the SNUR, the Agency believes that there would be three possible outcomes for companies that would manufacture, import, process, distribute in commerce, or dispose of the substances. The companies could: (1) Manufacture, import, process, distribute in commerce, or dispose of the substances within the limits of this SNUR; (2) manufacture, import, process, distribute in commerce, use, or dispose of the substances under circumstances requiring the submission of a SNUR notice; or, (3) not manufacture, import, process, distribute in commerce, use, or dispose of the substances. The costs of these outcomes are summarized below.

If a company decides to manufacture, import, process, distribute in commerce, use, or dispose of P–84–660 and P–84–704 within the limits of the SNUR and meets the limited production volume requirements, it will not incur the cost of submitting a SNUR notice. The only cost to the company would be the cost of specific protective equipment, recordkeeping, labeling, and imperviousness determinations. Protective equipment and recordkeeping costs, due to their recurring nature, are calculated as present value cost over an estimated 10-year life of the substances.

The PMN submitter claimed the actual exposure data as CBI. For analytical purposes, EPA has assumed that 10 workers will be exposed to P–84–660 and P–84–704 for 8 hours a day, 250 days per year. Each worker will be required to wear gloves (which are determined to be impervious to the chemcial substances), other protective clothing, chemical safety goggles, and an air-supplied positive pressure respirator, excluding single-use, disposable, and air purifying respirators. Assuming a 10 percent discount rate and a 10-year economic life for the two substances, the present value of outfitting each worker is estimated to cost $5,270 per worker; for 10 workers, the cost would be $52,700. On an annualized basis, these costs may exceed $780 and $7,800 for 1 worker and 10 workers, respectively. Permeation tests to determine if the gloves are impervious to the substances have been estimated to cost $500 per substance per test per substrate (annualized cost of $75). These tests may cost up to $7,000 to $10,000 if different substrates (i.e., different compositions of gloves) are tested (annualized cost of $1,480). To the extent a company is able to extrapolate from previous tests, draw from knowledge of similar types of chemicals, or rely on the glove manufacturer's specification as the basis for determining imperviousness, these costs may be less.

Workers who may be exposed to the two substances as vapors, in addition to the dermal protective equipment, are required to wear NIOSH-approved, category 19c air-supplied, positive pressure respirators. The total present value of supplying the respirator, hose, compressor, pressure reducing equipment, and other miscellaneous equipment has been estimated to cost $2,765 per worker (annualized cost of $410). The present value cost of the required respirators for 10 workers would be $20,720 (annualized cost of $3,065). EPA assumes that the other required protective clothing is standard equipment for every worker regardless of whether or not they work with the substances.

A company would also be required to inform the workers of the hazards associated with the chemical substances with an MSDS, with appropriate warning labels, and as part of a training program in safety meetings. In addition, the company would be required to maintain certain records. The initial cost of the labeling requirements is estimated to be between $135 and $500, which is the cost of developing the label. Other labeling costs are expected to be minimal. The annualized cost of labeling is $75. The present value of the cost of complying with the recordkeeping requirements over a 10-year period is estimated to be $1,520 (the annualized cost is $225).

If the intended production volume by a company exceeds the specific production limitations, or if the company decides to commence a significant new use, it will incur the cost of filing a SNUR notice ($1,400 to $8,000). The submitter may also experience up to a 3.2 percent reduction in profits due to delays in manufacturing, importing, or processing, and the cost of regulatory follow-up, if any.

If the company elects to test for central nervous system, liver, kidney, reproductive, and teratogenic effects, the estimated cost would range between an estimated $95,000 and $140,000, plus the cost of delay (probably a delay in profits of 2.5 to 3.0 years), and the cost of any regulatory follow-up.

Under this outcome, EPA will incur only enforcement costs once the SNUR has been issued.

If a company elects not to manufacture, import, process, distribute in commerce, use, or dispose of P–84–660 and P–84–704 within the limits of the SNUR, it will incur the cost of filing a SNUR notice. If a company decides to test, it will incur: (1) The cost of testing and possibly up to 3.2 percent reduction in profits due to delays in manufacturing or processing; and (2) the cost of any regulatory follow-up.

EPA costs following promulgation of the SNUR would include the cost of reviewing SNUR notices, estimated at $7,100 per notice, and the costs of modifying the terms of the SNUR if the information provided indicates that EPA's concerns would be adequately addressed by use of a different type of

exposure control. This cost is estimated at $8,700.

Some companies could find the cost of controlling exposure and potential testing costs too expensive to justify production, processing, and/or use. Therefore, there would be no direct costs as a result of the SNUR. The companies and society could lose benefits associated with the manufacture, processing, and use of the substances. However, the fact that the original PMN submitter intends to manufacture the substances under the conditions of the section 5(e) consent order indicates that the intended uses of the two substances will still return an acceptable profit under terms of the SNUR.

The Agency has not quantified the benefits of the proposed SNUR. In general, however, benefits will accrue if the proposed action leads to the identification and control of unreasonable risks before significant health effects occur. The proposal and promulgation of the SNUR provide benefits to society by minimizing or eliminating potential health and environmental effects for these chemical substances.

XIII. Confidential Business Information

Any person who submits comments which the person claims as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Any comment not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR Part 2. EPA requests that any party submitting confidential comments prepare and submit a sanitized version of the comments which EPA can place in the public file.

XIV. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS-50541). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received. The record now includes the following:

1. The PMNs for the substances.
2. The Federal Register notices of receipt of the PMNs.
3. The section 5(e) consent order.
4. The economic analysis of this proposed rule.
5. The toxicology support document.
6. The engineering support document.

The Agency will accept additional materials for inclusion in the record at any time between this proposal and designation of the complete record.

EPA will identify the complete rulemaking record by the date of promulgation. A public version of this record containing sanitized copies from which CBI has been deleted is available to the public from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the OTS Public Information Office, Rm. E-107, 401 M St., SW., Washington, D.C.

XV. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed rule is not a "major rule" because it will not have an effect on the economy of $100 million or more, and will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the annual cost of this proposed rule, for the reasons discussed in Unit XII of this preamble, EPA believes that the cost will be low. In addition, because of the nature of the proposed rule and the substances identified in it, EPA believes that there will be few significant new use notices submitted. Further, while the expense of a notice, the suggested testing, and the uncertainty of possible EPA regulation may discourage certain innovation, that impact may be limited because such factors are unlikely to discourage innovation of high potential value. Finally, this SNUR may encourage innovation in safe chemical substances or highly beneficial uses.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small businesses. The Agency cannot determine whether parties affected by this proposed rule are likely to be small businesses. However, EPA believes that few manufacturers, importers, or processors will submit SNUR notices. Therefore, although the costs of preparing a notice under this proposed rule might be significant for some small businesses, the number of such businesses affected is not expected to be substantial.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in the proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2070-0012. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked Attention: Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Recordkeeping and reporting requirements, Significant new uses.

Dated: March 7, 1986.

John A. Moore,

Assistant Administrator, for Pesticides and Toxic Substances.

PART 721—[AMENDED]

Therefore, it is proposed that 40 CFR Part 721 be amended as follows:

1. The authority citation for Part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding new §§ 721.135 and 721.135a to read as follows:

§ 721.135 Substituted benzenes, halogenated.

§ 721.135a Substituted benzenes, halogenated under PMN 84-660 and 84-704.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The following chemical substances, referred to by their Premanufacture Notice numbers and generic chemical name, are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this seciton: P-84-660, and P-84-704, substituted benzenes, halogenated.

(2) The significant new uses are:

(i) Use other than as allowed under the Order issued on November 15, 1984, under section 5(e) of the Act for Premanufacture Notices P-84-660 and P-84-704 (the Order).

(ii) Manufacturing or importing, for the uses allowed under the Order, an aggregate volume of P-84-660 greater than that allowed by the Order.

(iii) Any manner or method of disposal associated with any use of the substances other than removal from waste streams by carbon bed filtration where the substances are either incinerated with the carbon in a waste

incinerator, destroyed during the regeneration of the carbon, or landfilled in a permitted facility under the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

(iv) Any manner or method of manufacturing, importing, or processing associated with any use of the substances without establishing a program whereby:

(A) Any person who may be dermally exposed to the substances must wear:

(*1*) Gloves determined to be impervious to the substances under the conditons of exposure, including the duration of exposure. This determination is made either by testing the gloves under the conditions of exposure or by evaluating the specifications provided by the manufacturer of the gloves. Testing or evaluating the specifications includes consideration of permability penetration and potential chemical and mechanical degradation by the substances and associated chemical substances.

(*2*) Clothing which covers any other exposed areas of the arms, legs, and torso.

(*3*) Chemical safety goggles or equivalent eye protection.

(B) Any person who may be exposed to the substances as a vapor must wear a National Institute for Occupational Safety and Health approved air-supplied, positive pressure respirator, excluding single-use or disposable and air purifying respirators in approval category 19C and in acordance with 30 CFR 11.110, Subpart J.

(C) All persons who may be exposed to the substances are informed in writing, and by presenting the information as part of a training program in safety meetings at which attendance is recorded, by means of the following statement for P–84–660:

WARNING: Avoid contact. Contact with skin and eyes may be harmful. Chemicals similar in structure to [insert appropriate name] have been found to cause liver, kidney, neurotoxic, reproductive, and teratogenic effects in laboratory animals. To protect yourself, you must wear chemical safety goggles, impervious gloves, a respirator, and protective clothing while handling this material.

and the following statement for P–84–704:

WARNING: Avoid contact. Contact with skin and eyes may be harmful. Chemicals similar in structure to [insert appropriate name] have been found to cause liver and kidney effects in laboratory animals. To protect yourself, you must wear chemical safety goggles, impervious gloves, a respirator, and protective clothing while handling this material.

(D) A label is affixed to each container of the substances that may be distributed in commerce which includes a warning statement which consists, at a minimum, of the appropriate language in paragraph (a)(2)(iv)(C) of this section. The first word on the label is capitalized, and the type size for the first word is no smaller than 6 point type for a label 5 square inches or less in area, 10 point type for a label above 5 but no greater than 10 square inches in area, 12 point type for a label above 10 but no greater than 15 square inches in area, 14 point type for a label above 15 but no greater than 30 square inches in area, or 18 point type for all labels over 30 square inches in area. The type size of the remainder of the warning statement is no smaller than 6 point type. All required label text is of sufficient prominence, and is placed with such conspicuousness relative to other label text and graphic material, to insure that the warning statement is read and understood by the ordinary individual under customary conditions of purchase and use.

(E) A Material Safety Data Sheet (MSDS) is provided when the substances are distributed in commerce. The MSDS includes, at a minimum, the appropriate language specified in paragraph (a)(2)(iv)(C) of this section, and specifies the requirement for protective equipment in paragraph (a)(2)(iv)(A) and (B) of this section.

(b) *special Requirements.* The provisions of Subpart A of this Part apply to this section except as modified by this paragraph.

(1) *Determining whether a use is a significant new use.*

(i) a person who intends to manufacture, import, or process one of the substances identified in paragraph (a)(1) of this section may submit to EPA the use for which the person intends to manufacture, import, or process the substance and ask EPA whether that use is a significant new use under paragraph (a)(2)(i) of this section.

(ii) EPA will answer such an inquiry only if it determines that the person has a *bona fide* intent to manufacture, import, or process the substance. To establish a *bona fide* intent to manufacture, import, or process the substance, the person must submit to EPA the information required under § 721.6. If a person intends to manufacture, import, or process a substance described by the generic chemical name in paragraph (a)(1) of this section, but does not know whether the substance is one of the substances identified in paragraph (a)(1) of this section, the person may, in connection with a submission under § 721.6, ask both whether the substance is identified in paragraph (a)(1) of this section and whether the use is a significant new use under paragraph (a)(2)(i) of this section.

(iii) EPA will review the informaion submitted by the person under § 721.6 and this paragraph (b)(1) to determine whether the person has a *bona fide* intent to manufacture, import, or process the substance. If EPA determines that the person has a *bona fide* intent to manufacture, import, or process a substance identified in paragraph (a)(1) of this section, EPA will tell the person whether the use for which the person intends to manufacture, import, or process the substance is a significant new use under paragraph (a)(2)(i) of this section.

(iv) If the person is a manufacturer or importer of P–84–660 and EPA informs the person that the use for which the person intends to manufacture or import P–84–660 would not be a significant new use under paragraph (a)(2)(i) of this section, EPA will inform the person of the aggregate production volume limit identified in paragraph (a)(2)(ii) of this section.

(v) A disclosure to a person with a *bona fide* intent to manufacture, import, or process a substance identified in paragraph (a)(1) of this section that a use is or is not a significant new use under this section will not be considered public disclosure of confidential business information under section 14 of the Act.

(vi) EPA will answer an inquiry as to whether a use is a significant new use under this section within 30 days after receipt for a complete submission under this paragraph (b)(1).

(2) *Recordkeeping.* In addition to the requirements of § 721.17, manufacturers, importers, and processors of the chemical substances identified in paragraph (a)(1) of this section must maintain the following records for 5 years from their creation:

(i) Any determination that gloves are impervious to the substances in accordance with paragraph (a)(2)(iv) of this section.

(ii) Names of persons who attend safety meetings in accordance with paragraph (a)(2)(iv)(C) of this section, dates of such meetings, and copies of any written information provided in accordance with paragraph (a)(2)(iv)(C) of this section.

(iii) Dates of shipments of containers which have been labeled in accordance with paragraph (a)(2)(iv)(D) of this

section, copies of labels used, and the identities of persons to whom they have been shipped.

(iv) Any names used for the substances and the accompanying dates of use.

(v) Documentation of quantities of P-84-660 which are manufactured or imported, with the accompanying dates. (Approved by Office of Management and Budget (OMB) under control number 2070-0012.)

[FR Doc. 86-5879 Filed 3-17-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6703]

Proposed Flood Elevation Determinations; Missouri

Correction

In FR Doc. 86-3750 beginning on page 6434, in the issue of Monday, February 24, 1986, make the following correction:

On page 6438, in the second column, under "Missouri", the bold heading "Flinghill" should read "Flinthill".

BILLING CODE 1505-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1177

Claims Collection

AGENCY: National Endowment for the Humanities.

ACTION: Proposed rule.

SUMMARY: The National Endowment for the Humanities (Endowment) proposes to publish at 45 CFR Part 1177 a rule for the processing of debts owed to the United States. This rule would implement the Federal Claims Collection Act of 1966, the Debt Collection Act of 1982, and is consistent with the regulations issued jointly by the Department of Justice and the General Accounting Office at 4 CFR parts 101-105, as amended by 49 FR 8889. The Debt Collection Act of 1982 provides that agency heads shall act under debt collection regulations prescribed by the head of the agency and standards that the Attorney General and the Comptroller General prescribe jointly. These jointly prescribed federal standards are at 4 CFR parts 101-105.

The proposed rule will enhance the Endowment's ability to collect its debts by providing guidance to officers and employees charged with debt collection responsibilities. In addition, the proposed rule provides notice to Endowment debtors concerning agency debt collection practices.

DATE: Comments must be received on or before April 17, 1986.

ADDRESS: Comments may be addressed to Stephen J. McCleary, Deputy General Counsel, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Deputy General Counsel at (202) 786-0322.

SUPPLEMENTARY INFORMATION: This rule implements the Federal Claims Collection Standards issued jointly by the General Accounting Office and the Department of Justice at 4 CFR parts 101-105 as amended by 49 FR 8889 on March 9, 1984. The Federal Claims Collection Act of 1966, codified at 31 U.S.C. 3711 and 3716-3718, and the Privacy Act, 5 U.S.C. 552a, were amended by the Debt Collection Act of 1982 to permit the disclosure of information from a system of records to a consumer reporting agency. The Debt Collection Act of 1982 also authorized the head of an agency to enter into contracts for private collection services.

E.O. 12291

The proposed rule does not require a Regulatory Impact Analysis because it is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981 because it is unlikely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or a significant adverse effect on competition, employment, investment, productivity innovation or on the ability to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

I certify under 5 U.S.C. 605(b) that the proposed rule will not have a significant economic impact on a substantial number of small entities including small businesses, small organizations and small local governments. Accordingly, a regulatory flexibility analysis is not required by 5 U.S.C. 603.

Reporting and Recordkeeping Requirements

The proposed rule would establish no burdens as defined under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These regulations impose no new reporting or recordkeeping requirements that must be cleared by the Office of Management and Budget.

List of Subjects in 45 CFR Part 1177

Administrative practice and procedure, Claims, Government employees, Privacy.

Dated: March 12, 1986.

John Agresto,

Acting Chairperson.

For the reasons set forth in the preamble, the National Endowment for the Humanities proposes to add at 45 CFR 1177 the following regulation:

PART 1177—CLAIMS COLLECTION

Sec.

Authority: 31 U.S.C. 3711, 3716-3719.

§ 1177.1 Purpose and scope.

This proposed rule prescribes standards and procedures for officers and employees of the Endowment who are responsible for the collection and disposition of debts owed to the United States. The authority for this proposed regulation is the Federal Claims Collection Act of 1966, as amended, 31 U.S.C. 3711 and 3716-3718; the Federal Claims Collection Standards at 4 CFR Parts 101-105, as amended by 49 FR 8889, 5 U.S.C. 552a), and Office of Management and Budget Circular A-129. The covered activities include: collecting of claims in any amount; compromising claims, or suspending or terminating the collection of claims that do not exceed $20,000 exclusive of interest and charges; and referring debts that cannot be disposed of by the Endowment to the Department of Justice or to the General Accounting Office for further administrative action or litigation.

§ 1177.2 Definitions.

For the purposes of this proposed rule the following definitions will apply:

"Claim" or "Debt" means an amount or property owed to the United States. Debts include but are not limited to: overpayments program beneficiaries;

overpayments to contractors and grantees; including overpayments arising from audit disallowances; excessive cash advances to grantees and contractors; and civil penalties and assessments. A debt is overdue, or delinquent if it is not paid by the due date specified in the initial notice of the debt (see sec. 1177.6 of this part) of if the debtor fails to satisfy his or her obligations under a repayment agreement.

"Debtor" means an individual, organization, association, partnership, or corporation, indebted to the United States, or the person or entity with legal responsibility for assuming the debtor's obligation.

§ 1177.3 Other remedies.

The remedies and sanctions available to the National Endowment for the Humanities under this rule are not intended to be exclusive. The Chairperson of the National Endowment for the Humanities or his designee may impose other appropriate sanctions upon a debtor for inexcusable, prolonged or repeated failure to pay a debt. For example, the Chairperson or his designee may place the debtor's name on a list of debarred, suspended or ineligible grantees and contractors; convert the method of payment under a grant from an advance to a reimbursement method; or revoke a grantee's letter of credit. In such cases, the debtor will be advised of the Endowment's action.

§ 1177.4 Claims involving criminal activity or misconduct

(a) A debtor whose indebtedness involves criminal activity such as fraud, embezzlement, theft, or misuse of government funds or property is subject to punishment by fine or imprisonment as well as to a civil claim by the United States for compensation for the misappropriated funds. The Endowment will refer these cases to the appropriate law enforcement agency for prosecution.

(b) Debts involving fraud, false claims or misrepresentation shall not be compromised, terminated, suspended or otherwise disposed of under this rule. Only the Department of Justice is authorized to compromise, terminate, suspend or otherwise dispose of such debts.

§ 1177.5 Collection.

(a) The Endowment will take aggressive action to collect debts and reduce delinquencies. Collection efforts shall include sending to the debtors's last known address a total of three progressively stronger written demands for payment at not more than 30-day intervals. When necessary to protect the Government's interest, written demand may be preceded by other appropriate action, including immediate referral for litigation. Other contact with the debtor or his or her representative or guarantor by telephone, in person and/or in writing may be appropriate to demand prompt payment, to discuss the debtor's position regarding the existence, amount and repayment of the debt, and to inform the debtor of his or her rights and the effect of nonpayment or delayed payment. A debtor who disputes a debt must promptly provide available supporting evidence.

(b) If a debtor is undergoing insolvency proceedings, the debt will be referred to the appropriate United States Attorney to file a claim. The United States may have a priority over other creditors under 31 U.S.C. 3713.

§ 1177.6 Notice to debtor.

(a) The first written demand for payment must inform the debtor of the following:

(1) The amount and nature of the debt;

(2) The date payment is due, which will generally be 30 days from the date the notice was mailed;

(3) The assessment of interest under § 1177.7 from the date the notice was mailed if payment is not received within the 30 days;

(4) The right to dispute the debt;

(5) The office, address and telephone number that the debtor should contact to discuss repayment or reconsideration of the debt; and

(6) The sanctions available to the National Endowment for the Humanities to collect a delinquent debt including, but not limited to, referral of the debt to a credit reporting agency, a private collection bureau, or to the Department of Justice for litigation.

§ 1177.7 Interest.

(a) Interest will accrue on all debts from the date when the first notice of the debt and the interest requirement is mailed to the last known address or hand-delivered to the debtor if the debt is not paid within 30 days from the date the first notice was mailed. The Endowment will charge an annual rate of interest that is equal to the average investment rate for the Treasury tax and loan accounts on September 30 of each year, rounded to the nearest whole per centum. This rate, which represents the current value of funds to the United States Treasury, may be revised quarterly by the Secretary of the Treasury and is published by the Secretary of the Treasury annually or quarterly in the **Federal Register** and the Treasury Financial Manual Bulletins.

(b) The rate of interest initially assessed will remain fixed for the duration of the indebtedness; except that if a debtor defaults on a repayment agreement, interest may be set at the Treasury rate in effect on the date a new agreement is executed.

§ 1177.8 Administrative offset of debts.

(a) "Administrative Offset" means satisfying a debt by withholding money payable by the United States or held by the United States for a debtor.

(b) The Endowment may collect debts owed by administrative offset if:

(1) The debt is certain in amount;

(2) Efforts to obtain direct payment have been, or would most likely be unsuccessful, or the Endowment and the debtor agree to the offset

(3) Offset is cost-effective or has significant deterrent value; and

(4) Offset is best suited to further and protect the Government's interest.

(c) The Endowment may offset a debt owed to another Federal agency from amounts due or payable by the Endowment to the debtor or request another Federal agency to offset a debt owed to the endowment.

(d) Prior to initiating administrative offset the National Endowment for the Humanities will send the debtor written notice of the following:

(1) The nature and amount of the debt and the agency's intention to collect the debt by offset 30 days from the date the notice was mailed if neither payment nor a satisfactory response is received by that date;

(2) The debtor's right to an opportunity to submit a good faith alternative repayment schedule, to inspect and copy agency records pertaining to the debt, to request a review of the determination of indebtedness; and to enter into a written agreement to repay the debt; and

(3) The applicable interest.

(e) The National Endowment for the Humanities may effect an administrative offset against a payment to be made to a debtor prior to the completion of the procedures required by paragraph (d) of this section if:

(1) Failure to offset would substantially prejudice the Government's ability to collect the debt, and

(2) The time before the payment is to be made does not reasonably permit completion of those procedures.

§ 1177.9 Use of credit reporting agencies.

(a) The Endowment may report delinquent debts over $100 to consumer or commercial credit reporting agencies

consistent with the notice requirements contained in the § 1177.6 of this Part.

(b) Debts owed by individuals may be reported to consumer reporting agencies as defined in 31 U.S.C. 3701(a)(3) pursuant to 5 U.S.C. 552a(b)(12) and 31 U.S.C. 3711(f). The Endowment may disclose only an individual's name, address, social security number, and the nature, amount, status and history of the debt and the program under which the claim arose.

§ 1177.10 Collection services.

(a) The Endowment may contract for collection services to recover delinquent debts. The Endowment may refer delinquent debts to private collection agencies listed on the Schedule compiled by the General Services Administration. In such contracts, the National Endowment for the Humanities will retain the authority to resolve disputes, compromise claims, terminate or suspend collection, and refer the matter to the Department of Justice or the General Accounting Office.

(b) The contractor shall be subject to the disclosure provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a(m)), and to applicable federal and state laws and regulations pertaining to debt collection practices, such as the Fair Collection Practices Act, 15 U.S.C. 1692, and shall be strictly accountable for all amounts collected.

(c) The contractor shall be required to provide to the Endowment any data contained in its files relating to the debt account upon agency request or upon returning an account to the Endowment for referral to the Department of Justice for litigation.

§ 1177.11 Referral to the Department of Justice or the General Accounting Office.

Debts over $600 but less than $100,000 which the Endowment determines can neither be collected nor otherwise disposed of will be referred for litigation to the United States Attorney in whose judicial district the debtor is located. Claims for amounts exceeding $100,000 shall be referred for litigation to the Commercial Litigation Branch, Civil Division of the Department of Justice.

§ 1177.12 Compromise, suspension and termination.

(a) The Chairperson of the National Endowment for the Humanities or his designee may compromise, suspend, or terminate the collection of debts where the outstanding principal is not greater than $20,000. Endowment procedures for writing off outstanding accounts are available to the public.

(b) The Chairperson of the National Endowment for the Humanities may compromise, suspend, or terminate collection of debts where the outstanding prinicipal is greater than $20,000 only with the approval of, or by referral to the United States Attorney or the Department of Justice.

(c) The Chairman of the National Endowment for the Humanities will refer to the General Accounting Office (GAO) debts arising from GAO audit exceptions.

§ 1177.13 Omissions not a defense.

Failure to comply with any provisions of this rule may not serve as a defense to any debtor.

[FR Doc. 86-5711 Filed 3-17-86; 8:45 am]

BILLING CODE 7536-01-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Ch. II

[Docket No. R-101]

Marine Insurance Inquiry and Notice of Meeting

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of Public Meeting.

SUMMARY: The Maritime Administration (MARAD) is continuing to review its policies concerning the eligibility of foreign insurance underwriters to write hull insurance on subsidized vessels or vessels that are security for MARAD vessel obligation guarantees issued under its Title XI program. To further evaluate the need for a rulemaking in this area and to elicit facts and opinions on this matter, MARAD has decided to hold a public meeting.

DATE: The meeting will be held on April 17, 1986, beginning at 10:00 A.M.

ADDRESS: Room 2230, Nassif Building, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. If necessary, the meeting will continue on the following day.

FOR FURTHER INFORMATION CONTACT: William B. Edersold, Office of the Associate Administrator for Maritime Aids, Maritime Adninistration, 400 Seventh Street, SW., Washington, D.C. 20590 Tel. (202) 382-0364. Persons desiring to participate in this hearing should notify the contact person by April 10, 1986, and indicate the amount of time they will need to present their views. Prepared statements and comments may be submitted by persons unable to participate in the inquiry, provided they are received by MARAD by April 14, 1986, so that they may be reproduced and made available at the inquiry.

SUPPLEMENTARY INFORMATION: On October 11, 1985, MARAD published an Advance Notice of Proposed Rulemaking (ANPRM) (50 FR 41531) in the **Federal Register** stating that the agency was considering whether to conduct a rulemaking, or take other administrative action, with respect to its existing policies of: accepting only American insurance underwriters, or certain British underwriters, as hull insurers of subsidized or Title XI program vessels; requiring that 75 percent of the required hull insurance coverage be placed in the American market when the rates and conditions are competitive; and limiting the underwriter's risk on any single vessel.

The board purpose of the (ANPRM) was to elicit information and opinions from commentors on the need for rulemaking in this area and data that would be useful in the formulation of a text for a Notice of Proposed Rulemaking. The ANPRM contained no specific proposals, but requested that comments on the basic policy change under consideration specifically address possible acceptance criteria for hull insurance underwriters. The comments received, however, were of a general nature and did not provide MARAD with sufficient information to achieve either the primary goal of determining the need for a rulemaking on the placement of hull insurance or, if appropriate, how to formulate the text of a proposed rule. Therefore, MARAD has decided to conduct a public marine insurance inquiry in order to give all interested parties an opportunity to provide more detailed information and support for their positions. In addition, this marine insurance inquiry should generate sufficient information to enable MARAD to decide whether to proceed with a rulemaking on this subject.

The broad scope of the inquiry, again, will encompass three general areas: (1) Whether MARAD should approve non-British foreign hull underwriters, and, if so, under what terms and conditions; (2) whether MARAD should modify or eliminate the current reservation of 75 percent of the required hull insurance coverage to the American market; and (3) whether the current limitation on a single underwriter's risk (10 percent of policyholder's surplus) should be increased, decreased, or eliminated.

During the inquiry, MARAD intends to specifically focus on obtaining meaningful information on the following issues:

1. Are the National Association of Insurance Commissioners (NAIC) tests an appropriate measure for all kinds of insuring organizations (large, small, stock, mutual)? Are there any biases in any of the ratios which would consistently produce satisfactory results for any group of insurers regardless of their financial condition? Should any failure to meet the "usual range" guidelines be cause for denying approval of a foreign insurer? Should MARAD withdraw approval of a U.S. insurer for a similar failure? If ratio tests are used as part of the approval process, what further evaluation would be recommended for ratio guidelines not met?

2. What requirements for state licensing in this country are particularly relevant? If MARAD does not require state licensing, but decides to use state standards as the basis for its approval, which requirements should be used? From the viewpoint of the foreign insurer, what are the pros and cons of opting for state licensing versus directly insuring from overseas? Similarly, what are the licensing or other requirements in England and Scandinavia (the only foreign areas for which comments were received) necessary for a domestic of U.S. underwriter to do business in those countries? Would it be appropriate for MARAD to accept approval by the insurance authorities in these countries as evidence of suitability for MARAD's program? If not, why not?

3. Some U.S. underwriters have stated that they do not object to additional competition, provided that the quality of security is high and does not present an inordinate risk for the U.S. taxpayer. One U.S. broker stated that there are strong, financially, secure insurers that meet broker security standards, but are unable to participate because of MARAD restrictions. what are those broker security standards and what markets are likely to provide sufficiently high quality insurance? Should the focus of MARAD's inquiry be limited to those markets?

4. What countries have the restrictive insurance practices which are of concern to the U.S. insurers? What are those practices that should be grounds for disqualification, and how should it be verified that such practices exist? Should only restrictive hull insurance practices be considered? Since MARAD's 75 percent U.S. market reservation is a restrictive practice, what kind of certification as to reciprocal treatment ought to be required as a condition for approval?

5. What would the impact be on the U.S. marine insurance market if MARAD changed its policy and admitted additional foreign underwriters, but retained a U.S. market reservation at 50 percent? 30 percent? what is the minimum level required to maintain a viable U.S. market? If this policy were adopted, on what basis, if any, should waivers of this requirement be granted?

6. Please comment on the view that hull insurance is marginally profitable at best, so that substantial premium savings must be a temporary action aimed at eliciting new business. Are overhead, expense levels and underwriting techniques so similar worldwide that there can be no appreciable long-term difference in rates? Is there a fundamental structural difference between stock and mutual companies which by reason of its non-profit orientation enables the mutual to operate on a significantly different rate structure?

7. What are the significant adverse effects which a policy change would have on competition, employment, investment, productivity or the ability of U.S.-based enterprises to compete with foreign enterprises? Is there anything inherent in the structure of the U.S. marine insurance industry which would make it unable to compete effectively and require protection? If protection is required and desirable, why is there a continuing need for an antitrust exemption under 46 App. U.S.C. 885? How can there be any real competition if operations are conducted under an umbrella of both an antitrust exemption and a market reservation? If this is not the case, please describe how true competition for the U.S.-flag operator's hull business does exist?

8. As a means of assessing the potential impact of a policy change on the balance of payments, approximately how much total hull premium is involved for MARAD program vessels? How much of that premium would be expected to be lost to foreign market if all restrictions on placement were removed? How much of what is lost could be expectd to flow back to the U.S. in the form of reinsurance? How much could rate levels be expected to decline as a result of deregulation?

9. Does "cut through" language, whereby a reinsurer agrees to direct suit by the assured, provide adequate access to the reinsurer? If it does, can reinsurance placed in this country by a foreign direct insurer be considered in the evaluation of the resources of the foreign insurer? Should the quality of the reinsurance be evaluated on the same basis as that of the direct insurer? Is diversification or concentration of reinsurance preferable? If reinsurers are subject to state regulation, shouldn't reinsurance placed in this country give an adequate measure of security to direct insurance placed with a foreign direct insurer?

10. The view has been stated that reserves must be adequate to cover shock losses, and that if the cost of reinsurance is adequate, there may not be enough to pay losses within their retention. Why must shock losses be covered from available surplus, if reinsurance is adequate and pays off quickly? Does not the ability of a mutual insurer to issue a supplemental call provide reasonable assurance of the ability to pay losses within their retention?

11. If it is important that there be adequate accessible assets in this country to protect the interests of the assureds, what type of assets are considered suitable and sufficiently accessible? (Bonds? Letters of Credit?) What is required to make such assets truly accessible to assureds?

12. If additional foreign underwriters were to be admitted only from Europe, what, if any, accounting practices and statutory requirements might cause MARAD to have difficulty evaluating financial statements and assessing financial condition, or could MARAD expect to be able to obtain sufficiently comparable data to that available in this country?

13. Are there currently any underwriting limitations in the American or London markets which would make it desirable to have additional approved underwriters in order to ensure that American assureds have adequate options? By limitations we mean any risks which will not be accepted, any types of vessels for which coverage is difficult to obtain at reasonable rates, any failure to grant rate reductions in response to improved loss records. If any such limitations exist, what is the justification?

14. If there is a state of crisis in the world insurance market, and the prospect that there will be a tightening of capacity, should this be compensated by an increase in the number of approved underwriters?

15. Given that quality of foreign insurance is of paramount importance, in order to assess the magnitude of the problem, what has been the incidence of insolvency among foreign hull underwriters and the amount of unpaid hull claims over the past several years? In the U.S., how does regulation ensure that losses will be paid? Would not attachable assets already be dissipated by the time insolvency occurs?

16. Are there any criteria for the approval of foreign underwriters, not

mentioned in any earlier comments, which MARAD ought to consider?

17. What is the basis for recommending a lower percentage than the current 10 percent limit on the amount which an underwriter may take on a single risk? If there is adequate reinsurance, is there any basis for continuing to impose any limits at all? If there is adequate reinsurance, should MARAD continue to prohibit captives?

18. If a mutual insurance company is already approved to write protection and indemnity insurance on MARAD program vessels, is there any basis inherent in either protection and indemnity or hull insurance for precluding participation by such a company in hull insurance on MARAD program vessels?

MARAD requests that any parties interested in this inquiry (underwriters, brokers, owners, banks, state regulatory agencies, U.S. or foreign) participate actively by answering those questions that concern them and by providing knowledgeable witnesses and other pertinent information. In view of the many similar responses to the ANPRM from interested parties, and to avoid time-consuming duplication in the presentation of views and information, MARAD suggests that prospective participants in the inquiry with identical or substantially the same interests in the matter coordinate and consolidate their presentations or submissions for the record. MARAD further requests that these witnesses be prepared to present detailed information to justify their position.

Any rulemaking that might ensue from this inquiry has been determined not to be major, pursuant to Executive Order 12291 (February 17, 1981). It would be significant under the Department of Transportation's Regulatory Policies and Procedures (February 26, 1979) and would require the preparation of a regulatory evaluation. The Maritime Administrator certifies that such a rulemaking would not exert a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612), since its major impact in the United States would be on ship operators, marine casualty underwriters and insurance brokers, the great majority of which are not small entities. While such a rulemaking may contain information collection requirement within the scope of the Paperwork Reduction Act of 1980 (Pub. L. 95–511), the submission of information for purposes of this inquiry is exempt from the scope of the Act (5 CFR 1320.7(k)(8).

By Order of the Maritime Administrator.

Dated: March 12, 1986.

Georgia P. Stammas,

Secretary, Maritime Administration.

[FR Doc. 86–5762 Filed 3–17–86; 8:45 am]

BILLING CODE 4910–81–M

Notices

Federal Register
Vol. 51, No. 52
Tuesday, March 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.

DEPARTMENT OF AGRICULTURE

Citizens' Advisory Committee on Equal Opportunity; Meeting Change and Amendment

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), a change and amendment is made of the following committee meeting:

Name: Citizens' Advisory Committee on Equal Opportunity
Date: April 7-9, 1986
Place: Sheraton Hotel, 4728 Constitution Avenue, Baton Rouge, Louisiana
Time: 8:30 a.m.—5:00 p.m.
Purpose:
—Advise the Secretary on the effectiveness of compliance program directives;
—Review all aspects of the Department's policies, practices, and procedures on Equal Opportunity;
—Recommend changes in Department rules, regulations, and orders to assure USDA activities are free from discrimination;
Additionally, will specifically focus on:
—Continued outreach efforts in Equal Opportunity that are being initiated by the Committee members;
—Networking with constituents groups that are recipients of USDA services.

The meeting is open to the public. Persons may participate in the meeting as time and space permit. Persons who wish to address the Committee at the meeting or who wish to file written comments before or after the meeting should contact: Lawrence Bembry Associate Director, Equal Opportunity, Office of Advocacy and Enterprise, 201 14th Street SW. Room 2305 Auditors Building, Washington, DC 20250 (202) 447-5681.

Written statements may be submitted until March 28, 1986.

Lawrence Bembry,

Associate Director, Equal Opportunity Office of Advocacy and Enterprise.

[FR Doc. 86-5861 Filed 3-17-86; 8:45 am]

BILLING CODE 3410-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

Structural Strengthening and Raising of Gibraltar Dam; Los Padres National Forest, Santa Barbara County, CA; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, and the City of Santa Barbara jointly will prepare an environmental impact statement/environmental impact report to assess the impacts of raising and strengthening Gibraltar Dam. The dam is situated on the Santa Ynez River in Santa Barbara County and in the Santa Barbara Ranger District, Los Padres National Forest.

The City of Santa Barbara, owner of Gibraltar Dam, has been directed to strengthen the Dam by the State of California in order to provide seismic safety. In addition, much of the storage capacity of the reservoir has been lost as a result of siltation. The City of Santa Barbara wishes: (1) to Study means of strengthening Gibraltar Dam and (2) to study the possibility of increasing dam height in order protect the long-term reliability of the reservoir as a water supply for the City. Los Padres National Forest manages most of the lands which currently are inundated by the present reservoir and lands which could be inundated as a consequence of increased dam height.

A range of alternatives will be considered, including no action. The range of alternatives has not been established.

Federal, State, and local agencies and individuals and other organizations who may be interested in or affected by the decision will be invited to participate in the joint scoping process. The public involvement plan will be jointly prepared to ensure that issues are scoped correctly. The scoping process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues and those adequately treated in previous environmental analysis.
4. Determination of potential cooperating agencies and assignment of responsibilities.

The Fish and Wildlife Service and the Bureau of Reclamation, Department of the Interior, and the Federal Energy Regulatory Commission will be invited to participate as cooperating agencies in the environmental analysis.

The City of Santa Barbara and Los Padres National Forest will conduct a joint scoping hearing on May 2, 1986, at 9:00 a.m. in the City Council Chambers, City Hall, De La Guerra Plaza, Santa Barbara. Questions regarding this hearing should be addressed to Janice Hubbell, Environmental Analyst, City of Santa Barbara, P.O. Drawer P-P, 93102.

Erwin N. Ward, Acting Forest Supervisor, is the responsible official for the environmental impact statement.

The draft environmental impact statement should be available for public review by late September 1986. The final environmental impact statement is scheduled for completion in January 1986.

Written comments and suggestions concerning the analysis should be sent to Erwin N. Ward, Acting Forest Supervisor, Los Padres National Forest, Goleta, California, 93117-2053, by May 6, 1986.

Questions about the proposed action and environmental impact statement should be directed to John Bridgwater, Resource Officer, Santa Barbara Ranger District, Star Route, Santa Barbara, California, 93105; telephone (805) 967-3481 or 967-7312.

Dated: March 10, 1986.

Erwin N. Ward,

Acting Forest Supervisor, Los Padres National Forest.

[FR Doc. 86-5847 Filed 3-17-86; 8:45 am]

BILLING CODE 3410-11-M

Wolf Creek Valley Winter Sport Site; San Juan National Forest; Mineral County, CO; Intent To Prepare a Revised Environmental Impact Statement

The Forest Service, Department of Agriculture in cooperation with other federal, state, and local agencies will prepare a revised draft environmental impact statement concerning development of the proposed Wolf Creek Valley Winter Sports Site.

Westfork Investments Ltd. proposes to develop an alpine skiing area and year-round resort on public and private land. The area proposed for development, identified as Windy Pass in the San Juan National Forest Land and Resource Management Plan, is

located about eleven miles north and east of Pagosa Springs on U.S. Highway 160. The proposed skiing development would likely occur in phase and reach an ultimate capacity of 11,750 skiers-at-one-time served by approximately 15 lifts.

The environmental analysis of this proposal is being assisted and coordinated by a Joint Review Committee which was established and provided for in a Memorandum of Understanding dated August 27, 1984. Committee membership includes representatives of the USDA Forest Service; State of Colorado; Mineral County, Colorado; Archuleta County, Colorado; Town of Pagosa Springs; and Westfork Investments Ltd.

The alternatives analyzed are those of no action, of permitting development as proposed, and of permitting the development as proposed except in an area identified as the "back bowls".

The National Environmental Policy Act (NEPA) requires an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. The Forest Service with the Joint Review Committee has held numerous public meetings to identify issues and concerns, review alternatives and discuss anticipated impacts related to the proposal. A draft Environmental Impact Statement was written and made available for public review and comment. The comment period closed December 2, 1985 and comments were received through January 16, 1986. The responsible official decided that a revision of the EIS should be written because: (1) Various state and federal agencies requested clarification on numerous points, (2) additional information is now available for the proposed East Fork Resort, another ski area proposal in the vicinity, so better cumulative impacts can be disclosed, and (3) it is desirable to allow the public to review additional data as it becomes available so as to avoid public misunderstanding.

The revised draft Environmental Impact Statement is expected to be available for public review before the end of June 1986. The final Environmental Impact Statement is scheduled to be filled by the end of October 1986. A Record of Decision will be issued by the USDA Forest Service when the final Environmental Impact Statement is released. If the decision is to allow development, construction could not realistically begin on National Forest System lands until spring 1988.

John R. Kirkpatrick, San Juan National Forest Supervisor, is the responsible official.

Questions and comments about the proposed action and Environmental Impact Statement should be directed to: Samuel A. Scanga, District Ranger, Pagosa Ranger District, P.O. Box 310, Pagosa Springs, Colorado 81147, (303) 264–2268.

Dated: March 2, 1986.

John R. Kirkpatrick,

Forest Supervisor.

[FR Doc. 86–5848 Filed 3–17–86; 8:45 am]

BILLING CODE 3410–11–M

Quartz Hill Molybdenum Mine, Tongass National Forest, Ketchikan Area, Ketchikan, Alaska; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare, through a third party consultant, an Environmental Impact Statement for the development of a proposed molybdenum mine at Quartz Hill within the non-wilderness portion of Misty Fiords National Monument. A previously issued Draft Environmental Statement on this subject will be revised due to changes in the plan of operations submitted by the mine operater and to new information developed during the public comment period on the original draft. The Plan of Operations submitted by the United States Borax & Chemical Corporation on behalf of Pacific Coast Molybdenum includes:

1. Construction and operation of an open pit capable of producing 800,000 tons of ore per day for more than 55 years.

2. Construction and use of an access road suitable for mine development.

3. Construction and operation of a mill capable of processing 80,000 tons of ore per day.

4. Construction and operation of a 100 megawatt power plant.

5. Construction and use of a tunnel for transportation of crushed ore.

6. Disposal of tailings in the marine environment of the Wilson Arm-Smeaton Bay fjord.

7. Construction and use of a well-field adjacent to the Wilson River to provide a 16,000 gpm water supply.

8. The workforce and their families to be housed in Ketchikan, Alaska and to commute to the mine in alternating weekly shifts.

9. Construction and use of associated ancillary structures i.e. docks, fuel storage, sediment control facilities, pipelines etc.

Alternatives to the proposed Plan of Operation will be analyzed including a no action alternative and alternative ways to arrange facilities or processes at the mine site. Possible alternatives include developing a townsite near the mine, developing water supplies in drainages other than Wilson River, tailings disposal on land or in Boca de Quarda Fjord, and relocating the existing access road from the Blossom River valley to the Keta River valley.

The initial scoping process occurred in January and February 1983 and consisted of a public meeting in Ketchikan and a public comment period during which written comments were received from individuals and organizations having an interest in the project. Inderdisciplinary Team meetings were held to discuss and identify public and agency issues, concerns and opportunities to be analyzed in the Environmental Statement.

The following groups have participated in the planning process have provided individuals to be members of the Interdisciplinary Team preparing the Environmental Statement:

The State of Alaska Departments of—
- Transportation and Public Facilities
- Community and Regional Affairs
- Natural Resources
- Commerce and Economic Development
- Fish and Game

National Marine Fisheries Service
U.S. Bureau of Mines
U.S. Fish and Wildlife Service
Southern Southeast Regional Aquaculture Association
U.S. Army Corps of Engineers
U.S. Environmental Protection Agency
Ketchikan Gateway Borough
United States Borax & Chemical Corporation

A Draft Environmental Statement was circulated in July 1984 for public review and comment ending 10/5/84. A public hearing was held in Ketchikan on the DEIS and an associated NPDES permit on 9/6/84. The comments received both in writing and at the hearing will be displayed in the Revised Draft Environmental Statement. The Revised Draft Environmental Statement should be available for public review by May 1986. The Final Environmental Statement is scheduled for completion in November 1986.

Michael A. Barton, Regional Forester of the Alaska Region, located in Juneau, Alaska, is the responsible official.

Written comments and suggestions should be sent to Win Green, Forest Supervisor, Ketchikan Area, Tongass National Forest, Department QH, Federal Building, Ketchikan, Alaska 99901.

Questions about the proposed action and environmental statement should be directed to Ed Johnson, Minerals and Watershed Staff Officer/Borax IDT Leader, Ketchikan Area, Tongass National Forest, phone (907) 225–3101.

Dated: March 7, 1986.

Michael A. Barton,

Regional Forester.

[FR Doc. 86–5849 Filed 3–17–86; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 8–86]

Foreign-Trade Zone 83—Huntsville, AL; Application for Subzone Chrysler Electronics Plant

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Huntsville-Madison County Airport Authority, grantee of Foreign-Trade Zone 83, requesting special-purpose subzone status for Chrysler Corporation's auto electronic products plant in Huntsville, Alabama, within the Huntsville Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on February 24, 1986.

The proposed subzone would be located at Chrysler's Huntsville Electronics Plant, 1024103 Wynn Drive, Huntsville. The 71-acre facility is used to produce radio/cassette players, ignition control computers and other electronic controls. Parts such as cassette heads, semiconductors, and capacitors, representing 6 percent of production costs, are sourced abroad. The finished electronic auto components are shipped to Chrysler assumbly plants in the U.S. and abroad.

Zone procedures would allow Chrysler to export finished components without paying customs duties on foreign materials. On the products used at its domestic auto assembly plants with subzone status, the company would be able to take advantage of the same duty rate that is available to importers of finished autos. The duty rates on the parts imported by Chrysler range from 4.0 to 10.0 percent, whereas the rate for finished autos is 2.6 percent. The savings from subzone status would contribute to the company's overall cost reduction program, helping it to become more competitive with auto plants abroad.

In accordance with the Board's reguations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; David L. Willette, Acting District Director, U.S. Customs Service, South Central Region, 250 N. Water Street, Mobile, Alabama 36652; and Colonel William Kirkpatrick, District Engineer, U.S. Army Engineer District Nashville, P.O. Box 1070, Nashville, TN 37202.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before April 17, 1986.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, Huntsville-Madison County Airport, Huntsville, Alabama 35806;

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, NW., Washington, D.C. 20230.

Dated: March 11, 1986.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 86–5898 Filed 3–17–86; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 320]

Resolution and Order Approving the Application of the City of New York, NY for a Subzone at the Apparel Plant of Jack Young Associates, Inc.

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the City of New York, New York, grantee of Foreign-Trade Zone 111, filed with the Foreign-Trade Zones Board (the Borad) on September 25, 1985, requesting special-purpose subzone status for the storage and sweater manufacturing-for-export operations of Jack Young Associates, Inc., in New York City, within the New York Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone in New York City

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the City of New York, New York, grantee of Foreign-Trade Zone No. 111, has made application (filed September 25, 1985, Docket 36–85, 50 FR 42198) in due and proper form to the Board for authority to establish a special-purpose subzone for the storage and sweater manufacturing-for-export operations of Jack Young Associates, Inc., in St. Albans (Queens), New York, within the New York Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, therefore, in accordance with the application filed September 25, 1985, the Board hereby authorizes the establishment of a subzone for storage and export manufacturing at the Jack Young Associates plant in New York City, designated on the records of the Board as Foreign-Trade Subzone No. 111A at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and

also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, D.C., this 10th day of March 1986, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Paul Freedenberg,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates.

[FR Doc. 86-5899 Filed 3-17-86; 8:45 am]

BILLING CODE 3510-25-M

International Trade Administration

Automated Manufacturing Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Automated Manufacturing Equipment Technical Advisory Committee will be held April 9, 1986, 9:30 a.m., Herbert C. Hoover Building, Room 6029, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to automated manufacturing equipment and related technology.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Numerical Control Equipment.
4. Precision Inspection Equipment.
5. Sensory Systems.
6. Electric Arc Devices/Isostatic Presses.
7. Local Area Networking.

Executive Session

8. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government in the Sunshine Act Pub. L. 94-409, that the matters to be discussed in the Excutive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: 202/377-4217. For further information or copies of the minutes, contact Liga Hagenah, (202) 377-4959.

Dated: March 12, 1986.

Margaret A. Cornejo,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 86-5900 Filed 3-17-86; 8:45 am]

BILLING CODE 3510-DT-M

The MCTL Implementation Technical Advisory Committee; Partially Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held April 8, 1986, 9:30 a.m., Herbert C. Hoover Building, Room 3407, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises and assists the Office of Technology and Policy Analysis in the implementation of the Militarily Critical Technologies List (MCTL) into the Export Administration Regulations and provide for continuing review to update the Regulations as needed.

Agena

1. Introduction of members and attendees.
2. Presentation of papers or comments by the public.
3. Approval of the minutes of the meeting on January 7.
4. Proposed work plan for 1986.
5. Discussion of Section 379.3.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 19, 1985, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377-4217. For further information or copies of the minutes contact Margaret A. Cornejo 202-377-2583.

Dated: March 13, 1986.

Margaret A. Cornejo,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 86-5901 Filed 3-17-86; 8:45 am]

BILLING CODE 3510-DT-M

National Bureau of Standards

[Docket No. 51208-5208]

Federal Information Processing Standard 21-2, COBOL

AGENCY: National Bureau of Standards, Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce (Secretary) has approved a revision of Federal Information Processing Standard 21-1, COBOL, which will be published as FIPS 21-2.

SUMMARY: On November 20, 1984, notice was published in the **Federal Register** (49 FR 45772) that a revised Federal Information Processing Standard for COBOL was being proposed for Federal use. The written comments submitted by interested parties and other material available to the Department relevant to this standard were reviewed by NBS. On the basis of this review, NBS recommended that the Secretary approve the standard as a Federal Information Processing Standard (FIPS) and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

This approved revised standard contains two portions: (1) An announcement portion which provides information concerning the applicability, implementation, and maintenance of the standard, and (2) a specifications portion which deals with the technical requirements of the standard.

ADDRESS: Interested parties may purchase copies of this revised standard, including the technical specifications portion, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies section of the announcement portion of the FIPS PUB.

FOR FURTHER INFORMATION CONTACT: Ms. Mabel Vickers, Center for Programming Science and Technology, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, (301) 921-2431.

Dated: March 12, 1986.

Ernest Ambler,

Director

Federal Information Processing Standards Publication 21-2

(Date)

Announcing the Standard for COBOL

Federal Information Processing Standards Publications (FIPS PUB) are issued by the National Bureau of Standards pursuant to section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89-306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations (CFR).

1. *Name of Standard.* COBOL (FIPS PUB 21-2).

2. *Category of Standard.* Software Standard, Programming Language.

3. *Explanation.* This publication announces the adoption of American National Standard Programming Language, COBOL, ANSI X3.23-1985, as amplified herein, as a Federal Information Processing Standard (FIPS). This revision supersedes FIPS PUB 21-1 and reflects major changes and improvements in the COBOL specifications. It also contains changes to the Objectives, Applicability, and Implementation portions of FIPS PUB 21-1 to recognize advances in programming technology and to provide consistent policy for all FIPS languages. The American National Standard defines the elements of the COBOL programming language and the rules for their use. The purpose of the standard is to promote portability of COBOL programs for use on a variety of data processing systems. The standard is used by implementors as the reference authority in developing processors and by users who need to know the precise syntactic and semantic rules of the standard language.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* Department of Commerce, National Bureau of Standards (Institute of Computer Science and Technology).

6. *Cross Index.* American National Standard Programming Language COBOL, ANSI X3.23-1985, ISO 1989-1985.

7. *Related Documents.*[1]

a. Federal Information Resources Management Regulation 201-8.1, Federal ADP and Telecommunication Standards.

b. Federal Information Processing Standards Publication 29, Interpretation Procedures for Federal Information Processing Standard Programming Languages.

c. NBS Special Publication 500-117, Selection and Use of General-Purpose Programming Languages.

8. *Objectives.* Federal standards for high level programming languages permit Federal departments and agencies to exercise more effective control over the production, management, and use of the Government's information resources. The primary objectives of Federal programming language standards are:

—To encourage more effective utilization and management of programmers by insuring that programming skills acquired on one job are transportable to other jobs, thereby reducing the cost of programmer re-training;

—To reduce the cost of program development by achieving the increased programmer productivity that is inherent in the use of high level programming languages;

—To reduce the overall software costs by making it easier and less expensive to maintain programs and to transfer programs among different computer systems, including replacement systems;

—To protect the existing software assets of the Federal Government by insuring to the maximal feasible extent that Federal programming language standards are technically sound and that subsequent revisions are compatible with the installed base.

Government-wide attainment of the above objectives depends upon the widespread availability and use of comprehensive and precise standard language specifications.

9. *Applicability.*

a. Federal standards for high level programming languages should be used for computer applications and programs that are either developed or acquired for government use. FIPS COBOL is one of the high level programming language standards provided for use by all Federal departments and agencies. FIPS COBOL is especially suited for applications that emphasize the manipulation of characters, records, files, and input/ouput (in contrast to those primarily concerned with scientific and numeric computations).

b. The use of FIPS high level programming languages is strongly recommended when one or more of the following situations exist:

—It is anticipated that the life of the program will be longer than the life of the presently utilized equipment;

[1] Refers to most recent revision of FIPS PUBS.

—The application or program is under constant review for updating of the specifications, and changes may result frequently;
—The application is being designed and programmed centrally for a decentrailzed system that employs computers of different makes, models and configurations;
—The program will or might be run on equipment other than that for which the program is initially written;
—The program is to be understood and maintained by programmers other than the original ones;
—The advantages of improved program design, debugging, documentation and intelligibility can be obtained through the use of this high level language regardless of interchange potential;
—The program is or is likely to be used by organizations outside the Federal Government (i.e., State and local governments, and others).

c. Nonstandard language features should be used only when the needed operation or function cannot reasonably be implemented with the standard features alone. Although nonstandard language features can be very useful, it should be recognized that their use may make the interchange of programs and future conversion to a revised standard or replacement processor more difficult and costly.

d. It is recognized that programmatic requirements may be more economically and efficiently satisfied through the use of report generation, database management, or text processing languages. The use of any facility should be considered in the context of system life, system cost data integrity, and the potential for data sharing

e. Programmatic requirements may be also more economically and efficiently satisfied by the use of automatic program generators. However, if the final output of a program generator is a COBOL source program, then the resulting program should conform to the conditions and specifications of FIPS COBOL.

10. *Specifications.* FIPS COBOL specifications are the language specifications contained in American National Standard Programming Language COBOL. ANSI X3.23–1985.

ANSI X3.23–1985 specifies the form of a program written in COBOL, formats for data, and rules for program and data interpretation.

The standard does not specify limits on the size of programs, minimum system requirements, the means of supervisory control of programs, or the means of transforming programs internally for processing.

In addition, the following requirements apply:

a. For purposes of FIPS COBOL, the modules defined in ANSI X3.23–1985 are combined into three subsets and four optional modules. The three subsets are identified as Minimum, Intermediate, and High. The four optional modules are Report Writer, Communications, Debug, and Segmentation. These four optional modules are not an integral part of any of the subsets; however, none, all, or any combination of the optional modules may be associated with any of the subsets.

The high subset is composed of all language elements of the highest level of all required modules. The intermediate subset is composed of all language elements of level 1 of all required modules. The minimum subset is composed of all language elements of level 1 of the Nucleus, Sequential I–O, and Inter-Program Communication modules.

The following table reflects the composition of the required subsets and the relationship of the subsets and the optional modules. The numbers in the table refer to the level within a module as designated in ANSI X3.23–1985, and a dash denotes the corresponding module is omitted or may be omitted.

COBOL Subsets

Modules	Minimum	Intermediate	High
Required			
Nucleus	1	1	2
Sequential I–O	1	1	2
Relative I–O		1	2
Indexed I–O		1	2
Inter-program communication	1	1	2
Sort-merge		1	2
Source text manipulation		1	2
Optional			
Report writer	—, or 1	—, or 1	—, or 1
Communication	—, 1, or 2	—, 1, or 2	—, 1, or 2
Debug	—, 1, or 2	—, 1, or 2	—, 1, or 2
Segmentation	—, 1, or 2	—, 1, or 2	—, 1, or 2

b. A facility must be available in the processor for the user to optically specify monitoring of the source program at compile time. The monitoring may be specified for a FIPS COBOL subset, for any of the optional modules, for all of the obsolete language elements included in the processor, or for a combination of a FIPS COBOL subset, optional modules, and all obsolete elements. The monitoring may be specified for any FIPS COBOL subset at or below the highest subset for which the processor is implemented and for a level of an optional module at or below the level of the optional module for which the processor is implemented. The monitoring is an analysis of the snytax used in the source program against the syntax included in the user selected FIPS COBOL subset and optional modules. Any syntax used in the source program that does not conform to that included in the user selected FIPS COBOL subset and optional modules will be diagnosed and identified to the user through a message on the source program listing. Any syntax for an obsolete language element included in the processor and used in the source program will also be diagnosed and identified through a message on the source program listing. The determination of the need to flag any given source program syntax in accordance with these requirements cannot be logically resolved until the syntactic correctness of the source program has been established. The message provided will identify:

—The clause, statement or header that directly contains the nonconforming or obsolete syntax. (For the purpose of this requirement the definitions of clause, statement and header contained in American National Standard Programming Language COBOL, ANSI X3.23–1985, Section III, Glossary, and the definition of syntax contained in American National Dictionary for Information Processing Systems, X3/TR–1–82, apply).
—The source program line and an indication of the beginning location within the line of the clause, statement or header which contains the nonconforming or obsolete syntax;
—The syntax as "nonconforming standard" if the nonconforming syntax is included in the processor but is not within the user selected FIPS COBOL subset or optional modules except if monitoring is selected for the obsolete category then obsolete language elements are only flagged as "obsolete";
—The syntax as "nonconforming nonstandard" if the nonconforming syntax is a nonstandard extension included in the processor;
—the syntax as "obsolete" if the syntax identified is in the obsolete category within a FIPS COBOL subset or optional module included in the processor.

11. *Implementation.* The implementation of FIPS COBOL involves, three areas of consideration: acquisition of COBOL processors, interpretation of FIPS COBOL, and validation of COBOL processors.

11.1 *Acquisition of COBOL Processors.* This publication is effective October 1, 1986. COBOL processors acquired for Federal use after this date

should implement at least one of the required subsets of FIPS COBOL. If the functionality of one or more of the optional modules meets programmatic requirements, then those optional modules also should be acquired. Conformance to FIPS COBOL should be considered whether COBOL processors are developed internally, acquired as part of an ADP system procurement, acquired by separate procurement, used under an ADP leasing arrangement, or specified for use in contracts for programming services.

For processors conforming to FIPS PUB 21–1 ordered or delivered after (date of publication of final document in the **Federal Register**), the requirement to contain any of the optional modules defined herein is waived. Each optional module that is needed to meet programmatic requirements should be explicitly cited as a requirement in the order for the processor.

A transition period provides time for industry to produce COBOL processors conforming to the standard. The transition period begins on the effective date and continues for one (1) year thereafter. The following apply during the transition period:

a. The provisions of FIPS PUB 21–1, with the exception concerning optional modules stated above, apply to processors ordered before the effective date but delivered subsequent to the effective date.

b. The provisions of this publication apply to orders placed after the effective date; however, a processor conforming to FIPS PUB 21–2, if available, may be acquired for use prior to the effective date. If a conforming processor is not available, a processor conforming to FIPS PUB 21–1 may be acquired for interim use during the transition period.

11.2 *Interpretation of FIPS COBOL.* NBS provides for the resolution of questions regarding FIPS COBOL specifications and requirements, and issues official interpretations as needed. All questions about the interpretation of FIPS COBOL should be addressed to: Director, Institute for Computer Sciences and Technology, ATTN: COBOL Interpretation, National Bureau of Standards, Gaithersburg, MD 20899.

11.3 *Validation of COBOL Processors.* The General Services Administration (GSA), through its Federal Software Management Support Center (FSMSC), provides a service for the purpose of validating the conformance to this standard of processors offered for Federal procurement. The validation system reports the nature of any deviations that are detected. This service is offered on a reimbursable basis. Further information about the validation service can be obtained from the FSMSC which is located at 5203 Leesburg Pike, Suite 1100, Falls Church, Virginia 22041–3467 (703–756–6156).

12. *Where to Obtain Copies.* Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 21–2 FIPS PUB 21–2), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 86–5852 Filed 3–17–86; 8:45 am]

BILLING CODE 3510-CN-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Bilateral Textile Consultations With the Government of Malaysia to Review Trade in Category 315

March 13, 1986.

On February 28, 1986, the Government of the United States requested consultations with the Government of Malaysia with respect to Category 315 (cotton printcloth). This request was made on the basis of the agreement between the Governments of the United States and Malaysia relating to trade in cotton, wool, and man-made fiber textile products, effected by exchange of notes dated July 1 and July 11, 1985. The agreement provides for consultations when the orderly development of trade between the two countries may be impeded by imports due to market disruption, or the threat thereof.

The purpose of this notice is to advise the public that, pending agreement on a mutually satisfactory solution concerning this category, the Government of the United States has decided to control imports during the ninety-day consultation period which began on February 28, 1986 and extends through May 28, 1986 at a level of 2,139,148 square yards. If no solution is agreed upon in consultations between the two governments, CITA, pursuant to the agreement, may establish a prorated specific limit of 4,360,344 square yards for Category 315 for the entry and withdrawal from warehouse for consumption of textile products, produced or manufactured in Malaysia and exported during the period beginning on May 29, 1986 and extending through December 31, 1986.

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit imports of cotton textile products in Category 315 produced or manufactured in Malaysia and exported during the ninety-day period which began on February 28, 1986 and extends through May 28, 1986 in excess of the established limit. In the event the limit established for the ninety-day period is exceeded, such excess amounts, if allowed to enter, may be charged to the levels established during the subsequent restraint period.

A summary market statement for this category follows this notice.

Anyone wishing comment or provide data or imformation regarding the treatment of Category 315 under the agreement with Malaysia, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. Ronald I. Levin, Acting Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Malaysia—Market Statement

Category 315—Cotton Printcloth

February 1986.

Summary and Conslusions

U.S. imports of Category 315 from Malaysia were 7,391,000 square yards during 1985, a substantial increase over the 136,000 square yards imported a year earlier. There were no imports of Category 315 from Malaysia in

1983; however, it is now the seventh largest supplier in the United States.

This sharp and substantial increase in imports of low-valued fabric is disrupting the U.S. market for Category 315.

U.S. Production and Producers' Market Share

U.S. production of Category 315 trended downward through 1982 when the U.S. market was severely impacted by recession and by a large carryover of printcloth stocks which had been imported in 1981. Production under these conditions was only 339 million square yards in 1982. After a slow start, production increased to 425 million square yeards in 1983 and to 450 million in 1984. For the first six months of 1985, production dropped 3 percent below the comparable period of 1984 level.

The apparent market for Category 315 is erratic. However, there has been a distinct downward trend in the U.S. producers' share of the market. In 1980, the domestic producers provided 81 percent of the market; in 1984, they provided 57 percent.

Imports and Import Penetration

Imports of Category 315 have been erratic but with a distinct upward trend. Imports in 1984 were a record 338 million square yards, nearly three times the 1980 imports of 116 million square yards. Imports temporarily dropped in 1985 due to embargoes on entries from certain countries and heavy stocks of unsold fabric in the marketing channels.

The ratio of imports to domestic production tripled from 23.5 percent in 1980 to 75.1 percent in 1984.

Duty-Paid Values and U.S. Producer Prices

Approximately 70 percent of the imports from Malaysia are entered under TSUSA No. 326.3927. This is a cotton/polyester printcloth with yarn count in the thirties. This fabric was priced below the U.S. prices for identical fabrics.

Committee for the Implementation of Textile Agreements

March 13, 1986.

Commissioner of Customs
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated July 1 and July 11, 1985, between the Governments of the United States and Malaysia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 19, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 315, produced or manufactured in Malaysia and exported during the ninety-day period which began on February 28, 1986 and extends through May 28, 1986, in excess of 2,139,148 square yards.[1]

Textile products in Category 315 which have been exported to the United States prior to February 28, 1986 shall not be subject to this directive.

Textile products in Category 315 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

the Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-5905 Filed 3-17-86; 8:45 am]

BILLING CODE 3510-DR-M

Import Limits for Certain Cotton Textile Products Produced or Manufactured in Brazil

March 13, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 19, 1986. For further information contact Nathaniel Cohen, Trade Reference Assistant, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 7 and 29, 1985 between the Governments of the United States and the Federative Republic of Brazil provides, among other things, for designated percentage increases in certain categories (swing), and for the borrowing of yardage from the succeeding year's level with the amount used being deducted from the level in the succeeding year (carryforward). Increases for swing and carryforward are being applied to the restraint limits previously established for cotton textile products in Categories 300/301, 313, 317, and 350, produced or manufactured in Brazil and exported during the agreement year which began on April 1, 1985 and extends through March 31, 1986. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the restraint limits for these categories.

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).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 13, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on October 15, 1985 by the Charman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and man-made fiber textile products, produced or manufactured in Brazil and exported during the twelve-month period which began on April 1, 1985 and extends through March 31, 1986[1]

Effective on March 19, 1986, the directive of October 15, 1985 is hereby amended to include the following adjusted restraint limits:

Category	Adjusted limits [2]
300/301	9,389,203 pounds.
313	33,600,000 square yards.
317	13,720,000 square yards.

[1] The limit has not been adjusted to account for any imports exported after February 27, 1986.

[1] The agreement provides, in part, that: (1) Specific limits may be exceeded during the agreement year by designated percentages; (2) Specific limits may be adjusted for carryover and carryforward; and (3) Administrative arrangements of adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Category	Adjusted limits [1]
350	67,200 dozen.

[1] The limits have not been adjusted to account for any imports exported after March 31, 1985.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-5902 Filed 3-17-86; 8:45 am]

BILLING CODE 3510-DR-M

Certain Cotton Textile Products Produced or Manufactured in Pakistan

March 13, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 19, 1986. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

Background

In consultations held in December 1985, pursuant to the terms of the Bilateral Cotton Textile Agreement of March 9 and 11, 1982, as amended, between the Governments of the United States and Pakistan, the Government of the United States agreed to rescind calls previously made concerning imports of men's and boys' other cotton coats in Category 334 and cotton dressing gowns in Category 350, produced or manufactured in Pakistan. Accordingly, the import control limits currently in effect are being cancelled. The United States Government reserves the right to request consultations with the Government of Pakistan in the future concerning these categories should imports reach levels which are disruptive to the U.S. market.

The two Governments also agreed during the December 1985 consultations to further amend their bilateral agreement to establish an adjusted aggregate limit of 235,123,446, square yards equivalent for cotton textile products in Categories 300 through 369, exported to the United States during the agreement year which began on January 1, 1986 and extends through December 31, 1986. The United States Government reserves its right under the agreement, as further amended, to deny entry permanently to shipments which are in excess of this adjusted aggregate limit.

In the letter which follows this notice the Chairman of CITA directs the Commissioner of Customs to cancel the import restraint limits in effect for cotton textile products in Categories 334 and 350. Inasmuch as the aggregate limit has already been adjusted in accordance with this amendment, no further instructions to Customs concerning it are needed at this time.

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).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreement.

Committee for the Implementation of Textile Agreements

March 13, 1986.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear M. Commissioner: This directive amends, but does not cancel, the directive of December 26, 1985 concerning certain categories of cotton textile products, produced or manufactured in pakistan and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

Effective on March 19, 1986, the directive of December 26, 1985 is hereby amended to cancel the import restraint limits established for cotton textile products in Categories 334 and 350.

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,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreement.

[FR Doc. 86-5904 Filed 3-17-86; 8:45 am]

BILLING CODE 3510-DR-M

Restraint Limit for Wool Textile Products Produced or Manufactured in the Hungarian People's Republic

March 13, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 19, 1986. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On December 19, 1985 a notice was published in the **Federal Register** (50 FR 51739) which announced import restraint limits for certain wool textile products, including Category 433 (men's and boys' wool suit-type coats), produced or manufactured in the Hungarian People's Republic and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986. In the letter which follows this notice, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to reduce the limit established for Category 433 from 7,573 dozen to 7,123 dozen to account for carryforward used during the 1985 agreement period.

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).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 13, 1986.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 16, 1985, which directed you to prohibit entry of certain wool textile products, produced or manufactured in the Hungarian People's Republic and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

Effective on March 19, 1986, the directive of December 16, 1985 is hereby amended to include an adjusted restraint limit of 7,123 dozen in Category 433.

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,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-5903 Filed 3-17-86; 8:45 am]

BILLING CODE 3510-DR-M

Deducting Charges From the Import Restraint Limit for Certain Cotton Textile Products Produced or Manufactured in Israel

March 13, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 18, 1986. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On November 13, 1985 a notice was published in the **Federal Register** (950 FR 46809), which announced that, on November 4, 1985, the Governments of the United States and Israel had exchanged letters on an arrangement establishing a limit of 750,000 numbers for cotton sheets in Category 361, produced or manufactured in Israel and exported during the seven-month period which began on September 1, 1985 and extends through March 31, 1986. That limit is now filled.

In reviewing the import charges, the Committee for the Implementation of Textile Agreements has determined that an error in the import data has resulted in 189,330 numbers being incorrectly charged to the limit. Accordingly, in the letter which follows this notice the Chairman of CITA directs the Commissioner of Customs to deduct 189,330 numbers from the import charges. This will reopen the category.

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).

Ronald I Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

March 13, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: To faciliate implementation of the arrangement of November 4, 1985 between the Governments of the United States and Israel, I request that, effective on March 18, 1986, you deduct 189,330 numbers from the imports charged to the restraint limit established in the directive of November 7, 1985 for cotton textile products in Categroy 361, produced or manufactured in Israel and exported during the seven-month period which began on September 1, 1985 and extends through March 31, 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.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-5946 Filed 3-14-86; 11:30 am]

BILLING CODE 3510-DR-M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval of Information Collection Requirements—Flammability Standards for Carpets and Rugs

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for extension of approval through March 31, 1989, of information collection requirements in regulations implementing flammability standards for carpets and rugs. The regulations are codified at 16 CFR Parts 1630 and 1631, and prescribe requirements for testing and recordkeeping by persons and firms issuing guaranties of products subject to the Standard for the Surface Flammability of Carpets and Rugs and the Standard for the Surface Flammability of Small Carpets and Rugs.

Additional Details About the Requested Extension of Approval of Requirements for Collection of Information

Agency address: Consumer Product Safety Commission, 1111 18th Street, NW., Washington, D.C. 20207.

Title of information collection: Standard for the Flammability of Carpets and Rugs (FF 1-70), 16 CFR Part 1630; Standard for the Flammability of Small Carpets and Rugs (FF 2-70), 16 CFR Part 1631.

Type of request: Extension of approval.

Frequency of collection: Varies depending upon volume of goods manufactured or imported.

General description of respondents: Manufacturers and importers of products subject to the flammability standards for carpets and rugs.

Estimated number of respondents: 120.

Estimated average number of hours for each respondent: 532 per year.

Comments: Comments on this requested extension of approval of information collection requirements should be addressed to Andy Valez-Rivera, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503; telephone: (202) 395-7340. Copies of the request for extension of information collection requirements are available from Francine Shacter, Office of Budget, Planning, and Program Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6529.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: March 12, 1986.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 86-5875 Filed 3-17-86; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Semi-Conductor Dependency

ACTION: Notice of Advisory Committee offer for prearranged public witnesses.

SUMMARY: The Defense Science Board Task Force on Semi-Conductor Dependency will meet on 29 May as previously announced in closed session. However, during the 1300 to 1700 period, public witnesses will be permitted. Any individual or organization desiring to

appear before the Task Force is encouraged to submit a written request. Individuals may contact Mr. Maynard, the Task Force Executive Secretary, at OUSDRE, Room 3E114, The Pentagon, Washington, DC 20301, for approval and scheduling.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting this Task Force will evaluate the Department of Defense's Dependency on foreign sources of supply for Semi-Conductors.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public, except for the afternoon of 29 May as explained above.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

March 11, 1986.

[FR Doc. 86–5864 Filed 3–17–86; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Use of Commercial Components in Military Equipment; Meeting

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Board Summer Study Task Force on Use of Commercial Components in Military Equipment will hold preliminary closed sessions on 10 April 1986 in Redondo Beach, California, and on 8 May and 20 June 1986, at the Pentagon, Washington, DC.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting this Task Force will receive classified briefings on military acquisition programs and systems availability and the affect of increased use of commercial items on force posture.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

March 12, 1986.

[FR Doc. 86–5865 Filed 3–17–86; 8:45 am]

BILLING CODE 3810-01-M

Strategic Defense Initiative Organization

ACTION: Notice of DoD intent to establish a Federally Funded Research and Development Center (FFRDC).

SUMMARY: The Department of Defense announces its intention to establish a Federally Funded Research and Development Center (FFRDC) to support the Strategic Defense Initiative Organization (SDIO) and to designate the FFRDC as the Strategic Defense Initiative Institute (SDII). The purpose of this action is to make continuously available to the Strategic Defense Initiative Organization (SDIO) a relatively small but dedicated technical support unit that can facilitate the utilization, in a manner that is more timely, cost effective, and productive than currently possible, of the large national capability that must be applied to the Strategic Defense initiative Program (SSIP). To accomplish this goal, the support unit personnel must have the across-the-board SDI-related technical skills and functional capabilities to preform a technology evaluation and integration role in support of the SDIO.

The SDII will seek flexible and innovative approaches to solving complex and multidimensional problems for the SDIP. In accomplishing this task, it will tap the broad base of talent, relevant experience, and perspectives available from addressing prior programmatic challenges. This will require contributions from a wide range of agencies and existing organizations, each of which already has some of the resource and skills in the needed areas, but no one of which can address SDIP technical support needs as a unified, coordinate whole

The SDII must be free from actual, potential, or apparent individual or organizational conflicts of interest. It must gain no competitive advantage from its position over those whose efforts it is helping the SDIO oversee; nor lack objectivity as a result of having profit-seeking manufacturing, or other conflicting organizational goals, such as a desire to serve other clients.

It has been decided, based on a careful comparative evaluation by the SDIO of all feasible institutional alternatives, that only a carefully designated, new Federally Funded Research and Development Center (FFRDC) within ready physical access of the SDIO can effectively satisfy the above purpose of the SDII. Accordingly, this announcement is being issued in compliance with the procedures of OFPP Policy Letter 84–1 of April 4, 1984, "Federally Funded Research and Development Centers."

The Mission Statement for the SDII is a follows:

Mission Statement

The specific mission of the SDII will be to perform, in a highly flexible manner, research, studies, and analyses of emerging technologies and system concepts relative to the Strategic Defense Initiative Program (SDIP); and to provide technical evaluation of basic and applied research efforts and program developments by other contractors. In particular, the scope and nature of the effort to be performed by the SDII in support of the SDIO will include, but not be limited to: (1) Identifying and evaluating existing and potential technical advances, technologies, and system concepts from all available sources; (2) Reducing the costs and increasing the effectiveness of basic and applied SDIP research; (3) Providing advice on the relative utility and integration implications of each of the complex technical aspects of the SDIP; (4) Assessing and helping to develop evolving technical requirements, architectures, and their related testbed needs; (5) Performing test and evaluation planning; (6) Integrating Offense/Defense scenarios and analyses into useful conclusions and framing of issues for decision by the SDIO; (7) Developing and maintaining a data base on active SDIP projects and capabilities, and continually analyzing same for overlap, duplication, and opportunities for coordination; (8) Conducting SDIP-related studies and analyses; and (9) Coordinating and performing other technical and liaison tasks, including interface with the pertinent acquisition activities of the military services, related to performance of SDIP-related technical activities in industry, universities, government laboratories, and elsewhere.

This announcement is not a synopsis in accordance with Section 18 of the Office of Federal Procurement Policy Act, or otherwise a synopsis of sources sought in connection with a procurement. Is it being published in response to Paragraph 6b(2) of the Office of Federal Procurement Policy policy letter on FFRDC's which provides

for at least three notices over a 90-day period in the *Commerce Business Daily* and the **Federal Register** indicating an agency's intentions to sponsor an FFRDC and the scope and nature of the effort to be performed by the FFRDC.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Sybert, Special Assistant to the Secretary, Executive Secretariat/OSD, Pentagon 3E880, Washington, DC 20301–1000, telephone (202) 697–8388.

Dated: March 12, 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86–5866 Filed 3–17–86; 8:45 am]

BILLING CODE 3810-01-M

Foreign Language and Area Studies; Meeting

AGENCY: Office of Research and Laboratory Management.

ACTION: Notice of open meeting.

SUMMARY: The Working Group on Foreign Language and Area Studies of the DoD-University Forum will meet in open session on April 9, 1986, from 11:00 a.m. until 4:00 p.m., at the Hyatt Regency-Crystal City, 2799 Jefferson Davis Highway, Arlington, Virginia.

The purpose of the meeting is to discuss progress of implementation of recommendations of the Report, "Beyond Growth: The Next Stage in Language and Area Studies."

Public attendance will be accommodated as space permits. Public attendees are requested to contact the DoD Office of Research and Laboratory Management before COB, April 7, 1986, to be advised of the meeting room and seating accommodations.

FOR FURTHER INFORMATION CONTACT: Don DeYoung on, (202) 694–0205.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

March 13, 1986.

[FR Doc. 86–5916 Filed 3–17–86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Fund for the Improvement of Postsecondary Education

AGENCY: Department of Education.

ACTION: Application notice for the comprehensive program final year dissemination competition for fiscal year 1986.

Applications are invited for new awards to be made in fiscal year 1986 under the Comprehensive Program Final Year Dissemination Competition conducted by the Fund for the Improvement of Postsecondary Education.

Under this competition, the Secretary of Education makes awards to institutions of postsecondary education and other public and private educational institutions and agencies. The purpose of the awards is to improve postsecondary education by supporting the efforts of current grantees to disseminate project ideas and results.

Authority for this program is contained in Part A of Title X of the Higher Education Act, as amended.

(20 U.S.C. 1135)

Closing Date for Transmittal of Applications: An application for a Final Year Dissemination award must be mailed or hand delivered by May 2, 1986.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.116D, 400 Maryland Avenue SW., Washington, DC 20202.

To establish proof of mailing, an applicant must show one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legibly mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, or receipt from a commerical carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Attention: 84.116D, 7th and D Streets SW., Region Office Building 3, Room 3633, Washington, DC.

The Application Control Center will accept hand delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays. An application that is hand delivered will not be accepted after 4:30 p.m. on May 1, 1986.

Program Information

Type of Competition: Applications under the Final Year Dissemination competitions are limited to grantees of the Fund whose projects are in their final year of funding, except that a recipient of a single-year grant may apply for assistance under this Competition within one year following the termination of its project.

Selection Criteria: The following selection criteria apply to the fiscal year 1986 competition:

(a) *Significance for Postsecondary Education.* The Secretary reviews each proposed project for its significance in improving post-secondary education by determining the extent to which it would—

(1) Achieve the purposes of the Final Year Dissemination Competition;

(2) Address an important problem or need;

(3) Involve learner-centered improvements;

(4) Achieve far-reaching impact through improvements that will be useful in a variety of ways and in a variety of settings; and

(5) Increase the cost-effectiveness of services.

(b) *Feasibility.* The Secretary reviews each proposed project for its feasibility by determining the extent to which—

(1) The project represents an appropriate response to the problem or need addressed;

(2) The applicant is capable of carrying out the project, as evidenced by the quality of the dissemination project design;

(3) The applicant is capable of carrying out the project, as evidenced by the adequacy of resources, including money, personnel, facilities, equipment, and supplies;

(4) The applicant is capable of carrying out the dissemination project, as evidenced by the applicant's qualifications and relevant prior experience; and

(5) The applicant and any other participating organizations are committed to the success of the dissemination project, as evidenced by contributions of resources and prior work in the area.

(c) *Appropriateness of funding projects.* The Secretary reviews each application to determine whether support of the proposed project by the Fund is appropriate in terms of the availability of other funding sources for

the proposed dissemination activities. (20 U.S.C. 1135)

The selection criteria (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), and (c) are of equal importance. In applying the criteria, the Secretary first analyzes an application in terms of each individual criterion. The Secretary then bases the final judgment of an application on an overall assessment of the degree to which the applicant addresses all selection criteria.

Other Information To Be Requested from Applicants: During the final stages of the selection process, the Secretary will contact by telephone all applicants being considered for funding in order to clarify or verify information relevant to their applications.

Available Funds: The Department of Education Appropriation Act, 1986 (Pub. L. 99–178), appropriated $12,710,000 for the Fund for the Improvement of Postsecondary Education. Approximately $100,000 will be available for Final Year Dissemination awards under the Comprehensive program. These funds could support approximately 12 new awards. The estimated size of the final year awards is $8,000 for a 12-month period.

These estimates do not bind the U.S. Department of Education to a specific number of grants, or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Application Forms: Application forms included in the program information packages will be sent directly to all potential applicants that are eligible for a Final Year Dissemination award.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is intended only to aid applicants in applying for assistance under this competition. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations governing the competition.

(Approved by the Office of Management and Budget under control number 1840–0117)

Applicable Regulations: The regulations governing awards made by the Fund for the Improvement of Postsecondary Education are contained in:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78, with the exceptions noted in the regulations referred to below.

(2) The regulations in 34 CFR Part 630.

Further Information: For further information contact the Fund for the Improvement of Postsecondary Education regarding the Comprehensive Program Final Year Dissemination Competition (84.116D), telephone (202) 245–8091.

(U.S.C. 1135)

(Catalog of Federal Domestic Assistance No. 84.116D, Fund for the Improvement of Postsecondary Education—Comprehensive Program Final Year Dissemination Competition)

Dated: March 11, 1986.

William J. Bennett,

Secretary of Education.

[FR Doc. 86–5867 Filed 3–17–86; 8:45 am]

BILLING CODE 4000–01–M

Office of Bilingual Education and Minority Languages Affairs

Emergency Immigrant Education Program for fiscal year 1986; Application for New Awards

AGENCY: Department of Education.

ACTION: Applicaton notice for new awards under the Emergency Immigrant Education Program for fiscal year 1986.

Programmatic and Fiscal Information

Notice is given that the Secretary has established a closing date for the transmittal of applications for assistance under the Emergency Immigrant Education Program. A State educational agency (SEA) may apply for a grant if it meets the eligibility requirements contained in 34 CFR 581.2. This program provides financial assistance to SEAs for educational services and costs for immigrant children enrolled in elementary and secondary public and nonpublic schools.

For fiscal year 1986 awards to SEAs, $28,710,000 is available. This amount reflects a reduction of $1,290,000 pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985, Pub. L. 99–177.

Applicants should be aware that the President has proposed budget rescissions to the Congress that may eliminate funds for this program. The deadline established in this notice will not be extended and applicants should prepare and submit applications pending further notification. The Secretary estimates that these funds will support 34 States.

These estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Closing Date for Transmittal of Applications

Applications for new awards must be mailed or hand delivered on or before May 9, 1986.

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: CFDA No. 84.162, 400 Maryland Avenue SW., Washington, DC 20202.

Each late applicant will be notified that its application will not be considered.

Applications that are hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building No. 3, 7th and D Streets SW., Washington, DC.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays.

Applicable Regulations

Regulations applicable to this program include the following:

(a) The regulations governing the Emergency Immigrant Education Program in 34 CFR Part 581.

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 78, and 79.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

Immediately upon receipt of this notice, applicants that are governmental entities, must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is

included in the application package for this program.

In States that have not established a process or chosen this program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

All comments from State single points of contact and all comments from State, areawide, regional, and local entities must be mailed or hand delivered by July 8, 1986 to the following address:

The Secretary, U.S. Department of Education, Room 4181 (CFDA No. 84.162), 400 Maryland Avenue SW., Washington, DC 20202.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION.

Do Not Send Applications to the Above Address

Application forms

Application forms and program information packages are available.

These may be obtained by writing to the Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue SW., (Room 421, Reporters Building), Washington, DC 20202. The Office of Bilingual Education and Minority Languages Affairs will mail application forms and program information packages to all SEAs.

Further Information: For further information contact Jonathan Chang, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue SW. (Room 421, Reporters Building), Washington, DC 20202. Telephone: (202) 732-1842.

Program Authority: 20 U.S.C. 4101-4108.

(Catalog of Federal Domestic Assistance Number 84.162, Emergency Immigrant Education Program)

Dated: March 12, 1986.

Carol Pendas Whitten,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 86-5868 Filed 3-17-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

National Petroleum Council Refinery Survey Task Group; Date Change for Meeting

The date and time of the March 1, 1986, eighth meeting of the Refinery Survey Task Group has been changed. The meeting will now be held on Thursday, March 20, 1986, starting at 2:30 p.m., in the Reading Room of the National Petroleum Council, 1625 K Street NW., Suite 600, Washington, DC. Notice of this meeting first appeared in 51 FR 6164, Thursday February 20, 1986 (FR Doc. 86-3706).

Issued at Washington, DC, March 12, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86-5918 Filed 3-17-86; 8:45 am]

BILLING CODE 6450-01-M

U.S. Petroleum Refining Coordinating Subcommittee on U.S. Petroleum Refining; Rescheduled Meeting

The date of the March 14, 1986, tenth meeting of the Coordinating Subcommittee on U.S. Petroleum Refining has been changed. The meeting will now be held on Friday, March 21, 1986, starting at 8:00 a.m., in the Conference Room of the National Petroleum Council, 1625 K Street NW., Washington, DC. Notice of this meeting first appeared in 51 FR 6586, Tuesday, February 25, 1986 (FR Doc. 86-4055).

Issued at Washington, DC, March 12, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86-5919 Filed 3-17-86; 8:45 am]

BILLING CODE 6450-01-M

Inventions Available for License

The Department of Energy hereby announces a number of inventions available for license, in accordance with 35 U.S.C. 207-209, in order to achieve expeditious commercialization of results of federally funded research and development. For further information concerning licensing of the inventions, please contact Robert J. Marchick, Office of the Assistant General Counsel for Patents, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Copies of specifications of the listed U.S. patent applications may be obtained, for a modest fee, from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161.

Issued in Washington, DC on March 12, 1986.

J. Michael Farrell,

General Counsel.

Department of Energy Patent Applications

Serial No. and Title of Invention

667,255—Liquid-Film Electron Stripper
668,054—Fabrication of Low Density Ceramic Material
670,777—In-Line Beam Current Monitor
672,228—Thermoacoustic Magnetohydrodynamic Electrical Generator
672,229—Multi-port Valve Assembly
673,450—Tokamak Reactor First Wall
673,968—Method of Forming a Foamed Thermoplastic Polymer
673,969—Organic Metal Neutron Detector
673,970—Preparing Reflective Substrate Surfaces for Laser Treatment
676,045—Abrasive Slurry Composition for Machining Boron Carbide
676,046—Method for Improving Product Yields in an Anionic Metalloporphyin-Based Artificial Photosynthesis System
676,047—Transmissive Metallic Contact for Amorphous Silicon Solar Cells
676,149—Spot Test for 1,3,5-Triamino-2,4,6-Trinitrobenzene, TATB
676,338—Density Gradient Free Electron Collisionally Excited X-Ray Laser
676,340—Short Protection Device for Stack of Electrolytic Cells
676,342—Microwave Coupler and Method
676,343—Method of Synthesizing and Growing Copper-Indium-Diselenide ($CuInSe_2$) Crystals
676,344—Apparatus for Connecting Aligned Abutted Tubes
678,148—Cycling Cryopump
678,202—Process for Selectively Patterning Epitaxial Film Growth on a Semiconductor Substrate
678,913—Dump Assembly
679,841—Magnetically Focussed Liquid Drop Radiator
679,842—Method of Preparing P-I-N-Junctions in Amorphous Silicon Semiconductors
684,099—Process for Producing Peracids from Aliphatic Hydroxy Carboxylic Acids
685,013—Preparation of Nuclear Fuel Spheres by Flotation-Internal Gelation
685,096—Method for Sensing and Measuring a Concentration or Partial Pressure of a Reactant Used in a Redox Reaction
685,100—Process for Converting Magnesium Fluoride to Calcium Fluoride
685,177—Low Voltage Solid-State Lateral Coloration Electrochromic Device
688,668—Composite Material for Thermal Energy Storage
688,669—Electrolysis Cell for Reprocessing Plutonium Reactor Fuel
688,670—Optical Emission Line Monitor With Background Observation and Cancellation
688,671—Production of Glass or Glass-Ceramic to Metal Seals with the Application of Pressure

688,672—Miniature Plasma Accelerating Detonator and Method of Detonating Insensitive Materials
688,673—Radioactive Waste Disposal Package
689,104—Liquid Chromatography/Fourier Transform IR Spectrometry Interface Flow Cell
689,735—Glass Electrolyte Composition
690,022—Recirculating Electric Air Filter
690,023—Disk Filter
690,218—Narrow Band Gap Amorphous Silicon Semiconductors
690,544—Progressing Batch Hydrolysis Process
691,825—High Efficiency, Direct Detection of Ions from Resonance Ionization of Sputtered Atoms
692,747—Diagnostic Apparatus and Method for Use in the Alignment of One or More Laser Means Onto a Fiber Optics Interface
692,748—Recirculating Cross-Correlation Detector
692,760—Optical Switch
696,273—First Wall for Polarized Fusion Reactors
696,276—Extrusion Cast Explosive
696,547—Isoptic Generator for Bismuth-212 Based on Radium
696,548—Apparatus and Method for the Preparation of Dioxygen Difluoride
696,549—Apparatus for Laser Beam Profile Measurements
696,550—Machine Imparting Complex Rotary Motion for Lapping a Spherical Inner Diameter
697,296—Phase Comparator Apparatus and Method
697,824—Fiberoptic Spectrophotometer
697,828—Predicting Threshold and Location of Laser Damage on Optical Surfaces
697,989—Direct Fissile Assay of Enriched Uranium Using Random Self-Interrogation and Neutron Coincidence Response
699,092—Low Activation Ferritic Alloys
699,878—Log Amplifier with Pole Zero Compensation
699,879—Microwave Detector
699,887—Control System for a Small Fission Reactor
699,889—Removal of Sulfur and Nitrogen Containing Pollutants from Discharge Gases
700,845—Synthesis of New Amorphous Metallic Spin Glasses
701,010—Magnetic Shielding
702,540—Flexible Swivel Connection
702,569—Excimer Laser Phototherapy for the Dissolution of Abnormal Growth
702,692—Reactor Design for Uniform Chemical Vapor Deposition-Grown Films Without Substrate Rotation
702,715—Semiconductor Electrode with Improved Photostability Characteristics
702,716—Semiconductor Bridge (SCB) Igniter
702,751—Gated Strip Proportional Detector
702,752—Boiling Water Neutronic Reactor Incorporating a Process Inherent Safety Design
703,577—Steady-State Inductive Spheromak Operation
704,114—Pulse-Excited, Auto-Zeroing Multiple Channel Data Transmission System
704,115—Multiple Channel Optical Data Acquisition system
704,455—Gas Ampoule-Syringe
704,697—Inorganic-Polymer-Derived Dielectric Films

[FR Doc. 86-5877 Filed 3-17-86; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project Nos. 9556-000, et al.]

Hydroelectric Applications (Kamargo Corp., et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Preliminary Permit.

b. Project No.: 9556-000.

c. Date Filed: October 24, 1985.

d. Applicant: Kamargo Corporation.

e. Name of Project: Poors Island.

f. Location: Black River, Jefferson County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Paul J. Elston, 420 Lexington Avenue, Suite 440, New York, NY 10170, (212) 986-0440.

i. Comment Date: May 7, 1986.

j. Description of Project: The proposed project would develop the unutilized capacity at the licensed Black River Project No. 2569, which includes: (1) An existing concrete gravity dam, 770 feet long and 23 feet high; (2) an existing concrete gravity dam 90 feet long, to be demolished; and (3) an existing impoundment 40 acres in surface area with a storage capacity of 460 acre-feet at a normal maximum surface elevation of 564 feet mean sea level. The proposed project would consist of: (1) A proposed intake/powerhouse structure of reinforced concrete, 100 feet long and 120 feet wide; (2) a proposed excavated intake channel 170 feet long, 120 feet wide and 25 feet deep; (3) three proposed turbine/generators of 3.65 MW capacity each; (4) a proposed 23 kV transmission line 800 feet long; and (5) appurtenant facilities.

The estimated annual energy production is 16,000,000 kWh. The net hydraulic head is 22 feet. Project power would be sold to Niagara Mohawk Power Corporation. The dams are owned by Niagara Mohawk Power Corporation.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $160,000.

2 a. Type of Application: Preliminary Permit.

b. Project No. 9655-000.

c. Date Filed: December 2, 1985.

d. Applicant: American Power Producers, Inc.

e. Name of Project: Lake Isabel.

f. Location: On Lake Isabel in Sec. 36, T.28N., R.9E., in the Mt. Baker Snoqualmie National Forest near the town of Goldbar in Snohomish County, Washington.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Roy W. Johnson, American Power Producers, Inc., 1819—12th Avenue, Seattle, WA 98122, (206) 323-3150.

i. Comment Date: May 2, 1986.

j. Description of Project: The proposed project would consist of: (1) A 32-foot-high dam at elevation 2,842 feet; (2) a 9,900-foot-long penstock; (3) a powerhouse containing one generating unit with a rated capacity of 5,000 kW; and (4) a 250-foot-long transmission line. Applicant estimates the average annual energy production to be 43,800,000 KWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $9,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The power produced is proposed to be sold to the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

3 a. Type of Application: License (Over 5MW).

b. Project No.: 8990–000.

c. Date Filed: March 1, 1985.

d. Applicant: Noah Corporation.

e. Name of Project: Opekiska Lock and Dam.

f. Location: At the U.S. Army Corps of Engineers' Opekiska Lock and Dam on the Monongahela River in Monongalia County, West Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. James B. Price, President, Noah Corp., P.O. Drawer 640, Aiken, SC 29802, (803) 649–1115.

i. Comment Date: April 18, 1986.

j. Competing Application: Project No. 8179–000, Date Filed: March 19, 1984.

k. Description of Project: The proposed run-of-river project would utilize the U.S. Army Corps of Engineers' Opekiska Lock and Dam and would consist of: (1) A new intake structure; (2) a new powerhouse with a 10-MW turbine-generator unit; (3) a new tailrace; (4) a new 4,400-foot-long transmission line; and (5) other appurtenances. Applicant estimates an average annual generation of 34,700 MWh.

l. Purpose of Project: Project energy would be sold to the Monongahela Power Company.

m. This notice also consists of the following standard paragraphs: A4, B, and C.

4 a. Type of Application: Preliminary Permit.

b. Project No.: 9622–000.

c. Date Filed: November 15, 1985.

d. Applicant: Adirondack Hydro Development Corporation.

e. Name of Project: Ploof Falls.

f. Location: St. Regis River in Franklin County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Malcolm M. Preston, Adirondack Hydro Development Corporation, Market Street, Potsdam Industrial Plaza, Potsdam, NY 13676, (315) 265–8090.

i. Comment Date: May 9, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 8-foot-high, 250-foot-long concrete dam owned by the State of New York; (2) an existing reservoir with a surface area of 3 acres and a gross storage capacity of 30 acre-feet and a water surface elevation of 1,120 feet msl; (3) a proposed 96-inch-diameter, 60-foot-long penstock; (4) a proposed powerhouse containing a generating unit with a rated capacity of 925-kW; and (5) a proposed 1,800-foot-long transmission line tying in to the existing Niagara Mohawk Power Corporation system. The Applicant estimates a 4,900,000 kWh average annual energy production.

k. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending on the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under the permit would be $110,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

5 a. Type of Application: License (5 MW or less).

b. Project No.: 8460–001.

c. Date Filed: June 10, 1985.

d. Applicant: Contoocook Valley Paper Company, Inc.

e. Name of Project: West Hennicker.

f. Location: Contoocook River in Merrimack County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Ms. Mary E. Fletcher, President, Contoocook Valley Paper Company, Inc. P.O. Box 434, Milford, NH 03055, (603) 428–3263.

i. Comment Date: May 9, 1986.

j. Description of Project: The proposed project would consist of (1) An existing 12-foot-high, 137-foot-long concrete dam owned by the Applicant with a crest elevation of 430 feet msl; (2) an existing reservoir with a surface area of 10 acres and a storage capacity of 98 acre-feet; (3) a proposed powerhouse at the dam containing a generating unit with a rated capacity of 95 kW; (4) a proposed canal 20 to 30-foot-wide, 5 to 12-foot-high, 1,000-foot-long; (5) a proposed millpond with a surface area of 1 acre and a storage capacity of 5 acre-feet; (6) a proposed 20-foot-high, 50-foot-long intake structure; (7) four 8-foot-diameter, 350-foot-long penstocks; (8) a proposed powerhouse containing a generating unit with a rated capacity of 1,400 kW; (9) a proposed 250-foot/long transmission line tying into the existing Pubic Service Company of New Hampshire system. The Applicant estimates a 4,189,300 kWh average annual energy production.

k. Purpose of Project: Power will be sold to the Public Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and Dl.

6 a. Type of Application: Preliminary Permit.

b. Project No: 9793–000.

c. Date Filed: December 30, 1985.

d. Applicant: Hillcrest Hydroelectric Company.

e. Name of Project: Hillcrest.

f. Location: Upper Ammonoosuc River in Coos County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Harold Turner, Jr., Hillcrest Hydroelectric Company, P.O. Box 7191, Concord, NH 03301, (603) 497–3940.

i. Comment Date: May 9, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 17-foot-high, 105-foot-long concrete dam owned by the Berlin Water Department; (2) an existing reservoir with a surface area of 4.5 acres and a storage capcity of 40 acre-feet at elevation 1,490 feet msl; (3) an existing 16-inch-diameter, 27,700-foot-long penstock; (4) a proposed powerhouse containing a generating unit with a rated capacity of 50 kW; and (5) a proposed 1,600-foot-long transmission line typing into the existing Public Service Service Company of New Hampshire system. The Applicant estimates a 425,00 kWh average annual energy production.

k. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $5,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

7a. Type of Application: Minor License.

b. Project No: 9654–000.

c. Date Filed: November 29, 1985.

d. Applicant: Martin Wirkkala.

e. Name of Project: Burnham Creek.

f. Location: On Burnham Creek in Sec. 21, T10N, R9W, near Naselle in Pacific County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. R. L. Van Wormer, Independent Ecological Services, 1514 Muirhead, Olympia, WA 98502, (206) 943–0127.

i. Comment Date: May 9, 1986.

j. Description of Project: The existing project would consist of: (1) A 20-foot-high earthen dam; (2) a reservoir with a surface area of 5.57 acres with a water surface elevation of 53.2 feet MSL; (3) a 76-foot-long penstock varying in diameter from 30 inches to 18 inches; (4) a powerhouse containing one generating unit rated at 23 kW, producing an average annual output of 43,000 kWh; and (5) a 1,500-foot-long, 600-volt transmission line.

k. Purpose of Project: The power produced is proposed to be sold to the local power company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

8 a. Type of Application: Transfer of License.

b. Project No.: 2615–004.

c. Date Filed: December 30, 1985.

d. Applicant: Central Maine Power Company, Scott Paper Company, Milstar Manufacturing, and the Madison Paper Corporation (Owners of Brassua Dam or Transferors) and the Brassua Hydroelectric Limited Partnership.

e. Name of Project: Brassua Storage Project.

f. Location: On the Moose River in Somerset County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. John Gulliver, c/o Peirce, Atwood, Scribner, Allen, Smith, & Lancaster, One Monument Square, Portland, ME 04101, (207) 773–6411.

i. Comment Date: April 21, 1986.

j. Description of Project: On September 16, 1977, a minor license was issued to the Central Maine Power Company, the Milstar Manufacturing Corporation and the Kennebec River Pulp and Paper Company, Inc. to construct, operate and maintain the Brassua Storage Project No. 2615. Subsequently, by order issued June 14, 1978, the Commission approved the transfer of Kennebec River Pulp and Paper Company, Inc.'s interest in Project No. 2615 to the Madison Paper Corporation. It is now proposed to transfer the license to the Owners of Brassua Dam and the Brassua Hydroelectric Limited Partnership (hereinafter referred to as the "Co-Transferees"). The Co-Transferees are an unincorporated association of domestic corporations (the Owners of Brassua Dam) and a private limited partnership organized under the laws of the State of Maine (Brassua Hydroelectric Limited Partnership). The purpose of the proposed transfer is to facilitate the expeditious development of hydroelectric generation capacity at the project. As stated in the application for amendment of license for the Brassua Dam filed simultaneously with this application for license transfer, the proposed development of hydroelectric generation capacity at the project will result in annual production of approximately 17 million kWh, thereby, reducing Maine's dependence on fossil fuels. Approval of the license transfer will be in the public interest because it will place both the license and the project properties in the hands of Co-transferees, entities appropriately structured and qualified to undertake the financial and operational steps necessary to develop the project expeditiously. Co-transferee, Owners of Brassua Dam, consists of corporate entities having business experience in the financing, design, and development of hydroelectric projects. Co-transferee, Brassua Hydroelectric Limited Partnership, a new entity, is structured so as to attract the level of financial participation necessary to ensure successful development of the project, and has, as its general partner, Swift River/Hafslund Company, an entity having business experience in the financing, design, and development of hydroelectric projects.

k. This notice also consists of the following standard paragraphs: B and C.

9 a. Type of Application: Preliminary Permit.

b. Project No.: 9897–000

c. Date Filed: February 3, 1986.

d. Applicant: Salmon Falls Creek Associates.

e. Name of Project: Salmon Falls Creek.

f. Location: At Salmon Falls Dam on Salmon Falls Creek in Twin Falls County, Idaho

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Jordan Walker, 484 East 300 North Manti, UT 84642, (801) 835–0202.

i. Comment Date: May 9, 1986.

j. Description of Project: The proposed project would utilize the Salmon Falls Canal Company's existing Salmon Falls Dam and would consist of: (1) The existing 226-foot-high earthfilled dam; (2) the existing reservoir which has a surface area of 3,000 acres and a 228,000 acre/feet storage capacity at reservoir elevation 5007 feet; (3) a 1,000-foot-long, 48-inch-diameter penstock; (4) a powerhouse containing a generating unit with a capacity of 4702 kW and an average annual generation of 8,231 MWh; and (4) a 2-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $85,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

10 a. Type of Application: Preliminary Permit.

b. Project No. 9899–000.

c. Date Filed: February 3, 1986.

d. Applicant: Plymouth Dam Associates.

e. Name of Project: Plymouth Dam.

f. Location: On the Schuylkill River in Montgomery and Chester Counties, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mike Graham, 484 East 300 North, Manti, UT 84642, (801) 835–0202.

i. Comment Date: April 18, 1986.

j. Competing Application: Project No. 9531–000, Date Filed October 9, 1985.

k. Description of Project: The proposed project would consist of: (1) The existing 8.2-foot-high and 530-foot-long gravity and timber crib Plymouth Dam owned by the Pennsylvania Department of Environmental Resources; (2) a reservoir with a surface area of 500 acres; (3) a new intake structure; (4) a new powerhouse at the dam with 4 turbine-generator units with a total installed capacity of 1,600 kW; (5) a new 12–kV and 1-mile-long transmission line; and (6) other appurtenances. Applicant estimates an average annual generation of 7,000,000 kWh.

l. Purpose of Project: Project energy would be sold to Philadelphia Electric Power.

m. This notice also consists of the following standard paragraphs: A8, B, C, and D2.

n. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $50,000.

11 a. Type of Application: License (5 MW or less).

b. Project No. 9175–001.

c. Date Filed: May 31, 1985.

d. Applicant: Rivers Electric Co., Inc.

e. Name of Project: Eddyville Falls Dam.

f. Location: Rondout Creek in Ulster County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Charles R. Pepe, River Electric Co., Inc., 120 North Pascack Road, Spring Valley, NY 10977, (914) 356–1900.

i. Comment Date: May 9, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 11-foot-high, 220-foot-long gravity dam owned by Michael and Florence Briglia and has a crest elevation of 16 feet msl; (2) an existing reservoir with negligible storage capacity and a surface area of 15 acres; (3) a proposed powerhouse at the base of the dam containing a generating unit with a rated capacity of 1,392 kW; (4) a proposed 200-foot-long transmission line tying into the existing Central Hudson Gas and Electric Corporation's system; and (5) appurtenant facilities. The Applicant estimates a 6.0 million kWh average annual energy production.

k. Purpose of Project: Power generated would be sold to Central Hudson Gas and Electric Corporation.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

12 a. Type of Application: Preliminary Permit.

b. Project No: 9638–000.

c. Date Filed: November 22, 1985.

d. Applicant: Lock 16 Associates.

e. Name of Project: Mississippi Lock & Dam No. 16.

f. Location: On the Mississippi River in Rock Island County, Illinois and Muscatine County, Iowa.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. J. Kirk Rector, Lock 16 Associates, 5041 S. Boabab Drive, Salt Lake City, UT 84117, (801) 272–2030.

i. Comment Date: May 9, 1986.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers Mississippi Lock and Dam No. 16, and would consist of: (1), 35 new steel penstocks each 60 feet long and 16 feet in diameter; (2) a new concrete powerhouse approximately 900 feet by 84 feet containing 35 turbine/generator units having a total installed capacity of 14,000 kW operating at 9 feet of hydraulic head; (3) a new rock tailrace approximately 130 feet long and 900 feet wide; (4) a new 28,000-foot-long 115-kV transmission line; and (5) appurtenant facilities. The Applicant estimates the average annual energy production to be 74.0 GWh.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to the City of Muscatine, Iowa.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $155,000.

13 a. Type of Application: Major License (under 5 MW).

b. Project No.: 8436–001.

c. Date Filed: March 11, 1985.

d. Applicant: Idaho Natural Energy, Inc.

e. Name of Project: Smith Creek.

f. Location: On Smith Creek in Boundary County, Idaho near the town of Porthill within the Idaho Panhandle National Forest. T65N R3W Unsurveyed T65N R2W Sections 6, 31, 32, 33, 34, 27, and 26.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Jeff Burt, President, Idaho Natural Energy, Inc., 165 Wright Brothers Drive, Salt Lake City, Utah 84116 and Mr. Clark M. Mower, Vice-President, Bingham Engineering, 100 Lindbergh Plaza 2, 5160 Wiley Post Way, Salt Lake City, Utah 84116 (801) 532–2520.

i. Comment Date: May 9, 1986.

j. Description of Project: The proposed project would consist of: (1) An 8-foot-high, 75-foot-wide concrete diversion dam having sluice gates, trashracks, fish screening and a fish bypass located at elevation 3,450 feet; (2) a 27,770-foot-long steel penstock with a diameter varying from 72-inches, 66-inches, and 60-inches; (3) a 100-foot-wide, 50-foot-long, 30-foot-high powerhouse containing two generating units with a total rated capacity of 30 MW, producing an estimated annual average output of 81.8 million kWh; (4) a 20-foot-wide, 30-foot-long tailrace discharging water released from the turbines into Smith Creek at elevation 1,840 feet above Smith Falls; (5) a 700-foot-long, 115-kV transmission line interconnecting to an existing Northern Light Inc. transmission system. The existing system will be upgraded 30-miles to an existing Bonneville Power Authority Substation in Bonners Ferry, Idaho; (6) a 1,100-foot-long, 20-foot-wide access road allowing access from Forest Service Road # 281 to the south side of the diversion structure permitting construction and maintenance activities; and an existing 200-foot-long logging road widened to permit access to the diversion dam from the north side.

The cost of the project would be $27,381,000 dollars.

k. Purpose of Project: Project power will be sold to either Pacific Power and Light Company or Idaho Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

14 a. Type of Application: Preliminary Permit.

b. Project No.: 9630–000.

c. Date Filed: November 19, 1985.

d. Applicant: Joint Venturers.

e. Name of Project: Burnside Project.

f. Location: Hockanum River in Hartford County, Connecticut.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Brooke J. Pennypacker, Hydro-Tech, Inc., P.O. Box 277, South Barre, MA 01074, (617) 355–2139.

i. Comment Date: May 8, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 12-foot-high, 160-foot-long concrete gravity dam; (2) a reservoir with a surface area of 3 acres, a storage capacity of 21 acre-feet, and a normal water surface elevation of 34 feet m.s.l.; (3) a concrete intake structure; (4) a 62-foot-long masonry intake flume; (5) an existing concrete and brick powerhouse containing one generating unit with a capacity of 150 kW; (6) a 251-foot-long concrete, stone, and earth tailrace; (7) an existing transmission line, 150 feet long; and (8) appurtenant facilities. The Applicant estimates the average annual generation would be 570,000 kWh. The existing dam is owned by Joint Venturers, East Hartford, Connecticut.

k. Purpose of Project: Project power would be sold to the Connecticut Light and Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a

preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $3,500.

15 a. Type of Application: Preliminary Permit.

b. Project No.: 9784–000.

c. Date Filed: December 30, 1985.

d. Applicant: North American Hydro, Inc. and Renaissance Hydro Associates.

e. Name of Project: Manawa Dam Project.

f. Location: On the Little Wolf River in the City of Manawa, Waupaca County, Wisconsin.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Charles Alsberg, North American Hydro, Inc., P.O. Box 167, Neshkoro, WI 54960, (414) 293–4628.

i. Comment Date: May 12, 1986.

j. Description of Project: The proposed project would consist of: (1) The existing Manawa Dam approximately 114 feet long and 16 feet high; (2) an existing 195-acre reservoir having a storage capacity of 1,078 acre-feet; (3) an existing concrete powerhouse approximately 20 feet by 32 feet containing two turbine/generator units having a total installed capacity of 250 kW operating at 12 feet of hydraulic head; and (4) appurtenant facilities. The existing facilities would be rehabilitated and place back into service. An existing 12.7-kV transmission line is available at the site. The Applicant estimates that the average annual energy generation would be 900,000 kWh. The project dam is owned by the City of Manawa.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to the Wisconsin Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $15,000.

16 a. Type of Application: Preliminary Permit.

b. Project No: 9781–000.

c. Date Filed: December 30, 1985.

d. Applicant: North American Hydro, Inc. and Renaissance hydro Associates.

e. Name of Project: Chetek Dam Project.

f. Location: On the Chetek River in the City of Chetek, Barron County, Wisconsin.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Charles Alsberg, North American Hydro, Inc., P.O. Box 167, Neshkoro, WI 54960, (414) 293–4628.

i. Comment Date: May 7, 1986.

j. Description of Project: The proposed project would consist of: (1) The existing concrete Chetek Dam approximately 110 feet long and 12 feet high; (2) an existing 3,425-acre reservoir having a storage capacity of 28,500 acre-feet; (3) an existing powerhouse located at the east end of the dam spillway containing a single turbine/generator unit with a capacity of 250 kW operating at 12 feet of hydraulic head; and (4) appurtenant facilities. The existing facilities would be rehabilitated and placed back into service. An existing 12.7-kV transmission line is available at the site. The Applicant estimates that the average annual energey generation would be 650,000 kWh. The project is owned by Barron County.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to Northern States Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $15,000.

17 a. Type of Application: Preliminary Permit.

b. Project No: 9743–000.

c. Date Filed: December 27, 1985.

d. Applicant: Taft hydropower, Inc.

e. Name of Project: Fort Drum Hydropower Porject.

f. Location: On the Indian River near Antwerp, Jefferson County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person:

Mr. Lawrence R. Taft, 10315 Caughdenoy Rd., Central Square, NY 13036, (315) 437–2547

Mr. Neal F. Dunlevy, Stetson Dale Engineering PC, 185 Genesee St., Utica, NY 13501, (315) 797–5800.

i. Comment Date: May 7, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing stone masonry gravity dam approximately 250 feet long and 12 feet high; (2) an existing 30 acre reservoir with a storage capacity of 150 acre-feet at an elevation of 514 msl (the use of flashboards 3 feet high will be investigated); (3) a new intake cannel 15 feet wide, 7 feet deep, and 200 feet long; (4) a proposed intake structure, gate, and trash racks; (5) a new penstock eight feet in diameter and 150 feet long; (6) a new reinforced concrete powerhouse 15 feet wide, 25 feet long, and 10 feet high housing one 500 kW bulb turbine-generator; (7) a proposed tailrace 15 feet wide, 7 feet deep, and 50 feet long; (8) a proposed 13.8 kV transmission line approximately 3,000 feet long; and (9) appurtenant facilities. The Applicant estimates that the average annual energy generation would be 2.0 GWh. The project energy would be sold to the Niagara Mohawk Power Company. The dam is owned by the Village of Antwerp, New York.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope under this Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $25,000.

19 a. Type of Application: Preliminary Permit.

b. Project No.: 9662–000.

c. Date Filed: December 3, 1985.

d. Applicant: Henrys Fork Conservationists I.

e. Name of Project: Henrys Fork I.

f. Location: In Targhee National Forest, on Henrys Fork, in Fremont County, Idaho.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Louis Rosenman, Suite 1100, 1333 New Hampshire Avenue, Washingon, DC 20036, (202) 783–2100.

i. Comment Date: April 21, 1986.

j. Competing Application: Project No. 9804, Date Filed 12–30–85.

k. Description of Project: The proposed project would consist of: (1) A 10-foot-high diversion dam at elevation 6,080 feet; (2) a 1.25-mile-long canal (3) a 700-foot-long, 96-inch-diameter penstock; (4) a powerhouse containing a generating unit with a capacity of 2,650 kW and an average annual generation of 15.8 GWh; and (5) a 1.3-mile-long Transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $145,000. No new roads would be constructed or drilling conducted during the feasibility study.

l. Project power would be sold.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

20 a. Type of Application: Preliminary Permit.

b. Project No.: 9666–000.

c. Date Filed: December 3, 1985.

d. Applicant: Marble Creek Associates.

e. Name of Project: Marble Creek.

f. Location: In St. Joe National Forest on Marble Creek, Township 45N, Range 3E, in Shoshone County, Idaho.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Mike Graham, 484 East 300 North, Manti, UT 84642, (801) 835–0202.

i. Comment Date: April 21, 1986.

j. Competing Application: Project No. 9656, Date Filed: 12/02/85; Due Date: April 7, 1986.

k. Description of Project: The proposed project would consist of: (1) A 6-foot-high diversion dam at elevation 2600 feet; (2) a 4,150-mile-long, 60-inch-diameter penstock; (3) a powerhouse containing a generating unit with a capacity of 1,810 kW and an average annual generation of 7,927,800 kWh; and (4) a 1.8-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $85,000. No new roads would be constructed or drilling conducted during the feasibility study.

l. Purpose of Project: Project power would be sold.

m. This notice also consists of the following standard paragraphs: A8, B, C, D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION",

"COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: March 13, 1986.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–5909 Filed 3–17–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83–30–043]

Transcontinental Gas Pipeline Corp.; Proposed Changes in FERC Gas Tariff

March 12, 1986.

Take notice that on February 28, 1986, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to Original Volume No. 2 of its FERC Gas Tariff, proposed to be made effective April 1, 1986. Transco states that such sheets are being filed in compliance with Article IV of the "Interim Settlement Agreement as to Rates of Transcontinental Gas Pipe Line Corporation" (Interim Settlement) approved by the Commission as an uncontested settlement in Transco's Docket No. RP83–30. The revised tariff sheets are being filed to implement the second of three increments of the conversion of Transco's production area transportation rates to rolled-in, mileage-based rates as required by the Interim Settlement.

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 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 19, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–5915 Filed 3–17–86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8235–001, et al.]

Hydroelectric Development, Inc., et al.; Availability of Environmental Assessment and Finding of No Significant Impact

March 13, 1986.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major and minor licenses (or exemptions) listed below and has assessed the environmental impacts of the proposed developments.

Project No.	Project Name	State	Water body	Nearest town	Applicant
			Exemptions		
8235-001	Lower Robertson Dam	NH	Ashuelot River	Winchester	Hydroelectric Development, Inc.
9169-000	Thompson's Mill's	OR	Calapooia River	Shedd	Boston Power Company, Inc.
9231-000	Canyon Lake	WA	Canyon Creek	Deming	Scott Paper Co.
9379-000	Belding Dam	MI	Flat River	Belding	Grenfell, Inc.
9384-000	White's Brook Micro	ME	White's Brook	Gilead	David Head.
9545-000	Hotchkiss	CO	Leroux Creek	Hotchkiss	Town of Hotchkiss & Hotchkiss Hydropower Corp.
			Licenses		
3991-002	Cross Cut Diversion Dam Black River.	ID	Henrys Fork River	St. Antony	Energenics Systems, Inc.
6681-001	Black River	LA	Black River	Catahoula and Concordia Parishes	F. and T. Services Corp.
6682-001	Ouachita	LA	Ouachita River	Columbia	F. and T. Services Corp.
6873-001	Southside II Water Power Project	CO	Southside Canal	Collbran	STS Energenics Inc.
6896-002	Forks of Butte	CA	Butte Creek	Paradise	Butte Creek Improvement Co. & Energy Growth Group.
7211-002	Salmon Falls Creek	ID	Salmon Falls Creek	Buhl	Vernon L. and Betty J. Herzinger.
7232-001	Columbus Lock & Dam	MS	Tombigbee River	Columbus	Aero Construction, Inc.
8178-000 and	Falls Dam	CT	Naugatuck River	Seymour	Eveready Machinery Company, Inc. & McCallum Enterprises, Inc.
8794-000	Rimmon Pond				Howard & Mildred Carter.
8546-000	Pine Creek	MT	Pine Creek	Livingston	Limestone Hydro Associates.
8774-000	Edwards Falls	NY	Limestone Creek	Syracuse	Nelson Creek Power, Inc.
9029-000	Grasshopper Flat Hydro	CA	Nelson Creek	Big Bend	
			Amendments		
2031-003	Bartholomew Creek	UT	Bartholomew and Hobble Creek	Springville City	Springville City, Utah.
2310-015	Brum-Spaulding	CA	North Fork American River	Auburn	Pacific Gas and Electric Company.
3267-002	Ballard Mill Dam	NY	Salmon River	Village of Malone	The Greater Malone Community Council, Inc.
5755-001	Sugar Pine Dam	CA	North Shirttail	Foresthill	Foresthill Public Utility District.
7153-002	Victory Mills	NY	Fish Creek	Schuylerville	SNC Hydro, Inc.

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environmental impact statements for these projects will not be prepared. Copies of the EA's are available for review of the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NW., Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5912 Filed 3-17-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF86-375-001]

Garden State Paper Co., Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

March 12, 1986.

On March 4, 1986, Garden State Paper Company, Inc. (Applicant), of 950 River Drive, Garfield, New Jersey 07026 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is a topping-cycle cogeneration facility, wholly owned and operated by the applicant, and is located at 950 River Drive, Garfield, New Jersey. The facility contains five power boilers and is equipped with four turbine generators, and furnishes steam, electricity, mechanical energy and heated water. The electric power production capacity is 15 megawatts. The primary energy sources used by the facility are Natural Gas, 2.8% Sulfur No. 6 oil and .3% Sulfur No. 6 Oil. The facility was installed prior to November 9, 1978.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5913 Filed 3-17-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF86-542-000]

Springfield Hydroelectric Co.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

March 12, 1986.

On February 28, 1986, Springfield Hydroelectric Company, (Applicant), of 26 State Street, Montpelier, Vermont 05602 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 400 kilowatt hydroelectric facility (FERC P. 8014) will be located on the Black River in Windsor County, Vermont.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and

214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5914 Filed 3-17-86; 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 Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $100,000 gained as a result of a consent order which the DOE entered into with Ferrell Companies, Inc., a reseller-retailer of petroleum products, located in Liberty Missouri. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC. 20585. All comments should conspicuously display a reference to case number HEF-0587.

FOR FURTHER INFORMATION CONTACT: Sharon Dennis, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC. 20585 (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulation of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedure and standards that the DOE has tentatively formulated to distribute to adversely affected parties $100,000 plus accrued interest obtained by the DOE under the terms of a consent order enterd into with Ferrell Companies, Inc. The funds were provided to the DOE by Ferrell to settle all claims and disputes between the firm and the DOE regarding the manner in which the firm applied the federal price regulations with respect to its sales of propane during the consent order period October 1, 1973, through January 27, 1981.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to firms and individuals who purchased propane from Ferrell. In order to obtain a refund, a claimant will be required to submit a schedule of its monthly purchases from Ferrell and to demonstrate that it was injured by Ferrell's pricing practices. Applicants must submit specific documentation regarding the date, place, and volume of product purchased, whether the increased costs were absorbed by the claimant or passed through to other purchasers, and the extent of any injury alleged to have been suffered. An applicant claiming $5,000 or less, however, will be required to document only its purchase volumes.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in this proceeding will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: March 7, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Implementation of Special Refund Procedures

March 7, 1986.

Name of Firm: Farrell Companies, Inc.
Date of Filing: June 4, 1985.
Case Number: HEF-0587.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on June 4, 1985, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Ferrell Companies, Inc. (Farrell) and its subsidiaries.[1]

I. Background

Ferrell is a "reseller-retailer" of covered products as that term was defined in 10 CFR 212.31 with its home office located in Liberty, Missouri. A DOE audit of Ferrell's records revealed possible violations of the Mandatory Petroleum Price Regulations 10 CFR Part 212, Subpart F. The audit alleged that between October 1, 1973 and January 27, 1981, Ferrell committed certain pricing violations in its sales of propane.[2]

In order to settle all claims and disputes between Ferrell and the DOE regarding the firm's sales of propane during the period covered by the audit, Ferrell and the DOE entered into a consent order on December 12, 1984.[3]

[1] The subsidiaries of Ferrell Companies, Inc., a Kansas corporation, are: Ferrell Companies, Inc., a Delaware corporation; Sentry Underground Storage Company; Indian Wells Oil Company; FCI, Inc.; Propane Industrial, Inc.; Ferrell Leasing Corporation; Indian Wells Production Company; Ferrell Securities, Inc.; One Liberty Plaza, Inc.; One Liberty Plaza Real Estate, Inc.; and Ferrellgas, Inc. For purposes of this proceeding, any reference to Ferrell includes its subsidiaries.

[2] The audit involved only two of Ferrell's subsidiaries, Ferrellgas, Inc. and Propane Industrial, Inc.

[3] We note, however, that the consent order has no effect upon, and resolves no matters regarding, the claims pending in Indian Wells Oil Company, Case No. HRO-0075, nor does it resolve any liability which Ferrell may have for the amounts claimed in that case based on any ownership interest which Ferrell may hold in Indian Wells.

The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. In addition, the consent order states that Ferrell does not admit that it violated the regulations.

Under the terms of the consent order, Ferrell agreed to deposit $100,000 into an interest-bearing escrow account for ultimate distribution by the DOE. Ferrell remitted this sum on December 12, 1984. This decision concerns the distribution of the funds in the Ferrell escrow account.[4]

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines which may be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or readily ascertain the amount of such persons' injures. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

As in other Subpart V cases, we believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will attempt to provide refunds to identifiable purchasers of propane that were injured by Ferrell's alleged pricing practices between October 1, 1973 and January 27, 1981 (the consent order period). Any funds that remain after all meritirious first-stage claims have been paid may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*).

A. Refunds to Identifiable Purchasers

In the first stage of the Ferrell refund proceeding, we propose to distribute the funds currently in escrow to claimants who demonstrate that they were injured by Ferrell's alleged overcharges. As we have done in many prior refund cases, we propose to adopt certain presumptions which will be used to help determine the level of a purchaser's injury.

The use of presumptions in refund cases is specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and will enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. First, we plan to adopt a presumption that the alleged overcharges were dispersed evenly among all sales of products made during the consent order period. In the past, we have referred to a refund process that uses this presumption as a volumetric system. Second, we propose to adopt a presumption of injury with respect to small claims. Third, we plan to adopt a presumption that spot purchasers were not injured by the alleged overcharges. As a separate matter, we are making a proposed finding that end users experienced injury.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges by a consent order firm were spread equally over all gallons of products marketed by that firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. This presumption is rebuttable, however. A claimant which believes that it suffered a disproportionate share of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. *See Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984), and cases cited therein at 88,164.

Under the volumetric system we plan to adopt, a claimant will be eligible to receive a refund equal to the number of gallons purchased from Ferrell times the volumetric factor. The volumetric factor is the average per gallon refund and in this case equals $.000136 per gallon.[5] In addition, successful claimants will receive a proportionate share of the accrued interest.

Second, we plan to presume that purchasers of Ferrell's products seeking small refunds were injured by Ferrell's pricing practices. There are a number of bases for the presumption that claimants seeking small refunds were injured. *See, e.g., Urban Oil Co.*, 9 DOE ¶ 82,541 (1982). The firms that will be eligible for refunds are purchasers that were in the chain of distribution of the products to which the alleged overcharges are attached. These purchasers therefore experienced some impact of the alleged overcharges. Without some presumptions as to injury, in order to support a specific claim of injury a claimant would have to compile and submit very detailed factual information regarding the impact of alleged overcharges which occurred many years ago. Such a demonstration, if even possible, would generally be very time-consuming and expensive. In the case of relatively small claims, the cost to the claimant of gathering the necessary information and the cost to OHA of analyzing it could certainly exceed the value of any expected refund as well as any analytic benefits to be derived. Consequently, without simplified procedures, some potential claimants could be effectively denied an opportunity to seek a refund since it would be uneconomic to do so. As a result, we intend to adopt a small claims presumption which will eliminate the need for a claimant to submit and OHA to analyze extensive, detailed proof of the result of the initial impact of the alleged overcharges.

Under the small-claims presumption, a claimant that is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. Principal among the factors which determine the value of this threshold is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low, $5,000 is a reasonable value for the small-claim threshold. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984); *Office of Special Counsel*, 11 DOE ¶ 85,226 (1984) (*Conoco*), and cases cited therein.

A reseller or retailer which seeks a refund of more than $5,000 will be

[4] As of January 31, 1986, the Ferrell escrow account contained a total of $109,407.84, representing $100,000 in principal and $9,407.84 in accrued interest.

[5] This figure is derived by dividing the $100,000 principal amount by the 733,366,000 gallons of propane reportedly sold by Ferrell and its subsidiaries during the consent order period. *See* December 10, 1985 Letter from James E. Ferrell, President of Ferrell Companies, Inc. to Richard T. Tedrow, Deputy Director, OHA.

required to document its claim. While there are a variety of methods by which a claimant could show that it did not pass the alleged overcharges on to its customers, the claimant would generally have to show that at the time of the alleged overcharges, it maintained a bank of unrecovered costs, and that market conditions would not permit it to pass through those increased costs.[6]

If a reseller or retailer made only spot purchases, we propose that it should not receive a refund since it is unlikely to have experienced injury. This is true because:

> [t]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. The same principles apply in this case. Accordingly, we propose that resellers and retailers which made only spot purchases from Ferrell not receive refunds unless they present evidence which rebuts this presumption and establishes the extent to which they experienced injury.

As noted above, we are making a proposed finding that end users whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges. These entities were not subject to DOE regulations during the relevant period, and are thus outside our inquiry about pass-through of overcharges. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983) (*PVM*); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. Therefore, we propose that for end users of propane sold by Ferrell, documentation of purchase volumes will provide a sufficient showing of injury.

In addition, we propose that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to provide a detailed demonstration that they absorbed the alleged overcharges associated with Ferrell's sales of propane. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,538 (1982) (*Tenneco*), and *Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,244 (1982) (*Pennzoil*). Those firms should provide with their applications a full explanation of the manner in which refunds would be passed through to their customers and of how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

As in previous cases, only claims for at least $15 plus interest will be processed. In prior refund cases we have found that the cost of processing claims for smaller amounts outweighs the benefits of restitution. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

III. Applications for Refund

In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of propane from Ferrell. If they claim injury at a level greater than the threshold level, they must document this injury in accordance with the procedures described above, including specific information as to the volume and per gallon price of propane purchased, the date of purchase, the name of the firm from which the purchase was made, and the extent of any injury alleged. A claimant must also indicate whether it has previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying this proceeding.[7] Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in any DOE enforcement or private, § 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It is therefore ordered that:

The refund amount remitted to the Department of Energy by Ferrell Companies, Inc. pursuant to the Consent Order executed on December 12, 1984, will be distributed in accordance with the foregoing Decision.

[FR Doc. 86-5878 Filed 3-17-86; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed the Week of February 21 Through February 28, 1986

During the Week of February 21 through February 28, 1986, the applications for 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.

March 12, 1986.

[6] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,122 (1982) (Ada).

[7] The audit files indicate that on December 26, 1974, Ferrell signed an Accord and Satisfaction with the FEA in which it agreed to remit $12,500 to the FEA to settle alleged overcharges on Ferrell's sales of propane to Lyons Diecasting, a wholesale customer of Ferrellgas, Inc. On the basis of this information, we propose that Lyons Diecasting be precluded from receiving a refund in this proceeding.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Feb. 21 through Feb. 28, 1986]

Date	Name and location of applicant	Case No.	Type of submission
Feb. 21, 1986	Economic Regulatory Administration, Washington, DC	HRR-0008	Request for modification/rescission. If granted: The July 1, 1985 Remedial Order issued to P & R Trading Co. (Case No. HRO-0091) would be amended to include as a named party Benton Pruet, the individual, as stated in the Proposed Remedial Order.
Feb. 24, 1986	Tri-Service Drilling Company, Washington, DC	KRD-0120	Motion for discovery. If granted: Discovery would be granted to Tri-Service Drilling Company in connection with the firm's Statement of Objections submitted in response to the Proposed Remedial Order issued to the firm (Case No. KRO-0120).
Feb. 26, 1986	Vanderbilt Energy Corporation, Enid, OK	KRD-0014	Motion for discovery. If granted: Discovery would be granted Vanderbilt Energy Corporation in connection with the firm's Statement of Objections submitted in response to the Proposed Remedial Order issued to the firm (Case No. HRO-0080).
Feb. 27, 1986	Economic Regulatory Administration, Washington, DC	KRZ-0026	Interlocutory. If granted: The May 31, 1985 Proposed Remedial Order issued to Tonkawa Refining Company would be amended.
Do	Edwin Milton Jones, Jr., Houston, TX	KRD-0015	Motion for discovery. If granted: Discovery would be granted to Edwin Milton Jones, Jr. in connection with the Statement of Objections submitted in response to the Proposed Remedial Order (Case No. HRO-0225) issued to Edwin Milton Jones, Jr.

REFUND APPLICATIONS RECEIVED

[Week of Feb. 21 through Feb. 28, 1986]

Date	Name of refund proceeding/ name of refund applicant	Case No.
2/21/86	Hicks/C.T. Rees & Son, Inc	RF237-4
2/21/86	City Service/Ron Millard	RF219-7
2/21/86	Eastern/General Motors Corporation.	RF215-9
2/21/86	Amoco/South Carolina	RQ21-276
2/21/86	Perry Gas/South Carolina	RQ183-277
2/21/86	Belridge/South Carolina	RQ8-278
2/21/86	Charter/South Carolina	RQ23-279
2/21/86	Coline/South Carolina	RQ2-280
2/24/86	Gulf/Adelman's 301 Gulf	RF40-3111
2/24/86	Gulf/Ormond Beach Gulf	RF40-3112
2/24/86	Union Texas/General Telephone Co.	RF140-36
2/24/86	Quaker State/Shelby's	RF213-118
2/24/86	Mobil/Cresecent Oil, Inc	RF225-155
2/24/86	Mobil/Karaman Service Center	RF225-156
2/24/86	Mobil/Dorsey K. Leith, Inc.	RF225-157
2/24/86	Mobil/Hollingers Service Station	RF225-158
2/24/86	Mobil/Dimitrios Feraroiis	RF225-159
2/24/86	Mobil/Cortese Motor Service	RF225-160
2/24/86	Hicks/Southern States Cooperative.	RF237-5
2/24/86	Hicks/Small's L.P. Gas Company.	RF237-6
2/24/86	Eastern NJ/Governor Morris Associates.	RF232-186
2/24/86	Eastern NJ/Jacobs S. Rudd	RF232-187
2/24/86	Belcher/Bay State Fuel Oil, Inc of Agawam.	RF227-7
2/24/86	Mobil/Gill Syrup Corporation	RF225-161
2/24/86	Mobil/Alvin Hollis & Company	RF225-162 & RF225-163
2/24/86	Mobil/Southwest Forest Industries, Inc.	RF225-164
2/24/86	Mobil/Grisha Hambarsumyn	RF225-165
2/24/86	Eastern NJ/Solvents Recovery Service of New Jersey, Inc.	RF232-188
2/24/86	Eastern NJ/Gernal Export Clothing Corporation.	RF232-189
2/24/86	Eastern NJ/Cumersell Properties, Inc.	RF232-190
2/24/86	Eastern NJ/Maurice Albert	RF232-191
2/24/86	Quaker State/Ken Stephens Oil Co.	RF213-120
2/24/86	Quaker State/Jim's Garage	RF213-121
2/24/86	Quaker State/Lube King	RF213-122
2/24/86	Quaker State/R.E. Mabon	RF213-123
2/24/86	Union Texas/Raymond E. Lee	RF104-10
2/24/86	Sid Richardson/Central Butane Gas Company.	RF26-28
2/24/86	Beacon/E. J. Brown	RF238-1
2/24/86	Beacon/Bobby D. Sprouse	RF238-2
2/24/86	Beacon/S.F. Four Wheel Brake Service.	RF238-3
2/24/86	Quaker State/H. E. Snyder	RF213-119
2/25/86	Quaker State/National Lubricating Products Company.	RF213-124
2/25/86	Quaker State/Kepler Supply Co., Inc.	RF213-125
2/25/86	Quaker State/Webster's Garage	RF213-126
2/25/86	Aminoil/Pawnee Industries	RF139-152
2/25/86	Mobil/Meyers Super Service	RF225-170

REFUND APPLICATIONS RECEIVED—Continued

[Week of Feb. 21 through Feb. 28, 1986]

Date	Name of refund proceeding/ name of refund applicant	Case No.
2/25/86	Mobil/Rocco DeLuca Mobil	RF225-171
2/25/86	Mobil/Gene Steck	RF225-172
2/25/86	Mobil/Hansford Mobil Service	RF225-173
2/25/86	Mobil/Clois B. Sumrow	RF225-174
2/25/86	Mobil/DeMartini's Service Station.	RF225-175
2/25/86	Mobil/Raymond P. Wilson	RF225-166
2/25/86	Mobil/Martin Fuel Distributors, Inc.	RF225-167
2/25/86	Mobil/North Market Mobil	RF225-168
2/25/86	Mobil/Metpar Steel Products Corp.	RF225-169
2/25/86	Eastern NJ/Whittredge Gardens, Inc.	RF232-192
2/25/86	Eastern NJ/Bishop Investment Trust.	RF232-193
2/25/86	Eastern NJ/Rose Tree Gardens	RF232-194
2/25/86	Mobil/Yahr Oil Company, Inc	RF225-176
2/26/86	Eastern NJ/S. B. Thomas, Inc	RF232-195
2/26/86	Eastern NJ/Topp's Cleaners of Fair Lawn, Inc.	RF232-196
2/26/86	Mobil/ D & G Dairy Mart	RF225-177
2/26/86	Eastern NJ/Ivex Corporation	RF232-197
2/26/86	Quaker State/Allegheny Clarion Valley.	RF213-127
2/26/86	Quaker State/May Brothers Company.	RF213-128
2/26/86	Quaker State/Sherrill Oil Co., Inc.	RF213-129
2/26/86	Quaker State/Bill Howdershelts Service & Auto Supply.	RF213-130
2/27/86	Mobil/Herbert Staretz	RF225-178
2/27/86	Mobil/Sound View Service Center.	RF225-179
2/27/86	Mobil/Zephrea Verdell Cloud	RF225-180
2/27/86	Mobil/George Rice's Service	RF225-181
2/27/86	Mobil/Bablers Mobil	RF225-182
2/27/86	Mobil/Edward J. Marschilok	RF225-183
2/27/86	Quaker State/Niagara Lubricant Company.	RF213-131
2/27/86	Eastern NJ/Cranston Corporation.	RF232-198
2/27/86	Eastern NJ/Topps Cleaners of Hackensack.	RF232-199
2/27/86	Eastern NJ/Robert D. Schiengen Co.	RF232-200
2/27/86	Eastern NJ/Temple Israel	RF232-201
2/27/86	Eastern NJ/Mr. P. Perone	RF232-202
2/27/86	Eastern NJ/Colonial Mann	RF232-203
2/27/86	Eastern NJ/Suburban Court	RF232-204
2/27/86	Eastern NJ/General Cable Company.	RF232-205
2/27/86	Eastern NJ/Pharmachem Labs, Inc.	RF232-206
2/27/86	Eastern NJ/Park Lane	RF232-207
2/27/86	Quaker State/Don's Quaker State.	RF213-132
2/27/86	Quaker State/Ila Hunsberger	RF213-133
2/27/86	Quaker State/Cable & Snyder Logging Company.	RF213-134
2/27/86	Quaker State/Spartan Petroleum Co.	RF213-135

REFUND APPLICATIONS RECEIVED—Continued

[Week of Feb. 21 through Feb. 28, 1986]

Date	Name of refund proceeding/ name of refund applicant	Case No.
2/27/86	Quaker State/Prince's Service	RF213-136
2/27/86	Quaker State/Snyder Bros	RF213-137
2/27/86	Quaker State/Don Lucas Cadillac.	RF213-138
2/27/86	Mobil/Mobil Service Center	RF225-184
2/27/86	Mobil/Clayfield Service Station	RF225-185
2/27/86	Mobil/Prima Vista Mobil Service	RF225-186
2/27/86	Mobil/Ravenna Oil Company	RF225-187
2/27/86	Mobil/George Rice Service	RF225-188
2/27/86	Mobil/Fort Sutter Mobil	RF225-189
2/27/86	City Service/Tim Brown	RF219-8
2/28/86	Gate/Robert E. Hatcher	RF205-4
2/28/86	Field/Avis Rent-A-Car	RF173-13
2/28/86	Quaker State/Interstate Oil Company.	RF213-139
2/28/86	Quaker State/Sabraton Chrysler Plymouth Dodge, Inc.	RF213-140
2/28/86	Quaker State/Bright Oil & Tire Co.	RF213-141
2/28/86	Eastern NJ/Corona Plastics, Inc	RF232-208
2/28/86	Eastern/Essex Chair Company	RF232-209
2/28/86	Mobil/10 Mile & Ryan et al	RF225-191 RF225-192 RF225-193
2/28/86	Mobil/Joseph F. Pepas	RF225-194
2/28/86	Mobil/South Clairemont Service	RF225-195
2/28/86	Mobil/Regional Publishing Corp	RF225-196

[FR Doc. 86-5920 Filed 3-17-86; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of proposed implementation of special refund procedures and solicitation of comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $1,400,000.00 (plus accrued interest) obtained as the result of a Consent Order between the DOE and Placid Oil Company (Placid). The funds will be distributed to refund applicants who purchased petroleum products from Placid during the

settlement period (August 19, 1973 through January 27, 1981).

DATE AND ADDRESS: Comments must be filed in duplicate by [30 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 comments should refer to Case No. KEF–0007.

FOR FURTHER INFORMATION CONTACT: Matt Huston, Staff Analyst, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–2400.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order summarized below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute monies obtained from Placid Oil Company (Placid). Placid, the owner and operator of a refinery located in Port Allen, Louisiana, entered into a Consent Order to settle possible pricing violations with respect to its sales of petroleum products during the period August 19, 1973 through January 27, 1981. Under the terms of the Consent Order, Placid has remitted $1,400,000 which is being held in an interest-bearing escrow account pending determination of its proper distribution.

The DOE proposes that the Placid consent order funds be distributed in a two-stage refund proceeding. The first stage will attempt to refund monies to injured Placid customers who are able to document their purchases of Placid product. The Proposed Decision and Order provides that the funds will generally be distributed to successful claminants based on the number of gallons of product which they purchased and the extent to which they can prove that they were injured by Placid's alleged overcharges. After meritorious claims are paid in the first stage, second-stage refund procedures may become necessary to distribute any remaining funds.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted with in 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1:00 p.m. to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: March 6, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

March 6, 1986.

Name of Case: Placid Oil Company
Date of Filing: October 18, 1985
Case Number: KEF–0007

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request that the Office of Hearings and Appeals (OHA) of the DOE formulate and implement special refund procedures in certain instances. *See* 10 CFR Part 205, Subpart V. Such procedures enable the DOE to refund monies to those injured by alleged violations of the DOE petroleum pricing regulations.

On October 18, 1985, the ERA requested that the OHA formulate and implement procedures to distribute funds the DOE had received pursuant to a Consent Order entered into with Placid Oil Company (Placid). This Proposed Decision outlines the procedures that the OHA has tentatively formulated to distribute the Placid consent order funds.

I. Background

Placid was a "refiner" and "reseller" of petroleum products as those terms were defined in 10 CFR 212.31.[1] The ERA audited Placid to determine the firm's compliance with the regulations applicable to refiners and resellers. On February 18, 1983, the ERA issued a Proposed Remedial Order (PRO) to Placid alleging that, from August 1973 through January 1976, the firm charged prices for motor gasoline, natural gas liquids (NGLs), natural gas liquid products (NGLPs), middle distillates and residual fuel in excess of the prices allowed under the DOE regulations.

In order to settle the claims made in the PRO and certain other claims by the DOE which might have arisen, Placid and the DOE entered into a Consent Order on February 22, 1984 (the Consent Order). Placid's first sales of crude oil were specifically excluded from the ambit of the Consent Order, as were Placid's obligations under the DOE Entitlements Program. *See* Consent Order, ¶¶ 302, 501. Pursuant to the Consent Order, Placid remitted the sum of $1,400,000 to the DOE to cover certain alleged violations of the applicable price regulations during the period between August 19, 1973 and January 28, 1981.

II. Jurisdiction and Authority To Fashion Refund Procedures

The Subpart V process is useful in situations where the DOE is unable to ascertain the identity of the particular persons entitled to receive refunds or the precise amounts of such refunds. 10 CFR 205.280; *see also* 44 Fed. Reg. 8562 (February 9, 1979). For a detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*).

We have considered the ERA's October 18, 1985 petition requesting that we implement a Subpart V proceeding with respect to the Placid consent order funds. We have determined that such a proceeding is appropriate in this case.

III. Proposed Refund Procedures

We propose a two-stage process to distribute the Placid monies. In the first stage, we will attempt to refund monies to those who purchase Placid products during the settlement period. Purchasers must file claims and document that purchases in order to be eligible for portions of the consent order funds. In addition, purchasers will be required to demonstrate that they were injured by the alleged overcharges—e.g., that they did not pass through any alleged overcharges to their own customers.

After meritorious claims are paid in the first stage, a second stage may become necessary to distribute any remaining funds. *See generally Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). We will not set forth second-stage procedures at this time.

[1] According to documents in the DOE audit file, Toro Petroleum Corporation (Toro) operated a gasoline blending facility during 1973 and early 1974. In February 1974, Ryder Systems, Inc. (Ryder) acquired more than 50 percent of Toro's capital stock, and commenced building a refinery that by late 1974 allowed Toro to produce distillates and residual fuel. In December 1974, Placid Refining Company, a wholly-owned subsidiary of Placid Oil Company, purchased Toro from Ryder. Toro's and Ryder's activities from August 19, 1973 forward are covered under the terms of the Placid Consent Order, and we will accept Applications for Refund from Toro's and Ryder's customers who purchased covered product during the consent order period.

With regard to first-stage procedures, we propose adoption of certain presumptions. Presumptions in refund cases are specifically authorized by the DOE procedural regulations. Section 205.282(e) of those regulations states that:

[I]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we propose to adopt in this case will permit claimants to participate in the refund process without incurring disproportionate expenses, and will enable the OHA to consider refund applications efficiently.

A. Allocation of Funds and a Volumetric Refund Presumption

We note that Placid may have acted as a reseller of crude oil during the consent order period. Although crude oil resales are not specifically excluded from the scope of the Consent Order, the DOE audit underlying the Consent Order apparently did not examine any crude oil resales Placid may have made. *See* Consent Order, ¶ 302. Accordingly, we have tentatively concluded that the Placid consent order funds should be allocated to purchasers of products other than crude oil.

We propose the adoption of a presumption that the alleged overcharges were dispersed equally over all sales of products other than crude oil made by Placid during the consent order period. To implement such a presumption, we will calculate a volumetric refund figure. This figure is equal to the amount of available consent order funds divided by the number of gallons of covered product other than crude oil sold by Placid during the consent order period. Based on information from the Placid audit files, we estimate that Placid sold 4,083,904,613 gallons of covered products during the consent order period. This results in a volumetric refund, figure of $0.000343 per gallon ($1,400,000 of consent order funds divided by 4,083,904,613 gallons sold). A claimant will be eligible to receive a refund equal to the documented number of gallons bought from Placid during the consent order period, multiplied by the volumetric refund figure of $0.000343.[2] In addition, interest which has accrued on the consent order funds will be applied to each paid refund on a pro rata basis.

B. Demonstrating Injury and Related Presumptions

In order to be eligible to receive a refund, claimants will, with several exceptions discussed later in this Proposed Decision, be required to demonstrate that they have been injured by Placid's alleged overcharges. While there are a variety of methods of demonstrating injury, several elements are common to the showings required of refiners, resellers and retailers that purchased covered product from Placid during the consent order period. First, as a preliminary to a showing of injury, a firm must demonstrate that during the period covered by the Consent Order, it maintained "banks" of unrecovered increased product costs which were at least equal to the amount of the refund claimed. Any demonstration of the existence of banks should show that banks where maintained, or could have been maintained, until the relevant product was decontrolled.[3] If actual, contemporaneously calculated cost banks are not available, we will accept other types of information that demonstrate the existence of cost banks during the relevant period. For example, monthly profit margin data may in some cases demonstrate the existence of cost banks. *See Husky Oil Co.*, 13 DOE ¶ 85,045 (1985); *Bayou State Oil Corp.*, 12 DOE ¶ 85,197 (1985).

In addition to demonstrating the existence of banks, a refiner, reseller or retailer claimant must demonstrate that cognizable injury resulted from the purchase of Placid's allegedly overpriced product.[4] A firm migh establish that it absorbed the alleged overcharges by showing, for example, that market conditions would not permit it to increase its prices to pass additional costs through to its own customers. *Office of Enforcement*, 10 DOE ¶ 85,056 (1983); *Office of Enforcement*, 10 DOE ¶ 85,029 (1982).

1. Small Claims Presumptions. In order to support a specific claim of injury, a firm would have to compile and submit detailed factual information regarding the impact of alleged overcharges that occurred many years ago. In prior refund proceedings, we have adoped a small claims procedure to assure that the costs of filing a refund application, and the cost to the OHA of analyzing it, do not exceed the anticipated refund. *See, e.g., Aztex Energy Co.*, 12 DOE ¶ 85,116 (1984); *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984). We find that such a small claims procedure is warranted in this refund proceeding as well.

In many recent cases, we have adopted $5,000 as a reasonable value for a threshold refund amount. *See Texas*

[2] The volumetric refund methodology does not purport to refund the exact amount that a customer may have been overcharged. Rather, it is a method by which a customer may receive an appropriate portion of the consent order funds. We recognize, however, that the impact of a firm's pricing practices on an individual purchaser could have been greater, and therefore any purchaser will be allowed to file a claim that it absorbed a disproportionate share of the alleged Placid overcharges during the consent order period. An application requesting a refund greater than the amount calculated using the volumetric presumption must document the disproportionate impact of the alleged overcharges. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 at 88,233–34 (1984).

[3] We note that effective July 15, 1979, the retailer price rule for motor gasoline was amended. That amendment eliminated the banking provision for retailers of motor gasoline. 44 FR 42541 (July 19, 1979). Accordingly, retailers will not be required to submit evidence that they maintained banks of unrecouped increased product costs for motor gasoline after July 15, 1979. They will, however, be required to furnish information demonstrating (1) the existence of banks through July 15, 1979, and (2) that they suffered injury as a result of their motor gasoline purchases from Placid, both before and after the banking provision change. See Note 4.

We also note that effective May 1, 1980, a new rule regarding the pricing of motor gasoline by resellers and reseller-retailers went into effect. As a result, these types of firms were allowed to calculate maximum lawful selling prices either under a fixed-margin approach set forth in the new rule or using the method established by rules in effect on April 30, 1980. 45 FR 29546 (May 2, 1980). As a result, Placid's customers who were motor gasoline resellers or reseller-retailers and who chose the fixed-margin approach were not to maintain banks subsequent to April 30, 1980. The lack of motor gasoline cost banks for the period beyond April 30, 1980, will not preclude a refund based upon a firm's total purchases of covered Placid products. Nonetheless, if a firm had chosen the fixed-margin approach, and is unable to show that it maintained cost banks for motor gasoline after April 30, 1980, it must still demonstrate that it maintained cost banks until that point, and that it absorbed the effects of Placid's alleged overcharges. See Note 4.

[4] The OHA has consistently held, an continues to believe, that the existence of banks of unrecouped increased product costs does not demonstrate injury. *National Helium Corp./Farmland Industries, Inc.*, 11 DOE ¶ 85,257 (1984); *Palo Pinto Oil & Gas/Gulf Oil Corp.*, 10 DOE ¶ 85,049 (1983). In a recent district court case, our judgment in this matter was upheld:

OHA's requirement of proof of nonpass-through is entirely reasonable and well within OHA's authority. . . . The basis for OHA's presumption [that first purchasers passed through alleged overcharges] is strengthened by the very structure of the price control regulations. Under the regulations, refiners such as ARCO and Mobil were generally permitted to pass on their increased costs to the full extent that the market would bear. . . . Indeed, plaintiffs [ARCO and Mobil] do not dispute that while substantial sums were amassed in cost banks, the size of these banks was small in comparision to the huge cost increases that were passed on to downstream consumers.

Perhaps most important, OHA's requirement that a direct purchaser prove nonpass-through is consistent with the equitable principles under which the Subpart V provisions must operate.

Atlantic Richfield Co. v. *DOE*, Nos. 84–190/84–735, slip op. at 24–26 (D. Del. September 26, 1985).

Oil & Gas Corp., 12 DOE ¶ 85,069 (1984); *Marion Corp.*, 12 DOE ¶ 85,014 (1984). The factual situations in the cases cited above are similar to the circumstances surrounding this case. Accordingly, we propose that firms claiming volumetric refunds of $5,000 or less should not be required to provide banks of unrecouped increased product costs or evidence of injury.[5]

2. *End-User Presumption.* In prior refund proceedings, we have adopted a presumption that end-users of covered products absorbed alleged overcharges. Unlike regulated firms in the petroleum industry, firms that were the ultimate consumers of covered products generally were not subject to price controls during the consent order period, and were not required to keep records that justified selling price increases by reference to petroleum cost increases. For these reasons, an analysis of the impact of the increased cost of petroleum products on the final prices on non-petroleum goods and services would be beyond the scope of this special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983) *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. We therefore propose that an end-user of Placid product will not be required to demonstrate that Placid's alleged overcharges caused injury. Documentation of purchase from Placid, we propose, will be a sufficient showing that the end-user was injured by the alleged overcharges.

3. *Agricultural Cooperatives and Firms Not Regulated by the DOE.* Firms regulated by a governmental agency other than the DOE or by the terms of a cooperative agreement will not be required to demonstrate that they absorbed Placid's alleged overcharges. In the case of otherwise regulated firms, e.g., public utilities, any alleged overcharges incurred as a result of the alleged violations of the DOE regulations would routinely have been passed through to the utilities' customers. Similarly, any refunds received by such firms would be reflected in the rates they are allowed to charge their customers. Overcharges incurred by, and refunds granted to, cooperatives will also directly influence the prices charged to member customers. Consequently, since the benefits of refunds will accrue to the ultimate consumers affected by Placid's alleged overcharges (the ratepayers or cooperative members), otherwise regulated firms and cooperatives need only document their purchase volumes from Placid to be eligible to receive refunds. *See Office of Special Counsel*, 9 DOE ¶ 82,538 (1982). Nonetheless, these firms should include with their applications a full, detailed explanation of the manner in which refunds would be passed through to customers and an explanation of how the appropriate regulatory body or membership group would be advised of the applicant's receipt of a refund.

4. *Spot Purchaser Presumption.* We also propose to adopt a rebuttable presumption that firms which made only spot purchases of Placid product have suffered no injury. Spot purchasers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot purchases of Placid's product at increased prices unless such purchases were economically advantageous. *See Vickers*, 8 DOE at 85,396–97. Accordingly, a spot purchaser claimant will be required to submit additional evidence sufficient to establish that it suffered injury as a result of Placid's alleged overcharges. For example, a spot purchaser might attempt to show that it paid Placid uncompetitive prices, and was subsequently unable to recover those prices. *See Ropet, Inc./Duquesne Light Co.*, 13 DOE ¶ 85,153 (1985).

Comments regarding the tentative distribution scheme set forth in this Proposed Decision should be filed with the Office of Hearings and Appeals within 30 days of publication of this Proposed Decision in the **Federal Register**. Detailed procedures for filing Applications for Refund will be provided in a final Decision and Order. *See Vickers*. Applications for Refund should not be filed at this time.

Any purchaser claiming a portion of the consent order funds will be required to file an Application for Refund pursuant to 10 CFR 205.283. Applications should provide all relevant information necessary to establish a claim in accordance with the presumptions outlined above, including, where necessary, specific documentation concerning the date, place, price and volume of product purchased; banks of unrecouped increased product costs; and the extent of any injury alleged. Before disposing of any of the consent order funds, we intend to publicize widely the distribution process and to provide an opportunity for any affected party to file a claim.

It is Therefore Ordered That:

The $1,400,000 refund amount obtained from Placid Oil Company pursuant to the Consent Order entered into with the Department of Energy on February 22, 1984 will be distributed in accordance with the foregoing Proposed Decision.

[FR Doc. 86-5921 Filed 3-17-86; 8:45 am]

BILLING CODE 6450-01-M

[5] Firms that claim refunds in excess of $5,000 but which are unable to establish that they absorbed Placid's price increases will be eligible for refunds up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000 in order to avoid having to submit detailed documentation of their injury. *See Vickers*, 8 DOE at 85,396.

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $66,969 obtained as a result of a consent order which the DOE entered into with Key Oil Company, a reseller-retailer of diesel fuel located in Franklin, Kentucky. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to case number HEF-0106.

FOR FURTHER INFORMATION CONTACT: Nancy L. Kestenbaum, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b) notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $66,969 plus accrued interest obtained by the DOE under the terms of a consent order entered into with Key Oil Company. The funds were provided to the DOE by Key to settle all claims and disputes between the firm and the DOE regarding the

manner in which the firm applied the federal price regulations with respect to its sales of diesel fuel during the consent order period November 1, 1973 through March 31, 1974.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to the eight first purchasers who may have been overcharged. In order to obtain a refund, each claimant will be required either to submit a schedule of its monthly purchases from Key or to submit a statement verifying that it purchased diesel fuel from Key and is willing to rely on the data in the audit files. Certain firms will also be required to make specific demonstrations of injury. In addition, applications for refund will be accepted from purchasers not identified by the DOE audit. These purchasers will be required to provide specific documentation concerning the date, place, price, and volume of product purchased, the name of the firm from which the purchase was made, and the extent of any injury alleged. Appications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributiong any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in this proceeding will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: March 11, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

March 11, 1986.

Name of Petitioner: Key Oil Company.
Date of Filing: October 13, 1983.
Case Number: HEF-0106.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of alleged or actual violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Key Oil Company (Key).

I. Background

Key is a "reseller-retailer" of diesel fuel as that term was defined in 10 CFR 212.31 and is located in Franklin, Kentucky. Based on an audit of Key's records, ERA issued a Proposed Remedial Order (PRO) on March 20, 1981, alleging that Key committed certain pricing violations with respect to its sales of diesel fuel.

In order to settle all claims and disputes between Key and the DOE regarding the firm's sales of diesel fuel during the period covered by the PRO, Key and the DOE entered into a consent order on September 29, 1981. The consent order funds represented 64.3 percent of the amount of the overcharges originally stated in the PRO. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. In addition, the consent order states that Key does not admit that it violated the regulations.

The consent order required Key to pay a total of $58,730, plus installment interest, in 24 equal monthly installments. The first payment was received on October 16, 1981 and the last on September 21, 1983.[1] This decision concerns the distribution of the funds in the escrow account.

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines which may be used by OHA in formulating and implementing a plan of distribution for funds received as a result of enforcement proceedings. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who might have been injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

As in other Subpart V cases, we believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will attempt to provide refunds to identifiable purchasers of refined petroleum products who may have been injured by Key's pricing practices during the consent order period. Any funds that remain after all meritorious first-stage claims have been paid may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*).

A. Refunds to Identified and Unidentified Purchasers

The basic purpose of a special refund proceeding is to recompense parties who were injured as a result of alleged or actual violations of the DOE regulations. In order to effect restitution in this proceeding, we have decided to rely in part on the information contained in the DOE's audit files. Our experience with similar cases supports the use of this approach in Subpart V cases where many of the purchasers of a firm's products are identified in the audit file. *See, e.g., Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*). Under these circumstances, a reasonably precise determination can be made regarding the identify of the allegedly overcharged parties and the amount of alleged overcharges each party suffered.

During the DOE's audit of Key, eight first purchasers were identified as having allegedly been overcharged. ERA also alleged overcharges to customers who were not identified. We recogniae that the DOE audit files do not necessarily provide conclusive evidence regarding the identify of all possible refund recipients or the appropriate refund for a particular firm. However, the information contained in those audit files may reasonably be used for guidance. *See Armstrong and Associates/City of San Antonio*, 10 DOE ¶ 85,050 at 88,259 (1983). In *Marion*, we stated that "the information contained in the . . . audit file can be used for guidance in fashioning a refund plan which is likely to correspond more closely to the injuries probably experienced than would a distribution plan based solely on a volumetric

[1] The total consent order payment including installment interest amounted to $66,969. We have used this figure as the principal amount. As of February 28, 1986, the escrow account contained $92,043, including accrued interest.

approach." 12 DOE at 88,031. In previous cases of this type, we have proposed that the funds in the escrow account be apportioned among the direct customers identified by the audit, other direct customers who can show injury, and subsequent repurchasers. *See, e.g., Bob's Oil Co.*, 12 DOE ¶ 85,024 (1984); *Richards Oil Co.*, 12 DOE ¶ 85,150 (1984). The first purchasers identified by the audit, and the portion of the consent order fund which was allotted to each customer by ERA, are listed in the Appendix. We will allot the remaining $59,268 plus accrued interest to customers who are as yet unidentified.

As we have done in many prior refund cases, we propose to adopt certain presumptions which will be used to help determine the level of a purchaser's injury. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. 10 CFR 205.282(e). The presumptions we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

As an initial matter, we will adopt a presumption that the alleged overcharges committed by Key were dispersed evenly among all sales of diesel fuel made by the firm during the relevant consent order period. In the past, OHA has used a volumetric refund amount as an equitable means of distributing funds based on this presumption. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

We recognize that the impact on an individual purchaser could have been greater than that estimated by using the volumetric factor, and any purchaser may file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See Sid Richardson Carbon and Gasoline Co. and Richardson Products/Co. Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984), and cases cited therein at 88,164.

Using a volumetric approach, a successful claimant's refund is determined by multiplying a factor, known as the volumetric refund amount, by the number of gallons of diesel fuel purchased by the claimant. For claimants which purchased diesel fuel from Key but were ot identified by ERA, the volumetric factor is $0.01838 per gallon.[2] In addition, successful claimants will receie a proportionate share of accrued interest.

Second, we plan to presume that purchasers of Key's products seeking small refunds were injured by Key's pricing practices. There are a number of bases for the presumption that claimants seeking small refunds were injured. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82, 541 (1982). The firms that will be eligible for refunds are purchasers that were in the chain of distribution of the products to which the alleged overcharges are attached. These purchasers therefore experienced some impact of the alleged overcharges. Without some presumptions as to injury, in order to support a specific claim of injury a claimant would have to compile and submit very detailed factual information regarding the impact of alleged overcharges which occurred many years ago. This procedure is generally time-consuming and expensive. In the case of relatively small claims, the cost to the claimant of gathering the necessary information and the cost to OHA of analyzing it could certainly exceed the expected refund and whatever benefits are derived from any additional precision. Consequently, without simplified procedures, some potential claimants would be effectively denied an opportunity to seek a refund sicne it would be uneconomic to do so. As a result, we intend to adopt a small claims presumption which will eliminate the need for a claimant to submit and OHA to analyze extensive, detailed proof of the result of the initial impact of the alleged overcharges.

Under the small-claims presumption, a claimant who is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. Several factors determine the value of this threshold. Principal among these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low, $5,000 is a reasonable value for the threshold. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984); *Office of Special Counsel, 11 DOE ¶ 85,226 (1984) (Conoco)*, and cases cited therein.

Unlike threshold claimants, a reseller or retailer which claims a refund in excess of $5,000 will be required to provide detailed documentation of its injury. While there are a variety of methods by which a firm can make such a showing, a firm is generally required to demonstrate that it maintained a "bank" of unrecovered costs, in order to show that it did not pass the alleged overcharges through to its own customers, and to show that market conditions would not permit it to pass through those increase costs.[3]

We are proposing a finding that end user—or ultimate consumer—purchasers whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. An analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983) (*PVM*); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. To prove injury, ultimate consumers must document only their purchase volumes.

In addition, we propose that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to demonstrate that they absorbed the alleged overcharge for refined petroleum products. In the case of regulated firms, *e.g.*, public utilities, and overcharges incurred as a result or Key's alleged violations of the DOE regulations would routinely be passed through to their customers. Similarly, any refunds received by such firms would be reflected in the rates they were allowed to charge their customers. Refunds to agricultural cooperatives would likewise directly influence the prices charged to their member customers. Consequently, we propose adding such firms to the class of claimants that are not required to show that they did not pass through to their customers cost increases resulting from alleged overcharges. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,539 (1982)

[2] This figure was derived by dividing the remaining $59,268 principal amount by the 3,224,075 gallons of diesel fuel sold by Key during the consent order period.

[3] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to $5,000 threshold, without being require to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,125 (1982) (Ada).

(*Tenneco*), and *Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,244 (1982) (*Pennzoil*). Instead, those firms should provide with their applications a full explanation of the manner in which refunds would be passed through to their customers and of how the appropriate regulatory body or membership group will be advised to the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

As in previous cases, only claims for at least $15 will be processed. We have found through our experience in prior refund cases that the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See*, e.g., *Uban Oil Co.*, 9 DOE At 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

B. Applications for Refund

Any purchaser claiming a portion of the consent order funds should file an Application for Refund pursuant to 10 CFR 205.283. In its application, a claimant must include a schedule, broken down by product, of its relevant information necessary to support their claim in accordance with the presumptions stated above. A claimant must also state whether it has previously received a refund, from any source, with respect to the alleged overcharges underlying these proceedings. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in DOE enforcement or private, section 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Key Oil Company pursuant to the consent order executed on September 29, 1981, will be distributed in accordance with the foregoing decision.

Appendix

KEY OIL COMPANY

First purchasers	Share of settlement [1]
Cecil Key Truck Stop, Highway 222 & 165, Glendale, KY 42740	$1,340
Tri County Paving & Stone, Post Office Box 92, Rockfield, KY 42274	736
Gassie Construction Company, 720 Beech Street, Bowling Green, KY 42101	469
Gallatin Oil Company, 411 West Main Street, Gallatin, TX 37066	2,545
Winn Oil Company, 2910 N. Main Street, Madisonville, KY 42431	1,071
Nay Oil Company [2] Louisville, KY 40201	1,004
V.E. Overhold [2]	67
Allen Oil Company [2]	469

[1] This figure includes the share of installment interest. It does not include accured interest. *See* note 1, p. 2.
[2] No address avaialbe.

[FR Doc. 86-5922 Filed 3-17-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[SAB-FRL-2986-4]

Science Advisory Board, Executive Committee, Open Meeting

Under Pub. L. 92-463, notice is hereby given of a meeting of the Science Advisory Board's Executive Committee on April 7-8, 1986 in the Administrator's Conference Room 1101, West Tower, of the Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. The meeting will begin at 9:00 a.m. on April 7, and will adjourn at approximately 12:00 noon on April 8, 1986.

The agenda for the meeting includes discussion of a resolution by the Environmental Health Committee on the preparation of Agency risk assessment; briefing on EPA's comparative risk project; EPA requests for new SAB reviews; briefing on the Agency's Risk Assessment Forum; committee and subcommittee reports; and other issues of members interest.

The meeting is open to the public. Any member of the public wishing to attend, obtain information, or submit written comments should contact Dr. Terry F. Yosie, Director, Science Advisory Board or Mrs. Joanna Foellmer located at 401 M Street, SW., Washington, D.C. 20460 or call, (202) 382-4126 by close of business April 1, 1986

Dated: March 10, 1986.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 86-5880 Filed 3-17-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted To OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of Information Collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection: Application for Federal Deposit Insurance by Operating Noninsured Institutions (OMB No. 3064-0069).

Background

In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget form SF-83, "Request for OMB Review," for the information collection system identified above.

ADDRESSES: Written comments regarding the submission should be addressed to Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to John Keiper, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Washington, DC 20429.

Comments: Comments on the collection of information should be submitted on or before April 2, 1986.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 898-3810.

SUMMARY: The FDIC is requesting OMB approval for extending the expiration date of the form used by operating noninsured financial institutions who apply for FDIC deposit insurance. The form, FDIC 6200/07, requires the

applicant to furnish information about the institution's financial history and condition, capital structure, future earnings prospects, the identity of the management, and information about the community served. The information collected on the form is used by the FDIC as a basis for evaluating certain factors as required by section 5 of the Federal Deposit Insurance Act (12 U.S.C. 1815) before approving the application. It is estimated that it takes an applicant, on its average, 15 hours to prepare the application form.

Dated: March 12, 1986.

Federal Deposit Insurance Corporation

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-5860 Filed 3-17-86; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Gastrointestinal Drugs Advisory Committee Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration announces the renewal of the Gastrointestinal Drugs Advisory Committee by the Secretary of Health and Human Services. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)).

DATE: Authority for this committee will expire on March 3, 1988, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: March 12, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-5857 Filed 3-17-86; 8:45 am]

BILLING CODE 4160-01-M

Public Workshop; Bioequivalence of Solid Oral Dosage Forms; Change of Meeting Dates

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a change in the dates for the forthcoming public workshop on bioequivalence of conventional release, solid-oral drug dosage forms.

DATE: The workshop will now be held on September 29 through October 1, 1986, 9 a.m. to 5 p.m.

ADDRESS: The meeting will be held in the first floor auditorium at the Department of Health and Human Services, North Building, 330 Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Steve Moore, Division of Bioequivalence, Center for Drugs and Biologics (HFN-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6776.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 17, 1986 (51 FR 2574), a public workshop on bioequivalence issues was announced. In late January, the National Association of Pharmaceutical Manufacturers and the Generic Pharmaceutical Industry Association requested that the workshop be postponed until September. The reasons given for their request were insufficient time to prepare for the meeting, previous commitments for key scientific and technical personnel, a conference already being held immediately preceding the planned workshop, and other conflicts with the May dates. In order to provide an opportunity for the greatest number of concerned individual to participate, FDA is moving the dates of the meeting from May 7 through 9, 1986, to September 29 through October 1, 1986. The hours and location of the meeting stay the same.

The workshop will follow the previously announced format and provide a forum to discuss:

(1) The design of in vivo bioequivalence testing for conventional release, solid oral dosage forms of drugs;

(2) Quantitative and statistical analysis and evaluation of bioequivalence testing studies for conventional release, solid oral dosage forms of drugs;

(3) In vivo and in vitro data correlation and its implications on bioequivalence; and

(4) Agency procedures and regulatory aspects of bioequivalence.

Additional information on the workshop and directions on participation as a speaker on the program will be provided in a subsequent notice.

Dated: March 12, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-5858 Filed 3-17-86; 8:45 am]

BILLING CODE 4160-01-M

Radiopharmaceutical Drugs Advisory Committee; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration announces the renewal

Health Resources and Services Administration

Revision of Income Criteria for Eligibility for Uncompensated Services

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces the applicability of the recent revision of the Poverty Income Guidelines to uncompensated services programs administered by health care facilities pursuant to Titles VI and XVI of the Public Health Service Act.

DATE: The revision of the guidelines must be implemented by affected facilities on April 12, 1986.

FOR FURTHER INFORMATION CONTACT: Martin J. Frankel, Director, Division of Facilities Compliance, Office of Health Facilities, Bureau of Health Maintenance Organizations and Resources Development, Health Resources and Services Administration, 5600 Fishers Lane, Room 11-19,

Rockville, Maryland 20857, Telephone 301 443–5656.

SUPPLEMENTARY INFORMATION: On February 11, 1986 [51 FR 5105], the annual revision of the Poverty Income Guidelines was issued effective upon publication in the **Federal Register.** That revision affects, among others, health care facilities that have received construction assistance under Title VI or Title XVI of the Public Health Service Act, 42 U.S.C. 291, et seq., and 42 U.S.C. 300q, et seq., respectively. The regulations applicable to those facilities provide that the eligibility of persons for uncompensated services is to be determined in accordance with the current Poverty Income Guidelines of the Department of Health and Human Services, formerly published by the Community Services Administration (CSA). See 42 CFR 124.506(a). The statute which gave this Department authority to revise the guidelines also provides that any reference in law to the Poverty Income Guidelines constitutes a reference to, in this case, the present revision [Pub. L. 97–35, 683(c)(1)]. A discussion of the basis for delaying the effective date of the guidelines for eligibility for uncompensated services can be found in the **Federal Register,** Volume 47, No. 79, page 17489, published on April 23, 1982.

Dated: March 12, 1986.

John H. Kelso,

Acting Administrator.

[FR Doc. 86–5854 Filed 3–17–86; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Blackfeet Indian Reservation, MT; Ordinance Amending Laws Relating to the Use and Distribution of Liquor

February 28, 1986.

This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that Resolution No. 283–85 and Ordinance No. 73 were duly adopted by the Blackfeet Tribal Business Council on June 6, 1985. Resolution 283–85 and Ordinance No. 73 provide for the distribution of alcoholic beverages in the area of Indian country under the jurisdiction of the Blackfeet Indian Tribe. The ordinance reads as follows:

Ross O. Swimmer,

Assistant Secretary, Indian Affairs.

Resolution 283–85

Whereas: The Blackfeet Tribal Business Council is the duly constituted governing body within the exterior boundaries of the Blackfeet Indian Reservation; and

Whereas: The Blackfeet Tribal Business Council has been organized to represent, develop, protect and advance the views, interests, education and resources or the Blackfeet Indian Reservation; and

Whereas: Pursuant to Article VI, Section 1(h), the Blackfeet Tribal Business Council has been empowered to adopt laws regulating and licensing all business activities conducted upon the Blackfeet Indian Reservation; and

Whereas: The Congress of the United States has delegated its authority to regulate the sale of alcoholic beverages within Indian reservations to the various tribal governments who occupy those reservations; and

Whereas: Pursuant to the Act of June 30, 1919 (41 Stat. 3, 17), the Congress of the United States expressly provided that the lands within the Blackfeet Reservation, whether allotted, unallotted, reserved, set aside for townsite purposes, or otherwise disposed of, shall be subject to all the laws of the United States prohibiting the introduction into the Blackfeet Reservation until otherwise provided by Congress; and

Whereas: Congress has never provided that the liquor laws of the United States would not be applicable to all lands within the exterior boundaries of the Blackfeet Reservation; and

Whereas: Pursuant to Title 18 of the United States Code, Section 1161, liquor ordinances of the Blackfeet Tribe are a part of the federal liquor laws; and

Whereas: The Blackfeet Tribal Business Council first advertised the attached Ordinance No. 73, in the local newspaper for two weeks and then held a public hearing in Browning, Montana, regarding said ordinance; and

Whereas: After due consideration the Blackfeet Tribal Business Council believes that the attached ordinance fairly represents the views, policy and needs of the Blackfeet Nation in the area of liquor regulation; now

Therefore Be It Resolve: That the Blackfeet Tribal Business Council hereby adopts the attached Ordinance No. 73, and requests its prompt approval by the Secretary of the Interior or his authorized agent; and

Be It Further Resolved: That all prior ordinances regulating the sale of alcoholic beverages shall be repealed as of the date of the approval of the attached Ordinance No. 73, by the Secretary of the Interior or his authorized representative and final publication in the **Federal Register;** and

Now Be It Finally Resolved: That upon final approval of the attached Ordinance No. 73, and its final publication in the **Federal Register,** the authority of the Tribal Council as stated in the ordinance shall be delegated to the Tribal Revenue Department until otherwise changed by the Blackfeet Tribal Business Council.

Attest:

Myra J. Galbreath,

Secretary, Blackfeet Tribal Business Council.

The Blackfeet Tribe of the Blackfeet Indian Nation.

John Yellow Kidney,

Vice-Chairman, Blackfeet Tribal Business Council.

Certification

I hereby certify that the foregoing resolution was adopted by the Blackfeet Tribal Business Council during a duly called, noticed and convened Regular Session assembled for business the 6th day of June, 1985, with Seven (7) members present to constitute a quorum, and by a vote of Five (5) for and Two (2) opposed.

Myra J. Galbreath,

Secretary, Blackfeet Tribal Business Council.

Ordinance No. 73

Regulation and Control of Alcohol

Part 1.—General Provisions

1. Declaration of Public Policy—Subject Matters of Regulation
2. Sale of Alcoholic Beverages Privilege, Not Right

Part 2.—Retail Sales Restrictions

1. Unlawful Sales and Other Transactions
2. Sales and Distribution of Alcoholic Beverages Lawful
3. Closing Hours for Licensed Retail Establishments
4. Sale of Alcoholic Beverages During Closed Hours Unlawful
5. Lapse of License for Non-Use
6. Tribal License Automatically Revoked with Loss of State License

Part 3.—License Administration

1. License Classification
2. Beer Retailer's License—Application and Issuance—Check of Books of Account and Premises by Tribe

Ordinance No. 73

Regulation and Control of Liquor

Part 1.—General Provisions

1.0 *Declaration of Public Policy—Subject Matters of Regulation.* (A) It is hereby declared to be the public policy of the Blackfeet Tribe to effectuate and ensure the entire control of the sale and distribution of all alcoholic beverages within the Blackfeet Indian Reservation, subject to the inherent sovereign power of the Blackfeet Nation and the power delegated to the Tribe by the United States Congress and concurrently with the State of Montana.

(B) This code is an exercise of the police powers of the Blackfeet Nation and the power delegated pursuant to Title 18, Section 1161 of the United States Code, in and for the protection of the welfare, health, peace, morals and safety of the people of the Blackfeet Nation and residents of the Blackfeet Indian Reservation.

(C) It is further the policy of the Blackfeet Nation to effectuate the economic rights of members of the Blackfeet Nation, as guaranteed by Article VIII, Section 2, of the Blackfeet Constitution. This policy is implemented herein by limiting the issuance of new licenses to enrolled members of the Blackfeet Nation or business entities which are at least fifty-one percent (51%) owned by enrolled members of the Blackfeet Nation.

2.0 *Sale of Alcoholic Beverages Privilege, Not Right.* A license for the sale or distribution of alcoholic beverages within the Blackfeet Indian Reservation is a privilege which the Blackfeet Nation may grant or deny and is not a right to which any person or entity is entitled.

Part 2.—Retail Sales Restrictions

1.0 *Unlawful Sales and Other Transactions.* (A) It shall be unlawful for any licensee, his/her employee or employees, or any other person to sell, deliver, or give away or cause or permit to be sold, delivered, or given away any alcoholic beverage to any person:

(1) Under nineteen (19) years of age; or

(2) Who is obviously, actually or apparently intoxicated.

(B) It shall be unlawful for any person or entity to sell or distribute alcoholic beverages within the exterior boundaries of the Blackfeet Indian Reservation without first obtaining a license pursuant to this ordinance.

(C) It shall be mandatory under this law for all licensees to display in a prominent place in their premises a placard stating fully the consequences for violations of provisions of this law by persons under nineteen (19) years of age.

2.0 *Sales and Distribution of Alcoholic Beverages Unlawful.* It shall be lawful for a licensed person or business entity to sell or distribute alcoholic beverages within the exterior boundaries of the Blackfeet Indian Reservation, provided that the licensee complies with the provisions of this ordinance, concurrently with the laws of the State of Montana.

3.0 *Closing Hours for Licensed Retail Establishments.* All licensed establishments wherein alcoholic beverages are offered for sale, or given away at retail shall be closed:

(A) Each day between 2:00 a.m. and 8:00 a.m., and

(B) Easter Sunday between 8:00 a.m. and 2:00 p.m. (all day);

(C) From 6:00 p.m. December 24 (Christmas Eve) to 6:00 p.m. December 25 (Christmas Day); and

The Blackfeet Tribal Business Council retains discretionary authority to close licensed retail establishments in recognition of Indian religious ceremonies, after giving due notice. Provided, however, that when a licensed retail establishment is operated in conjunction with a restaurant, hotel, or other lawful business other than the sale of intoxicating alcoholic beverages, then such other lawful business need not be closed, but only the part whereof such alcoholic beverages are sold.

4.0 *Sale of Alcoholic Beverages During Closed Hours Unlawful.* It shall be unlawful for any licensed tribal

establishments to sell, offer for sale, or give away alcoholic beverages during the hours when the licensed retail establishments are required by this ordinance to be closed or otherwise refrain from the sale of alcoholic beverages.

5.0 *Lapse of License for Non-Use.* (A) Any retail license issued pursuant to this ordinance (including any retail license to sell alcoholic beverages for off-premises consumption) not actually used in a going establishment for ninety (90) days shall automatically lapse. Upon determining the fact of non-use, the Tribal Council shall cancel such license of record and no portion of the fee paid therefore shall be refundable.

(B) The provisions of this section shall not apply to the license of any licensee whose premises are operated on a seasonal basis in connection with a bona fide resort, park hotel, tourist facility from the Tribal Business Council to close the business.

(C) The Tribal Council may, in its discretion, waive the effects of this section for a licensee who failed to use his license in a going establishment for ninety (90) days should the Council find that said lapse was reasonably beyond control of the licensee.

6.0 *Tribal License Automatically Revoked With Loss of State License.* Pursuant to federal law, the regulation of transactions involving alcoholic beverages within the Indian Reservation is a matter of concurrent jurisdiction between the various Indian tribes and the States in which their reservations are located. Thus to validly engage in the business of selling or distributing alcoholic beverages on Indian reservations a licensee must possess both a tribal and state license.

(A) Any tribal license issued pursuant to this ordinance will be automatically revoked ninety (90) days after the Tribal Council receives notification from proper State officials that the licensee's state license has been revoked or has otherwise expired, and that all state appeals processes have been exhausted.

Part 3.—License Administration

1.0 *License Classification.* (A) The issuance of licenses for the retail sale of alcoholic beverages within the Blackfeet Indian Reservation shall be based upon the following classifications

CLASS 1 *All Beverage License:* This license enables the licensee to sell liquor, beer, wine and other alcoholic beverages, as provided by law at retail within the boundaries of the Blackfeet Indian Reservation.

CLASS 2. *On-Premises Retail Beer License, With Available Wine Sales Amendment.* This license enables the licensee to sell beer for on-premises consumption. For an additioinal fee a wine amendment is available. The license must make an initial showing that the sale of beer for on premises consumption is supplementary to a restaurant or prepared food business. Non-retention of the beer license, for any reason, will mean automatic loss of the wine license amendment.

CLASS 3. *Off-Premises Retail Beer License With Available Wine Sales Amendment:* This license enables the licensee to sell beer and wine with an amendment, in the original package for off-premises consumption only. The licensee must make an initial showing that the license will be used in conjunction with a business operated primarily as a bona fide grocery store or drug store.

(B) The issuance of new licenses in Class 1, 2, and 3 shall be limited to enrolled members of the Blackfeet Indian Nation or business entities which are at least fifty-one percent (51%) owned and operated by an enrolled member of the Blackfeet Indian Nation.

CLASS 4. *Special Licenses.* This license consists of special permission enabling the licensee to sell beer or wine to the patrons of some preplanned community event, to be consumed within the enclosure where the event is held. Allowable events include company picnics, conventions, fairs, civil entertainment, and sporting events.

2.0 *Beer Retailer s License—Application and Issuance—Check of Books of Account and Premises by Tribe.* (A) Any person desiring to have and possess beer and wine for sale under this ordinance for the purpose of selling it at retail shall first apply to the Tribal Council for a license to do so and tender with said application the license fee provided for

(B) Upon being satisfied, from such application or otherwise, that the applicant is qualified as provided, the Tribal Council shall issue a license to such person or applicant, which license shall at all times be prominently displayed in the place of business of the applicant.

(C) If the Tribal Council shall find that the applicant is not qualified, no license shall be granted and the license fee tendered shall be promptly returned.

(D) The Tribal Council shall have the right and is hereby given the authority to make, at any time an examination of the books of account of any such retailer and his premises and otherwise check his methods of conducting business in so much as it regards his retail liquor license, through independent licensed auditors.

3.0 *Retailer Beer License for On-Premises Consumption—Wine License Amendment—Limit On Number of Licenses.* (A) Except as otherwise provided by law, a license to sell beer at retail for on premises consumption, or beer and wine at retail for on-premises consumption, in accordance with the provisions of this ordinance, may be issued to any person, firm or corporation who is approved by the Tribal Council as a fit and proper person, firm or corporation to sell beer, except that:

(1) in the TOWN OF BROWNING, and within a distance of five (5) miles from the city limits of Browning, not more than one (1) license for every 1,000 persons residing in the above described area shall be issued and said license may not be used in conjunction with a retail all-beverage license.

(2) in the unincorporated TOWN OF EAST GLACIER PARK and within a distance of five (5) miles from the limits of East Glacier Park not more than one (1) license for every 1,000 persons residing in the described area, shall be issued and said license may not be used in conjunction with a retail all-beverage license.

(3) the number of retail beer licenses for on-premises consumption, which may be issued by the Tribal Council, excluding those provided for in subsections (1) and (2) above, shall be determined on a limitation of no more than one (1) per 750 persons in that area and provided further that, in the exercise of its sound discretion, the Tribal Council first determines that the issuance of said license is required by public convenience and necessity

(B) Retail beer licenses, or beer and wine licenses, of issue on January 1, 1985, and which are in excess of the foregoing limitations shall be renewable, but no new licenses may be issued in violation of such limitations.

(C) An applicant for a license to sell beer, or beer and wine for on-premises consumption, at retail, must make a satisfactory showing that the sale of beer or beer and wine for consumption on premises would be supplemental to the applicant s primary business activity of operating a restaurant or other prepared food business.

(D) Any licensee possessing an on-premises retail beer license may apply for an on-premises retail wine license amendment An applicant to sell wine for on-premises consumption at retail, must first possess a valid retail on-premises beer license: provided, however that this requirement shall not prevent an applicant from applying for an on-premises beer license and the retail on-premises wine license

simultaneously. Non-retention of the retail beer license, for whatever reason, shall mean automatic loss of the amendment.

A person holding a retail on-premises beer and wine license, may sell beer and wine for consumption on or off the premises.

4.0 *Retail Beer and Wine License for Off-Premises Consumption Only—Discretionary Authority to Issue—Limited to Tribal Members Only of 51% Member Owned Businesses on New Licenses.* (A) A retail license to sell beer or wine, or both in the original package for off-premises consumption only may be issued to any person, firm, or corporation to sell beer or wine, or both, and whose premises proposed for licensing are operated as a bona fide grocery store or drug store.

(B) The number of such licenses which the Tribal Council may issue is not limited, but shall be determined by the Tribal Council in the exercise of its sound discretion, and the Tribal Council may in the exercise of its sound discretion grant or deny any application for any such license or suspend or revoke any cush license for cause.

(C) Provided, however, that the issueance of new licenses pursuant to this section is limited to enrolled members of the Blackfeet Indian Nation or business entities which are at least 51% owned by enrolled members of the Blackfeet Nation.

Retail beer, or beer and wine, licenses for off-premises consumption only, which are held by persons not members of the Blackfeet Nation, or by entities which are not 51% owned by enrolled members of the Blackfeet Nation, and which were of issue prior January 1, 1985 [sic], are not affected by the limitation in this sub-section. Said licenses shall be renewable and transferable subject to the limitations contained in this ordinance.

5.0 *Beer License Transfers.* (A) A transfer of any beer retailer's license, including transfer of a beer license with a wine license amendment, may be made upon application to the Tribal Council with the consent of the Council, provided that the transferee qualifies under this ordinance, and subject to the following limitations:

(1) Transfer of a license which was issued after January 1, 1985, as a new license with tribal member preference, may be made only to another enrolled member of the Blackfeet Nation or a business entity which is 51% owned by an enrolled member of the Blackfeet Nation.

(2) Transfer of a license issued prior to January 1, 1985, may be made to any qualified applicant, and will not be limited to tribal member preference.

6.0 *All-Beverage License—Quotas.* (A) Except as otherwise provided by law, a license to sell beer, wine and liquor at retail (an all-beverage license) in accordance with the provisions of this ordinance, may be issued to any person approved by the Tribal Council as a fit and proper person to sell such beverages, except that the number of all-beverage licenses which the Tribal Council may issue shall be limited as follows:

(1) There shall be no more than four (4) Class 1 all-beverage licenses for the TOWN OF BROWNING and within a five (5) mile radius of the town limits. An additional license will be available with each increase of 1,000 persons residing in the above described area.

(2) There shall be no more than one (1) Class 1 all-beverage license for the unincorporated TOWN OF EAST GLACIER PARK and within a five (5) mile distance from its limits, for every 1,000 persons residing in said area.

(3) The number of retail All-Beverage licenses which the Tribal Council may issue for premises situated outside the areas identified in (1) and (2) above, may not be more than one license for every 750 persons residing on the Blackfeet Indian Reservation, excluding the population of the area identified in (1) and (2) above.

(B) Retail all-beverage licenses of issue on January 1, 1985, and which are in excess of the foregoing limitations shall be renewable, but no new licenses may be issued in violation of such limitations.

(C) Any original license issued pursuant to this section, shall be issued only upon the Tribal Council having first determined, upon a hearing held pursuant to this ordinance, that the issuance of said license is justified by public convenience and necessity.

(D) Transfers of all-beverage licenses which were of issue prior to January 1, 1985, will not be limited to tribal members preference, and may otherwise be made to any qualified applicant.

7.0 *Census.* The most recent census of the Blackfeet Nation shall be the basis upon which the limitations outlined in this ordinance shall be detemined.

8.0 *Special License to Sell Beer and Wine—Application and Issuance.* (A) Any association or corporation conducting a picnic, convention, fair, community entertainment, or sporting event shall in the sound discretion of the Tribal Council be entitled to a special permit to sell beer and wine to the patrons of such event to be consumed within the enclosure where the event is to be held.

(B) An application for a special license shall be presented at least three (3) days in advance of the start of the proposed event and shall describe the location of the enclosure where the event is to be held.

(C) The application shall be accompanied by the amount of the license fee and a written statement of approval of the premises where the event is to be held issued by [sic] law enforcement agency that has jurisdiction over the premises and patrons.

(D) The license issued is a special license and authorizes the sale of beer and wine only on the date and during the period stated in the application and approval.

Part 4.—Licensing Criteria and Procedure

1.0 *License as Privilege—Criteria for Decision on Application.* (A) A license under this ordinance is a privilege which the Blackfeet Nation may grant to, or deny, any applicant and is not a right to which any applicant is entitled.

(B) Except as provided herein, in the case of a license that permits onpremises consumption, the Tribal Council must find in every case in which it issues a new license, or in which it approves the transfer of a license that:

(1) In the case of the issuance of a new license, that the applicant is an enrolled member of the Blackfeet Indian Nation, or if the applicant is a firm or corporation, that the applicant is at least 51% owned by an enrolled member of the Blackfeet Indian Nation.

(2) The applicant is financially responsible.

(3) The applicant will not have an interest in more than one establishment licensed for all-beverage sales.

(4) The applicant's past record and present status as a seller of alcoholic beverages and as a businessman and citizen demonstrates that he is likely to operate his establishment in compliance with all applicable tribal laws.

(5) The applicant is not under the age of twenty-one (21) years.

(6) The applicant has obtained the necessary general tribal business license.

(7) The applicant has not been convicted of a felony, or if the applicant has been convicted of a felony, that his rights have been restored.

(8) In the case of the transfer of a license originally issued as a new license after January 1, 1985, that the applicant is an enrolled member of the Blackfeet Indian Nation, or if the applicant is a firm or corporation, that at

least 51% of the firm or corporation is owned by enrolled members of the Blackfeet Indian Nation.

(C) The requirements of this sub-section will apply to all new licenses and transfers occurring after January 1, 1985, in Class 1, Class 2, and Class 3 licenses, except as otherwise provided in specific sub-sections. [sic, 2.0 *Application and Investigation*]

(A) Prior to the issuance of any license under this ordinance, the applicant shall file with the Tribal Council, any application in writing, signed by the applicant and containing such statements relative to the applicant and the premises where the alcoholic beverage is to be sold, as may be required by the Tribal Council, including, but not limited to the following:

(1) The name, age and place or residence of the applicant.

(2) The location of the premises where the license will be used.

(3) In the case of a firm or corporation, the names of all partners and shareholders in the firm or corporation; the percentage of ownership held by each partner or shareholder; the relationship, if any between the partners or shareholders (husband, wife, son, brother-in-law, etc.); and whether or not each shareholder or partner is an enrolled member of the Blackfeet Indian Nation.

(4) In the case of an individual applicant, whether the applicant is an enrolled member of the Blackfeet Indian Nation.

(5) Financial records and reports of the applicant. The application shall be verified by the affidavit of the person making the same before a person authorized to administer oaths.

(B) Upon receipt of a completed application of a license under this ordinance, accompanied by the necessary license fee, as further required in this ordinance, the Tribal Council shall within thirty (30) days make a complete and thorough investigation of all matters pertaining to the application and shall determine whether the applicant is qualified to receive a license and whether the applicant's premises are fit to carry on the business and that tribal law will be complied with.

(C) Upon proof that the applicant has made any false statement on the application, the application may be denied, or if issued, the license may be revoked.

3.0 *Notice of Application—Publication—Protest.* (A) When an application has been filed with the Tribal Council to sell alcoholic beverages at retail or to transfer such license, the Tribal Council shall promptly publish in a newspaper of general circulation within the Blackfeet Indian Reservation a notice that such applicant has made application for such license and that protests against the issuance of a license to the applicant may be mailed to a named tribal administrator within ten (10) days after the final notice is published. Notice of application for either transfer or sale shall be published once a week for four (4) consecutive weeks. Notice may be substantially as follows:

Notice of Application for Transfer of or for Retail Sale of Alcoholic Beverages

Notice is Hereby Given that on the ——— day of ———, 198—, one (name of applicant) filed an application for a license to engage in the retail sale of alcoholic beverages within the boundaries of the Blackfeet Indian Reservation.

The license is to be used at (describe location of premises where alcoholic beverages will be sold), and protests, if there are any, against the issuance of such license may be mailed to ———, Blackfeet Nation, Browning, Montana 59417, on or before ——— day of —, 198—.

Dated: ———.

(B) Each applicant shall, at the time of filing his application, pay to the Blackfeet Nation an amount sufficient to cover the costs of publication of the notice.

(C) If the Tribal Council receives no written protests, it may issue a license without holding a public hearing. If written protests against the issuance of the license or transfer of an existing license are received, the Tribal Council shall hold a public hearing in Browning at the Blackfeet Tribal Offices. Additional public hearings may be held at the discretion of the Tribal Council.

4.0 *Protests and Hearing—Posting and Contents of License—Privilege—Expiration.* (A) No license may be issued until after the date set in the notice for hearing protests.

(B) Every license issued under this ordinance shall contain:

(1) The name of the person [sic] whom it was issued.

(2) The location of the premises, by street number or other appropriate description, where the license is to be used.

(3) Other information such as the Tribal Council shall deem necessary. Each license must be posted in a conspicuous place on the premises wherein the business authorized under the license is to be conducted. Such license shall be exhibited upon request to any authorized representative of the Tribal Council or to any peace officer of the Blackfeet Nation or Bureau of Indian Affairs.

(C) Any license issued under this ordinance shall be considered a personal privilege to the licensee named in the license and shall be good until the expiration of the license unless sooner revoked or suspended.

5.0 *Transfer—By Sale—In Case of Death of Licensee—From Premises to Premises.* (A) Except as otherwise provided in this ordinance, no license for the retail sale of alcoholic beverages shall be transferred or sold. Nor shall said license be used for any place of business not described in the license without first making application to and receiving the approval of the Tribal Council.

(B) A license for the retail sale of alcoholic beverages may be transferred to the executor or administrator of the estate of any business of selling alcoholic beverages under a license, and in such event a license may descend or be disposed of with the business to which it is applicable under the appropriate probate proceedings.

(C) A license to sell alcoholic beverages at retail may be transferred to a qualified purchaser, upon a bona fide sale of the business operated under that license. No transfer of any license as to person or location shall be effective until approval by the Tribal Council, and any licensee, transferee or proposed transferee who operates or attempts to operate under any supposedly transferred license shall be considered as operating without a license to operate the business to be transferred, under the license, pending final approval, providing an application for transfer has been filed with the Tribal Council.

6.0 *Denial of License—Public Safety and Welfare.* (A) The Tribal Council may deny the issuance of any license for the retail sale of alcoholic beverages if it determines that the premises proposed for licensing cannot be properly policed by local authorities.

(B) Nor may a license under this ordinance be issued if the Tribal Council finds upon the evidence presented at the hearing, that the welfare of the people residing in the vicinity of the place of which such license is desired will be adversely and seriously affected and the public interest will not be served by the issuance of such license.

7.0 *Expiration of License.* (A) Each July 1st, the Tribal Council shall issue licenses to holders of retail licenses to sell alcoholic beverages within the Blackfeet Reservation on an annual basis and as such fees as are prescribed by law, such licenses are subject to

revocation or suspension as provided for in Part 4, section 8 of this ordinance after midnight on June 30th of the licensing year for which the license fee has not been paid, if the annual license fees are not paid. Initial licenses issued under this ordinance, shall be issued, at the annual rate, for a period ending June 30, 1986, regardless of when issued.

8.0 *Renewal—Revocation or Suspension—Penalty.* (A) The Tribal Council may upon its own motion, and shall upon the written, verified complaint of any person, investigate the action and operation of any retail seller or alcoholic beverages licensed under this ordinance.

(B) If the Tribal Council, after investigation, shall have reasonable cause to believe that any such license has violated the provisions of this ordinance, it may, in its discretion, and in addition to other penalties prescribed:

(1) Reprimand the licensee; or

(2) Suspend a license for a period not to exceed three (3) months; or

(3) Revoke the license of any such licensee; or

(4) Refuse to grant a renewal of such license upon the expiration thereof; or

(5) Impose a civil penalty not to exceed One Thousand Five Hundred Dollars ($1,500.00), subject to the right to a hearing in the Blackfeet Tribal Court. The affected licensee may seek a stay of the imposition of the fine provided the licensee files a petition for hearing on the fine with the Blackfeet Tribal Court within ten (10) working days of the day the licensee is notified of the fine. Failure to file a petition within the required time shall result in a loss of the Tribal Court's jurisdiction to review the fine pursuant to this ordinance.

9.0 *Judicial Review Concerning Alcoholic Beverage Laws.* (A) Any interested party shall have the right to seek judicial review of any decision of the Tribal Council concerning the issuance, transfer, suspension, or revocation of any license to sell at retail alcoholic beverages within the Blackfeet Reservation by the Blackfeet Tribal Court.

(B) Judicial revied under this provision will be limited to a review of the record of the prior proceedings on the affected license. The Court will be limited to determining:

(1) Whether the Tribal Council abused its discretion by acting arbitrarily or capriciously; or

(2) Whether the Tribal Council's decision is supported by the record of the case and the facts contained therein; or

(3) Whether the Tribal Council's decision is consistent with the applicable provisions of the law.

(C) The Tribal Council's decision shall be final unless modified or reversed by the Tribal Court.

Part 5.—Licensing Fees

1.0 *Retail Sales License and Special License Fees.* (A) Each retail beer, or retail beer and wine license, under the provisions of this ordinance, shall pay an annual license fee as follows:

(1) Retail on-premises beer license, Two Hundred Dollars ($200.00); with wine license amendment, an additional Two Hundred Dollars ($200.00).

(2) For a license to sell beer at retail for off-premises consumption only, Two Hundred Dollars ($200.00); for a wine license amendment to sell at retail for off-premises consumption only, an additional Two Hundred Dollars ($200.00).

(B) The fee of special license to sell beer and wine at certain gatherings shall be computed at a rate of Thirty Five Dollars ($35.00) a day for two or more days, but in no case less than Seventy Five Dollars ($75.00).

(C) The fee for licensees licensed as Class 1, All-Beverage retail sellers of alcoholic beverages shall be Five Hundred Dollars ($500.00).

(D) The license fee provided for in this ordinance are exclusive of and in addition to other license fees chargeable by the Blackfeet Nation for the privilege of carrying on business within the Blackfeet Indian Reservation.

(E) In addition to other license fees, the Tribal Council may require a licensee to pay a late fee of thirty percent (30%) of any license fee delinquent on July 1st of the renewal year, and sixty percent (60%) of any license fee delinquent of August 1st of the renewal year, and one hundred percent (100%) of any license fee delinquent on September 1st of the renewal year.

Part 6.—Violations and Enforcement

1.0 *Investigations—Search Warrants—Seizure and Forfeiture of Unlawful Alcoholic Beverages and Conveyance Devices.* (A) The Tribal Council may employ or appoint investigators or prosecuting officers who, under the Council's discretion, will perform such duties as it may require, and who shall be paid such fees and expenses as the Council may fix.

(B) Upon information or oath by any investigator appointed under this ordinance or any tribal or Bureau of Indian Affairs police officer showing reasonable cause to believe that alcoholic beverages are being illegally sold or kept for sale or for any unlawful purpose in any building or premises, it shall be lawful for the Tribal Court by warrant to authorize and empower the police officer or investigator or any other person named in the warrant to enter and search the building or premises and every part thereof and for that purpose to break open any lock, door, or fastening, to break open any closet, cupboard, box or other receptacle where alcoholic beverages might be concealed.

(C) The Tribal Council or any duly authorized representative thereof or any tribal or Bureau of Indian Affairs police officer shall have the right at any time to make an examination of the premises of any retail licensee as to whether the laws of the Blackfeet Nation are being complied with.

(D) Any investigator, duly appointed representative of the Blackfeet Tribal Council or any tribal or Bureau of Indian Affairs police officer who finds an alcoholic beverage which he has reasonable cause to believe is had or kept by any person in violation of the provisions of this ordinance may forthwith seize and remove the same and the packages in which the alcoholic beverage is kept, and upon a finding that the alcoholic beverage is being kept or sold in violation of this ordinance, the alcoholic beverage and all packages containing the same shall, in addition to other penalties prescribed by this ordinance, be forfeited as a matter of law to the Blackfeet Nation.

Whenever a vehicle or other conveyance device of any kind is used to store or transport alcoholic beverages for purposes contrary to the provisions of this ordinance, the vehicle or conveyance device may be seized forthwith. Upon a finding by the Tribal Court that the person in possession of the vehicle or conveyance device or person in charge in said vehicle or conveyance device was in violation of the provisions of this ordinance, the Court may, in addition to any other possible penalties, declare in and by decree that the vehicle or conveyance device, which had been seized, to be forfeited to the Blackfeet Nation.

2.0 *When Force May be Used in Seizure—Hearing Required in Forfeiture Cases.* (A) Where alcoholic beverages are found by an investigator or tribal or Bureau of Indian Affairs Police Officer on any premises or in any place in such quantities as to satisfy the investigator or police officer that such alcoholic beverage is being had or kept contrary to the provisions of this ordinance, it shall force if necessary and seize any alcoholic beverage found, including the packages in which it was had or kept, and immediately turn such alcoholic beverage over to the tribal council.

(B) In all cases where alcoholic beverages, or alcoholic beverages and vehicles and conveyance devices, are seized, the Tribal Council or its designated prosecuting officer shall commence an action in the tribal court against the seized alcoholic beverage, vehicle or conveyance device, and the person or persons actually or apparently in possession or control thereof if any such person be presented at the time of the seizure. The alcoholic beverage shall be named as a defendant to the action.

(C) The complaint shall show the date and place of seizure, the name of the person or persons actually or apparently in or [sic] control thereof if any such person be present at the time of the seizure, the reason the tribal council claims the right to possess the alcoholic beverage or conveyance device, or both, and shall demand that all persons who claim any right to the possession of the alcoholic beverage or conveyance device, or both, shall show the nature of their claim or claims and that the court declare the same to be contraband and that the court order the contraband forfeited to the Blackfeet Nation.

(D) A summons shall be issued, served or published as in all civil actions pursuant to the Tribal Law and Order Code, except that the court summons shall be published in a local newspaper within the Blackfeet Indian Reservation.

(E) In every case in which an alcoholic beverage or a conveyance device is seized by an investigator or police officer, it shall be his duty to forthwith make or cause to be made to the Tribal Council a report in writing of the particulars of the seizure.

3.0 *Inspection of Carrier's Records—Unlawful for Carrier to Refuse.* (A) For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this ordinance, the Tribal Council or any person appointed by it in writing for the purpose, may inspect the freight and express books, and any other documents in the possession of any common carrier doing business within the exterior boundaries of the Blackfeet Indian Reservation, containing any information or record relating to any goods shipped, carried, received for shipment, or co-signed for shipment within the reservation. (B) Every common carrier and every official employee of any such company or common carrier who neglects or refuses to produce and submit for inspection any book, record, or document requested by the tribal council or its authorized representative, where that document relates to enforcement or administration under this ordinance, shall be deemed in violation of this ordinance and shall be subject to a fine of One Hundred Dollars ($100.00) per day for each day during which the violation continues, not to exceed Five Thousand Dollars ($5,000.00).

4.0 *Violation of Code Civil Action in Tribal Court—Corrective Action Before Judicial Proceedings.* (A) Every action charging a violation of the provisions of this ordinance shall be brought by the Tribal Council or its prosecuting officer, in the name of the Blackfeet Tribe, against the licensee or other alleged violator in the Blackfeet Tribal Court as a civil action.

(B) Provided, however, that the Tribal Council may, in the exercise of its sound discretion, resolve any alleged violation only when alleged to have been committed, by an authorized licensee, at the administrative level through the collection of an appropriate fine amount, an undertaking of corrective measures by the licensee, or other allowed penalty. Should an alleged violator agree to administrative resolution of the complaint, he shall not be allowed to seek judicial review of the administrative resolution.

Part 7.—Prohibitions and Penalties

1.0 *Unlawful Transfer, Sale and Possession of Alcoholic Beverages.* (A) Except when in possession of fully issued tribal license and as otherwise provided by this ordinance no person shall, within the Blackfeet Indian Reservation, by himself or through others, keep for sale, or directly or indirectly sell or offer to sell, or to give any other person alcoholic beverages.

(B) This section shall not apply to the county sheriff, tribal police, Bureau of Indian Affairs police, Blackfeet Tribal Council or its authorized representative when in possession of alcoholic beverages under judicial process or to sales by said entities and persons when under judicial process.

2.0 *Penalty for Sale of Alcoholic Beverages Without a License.* Any person who has not been issued a license for the retail sale of any alcoholic beverages under this ordinance who sells or keeps for sale any alcoholic beverage has committed a violation, and upon a finding thereof is punishable by a civil penalty of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Five Hundred Dollars ($1,500.00).

3.0 *Providing Alcoholic Beverages to Intoxicated Persons Prohibited.* (A) No retail seller of alcoholic beverages licensed pursuant to this ordinance may, either through themselves or an agent, sell any alcoholic beverages or permit alcoholic beverages to be sold to any person apparently under the influence of alcohol.

(B) Any retail seller of alcoholic beverages who is licensed pursuant to this ordinance who sells or allows to be sold alcoholic beverages to a person obviously intoxicated, is deemed to have violated this ordinance and upon a finding thereof is punishable of a civil penalty of up to Five Hundred Dollars ($500.00) for each infraction.

(C) No person may give alcoholic beverages to a person apparently under the influence of alcohol.

4.0 *Age Limit on Sale of Alcoholic Beverages—Penalty for Violation.* (A) Except in the case of an alcoholic beverage given to a person under nineteen (19) years of age by his parent or guardian for beverage purposes of administered or sold to him for medicinal purposes, no person shall sell, give or otherwise supply alcoholic beverages to any person under the age of nineteen (19) years or permit any person under that age to consume an alcoholic beverage.

(B) Any person shall have violated this provision who:

(1) invites a person under nineteen (19) years of age into a public place where alcoholic beverages are sold and treats, gives, or purchases an alcoholic beverage for such person; or

(2) holds out such person to the owner of a retail alcoholic beverage establishment that the person is older than nineteen (19) years of age or represents the same to the employees and agents of the owner.

(C) Any person who violates this provision may, upon a finding thereof, be punished through a civil penalty or a fine of not less than Two Hundred Fifty Dollars ($250.00) for each violation.

(D) Provided however, should the drinking age for the State of Montana be changed, the drinking age stated in this ordinance will automatically be changed to reflect the new change.

5.0 *Miscellaneous Prohibitions—Penalty.* (A) All licenses to sell at retail alcoholic beverages [sic] pursuant to this ordinance are hereby prohibited from engaging in the following activities:

(1) From engaging in pawnbroking or taking goods or materials in hock; or

(2) Lending money or engaging in similar activity to indigent persons solely for the purpose of enabling them to purchase alcoholic beverages in his establishment; or

(3) From allowing the consumption of alcoholic beverages on his premises which were purchased for off-premises consumption only; or

(4) From allowing fighting or threatening to fight on his premises or

from generally failing to keep order in his premises.

(B) Any licensee found to be in violation of any of the provisions of this section shall be deemed to have violated this ordinance and is subject to a civil penalty of not less than Three Hundred Dollars ($300.00) for each separate violation.

6.0 *Firearms Not Allowed on Premises.* (A) There shall be no firearms or other dangerous weapons allowed at any time on the premises where alcoholic beverages are being sold at retail, with the exception of licensed firearms for the maintenance of order, firearms possessed by duly authorized peace officers, and firearms maintained by the licensee for protection of himself, his agents, and invitees.

(B) Any person found in possession of a firearm or other dangerous weapon on a premises where alcoholic beverages are being sold at retail shall upon a finding thereof in court, be subject to a civil fine of not less than Two Hundred Fifty Dollars ($250.00).

7.0 *Minors Not Allowed—Eating Establishments Exception.* (A) Minors shall not be allowed in any establishment where alcoholic beverages are sold for on-premises consumption, except where a restaurant or other prepared food business is operated in conjunction therewith.

(B) Any licensee who is found to have violated this provision shall be deemed to have violated this ordinance and be subject to a civil fine of not less than Two Hundred Fifty Dollars ($250.00) for each violation.

8.0 *Sale of Alcoholic Beverages From Drive-In Windows or Similar Devices Prohibited.* (A) It is the public policy of the people of the Blackfeet Nation to stop the carnage that is taking place on the highways of the Blackfeet Reservation and which is occurring as a result of the high number of drinking drivers. It has been statistically proven that drinking drivers account for a significant percentage of all highway deaths and accidents. It is the public policy of the people of the Blackfeet Nation to prevent drinking and driving, not to encourage or facilitate such action.

(B) It shall be unlawful and a violation of this ordinance, to sell or offer to sell alcoholic beverages through drive-up windows or other similar devices which would allow the retail purchaser to purchase alcoholic beverages while remaining in his vehicle. Drive-up windows and other similar devices are hereby declared to be public nuisances and thus subject to injunction to prevent uses in violation of this ordinance.

(C) A licensee found to have violated this provision shall be subject to a civil penalty of not less than One Thousand Dollars ($1,000.00) and not more than Five Thousand Dollars ($5,000.00).

9.0 *Penalty for Violating Ordinance—Revocation of License.* (A) If any retail licensee is convicted of a violation under this ordinance, his license shall be immediately revoked or in the discretion of the Tribal Council such other sanction may be imposed as is authorized by this ordinance. Any person violating the provisions of this ordinance shall, upon a finding thereof, be deemed guilty and subject to such fine or penalty as is provided in this ordinance.

(B) A person under the age of nineteen (19) who is found to have violated any provision of this ordinance shall be subject to a One Hundred Dollar ($100.00) civil penalty for each offense.

10.0 *Officer or Agent, of Firm or Corporation, and Occupant of Premises Deemed Party to Violation.* (A) Where a violation of this ordinance is committed by a corporation or firm, the officer or agent in charge of the premises where the violation was committed shall be deemed to be a party to the violation and shall be personally liable to [sic] the penalties prescribed for the offense as principal offender.

(B) Upon proof of the fact that a violation of this ordinance has been committed by any person in the employ of the occupant of any house or premises, or by any guest of the occupant of any premises where the violation was committed, the occupant of the premises shall be personally liable for the penalties prescribed for the violation as principal offender, notwithstanding the fact that the occupant did not commit the violation or authorize its commission.

(C) Nothing in sections (A) and (B) above will relieve the person actually committing the offense for liability therefore.

11.0 *Injunction Actions.* (A) Upon the determination of the Tribal Council, in the exercise of its sound discretion, an injunction and immediate temporary restraining order may be sought against any retail licensee requesting that he be prohibited from further sales of alcoholic beverages and that his business activities be immediately suspended.

(B) The action may be started by the Tribal Council filing a petition in the Tribal Court, verified by affidavit, showing the need for immediate measures and showing that the licensee has been notified.

(C) If the Court finds that the circumstances present a public nuisance or that the public health and welfare has been or is endangered it shall issue a temporary restraining order and schedule a show cause hearing no later than five (5) working days from the date the temporary order is issued.

(D) The temporary restraining order will dissolve of its own force and effect on the fifth day if the Tribe fails to go forward on its petition on the day set for the hearing.

12.0 *Delegation of Authority.* The Blackfeet Tribal Council hereby reserves the right to delegate any of the powers and duties stated in this ordinance to any agency of the Blackfeet Tribe. In the event of such delegation, the Tribal Council shall promply notify all interested persons by proper publication of which activities or duties have been delegated and to which agency the delegation was made.

13.0 *Federal Laws Applicable.* The Federal Indian Liquor Laws remain applicable to any act or transaction not authorized by this ordinance and not otherwise in compliance with Federal law, violators may be subject to federal prosecution.

Part 8.—Regulation of Wholesalers, Brewers, and State Liquor Stores

1.0 *Brewers License to Sell Products—License Fee.* (A) It shall be unlawful for any brewer of beer, wherever located, to sell his product within the exterior boundaries of the Blackfeet Reservation without first obtaining a license and paying the appropriate fee as provided by this ordinance.

(B) Every brewer who is licensed to do business within the State of Montana, may obtain a license to sell his product within the Blackfeet Indian Reservation by making application with the Blackfeet Tribal Council and submitting a fee of Five Hundred Dollars ($500.00) therewith.

(C) Upon being satisfied that the applicant is duly licensed by the State of Montana and otherwise of good moral character, the Tribal Council shall issue such license to the applicant.

2.0 *Wholesale Distribution of Beer and Wine—License Required—Fee.* (A) It shall be unlawful for any person or firm to sell, offer to sell, or possess for sale any beer, or wine, or both, for wholesale distribution, within the exterior boundaries of the Blackfeet Reservation without first obtaining license and paying the appropriate fee as required by this ordinance.

(B) Any person desiring to possess and sell beer for wholesale or wine for

wholesale, or both, under the provisions of this ordinance shall apply to the Tribal Council for a license to do so, submitting with his application his annual license fee of One Thousand Dollars ($1,000.00).

(C) Upon being satisfied that the applicant is of good moral character, has sufficient capital and is otherwise a law abiding citizen, the Tribal Council shall issue the license to the applicant.

(D) If the Tribal Council shall determine that the license should not be granted, the applicant shall be promptly notified and his license fee returned.

(E) This provision does not apply to stores owned or operated by the State of Montana as State Liquor Stores.

3.0 *State Liquor Store—Limit—Fee.* (A) There shall be one (1) State Liquor Store on the Blackfeet Indian Reservation. Said store shall not sell alcoholic beverages on the Blackfeet Indian Reservation, whether at wholesale or retail, without first obtaining a license pursuant to this ordinance and paying the appropriate fee.

(B) Upon application by the State of Montana and the tendering of a One Thousand Dollar ($1,000.00) license fee therewith, the Tribal Council shall issue a license to the State Liquor Store which will enable said store to sell alcoholic beverages at wholesale and at retail.

4.0 *Renewal—Suspension—Revocation—Expiration.* Licenses issued to wholesale distributors of alcoholic beverages, brewers, and the State Liquor Store, pursuant to this Part, shall be subject to expiration, renewal, revocation and suspension pursuant to the provisions of Part 4, sections 7, 8, and 9.

5.0 *Violators—Enforcement.* The provisions of this part may be enforced pursuant to the provisions of Part 6, sections 1 through 6 of the ordinance, including those provisions providing for the seizure and forfeiture of contraband alcoholic beverages and conveyance devices which are used in violation of this ordinance.

Part 9.—Effective Date and Repeal.

1.0 *Effective Date.* This ordinance shall be effective upon approval by the Bureau of Indian Affairs and publication as required by law.

2.0 *Repeal of Prior Ordinances and Resolutions.* This Ordinance No. 73, hereby repeals all prior ordinances and resolutons which regulate or purport to regulate the sale and distribution of alcoholic beverages within the Blackfeet Indian Reservation including Ordinance No. 6A. This ordinance is controlling.

[FR Doc. 86-5870 Filed 3-17-86; 8:45 am]

BILLING CODE 4310-02-M

Bureau Of Land Management

Environmental Statement, Availability, etc.: Little Grand Canyon, San Rafael River, Sids Mountain Wilderness Study Area, and Flume Canyon Wilderness Study Area, UT

AGENCY: Bureau of Land Management, Moab, Interior.

ACTION: Notice of comment periods on two draft environmental assessments ending 30 days from publication of this notice.

SUMMARY: The first environmental assessment has been prepared in response to an application from an outfitter for a commercial Special Recreation Use Permit for the Little Grand Canyon portion of the San Rafael River. Most of this Canyon is located within the Sids Mountain Wilderness Study Area, UT-060-023. Under the proposed action BLM would issue new permits on a year-to-year basis pending completion of the San Rafael Resource Management Plan.

The second evaluates a proposed change in kind of livestock from sheep to cattle for 2500 acres of the Corral Wash Grazing Allotment within the Flume Canyon Wilderness Study Area, UT-060-100B.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Moat District Office, P.O. Box 970, Moab, UT 84532, (801) 259-6111.

Gene Nodine,

District Manager.

[FR Doc. 86-5871 Filed 3-17-86; 8:45 am]

BILLING CODE 4310-84-M

Availability of the House Range Resource Area Draft Resource Management Plan/Environmental Impact Statement, and Public Open House

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Availability of the draft RMP/EIS and notice of public open house.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is hereby given that the Bureau of Land Management has prepared a Draft House Range Resource Area Resource Management Plan/Environmental Impact Statement. The Draft RMP/EIS described and analyzes the impacts of four alternatives for managing the Public Lands in the House Range Resource Area. The alternatives recommend levels of grazing for livestock, wildlife, and wild horses and provide overall management prescriptions to guide the multiple-use management of all resoureces. Future recreation designations are also recommended.

DATES: Writen comments on the Draft RMP/EIS should be submitted by June 13, 1986. A Public Open House will be held as scheduled below to receive comments on the alternatives and potential impacts discussed in the Draft RMP/EIS. Written and verbal comments will be accepted.

Date: May 12, 1986
Time: Starting at 3:00 p.m. and ending at 7:00 p.m.
Place: Bureau of Land Management, 15 East 500 North, Fillmore, Utah 84631.

Written and verbal comments received during the Public Open House and all written comments received prior to June 13, 1986 concerning the adequacy of the Draft RMP/EIS will receive consideration in the preparation of the final RMP/EIS.

ADDRESS: Written comments on the Draft RMP/EIS should be sent to: Richfield District Manager, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Partridge at the above address or telephone (801) 896-8221.

SUPPLEMENTARY INFORMATION: A limited number of copies of the Draft RMP/EIS are available upon request at the above address, or from BLM Offices at the following locations:

Burau of Land Management, Office of Public Affairs, Main Interior Building, 18th and C Streets NW., Washington, DC 20240

Bureau of Land Mangement, Utah State Office, CFS Financial Center, 324 South State Street, Salt Lake City, Utah 84111-2303.

Dated: March 10, 1986.

Donald L. Pendleton,

District Manager.

[FR Doc. 86-5872 Filed 3-17-86; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Funding Guidelines Working Panel; Meeting

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of Meeting of Working Panel Established by the Royalty Management Advisory Committee.

SUMMARY: The Minerals Management Service hereby gives notice that the 202/205 Funding Guidelines Working Panel, established by the Royalty Management Advisory Committee, will meet in Lakewood, Colorado, at the location and on the dates indicated in the Location and Dates section below.

Sections 202 and 205 of the Federal Oil and Gas Royalty Management Act of 1982 authorize the Secretary to delegate authority to any State to conduct audits of mineral leases on Federal and Indian lands. Standards and specific criteria are needed to ensure an equitable allocation of available funds among the participating States and Indian tribes. The 202/205 Funding Guidelines Working Panel will submit recommendations to the Advisory Committee regarding such standards and specific criteria.

SUPPLEMENTARY INFORMATION: The 202/205 Funding Guidelines Working Panel is one of six working panels established by then Royalty Management Advisory Committee. The panels are composed of both Advisory Committee members and non-Committee members, and were established to provide the Advisory Committee with analyses of specific issues and proposed recommendations. Panel recommendations will be reviewed by the Advisory Committee, which will then decide what advice recommendations to give to the Department of the Interior and MMS. Although the panels may meet with Department of the Interior or MMS staff members to obtain information they require in conducting their analyses, advice and recommendations of the panels will be made to the Advisory Committee and not to the Department of the Interior or the MMS.

Location and Dates

The 202/205 Funding Guidelines Working Panel will meet at the Sheraton Inn Hotel, 360 Union Boulevard, Lakewood, Colorado, April 8–10, 1986.

The panel will meet from 8 a.m. to 5 p.m. daily. If the meeting is completed in less than the three days scheduled, the panel will adjourn upon such completion.

The public is invited to attend these meetings and make oral or written comments. A time will be set aside by the Panel chairperson during which the public will be invited to make oral comments. Written comments should be submitted by April 30, 1986, to the address listed in the **FOR FURTHER INFORMATION CONTACT** Section below.

FOR FURTHER INFORMATION CONTACT: Vernon B. Ingraham,Minerals Management Service, Royalty Management Program, Office of External Affairs, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 660, Denver, Colorado 80225, telephone number (303) 231–3360, (FTS) 326–3360.

Dated: March 13, 1986.

Donald T. Sant,

Acting Director, Minerals Management Service.

[FR Doc. 86–5906 Filed 3–17–86; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Boundary Adjustment of Lake Mead National Recreation Area.

By virtue of Section 2 of Pub. L. 88–639, 78 Statute 1039, enacted October 8, 1964 which authorizes the Secretary of the Interior to revise the boundaries of Lake Mead National Recreation Area, the following 935 acres of private land are hereby deleted from Lake Mead National Recreation Area:

All those parcels of land located in Township 21 South, Range 63 East, Mount Diablo Meridian, Nevada, and being more particularly described as follows:

Sec. 14, SW¼ NW¼ SE¼, NE¼, W½ SW¼ SE¼ NE¼, S½ NE¼ SW¼ NE¼, SE¼ SW¼ NE¼, W½ SW¼ NE¼, NW¼ NE¼ SW¼ NE¼, W½, W½ SE¼, W½ W½ NE¼ SE¼;

Section 23, W½ E½, W½.

The revised boundary of Lake Mead National Recreation Area reflecting this 935 acre deletion is depicted on the map entitled "Boundary Map, Lake Mead National Recreation Area", Numbered 80,013(B) and dated February 24, 1986. This map is available for public inspection at the Western Regional Office, National Park Service, 450 Golden Gate Avenue, P.O. Box 36063, San Francisco, California 94102, and at the Headquarters Office of the Superintendent of Lake Mead National Recreation Area.

Inquires concerning the area within Lake Mead National Recreation Area shall be directed to the Director, National Park Service, U.S. Department of the Interior, Washington, DC 20013–7127, or to the Regional Director, Western Regional Office.

Howard H. Chapman,

Regional Director, Western Region.

[FR Doc. 86–5923 Filed 3–17–86; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 8, 1986. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by April 2, 1986.

Carol D. Shull,

Chief of Registration, National Register.

INDIANA

Whitley County

Columbia City, *Columbia City Historic District*, Roughly bounded by Jefferson, Walnut, Ellsworth, Wayne, and N. Chauncy Sts.

KENTUCKY

Boyle County

Danville vicinity, *Melrose*, US 127

Campbell County

Bellevue, *Seiter, Joseph, House*, 307—309 Berry Ave.

MAINE

Oxford County

Norway, *Baptist Church (Norway MRA)*, 15 Cottage St.
Norway, *Barjo's (Norway MRA)*, 204 Main St.
Norway, *Barker, Dr., House (Norway MRA)*, 161 Main St.
Norway, *Crooker Block (Norway MRA)*, 194 Main St.
Norway, *Cummings Stephen & Edward, House (Norway MRA)*, 9 Whitman St.
Norway, *Danforth Block (Norway MRA)*, 144 Main St.
Norway, *Danforth, Asa, House (Norway MRA)*, 146 Main St.
Norway, *Dennison—Hathaway House (Norway MRA)*, 185 Main St.
Norway, *Evans—Cummings House (Norway MRA)*, 265 Main St.
Norway, *Grange Hall (Norway MRA)*, 8 Whitman St.
Norway, *Hathaway Block (Norway MRA)*, 229 Main St.
Norway, *Jackson's (Norway MRA)*, 206 Main St.
Norway, *Knights of Pythias (Norway MRA)*, 139 Main St.
Norway, *Leavitt Hardware (Norway MRA)*, 198 Main St.
Norway, *Masonic Temple (Norway MRA)*, 8 Cottage St.
Norway, *Norway National Bank (Norway MRA)*, 174 Main St.
Norway, *Noyes Block (Norway MRA)*, 171–175 Main St.
Norway, *Odd Fellows Block (Norway MRA)*, 201 Main St.

Norway, *Old Beal Block (Norway MRA)*, 160 Main St.
Norway, *Opera House Block (Norway MRA)*, 219 Main St.
Norway, *Pike, L. F., Company (Norway MRA)*, 170 Main St.
Norway, *Savings Bank Block (Norway MRA)*, 169 Main St.
Norway, *Tucker Block (Norway MRA)*, 167 Main St.
Norway, *Weary Club (Norway MRA)*, 178 Main St.
Norway, *Whitney—Cummings House (Norway MRA)*, 234 Main St.
Norway, *Z. L. Merchants (Norway MRA)*, 199 Main St.

NEW JERSEY

Bergen County

Lyndhurst, *Yeareance, Jeremiah J., House*, 410 Riverside Dr.

PUERTO RICO

Mayaguez County

Mayaguez, *La Casa Solariega de Jose De Diego*, 52 Liceo St.

TENNESSEE

Hamilton County

Signal Montain, *Signal Mountain Inn*, 100 James Blvd.

VIRGINIA

Richmond (Independent City)

Boulevard Historic District, 10—300 S. Boulevard and 10—800 N. Boulevard

WEST VIRGINIA

Fayette County

Prince, *Prince Brothers General Store—Berry Store*, WV 41

Randolph County

Huttonsville, *Tygarts Valley Church*, US 219

Webster County

Webster Springs, *Morton House*, Union St.

Wood County

Williamstown vicinity, *Henderson Hall Historic District*, CR 14

WISCONSIN

Columbia County

Wisconsin Dells, *Bowman House*, 714 Broadway St.

Dane County

Madison, *East Wilson Street Historic District*, 402—524 E. Wilson St. and 133 S. Blair St.
Madison, *Grimm Book Bindery*, 454 W. Gilman St.
Mount Horeb, *Aslak Lie Cabin*, 3022 County Trunk P

Fon du Lac County

New Fane, *Saint John Evangelical Lutheran Church*, 670 County Trunk Highway S

Marquette County

Briggsville vicinity, *Bonnie Oaks Historic District*, Grouse Dr.

Milwaukee County

Milwaukee, *Blatz Brewery Complex*, 1101—1147 N. Broadway

Outagamie County

Appleton, *Tompkins, James, House*, 523 S. State St.

Pierce County

River Falls, *North Hall—River Falls State Normal School*, University of Wisconsin

Walworth County

Fontana, *Douglass—Stevenson House*, Main and Mill Sts.
Lake Geneva, *Riviera (The)*, 810 Wrigley Dr.
Linn, *Bonnie Brae*, 78 Snake Rd.

The 15-day commenting period for the following properties is to be waived in order to assist in the buildings preservation through an easement donation.

CALIFORNIA

Los Angeles County

Downey, *Casa de Parley Johnson*, 7749 Florence Ave.

Orange County

Irvine, *Irvine Blacksmith Shop*, 14952 Sand Canyon Ave.

COLORADO

Pitkin County

Aspen, *Hotel Jerome*, 330 E. Main St.

NEW YORK

Seneca County

Seneca Falls, *Fourth Ward School*, 8 Washington St. (Received 03/11/86)

[FR Doc. 86-5924 Filed 3-17-86; 8:45 am]
BILLING CODE 4310-10-M

Appalachian National Scenic Trail Sale of Excess Lands

AGENCY: National Park Service, Interior.

ACTION: Notice, Sale of Lands Excess to the Appalachian National Scenic Trail, Warren and Fauquier Counties, Virginia.

SUMMARY: The following lands have been identified as suitable for disposal by public sale under the provisions of Section 7(f)(2) of the National Trails Systems Act, Pub. L. 90-543, as amended by Pub. L. 98-11 on March 28, 1983.

Tract No.	Option	Size (acres)	Location	Fair market value
420-31		62.50	Fauquier County	62,500
420-32/33	(a)	5.62	Warren County	15,000
	(b)	2.60	Warren County	15,000
	(c)	3.22	Warren County	13,000
	(d)	3.63	Warren County	13,000
	(e)	3.64	Warren County	13,000
	(f)	3.77	Warren County	13,000
	(g)	4.74	Warren County	15,000
	(h)	5.15	Warren/Fauquier County	13,000
	(i)	32.37	Warren/Fauquier County.	99,000
420-35/37		20.80	Warren/Fauquier County.	16,650
420-38/39	(a)	111.24	Warren/Fauquier County.	89,000
	(b)	111.24	Warren/Fauquier County.	66,700
420-41		23.00	Warren County	114,000
419-27		52.10	Fauquier County	31,300

The lands and improvements thereon, if any, are not required for the protection or management of the Appalachian National Scenic Trail. The lands are offered subject to existing rights of record and such terms and conditions as are deemed necessary for the protection and management of the Appalachian National Scenic Trail.

The lands will be offered for sale to the highest bidder. Bids in an amount less than the appraised fair market value will not be considered. Sealed bids must be received prior to 1:00 P.M. on May 5, 1986 at the Appalachian Trail Land Acquisition Field Office, P.O. Box 908, 210 Porter Avenue, Martinsburg, West Virginia 25401. Specifications for bidding and conveyance, legal descriptions, narrative descriptions of the lands and improvements thereon, maps, preference rights, deed restrictions and reservations, and other information regarding the terms and conditions of the sale are available for public inspection at the Appalachian Trail Land Acquisition Field Office, 210 Porter Avenue, Martinsburg, West Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Donald J. Owen, Appalachian Trail Land Acquisition Field Office, P.O. Box 908, Martinsburg, West Virginia 25401, Telephone (304) 263-4943.

Charles R. Rinaldi,
Chief, Land Acquisition Field Office.

[FR Doc. 86-5925 Filed 3-17-86; 8:45 am]
BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-32 (Sub-32)]

Boston and Maine Corporation—Abandonment in Hillsborough County; NH; Findings

The Commission has found that public convenience and necessity permit Boston and Maine Corporation to abandon its 18.61-mile line of railroad between Wilton and Bennington, NH, extending from milepost N-16.36 to milepost N-32.36 and milepost W-59.39

to milepost W–62.00, in Hillsborough County, NH.

A certificate will be issued authorizing this abandonment unless within 10 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 86–5953 Filed 3–17–86; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Partial Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 28, 1986, a proposed partial consent decree in *United States* v. *Broderick Investment Co., et al.*, Civil Action No. 86–Z369 was lodged with the United States District Court for the District of Colorado. The action arises under sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") and section 3008 of the Resource Conservation and Recovery Act ("RCRA"). The proposed decree imposes a civil penalty of one hundred thousand ($100,000) dollars under RCRA and requires the defendants to perform the Remedial Investigation and Feasibility Study ("RI/FS") for the Broderick wood processing and preservation facility in Denver, Colorado. The RI/FS will be designed to determine the full extent of contamination at the Broderick facility and to evaluate remedial action alternatives to abate such contamination.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed partial consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Broderick Investment Co., et al.*, D.J. Ref. 90–7–1–254.

The proposed consent decree may be examined at the Office of the United States Attorney, 1961 Stout Street, Suite 1200, Federal Office Building, Denver, Colorado 80294 and at the Region VIII Office of the Environmental Protection Agency, 999—18th Street, Suite 1300, One Denver Place, Denver, Colorado 80202–2413, and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $3.60 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86–5873 Filed 3–17–86; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

United States v. Pacific Telesis Group, et al.: Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) through (h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the Central District of California in *United States of America* v. *Pacific Telesis Group, et al.*, Civil Action No. 86–1298 RMT.

The complaint of the United States in this case alleges that the acquisition by Pacific Telesis Group ("Telesis") of Communications Industries, Inc. would result in Telesis becoming a partner of LIN Cellular Communications Corporation ("LIN") in one of the two cellular radio systems in Dallas-Ft. Worth, Texas, thereby gaining access to LIN's cellular strategies. By affording Telesis access to LIN's competitive plans, the acquisition would violate section 7 of the Clayton Act, 15 U.S.C. 18 and section 1 of the Sherman Act, 15 U.S.C. 1 by increasing the potential for collusion between Telesis and LIN in the Los Angeles, California cellular market, a market in which they are the only two competitors. The partnership between Telesis and LIN in the Dallas-Ft. Worth cellular system may have a significant anticompetitive effect by hampering LIN's ability to compete effectively in the Los Angeles or Dallas-Ft. Worth cellular markets, and thereby increase the already significant incentives and opportunities for collusion between LIN and Telesis in the Los Angeles cellular market.

The proposed Final Judgment denies Telesis access to LIN's competitive strategies by restricting Telesis to an essentially passive investment role in the Dallas-Ft. Worth partnership. Telesis is prohibited from participating in the affairs of the Dallas-Ft. Worth partnership except in very limited ways. It may not attend meetings of or have employees in common with the Dallas-Ft. Worth partnership and its right to vote is significantly limited. The information that Telesis may obtain concerning the Dallas-Ft. Worth cellular system is strictly limited.

Telesis has agreed to comply with the restrictions contained in the proposed Final Judgment as of the date of filing, and the Department has determined that the proposed Final Judgment provides effective antitrust relief without the costs and delay that would result from litigation.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Barry Grossman, Chief, Communications and Finance Section, Antitrust Division (SAFE–504), Department of Justice, Washington, DC 20530 (202/724–6693).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

United States District Court for the Central District of California

United States of America, plaintiff, v. Pacific Telesis Group, and Communications Industries, Inc., defendants.

[No. CV–86–1298–RMT]

February 28, 1986.

Stipulation for Entry of Final Judgment

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

(1) The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements

of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court;

(2) The parties shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment; and

(3) In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: February 27, 1986.

For the Plaintiff United States of America: W. Stephen Cannon, *Acting Assistant Attorney General.* Joseph H. Widmar, Barry Grossman, Kevin R. Sullivan, *U.S. Department of Justice.*

For the Defendants: Nancy C. Garrison, Christine A. Wardell, John Dorsey, Michael L. Volkov, *Attorneys, U.S. Department of Justice, Antitrust Division, Washington, D.C. 20530, (202) 724–6693.*

For Pacific Telesis Group: Stanley M. Gorinson, *Pillsbury, Madison & Sutro, 1667 K Street NW., Washington, D.C. 20006, (202) 887–0300.*

For Communications Industries, Inc: Carl W. Northrop, *Kadison, Pfaelzer, Woodard, Quinn & Rossi, 2000 Pennsylvania Ave. NW., Suite 7500, Washington, DC. 20006, (202) 452–8300.*

United States District Court for the Central District of California

United States of America, plaintiff, v. Pacific Telesis Group, and Communications Industries, Inc., defendants.

[No. CV-]

Final Judgment (Proposed)

Whereas, plaintiff, United States of America, filed its Complaint herein on February 28, 1986, and plaintiff and defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue; and

Whereas, the defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

Now, Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I. Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against each defendant under Section 1 of the Sherman Act (15 U.S.C. 1), and section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. "Affiliate" or "affiliates" means any organization or entilty in which, directly or indirectly, the named person has control or substantial ownership. For purposes hereof, "substantial ownership" means a direct or indirect equity interest (or the equivalent thereof) of fifty percent (50%) or more of an entity. Any parent company of a named person shall also be deemed its affiliate.

B. "Agent" means any person who is in the service of the named person pursuant to a contract of hire, express or implied, where the named person has the power or right to control and direct such person in the material details of how the work is perfored, provided, however, that a reseller of cellular services or a seller or lessor of cellular equipment not otherwise affiliated with Telesis or CI shall not be deemed its agent for purposes of this Final Judgment.

C. "Block A cellular license" means the authorization issued by the Federal Communications Commission granting authority to operate a cellular system on the Block A frequencies in a particular CGSA, assigned initially by the Federal Communications Commission for use by companies other than affiliates of an exchange telephone company.

D. "Block B cellular license" means the authorization issued by the Federal Communications Commission granting authority to operate a cellular system on the Block B frequencies in a particular CGSA, assigned initially by the Federal Communications Commission for use by affiliates of companies that provide local exchange telephone service in that area.

E. "Cellular system" menas a high capacity land mobile system (i.e., involving portable and car radiotelephones) authorized by the Federal Communications Commission, pursuant to §§ 22.900–22.921 of its rules (47 CFR 22.900–22.921), for use primarily to provide two-way mobile telephone service.

F. "CGSA" means the Cellular Geographic Service Area of a cellular system, which defines the geographic area intended to be served by that cellular system pursuant to §§22.903 of the Federal Communications Commission's rules, 47 CFR 22.903.

G. "CI" means the defendant Communications Industries, Inc.; each division, subsidiary (including but not limited to Gensub, Inc.), or affiliate thereof and each officer, director, employee, agent, or other person acting for or on behalf of any of them; provided, however, that a reseller of cellular services or a seller or lessor of cellular equipment not otherwise affiliated with CI shall not be deemed on agent or other person acting on behalf of CI for purposes of this Final Judgment.

H. "D/FW" means the Texas partnership known as D/FW Signal, established pursuant to the Partnership Agreement in Respect of D/FW Signal Partnership, dated December 9, 1985.

I. "D/FW partner" means any current or future partner in D/FW, or any successor of any of them.

J. "Document" means written, recorded, or graphic material of any kind, including but not limited to electronically stored data from which information can be obtained either directly or by translation through detection devices or readers.

K. "Information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or other symbols.

L. "LACTC" means the California partnership known as Los Angeles Cellular Telephone Company, holding the Block A cellular license for the Los Angles CGSA, established pursuant to the partnership agreement dated June 22, 1983.

M. "LIN" means LIN Broadcasting Corporation; each division, subsidiary or affiliate thereof, and each officer, director, employee, agent, or other person acting for or on behalf of any of them.

N. "Metroplex" means the Texas partnership known as Metroplex Telephone Company, holding the Block A cellular license for the Dallas-Fort Worth CGSA, established pursuant to the Amended and Restated Partnership Agreement dated November 9, 1984.

O. "Metroplex partner" means any current or future partner in Metroplex, and any successor to any of them.

P. "Person" means any natural person, corporation, association, firm,

partnership, or other business or legal entity.

Q. "Telesis" means the defendant Pacific Telesis Group; each division, subsidiary or affiliate thereof, and each officer, director, employee, agent, or other person acting for or on behalf of any of them; provided, however, that a reseller of cellular services or a seller or lessor of cellular equipment not otherwise affiliated with Telesis shall not be deemed an agent or other person acting on behalf of Telesis for purposes of this Final Judgment. Telesis includes Communications Industries, Inc. after its acquisition by Telesis. In addition, solely for purposes of this Final Judgment, Telesis includes the trustee under the Temporary Trust Agreement dated July 26, 1985, as amended, James F. Rill, andc any successor trustee.

R. "Telesis-CI closing" means the transfer of the stock of CI to the Temporary Voting Trust established pursuant to the Temporary Voting Trust Agreement, dated July 26, 1985, as amended, on the "Closing Date" as defined in section 10.02 of the Agreement and Plan of Reorganization, dated May 21, 1985.

III. Applicability

A. The provisions of this Final Judgment shall apply to Telesis and CI, their successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise, including but not limited to all persons who receive notice pursuant to Paragraph V of this Final Judgment.

B. Telesis shall require, as a condition of the sale or other disposition of all or substantially all of its assets or stock, or of its interests in both D/FW and the Los Angeles cellular system to a single purchaser, that the acquiring party agree to be bound by the provisions of this Final Judgment; provided, however, that if Telesis' interests in both D/FW and the Los Angeles Block B cellular system are not transferred to a single purchaser, this provision shall not apply.

IV. Restrictions on Telesis' Access to D/FW azndd Metroplex Information

A. Except as expressly permitted by this Paragraph IV:

1. Telesis shall not participate in the management or operation of D/FW or Metroplex.

2. Telesis shall not be an officer, a member of the partners' committee or a member of any other committee of D/FW or Metroplex.

3. Telesis shall attend no meetings, formal or informal, of D/FW, Metroplex or any committee of D/FW or Metroplex.

4. No officer or employee of Telesis shall be an officer, employee or agent of D/FW or Metroplex, provided, however that Telesis shall not be precluded, upon the receipt of any necessary regulatory or judicial approvals, from acting as a reseller of Metroplex or D/FW in accordance with the provisions of this Final Judgment.

5. Telesis shall not request, obtain, inspect or otherwise have access to any books, records, documents or other information generated by or for D/FW, Metroplex or LIN, that relates directly or indirectly to their cellular radio operations, provided, however, that Telesis may obtain:

(a) Information that is available to the public;

(b) Financial statements of D/FW and Metroplex (i.e. a balance sheet, a statement of earnings and a statement of changes in financial condition);

(c) A summary of a financial audit of D/FW, not more than once annually, prepared by an independent financial auditor selected by Telesis;

(d) Notice of capital calls, limited to the amount of the call and not specifying the purpose for which the funds are to be expended;

(e) Notice of rights to purchase or sell interests in Metroplex or D/FW;

(f) Notice and full information of any transfer or proposed transfer by a Metroplex or D/FW partner of its interest in Metroplex or D/FW or any portion thereof and any notice and full information of rights of first refusal regarding such proposed transfer;

(g) Notice of and full information relating to any matter on which Telesis is permitted to vote under Paragraph IV(A)(7) of this Final Judgment;

(h) Notice of any allocations made to the partnership accounts of any of the Metroplex or D/FW partners;

(i) The names and business addresses of persons to whom notice is to be given pursuant to Paragraph V of this Final Judgment; and

(j) Any additional financial information necessary to permit Telesis to prepare its state or federal tax returns.

6. Telesis shall not discuss with any D/FW or Metroplex partner or any person acting on behalf of any D/FW or Metroplex partner, any information generated by or for D/FW, Metroplex, LACTC or LIN that relates directly or indirectly to their cellular radio operations and which is obtained through D/FW or Metroplex, except information permitted to be disclosed to Telesis pursuant to Paragraph IV(A)(5) of this Final Judgment.

7. Telesis shall not vote on any matters submitted for vote of the D/FW or Metroplex partnership except that Telesis may vote, by written ballot or consent and without attending any partnership or partners' committee meeting, on:

(a) The proposed admission of a partner to either D/FW or Metroplex;

(b) A proposed merger or consolidation of D/FW or Metroplex;

(c) A proposed sale of substantially all of the assets of D/FW or Metroplex; or

(d) A proposed amendment to the D/FW or Metroplex partnership agreement.

B. All communications between Telesis, and D/FW or Metroplex, and between Telesis and any of the D/FW or Metroplex partners, of information generated by or for D/FW, Metroplex, LACTC or LIN that relates directly or indirectly to their cellular radio operations and which is obtained through D/FW or Metroplex, and all votes on D/FW or Metroplex partnership matters, shall be in written form. Complete and accuraie copies of such communications, information and votes shall be retained by Telesis and may be examined by representatives of the Department of Justice pursuant to Section VI of this decree.

C. The provisions of this Final Judgment do not prohibit Telesis from receiving distributions and any other payments to which it may be entitled under the D/FW partnership agreement or the Metroplex partnership agreement.

D. Prior to the Telesis-CI closing, Telesis shall have entered into an amendment to the D/FW partnership agreement in the form of Exhibit A to this Final Judgment. No subsequent amendments shall be made to the D/FW partnership agreement unless Telesis submits such proposed amendment to the Department of Justice at least thirty (30) days prior to its effective date. If the Department of Justice during the thirty (30) day period does not object to the proposed amendment, it shall take effect, but it shall not operate as a modification of this Final Judgment. If the Department of Justice during the thirty (30) day period objects in writing to such proposed amendment, the proposed amendment shall not become effective until the Department of Justice removes its objection or this Court rules, on the motion of either party to this Final Judgment, that the proposed amendment is consistent with this Final Judgment or that modification of the Final Judgment is warranted in accordance with legal standards governing modifications of consent

decrees. Plaintiff and defendant shall take all reasonable steps to expedite a resolution of any matter submitted to the Court under this Section IV(D).

V. Compliance Provisions

A. Not later than fifteen (15) days after the Telesis-CI closing, Telesis shall distribute to each officer and each management official with significant responsibility for Telesis' cellular operations, to the trustee under the Temporary Trust Agreement dated July 26, 1985, to any consultant providing services related to the operation of Telesis' cellular business who also provides or has provided consulting services to D/FW or Metroplex or any D/FW partner or Metroplex partner, and to any independent financial auditor hired pursuant to Paragraph IV(A)(5)(c) above:

1. A copy of this Final Judgment; and

2. In the case of Telesis employees, an admonition that noncompliance with this Final Judgment will result in appropriate disciplinary action, which may include dismissal.

B. Within thirty (30) days after the Telesis-CI closing, Telesis shall obtain from each person to whom notice is given pursuant to Paragraph V(A) of this Final Judgment a certificate in substantially the following form:

The undersigned hereby (1) acknowledges receipt of a copy of the Final Judgment and a written directive setting forth the policy regarding compliance with the Final Judgment, (2) represents that the undersigned has read such Final Judgment and understands the restrictions on disclosure of information, (3) acknowledges that the undersigned (if an employee of Telesis) has been advised and understands that non-compliance with the Final Judgment will result in appropriate disciplinary measures, which may include dismissal, and (4) acknowledges that the undersigned has been advised and understands that willful non-compliance with the Final Judgment may also result in conviction for contempt of court and imprisonment and/or fine.

C. Within ten (10) days after any additional person becomes subject to the requirements of Paragraph V(A) and V(B) Telesis shall provide the notice specified in Paragraph V(A) and obtain the acknowledgment specified in Paragraph V(B) from such person.

D. Telesis shall take appropriate disciplinary action against any person under its control who refuses or fails to comply with this Final Judgment.

E. Within ten (10) days after the Telesis-CI closing, Telesis shall send to (i) each officer or management official of D/FW and Metroplex with significant responsibility for cellular operations, (ii) either the chief executive officer or the officer with primary responsibility for cellular operations for each Metroplex or D/FW partner; and (iii) each person who is a representative, alternate representative, or officer of the D/FW or Metroplex partnership committees; by registered mail return receipt requested, the following:

1. A copy of this Final Judgment;

2. An admonition that willful disclosure to Telesis of information prohibited to Telesis under the Final Judgment may result in conviction for contempt of court and imprisonment or fine;

3. A written request that such persons take all necessary steps to inform those persons under his or her supervision or control who may have access to information that directly or indirectly relates to the cellular operations of D/FW, Metroplex or LIN of the restrictions imposed by this Final Judgment on the disclosure of such information to Telesis.

F. Not later than ninety (90) days after the Telesis-CI closing, Telesis shall provide to the Department of Justice a list of the persons notified pursuant to Paragraphs V(A) and V(E) of this Final Judgment. Telesis shall retain in its files for at least five (5) years from date of signature, the certificates required by Paragraph V(B) and the registered receipts required by Paragraph (V)(E) of this Final Judgment.

VI. Visitorial Provisions

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Telesis made to its principal office, be permitted access during office hours of Telesis to depose or interview officers, employees, or agents, and to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Telesis, which may have counsel present, relating to any matters contained in this Final Judgment.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to Telesis' principal office, Telesis shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Paragraph VI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Telesis to plaintiff, Telesis represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Telesis marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to Telesis prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Telesis is not a party.

VII. Termination of Judgment

This Final Judgment shall expire on the tenth anniversary of the date of its entry or, prior to that date, upon the happening of any of the following events:

A. The transfer by LIN of its entire interest in the Block A cellular license for the Los Angeles CGSA to a person not affiliated with LIN or with any D/FW or Metroplex partner (other than Telesis);

B. The transfer by LIN of its entire interest in Metroplex to any person unaffiliated with LIN and having no interest in the Block A cellular license in the Los Angeles CGSA;

C. The transfer by Telesis of its entire interest in D/FW and Metroplex to a third person unaffiliated with Telesis (or if any portion thereof is so transferred, this Final Judgment shall no longer have any force and effect with respect to such portion);

D. The transfer by Telesis of its entire interest in the Block B cellular license in the Los Angeles CGSA;

E. The failure to consummate the Telesis-CI merger and the termination of the Agreement and Plan of Reorganization dated May 21, 1985 between Telesis and CI; or

F. A determination by this Court that termination of this Final Judgment is warranted under the legal standards

applicable to termination of antitrust consent decrees because:

1. There has been a substantial reduction in the ownership interest, management role, or extent of control by LIN in either LACTC or Metroplex; or

2. There have been other substantial changes in the circumstances that led to entry of the decree.

G. The grant by this Court of a stipulated motion by the parties to this Final Judgment requesting termination.

VIII. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, modification or termination of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

IX. Public Interest Determination

Entry of this Final Judgment is in the public interest.

United States District Judge.

Dated:_____

Presented by

Nancy C. Garrison, Christine A. Wardell, John Dorsey, Michael L. Volkov, *Antitrust Division, Department of Justice, Washington, DC 20530, Attorneys for Plaintiff.*

Exhibit A—First Amendment to Partnership Agreement of D/FW Signal Partnership

This first amendment to partnership agreement of D/FW signal partnership ("First Amendment"), dated as of February 27, 1986, is made by and among *GENSUB, INC.*, a Texas corporation ("Gensub"), *METROMEDIA TELECOMMUNICATIONS, INC.*, a Delaware corporation ("Metromedia"), and *PAGE COMMUNICATIONS, INC.*, a Texas corporation ("Page").

Witnesseth:

Whereas Gensub, Metromedia and Page have previously entered into a Partnership Agreement dated as of December 9, 1985 ("Prior Agreement") of D/FW Signal Partnership, a Texas general partnership ("D/FW Signal"); and

Whereas D/FW Signal is one of the general partners of Metroplex Telephone Company, a Texas general partnership ("Metroplex") which partnership is controlled and managed by Lin Cellular Communications Corporation, a Texas corporation ("Lin"); and

Whereas in connection with the proposed merger of an indirect wholly owned subsidiary of Pacific Telesis Group, a Nevada corporation ("Telesis"), with and into Communications Industries, Inc. ("CI"), a Texas corporation and the parent company of Gensub, the United States Department of Justice ("DOJ") has raised questions regarding Gensub's participation in Metroplex due to Lin's position as general manager of the Metroplex and Los Angeles Block A cellular systems and, as a result, that Gensub may gain access to certain information deemed by the DOJ to be competitively "sensitive" with respect to the cellular operations of Lin and its affiliates in Los Angeles;

Now, Therefore, in consideration of the mutual covenants and agreements set forth herein and in the Prior Agreement, the parties hereto agree as follows:

1. *Definitions.* For purposes of this First Amendment, Gensub shall include all affiliates of Gensub, including Telesis and CI. The term "affiliate" means any organization or entity in which, directly or indirectly, the named person has control or any substantial ownership. For purposes hereof, the term "substantial ownership" means a direct or indirect equity interest (or the equivalent thereof) of fifty percent (50%) or more of an entity. Any parent company of a named person shall also be deemed its affiliate. The term "Information" means knowledge or intelligence generated by or for D/FW Signal, Metroplex, or Lin represented by any form of writing, signs, signals, pictures, sounds or other symbols that relate, directly or indirectly, to the cellular radio operations of D/FW Signal, Metroplex or Lin or their affiliates. The term "Agent" means any person who is in the service of the named person pursuant to a contract of hire, express or implied, where the named person has the power or right to control and direct such person in the material details of how the work is performed provided, however, that a reseller of cellular services or a seller or lessor of cellular equipment not otherwise affiliated with Telesis shall not be deemed its agent.

2. *Amendment to section 3.4(b).* It is the intent of the parties that, during the term of this First Amendment, Gensub shall not receive operating or capital budgets of Metroplex. Accordingly, section 3.4(b) of the Prior Agreement is amended to add the following clause at the end of the first sentence of such section:

provided, however, that Gensub shall not be provided with copies of the aforesaid operating and capital budgets nor with any business plan of Metroplex.

3. *Amendment to Add section 5.1(d).* It is the intent of the parties that, during the term of this First Amendment, Gensub shall not participate in the management or operation of D/FW Signal or Metroplex nor shall Gensub attend any formal or informal D/FW Signal or Metroplex meetings (including committee meetings) and shall not vote its Units except on any proposal to admit a partner to D/FW Signal or to Metroplex, to vote on a fundamental partnership change, or to vote on an amendment to the Metroplex or D/FW Signal Partnership Agreements. Accordingly, Section 5.1. of the Prior Agreement is amended to add a new Section 5.1(d) as follows:

(d) Notwithstanding anything herein to the contrary, Gensub shall not vote its Units except that Gensub shall be entitled to vote by written ballot or consent, without attending any meeting, on any proposal regarding any of the following: (i) the proposed admission of a partner to either Metroplex or D/FW Signal; (ii) a proosed merger or consolidation of Metroplex or D/FW Signal; (iii) a proposed sale of substantially all of the assets of Metroplex or D/FW Signal or (iv) a proposed amendment of the D/FW Signal or Metroplex partnership agreements.

4. *Amendment to section 6.3.* It is the intent of the parties that, for the term of this First Amendment, Gensub shall be prohibited from inspecting the books and records of D/FW Signal and Metroplex otherwise than in accordance herein. Accordingly, Section 6.3 of the Prior Agreement is amended to add the following clause at the end of such section:

provided further, however that Gensub shall not request, obtain, inspect or otherwise have access to any books, records, documents or other information, that relates directly or indirectly to the cellular radio operations of D/FW Signal, Metroplex or Lin otherwise than as permitted by the First Amendment to this Agreement dated as of February 27, 1986 ("First Amendment").

5. *Amendment to Add section 6.4* It is the intent of the parties that, during the term of this First Amendment, Gensub shall not receive any Information or publicity notices. Accordingly, Section 12.11 of the Prior Agreement is amended by adding "except Gensub" after the word "Partners" on the sixth line of such section. In addition, Article VI of the Prior Agreement is amended to add the following as a new section 6.4:

6.4 *Restriction on Information.* The Partners each hereby agree to refrain fromp roviding Gensub with any material or Information they receive from Lin or

Metroplex except that Gensub shall obtain: (i) Information that is available to the public; (ii) Financial statements of D/FW Signal and Metroplex (i.e. a balance sheet, a statement of earnings and a statement of changes in financial condition); (iii) Upon the request of Gensub, a summary of a financial audit of D/FW Signal, not more than once annually, prepared by an independent financial auditor selected by Gensub; (iv) Notice of capital calls, limited to the amount of the call and not specifying the purpose for which the funds are to be expended; (v) Notice of rights to purchase or sell interests in Metroplex or D/FW Signal; (vi) Notice and full information of any transfer or proposed transfer by a Partner to Metroplex or D/FW Signal of its interest in Metroplex or D/FW Signal or any portion thereof, and any notice and full information of rights of first refusal regarding such proposed transfer; (vii) Notice of and full information relating to any matter on which Gensub is permitted to vote pursuant to this First Amendment; (viii) Notice of any allocations made to the partnership accounts of any of the Partners to Metroplex or D/FW Signal; and (ix) Any additonal financial information necessary to permit Gensub and its affiliates to prepare its stae or fedeal tax returns. Any and all notices to which Gensub is entitled under this section 6.4 shall be given sufficiently in advance to permit Gensub to respond and thereby protect its interest in the partnerships.

6. *Amendment to section 12.3.* It is the intent of the parties that, during the term of this First Amendment, any proposed amendment to the Prior Agreement shall be made in compliance with Section 14 of this First Amendment. Accordingly, section 12.3 of the Prior Agreement is amended, in the second sentence thereof, by changing the comma after "herein" to a period, and by adding the following sentence to replace the remainder of section 12.3 as follows:

It may be modified or amended only by an instrument in writing signed by all of the Partners, and must be furnished to the DOJ at least 30 days prior to the date such instrument is proposed to become effective. If the DOJ has not objected to the proposed amendment within such 30 day period, such amendment shall become immediately effective.

7. *Amendment to Add section 12.15.* It is the intent of the parties that the revisions made to the Prior Agreement pursuant to this First Amendment shall be automatically extinguished when the reasons for entering into this First Amendment are no longer present. Accordingly, Article XII of the Prior Agreement is amended to add the following as a new section 12.15:

12.15 *Temporary Amendments.* Sections 5.1(d) and 6.4 of this Agreement shall automatically be extinguished and void and shall no longer be in force and effect, and sections 3.4(b), 6.3, 12.3 and 12.11 of the Prior Agreement and sections 2.02, 2.03, 2.07, 2.08, 2.11, 3.02, 3.03, 4.01, 4.02, 4.03, 8.02, 8.03, 11.03, and Article XII of the Rules shall automatically revert to the provisions set forth in the Prior Agreement before being revised pursuant to the First Amendment and shall no longer be in force and effect, upon the earliest to occur of ten years from the date that the Final Judgment in the *United States* v. *Pacific Telesis Group and Communications Industries, Inc.* is entered by the Court or any of the following events shall occur:

(a) The transfer by Lin of its entire interest in the Block A cellular license for the Los Angeles Cellular Geographic Service Area ("Los Angeles CGSA") to a person not affiliated with Lin or with any D/FW Signal or Metroplex partner (other than Telesis); or

(b) The transfer by Lin of its entire interest in Metroplex to any person unaffiliated with Lin and having no interest in the Block A license in the Los Angeles CGSA; or

(c) The transfer by Telesis of its entire interest in D/FW Signal and Metroplex to a third party unaffiliated with Telesis (or if any portion thereof is so transferred, this Agreement shall terminate as to such portion and all voting, informational and inspection rights shall be reinstated with respect to such portion); or

(d) The transfer by Telesis of its entire interest in the Block B cellular license in the Los Angeles CFSA; or

(e) (i) The termination of the Final Judgment in *United States* v. *Pacific Telesis Group and Communications Industries, Inc.* filed in the United States District Court for the Central District of California or (ii) the failure by the Court to enter such Final Judgment, provided however that such failure by the Court shall not automatically terminate the First Amendment, which termination shall only be effective upon the written election of Gensub in its sole discretion; or

(f) The failure to consummate the Telesis/CI merger and the termination of the Agreement and Plan of Reorganization dated as of May 21, 1985.

8. *Amendments to sections 2.02, 2.03, 4.01, 4.02 and 4.03 of the Rules.* Gensub hereby agrees to refrain from attending any formal or informal meetings of D/FW Signal or of Metroplex, or of either of their Partners' Committees. Accordingly, sections 2.03, 4.01, 4.02 and 4.03 of the Rules are hereby amended to add the following proviso at the end of such sections and in section 2.02 of the Rules at the end of the first sentence in such section:

provided, however, that Gensub shall not be entitled to attend any such meetings.

9. *Amendments to sections 2.07, 2.08 and 2.11 of the Rules.* It is the intent of the parties that Gensub refrain from voting on any proposals except those specified in Section 3 of this First Amendment. Accordingly, the following clause is added at the end of sections 2.07 and 2.08 of the Rules:

In calculating the vote on any matter to be considered, the number of Units held by Gensub shall first be deducted from the total number of Units available to vote, except that no such deduction shall be made when voting on any of the following: (i) The proposed admission of a Partner to Metroplex or D/FW Signal, (ii) a proposed merger or consolidation of Metroplex or D/FW Signal (iii) a proposed sale of substantially all of the assets of Metroplex or D/FW Signal, or (iv) a proposed amendment to the Metroplex or D/FW Signal partnership agreements.

In addition, section 2.11 is amended by adding the following proviso at the end of the first sentence of such section:

provided however, that Gensub's consent shall not be required unless the consent relates to any of the following, which would require Gensub's consent: (i) The proposed admission of a Partner to Metroplex or D/FW Signal, (ii) a proposed merger or consolidation of Metroplex or D/FW Signal, (iii) a proposed sale of substantially all of the assets of Metroplex or D/FW Signal, or (iv) a proposed amendment to the Metroplex or D/FW Signal partnership agreements.

10. *Amendments to sections 3.02 and 3.03 of the Rules.* It is the intent of the parties that, during the term of this First Amendment, Gensub shall not appoint a representative to either the Metroplex or the D/FW Signal Partners' Committees. Accordingly, Gensub hereby resigns from both of such Partners' Committees and, further, sections 3.02 and 3.03 of the Rules are amended to insert the following clause at the beginning of such sections:

Except Gensub,

11. *Amendment to sections 8.02 and 8.03 of the Rules.* It is the intent of the parties that, during the term of this First Amendment, no officer or employee of Gensub shall be an officer, employee or agent of D/FW Signal or Metroplex. Accordingly, Gensub hereby resigns as Chairman of D/FW Signal and, further, sections 8.02 and 8.03 of the Rules are amended to add the following sentence at the end of such sections:

all officers elected or appointed pursuant to this Section shall be unaffiliated with Gensub.

12. *Amendment to section 11.03 of the Rules.* It is the intent of the parties that, during the term of this First Amendment, no reports shall be provided to Gensub that are prohibited hereunder. Accordingly, section 11.03 of the Rules is amended to add the following clause at the end of such Section:

provided, however, that no reports shall be provided to Gensub that are prohibited by the First Amendment.

13. *Amendment to Article XII of the Rules.* It is the intent of the parties that the Rules of the Partnership, during the term of this First Amendment, may be

amended only in compliance with section 14 of this First Amendment. Accordingly, Article XII of the Rules is amended by restating such Article in its entirety as follows:

These Rules may be altered, amended or repealed, or new rules may be adopted, only by an instrument in writing signed by all of the Partners, and must be furnished to the DOJ at least 30 days prior to the date such instrument is proposed to become effective. If the DOJ has not objected to the proposed amendment within such 30 day period, such amendment shall become immediately effective.

14. *Amendments.* Any proposed amendment to this First Amendment or to the Prior Agreement must be in writing, signed by all of the parties hereto, and must be furnished to the DOJ at least 30 days prior to the date it is proposed to become effective. If the DOJ has not objected to the amendment within such 30-day period, such amendment shall become immediately effective.

15. *Relation to Prior Agreement.* The parties hereto acknowledge and agree that, except to the extent expressly amended pursuant hereto, the Prior Agreement shall remain unchanged and in full force and effect.

16. *Governing Law.* This First Amendment and the legal relations among the parties hereto shall be governed by and construed in accordance with the laws of the State of Texas, as if all parties to this First Amendment were resident and doing business in such state.

17. *Counterparts.* This First Amendment may be executed and delivered by one or more parties to this First Amendment on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same agreement.

In witness whereof, the undersigned have executed and delivered this First Amendment as of the day and year first written above.

GENSUB, INC.

By _____

Title _____

Metromedia Telecommunications, Inc.

By _____

Title _____

Page Communications, Inc.

By _____

Title _____

United States District Court for the Central District of California

United States of America, Plaintiff, v. *Pacific Telesis Group, and Communications Industries, Inc.,* Defendants.

[No. CV-86-1298-RMT]

Competitive Impact Statement

February 28, 1986.

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)), the United States of America hereby files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry against Pacific Telesis Group ("Telesis") and Communications Industries, Inc. ("CI") in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

This civil action began on February 28, 1986, when the United States filed a complaint alleging that the proposed acquisition of CI by Telesis would violate section 7 of the Clayton Act (15 U.S.C. 18) and section 1 of the Sherman Act (15 U.S.C. 1). The complaint alleges that the effect of the acquisition may be substantially to lessen competition in the provision of cellular telephone service in Los Angeles, California. As a result of the acquisition, Telesis will become a partner with LIN Cellular Communications Corporation (LIN) in one of the two cellular systems in Dallas-Ft. Worth, Texas, thereby increasing the potential for collusion between Telesis and LIN, the only two firms in the Los Angeles cellular market. The complaint requests that Telesis be required to divest its interest in the Dallas-Ft. Worth cellular system or that other appropriate relief be granted to prevent Telesis from participating in or gaining access to confidential information about the Dallas-Ft. Worth cellular system.

The United States, Telesis and CI have stipulated that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act. Entry of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction to construe, modify or enforce the Final Judgment and to punish violations of the Final Judgment.

II. Events Giving Rise to the Alleged Violation

On May 21, 1985, Telesis and CI entered into an Agreement and Plan of Reorganization (Merger Agreement) pursuant to which Telesis will acquire all of the outstanding common stock of CI for $32.75 per share or a total purchase price of approximately $432 million. The Merger Agreement provides for a two-step process. "Step One", the "closing" under the Merger Agreement, will result in transfer of CI's stock to a temporary trust, under which CI's present management will continue to run its businesses.[1] At that time, the CI stockholders will be paid and will have no further ownership interest in CI. "Step Two" of the transaction, transfer of control of CI from the trustee to Telesis, will occur after the necessary regulatory approvals have been secured and divestitures required by the FCC and the MFJ Court have been completed.

The alleged violation arises from the impact of the acquisition on the market for cellular radio services in Dallas-Forth Worth, Texas, and Los Angeles, California. Cellular radio is a high-capacity, two-way mobile telephone service. Unlike traditional mobile telephone systems, in which transmission on a particular frequency covers an entire metropolitan area, a cellular system is divided into several "cells," each of which is assigned a subsect of the 333 channels available to the entire system. The same frequency subsets can be reused in non-adjacent cells, thereby greatly increasing the system's capacity. Cellular telephone systems are connected to the public switched, or "landline" telephone network, and cellular subscribers are able to make local and interexchange calls in essentially the same manner as ordinary telephone users. Cellular systems are designed to provide subscribers with transmission quality and call completion ratios comparable to those traditional landline service.

Cellular radio is a product that under present technology is competitively distinct from other telecommunications services, particularly in urban markets. The capacity of older mobile telephone technologies is so limited relative to cellular radio that such systems cannot effectively constrain cellular prices. Local landline telephone service is not a substitute for cellular service because it does not offer mobility, an important attraction of cellular.[2]

[1] The conditions to closing under the Merger Agreement include obtaining: (1) Federal Communications Commission ("FCC") approval of the transfer of CI's stock to the trust, (2) California Public Utility Commission (PUC) approvals, (3) a waiver of the Modification of Final Judgment, *United States* v. *AT&T*, 552 F. Supp. 131 (D.D.C. 1982), aff'd sub. nom. *Maryland* v. *United States*, 460 U.S. 1001 (1983) ("MFJ") to permit the transaction, and (4) approval by CI's shareholders. The FCC has approved the "Step One" transfers, the CI shareholders have approved the merger, and the MFJ Court has granted the waivers, with conditions, including diverstiture of specified CI assets and businesses. The California PUC is expected to rule on February 28, 1986.

[2] In the future, cellular service could become a partial substitute for landline telephone service. Today, however, cellular prices are significantly higher and the capacity of cellular systems is more limited than that of landline telephone services.

The FCC is responsible for licensing cellular radio systems, and has authorized two cellular systems in each franchise area (called a Cellular Geographic Service Area, or CGSA).[3] As a result of the FCC's regulations, all cellular radio markets are highly concentrated, with only two firms, and there is no possibility of new entry.

Telesis, which is the parent company of Pacific Bell and Nevada Bell, and CI each provides a variety of telecommunications services. PacTel Mobile Access, a wholly-owned subsidiary of Telesis, holds controlling interests in the wireline cellular systems in Los Angles, San Diego, Sacramento and Oxnard-Simi Valley-Ventura, California, and a 23.5 percent interest in the San Francisco non-wireline cellular system. CI holds substantial interests in the non-wireline cellular systems in San Diego and San Francisco, California; Atlanta, Georgia; and Tampa-St. Petersburg, Florida.[4]

CI, through its subsidiary, Gensub, Inc., owns approximately a 48 percent interest in D/FW Signal, a Texas general partnership, which in turn owns a 34 percent interest in Metroplex Telephone Company ("Metroplex"), a Texas general partnership that holds the non-wireline license for the Dallas-Ft. Worth, Texas CGSA. Thus, CI owns approximately a 16 percent interest in Metroplex. As a result of Telesis' acquisition of CI, Telesis will acquire this CI interest in the Dallas-Ft. Worth system.

LIN owns approximately a 60 percent interest in Metroplex and manages the Dallas-Ft. Worth non-wireline cellular system. LIN also has a 35 percent equity interest and a 50 percent voting interest in Los Angles Cellular Telephone Company ("LACTC"), the non-wireline cellular carrier that is Telesis" only competitor in the Los Angles, California CGSA.[5]

The effect of Telesis' acquisition of CI's interest in the Dallas-Ft. Worth non-wireline cellular system may be substantially to lessen competition or tend to create a monopoly in violation of section 7 of the Clayton Act and to unreasonably restrain competition in violation of Section 1 of the Sherman Act in the Los Angles market for cellular radio service. The partnership between Telesis and LIN in the Dallas-Ft. Worth cellular system may have a significant anticompetitive effect by hampering LIN's ability to compete effectively in Los Angeles or in Dallas-Ft. Worth, and thereby increasing the already significant incentives and opportunites for collusion between LIN and Telesis in the Los Angeles cellular market.[6]

In order to realize efficiencies from its ownership interests and management role in Dallas-Ft. Worth, Los Angeles and other cellular systems, LIN intends to operate those systems in a centralized manner, coordinating closely the operations of all of its cellular systems. It plans to use substantially similar operational and promotional strategies in each of these markets, and it intends to develop technical improvements that it will employ in all of its cellular systems. It is important to the success of LIN's centralized form of operation that its plans not be disclosed to its competitors in advance of implementation.

The partnership agreement governing the Dallas-Ft. Worth non-wireline cellular system, however, affords each partner advance access to all information and plans concerning the operation of that cellular system. Since LIN will employ much of the same technology and marketing plans in Los Angeles as it does in Dallas-Ft. Worth, its partners in Dallas-Ft. Worth will have advance knowledge of LIN's competitive strategy in Los Angeles. Thus, if Telesis, LIN's only competitor in Los Angeles, acquired CI's interest in the Dallas-Ft. Worth system without modification of the current partnership agreement, it would have access to otherwise confidential, competitively sensitive information held by LIN. Such access would give Telesis time to react to LIN's competitive technical and marketing strategies that it normally would not have. The effectiveness of LIN's strategies for the Los Angeles market may therefore be reduced because of Telesis' access to this information through the Dallas-Ft. Worth partnership. LIN would sacrifice significant efficiencies if it had to develop separate plans and strategies to prevent Telesis from gaining access to its proprietary information.

By making it more difficult for LIN to compete effectively with Telesis in Los Angeles, Telesis' presence in the Dallas-Ft. Worth partnership may facilitate, and increase the risk of, collusion between Telesis and LIN. A collusive agreement between Telesis and LIN in Los Angeles could involve a variety of elements, including pricing, the introduction of service enhancements, and the implementation of technical modifications. Collusion would be attractive to LIN because it would allow LIN to disclose information to the Dallas-Ft. Worth partnership without fear of adverse consequences in Los Angeles. By colluding with Telesis, LIN could avoid the harmful effects of information transfer and increase significantly the profitability of its cellular operations.

Moreover, the Dallas-Ft. Worth partnership between Telesis and LIN would provide additional opportunities for communications necessary to the creation and enforcement of any collusive agreement. The discussion of information in the Dallas-Ft. Worth partnership that would not normally be disclosed between competitors provides an attractive opportunity for reaching and enforcing anticompetitive agreements in Los Angeles without detection.

The reduced incentives to innovate and the increased potential for collusion created when competitors in one market become partners in another is of particular concern in cellular radio markets because of the absence of other competitors and the absolute barriers to entry. Because FCC rules permit only two cellular systems in each metropolitan area, there would be no cellular competition in Los Angeles if Telesis and LIN colluded.

III. Explanation of the Proposed Final Judgment and Its Effects on Competition

The United States brought this action because the effect of Telesis' acquisition

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[3] *Cellular Communications Systems*, 86 F.C.C.2d 469, 476 (1981). The FCC generally based its CGSA delineations on an area's corresponding Metropolitan Statistical Area. Each of the two cellular systems in an area is allocated 333 radio channels. 47 CFR 22.903. The FCC's rules initially reserved one of the two licenses in each CGSA for the local wireline telephone company affiliate; this is commonly referred to as the "wireline", or "block B", license. The second cellular franchise could be awarded to any other qualified applicant; it is commonly referred to as the "non-wireline", or "block A", license. *Cellular Communications Systems, supra*, at 487–92.

[4] CI also provides paging and other mobile communications services and manufactures telecommunications equipment. To comply with the MFJ and the FCC's rules, Telesis will divest or discontinue CI's manufacturing operations. CI's San Diego cellular system, voice storage and retrieval services in California, interexchange paging services in California, and certain interexchange microwave facilities owned by CI in Kentucky and Northern California.

[5] In addition, LIN holds controlling interests in the Philadelphia and New York non-wireline cellular systems, as well as a substantial interest in the Houston non-wireline cellular partnership.

[6] The acquisition also will create other partner-competitor overlaps that, due to nature and extent of the ownership interests involved and other relevant considerations, appear less likely to reduce competition, and thus, are not challenged in this complaint. These include relationships between Telesis and McCaw Communications, which is Telesis' partner in San Francisco and will be Telesis' competitor in Sacramento, and between Telesis and Graphic Scanning (Dallas-Fort Worth partner/Oxnard, Fresno competitor), and between Telesis and American Cellular Telephone Corp. (Louisville, Jacksonville partner/Los Angeles competitor).

of CI's interest in the Dallas-Ft. Worth cellular partnership may be substantially to lessen competition in violation of Section 7 of the Clayton Act or to restrain competition in violation of Section 1 of the Sherman Act in the market for cellular services in Los Angeles. The anticompetitive effects associated with the merger, however, can be largely eliminated if Telesis does not participate actively in the Dallas-Ft. Worth cellular system.

To this end, Paragraph IV of the proposed Final Judgment restricts Telesis to an essentially passive investment role in the Dallas-Ft. Worth partnership, D/FW and Metroplex. It prohibits Telesis from participating in the affairs of these partnerships except in very limited ways. Telesis is prohibited from playing any role in the daily operations and planning of the Metroplex cellular system. It may not attend meetings of or have employees in common with D/FW or Metroplex. Telesis' right to vote is significantly limited. It may vote only (and only in writing) on the proposed admission of a partner to D/FW or Metroplex, a proposed merger or consolidation of D/FW or Metroplex, a proposed sale of all or substantially all of the assets of D/FW or Metroplex, or a proposed amendment of the D/FW or Metroplex partnership agreement.

Paragraphs IV(A)–(C) of the proposed Final Judgment also strictly limit the information Telesis may obtain about the Dallas-Ft. Worth system or about LIN's cellular operations. Telesis may obtain from the Dallas-Ft. Worth partnerships only information available to the public; financial statements of D/FW and Metroplex; a summary of results of an independent financial audit that it may request; notice of capital calls; notice of rights to purchase or sell interests in D/FW or Metroplex; notice and full information on any transfer or proposed transfer by a Metroplex or D/FW partner of its interest in Metroplex or D/FW and of rights of first refusal regarding such proposed transfer; notice and full information on matters on which it is permitted to vote; notice of any allocations made to the partnership accounts of any of the Metroplex or D/FW partners; information needed to notify persons of their decree obligations; and any additional financial information necessary to permit Telesis to prepare its state or federal tax returns. To facilitate monitoring of compliance with these restrictions, communications between Telesis and the D/FW and Metroplex partnerships and partners concerning the cellular operations of LIN or the Dallas-Ft. Worth system, and all Telesis votes in the D/FW and Metroplex partnerships must be in writing.

Paragraph IV (D) of the proposed Final Judgment requires Telesis to enter into an amendment to the D/FW partnership agreement in the form of Exhibit A to the proposed Final Judgment in order to conform the partnership agreement to the terms of the proposed Final Judgment. Paragraph IV(D) further requires that Telesis submit any proposed amendment to the D/FW partnership agreement to the Department of Justice at least thirty (30) days prior to the effective date of the amendment. If the Department of Justice during the thirty (30) day period does not object to the proposed amendment, it shall take effect. An amendment to the partnership agreement, however, would not operate as a modification of the Final Judgment. If the Department of Justice objects in writing to a proposed amendment to the D/FW partnership agreement, the proposed amendment shall not become effective until the Department of Justice removes its objection or the Court rules, on the motion of either party to the Final Judgment, that the proposed amendment is consistent with the Final Judgment or that modification of the Final Judgment is warranted.

Under Paragraph III of the Final Judgment, the restrictions on Telesis' access to information from the Dallas-Ft. Worth partnership are binding not only on Telesis and CI but on "all other persons in active concert or participation with any of them who shall have received actual notice of [the] proposed Final Judgment by personal service or otherwise." Telesis is required by Paragraph V of the proposed Final Judgment to inform its officers and management officials with significant responsibility for Telesis' cellular operations, the trustee under the Temporary Trust Agreement dated July 26, 1985, certain consultants providing services related to the operation of Telesis' cellular business, and any independent financial auditor that Telesis may hire, about the Final Judgment and their obligations to comply with it. In addition, Telesis is required by Paragraph V(E) of the proposed Final Judgment to inform each officer or management official of D/FW and Metroplex with significant responsibility for cellular operations, either the Chief operating officer or the officer with primary responsibility for cellular operations for each Metroplex or D/FW partner, and each person who is a representative, alternate representative, or officer of the D/FW or Metroplex partnership committee about the Final Judgment and their obligations to comply with it.

Paragraph VI of the proposed Final Judgment allows the United States to obtain information and documents relating to Telesis' compliance with the proposed Final Judgment.

Paragraph VII of the Final Judgment provides that the Final Judgment shall terminate ten years after it is entered. Because the anticompetitive effect at issue in this case arises from the resulting partner-competitor relationship between Telesis and LIN, Paragraph VII further provides that the Final Judgment will terminate if Telesis or LIN disposes of its entire interest in their competing Los Angeles systems, or if Telesis or LIN disposes of its entire interest in the Dallas-Ft. Worth partnership.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage actions. Under provisions of section 5(a) of the Clayton Act (15 U.S.C. 16(a)), entry of the proposed Final Judgment would have no *prima facie* effect in any private lawsuit that may be brought against Telesis or CI.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and defendants Telesis and CI have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the Antitrust Procedures and Penalties Act, provided that the United States has not withdrawn its consent. The Act conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The Act provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wants to comment on the proposed Final Judgment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate the

comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**. Written comments should be submitted to: Barry Grossman, Chief, Communications and Finance Section, Antitrust Division (504 Safeway), U.S. Department of Justice, Washington DC 20530.

Under Paragraph VIII of the proposed Final Judgment, the Court would retain jurisdiction over this matter for the purpose of enabling the United States, Telesis or CI to apply to the Court for such further orders or directions as may be necessary or appropriate for the construction, implementation, modification, or enforcement of compliance with the Final Judgment, or for the punishment of any violations of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The only alternative remedy considered was to require Telesis to divest CI's interest in the Dallas-Ft. Worth system. The United States determined that the competitive danger raised by the acquisition would be largely eliminated and the public interest would be served best by obtaining Telesis' consent to an enforceable decree limiting its participation in the Dallas-Ft. Worth partnership and by filing the proposed Final Judgment with the Court prior to the consummation of the proposed merger. Although the proposed Final Judgment may not be entered until the criteria established by the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)-(h) have been satisfied, the public will benefit immediately from the safeguards contained in the proposed Final Judgment because Telesis and CI have stipulated to comply with the terms of the Final Judgment pending its entry by the Court. The United States believes that the overriding public interest in having these enforceable safeguards in effect prior to consummation of the proposed merger required that it not attempt to seek a preliminary injunction, and thereby avoid the risk that the merger might be permitted to go forward without any enforcable safeguards in effect.

VII. Determinative Documents

The only document determinative in the formulation of the proposed Final Judgment was the First Amendment to Partnership Agreement D/FW Signal Partnership, amending that agreement to conform to the restrictions of the Final Judgment. A copy of that agreement is being filed by the United States pursuant to section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b), as Exhibit A to the proposed Final Judgment.

Dated: February 27, 1986.

Respectfully Submitted,
Barry Grossman,
Kevin R. Sullivan,
Nancy C. Garrison,
Christine A. Wardell,
John Dorsey,
Michael L. Volkov,
Attorneys, U.S. Department of Justice, Antitrust Division, Washington, DC 20530, (202) 724-6693.

[FR Doc. 86-5843 Filed 3-17-86; 8:45 am]
BILLING CODE 4410-01-M

Proposed Modification of Final Judgment

Notice is hereby given that Waste Management, Inc. and WM Acquiring Corp. (collectively "WMI") have filed with the United States District Court for the District of Columbia a petition to modify the final judgment in *United States v. Waste Management, Inc., et al.*, Civil No. 84-2832; and the Department of Justice ("Department"), in a stipulation also filed with the court, has consented to modification of the judgment, but has reserved the right to withdraw its consent pending receipt of public comments. The complaint in this case, filed on September 12, 1984, challenged WMI's acquisition of SCA Services, Inc. ("SCA") under section 7 of the Clayton Act, 15 U.S.C. 18. It alleged, among other things, that the effect of the acquisition might be substantially to lessen competition in the provision of solid waste collection and disposal services in twenty local geographic markets throughout the United States and in the provision of hazardous waste landfill services in the southeastern United States and portions of the midwestern United States. A consent judgment was entered on June 6, 1985. That judgment required WMI to divest 39 SCA business, approximately 40 percent of SCA, and certain businesses of WMI to Genstar Refuse Services Corporation (since renamed GSX Corporation), of wholly-owned subsidiary of Genstar Corporation.

The proposed modification of the judgment allows WMI to acquire from GSX the following businesses:

Berkley Division/Cal's Collection—(Assonet, Massachusetts)
J.K. Municipal—(Rowley, Massachusetts)
Independent Landfill—(Muskegon, Michigan)
Interstate Waste Removal Co.—(Trenton, New Jersey)
Eastern Collection and Eastern Transfer (excepting Eastern Municipal Business)—(Rowley, Massachusetts)

The proposed modification also affects the divestiture of a ninety (90) acre potential hazardous waste landfill site in Northwood, Ohio. The proposal allows WMI to keep the site and divest to GSX (or its assignee) an option to purchase a 118 acre site immediately to the east of the original site.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that modification of the judgment would serve the public interest. Copies of the complaint, final judgment, WMI's motion papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with this petition will be available for inspection in the the Legal Procedure Unit of the Antitrust Division, Room 7233, Department of Justice, Tenth Street and Pennsylvania Avenue, NW., Washington, DC 20530 (telephone: 202-633-2481), and at the Office of the Clerk of the United States District Court for the District of Columbia, United States Courthouse, Washington, DC 20001. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the copying fee set by the Department of Justice regulations.

Interested persons may submit comments regarding the proposed modification of the decree to the Department. Such comments must be received by the Division within the sixty day period established by court order, and will be filled with the court. Comments should be addressed to Anthony V. Nanni, Chief, Litigation I Section, Antitrust Division, Department of Justice, Washington, DC 20530 (telephone: 202-633-2541).

Dated: March 10, 1986.

Joseph H. Widmar,
Director of Operations, Antitrust Division.

[FR Doc. 86-5844 Filed 3-17-86; 8:45 am]
BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—Pyrethrin Joint Research Venture

Notice is hereby given pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. No. 98-462 ("the Act"), that Fairfield American Corporation has filed a written notification simultaneously with the

Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties to the PYRETHRIN Joint Research Venture and (2) the nature and objectives of the PYRETHRIN Joint Research Venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the PYRETHRIN Joint Research Venture and its general areas of planned activities are given below.

The parties to the PYRETHRIN Joint Research Venture are as follows:

Chemical Specialties Manufacturers Association
Fairfield American Corporation
McLaughlin Gormley King Company
Office of Pyrethrum of Rwanda ("OPYRWA")
Penick—BIO–UCLAF Corporation
Prentiss Drug & Chemical Corporation
Pyrethrum Board of Kenya
S.C. Johnson & Son, Inc.
Tanganyika Pyrethrum Board

The objective of the PYRETHRIN Joint Research Venture is to sponsor and conduct toxicological research on the pesticide ingredient PYRETHRIN and to submit the results of the research to the U.S. Environmental Protection Agency ("EPA") in connection with the PYRETHRIN Date Call-In. This research on PYRETHRIN, which is the active ingredient in certain commercially available pesticide products, will be conducted pursuant to the Data Call-In Notice issued by the EPA on September 27, 1985.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 86–5845 Filed 3–17–86; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984; Semiconductor Research Corp.

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. No. 98–462 ("the Act"), Semiconductor Research Corporation ("SRC") has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in the membership of SRC. The changes consist of the addition of E–Systems Inc. and Rockwell International Corp. to SRC; the deletion of Zilog, Incorporated, from SRC; the deletion of Micro Mask, Incorporated, from the Semiconductor Equipment and Materials Institute, Inc. ("SEMI"), Chapter of the SRC; and the addition of the following companies to the SEMI Chapter of the SRC:

E/G Electrograph Inc.
Emergent Technologies Corporation
Genus, Inc.
Ion Implant Services
Machine Intelligence Corporation
MG Industries/Scientific Gases
The Micromanipulator Company, Inc.
Sage Enterprises, Inc.
UTI Instruments Company

SRC filed its notification of these membership changes for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to SRC and SRC's general areas of planned activity are given below.

SRC is a joint venture which, with the deletion and addition of the previously identified companies consists of the following members:

Advanced Micro Devices, Incorporated
AT&T Technologies, Incorporated
Burroughs Corporation
Control Data Corporation
Digital Equipment Corporation
E.I. du Pont de Nemours & Company
Eastman Kodak Company
Eaton Corporation
E–Systems Inc.
GCA Corporation
General Electric Corporation
General Motors Corporation
Goodyear Aerospace Corporation
GTE Laboratories, Incorporated
Harris Corporation
Hewlett-Packard Company
Honeywell, Incorporated
IBM Corporation
Intel Corporation
LSI Logic Corporation
Monolithic Memories, Incorporated
Monsanto Company
Motorola, Incorporated
National Semiconductor Corporation
Perkin-Elmer Corporation
RCA Corporation
Rockwell International Corp.
SEMI Chapter, consisting of:
  FEP Analytic (division of Verity Instruments, Inc.)
  Amedyne
  E/G Electrograph Inc.
  Eagle-Picher, Ind. Inc.
  Emergent Technologies Corporation
  Flexible Manufacturing Systems, Inc.
  Genus, Inc.
  Gryphon Products
  Hercules Specialty Chemicals Company
  Ion Beam Technologies, Inc.
  Ion Implant Services
  Isitec Corporation
  Lehighton Electronic, Inc.
  Mac Dermid, Inc.
  Machine Intelligence Corporation
  Machine Technology, Inc.
  MG Industries/Scientific Gases
  Micrion Corporation
  Micronix Corporation
  Oneac Corporation
  Pacific Western System, Inc.
  Peak Systems, Inc.
  Probe-Rite, Inc.
  Pure Aire Corporation
  Sage Enterprises, Inc.
  Semi-Gas Systems, Inc.
  Silsco, Inc.
  The Micromanipulator Company, Inc.
  The SEMI Group, Inc.
  Universal Energy System, Inc.
  UTI Instruments Company
  VLSI Standards, Inc.
  XMR, Inc.
Silicon Systems, Incorporated
Sperry Corporation
Texas Instruments, Incorporated
Union Carbide Corporation
Varian Associates, Incorporated
Westinghouse Electric Corporation
Xerox Corporation

SRC's purpose is to plan, promote, coordinate, sponsor, and conduct research supportive of the semiconductor industry and directed toward:

1. Increasing knowledge of semiconductor materials and phenomena, and of related scientific and engineering subjects that are required for the useful application of semiconductors;

2. Developing new and more efficient designs and manufacturing technologies for semiconductor devices;

3. Indentifying directions, limits, opportunities, and problems in generic semiconductor technologies;

4. Increasing the number of scientists and engineers proficient in research, development, and manufacture of semiconductor devices;

5. Increasing industry-university ties, establishing university semiconductor research centers with major long-term research thrusts, and developing university semiconductor research activities with more precisely defined, short-term objectives;

6. Developing more relevant graduate school education and a larger supply of graduate students in areas related to semiconductor technology;

7. Increasing the ability of universities to attract and retain competent faculty in the semiconductor field;

8. Decreasing fragmentation and redundancy in United States semiconductor research;

9. Establishing advanced research efforts for critical semiconductor technology areas that are beyond the individual resources for many SRC members;

10. Promoting efficient communication of research results to SRC members and

to the United States semiconductor community as a whole.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 86-5846 Filed 3-17-86; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extension, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone (202) 523-6331 Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-1301, Washington, DC 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone (202) 395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Employment Standards Administration
Authorization for Release of Medical Information
1215-0057; CM-936
On occasion
Individuals or households
3,000 responses; 250 hours; 1 form

This form is necessary to obtain information on miners from medical institutions and private physicians who normally would not release this information to the Department. The form is used by the miner to give consent for the release of medical information pertaining to the miner.

Employment Standards Administration
Establishment Information and Establishment Information (Spanish)
1215-0008, WH-45 and WH-45 (Sp.)
On Occasion
Business or other for profit; non-profit institutions; small business organizations
4500 responses; 750 hours; 2 forms

Forms WH-45 and WH-45 (Sp.) are used in determining coverage of various establishments that are being considered for investigation under the Fair Labor Standards Act.

Employment Standards Administration
Continuance of Compensation
1215-0154; CA-12
Annually
Individuals or households
7,300 responses; 608 hours; 1 form

The Continuance of Compensation Claims Form is used to provide information concerning the continued entitlement of beneficiaries in death cases under the provisions of 5 USC 8101, et seq.

Employment Standards Administration
Claims for Compensation by Dependents and Dependents Information Reports (Death)
1215-0155; CA-5, 5b, 1615, 1617, 1085, 1074, 1031, 1072, 1093
On occasion; Semi-annually (CA-1617)
Individuals or households
3,765 responses; 2,097 hours; 9 forms

Reports are claims for compensation by survivors due to the death of a Federal employee, and supplemental reports concerning dependency status in various types of cases.

Mine Safety and Health Administration
Records of Results of Examinations of Self-Rescuers
1219-0044
Quarterly
Businesses or other for profit; small businesses or organizations
1,900 respondents; 8,056 hours

Requires underground coal mine operators to keep records of the results of examinations of self-rescue devices.

Mine Safety and Health Administration
Ventilation System and Methane and Dust Control Plan
1219-0084
On occasion; semi-annually
Businesses or other for profit; small businesses or organizations
2,100 respondents; 13,000 hours

Requires operators of underground coal mines to submit a detailed ventilation system and methane and dust control plan and revisions thereof to MSHA for approval.

Mine Safety and Health Administration
Ventilation Tests and Examinations in Underground Coal Mines
1219-0088
Daily/weekly
Businesses or other for profit; small businesses or organizations
1,900 respondents; 5,343,137 hours

Standards require that records be kept of certain tests and examinations which are required to be performed to monitor the ventilation system in underground coal mines. The information is used to insure that the integrity of the ventilation system is being maintained and that a safe working environment is being provided to miners.

Signed at Washington, DC, this 13th day of March, 1986.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 86-5931 Filed 3-17-86; 8:45 am]

BILLING CODE 4510-27-M, 4510-43-M

Employment and Training Administration

[TA-W-17,245]

Fieldcrest-Cannon, Inc., Concord, NC; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 28, 1986 in response to a worker petition which was

filed on behalf of workers at Fieldcrest-Cannon, Inc., Concord, North Carolina.

A negative determination applicable to the petitioning group of workers was issued on March 3, 1986 (TA-W-16,475). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

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

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-5929 Filed 3-17-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-16,383]

Western Nuclear, Incorporated, Jeffrey City, WY; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 9, 1985 in response to a worker petition received on August 29, 1985 which was filed on behalf of workers at the Jeffrey City, Wyoming operations of Western Nuclear, Incorporated..

A negative determination applicable to the petitioning group of workers was issued on September 25, 1985 (TA-W-15,056). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 7th day of March 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-5930 Filed 3-17-86; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Conway-Winter, Inc., et al.

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period March 3, 1986—March 7, 1986.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to work separations at the firm.

TA-W-16,559; Conaway-Winter, Inc., Birch Tree, MO

TA-W-16,536; Advanced Hemstitching, New York, NY

TA-W-16,519; Ashland Petroleum Co., Freedom, PA

TA-W-16,475; Cannon Mills Co., Plant # 6, Concord, NC

TA-W-16,454; Cooper Range Co., White Pine Copper Div., White Pine, MI

TA-W-16,427; ASL Industries, Inc., Unionville, NY

TA-W-16,453; Coors Porcelain Co., Grand Junction, CO

TA-W-16,403; AVX Corp., Olean, NY

TA-W-16,407; Thatcher Glass Corp., Tampa, FL

TA-W-16,375; American Cyanamid Co., Milton, FL

TA-W-16,504; West Point Peppperell, Inc., Shawmut Cordurory Plant, Shawmut, AL

TA-W-16,312; Atlas Crankshaft Corp., Fostoria, OH

TA-W-16,349; United Technologies, Mostek Corp., Colorado Springs, CO

TA-W-16,352; Cummings Engine Co., Madison, IN

TA-W-16,353; Cummings Engine Co., Seymour, IN

TA-W-16,354; Cummings Engine Co., Indianapolis, IN

TA-W-16,355; Cummings Engine Co., Walesbore, IN

TA-W-16,356; Cummings Engine Co., Columbus, IN

TA-W-16,461; Midwest Steel and Iron Works, Pueblo, CO

TA-W-16,461A; Midwest Steet and Iron Works, Denver, CO

TA-W-16,364 and TA-W-16, 646; Cyclops Corp., Empire-Detroit Steel Div., Dover, OH

In the following cases in the investigation revealed that criterion (3) had not been met for the reasons specified.

TA-W-16,529; Sunshine Mining Co., Eureka, UT

Aggregate U.S. imports of flux for copper smelting are negligible.

TA-W-16,530; Vulcan Mold and Iron Co., Latrobe, PA

Aggregate U.S. imports of iron ingot molds are negligilbe.

TA-W-16,527; Nitrochem Energy Corp., Biwabik, MN

Aggregate U.S. imports of water gels and slurries; blasting agents and explosives are negligible.

TA-W-16,400; ASARCO, Inc. Corpus Christi, TX

Aggregate U.S. imports of slab zinc did not increase as required for certification.

TA-W-16,318; Health Co., Benton Harbor, MI

Sales, production and employment did not decline during the relevant period as required for certification.

TA-W-16,503; Monessen Southwestern Railway Co., Monessen, PA

Sales or production did not decline during the relevant period as required for certification. Declines in production/employment due to labor dispute are not a basis for certification under Section 222 of the Trade Act of 1974.

TA-W-16,567; Wheeling-Pittsburgh Steel Corp., Coke and By-Products Department, Monessen, PA

Sales or production did not decline during the relevant period as required for certification. Declines in production/employment due to labor disputes are not a basis for certification under Section 222 of the Trade Act of 1974.

Affirmative Determinations

TA-W-16,468; Samson Altman, Inc., Waltham, MA

A certification was issued covering all workers of the firm separated on or after January 1, 1985 and before November 1, 1985.

TA-W-16,562; Hansley Industries, Inc., Paris, KY

A certification was issued covering all workers of the firm separated on or after October 15, 1984.

TA-W-16,513; Brown Shoe Co., Trenton, TN

A certification was issued covering all workers of the firm separated on or after September 30, 1984.

TA-W-16,554; Elegant Sportswear, Inc., Elizabeth, NJ

A certification was issued covering all workers of the firm separated on or after October 3, 1984 and before May 19, 1985.

TA-W-16,499; Canton Apparel, Inc., Canton, MS

A certification was issued covering all workers of the firm separated on or after January 1, 1985 and before January 31, 1986.

TA-W-16,480; Jackson China, Inc., Falls Creek, PA

A certification was issued covering all workers of the firm separated on or after August 1, 1985 and before November 1, 1985.

TA-W-16,515; LaTulipe Fashion, Inc., Irvington, NJ

A certification was issued covering all workers of the firm separated on or after September 9, 1984 and before August 19, 1985.

TA-W-16,441; Dalton Industries, Cleveland, OH

A certification was issued covering all workers of the firm separated on or after September 23, 1984.

TA-W-16,442; Dalton Industries, Willoughby, OH

A certification was issued covering all workers of the firm separated on or after September 23, 1984.

TA-W-16,443; Dalton Industries, Lorain, OH

A certification was issued covering all workers of the firm separated on or after Septeber 23, 1984 and before August 1, 1985.

TA-W-16,444; Dalton Industries, Conton, OH

A certification was issued covering all workers of the firm separated on or after September 23, 1984.

TA-W-16,321; Standard Plastic Products, Inc., Edison, NJ

A certification was issued covering all workers of the firm separated on or after August 30, 1985 and before September 30, 1985.

TA-W-16,437; Weyerhaeuser Co., North Bend, OR

A certification was issued covering all workers of the firm separated on or after September 11, 1984.

TA-W-16,405; Nicky Lee Sportswear, Waynesboro, PA

A certification was issued covering all workers of the firm separated on or after August 8, 1984 and before July 10, 1985.

TA-W-16,406; Lincoln Pulp and Paper Co., Inc., Lincoln, ME

A certification was issued covering all workers of the firm separated on or after July 1, 1985.

TA-W-16,429; Farah Manufacturing, Inc., Las Cruces, NM

A certification was issued covering all workers of the firm separated on or after September 13, 1984 and before May 10, 1985.

TA-W-16,425; U.S. Steel Corp., Research Laboratory, Monroeville, PA

A certification was issued covering all workers of the firm separated on or after February 18, 1985.

TA-W-16,186; Opelika Manufacturing Corp., Phenix City, AL

A certification was issued covering all workers of the firm separated on or after September 1, 1984.

TA-W-16,449; Rogers Manufacturing Co., Akron, OH

A certification was issued covering all workers of the firm separated on or after September 20, 1984.

TA-W-16,432; Permali Inc., Mt. Pleasant, PA

A certification was issued covering all workers of the firm separated on or after September 6, 1984.

TA-W-16,440; Columbia Sportswear Co., Portland, OR

A certification was issued covering all workers of the firm separated on or after August 1, 1985.

TA-W-16,426; U.S. Steel Corp., Railroad Axle Operations, McKees Rocks, PA

A certification was issued covering all workers of the firm separated on or after August 29, 1984 and before June 1, 1985.

TA-W-16,447; Milliken and Co., Manchester, GA

A certification was issued covering all workers of the firm producing yarn and woven fabric: pocketing separated on or after September 25, 1984 and before July 20, 1985.

TA-W-16,450; Sheller-Globe Corp., Quincy, IL

A certification was issued covering all workers of the firm separated on or after January 1, 1985 and before January 31, 1986.

TA-W-16,498; Act III, Div. of Jonathan Logan, Inc., Spartanburg, SC

A certification was issued covering all workers of the firm separated on or after February 1, 1985 and before February 1, 1986.

TA-W-16,418; Ertl Company, Dyersville, IA

A certification was issued covering all workers of the firm separated on or after January 1, 1985.

TA-W-16,362; B.F. Goodrich, Akron, OH

A certification was issued covering all workers of Plant #1 engaged in the production of conveyor belts separated on or after December 1, 1984.

TA-W-16,291; Goodrich Distribution Center, Columbus, OH

A certification was issued covering all workers of the firm separated on or after December 1, 1984.

TA-W-16,466; Mutual Manufacturing, Lawrence, MA

A certification was issued covering all workers of the firm separated on or after September 18, 1984 and before November 30, 1985.

TA-W-16,476; Edgo Lab Design, Lawrence, MA

A certification was issued covering all workers of the firm separated on or after September 18, 1984, and before November 30, 1985.

TA-W-16,502; Mighty-Mac, Inc., Gloucester, MA

A certification was issued covering all workers of the firm separated on or after September 12, 1984.

TA-W-16,489; The Fabsteel Co., Waskon, TX

A certification was issued covering all workers of the firm separated on or after September 17, 1984.

TA-W-16,490; Fabsteel of Louisiana, Shreveport, LA

A certification was issued covering all workers of the firm separated on or after September 17, 1984.

TA-W-16,490A; Fabsteel Headquarters, Shreveport, LA

A certification was issued covering all workers of the firm separated on or after September 17, 1984.

TA-W-16,491; Fabsteel of Texarkana, Texarkana, TX

A certification was issued covering all workers of the firm separated on or after September 17, 1984.

I hereby certify that the aforementioned determinations were issued during the period March 3, 1986–March 7, 1986. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC, during normal business hours or will be mailed to persons who write to the above address.

Dated: March 11, 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-5928 Filed 3-17-86; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefits Administration

[Application No. D-6083; et al.]

Proposed Exemptions; Allright Auto Parks, Inc., Profit Sharing Plan and Trust, et al.

AGENCY: Pension and Welfare Benefits Adminsitration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions form certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be avaialble for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Departmnt for a complete satement of the facts and representations.

Allright Auto Parks, Inc. Profit Sharing Plan and Trust (the Plan) Located in Houston, Texas

[Application No. D-6083]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale by the Plan to Allright Auto Parks, Inc. (the Employer) of a certain parcel of improved real property (the Property), provided that the terms of the proposed sale, including the sale price, are at least as favorable to the Plan as an arm's-length transaction with an unrelated party at the time of the consummation of the transaction.

Summary of Facts and Representations

1. The Plan is a defined contribution plan which, as of June 30, 1984, had 1,590 participants and total assets of $6,859,071. The trustee of the Plan is Texas Commerce Bank, N.A. (the Trustee). The Administrative Committee of the Plan (the Committee), which is composed of directors and officers of the Employer, has responsibility for directing Plan investments.

2. The Employer is a Texas corporation engaged in the automobile parking lot business with its headquarters located at the Concord Tower, Suite 1200, 1919 Smith Street, Houston, Texas. The Employer was acquired in July 1982 by a foreign interest, the Nedinco Acquisition Corporation (the Buyer), through the merger of the Employer and Nedinco Merger, Inc., a Delaware corporation wholly-owned by the Buyer. After the merger, the Buyer changed its corporate name to that of the Employer.

3. The Property is 11,250 square feet of land located at the northwest corner of Jackson and Prather Streets, Dallas, Texas. The Employer owns the adjacent 6,750 square foot tract of land located at the northeast corner of Jackson and S. Ervay Streets. Both the Property and the Employer's property are currently utilized as paved parking lots and are within the Dallas Central Business District. The Plan acquired the Property in 1972 from an unrelated party and entered into a lease of the Property with the Employer on December 1, 1973 (the Initial Lease). The term of the Initial Lease was for five years with rental payments of $2,340 per month. The Initial Lease was renewed on a month-to-month basis under the same terms until May 1, 1981, at which time a new two year lease was signed with an increase in rent to $3,600 per month (the Renewal Lease). The Renewal Lease expired on April 30, 1983, but continued thereafter under the same terms on a month-to-month basis. The applicant represents that the leasing of the Property satisfied the requirements of section 414(c)(2) of the Act through June 30, 1984 as a "binding contract" under applicable state law with terms at least as favorable to the Plan as an arm's-length transaction with an unrelated party.[1] The employer has continued to lease the Property beyond June 30, 1984, paying monthly rentals of $3,600 to the Plan. The Employer states that the necessary excise tax forms will be prepared and filed to report as a prohibited transaction the lease of the Property to the Employer, and that all appropriate taxes for the leasing transaction will be paid for the period from June 30, 1984 to the date of the proposed sale within 60 days of the date of a grant of this proposed exemption.

4. The applicant proposes that the Plan sell the Property to the Employer.

[1] The Department expresses no opinion regarding the applicability of section 414(c)(2) of the Act to this lease arrangement.

The Trustee states that it will serve as an independent fiduciary with respect to the sale. The Trustee chose the Cushman & Wakefield Appraisal Division (the Appraiser), an independent real estate appraiser in Dallas, Texas, to provide an updated appraisal of the Property's fair market value. The Appraiser initially estimated the Property's value at $956,000, or approximately $85.00 per square foot, as of September 27, 1985, and the fair market ground rental at $95,600 per annum based on a 10% rate of return on the appraised value. The Appraiser's valuation was based on an analysis of comparable land sales generally located along and south of Jackson Street in the Dallas Central Business District. However, the Appraiser later reconsidered the original evaluation based on some additional sales of properties located within the northern half of the Dallas Central Business District. Under the Appraiser's revised valuation, the fair market value of the Property is $100.00 per square foot or $1,125,000, as of September 27, 1985. The Appraiser states further that when the plottage value (i.e. the increment of value derived from the greater utility created when two or more sites are assembled under a single ownership) of the Property and the Employer's contiguous property is considered along with the market data, the fair market value of the subject half block would be $125.00 per square foot, making the Property's value approximately $1,406,250. In consideration of the Appraiser's findings and the other previous appraisals of the Property, the Employer proposes to pay $135.00 per square foot or $1,518,750 for the Property.[2] The Trustee states that the Employer's ownership of the adjacent property makes the Employer the best purchaser for the Property and that such a sale would be in the best interest of the Plan's participants and beneficiaries. The Trustee states further that the sale and use of the proceeds from the sale will have a positive effect on both the Plan's liquidity and its ability to diversify its investments with the available cash.

5. The Trustee acknowledges its duties, responsibilities and liabilities under the Act as a fiduciary of the Plan. The Trustee states that it has the authority, and will assume the responsibility, necessary to approve or disapprove the proposed sale. The Trustee will also pursue the Employer for the differences between the actual rentals paid on the Property under the current lease to the Employer and the fair market value rental as stated in the Appraiser's valuation of the Property, plus interest on the deficiency at an appropriate market rate of interest, beginning with June 30, 1984 through the date of sale. The Trustee states further that it has in place the necessary mechanisms to monitor the receipt of rental differentials and will take other such steps necessary to protect the interests of the Plan and assure that it is made whole based upon the fair market rental value of the Property as appraised by the Appraiser. The Employer has agreed to pay such amounts as are determined by the Trustee to be due.

6. The Trustee represents that it is not related to and shares no common interests with the Employer and that there are no owners or managers of the Employer serving on the Board of Directors of the Trustee. Loans outstanding to the Employer, as of April 1985, represented only .09% of the Trustee's total loans and lease financing. Total deposits of $530,104 for the Employer and its related companies represented .004% of the total deposits of the Trustee as of March 31, 1985. The applicant states that the Plan will not pay any commissions or other expenses in connection with the sale.

7. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the Plan will receive an amount equal to or greater than the fair market value of the Property; (c) the Plan will not incur any expenses with respect to the sale; and (d) the Trustee states that the transaction is in the Plan's best interest and will allow the Plan to divest itself of the Property and reinvest the proceeds in investments yielding a higher rate of return.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Intrec, Inc. Money Purchase Pension Plan and Intrec, Inc. Defined Benefit Pension Plan (the Plans) Located in Santa Monica, California

[Application Nos. D-6167 and D-6168]

Proposed Exemption

The Department is considering granting and exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale for cash by the Plans of certain real property to Quaestor, Inc. (Quaestor), a party in interest with respect to the Plans,[3] provided that the price received is not less than the fair market value of the real property on the date of sale, and provided further that the net cash proceeds to the Plans are at least equal to the Plans' cash outlay for the property to the date of sale, plus interest on funds advanced by the Plans at 1% per annum over the 1-year Treasury Bill rate on the date of advance.

Summary of Facts and Representations

1. The Plans are a defined contribution (money purchase) pension plan and a defined benefit pension plan respectively, each with the same five participants. As of April 30, 1985, total assets of the money purchase plan were $393,733, and of the defined benefit plan $267,996. The Plans' sponsor is Intrec, Inc. (Intrec), a management consultant firm located in Santa Monica, California. The Plans' trustee is Michael A. Levin, Vice President and Treasurer of Intrec. The Plans' Investment Committee (the Committee) is composed of Richard R. Hallock, Director and President of both Intrec and Quaestor, and Saul M. Weingarten, Director and Secretary of both Intrec and Quaestor.

2. In May, 1983, the Committee received an application for a loan of $36,000 for a term of six months, to be secured by a fourth deed of trust on a house and lot and a contiguous lot which were at that time listed for sale (the Real Property), located in Carmel Valley, California, from Bernard L. Friedman (Mr. Friedman), an unrelated third party. At that time Mr. Friedman furnished the Committee with an appraisal of the house and lot prepared by Coutchie & Wolf Associates, real estate appraisers and consultants located in Salinas, California, estimating their fair market value as of April 12, 1982 at $850,000. Senior encumbrances borrowed by Mr. Friedman from unrelated financial institutions totaled $370,000, which, together with the applied for loan of $36,000, resulted in a loan/value ratio of 48%. The senior encumbrances consisted of a first deed

[2] The applicant represents that the sale of the Property at this price will not result in a contribution to the Plan which exceeds the limitations set forth in section 415(c) of the Code.

[3] Quaestor is a party in interest with respect to the Plans under section 3(14) of the Act because 73% of its voting stock is owned by Richard R. Hallock, Director and President of Intrec, Inc., the Plans' sponsor.

of trust securing a loan of $99,000 from San Francisco Federal Savings and Loan; a second deed of trust securing a loan of $200,000 from Pan American Savings and Loan; and a third deed of trust securing a loan of $75,000 from Pan American Savings and Loan. Through amortization of principal the original total of $374,000 had been reduced to the $370,000 mentioned above. Accordingly, the Committee made the loan to Mr. Friedman, considering it to be a sound investment, since the loan/value ratio was well below the 70% upper limit used by the Committee, and since the prospect for the sale of the Real Property and repayment of the loans appeared excellent.

3. At the end of the six months, Mr. Friedman failed to pay the note, and also allowed the senior encumbrances to go into default. In order to protect the Plans' investment, the Committee decided to cure the default condition on the senior debt and commence foreclosure proceedings on the deliquent note. Accordingly, the Plans obtained title to the Real Property on June 18, 1984. During these proceedings, and subsequent to taking title to the Real Property, the Plans continued to make payments due on the senior debt, property taxes, and insurance at the rate of approximately $5,500 per month. The total of funds advanced by the Plans through December 3, 1985, including the original loan, delinquent payments on the senior encumbrances, and the pay off of the third note, is $246,907, with the underlying debt being approximately $291,000.

4. Upon completion of the foreclosure proceedings, the Real Property was listed for sale by Porter-Marquard Realty at $575,000 and subsequently reduced to $535,000. No offers to purchase the Real Property were received at these prices. The Real Property was then listed with another realtor, Sidney H. Yateman (Mr. Yateman), at $445,000 for the house alone and $75,000 for the contiguous lot. Two offers have been received at $350,000, and have been countered at $415,000; but there is little likelihood that the counter-offer will be accepted.

5. G.J. Kraft, a licensed real estate appraiser located in Monterey, California, estimated the fair market value of the Real Property at $510,000 ($420,000 for the house and $90,000 for the contiguous lot) as of August 5, 1985. The applicant represents that the great discrepancy between the original appraisal of the Real Property at $850,000 in 1982 and the latest appraisal is due, in part, to the failure of the original appraisal to take into account the lower average value of the other houses in the area. Further, the original appraisal was prepared to support an application by Mr. Friedman for a loan and lists no recent sales of comparable properties, but instead lists the asking prices (ranging from $900,000 to $1,500,000) of three homes then being offered for sale as a basis for appraised value. Mr. Kraft cites as further reasons for the decline in value a severe recessive economy with relatively high interest rates and a depressed real estate market in the Carmel Valley area, a growth moratorium on all major subdivisions under the Carmel Valley Master Plan, and increased traffic congestion in the area. Finally, the applicant notes that the Real Property is showing the results of deferred maintenance.

6. The applicant seeks an administrative exemption for the Plans to sell the Real Property to Quaestor for cash for no less than the fair market value of the Real Property on the date of sale, provided that the net cash proceeds to the Plans are at least equal to the Plans' total cash outlay for the Real Property to the date of sale, including all taxes, fees, payments of interest and principal, and underlying debt. Quaestor will also pay interest on the funds advanced by the Plans at 1% per annum over the 1-year Treasury Bill rate as of the date of advance from the date of advance until the date of sale to Quaestor. The applicant thus represents that the proposed sale will make the Plans whole with respect to any losses sustained in connection with the Real Property. The Plans will not be required to pay any real estate commissions or fees in connection with the sale.

7. Mr. Yateman, who is also a practicing attorney and member of the California Bar, has agreed to serve as independent fiduciary to oversee the proposed transaction. Mr. Yateman represents that he is aware of his duties, responsibilities and potential liabilities in serving as independent fiduciary. After examining the terms of the proposed transaction and the overall needs of the Plans, Mr. Yateman represents that the proposed transaction is in the best interest of the Plans' participants and beneficiaries and protective of their rights. Mr. Yateman further states that the interest to be paid to the plans at 1% per annum over prime rate for the use of the funds advanced by the Plans is adequate compensation for the loss of earnings by the Plans occasioned by their acquisition and holding of the Real Property. Mr. Yateman finally states that when the proposed transaction is consummated he will review and verify all amounts paid by Quaestor to the Plans in accordance with the terms herein set forth.

8. In summary, the applicant represents that the proposed transaction will satisfy the terms and conditions of section 408(a) of the Act because: (a) The Real Property will be sold for no less than its fair market value at the time of the sale as determined by an independent appraiser; (b) the sale represents a one-time transaction for cash which can be easily verified; (c) the sale will not require the payment of any commissions by the Plans; (d) the proposed sale will make the Plans whole with respect to any losses incurred in connection with the Real Property and compensate them for income lost through investment of the Plans' funds in the Real Property; and (e) the trustees of the Plans and the independent fiduciary have determined that the proposed transaction would be in the best interest and protective of the Plans and of their participants and beneficiaries.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Mandel-Kahn Industries, Inc. Profit Sharing Plan (the Plan) Located in Houston, Texas

[Application No. D-6450]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply, effective February 10, 1986, to the loans of money (the Loans) by the Plan to its sponsor, Mandel-Kahn Industries, Inc. (the Company). The proposed exemption would also exempt for the term of the Loans the personal guarantees of the Company's obligation by Joel H. Mandel and Jack B. Kahn, parties in interest with respect to the Plan.

Effective Date: If granted, this exemption will be effective February 10, 1986.

Summary of Facts and Representations

1. The Plan is a qualified profit sharing plan with approximately 633 participants and net assets of $3,061,720 as of April 30, 1985. The Plan Administrator is Gilbert Araiza, Jr. and the Trustees are Joel H. Mandel and Jack B. Kahn. The Trustees own or control a plurality of the Company's stock.

2. The Company, a corporation engaged in the wholesale distribution of non-food items to supermarkets, owns and maintains a fleet of vehicles (the Vehicles). Pursuant to Prohibited Transaction Exemption 81-9 (PTE 81-9) (February 10, 1981, 46 FR 11739), a temporary exemption for a five-year period, the Plan has financed the purchase of some of the Vehicles. First City National Bank of Houston (the Bank) has financed others at an interest rate of one percent above the prevailing prime rate of the Bank.

3. The Trustees are requesting an exemption beginning on the expiration date of PTE 81-9 for the Plan to make the Loans to the Company on a recurring basis for the purchase of the Vehicles. Each loan would be subject to the following conditions:

1. Each loan will be collateralized by a promissory note and security agreement.

2. Each loan will have a first lien on the vehicle and in addition will be collateralized by other vehicles which are owned by the Company such that at all times each loan will be collateralized in an amount at least equal to 150% of the outstanding balance of such loan.

3. Each vehicle purchased will be a new vehicle.

4. No loan will exceed 80% of the purchase price of the vehicle financed, excluding the tax, title and license costs.

5. The maximum length of each loan will be thirty-six months.

6. The interest rate on the Loans will be fixed at 2¼% above the prevailing prime rate set by the Bank with the maximum rate being the rate which is legally allowed under the usury statutes of the State of Texas.

7. At the time of its making, no loan, together with all other loans, will exceed 25% of the dollar volume of the total assets of the Plan.

8. Each loan will be personally guaranteed by Joel H. Mandel and Jack B. Kahn, who are principal stockholders of the Company.

4. Before the Plan enters into any loan transaction, an independent fiduciary, Mr. Dale A. Steele, Sr., C.P.A., will certify that such loan would be an appropriate investment for the Plan and that the terms of such loan are equal to or better than those which the Plan would receive in dealing with an unrelated third party. Mr. Steele will also be responsible for monitoring the payments on the Loans and for monitoring the fair market value of the collateral used in securing the Loans. Mr. Steele is engaged in the practice of public accounting in Houston, Texas, and is knowledgeable about loan transactions and trust administration. Mr. Steele represents that he has experience in ERISA, and both understands and acknowledges his duties, responsibilities and liabilities in acting as fiduciary under ERISA. Mr. Steele is unrelated to the Company and the Plan. The Bank will release money to fund a loan only upon its receipt of (1) a promissory note and security agreement in proper form, (2) proof of payment of the purchase price to the seller of the vehicle, (3) a true and correct copy of the application for a title to the vehicle, the sales tax receipt, and the seller's affidavit of sale, and (4) the written approval of Mr. Steele. The Bank will receive all loan payments and will notify Mr. Steele of any failure on the part of the Company to make a loan payment within fifteen days from the date such payment is due.

5. Kenneth H. Knop, Esquire (Mr. Knop), independent fiduciary with respect to PTE 81-9, represents that the Trustees and Plan Administrator discharged their fiduciary responsibilities with respect to PTE 81-9 fully, correctly, and timely; that all loans and loan payments have been properly accounted for by the Bank; and that all loan payments have been promptly paid when due. The applicant represents that Mr. Knop asked to be relieved as independent fiduciary because he was not able to charge the Plan fees commensurate with the time expended on behalf of the Plan.

6. In summary, the applicant represents that the proposed transaction will satisfy the terms and conditions of section 408(a) of the Act because: (a) The Loans will be in the best interest of the Plan; (b) the Loans will be approved and monitored by an independent fiduciary; (c) the Plan will receive a high rate of return on its investment; and (d) the Loans will be secured at all times by collateral valued at 150% of the outstanding balance of the Loans and by personal guarantees of the majority shareholders of the Company.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523-8194 (This is not a toll-free number).

Eastern Carolina Neurosurgical Associates, Inc. Employees Retirement Plan (the Plan) Located in Greenville, North Carolina

[Application No. D-6503]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance wth the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to 1) the proposed purchase of 16,0000 shares of First Federal Savings and Loan Association of pitt County (First Federal) common stock (the Stock) by the individually directed account of Robert L. Timmons (Dr. Timmons) in the Plan (the Timmons Account) from Dr. Timmons, a party in interest with respect to the Plan; and 2) the proposed purchase of 15,000 shares of the Stock by the individually directed account of Ira M. Hardy, II (Dr. Hardy) in the Plan (the Hardy Account) from Dr. Hardy, a party in interest with respect to the Plan, provided that the price paid for the Stock is no greater than the fair market value of the Stock on the date of purchase.

Summary of Facts and Representations

1. The Plan is a money purchase pension plan with nine participants and total assets of $2,090,149 as of January 20, 1986. The Plan is sponsored by Eastern Carolina Neurosurgical Associates, Inc. (the Employer), a North Carolina medical professional corporation located at 125 Moye Boulevard, Greenville, North Carolina. The trustees of the Plan are Dr. Timmons, Dr. Hardy, and Dr. John R. Leonard, III, (the Trustees), who are the decision-makers with respect to Plan investments. The Trustees are officers and directors of the Employer.

2. Dr. Timmons and Dr. Hardy propose to sell 16,000 and 15,000 shares, respectively, of the Stock to the Timmons Account and the Hardy Account (the Accounts) in the Plan. Both Dr. Timmons and Dr. Hardy purchased the Stock in 1982 for a price of $6.00 per share as part of an original offering by First Federal. The Stock was purchased as an investment with anticipated long term capital gain. The applicant states that recent changes in federal banking regulations have made First Federal an

attractive take-over candidate. Drs. Timmons and Hardy desire to sell the Stock to generate some liquidity for personal and business reasons, but they do not wish to sell the Stock on the open market at this time because a substantial increase in the Stock's value is anticipated. Therefore, Drs. Timmons and Hardy wish to sell their shares of the Stock to the Account so they can take advantage of any future appreciation of the Stock as participants of the Plan.

3. The applicant has submitted a valuation of the Stock by Burney S. Warren, II, (Mr. Warren), the President of First Federal, based on three major trades of the Stock which were the only trades of major blocks of the Stock during 1985. Mr. Warren, who is unrelated to Drs. Timmons and Hardy, represents that these major trades involved a total of 40,400 shares of the Stock which were transferred for a combined purchase price of $468,000 for an average of $11.58 per share. Two of the trades, on October 13, 1985 and November 21, 1985, were with parties totally unrelated to First Federal. Only one of the major trades mentioned by Mr. Warren involved a transaction with "insiders" or major stockholders. On August 14, 1985, 18,400 shares of the Stock were sold to seven major stockholders of First Federal for $12.00 per share by an individual who was selling all of his Stock. Mr. Warren States that there were approximately 329 stockholders of First Federal as of June 30, 1985 and that the marketplace generally has determined the value of the Stock when traded. The applicant proposes to have the Accounts purchase the Stock for $11.58 per share.

4. First Federal is a stockholder owned, federally chartered savings and loan association. The applicant states that there are presently about 370,000 outstanding shares of the Stock. The blocks of the Stock to be sold by Drs. Timmons and Hardy represent 4.32% and 4.05%, respectively, of the total outstanding shares. The Stock is registered with the Federal Home Loan Bank Board, which has substantially similar requirements as those of the Securities and Exchange Commission. The applicant represents that there are no restrictions on the sale or transfer of this Stock.

5. The applicant states that the Timmons Account and the Hardy Account had total assets of $752,608 and $731,109, respectively, as of January 20, 1986. The proposed purchase of 16,000 shares of the Stock by the Timmons Account and 15,000 shares of the Stock by the Hardy Account at $11.58 per share would involve less than 25% of the assets of each of the Accounts. In addition, the Plan will not incur any expenses on the purchase of the Stock for the Accounts. The Trustees state that any expenses relating to the proposed transactions will be paid by Dr. Timmons and Dr. Hardy.

6. In summary the applicant represents that the proposed transactions will satisfy the statutory criteria of section 408(a) of the Act because: (a) The purchase of the Stock will be a one-time transaction for cash; (b) the Accounts will purchase the Stock at a price no greater than the fair market value of the Stock; (c) the Accounts will not pay any expenses in connection with the transactions; and (d) Drs. Timmons and Hardy, the only paticipants to be affected by the transactions, have determined that the transactions are appropriate and in the best interest of the Accounts and desire that the transactions be consummated.

Notice to Interested Persons: Because Drs. Timmons and Hardy are the only participants in the Plan to be affected by the proposed transactions, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a public hearing are due 30 days from the date of publication of this proposed exemption in the **Federal Register.**

For Further Information Contact: Mr. E.F. Willians of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 13th day of March, 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 86-5927 Filed 3-17-86; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 86-38; Exemption Application No. D-6155 et al.]

Grant of Individual Exemptions; Knutson Companies, Employees Amended Profit Sharing Trust et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also

invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Knutson Companies Employees Amended Profit Sharing Trust (the Plan) Located in Minneapolis, Minnesota [Prohibited Transaction Exemption 86–38; Exemption Application No. D–6155]

Exemption

The restrictions of section 406(a) and 406 (b)((1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of certain real property by the Plan to The Knutson Companies, Inc., for $852,600 in cash, provided that such price is not less than the fair market value of the property on the date of sale and provided further that the net cash proceeds to the Plan are at least equal to the Plan's cash outlay for the property to the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 17, 1986 at 51 FR 2600.

For Further Informaton Contact: Joseph L. Roberts III of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Benham Management Corporation Money Purchase Pension Plan and Trust (the Plan) Location in Palo Alto, California [Prohibited Transaction Exemption 86–39; Exemption Application No. D–6295]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)((1) (A) and (E) of the Code, shall not apply to the proposed sale by the Plan of 45 units (the Units) in Westar Timber Group 37, Ltd., a California limited partnership, to Benham Management Corporation, the sponsor of the Plan, provided that the sales price is not less than the higher of either $45,000 or the fair market value of the Units on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 17, 1986 at 51 FR 2604.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Burt Chevrolet, Inc. Employees Retirement Plan and Trust (the plan) Located in Englewood, Colorado [Prohibited Transaction Exemption 86–40; Exemption Application No. D–6331]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)((1) (A) and (E) of the Code, shall not apply to the proposed sale by the Plan to Burt Chevrolet, Inc. (the Employer) of a certain parcel of improved real property (the Property) which is currently being leased to the Employer, provided that the sales price is no less than the fair market value of the Property on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 17, 1986 at 51 FR 2605.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Rex Moore Electrical Contractors & Engineers Profit Sharing Plan (the Plan) Located in Sacramento, CA [Prohibited Transaction Exemption 86–41; Exemption Application No. D–6383]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, for a period of 5 years, to the proposed loans by the Plan of up to 25% of its assets to Rex Moore Electrical Contractors and Engineers, Inc., provided that the terms of the transactions are not less favorable to the Plan that those obtainable in an arm's-length transaction with an unrelated party at the time of entering into each transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 17, 1986 at 51 FR 2606.

Temporary Nature of Exemption

This exemption is temporary and will expire 5 years after the date of grant with respect to the making of any loan. Subsequent to the expiration of this exemption, the Plan may hold loans originated during this 5 year period until the loans are repaid. Should the applicant wish to continue entering into loan transactions beyond the 5 year period, the applicant may submit another application for exemption.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Warner Plumbing Employee's Profit Sharing Plan (the Plan) Located in Springfield, Virginia [Prohibited Transaction Exemption 86–42; Exemption Application No. D–6434]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale by the Plan, for the total cash consideration of $700,000, of certain real property (the Suitland Property), to The Warner

Corporation, a contributing employer and a party in interest with respect to the Plan, provided the price paid for the Suitland Property is not less than its fair market value at the time the transaction is consummated.

For a more complete statement of the facts and representations supporting the the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 17, 1986 at 51 FR 2608.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Astro Homes, Inc. Profit Sharing Plan (the Plan) Located in Utica, Michigan [Prohibited Transaction Exemption 86–43; Exemption Application No. D–6165]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale of a parcel of vacant land located in Macomb County, Michigan and concurrent extension of credit by the Plan to Lombardo Enterprises, Inc., or to the guarantee of repayment by Mr. Cosimo Lombardo, provided that the terms of the transactions are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated person.

For a more complete statement of the facts and representations supporting the the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 17, 1986 at 51 FR 2601.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

The Travelers Separate Account "R" (the Account) Located in Hartford, Connecticut [Prohibited Transaction Exemption 86–44; Exemption Application No. D–6456]

Exemption

The restrictions of section 406(a), 406(b) (1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective December 16, 1985, to the sale of certain agricultural properties by the Account to the Travelers Insurance Company, provided that the terms of the sale are not less favorable to the Account than those terms obtainable in an arm's length transaction with an unrelated person.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 17, 1986 at 51 FR 2609.

Effective Date: December 16, 1985.

For Further Information Contact: Mr. Alan H. Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 13th day of March, 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 86–5926 Filed 3–17–86; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Meeting

ACTION: Notice of hearing.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given of a public hearing of the National Commission for Employment Policy at the Seelbach Hotel, 500 Fourth Avenue, Louisville, Kentucky.

DATE: Friday, April 11, 1986; 9:00 a.m. to 12:30 p.m.

Status: The hearing is open to the public.

Matters to be discussed: Commission members will hear testimony on dislocated worker issues from various witnesses representing State and local government, the private sector, and education. Witnesses will testify on the range of dislocated worker issues experienced in the Commonwealth of Kentucky generally and the Louisville area in particular. Attention will be given to the range of responses to dislocated worker problems with special attention being given to programs operated under Title III of the Job Training Partnership Act.

FOR FURTHER INFORMATON, CONTACT: Ms. Kathy McMichael, National Commission for Employment Policy, 1522 K Street, NW, Suite 300, Washington, DC 20005, (202) 724–1545.

SUPPLEMENTARY INFORMATION: The national Commission for Employment Policy is authorized by the Job Training Partnership Act (Pub. L. 97–300). The Act gives the Commission the broad responsibility of advising the President and the Congress. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made. No public testimony will be authorized except by those asked to do so prior to the hearing date. However, written testimony for the record will be accepted at the Commission offices through April 25, 1986.

Copies of the testimony and materials prepared for the hearing will be available for public inspection at the Commission's offices, 1522 K St. NW, Suite 300, Washington, DC 20005.

Signed this 12th day of March, 1986.

Carol J. Romero,

Acting Director.

[FR Doc. 86–5932 Filed 3–17–86; 8:45 am]

BILLING CODE 4510–30–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-237/249]

Commonwealth Edison Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from certain requirements of section III.G of Appendix R to 10 CFR Part 50 to Commonwealth Edison Company (CECo) (the licensee) for Dresden Nuclear Power Station, Unit Nos. 2 and 3, located at the licensee's site in Grundy County, Illinois.

Environmental Assessment

Identification of Proposed Action:

The proposed action would grant exemptions from certain requirements of section III.G of Appendix R to 10 CFR Part 50 which relate to fire protection features for ensuring that systems and associated circuits used to achieve and maintain safe shutdown are free of fire damage. The exemptions are technical since the licensee must demonstrate that fire protection configurations meet the specific requirements of Section III.G or that alternate fire protection configurations can be justified by an acceptable fire hazard analysis.

The Need for the Proposed Action:

The proposed exemptions are needed because the features described in the licensee's request regarding the existing and proposed fire protection at the plant for these items are the most practical method for meeting the intent of Appendix R and literal compliance would not significantly enhance the fire protection capability at Dresden Station.

Environmental Impacts of the Proposed Action

The proposed exemptions will provide a degree of fire protection such that there is no increase in the risk of fires at Dresden. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined nor do the proposed exemptions otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemptions.

With regard to potential nonradiological impacts, the proposed exemptions involve features located entirely within the restricted areas as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemptions.

Alternative Use of Resources: This action involves no use of resources not previously considered in the Final Environmental Statement dated November 1973 for the Dresden Nuclear Power Station, Unit Nos. 2 and 3.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's letters dated August 10, 1984 and September 18, 1985. These letters are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60451.

Dated at Bethesda, Maryland this 12th day of March 1986.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, BWR Project Directorate No. 1, Division of BWR Licensing.

[FR Doc. 86-5907 Filed 3-17-86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Employees Health Benefits Program; Health Practitioners; Public Comments

AGENCY: Office of Personnel Management.

ACTION: Request for comments.

SUMMARY: The Office of Personnel Management (OPM) is requesting comments on the question of whether to extend a provision of the Federal Employees Health Benefits (FEHB) law to cover nonphysician health practitioners not currently covered. The comments being requested are not intended for the purpose of rulemaking. They are elicited to help OPM evaluate the feasibility, effectiveness and affordability of broadening the scope of health care providers covered under the FEHB law.

DATE: Comments must be received on or before March 25, 1986.

ADDRESS: Written comments may be sent to Jean M. Barber, Executive Assistant Director for Actuarial Analysis and Insurance, Compensation Group, Office of Personnel Management, P.O. Box 707, Washington, DC 20044, or delivered to OPM, Room 3415, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Lease, Chief, Program Planning and Evaluation Division, (202) 632-4958. (Commenters who would like to expand on their written comments, or persons wishing to make their views known informally may also contact Mr. Lease by telephone.)

SUPPLEMENTARY INFORMATION: Under current law (5 U.S.C. 8902(k)(1)), FEHB fee-for-service plans that pay for or reimburse the cost of services which may be performed by licensed or certified clinical pyschologists and optometrists must allow individuals they cover to be free to select and have direct access to such clinical psychologists and optometrists without supervision or referral by a physician and have payment or reimbursement made to them or on their behalf for services performed.

Pub. L. 99-251 directs OPM to conduct a study on the issue of extending current law to require FEHB fee-for-service plans that pay for or reimburse the cost of services which may be performed by other health practitioners, such as nursemidwives, nurse practitioners, chiropractors, and clinical social workers, to provide those whom they cover the same freedom of selection, direct access, and payment or reimbursement entitlement. OPM must send a written report on the study to the Congress before April 1, 1986. So that all interested parties may provide input for the study, the Director of OPM is requesting public comments on the following issues:

(1) Specific nonphysician health practioners that should be extended coverage under 5 U.S.C. 8902(k)(1) and the rationale for each in terms of service delivery and quality.

(2) Potential cost impact on enrollees and the Government for covering the above-specified health practitioners under 5 U.S.C. 8902(k)(1).

In addition, commenters are invited to submit any other views they may have on the subject, as well as statistical data and research studies in support of their views.

Office of Personnel Management.
Constance Horner,
Director.
[FR Doc. 86-5851 Filed 3-17-86; 8:45 am]
BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA-1015; (803-41)]

Rockefeller and Co., Inc.; Application for Order Permitting Performance-Based Fees

March 10, 1986.

Notice is hereby given that Rockefeller and Co., Inc. ("Applicant"), 30 Rockefeller Center, New York, NY 10112, a registered investment adviser under the Investment Advisers Act of 1940 ("Act"), filed an application on September 17, 1984, and amendments thereto on January 31 and February 20, 1986, requesting a Commission order pursuant to section 206A of the Act granting an exemption from section 205(1) of the Act to the extent necessary to allow the general partners ("General Partners") of certain limited partnerships ("Partnerships") proposed to be organized by Applicant to receive fees ("Performance Fees") based upon a share of the profits and losses of such Partnerships. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the applicable provisions.

Applicant states that it was organized by the Rockefeller family ("Family") to provide investment advisory services to Family members and Family-related entities. Applicant is owned by 5600, Inc. ("5600"), which is owned by a Family trust ("Family Trust") established by Family members for descendants of the Family and their spouses ("Family Trust Beneficiaries"). The trustees of the Family Trust are advised by a committee of Family members. 5600's board of directors is elected by the trustees of the Family Trust and is comprised entirely of Family Members. (The office maintained by the Family, the Family Trust and the Family Trust Beneficiaries are collectively hereinafter referred to as the "Family Office.")

Applicant will act as investment adviser to each Partnership and will receive an annual fee of no more than two percent of Partnership assets as of the end of each year. Applicant states that each General Partner will be either (i) Applicant, (ii) a subsidiary of Applicant, (iii) key employees of, or consultants or other persons performing key services under contract with, the Family Office or a corporation controlled by the Family Office, or (iv) a partnership comprised of a combination of the foregoing. According to the application, each Partnership will have varying investment objectives and will require varying degrees of supervision and management by the General Partner. Further, the General Partner will be responsible for the management and administration of the Partnership's business and will be reimbursed by the Partnership for all expenses incurred by it on behalf of the Partnership. According to Applicant, each General Partner will maintain a Partnership interest equal to the greater of $150,000 or one percent of the total amount invested in the Partnership.

Applicant represents that limited partnership interests in the Partnership will be exempt from registration under the Securities Act of 1933 pursuant to section 4(2) thereof and that each Partnership will be exempt from registration as an investment company pursuant to either section 3(c)(1) of the Investment Company Act of 1940, or under an order issued by the Commission under section 6(c) thereof. Applicant further represents that individuals or entities desiring to invest in the Partnerships will either participate in accordance with Rule 205-3(b) under the Act or be "Family Partners" consisting of:

(i) Descendants of John D. Rockefeller, Jr. and their spouses, trusts created by or for such persons, and estates of such persons;

(ii) Charitable or educational institutions established by persons described in (i) or by John D. Rockefeller, Sr. or Jr.;

(iii) Businesses established by persons described in (i) and (ii), and which either are controlled by them or in which they have significant interest;

(iv) Certain organizations served by the Family Office; and

(v) Managers, supervisors and professionals ("Key Employees") of persons described in (i), (ii) and (iii) or trusts for the benefit of such Key Employees.

Family Partners who are Family Members must have a continuing and substantial relationship with the Family Office or have at least 50% of his or her assets available for investment under Family Office management. Applicants state that at present many Family Partners have at least $250,000 under management with the Family Office. Applicant also states that each Key Employee must (a) earn in excess of $50,000 per year; (b) have either a business or professional background and a college or professional degree or substantial specific experience in financial matters; (c) perform significant executive, professional or managerial functions; (d) be involved with the Family's business and/or philanthropic activities and have regular access to Family members; and (e) participate in a Key Employee investment program. Further, as described in the application, Family Partners have certain withdrawal and appraisal rights and Key Employees are subject to investment limitations.

According to the application, a General Partner will participate in the capital appreciation (or depreciation) of Partnership assets in two ways:

First, a General Partner will participate in the capital appreciation (or depreciation) of Partnership assets to the extent of its Interest in the same manner as Limited Partners so participate. Each Partner (General or Limited) will be allocated a pro rata share of all capital appreciation (or depreciation) which has not been specially allocated to the General Partner in the manner described below.

Second, a General Partner will receive a Performance Fee, ranging between 10% and 20% depending on the type of investments in which Partner assets are invested, of the realized and unrealized capital gains less realized and unrealized capital depreciation of Partnership assets. (The General Partner of a Partnership which requires more intensive supervision and management will receive a Performance Fee nearer 20%; the General Partner of a Partnership requiring less intensive supervision and management will receive nearer 10%.) If realized and unrealized capital depreciation exceeds realized and unrealized capital gains in any year, the General Partner will be specially allocated a percentage of such excess equal to its Performance Fee; *Provided, however,* Such net depreciation shall be so allocated to the General Partner only to the extent it does not exceed the aggregate amount of gains previously specially allocated to each such General Partner, net of any capital depreciation previously specially allocated to that General Partner. Thereafter, any excess net depreciation will be allocated to all Partners (General and Limited) in proportion to their capital contributions to be Partnership, adjusted for accretions, demunitions and withdrawals ("Interests"). Any net capital gains in subsequent years will also be allocated (pro rata) to all Partners until all allocated excess net

depreciation has been fully offset. Applicant represents that permitting a General Partner to receive a Performance Fee representing a share of a Partnership's capital gains furthers the public interest, will not endanger the interests of the Limited Partners, and will not conflict with the policy of the Act against encouraging undue speculation by investment advisers.

Notice is further given that any interested person wishing to request a hearing on the applicaton may, not later than April 4, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-5896 Filed 3-17-86; 8:45 am]

BILLING CODE 8010-01-M

PRESIDENTIAL COMMISSION ON THE SPACE SHUTTLE CHALLENGER ACCIDENT

[Notice 86-20]

Presidential Commission on the Space Shuttle Challenger Accident; Open Meeting

AGENCY: Presidential Commission on the Space Shuttle Challenger Accident.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the Commission announces a forthcoming meeting.

DATE AND TIME: March 21, 1986, 10:00 a.m. to 4:00 p.m.

ADDRESS: Dean Atchison State Department Auditorium, 2201 C Street NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Dr. Alton G. Keel, Executive Director, Presidential Commission on the Space Shuttle Challenger Accident (202-453-1797).

Purpose of Meeting: To receive the results of the latest analysis of photographic and film evidence relating to the Space Shuttle Challenger accident and to receive testimony to update the findings of the Commission's investigative efforts.

SUPPLEMENTARY INFORMATION: The Presidential Commission on the Space Shuttle Challenger Accident was established as a group of distinguished leaders of the government and the scientific, technical and management communities to investigate the accident of the Space Shuttle Challenger which occurred on January 28, 1986.

Exceptional circumstances requiring less than 15 days notice: the meeting is required to be held promptly due to the Presidential direction that the Commission investigate the January 28, 1986, Space Shuttle Challenger accident and submit a final report to the President and the Administrator of the National Aeronautics and Space Administration within 120 days of issuance of Executive Order 12546, dated February 3, 1986.

Type of Meeting: Open.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

March 17, 1986.

[FR Doc. 86-6074 Filed 3-17-86; 11:21 am]

BILLING CODE 7510-01-M

VETERANS ADMINISTRATION

Station Committee on Educational Allowances; Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on April 21, 1986, at 9:00 a.m., the Washington Regional Office Station Committee on Educational Allowances shall at 941 North Capitol Street, NE., Washington, D.C., Room 8300-B, conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in the Culinary School of Washington, LTD., 1050 Connecticut Avenue, NW., Washington, D.C., should be discontinued, as provided in 38 CFR 21.4134, because of requirement of law is not being met or provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the Committee at that time and place.

Dated: March 10, 1986.

W. David Smith,

Director, VA Regional Office.

[FR Doc. 86-5874 Filed 3-17-86; 8:45 am]

BILLING CODE 8320-01-M

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains a new collection and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Nancy C. McCoy, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: March 13, 1986.

By direction of the Administrator

Randall H. Bryant II,

Executive Assistant to the Associate Deputy Administrator for Management.

New

1. Department of Veterans Benefits
2. Certificate Showing Residence and Heirs of Deceased Veteran or Beneficiary
3. VA Form 29-541
4. On occasion
5. Individuals or households
6. 2,000 responses
7. 2,000 hours
8. Not applicable

[FR Doc. 86-5890 Filed 3-17-86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 52
Tuesday, March 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 MINE SAFETY AND HEALTH REVIEW COMMISSION

March 12, 1986.

TIME AND DATE: 10:00 a.m., Wednesday, March 19, 1986.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Westmoreland Coal Company, Docket No. WEVA 82–152–R, etc. (Issues include appropriateness of the administrative law judge's civil penalty assessment).

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. 29 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 86–5960 Filed 3–14–86; 12:09 pm]

BILLING CODE 6735–01–M

2

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 12, 1986.

TIME AND DATE: 10:00 a.m., Thursday, March 20, 1986.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Secretary of Labor on behalf of Michael Hogan and Robert Ventura v. Emerald Mines Corp., Docket No. PENN 83–141–D. (Issues include whether the administrative law judge erred in dismissing the discrimination complaint.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 86–5959 Filed 3–14–86; 12:09 pm]

BILLING CODE 6735–01–M

3

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 12, 1986.

TIME AND DATE: Wednesday, March 12, 1986.

PLACE: Room 600, 1730 K Street, NW, Washington, DC.

STATUS: Closed (pursuant to 5 U.S.C. 552b(c)(10).

MATTERS TO BE CONSIDERED: In addition to the previously announced items, the Commission will discuss the following:

4. Robert Simpson v. FMSHRC, No. 86–1152, D.C. Circuit. (Discussion of complainant's petition for review in the court of appeals.)

5. NACCO Mining Co., Docket No. LAKE 85–87–R. (Dissussion of procedural motion.)

It was determined by a unanimous vote of Commissioners that these items be included on the agenda and that no earlier announcement of the additions was possible.

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 86–5958 Filed 3–14–86; 12:09 pm]

BILLING CODE 6735–01–M

4

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 10:00 A.M. and 3:30 P.M., Monday, March 17, 1986.

PLACE: Eighth Floor, 1120 Vermont Avenue, NW. Washington, DC 20419.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. *Special Counsel* v. *Peace Corps*, MSPB Docket No. HQ12088610008

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Clerk of of the Board, (202) 653–7200.

Dated: March 14, 1986.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 86–5981 Filed 3–14–86; 8:45 am]

BILLING CODE 7400–01–M

Federal Register

Tuesday
March 18, 1986

Part II

Department of the Interior

Minerals Management Service

30 CFR Parts 250 and 256

Oil, Gas, and Sulphur Operations in the Outer Continental Shelf; Proposed Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 250 and 256

Oil, Gas, and Sulphur Operations in the Outer Continental Shelf; Outer Continental Shelf Minerals and Rights-of-Way Management, General and Outer Continental Shelf Orders for all Regions of the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule.

SUMMARY: The proposed rule would consolidate into one document the currently multitiered rules of the Offshore program of the Minerals Management Service (MMS) that govern oil and gas operations in the Outer Continental Shelf (OCS). The proposal also would eliminate redundant, burdensome, unnecessary, and counterproductive requirements imposed in current rules; introduce more performance standards; introduce new requirements; and simplify the language of the rules.

DATES: Comments must be hand delivered or postmarked no later than June 16, 1986.

ADDRESSES: Written comments must 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: David A. Schuenke.

FOR FURTHER INFORMATION CONTACT: David A. Schuenke, telephone (703) 648–7729.

SUPPLEMENTARY INFORMATION:

Synopsis

The MMS is proposing to reform the rules governing oil and gas operations in the OCS. The reform is directed toward reducing the burden on industry resulting from the regulations while maintaining or increasing the level of safety and the protection provided for the environment. This is being accomplished by addressing issues identified by MMS as well as issues raised by industry in response to a request from the Secretary of the Interior (Secretary) for the identification of burdensome regulations.

The goal of minimizing the burden on industry while maintaining levels of safety and environmental protection mandated by statute is proposed to be accomplished through the following specific objectives:

(1) To consolidate all requirements into a single document, eliminating the multiple tiers of rules,

(2) To add more performance standards to the extent practicable,

(3) To update rules in areas where warranted by safety or environmental needs, operating experience, current operational practices, or advances in technology,

(4) To trim reporting and recordkeeping requirements to the minimum, and

(5) To remove redundant provisions, generally simplify the language, and clarify the rules.

Current regulations at 30 CFR Part 250, Oil and Gas and Sulphur Operations in the Outer Continental Shelf, OCS Orders for each of the four OCS Regions, and portions of selected Notices to Lessees and Operators (NTL) would be combined into a proposed new Part 250 of Title 30 of the Code of Federal Regulations. The proposed rules would be organized into 14 subparts reflecting specific subject matter, e.g., Drilling Operations, and Remedies and Penalties.

The following summarizes the major proposed changes:

(1) *Performance Standards.* Performance standards would be added to the detailed requirements. Because the nature of the activities regulated are not readily amenable to performance standards (as in the case of emission standards or other numerically quantifiable standards) these standards are fairly general. They are descriptions of the safety, environmental, property, and resource protection goals intended to be achieved by the design and engineering requirements. They are intended to identify the purpose of the detailed requirements and provide a basis for alternative achievement of such purpose. New, different, better, and more efficient techniques and practices are intended to be available to lessees on the basis of these performance standards. We invite industry to comment as to whether the performance standards proposed present a welcome opportunity.

(a) *Performance Requirements.* A "Performance requirements" section would be added. This would clarify that specific detailed requirements of the regulations would not preclude the use of new or alternative techniques, procedures, equipment, or activities if they meet or exceed the protection intended to be provided by the specific requirements and if they have been approved by MMS. This is intended to remove obstacles to innovation and ensure that MMS's regulations are not unnecessarily prescriptive.

(b) *Well Casing Performance Characteristics.* A performance standard is proposed to be substituted for a reference in existing regulations incorporating the requirements in eight American Petroleum Institute (API) documents. The Applications for Permit to Drill, Deepen, or Plug Back (APD) and MMS inspections would provide review of actual casing being used.

(c) *Well Casing Setting Depths.* Specific depths for setting the conductor and surface casing are proposed to be deleted. The lessees' proposed casing programs would be reviewed by MMS as part of the APD approval procedure.

(d) *Well Completions and Well Workovers.* In this portion of the proposed regulations, performance standards for well-control fluids, blowout preventers (BOP), tubing, and wellhead equipment would be combined with limited additional requirements as opposed to the detailed design and engineering requirements proposed by MMS in May 1983. Industry voiced objection to the detailed prescriptive approach and suggested the use of performance standards.

(e) *Blowout-Prevention Systems.* The requirements concerning practices for blowout-prevention systems incorporated from various API documents would be replaced by a performance standard.

(2) *New Requirements.* Many of the OCS Orders have not been revised in more than 10 years. Some new requirements are proposed in response to recommendations made by accident investigation panels and others. Whenever possible, these new requirements would be described in terms of performance rather than design.

(a) *Periodic Inspections and Maintenance.* The MMS's regulations and rules presently are silent concerning periodic inspection and maintenance of platforms. Problems may increase as platforms age and as they are built in deeper waters and more hazardous areas. The proposed regulations would provide a minimal regulatory approach, lessee flexibility, and simple reporting to MMS.

(b) *Well-Completion and Well-Workover Operations.* Another gap in current MMS rules relates to well-workover operations and, to some extent, well completions. Numerous accidents have been associated with these operations. In May 1983, MMS proposed a comprehensive set of rules for these activities. The MMS received numerous industry objections to the May 1983 proposed rulemaking, primarily concerning the detail of the proposed requirements. This new

proposal would depend more on performance standards and would also respond to other industry comments. Although these proposed requirements are new, they represent widespread current industry practice. Specific requirements for well-completion and well-workover operations are included for equipment movement, emergency shutdown systems, hydrogen sulfide, subsea completions, crew instructions, welding and burning, electrical requirement, structures on fixed platforms, prevention of diesel engine "runaway", simultaneous operations, field rules, well-control, blow-out prevention, and tubing and wellhead equipment. Requirements are also included for well-workover wireline operations. Many of these requirements are based on similar requirements which are either currently applicable to drilling operations or are proposed to be applicable to drilling operations.

(c) *Hydrogen Sulfide (H_2S)* Requirements and Procedures for Production, Well-Completion, and Well-Workover Operations. The presence of H_2S represents a lethal threat to human safety and equipment/platform durability. Present H_2S requirements concerning drilling operations are proposed to be expanded to cover the other operations. The proposed rules concerning H_2S are tailored to whether or not the operations are in an area known to contain H_2S.

(d) *Diverter Equipment.* During the drilling of a well, shallow gas may be encountered. This equipment diverts gases to the side and away from the rig and may also prevent the destruction of a facility, loss of life or injury, and loss of resource which could occur from a blowout. The proposed rulemaking would require the use of diverters of a specific configuration (large diameter pipe and minimum turns). Because the configuration and use of diverters are controversial, we are posing a number of questions to guide the development of final rules.

(e) *Extension of Lease Terms.* A provision is proposed whereby a suspension which would extend the term of a lease beyond the primary term would be issued only if a well determined to be capable of producing in paying quantities has been drilled on the lease. This new provision is a restatement of existing MMS policy. In addition, the Director would be authorized to extend up to 180 days (currently 90 days), the allowable time that a lease term can be extended through a drilling or well-reworking operation. *

(f) *Additions to Development and Production Plans.* Development and Production Plans shall include descriptions of new or unusual technology to be employed and technology and practices intended to increase the ultimate recovery of oil and gas.

(g) *Pollution Prevention and Control.* New provisions are included with regard to restricting the rate of drilling fluid discharge, requiring berms on artificial islands, and information to be included in an oil spill contingency plan.

(h) *Additional Safety Devices.* Requirements would be added for crown block safety devices and for devices to prevent diesel engine "runaway."

(i) *Pipelines.* Rules governing pipelines would expand requirements governing design, installation, testing safety equipment, abandonment and reporting.

(j) *Flaring and Venting.* Requirements for flaring and venting would be expanded to clarify the intent of requirements currently in OCS Order No. 11.

(k) *Enhanced Recovery of Oil and Gas.* Clarifying details would be added to rules concerning enhanced recovery, currently in OCS Order No. 11.

(l) *Site Security.* Requirements would be established for site security. These provisions are intended to ensure against the loss or theft of production and to assure accurate measurement for royalty purposes.

(m) *Enclosed Mud Rooms.* Gas detection systems would be required for enclosed mud-handling rooms.

The MMS invites comment as to the costs and benefits associated with each of the proposed new requirements.

(3) *Reduced or Eliminated Requirements.* Requirements are proposed to be reduced or eliminated where no adverse impact on safety or protection of the environment would result. Many of the requirements proposed to be eliminated have been identified as counterproductive by industry. Requirements are proposed to be eliminated only when we believe the requirements would no longer be needed or where functions would be better accomplished by performance standards.

(a) *Cranes on Platforms.* Requirements concerning cranes on platforms are proposed to be deleted. Recent discussions between the U.S. Coast Guard (USCG) and MMS have resulted in a division of responsibility with respect to cranes. In the agreement, the USCG will have responsibility for cranes on all OCS platforms.

(b) *Determination of Producibility.* The presently required determination of producibility of each well is proposed to be eliminated. The determination of producibility would be needed to suspend operations when a lease which has no producing wells would be extended beyond its primary term. Making those determinations only when the lessee requests it instead of for every completed well would save lessees and MMS considerable time and money. However, we do request comments on whether this proposal should become final, the current requirement remain, or some other alternative such as a requirement for at least one determination per lease for each lease that is not in production by the end of its primary term.

(c) *Maximum Efficient Rate (MER) on Nonsensitive Reservoirs.* The MER's would not be required for "nonsensitive reservoirs." Reservoirs would be classified as sensitive or nonsensitive, and MER's would be established only for the sensitive reservoirs.

(d) *Shallow Hazard Surveys.* Detailed specifications for shallow hazard surveys previously contained in NTL's are proposed to be eliminated. Site and regional differences and data availability preclude establishment of a single set of detailed national or regional requirements. The responsibility for designing an appropriate surveying strategy would be with the lessee.

(e) *Orientation and Motivational Training.* The majority of training requirements for the prevention of pollution relate to drilling and production procedures and would be addressed in subparts D, Drilling Operations, and H, Production Safety Systems. Therefore, the orientation and motivational training requirements currently found in OCS Order No. 7 are proposed to be deleted as unnecessary and redundant. The API Recommended Practice (RP) for Orientation Program for Personnel Going Offshore for the First Time (API RP T-1) and API Bulletin, Employee Motivation Programs for Safety and Prevention of Pollution in Offshore Operations (API Bul. T-5), that are incorporated by reference in the current rules, are proposed to be eliminated. While trained personnel are key to safe conduct of operations, the two referenced documents are not appropriate as regulatory requirements. However, the training requirements for oil spill response operating teams in current OCS Order No. 7 would continue in effect.

The MMS invites comment as to the desirability and savings associated with the proposed deletions.

(4) *Reduced Recordkeeping and/or Reporting.* In a number of instances, recordkeeping and reporting

requirements would be reduced or eliminated without affecting the level of safety or environmental protection. In some cases, redundant reports are proposed to be eliminated while in other cases the use of performance standards would reduce the need for reporting or for recordkeeping.

It has been suggested that it may be more efficient to refer to the brand name, model number, or other similar standardized designation of equipment in lieu of describing such equipment in reports and recordkeeping required by MMS. Comment is requested as to that suggestion.

(a) *Exploration Plans.* Intended development and production information is proposed to be dropped from the Exploration Plan. Since discoveries have not yet been made when the plan is prepared, intended development and production information has been speculative and adds little, if any, information to that which the MMS or coastal States already have.

(b) *Critical Operation and Curtailment Plans.* Critical Operation and Curtailment Plans are proposed to be eliminated for the Gulf of Mexico and Pacific OCS Regions. This information is often speculative and/or redundant to material MMS already receives in the Exploration Plan, Development and Production Plan, and the APD. For the Alaska and Atlantic OCS Regions, the requirements would be merged and refocused. Similarly, information required in the fitness of drilling unit report would be reduced for the Atlantic, Gulf of Mexico, and Pacific OCS Regions. In the Alaska OCS Region, it is proposed that third-party review of the drilling unit may be required by the District Supervisor.

(c) *Exploration Plan and Development and Production Plan.* The proposed regulations would reduce the amount of redundant or unnecessary information to be included in the Exploration Plan and Development and Production Plan. Only information of practical significance to States, localities, and MMS would be required. Local interests and/or regional situations may make some information unnecessary. Regulations would permit the Director of MMS, in consultation with the affected States, to inform lessees of reduced information requirements. This would be in addition to the current exemption from submitting Development and Production Plans in the western Gulf of Mexico.

(d) *Changes to Plans.* Regulations would provide that when plans are revised, only the portions actually being changed would need to be resubmitted. Changes usually involve only a few pages out of hundreds of pages, and many lessees have felt obliged to resubmit the entire plan.

(e) *Monthly Report of Operations.* The monthly report of operations would be discontinued. The production information for each well would be reported to MMS in accordance with rules issued by the Royalty Management Program of MMS.

(f) *Erosion-Control Program Report.* The annual report on erosion control programs would be deleted. The erosion control program would be retained. The lessee would be required to maintain records of the results obtained.

(g) *Pipeline-Safety Reports.* The semiannual reports on pipeline-safety devices and annual reports of monthly pipeline inspections would be deleted. The installation, maintenance, and operation of the safety devices and the conduct of the monthly inspections would continue to be required, but the submission of reports adds little, if anything, to the margin of safety and is proposed to be deleted.

(5) *Deleted and/or Modified References to Technical Documents.* The incorporation by reference of technical documents is proposed only when clearly needed. Only the specific, relevant portions of the document would be incorporated. In some cases, incorporated references would be replaced with a performance standard describing the level of performance rather than relying upon specific requirements.

(a) *Reference for Well-Casing Requirements.* References to eight API documents concerning well casing are proposed to be replaced by a performance standard. The API documents do not provide sufficient flexibility to allow the lessee to meet the desired performance in the most efficient manner for a particular well.

(b) *Electrical Code Reference.* References to the National Electrical code and the American National Standards Institute/Institute of Electrical and Electronics Engineers (ANSI/IEEE) publication, ANSI/IEEE Std 45–1977, Recommended Practice for Electric Installations on Shipboard, are proposed to be eliminated. These documents are bulky, vague as to which portions apply, and difficult to enforce. Essential electrical requirements would already be covered by requirements proposed to be incorporated by reference in API RP 14F for Design and Installation of Electrical Systems for Offshore Production Platforms and API RP 500B for Classification of Areas for Electrical Installations at Drilling Rigs and Production Facilities on Land and on Marine Fixed and Mobile Platforms.

(c) *References to MMS Documents.* References to MMS documents, Appendices to Requirements for Verifying the Structural Integrity of OCS Platforms and Commentary on Requirements to Verifying the Structural Integrity of OCS Platforms are proposed to be eliminated. These documents are outdated and advisory in nature.

(6) *Simplified Format and Wording.* The approach of a single set of rules in place of regulations, Orders, standards, and selected NTL's would greatly simplify the rules format. In addition, many sections of Part 250 would be restructured and reworded for clarity. For example, in Subpart N, Remedies and Penalties, the language would be streamlined and simplified. Portions of current regulations which constitute instructions to MMS personnel would be removed.

(7) *Other Changes in Requirements.* Many other changes are proposed in an attempt to meet the established objectives.

(a) *Preliminary Activities.* Preliminary activities—those which occur prior to activities described in an Exploration Plan or a Development and Production Plan—would be redefined to permit seabed penetrations of up to 500 feet instead of 300 feet in unconsolidated formations or 50 feet in consolidated formations. Normally, significant hydrocarbons do not exist within the first 500 feet. Preliminary activities would not require prior MMS notification or approval except as may be required by the Regional Supervisor. In areas where shallow gas or other hazards might be present, the District Supervisor may specify appropriate procedures. The redefinition is intended to reduce paperwork for lessees and the MMS and to eliminate confusion over differing requirements in consolidated versus uncon solidated formations.

(b) *Combination of Plans and Environmental Reports.* It is proposed to combine the Exploration Plan and Development and Production Plan with their respective Environmental Reports (ER) into single documents. The separate documents now contain redundant material. The combined documents would contain all of the information previously required but with less redundancy.

(c) *Approval of Plans.* Significant changes in the approved plans would be sent to affected coastal zone management (CZM) agencies for review. Existing regulations make provision for a State Governor to review changes in approved plans but not for review by

CZM agencies even though the plan must be consistent with the CZM plan. The proposed regulations recognize the possible significance of modifications to plans and include CZM agency review of modifications.

(d) *Model Unit Agreements.* It is proposed to include the Model Unit Agreements in the regulations. The existing Model Unit Agreement would be rewritten as two model unit agreements—one for exploration units and one for development and production units. The model unit agreements would be published in the regulations and would be a standard for lessees to follow in proposing units. Procedures would be provided for requesting variations. This proposal is expected to save lessees and MMS considerable time and costs.

(e) *Extension of Lease Term by Production, Drilling, or Well Reworking.* Current rules require production, drilling, or well reworking every 90 days to extend a lease which is not in production beyond the primary term. The proposed rules would permit the Regional Supervisor to extend the time period during which production, drilling, or well reworking must occur for such purpose up to 180 days.

(f) *Criteria for Determinations.* The regulations would state criteria to be considered by the District or Regional Supervisor, as appropriate, in making numerous determinations. The proposed regulations would identify a number of circumstances where particular requirements need to be adapted to the situation. In exercising the necessary discretion, District and Regional Supervisors would be guided by appropriate criteria. The proposed regulations would recognize that it is important to articulate the criteria that would guide and affect those judgmental determinations.

(g) *Identification of Specific Authorities and Responsibilities.* The regulations would identify the MMS officials with specific authorities and responsibilities. In the past, MMS informed lessees of this information with NTL's. Such authorities may also be exercised by all MMS and Department of the Interior (DOI) officers superior to the officer designated in the regulations. Delegations of authority in the DOI are effected through DOI manual publications. The regulations would now make the identification of the responsible official explicit.

(h) *Timing of the Exploration Plan.* The requirement that an Exploration Plan be submitted by the fourth year of a lease term is proposed to be deleted. This requirement was originally included to promote exploration diligence. Lessees are fully aware that the failure to explore, discover, and produce by the end of the primary term will result in the loss of a lease and that the Exploration Plans must be submitted early enough to allow time for MMS review. The specific requirement to submit a plan by the fourth year, we believe, is an unnecessary intervention in a lessee's management of its lease.

(i) *Pipelines and Pipeline Rights-of-Way.* Requirements regarding pipelines on a lease would be combined with those regarding rights-of-way for pipelines to shore, currently covered in the leasing regulations in 30 CFR Part 256, Outer Continental Shelf Minerals and Rights-of-Way Management, General.

Background

Executive Order (E.O.) 12291, February 17, 1981, requires Agencies to "initiate reviews of currently effective rules in accordance with the purposes of the Order. . . ." One of the stated purposes of the Order is to reduce the burdens of existing regulations. Since the issuance of E.O. 12291, MMS has been reviewing and revising its rules governing operations on the OCS on an individual subject matter basis.

These revisions have included the following rules: Rescission of affirmative action plan requirements, 47 FR 45951, September 16, 1981; Deletion of requirements to segregate unitized leases, 47 FR 6620, February 16, 1982; Extension of submission deadline for deep stratigraphic test well data and information, 47 FR 15781, April 13, 1982; Deletion of failure and inventory reporting system, 47 FR 18682, April 30, 1982; Reimbursement for copying geological and geophysical data and information, and processing geophysical information, 47 FR 25330, June 11, 1982; Updating of safety equipment required in a hydrogen sulfide environment, 47 FR 28888, July 1, 1982; Provision for suspension of operation when delay results from governmental inaction, 47 FR 30055, July 12, 1982; Rescission of variable net profit and work commitment bidding systems, 48 FR 24873, June 3, 1983; Change status report on prelease permits from weekly to monthly, 48 FR 37967, August 22, 1983; Deletion of requirement of immediate notice of reprocessing geophysical information, 48 FR 46025, October 11, 1983; Reduction of information required prior to deep stratigraphic tests, 48 FR 54007, November 30, 1983; Streamlining of requirements for submission of environmental reports, 48 FR 55455, December 13, 1983: Deletion of requirement to submit Development and Production Plans in the western Gulf of Mexico, 48 FR 55565, December 14, 1983; and Revision of the marking of equipment requirements, 49 FR 1897, January 16, 1984.

On February 22, 1983, the Secretary asked the public for suggestions and recommendations on further reform of the DOI rules, including the offshore operating rules. In response to that request, numerous comments, recommendations, and suggestions were received from the public, especially from the offshore oil and gas industry.

During the summer of 1983, the Director of MMS appointed a Regulatory Reform Task Force of senior personnel from headquarters, regional, and district offices to examine all of the recommendations received from the public and to look at the entire structure of rules governing offshore lease operations, particularly 30 CFR Part 250, Oil and Gas and Sulphur Operations in the Outer Continental Shelf, the OCS Orders (including standards and other documents incorporated by reference), and appropriate NTL's. The Task Force reviewed the various rules and related documents with the view toward consolidating the multitiered structure into a single document. The proposed rules would merge the various operating requirements now found in regulations, OCS Orders, and other documents into a single set of requirements to be codified at 30 CFR Part 250. New internal guidelines and procedures have been established for NTL's to assure that their continued purpose would be to transmit administrative information and disseminate interpretations to lessees.

Performance Standards

The proposed rules would also introduce more performance standards, to the extent practicable, while eliminating those requirements which experience has shown to be needless, excessive to their purpose, or counterproductive in that the harm or costs associated with them outweigh the intended benefit or savings. An effort was made to restate the rules in simple, straightforward language.

The performance standards would generally identify safe and pollution-free (no discharges or emissions contrary to established standards) operations as a minimum requirement. These proposed performance standards are usually associated with more specific design or engineering requirements. The performance requirements would identify the purpose to be achieved by the more specific requirements. If a lessee complies with the specific requirements, it would be presumed that the performance standard would be

achieved. If the lessee can show that something other than compliance with the specific requirements would achieve the performance standard (see discussion below of § 250.3, Performance requirements), MMS could approve the lessee's employment of alternatives to the specific requirements. In those instances, the burden would be on the lessee to demonstrate that the performance standard would be met or exceeded.

Fundamental to this proposed revision of the offshore operating rules is the requirement that the necessary margin of safety for the protection of life, property, environment, and natural resources be maintained. This proposed revision and reform of the operating rules to eliminate unnecessary burdens and excessive and counterproductive requirements is not intended to be achieved at the cost of increased hazards to safety, natural resources or the environment.

Current Rules

The current offshore operating rules are contained in regulations, OCS Orders, standards, NTL's, conditions of approval, and related documents. The regulations at 30 CFR Part 250 were the subject of major revisions following the enactment of amendments to the OCS Lands Act (Act) in 1978. They are rules of general applicability often stated in general policy terms. The OCS Orders are rules of general applicability, adopted in compliance with rulemaking requirements, published in the **Federal Register**, but not codified in the Code of Federal Regulations. The OCS Orders were adopted on a Region-specific basis with separate sets of Orders for the Alaska, Atlantic, Gulf of Mexico, and Pacific OCS Regions. The Orders implement provisions in the regulations in more specific detail—often in terms of particular technical requirements. The requirements are essentially consistent in each of the Regions with variations to accommodate local environmental conditions, e.g., severe arctic weather in portions of the Alaska OCS Region. Standards are documents incorporated by reference into the Orders, thereby becoming requirements. These include statements of recommended practices adopted by industry and trade associations, such as API, or professional standards organizations, such as ANSI, as well as those drafted within MMS itself. The NTL's were intended to inform lessees of MMS's interpretations of its requirements but were not intended to impose new requirements themselves. However, such notices as well as documents reciting conditions of approval for various required approvals at times went beyond the realm of clarification or interpretation to impose new requirements.

The growth of multiple levels of rules, interpretations, and requirements incorporated from other documents tended to confuse industry, the Government, and the public in their understanding of offshore operating rules. In this proposed restructuring and consolidation of rules into a new 30 CFR Part 250, we are attempting to eliminate any inconsistency and redundancy in the current rules. We are proposing to narrow or eliminate references to incorporated material found to be excessive and also restate certain requirements found in NTL's and other documents which we believe have merit.

The MMS recognizes that the proposed reorganization of the offshore operating rules will necessitate an effort on the part of industry and the government to become acquainted with the new organization. This may entail some initial difficulty. However, MMS is of the view that long-term benefits of a consolidated, consistent, and comprehensive presentation of those rules far outweigh the initial inconvenience.

In many cases, the requirements and procedures will be recognized to be identical with the current requirements and procedures. Therefore, the MMS believes that the proposed rules will be readily understood by those already familar with the current rules (regulations, OCS Orders, and NTLs).

Part 256 of Title 30 of the Code of Federal Regulations, Outer Continental Shelf Minerals and Rights-of-Way Management, General, is also proposed for revision.

Pursuant to the National Environmental Policy Act and the requirements of the DOI, the proposed rules are being analyzed to determine whether they would have significant effects on the human environment. An environmental assessment will be prepared and included in the administrative record of the rulemaking.

Specific Proposed Changes

The following represents the specific changes proposed to be made. References to OCS Orders are to the Gulf of Mexico OCS Orders, unless otherwise specified. A derivation table relating proposed new sections to current rule designations is included at the conclusion of this preamble. Editorial clarifications, eliminations of redundancy, and reformatting are not intended to effect substantive changes.

Subpart A—General

Section 250.0, Authority for information collection, is proposed to be retained. This section would report the status of information collection clearances by the Office of Management and Budget (OMB) concerning information collection requirements contained in this part. It would comply with OMB and **Federal Register** requirements under the Paperwork Reduction Act, 44 U.S.C. 35.

Proposed § 250.1, Documents incorporated by reference, would be added in accordance with the requirements of the Office of the Federal Register regulations contained in 1 CFR Part 51, Incorporation by reference. The introductory paragraph is self explanatory. It should be noted that certain of the documents incorporated by reference are published by nongovernmental entities as "Recommended Practices." Compliance with such recommended practices, procedures, and equipment become mandatory when incorporated by reference in this part.

Current § 250.1, Purpose and authority, is proposed to be deleted as an unnecessary recitation of statutory authority.

Section 250.2, Definitions is proposed to be revised to eliminate those definitions that are not believed to be essential for an understanding of the regulations in Part 250.

Definitions which are relevant only to a particular subpart or section would be provided in the subpart or section, as appropriate. For example, definitions of "Party," "Unit agreement," "Unit area," and "Unitized substances" are proposed to be deleted from § 250.2 as those terms would be dealt with in the context of the subparts on investigations, remedies and penalties, and on unit agreements.

Definitions of "Regional Director," "Regional Supervisor," and "District Supervisor" are proposed to be added. In that regard, it should be noted that we are proposing to name the appropriate MMS officer, e.g., the Regional Supervisor, the District Supervisor, or the Regional Director, as appropriate, to the context of the particular section involved. This would differ from the current regulations which consistently refer to the Director, necessitating reference to a delegation of authority document to ascertain the appropriate MMS official with authority or responsibility for specific provisions in the regulations.

A new § 250.3, Performance requirements, is proposed to be added to authorize the use of new or alternative

techniques, procedures, equipment, or activities other than those prescribed in the regulations of Part 250 if such new or alternative techniques, procedures, equipment, or activities would provide a degree of protection, safety, or performance equal to or better than that to be achieved by any particular provision in the regulations.

The requirements in these regulations would not exist for their own sake but are intended to achieve the beneficial purposes identified in the Act—the protection of life, property, and the environment, and the efficient production of our offshore resources. It is the achievement of those beneficial purposes, rather than adherence to any particular operating procedures, which we intend to pursue. We recognize that those beneficial, statutorily defined purposes might be better or equally achieved through practices other than those prescribed in these regulations. We believe this is especially important in a field such as offshore oil and gas operations where new and innovative technology and procedures are continually developing. We would hope that our proposed operating regulations would serve as an encouragement to new, better, and more efficient practices. We invite industry representatives to indicate whether performance standards present a welcome opportunity for efficiencies and innovations.

This policy should not be understood as opening the door to every alternative practice. Only those new or alternative practices which are found to achieve equal or superior results to those required in the regulations would be authorized. We do not expect that this would be an easy or pro-forma determination since the minimum requirements in our proposed regulations are adopted as the best available and safest technology practicable in the offshore oil and gas industry today as required by the Act.

Proposed § 250.3(b) is a restatement of current § 250.11(b). It would provide for departures from the requirements of this part as may be necessary under specific circumstances. These departures, whether required by the Regional or District Supervisor or requested by the lessee, would be dictated by the circumstances of the particular case.

Current § 250.4, Privileged and proprietary data and information to be available to affected States, is proposed to be deleted as it is redundant with 30 CFR 256.25, Areas near Coastal States. The provision is more appropriate in Part 256 which governs leasing than in Part 250 which governs operations.

Current § 250.5, Effect of regulations on provisions of section 6 leases, is proposed to be deleted as it is redundant with 30 CFR 256.79, Effect of regulations on lease. The provision is more appropriate in Part 256 which governs leasing than in Part 250 which governs operations.

Proposed § 250.4, Jurisdiction, and § 250.5, Functions, are proposed to replace and amend §§ 250.10 and 250.11, respectively, to eliminate references to OCS Orders since appropriate requirements of those Orders are proposed to be merged into this part. The OCS Orders would not exist as separate rules. References to royalty management functions are also proposed to be eliminated as those functions are now addressed in Subchapter A of Chapter II of 30 CFR.

Proposed § 250.6, Oral approvals would replace § 250.13 and indicate that oral approvals (to be later confirmed in writing) may be made by the appropriate MMS official from whom approval is required.

Proposed § 250.7, Right of use and easement, is proposed to revise § 250.18 to clarify the rule and remove unnecessary language.

The lease agreement executed between MMS and the lessee gives the lessee the exclusive right and privilege to drill for, develop, and produce oil and gas resources within the leased area. In addition, other rights are granted including the right to conduct certain operations on the leased area leading to the full enjoyment of the lease. (Proposed Subpart J, Pipelines and Pipeline Rights-of-Way, deals with rights-of-way for oil and gas pipelines for transportation of oil and gas off the lease.) Under certain circumstances, a lessee might have a legitimate reason to conduct operations such as construction of a platform on lands off a lease or to conduct operations on a lease which are not granted in the lease agreement or in proposed Subpart J. The granting of a right of use and easement in accordance with the proposed rule would provide for these circumstances.

Revisions are intended to clarify that a right of use and easement may be granted if a structure would be used for conducting exploration, development, or production activities or if an operation would be related to such activities. A right of use and easement may be on or off a lessee's lease.

A new paragraph would require that the holder of a right of use and easement comply with all rules which are applicable to a lessee. This is the intent of the existing rule although it recites only the requirements for use of best available and safest technology and requirements for disposition of equipment after use. The MMS believes that the proposed amendment would more clearly define the responsibilities of a holder of right of use and easement.

Proposed § 250.8, Designation of operator, and § 250.9, Local agent, would replace §§ 250.31 and 250.32, respectively. The District Supervisor would be substituted for the Director in § 250.8, and the Regional Supervisor would be substituted for the Director in § 250.9.

Proposed § 250.10, Suspension of operations, and § 250.12, Cancellation of leases, would incorporate the provisions of current § 250.12 governing suspension of operations.

Under current policy, a suspension of operations requested by a lessee which extends a lease beyond its primary term is not available unless the lease contains a well determined to be producible in paying quantities. A request for such determination under current OCS Order No. 4, Determination of Well Producibility, must be made within 60 days from the removal of a rig from the well. Under the proposed § 250.11, Determination of well producibility, such request could be made whenever the lessee wishes. We expect this change would reduce the number of applications for determinations of producibility and the associated administrative costs. Under the proposed rule, it would not be necessary to obtain a determination of producibility for each well. Further, a lessee need not obtain such determination if the lease has production in the primary term. However, we are requesting comments as to whether this proposal should become final, the requirement remain as it currently stands, or an alternative be used such as requiring at least one determination per lease for every lease that is not in production by the end of its primary term.

Proposed § 250.12, Cancellation of leases, would essentially repeat the provisions concerning lease cancellation in § 250.12.

Proposed § 250.13, Effect of production, drilling, or well reworking on lease term, would replace § 250.35 and authorize the extension of a lease based upon operations other than production, drilling, or well reworking for periods of up to 180 days. Such an extension would be conditioned upon a determination that it would be in the national interest. We believe that the Director should have the discretion to approve operations other than producing, drilling, or well reworking for

periods up to 180 days to allow proper exploration and development of leases in certain frontier areas or in other circumstances where producing, drilling, or well reworking every 90 days would not serve a useful purpose and where the Director determines that prompt and appropriate exploration and/or development is underway.

Proposed § 250.14, Reinjection and subsurface storage of gas, would replace § 250.53 but would be modified in the following manner:

(1) The section would differentiate reinjection of gas for conservation purposes and subsurface storage of gas for later commercial benefits.

(2) Only the subsurface storage of gas, rather than oil and gas, would be addressed. In our experience, we need provide only for subsurface storage of gas on the OCS.

(3) Specific criteria would be identified as providing the basis for reinjection, i.e., for enhanced recovery projects to prevent the flaring of casinghead gas and for other conservation reasons.

(4) Clarification would be provided as to the availability of both on-lease and off-lease storage.

(5) Timing of royalty payments would be clarified.

Proposed § 250.15, Identification, would repeat the requirements of current § 250.37, and parts of current OCS Order No. 1 as revised on January 16, 1984, 49 FR 1897.

Proposed § 250.16, Reimbursement, would amend current § 250.58 which provides for reimbursement of lessees for the cost of reproducing geological and geophysical (G&G) data and information as well as certain processing costs to clarify that such reimbursement would be authorized whether the MMS retains the information required to be submitted or not.

Proposed § 250.17, Information and forms, relating to reports made by lessees would replace § 250.90 and add a paragraph (b) to require the submission of a "Public Information" copy of each required report. The "Public Information" copy would be available to the public and would exclude protected proprietary information. This is a restatement of a portion of current OCS Order No. 12.

Proposed § 250.18, Data and information to be made available to the public, would govern the release to the public of G&G data and information submitted by lessees, and would replace and amend § 250.3 as follows:

- The regulation would be clarified to indicate that the terms of protection it provides would apply to all G&G data and information, whenever submitted (either before the effective date of the regulation or thereafter).
- Processed geological information—a new category of information—would be protected to the same extent as analyzed geological information.

It should be noted that MMS is amending its rules in 30 CFR Part 251 to eliminate reimbursement of permittees for costs of processing and reprocessing data and information in a form and manner used by the permittee in the normal conduct of business. This conforms with provisions in Pub. L. 99-190.

Paragraph 250.18(c) would restate pertinent portions of OCS Order No. 12, Public Inspection of Records, to indicate those specific entries required on MMS forms that are considered to fall within the class of G&G data and information which would be protected from public disclosure in accordance with the terms of § 250.18 or would otherwise be considered privileged information protected from disclosure (e.g., trade secrets, commercial information). The items are not intended to be a comprehensive identification of all G&G data and information protected from release to the public under proposed § 250.18, or otherwise protected as proprietary, but as an identification of the most frequently recurring instances where such data and information would be required on MMS forms.

Proposed § 250.18 would also clarify the status of information resulting from directional surveys for wells drilled in close proximity to a lease line. If the adjacent off-lease area is leased, the data and information may be required to be shared with the adjacent lessee but not with the public. If the adjacent off-lease area is unleased, the data and information obtained from the unleased land would be available to the public.

The determination of producibility pursuant to proposed § 250.11 would continue to be available to the public without the consent of the lessee. Such determinations are made not by the lessees but by MMS. This proposed restatement of a portion of OCS Order No. 12 is not intended to effect a substantive change.

Proposed § 250.19, Accident reports, would replace, retitle, and simplify § 250.45. The proposal would clarify the present requirements for reporting blowouts and explosions as well as the official to whom the report would be submitted. In addition, the current § 250.45(b) with respect to the reporting of "unusual conditions" is proposed to be deleted as a vague, unnecessary, and burdensome requirement. The proposal would also clarify that the owner of an easement, right-of-way, or permit would also be required to report accidents occurring in these events. Requirements for written reports are proposed to be eliminated. The MMS will obtain copies of accident reports from the U.S. Coast Guard in those instances where reporting is required under Coast Guard rules.

Proposed § 250.20, Safe and workmanlike operations, would replace § 250.46 without change.

Proposed § 250.21, Access to facilities, would incorporate the provisions of current § 250.19. This section, rather than addressing only lessees, has been expanded to include right-of-way holders, easement holders, and permit holders.

Current § 250.92, Sundry notices and reports on wells, is proposed to be deleted. Reporting requirements including Form No. MMS-331, Sundry Notices and Reports on Wells, would be reflected in the sections relating to drilling, production, and site abandonment, well-completion, or well-workover operations, as appropriate.

Current § 250.93, Monthly report of operations, is proposed to be deleted. The production information for each well now provided by this report will be reported to Royalty Management under the production Accounting and Auditing System.

Current § 250.96, Special forms or reports, is proposed to be deleted as unnecessary.

Subpart B—Exploration and Development and Production Plans

The current rules at § 250.17, Well spacing, and § 250.34, Exploration, development, and production activities, are proposed for revision as Subpart B, Exploration and Development and Production Plans, to combine reporting requirements, eliminate redundant and unnecessary requirements, eliminate descriptions of certain procedures internal to MMS, incorporate some provisions from the current OCS Orders and NTL's and simplify format and language.

The requirements of the Exploration Plan or the Development and Production Plan and the attendant ER's will be combined to strengthen the presentation and eliminate the submittal of redundant information. Information need not be repeated in separate sections of the document. Lessees would be encouraged to organize the document to facilitate the identification of each item of information required by this subpart. Including information in the plans in the same sequence in which it is required in this subpart would greatly

increase MMS's ability to promptly review and process such plans.

The procedures would continue to require the submittal of the environmental information presently included in ER's. Such information alerts the lessee of the possible environmental effects of the proposed actions so that any necessary mitigating measures can be included in the plan and provided to the affected States for CZM consistency determinations (pursuant to 15 CFR 930.77(a)) and used by MMS to expeditiously complete its responsibilities under the National Environmental Policy Act (NEPA). The Regional Director would be able to authorize lessees to jointly submit environmental information for leases in the same planning area that are covered by more than one Exploration Plan but have similar environmental conditions. This could significantly reduce the duplication prevalent in Exploration Plans, particularly in frontier areas.

After operational and environmental data have been gathered for an offshore area, the Regional Director could, after consultation with the affected States, limit the amount of information required to be submitted. This authority would permit the Regional Director to limit the content of plans to a minimum of information necessary for the MMS and the affected States to conduct their reviews. Such reductions should result in savings for lessees submitting plans describing proposed activities in established offshore areas and should facilitate MMS and coastal State review. This authority would be in addition to the current exemption from the requirement to submit Development and Production Plans for leases in the western Gulf of Mexico and would be applicable to all offshore areas.

The definition of preliminary activities is proposed to be modified to include seabed penetrations of up to 500 feet. The present rule is limited to 300 feet of unconsolidated formations or 50 feet of consolidated formations. This has proven confusing for both the MMS and the lessees. This change would simplify the requirement. The section would also be reformatted to clarify that the definition applies to activities conducted prior to submittal of both Exploration Plans and Development and Production Plans. The present language is unclear as to the status of such activities as soil borings conducted prior to development. As a result, lessees often file special plans to obtain approval for such activities. The 500-foot limit would be deep enough to exclude most soil borings from the Plan-approval process but shallow enough to assure that significant hydrocarbon accumulations would not be encountered (or would have been previously identified). Under certain unusual logistical and environmental problems, particularly related to arctic operations, the Regional Supervisor may require certain information to make a determination that preliminary activities excluded from plans would not result in any significant adverse environmental effects.

A specific deadline for submittal of an Exploration Plan would be deleted. Lessees have often submitted plans prematurely to fulfill the regulatory filing requirements. This has resulted in unnecessary efforts by lessees, MMS, affected States, and other reviewers. Lessees are aware of the statutory requirements that must be met to keep a lease. It would be the lessee's responsibility to submit a plan in sufficient time for approval of those activities necessary to keep a lease.

Unless considered necessary for explanatory purposes or to assure compliance with the Act, language related to some internal MMS procedures would be deleted. Such language is not necessary and has made it difficult to locate and excerpt those portions that constitute lessee requirements.

In Exploration Plans, lessees would be required to describe the type of mobile drilling unit, platform, or artificial island to be used rather than provide a description of the specific rig. State CZM consistency review and other considerations often dictate that lessees submit Exploration Plans well in advance of the proposed drilling operation. As it may be imprudent, if not impossible to commit to a specific rig contract at such an early date, lessees often describe rigs which may or may not be used, and they must later revise the plan to provide information on the actual rig. Under the proposed language, the lessee would need only to indicate the type of unit (e.g., jack-up or semisubmersible) and describe the characteristics of such a unit. Alternatively, the lessee could reference information already on file for a similar unit. The unit itself could then be specified in the APD. If there is no difference in the type or performance capabilities of the unit, the plan would not need to be revised.

Lessees would be required to submit only that information related to the proposed changes to modify or revise a plan. Under the present language, lessees often resubmitted the entire plan. This has resulted in unnecessary duplication of effort for industry and Government.

Lessees would no longer be required to identify those portions of plans considered to be proprietary. The release of data and information submitted with plans would be restricted in accordance with the provisions of § 250.18. Lessees would continue to be free to identify that data which they consider exempt from disclosure; however, such determinations would neither be required nor binding. Lessees would no longer be required to fully describe their Oil Spill Contingency Plans (OSCP) in their plans. Since the OSCP's are already provided to the USCG and the affected States, descriptions of the OSCP in the plans are an unnecessary duplication. The OSCP document itself or reference to an approved or previously submitted OSCP (including regional OSCP's covering leases where activity is proposed) would meet the requirement as part of the Exploration Plan or Development and Production Plan.

The requirement to submit a general statement of development and production intentions in current § 250.34–1(a)(4) with an Exploration Plan is proposed to be deleted. Lessees intending to develop a lease must submit a Development and Production Plan. Indications of such intentions are often given to MMS and the affected States prior to submission of a plan. Therefore, there has been sufficient notice of development and production intentions without requiring a general statement of intentions.

Some of the information requirements related to the effects of onshore activities are proposed to be limited to new or significantly expanded onshore facilities. The number of new employees and families to be added to the local population, increased energy and resource needs, contractors to be employed, and similar information are very important for new or expanded bases in isolated locations. Such information is of little value for established bases in the Gulf of Mexico. In making the determination regarding such facilities, the Regional Supervisor would consider local concerns and regional differences. In some cases, small incremental increases might be significant. For example, although onshore facilities to support Pacific offshore operations are well established, it would still be necessary to provide estimates on increased air emissions from new onshore activities because of regional air quality problems. The MMS and the Office of Management and

Budget (OMB) request comments concerning the need for a provision to enable States to collect information directly from lessees when such information is collected solely for the States.

A requirement is proposed to be added to Development and Production Plans to describe the technology and reservoir engineering practices intended to increase the ultimate recovery of oil and gas. The consideration of secondary and tertiary recovery methods in the early stages of lease development can have a significant effect on the feasibility of greater oil and gas recovery. This is becoming more and more important as the use of enhanced oil recovery methods increases and the economic and social value of these activities grow.

Information requirements would be incorporated into this subpart from the OCS Orders and various NTL's. This incorporation would not result in any new information requirements but would consolidate them in one place and eliminate duplication.

Current §§ 250.34–1(j)(2) and 250.34–2(k)(2) excluding revised plans which could result in certain significant changes from further CZM review would be deleted. We propose that such significant changes should not be excluded from CZM review. Furthermore, as no revised plan with significant changes has ever been excluded, we do not anticipate any additional cost or delay as a result of this deletion.

The time provided for the Regional Supervisor to transmit Development and Production Plans to affected States would be reduced from 10 days to 5 days. This would be sufficient time to prepare such documents for transmittal and would help expedite the review process.

Requirements currently in § 250.17, Well spacing, and OCS Order No. 11, Oil and Gas Production Rates, Prevention of Waste, and Protection of Correlative Rights, related to well location and spacing would be incorporated into this subpart because these requirements relate to operational planning decisions. If a proposed well could intersect an offset property, the Regional Supervisor would be authorized to require additional directional control measures to assure that the well does not deviate into the adjacent lease. The Regional Supervisor could also release directional survey data to the adjacent lessee but not to the public. In the case of drainage wells, unitization may be required. If a well deviated into an unleased tract, those portions of the data obtained from beneath the unleased tract would be subject to public release. These measures would be necessary to protect the correlative rights of offset lessees from improper acquisition of geologic data or from hydrocarbon drainage. This would not be a significant change as these measures have frequently been required in the past.

Subpart C—Pollution Prevention and Control

The current OCS Order No. 7, Pollution Prevention and Control, and §§ 250.43, Pollution and waste disposal, and 250.57, Air quality, would be combined into Subpart C, Pollution Prevention and Control. The requirements of § 250.54, Marking of equipment, and parts of OCS Order No. 1, Identification of Wells, Platforms, Structures, Mobile Drilling Units, and Subsea Objects, as they relate to marking of equipment, are proposed to be merged in Subpart C as well. Only slight editorial changes and some reformatting are proposed to be made to current § 250.43 for clarification and simplification. The following changes to current requirements are proposed:

Requirements for environmental information on drilling mud components would be covered in proposed Subpart B, Exploration and Development and Production Plans. Under the current requirements, such information on drilling fluid components is often redundant in the plan and the APD. Environmental information would only continue to be required with the Exploration Plan and Development and Production Plans while information on mud weights, reserve barite supplies, and other well-control considerations would be submitted in the APD eliminating any duplication.

Under proposed Subpart C, the District Supervisor would have the authority to restrict the rate of drilling fluid discharges, prescribe alternate discharge methods, and restrict the use of certain components. Such requirements are generally part of the Environmental Protection Agency's National Pollution Discharge Elimination System process, but under special circumstances, it might be necessary for the District Supervisor to exercise such authority.

As a result of studies by the National Research Council, *Drilling Discharges in the Marine Environment*, in particular, the use of petroleum-based additives is proposed to be prohibited without prior approval by the District Supervisor. The District Supervisor would approve the use of petroleum-based additives only to correct serious operational problems and only after alternative corrective actions have failed. Muds containing such additives would have to be collected for disposal at approved onshore sites. The majority of training requirements for the prevention of pollution relate to drilling and production procedures and are addressed in Subparts D, Drilling Operations, and H, Production Safety Systems. However, training of the designated oil spill response operating team and drills to demonstrate familiarization with pollution-control equipment and procedures is included in Subpart C, (§ 250.43). This team constitutes the key personnel involved in containing and removing an oil spill to minimize the environmental impact. The MMS will continue to monitor pollution-prevention programs, focusing on lessee maintenance practices and operational procedures. Lessees and contractors with ineffective pollution-prevention programs would be identified and dealt with under our enforcement program.

The pollution-reporting provisions are proposed to be changed as follows:

a. All oil spills would be required to be reported to MMS, but only spills of 1 barrel or more would require confirmation in writing.

b. Spill-size limits would be defined in barrels instead of cubic meters. As offshore separation and storage equipment is rated in barrels, personnel could better judge amounts in barrels. The level of detailed information would continue to be dependent on the size of the spill.

c. Certain OSCP requirements would be revised to include the specific size of spill that must be planned for and the expected response times. These proposed requirements are based on agreements with the USCG.

No substantive changes are being proposed to the rules concerning air quality (§ 250.57). On June 10, 1983, we proposed a distance-from-shore exemption to these rules (48 FR 26837). The comments received fell into two distinct categories—one feeling the exemption was too broad and the other feeling it was too narrow. Both objected to the background data used to calculate the proposed exemption. Therefore, no changes will be proposed until the results of an air quality modeling study are received.

Subpart D—Drilling Operations

The current rules which pertain to drilling operations at 30 CFR 250.36, 250.38, 250.39, 250.40, 250.41, and 250.92; Alaska, Atlantic, Gulf of Mexico, and Pacific OCS Regions' Orders No. 2; and some provisions from NTL's and from Conditions of Approval are proposed to

be merged in Subpart D, §§ 250.50 through 250.68. Unnecessary, excessive, and redundant requirements are removed; incorporation by reference of numerous API and other institutional standards are eliminated; and the requirements are restated as a unified and concise body of rules.

Eight API documents which address casing are removed. Sufficient supervision over the quality and design of casing already exist under the requirements for the APD.

The National Electrical Code (NEC) and the IEEE Recommended Practice for Electric Installation on Shipboard would be removed. The API RP 500B, Classification of Areas for Electrical Installations at Drilling Rigs and Production Facilities on Land and on Marine Fixed and Mobile Platforms, is retained. Those portions of API RP 14F for Design and Installation of Electrical Systems for Offshore Production Platforms, which pertain to drilling rigs, are newly introduced as proposed requirements. The NEC and IEEE documents now incorporated by reference are bulky, vague as to which of their sections are applicable, and difficult to administer for compliance. The API RP 500B and API RP 14F documents cover the essentials for minimum standards of safety without imposing excessive burdens.

The API RP T–1, Orientation Program for Personnel Going Offshore for the First Time, and API Bul. T–5, Employee Motivation Programs for Safety and Prevention of Pollution in Offshore Operations, are proposed for removal These documents do not lend themselves to appropriate regulatory requirements.

Sections 3–A and 3–B and subsection 5.B.13 in API RP 53, Blowout Prevention Equipment Systems, which address choke manifolds, closing units, and subsea control pods, are proposed to be replaced with more performance oriented standards, eliminating unnecessary requirements.

All of API RP 13B, Standard Procedure for Field Testing Drilling Fluids, is proposed to be replaced with a requirement that drilling fluids be tested in accordance with generally accepted industry practices. The intent is to eliminate unnecessarily specific and detailed procedures. Testing procedures have not proven to be a source of problems, and generally accepted industry practices are sufficiently ascertainable.

The National Fire Protection Association (NFPA) 51B, Cutting and Welding Processes 1977, is proposed to be removed. Proposed § 250.52 would provide the essential precautions and protective measures to be taken. The NFPA Standard is considered redundant.

The existing MMS Standard, MMSS–OCS–1, Safety Requirements for Drilling Operations in a Hydrogen Sulfide Environment, incorporates 10 documents by reference. All of these are proposed to be deleted except the ANSI Z88.2–1980, Practices for Respiratory Protection. The documents proposed to be removed are considered out-of-date, nonessential, and/or redundant to the H_2S rules proposed at § 250.67. The proposed rules would incorporate by reference the National Association of Corrosion Engineers (NACE) Standard MR–01–75, Material Requirement, Sulfide Stress Cracking Resistant Metallic Material for Oil Field Equipment. The proper selection of metals for use in well-control equipment in an H_2S environment is crucial. The NACE Standard, developed with the participation of the petroleum industry, is considered to be an appropriate requirement.

Proposed MMS rules require that certain H_2S personnel protection precautions, such as the installation of monitors, take place when drilling is initiated. These provisions differ from Occupational Safety and Health Administration (OSHA) requirements in that OSHA rules apply when within 1,000 feet of a hydrocarbon bearing zone. Installation of this equipment when drilling reaches a certain depth, as is required by OSHA, is less practical for operations at locations which are offshore and sometimes remote. The proposed rules require that H_2S monitors and detectors be calibrated daily when drilling approaches a potential H_2S-bearing zone and every 8 hours when in an H_2S environment. The MMS welcomes comments on the potential cost savings associated with allowing installation of the H_2S detection and monitoring equipment to take place when drilling reaches a prescribed distance from a potential H_2S-bearing zone. In addition, MMS welcomes comments concerning the proposed frequency of calibration of H_2S monitors. Is the proposed frequency both necessary and sufficient to ensure the accuracy of H_2S monitors?

Statistics from the Gulf of Mexico OCS Region indicate that about one-third of all fires have been caused by engines. Nearly one-half of these engine caused fires have resulted from diesel engine "runaway" when hydrocarbons enter the air intake of the engine. To mitigate this problem, the proposed rules require that diesel engine air intakes be equipped with an automatic-shutdown device. The requirement concerning diesel engine "runaway" are contained in subparts relating to drilling, well-completions, well-workovers, and production.

The MMS surveys show that the preponderance of drilling rigs are now equipped with a crown-block safety device. The proposed rules require that this device be installed on all drilling rigs. We believe the device has proven its value in practice. The requirement for a crown-block safety device is contained in subparts relating to drilling, well-completions, and well-workovers.

Lessees are presently required by OCS Order No. 2, as supplemented by NTL's for each Region, to conduct geophysical surveys to identify surface or near-surface geologic conditions to be considered in a proposed drilling program.

The proposed rule incorporates such a requirement. However, for sites where predrilling surveys have previously been conducted or which are otherwise well-defined geologically, no surveys will be required. The significant inter- and intra-regional differences in data availability, water depths, seafloor gradients, surface sediments, seismicity, ice conditions, and other natural factors preclude one set of national site-survey requirements. Further, the rapid advances in site-survey technology necessitate continuous updates in the specifications. Therefore, the lessee is asked to submit a survey strategy prior to beginning the field program. If the District Supervisor concurs that the strategy is sufficient to identify potential geologic and manmade constraints, the lessee may proceed with the survey.

This flexibility allows the lessee to determine a survey program independent of rigid grid and instrumentation requirements. We believe prior approval of the survey strategy by MMS is necessary to prevent costly disagreements and possible resurveys after the data has been gathered. However, lessees will be given full opportunity to demonstrate the viability of their strategy. With this approach, the MMS believes lessees will have the incentive to tailor surveys to the region, site, and operation.

The proposed rule articulates that a magnetometer survey and/or soil borings may be required in areas where the competency of the ocean floor to support the load of a jack-up rig is in doubt. The purpose is to add clarity and specificity to existing rules.

The present requirements in OCS Order No. 2 for the filing of a Critical Operations and Curtailment Plan are proposed to be removed. This requirement has resulted in the

preparation of lists of examples of critical operations which are often arbitrary and conjectural. Operators have been pressed into making tentative statements about future courses of action under a hypothetical set of circumstances with little relation to reality. The proposed requirements state that the design and use of unique and unproven drilling units in Alaska may require a third-party review. The purposes of the third-party review are to assure that the drilling unit is capable of operating under the environmental conditions at the site and to establish contingency plans to be followed in the event that operational limitations are reached or exceeded.

Setting-depth ranges specified in the present rules as between 500 and 1,000 feet for the conductor and between 1,500 and 4,500 feet for the surface casing are proposed to be removed. These setting-depth ranges are a source of confusion and unnecessary paper work. A properly engineered design may yield proposed setting depths outside the specified range which triggers a request for a departure. Conversely, setting depths within the specified range may be construed erroneously as prima facie evidence of proper design. Lessees routinely submit with the APD a single sheet containing plots of estimated pore pressures, estimated fracture gradients, proposed mud weights, and proposed casing points. This convention provides the information needed with a minimum of paperwork.

The requirement that the volume of excess cement be approved by the District Supervisor is proposed to be removed. This requirement for specific approval action generates paperwork which has not proven worthwhile. The lessee remains under an obligation to bring cement to the ocean floor, and excess volumes of cement are readily calculable when the geometry of the hole as drilled becomes known or estimable.

The last sentence of paragraph 3.6 in OCS Order No. 2 which reads, "The typical performance data for the particular cement mix used in the well shall be used to determine the time lapse required," is proposed to be removed. "Typical performance data" is a statistic on distribution of values and may or may not be applied properly to an individual well. The results-oriented requirements that the cement in place attain a compressive strength of 500 pounds per square inch (psi) and that inadequate cement jobs be remedied along with the cementing information contained in the APD are considered sufficient. There is no intent to change the objectives or substance of the requirement.

The OCS Order No. 2 requires that the casing be evaluated following prolonged drill-pipe rotation that could cause damage to the casing. The present wording is nondefinitive and unquantified as to the meaning of "prolonged drill pipe rotation." This gives rise to uncertainties about compliance. The proposed wording clarifies the intent by proposing that an evaluation survey be run every 30 days when certain drill-pipe operations are conducted within any casing string run to the surface. We recognize that casing wear is the result of a complex interplay of multiple variables and solicit comments you may have which would serve to further delineate, quantify, and clarify the rule.

The proposed rule revises the language in OCS Order No. 2 to specify the amount of pressure to be applied during pressure testing of the annulus between the liner top and the casing outside the liner top. We recognize that the proposed required test pressures (70 percent of the minimum internal-yield pressure of the larger casing) are a significant change from current requirements and solicit comments with respect to test pressures of a more general applicability and/or where exceptions to the rule as proposed are warranted.

The sentence in paragraph 3.5 in OCS Order No. 2 which reads, "Open-hole and slotted-liner completions are permitted when approved by the District Supervisor," is proposed to be removed as being essentially informational and, as such, unnecessary. No change in the rules is intended.

The OCS Order No. 2 requires that BOP stacks be pressure tested to the anticipated surface pressure. Lessees submit to the MMS the underlying assumptions and the calculations made in arriving at the anticipated surface pressure. Experience shows a wide divergence among lessees in the degree of conservatism in the underlying assumptions and in the methodologies used in the calculation. As such, there are significant variances among lessees in the estimates of anticipated surface pressure. Some of these variances are not explainable by differences in geology or local drilling conditions. This gives rise to requests for resubmittals and further paperwork. We propose that the required test pressure be changed from anticipated surface pressure to 70 percent of the minimum internal-yield pressure of the casing. We believe that tying the required test pressure to casing-yield pressure provides a more concrete and objective basis, is reasonable, and will reduce paperwork.

The present rules require only actuation tests on the kelly cock, inside preventer, and the drillstring safety valve. The proposed rule requires pressure tests. Pressure seals on these valves deteriorate with time and use. Defective seals are not detectable by actuation tests only.

The proposed rules require that the blind and blind-shear rams in surface and subsea BOP stacks be actuated at least once every 7 days. Since the weekly pressure test is not required for blind and blind-shear rams, we believe it is important that these rams be actuated weekly to assure that control communication exists and that the rams will move. Full closing pressure on these rams is not required. Requirements relating to variable-bore pipe rams have been restated to eliminate needless complexity. The proposed language is more concise. There is no intent to alter the substance of the requirement.

The frequency and costly consequences of shallow-gas blowouts during drilling operations continue to be a source of serious concern to the MMS, industry, and the public. To combat this problem, requirements are proposed which focus primarily on improving diverter hardware reliability by reducing restrictions to flow and lessening causes of line parting and clogging and control instrument failure. The MMS believes that the use of diverters is important for the mitigation of damage once control of a drilling well is lost. Diverters direct well flow away from the drilling rig and allow time for personnel to evacuate the structure. From an examination of a number of diverter-related accidents and near-accidents on the OCS, it is fair to conclude that more injuries, fatalities, and platform and drilling rig losses would have occurred if diverters had not been installed. The MMS also believes that if the minimum size for diverters is increased to 12 inches, fewer losses in rigs, platforms, personnel, and wells will occur. A 12-inch line would provide for a much larger flow area and relieve pressures on the surface equipment and on shallow rock formations which may fracture under pressure and allow flow to the surface outside of the wellbore. We recognize that the proposed new line sizes and maximum number of turns may be debatable and also that the problems of shallow-gas drilling go beyond diverter hardware. Within this context, your recommendations and comments are solicited as to the appropriate design criteria and performance capabilities for a diverter

system, as well as your comments on the following issues:

1. Appropriate vent pipe internal diameter, tensile and burst strengths, resistance to erosion, and thrust-load anchoring,

2. The advisability of changing the direction of flow while diverting in response to a change in wind speed and/or direction,

3. Suitability of flexible hose versus rigid vent pipe,

4. Maximum permissible number of and minimum radius of curvature of turns in the vent line(s),

5. Valve and valve actuator types suitable for use,

6. Optimum diverter control panel instrumentation and logic,

7. Protection of diverter system hardware from damage at all times, and

8. Functional reliability inspection and testing methods as well as frequency.

Other issues of a less equipment-specific nature are as follows:

1. Is elimination or abbreviation of MMS requirements appropriate in view of the historical failure rate and the outlook for those systems. What are acceptable means of substitution for coping with shallow-gas flow once control of the well is lost?

2. On balance, would the prohibition of venting from the marine riser into the ocean water serve the best interests of safety and prevention of pollution? Under what conditions, i.e., water depths, casing setting depths, fracture pressures, anticipated composition of the flowing fluids and solids, anticipated flow rates? Would disconnection of the marine riser or the use of dump or flood valves on the marine riser be a better alternative to bringing the flow to the surface? Under what specific conditions would it be best to drill without a marine riser even though it is possible to bring returns to the surface while drilling?

3. Should the requirements for diverters be modified or exempted on the basis of drilling history within a geologic/geographical area?

4. Under what conditions does the drilling of pilot holes provide worthwhile safety benefits?

5. What are the estimated costs and benefits of retrofitting existing rigs and the incremental costs of fitting future rigs as a result of the proposed requirements and as a result of any alternate sets of design criteria and equipment specifications that you may recommend?

In determining its policy on the design and use of diverters, MMS will consider the comments and suggestions in response to the foregoing questions and its own continuing examination of the question, including results of a study being conducted by Louisiana State University under contract with MMS.

Note.—The MMS published an OCS report entitled, Shallow Gas Events, MMS 84-0029, dated July 1984. Copies of this report may be obtained by contacting the Gulf of Mexico OCS Region, Minerals Management Service, Imperial Office Building, 3301 N. Causeway Boulevard, P.O. Box 7944, Metairie, Louisiana 70010.

The OCS Order No. 2 is proposed to be revised to remove the requirement for a tabulation of well depth and minimum mud quantities and the requirement that the District Supervisor approve plans to replenish mud supplies in an emergency. This paperwork and specific approval action by the District Supervisor has proven redundant and unnecessary. Information on availability of resupplies is obtainable from the Exploration Plan, Development and Production Plan, and from the APD. Alaska OCS Order No. 2 contains a requirement that enclosed mud-handling areas be equipped with gas detection, negative pressure, and ventilation equipment. Drilling units working in cold climates winterize (enclose) the mud rooms for the protection of personnel and materials. Gas emanating from gas-cut mud presents a fire and explosion hazard. The proposed rule extends the requirement to all OCS Regions. The intent is to include those drilling units which travel from cold to mild climates or are already located in a mild climate and which elect to maintain enclosed, unventilated mud rooms.

For clarity, a definition of field drilling rules in terms of their purpose and relationship to other drilling rules has been added. Further clarification as to the basis on which a lessee may apply for or the District Supervisor may require establishment of field drilling rules has been added. There is no intent to change the substance of this requirement.

The phrases "As approved by," "As required by" and "As prescribed by the District Supervisor" or "Regional Supervisor," appear without qualification numerous times throughout the existing drilling regulations and OCS Order No. 2. The purpose and condition on which the District Supervisor or Regional Supervisor require specific approval actions and the bases for such actions have been added.

Information collection and recordkeeping requirements are widely scattered in the present rules. The proposed rules consolidate and separate them from the safety requirements.

The proposed rules revise the existing MMS Standard, MMSS–OCS–1, Safety Requirements for Drilling Operations in a Hydrogen Sulfide Environment, which are currently applicable only to drilling operations, to include well-completion, well-workover, and production operations. The presence or potential presence of H_2S poses a hazard in these operations as it does in drilling. The MMS regulates H_2S safety during well-completion, well-workover, and production operations by requiring lessees to submit an H_2S Contingency Plan for approval in the Exploration Plan, Development and Production Plan, and the APD. Experience with this procedure shows that uncertainties and inefficiencies exist because there are no clear guidelines for the lessees' use in preparing the H_2S Contingency Plan. As a result, unnecessary paperwork is generated. The proposed rules provide guidelines and are intended to reduce paperwork. We believe that lessees are essentially in compliance with the proposed rules and that they impose no substantive new burdens.

Fully trained, technically competent personnel are essential for the safe conduct of offshore oil and gas operations. The MMS recognizes a responsibility under the Act to take appropriate measures toward that end. Although our responsibility is clear, there is question as to the measures which may be appropriate.

The MMS's objectives are to assure that the personnel employed by the lessees are trained and qualified, to assure that the standards for these qualifications are appropriate to ensure safety and environmental protection, and to reduce the amount of paperwork to be submitted by the lessee which MMS must review and upon which they must act.

As we reexamine our training requirements and programs, we would appreciate the advice and recommendations of the regulated industry, States, public interest groups, and the public as to the following:

General

1. How can MMS best assure that personnel engaged in oil and gas operations on the OCS are adequately trained?

2. To what extent, if any, should the training be provided by (a) the Federal Government, (b) OCS lessees, (c) State educational and training institutions, or (d) private training schools?

3. How should MMS assure itself that the training provided is adequate.

4. Should performance standards for job categories be established by MMS, by industry, or by others.

5. Should MMS prescribe training criteria.

6. To what extent, if any, should on-the-job training be a part of MMS training requirements?

7. Should MMS training requirements call for periodic retraining or "refresher" training?

8. What is the appropriate training role for lessees, for oil and gas industry trade associations, and for others?

9. Have the current MMS training requirements provided satisfactory results?

10. Should MMS adopt a training program different from its current program? If so, what should it be, how would it be an improvement over the current program, and what are the cost implications of any recommended changes?

11. What are practical alternatives to the present MMS program for school certification, periodic recertification, and on-site evaluations that would maintain the standards of training?

12. Might such alternatives include an approach in which the MMS would require access to appropriate records at the field site and make periodic on-site evaluations of training facilities to determine compliance and take such corrective actions as warranted?

MMSS-OCS-T 1, Training and Qualifications of Personnel in Well-Control Equipment and Techniques for Drilling on Offshore Locations

The MMS promulgated in 1977 and revised in 1982 a training standard for certain categories of personnel engaged in offshore drilling operations. The currently effective standard is published at § 250.68 in these proposed rules. While not proposing specific changes in its existing drilling training requirements at this time, MMS is searching for ways to improve the program, reduce paperwork, and increase cost effectiveness.

We believe that the current MMS training program is basically sound in concept, except as follows:

1. How can the present program be improved, administrative procedures be simplified, and costs be reduced?

2. Is the curriculum too broad or too detailed?

3. Are there too many or too few job classifications?

4. Are there sufficient distinctions as to training requirements for each classification? What should the classifications be and how should the training requirements differ for each classification?

5. Would refresher-course training less often than once a year suffice? Should refresher-course training be required more frequently than once a year for certain activities? Should refresher-course training be placed on a graduated scale so that the longer a person is active on the job, the farther apart the required refresher training?

6. Should "hands-on" training be expanded?

7. Should MMS oversight of certified training institutions be expanded or reduced?

Training and Qualifications for Personnel in Well-Control Equipment and Techniques for Well-Completion and Workover Operations on Offshore Locations

The MMS (then the U.S. Geological Survey) published in the **Federal Register**, on February 8, 1979 (44 FR 8029), a Notice of Intent to develop a training standard for personnel engaged in well-completion and workover operations. In general, the comments received in 1979 (1) suggest that the standard follow the basic format used in GSS-OCS-T 1 (MMSS-OCS-T 1), and (2) urge the participation of industry in the development of the standard and its implementation.

In light of the concerns about training for these personnel, MMS is considering the develoment and adoption of training standards applicable to well-completion and workover operations. We are especially interested in your response to the following:

1. How should MMS establish training standards for well-completion and workover operations, and what should these standards include?

2. What are appropriate job classifications for such standards?

3. What should be the relationship between drilling and well-completion and workover standards and training?

4. Should refresher courses be required, and if so, how often?

5. What should be the implementation schedule for such a training requirement?

Training and Qualifications of Personnel in Well- and Process-Control Equipment and Techniques for Production Operations on Offshore Locations

Paragraph 5.7 in currently effective OCS Order No. 5 requires that personnel engaged in installing, inspecting, testing, and maintaining safety devices be qualified under a program as recommended by API RP T-2 for Qualification Programs for Offshore Production Personnel Who Work with Anti-Pollution Safety Devices. Administratively, lessees submit an application to MMS for approval which describes the training to be conducted and the methods the lessee will utilize. After approval, lessees are required to maintain records of all qualified personnel in the field area. Experience with the program shows that uncertainty and inefficiencies exist primarily because there are no clear, written guidelines as to which employees should receive training and the lack of definition of a particular standard curriculum to match each particular job classification's duties and responsibilities. To resolve this problem, MMS is considering development of a training standard for personnel engaged in production operations.

The format of such a standard would be similar to that of MMSS-0CS-T 1 and would attempt to include the strengths and correct the deficiencies of API RP T-2 in an MMS document.

In addition to any general comments you may have, we would like your response to the following:

1. To strengthen the standard, should job classifications be added, and if so, which ones?

2. What training should be specified for each job classification?

3. Should refresher courses be required, and if so, how often and what should be their content?

4. How should MMS properly recognize individuals trained under currently approved programs?

5. What is an appropriate timetable for development and implementation of such a training requirement?

Subpart E—Well-Completion Operations and

Subpart F—Well-Workover Operations

The proposed revisions to the requirements in Subpart E, Well-Completion Operations, and Subpart F, Well-Workover Operations, presently contained in § 250.92 and OCS Order No. 6 regarding well-completion and well-workover operations, are intended to reflect experience in the field and advances in available technology. Well-completion and well-workover operations are a significant portion of oil and gas operations and involve a number of critical and dangerous tasks. A significant number of the blowouts on the OCS have occurred during well-completion and well-workover operations. However, there are few MMS requirements governing those operations. Despite advances in technology and an accumulation of operational experience, current requirements have not been revised in more than a decade. Considerations of good practice prompted most lessees to guide their well-completion and well-workover operations on the basis of

other regulatory provisions such as current OCS Order No. 2, Drilling Operations, and Order No. 5, Production Safety Systems. We believe that both lessees and the MMS should have a clear understanding of the minimum requirements and safeguards needed for well-completion and well-workover operations. We are proposing requirements written specifically for such operations.

On July 27, 1983, MMS published in the **Federal Register** (48 FR 34063) a proposed revision to current OCS Order No. 6 concerning well completion and well-workover operations. Numerous comments were received in response to the Notice, and many oral comments were presented at a public meeting held on September 13, 1983.

Many commenters suggested that the proposed requirements were too detailed and should be replaced by "performance type" rules. In this proposal, we have attempted to define requirements in terms of performance to the extent we believe practicable. Specific engineering and design requirements are associated with those proposed performance standards. However, lessees would be free to use approved alternatives to those specific requirements if the performance standard would be met. (See discussion of § 250.3.)

Some commenters suggested that specific requirements for subsea completions and workovers should not be included since the technology is undergoing rapid development. It was suggested that specific requirements might stifle technological and equipment development. Because it is our intention to promote safety while encouraging innovation and improved technology, we are proposing for the foreseeable future that the District Supervisor approve subsea completions on a case-by-case basis (§§ 250.75 and 250.95).

Several commenters felt that the 1983 proposed rules involved too many detailed recordkeeping and reporting requirements. We have reexamined those requirements and are now proposing minimized recordkeeping and reporting burden on lessees.

Several commenters objected to the incorporation by reference of lengthy documents without identifying specific applicable sections. We agree with those comments. Commenters also objected to the incorporation by reference of documents developed by industry as recommended practices. We recognize that some recommended practices developed by industry are not suitable as Federal requirements, and those are not included in the proposal.

Several commenters felt that a number of operations should be considered routine, obviating the need for notice and approval. The MMS has reviewed the hazards associated with various types of well-workover operations, and we are proposing that a number of additional operations be considered routine and need not be preceded by notice, MMS approval, or after-the-fact reporting (§ 250.41). However, these routine operations shall be conducted in accordance with all other appropriate requirements of the regulations.

Some commenters felt that the earlier proposed requirements for surface safety valves (SSV) were too detailed and required too much recordkeeping. We are now proposing that the SSV requirements for well-completion and well-workover operations parallel those applicable to production operations.

Based on field experience, the responses from the public to our 1983 proposal concerning well-completion and well-workover operations, and our further analysis of the issues, a new set of requirements in a different structure are now being proposed. The requirements have been organized into two subparts, i.e., well-completion operations, and well-workover operations. Although this organization of the regulations results in some redundancy, we believe this will facilitate use of the regulations in field operations. However, for purposes of discussing the requirements, the following comments in many cases address both subparts.

A number of provisions included in our 1983 proposal are not included in this proposed rulemaking. We agree with the comments and suggestions of many of the commenters and have deleted a number of those detailed requirements, i.e., (1) storage and conveyance of flammable liquids, (2) certain pumping and testing safeguards, (3) requirements for drill-stem testing, and (4) verification of valve closure for wireline operations. The proposed general performance requirements that are discussed later would require safe operations with regard to these items. Possible future requirements for well-completion and well-workover training that are discussed in Subpart D, Drilling Operations, would provide additional safeguards.

Performance standards have been proposed to more clearly identify the regulatory objective of the subparts regarding well-completion and well-workover operations and subordinate sections, e.g., §§ 250.70, 250.85, 250.86, 250.88, 250.90, 250.105, 250.106, and 250.108. Such performance standards focus on the objective to be attained. While the performance standards do not specify the means to be used, they require that the means shall be compatible to whatever conditions or circumstances may exist, e.g., subfreezing conditions, storms or waves, and age of equipment. They further require that the equipment is maintained and is operable, that the crews are adequately trained, and that operating and maintenance tools and supplies are readily available so that the objective can be attained. We believe these performance standards will better accomplish the regulatory purpose than a large number of detailed requirements.

Sections 250.71 and 250.91 define well-completion operations and well-workover operations. The definition of well-completion operations, in part, distinguishes those operations from drilling operations.

Section 250.91 also distinguishes between routine and nonroutine well-workover operations.

Routine operations would be excluded from the advance notice and approval and reporting requirements associated with other operations. They are not excluded from compliance with other requirements. This would reduce recordkeeping and reporting requirements.

Requirements are proposed in §§ 250.72 and 250.92 concerning movement of rigs and equipment onto wells for well-completion and well-workover operations. We believe that the possibility of accidents resulting from such movements justify precautions and redundant securing of the wells.

A requirement is proposed in §§ 250.73 and 250.93 that an Emergency Shutdown (ESD) System to provide a rapid means of shutting in an entire platform in the event of an emergency be required when well-completion or well-workover operations are conducted on a platform. We believe an ESD System is a prudent and necessary system to minimize the threat of pollution during well-completion and well-workover operations. In the event of an emergency, the ESD would reduce the risk to wells, personnel, and production equipment on the platform.

A requirement has been proposed in §§ 250.74 and 250.94 to require special precautions when a well-completion or well-workover operation is conducted on a well in zones known to contain H_2S or in zones where the presence of H_2S is unknown. These zones and necessary requirements are spelled out in § 250.67. The danger of H_2S to the crews and equipment is such that we believe

special requirements are appropriate during well-completion and well-workover operations.

It is proposed in §§ 250.75 and 250.95 that subsea well-completion and well-workover operations be subject to approval by the District Supervisor on a case-by-case basis. Our experience is yet insufficient to set out standard requirements as was proposed in the 1983 Notice of Proposed Rulemaking concerning revision of current OCS Order No. 6. A case-by-case review and approval at this time would provide necessary flexibility and assurance of safety.

A requirement for crew instructions is proposed in §§ 250.76 and 250.96. We believe properly informed and trained personnel are necessary for assuring safe well-completion and well-workover operations, and we are proposing that instruction of the involved personnel should occur before the operations begin. Thereafter, the timing and format of subsequent instruction, e.g., periodic meetings, would be best left to the lessee's judgment. Recordkeeping burdens would be reduced from the 1983 proposal to what we believe would be the minimum necessary to monitor the occurrence of these important meetings.

It is proposed in §§ 250.77, 250.78, 250.97 and 250.98 that well-completion and well-workover operations adhere to appropriate requirements of welding and burning practices and procedures (§ 250.52) and electrical requirements (§ 250.53). We believe these requirements to be prudent. They will contribute to the safety of operations, and they should be followed in well-completion and well-workover operations as well as in the drilling and production phases.

Requirements have been proposed in §§ 250.79 and 250.99 for determining the adequacy of well-completion or well-workover equipment and for determining the structural capacity of fixed platforms before moving well-completion or well-workover equipment onto them. The MMS is concerned with the hazard that may be involved in using inadequately designed well-completion and well-workover equipment and in placing additional stresses on old platforms. These proposed requirements will not entail a costly analysis but rather an analysis of the well-completion or well-workover equipment and a review of additional stresses which may be added to the platform during the well-completion or well-workover operations and of any changes in the capacity of the platform due to factors such as hurricanes, earthquakes, or workboat collisions.

It is proposed in §§ 250.80 and 250.100 to require an automatic shut-down device on all diesel engines used in well-completion and well-workover operations to prevent engine runaways. This requirement is similar to that proposed in Subpart D, Drilling Operations (§ 250.51), and Subpart H, Production Safety Systems (§ 250.123), and is proposed for the same reasons.

A requirement has been proposed in §§ 250.81 and 250.101 for a safety device to prevent the traveling block from striking the crown block. Accidents have occurred in the past from this event, and we believe precautions are warranted. The specific requirement that is now proposed has been modified to reflect comments received on our 1983 proposal.

Sections 250.82 and 250.102 regarding simultaneous operations provide the linkage in these subparts on well-completion and well-workover operations with the current production operation phase requirements proposed in § 250.123 requiring a plan for simultaneous operations.

The authority is proposed in §§ 250.83 and 250.103 to establish special field rules for well-completion and well-workover operations when field conditions indicate that a departure from the requirements of these subparts is appropriate. We believe such a convention provides operational flexibility to meet real-world conditions, eases administration for the lessee and MMS, and assures safety. A requirement is proposed in § 250.84 that all well-completions must be approved before those operations are commenced. The completion of a well is such a significant step in the lease development in terms of safety and resource management that we believe MMS's review and approval of the proposal is warranted. We propose that the review and approval of the completion can be handled on one of two forms at different times. In those cases when the proposed completion can be foreseen at the time the APD (Form MMS–331C) is submitted, as would be the case with many development wells, the APD can include the completion proposal. When completion is planned some time after the APD is submitted, when the drilling rig is moved off the hole and a well-completion rig is moved on, or when conditions have significantly changed from the completion proposed on the APD, the well-completion proposal and approval shall be handled on a Form MMS–331, Sundry Notices and Reports on Wells. We believe this use of forms will accomplish the desired approval step consistent with the status of knowledge in the field and minimal changes in the use of familiar forms.

It is also proposed that Form MMS–331 shall be submitted within 30 days of a well completion to report the "as built situation," instead of a second submission of Form MMS–330, Well Completion and Recompletion Report and Log. This latter report is frequently submitted at the end of the actual drilling and before completion begins. We believe it is redundant to have Form MMS–330 submitted again following actual completion when the needed information can be submitted on Form MMS–331. The regulations would provide that if Form MMS–330 had not already been submitted, it shall be submitted with the "as built" Form MMS–331 within 30 days of well completion.

A requirement for well-control fluid is proposed to be added to the subparts on well-completion operations (§ 250.85) and well-workover operations with the tree removed (§ 250.105). A good well-control fluid system and its operation are a primary mechanism for maintaining well-control during these activities. This requirement and others proposed for well-workover and well-completion operations are new rules although they reflect current practice in the OCS. We propose that this important phase of well control be addressed by well-completion and well-workover operations requirements and not through piecemeal application of requirements designed specifically for drilling operations. More is known of the expected pressures during the completion and workover operations as distinguished from the drilling operation. Accordingly, we are proposing a performance standard and only a few detailed requirements governing well-control fluids to allow the lessee to design a system to meet the needs of the particular situation.

The proposed requirements for BOP equipment and procedure requirements would be tailored to well-completion operations (§ 250.86), well-workover operations with the tree installed, and well-workover operations with the tree removed (§ 250.106). The number of blowouts which have occurred during well-completion and well-workover operations warrant the proposed inclusion of requirements addressing BOP equipment. As with well-control fluids, we are proposing a performance standard coupled with a few detailed requirements to allow the lessee to tailor a system to the circumstances. We believe this would provide needed safety with the minimum burden on the lessee.

A requirement has been proposed for BOP drills in §§ 250.87 and 250.107. We believe trained personnel are the most important means of preventing injury and loss. The proposed drills would be a key aspect of necessary training and are intended to increase the capability of personnel to deal with potential emergencies.

New requirements have been proposed in §§ 250.88 and 250.108 for wellhead equipment and tubing based on a performance standard approach to regulation. They would substitute for the requirements in current OCS Order No. 6 concerning wellhead-testing procedures. We believe that the testing requirements are unnecessarily prescriptive and are no longer appropriate. Would retention of the more prescriptive requirements be desirable? Does the performance standard approach present a welcome opportunity?

We are proposing a specific requirement for a minimum of one master valve and one SSV in the vertical run of the tree. This equipment would be required on all new wells completed after the effective date of these regulations and would be required on any previously completed wells at the time the existing tree is removed and reinstalled for a well-workover operation.

The current requirement in OCS Order No. 6 for "storm choke" is proposed to be reidentified as a part of subsurface safety equipment, inasmuch as "storm choke" is a proprietary name for a specific piece of equipment. The proposed amendment for subsurface safety equipment would require that the lessee meet the requirements which are in proposed Subpart H, Production Safety Systems.

Specific requirements for tubingless completions contained in current OCS Order No. 6 would be deleted. Tubingless completions have become relatively rare, and the existing requirements are felt to be unnecessarily prescriptive and detailed. Any proposed completion, including a tubingless one, would still have to be proposed and approved through an APD or Sundry Notices and Reports on Wells. We believe that the approval process and proposed general performance requirements would provide adequate precaution to achieve installation reliability, safety, and environmental protection.

It is proposed in § 250.109 to require the lessee to minimize leakage and to test the lubricator each time it is installed during wireline operations. These new requirements have been significantly modified as a result of comments on our 1983 proposal. We believe these proposed requirements address the most critical concerns about wireline operations and, when taken with the performance standard and other requirements of this subpart, will provide safe operations.

Subpart G—Abandonment of Wells

The requirements of current OCS Order No. 3 on plugging and abandonment of wells are proposed to be transferred to new Subpart G, Abandonment of Wells. A number of revisions of an editorial nature are proposed to be made. Under the requirements of current OCS Order No. 3, all casings, wellhead equipment, and pilings must be removed to a depth of 15 feet below the mud line to avoid conflict with other users of the seafloor. Under proposed § 250.112(i), wellhead removal and site clearance might be reduced or eliminated if the remaining material would not result in a hazard for other users of the seafloor. It is intended that this proposal would eliminate significant costs associated with site clearance when no resulting benefit can be identified.

Proposed § 250.114, Site clearance, would require the lessee to verify the clearance of the drill site by one of the prescribed methods and submit a certifying letter that the drill site had been cleared of all obstructions. The current Region-specific requirements would be deleted; the prescribed methods would apply to all Regions. An option would allow for the application of other methods.

Subpart H—Production Safety Systems

The requirements relating to production safety systems that are currently contained in OCS Order No. 5, Production Safety Systems, and 30 CFR 250.41(b) are proposed to be revised to remove unnecessary and redundant provisions and be incorporated into proposed Subpart H, Production Safety Systems.

Section 250.22 of Subpart A, General, is proposed to incorporate the requirements of Paragraph 1, *Use of Best Available and Safest Technologies (BAST)*, of current OCS Order No. 5 where applicable to all appropriate operations. This proposal takes into account the responses to comments on the proposed revision of current OCS Order No. 5 which was published in the **Federal Register** on July 25, 1983 (48 FR 33757). That Notice proposed the following:

(1) To delete the "grandfather provision" in the American National Standards Institute/American Society of Mechanical Engineers (ANSI/ASME) Safety and Pollution Prevention Equipment (SPPE) program,

(2) To delete redundant citations, and

(3) To establish operator field practice controls for equipment used in the ANSI/ASME SPPE program.

Seventeen timely comments were received on the proposal. The **Federal Register** Notice was not clearly worded with respect to the "grandfather provision." It was possible to interpret the definition of "replaced" in two different fashions. One interpretation, the replacement of all non-SPPE valves with SPPE valves, was very costly, and the other interpretation, the replacement of valves being remanufactured, was not. Nine of the commenters understood the proposal to require the immediate replacement of all non-SPPE valves with SPPE valves and felt that the revised definition was too costly. Another five commenters felt that the definition needed to be clarified. As a result of the comments received, the definition of "replaced" is proposed to be revised as indicated in §§ 250.121(b) and 250.122(c). This revision would eliminate an ambiguous statement that could have resulted in significant expense without a corresponding gain in safety and pollution prevention. It should be noted that in the 4 years that the SPPE program has been in effect, approximately one-third of the safety valves in use offshore are now SPPE valves.

Section 250.126 is proposed to incorporate the substance of current Paragraph 2, *Quality Assurance and Performance of Safety and Pollution-Prevention Equipment*, of OCS Order No. 5. The ANSI/ASME Standard, Accreditation of Testing Laboratories for Safety and Pollution Prevention Equipment Used in Offshore Oil and Gas Operations, ANSI/ASME SPPE–2–1982 Edition, is proposed for deletion as a redundant reference. Compliance with ANSI/ASME SPPE–2 is required by ANSI/ASME SPPE–1 which is proposed for incorporation by reference in § 250.126.

Proposed Subpart D, Drilling Operations, would incorporate the requirements of Subparagraphs 5.1.10, *Electrical Equipment*, and 5.4, *Welding and Burning Practices and Procedures*, of current OCS Order No. 5 into §§ 250.53, and 250.52. Language would be incorporated into those sections to make the appropriate parts applicable to platform and production operations. Electrical-system information-submittal requirements are proposed for § 250.122(e)(4) as safety-system design and installation features. Since this is design and installation information, it

would seem appropriate to include it in Subpart H.

The requirements of Paragraph 7, *Crane Operations*, of current OCS Order No. 5 are proposed to be deleted to reflect an agreement between USCG and MMS. In that agreement, the USCG will have responsibility for cranes installed on all OCS platforms.

Sections 250.52 and 250.53 of proposed Subpart D, Drilling Operations, would incorporate the substance of Paragraph 9, *Requirements for Drilling Rigs*, of current OCS Order No. 5 for the Atlantic, Gulf of Mexico, and Pacific OCS Regions.

There are numerous proposed changes in the language contained in current OCS Order No. 5 that are basically editorial in nature. The editorial changes would not result in substantive changes in the requirements. The effective date of current OCS Order No. 5 was January 1, 1980, for the Atlantic, Gulf of Mexico, and Pacific, OCS Regions. This is a pivotal date for many requirements of the current Order. For example, surface-controlled subsurface safety valves (SSSV) are currently required in all tubing installations after the effective date of the Order. On the other hand, if installation of the tubing had occurred prior to January 1, 1980, subsurface-controlled SSSV's, currently "grandfathered," would not require replacement until the tubing is first removed and reinstalled. In most instances, however, we have eliminated the "before" and "after" requirements based on the effective date of the current Order in this proposal.

Substantive changes in the regulation are addressed below:

Proposed §§ 250.120 through 250.127 would incorporate the requirements of the current paragraph (b) of § 250.41, Control of wells.

All references made to the NEC and IEEE RP for Electric Installations on Shipboard, IEEE Std 45–1977, are proposed to be eliminated. These references are not appropriate for fixed offshore facilities. In place of these references, we are proposing that industry standards such as API RP for Design and Installation of Electrical Systems for Offshore Production Platforms, API RP 14F, and API RP for Classification of Areas for Electrical Installations at Drilling Rigs and Production Facilities on Land and on Marine Fixed and Mobile Platforms. API RP 5008, be incorporated by reference into the regulations. These changes would not have an effect on current industry practices.

Proposed § 250.123(b) would incorporate the requirements of subparagraph 5.1.1(d) of current OCS Order No. 5. The last three sentences of the current subparagraph contain a provision to permit the use of uncoded vessels if they have successfully passed a hydrostatic test. This provision would be eliminated in the proposed regulation. We believe the use of uncoded vessels should not be approved. However, proposed § 250.123(b)(1) would allow continued use of any uncoded vessels that have received approval under the current Order.

Statistics from Gulf of Mexico OCS operations indicate that about one-third of all fires have been caused by engines. Nearly half of these engine-caused fires have resulted from diesel engine "runaway" when hydrocarbons enter the air intake of the engine. To eliminate this problem, we are proposing in § 250.123(b)(5) that all diesel-engine air intakes be equipped with an automatic-shutdown device that would prevent engine "runaway." The same requirement is proposed in the subpart on drilling as discussed above.

Subparagraph 5.1.9(e) of current OCS Order No. 5 requires fire-detection systems to be designed and installed in accordance with the NFPA Standard on Automatic Fire Detectors, ANSI/NFPA 72E. Gas-detection systems are currently required to be designed and installed in accordance with sections 9.1 and 9.2 of API RP 14F. The proposed § 250.123(b)(9) would retain API RP 14F but would eliminate the NFPA Standard and replace it with API RP for Fire Prevention and Control on Open Type Offshore Production Platforms. API RP 14G. We believe that the API documents are more appropriate for offshore petroleum industry operations.

Subparagraph 5.1.11 of current OCS Order No. 5 requires an annual report on the erosion-control programs in effect and the results of those programs. Proposed § 250.123(b)(10) would retain the requirement for the erosion-control program but would not require an annual report to be submitted. It would require the lessee to maintain the records of results obtained from the programs. We believe that this change would provide for adequate monitoring of the programs while reducing the reporting burden for the lessee.

Proposed § 250.125 would retain the requirements of Paragraph 5.7, *Safety Device Training*, of current OCS Order No. 5. However, the requirement for the lessee to apply for and obtain MMS approval of the proposed training would be eliminated. Comments on the method of improving the Safety Device Training Program are requested. The substance of Paragraph 8, *Employee Orientation and Motivation Programs for Personnel Working Offshore*, of current OCS Order No. 5 is proposed to be deleted. While we agree that motivation of personnel is a desirable management tool, we believe that industry management can best implement such a program without the need for Federal regulatory involvement. The deletion of this program would have no effect on the Fisheries Training Program which is required by a stipulation.

Proposed § 250.126, Quality assurance and performance of safety and pollution prevention equipment, would repeat the requirement of OCS Order No. 5 that SPPE shall conform to ANSI/ASME SPPE–1–1982, Quality Assurance and Certification of Safety and Pollution Prevention Equipment used in Offshore Oil and Gas Operations, and related requirements.

The MMS believes the SPPE program contributes significantly to the safety of offshore oil and gas operations. Nevertheless, MMS invites comment as to whether alternatives to the SPPE program exist which could accomplish purposes of the SPPE program while reducing the paperwork burden on lessees and operators.

Current OCS Order No. 5 does not address the subject of H_2S. However, proposed § 250.127 would make the appropriate parts of proposed Subpart D, Drilling Operations, § 250.67 relating to H_2S applicable to production operations.

Subpart I—Platforms and Structures

The requirements pertaining to platforms and structures contained in current OCS Order No. 8, Platforms and Structures, are proposed to be revised to remove redundant provisions, update the requirements as appropriate, eliminate two referenced documents concerning the Platform Verification Program, consolidate and clarify the submittal of required technical data and verification plans, and add provisions for periodic inspection and platform removal.

Proposed Subpart I, Platforms and Structures, would merge the provisions of the four regional OCS Orders No. 8 into a single set of regulations which would apply generally to platforms and structures on the OCS. However, different geological and environmental conditions in the Regions continue to make it necessary to propose to retain certain specialized requirements, e.g., icing effects.

Proposed §§ 250.130, 250.131, 250.132, 250.143, and 250.144 would incorporate the requirements of current OCS Order No. 8. These proposed sections would specify the requirements for application,

documentation, structure removal, record retention, and the criteria for third-party verification. Proposed §§ 250.134 through 250.141 would specify the technical requirements, concepts, and performance standards for the design, fabrication, and installation of platforms on the OCS. These requirements would be transferred from the current MMS publication, Requirements for Verifying the Structural Integrity of OCS Platforms. There is no change intended. This document was issued in November 1979 and has been a part of current OCS Order No. 8 since January 1, 1980. It is a comprehensive tabulation of specific technical requirements, concepts, and considerations to be utilized in the design, fabrication, and installation of offshore platforms. Other standards, codes, or sets of rules exist pertaining to the full scope of activities involving offshore platforms. Two examples are the API RP for Planning, Designing, and Constructing Fixed Offshore Platforms, API RP 2A, and Part 1, Structures, of the American Bureau of Shipping Rules for Building and Classing Offshore Installations. Similar sets of rules have been issued by other Nations involved with offshore oil and gas operations, i.e., Norway, Great Britain, Canada, and France. Considering the total offshore industry experience with OCS Order No. 8 as well as these other standards and/or rules affecting platform activities, we are requesting comments as to the effective use and application of each and/or all of these existing documents. We invite your recommendations as to whether the requirements of the proposed Subpart I or the requirements of API RP 2A or those of the American Bureau of Shipping mentioned above would best accomplish the desired structural integrity of offshore platforms.

In proposed § 250.130(c), the criteria that currently determine the applicability of the Platform Verification Program for platforms in the Gulf of Mexico OCS Region would be revised and applied to all OCS Regions. We are proposing to replace current Criterion (d), Installed in Frontier Areas, and to revise Criterion (e) to read as follows: ". . . having configurations and designs which have not been used previously or proven for use in the area. . . ." We are also proposing a requirement whereby platforms to be installed in seismically active areas would also need third-party verification. The proposed revisions are intended to make the criteria more descriptive of the conditions encountered in frontier areas. The same criteria would apply, providing for similar exemptions in the Alaska, Atlantic, and Pacific OCS Regions when sufficient experience is obtained and designs are proven.

The MMS believes that the third-party verification program has contributed significantly to the safety and success of the offshore oil and gas program. Through the third-party verification program, a number of serious defects in design, fabrication, and installation of offshore platforms have been detected and corrected, thereby eliminating high potential for significant damage or loss. Nevertheless, we invite comment as to whether alternatives to the third-party verification program are available which would better and more economically accomplish the purposes of that program.

Proposed § 250.131(d) would revise the requirements of Paragraph 2.2, *Certification*, of current OCS Order No. 8. We do not propose to require the submittal of lessee certification but rather to require that the detailed structural plans and specifications for all platforms be certified by a registered professional or structural engineer. These drawings and specifications are routinely submitted and normally contain the professional engineer's stamp.

The requirements of item (c) of paragraph 3.2.1.1 of current OCS Order No. 8 would be deleted because the intended use of the platform would be provided in the Development and Production Plan or Exploration Plan. Item (d) of the same paragraph would be deleted since the submittal of information on personnel facilities, boat landings, cranes, and evacuation routes is covered by USCG requirements.

Proposed § 250.133 would contain the revised text of the current MMS publication, Operating Procedures for the OCS Platform Verification Program. This document covers the review process for a certified verification agent (CVA), qualification criteria for certification as a CVA, instructions and guidance to the CVA, and procedures for handling disputes between the CVA and the lessee. The proposed text at § 250.133 would describe only the CVA-review process and the criteria for nomination as a CVA. Parts of the current document that are proposed to be deleted concern the responsibility of parties and the dispute procedures which are inherent to the lessee/lessor relationship that are otherwise covered in the lease contract or the law.

A new § 250.142, Periodic inspections and maintenance, is proposed to require periodic inspections of the entire platform and the submittal of a brief annual report describing inspection techniques and the results of the inspections. This proposed requirement is intended to ensure that the integrity of the platform would be maintained throughout its useful life. On October 16, 1980, a Notice of Intent to develop these requirements was published in the **Federal Register**. After an analysis of the public comments and reconsideration of the objectives of the Platform Verification Program, we are proposing periodic inspection and maintenance requirements as logical methods to assure the continual structural integrity of these platforms.

A new § 250.143 is proposed to address removal of platforms and site clearance. Paragraph 2.9 of current OCS Order No. 3 (proposed Subpart G, Abandonment of Wells) addresses the removal of well equipment and site clearance but does not address platform removal. To cover this issue in a manner consistent with Subpart G, it is proposed to require the removal of all platforms to a depth of at least 15 feet below the ocean floor. Currently, under OCS Order No. 3 and Gulf of Mexico NTL 81–5, a letter is required concerning the location clearance for wellhead and equipment removal after the plugging and abandonment of wells. A similar provision is proposed for the clearance of a platform location. If final well abandonment is also involved, one letter concerning overall location clearance would suffice.

Concerning the removal of platforms and site clearance, we have considered the possibility of providing for the allowance of the entire platform to remain in place or to be partially removed. This may be considered if it could be shown that there was a beneficial use for the platform and that it would not unreasonably interfere with the other legitimate uses of the area. The MMS has recently funded a study to be conducted by the Marine Board of the National Research Council to analyze and advise on the national and international ramifications of platform removal and disposition. The MMS has considered this option in light of the objectives of the Recreational and Environmental Enhancement for Fishing in the Seas (REEFS) Task Force cochaired by the Secretary of the Interior, the proposed legislation (H.R. 5447), the possible economic savings to be derived, studies demonstrating considerable incidental biological, social, and economic values associated with offshore structures, and the absence of objection from State or Federal Agencies having jurisdiction. Therefore, we request comments as to the need for a provision relating to

platform partial removal or nonremoval, the limitations or conditions that should be included, and a general expression of the pros and cons. If there are benefits to be obtained and the multiple-use concept of the OCS will not be violated, we would appreciate the benefit of your thoughts as to the need for such a provision.

Concerning the above consideration and the study to be made on platform removal and disposition by the Marine Board, we request your responses to the following:

Alternative Dispositions

1. What are the alternatives for the disposition of offshore platforms after they have reached the end of their useful life as oil and gas facilities? What are the opportunities for reusing platforms or sections of platforms as oil and gas facilities or for other industrial purposes? What are the costs of the alternatives?

Status of Technology

2. What are the technical problems in dismantling, transporting, relocating, and reusing platforms? What are the technological capabilities?

Environmental Protection

3. What disruption of fisheries habitats is likely to result from the removal of platforms?

4. The question of the reuse of offshore platforms for fisheries-habitat enhancement is of widespread interest. To this end, the structures can be left in place, toppled in place or removed, or transported and relocated as an artificial reef. What are the potential benefits of this alternative? What criteria could be used to identify platforms that have potential for fisheries-habitat enhancement?

Economic

5. What percentage of the cost of offshore resource development can be attributed to platform removal? How might this vary in the different Regions?

Legal

6. How is liability for safety, maintenance, marking, and third-party damage affected by the alternative strategies for the disposition of offshore platforms?

The existing MMS documents, Appendices to Requirements for Verifying the Structural Integrity of OCS Platforms, and Commentary on the Requirements for Verifying the Structural Integrity of OCS Platforms, are proposed to be deleted. These documents contain guidelines and numerous technical references concerning how to design, fabricate, and install offshore platforms. As research efforts and experience have moved technology ahead, these guidelines and references have become outdated. Therefore, it is proposed to no longer reference these documents.

The substance of paragraph 5 of current OCS Order No. 8 would be deleted because departures from the regulations may be granted by the Regional Supervisor in accordance with proposed § 250.3(b) of Subpart A, General.

Subpart J—Pipelines and Pipeline Rights-of-Way

The DOI and the Department of Transportation (DOT) share responsibility for safety and prevention of pollution associated with offshore pipelines. In addition, DOI has the responsibility for the approval of the installation, modification, change of service, or abandonment of oil and gas pipelines under the jurisdiction of DOI on the OCS.

At present, there are three classifications of oil and gas pipelines approved by DOI on the OCS. They are as follows:

1. Lease—These pipelines are owned and operated by a lessee or operator and are wholly contained within a single lease, unitized leases, or contiguous (not cornering) leases.

2. Permit—These pipelines meet the same boundary limits as in 1. above; however, the pipelines are owned and operated by a nonlessee of the lease(s) involved.

3. Right-of-way—These pipelines are those which are not wholly contained within a single lease, unitized leases, or contiguous (not cornering) leases.

The proposed regulations would apply to the approval of all oil and gas pipelines on the OCS. No substantive change is intended in this regard.

The proposed revisions to the requirements for the design installation, and operation of pipelines, currently at 30 CFR 250.20, Pipeline approval, and OCS Order No. 9, Oil and Gas Pipelines, are intended to reflect experience in the field and advances in available technology. The requirements for pipeline rights-of-way, currently Subpart N of 30 CFR Part 256, are also proposed as §§ 250.158 through 250.163 for inclusion with the pipeline requirements into new Subpart J, Pipelines and Pipeline Rights-of-Way.

The proposed requirements for design, installation, and operation of pipelines would include the following:

1. In proposed § 250.152(e), requirements are proposed for independent and redundant shut-in systems on pipelines. These requirements are currently in force under OCS Order No. 5, Paragraph 5.1.2, *Flowlines*, and Section A9 of API RP for Analysis, Design, Installation and Testing of Basic Surface Safety Systems for Offshore Production Platforms (API RP 14C). No substantive change is intended.

2. In § 250.152(f), requirements are proposed for cathodic protection of pipelines. While existing rules require protection from loss of metal for the pipeline, the proposed rule would specify a 20-year life for the protection system.

3. In § 250.153. requirements are proposed for pipeline burial to prevent interference with other pipelines and other uses of the OCS. These proposed rules would specify the degree of protection necessary for multiple use of the OCS. They also reflect current practice for most OCS operations. For example, in § 250.153(a)(4), requirements are proposed for pipeline risers installed after the effective date of this regulation to be protected from physical damage that could result from floating vessels. This requirement reflects current practice in the OCS.

4. In § 250.153(b), requirements are proposed for measurement of temperature during hydrostatic testing and increased length of hydrostatic tests. We believe the proposed requirements are warranted because of the pollution which might result if defects in pipelines are not discovered during testing.

5. In § 250.154(b) requirements are proposed for safety equipment on pipeline installations as follows:

(a) Paragraphs 1, 2, 3, 4, and 9 are taken from the current Gulf of Mexico OCS Region's Order No. 9, while paragraph 5 is taken from the Pacific OCS Region's Order No. 9. No new requirements are proposed.

(b) Paragraph 6 would require that a check valve and block valve be installed at all subsea tie-ins. These devices are currently installed as standard industry practice so as to eliminate production loss from the main trunk line in case a secondary pipeline were to rupture, thus minimizing the chance of pollution.

(c) Paragraph 7 would eliminate a present requirement for a shutdown valve (SDV) on all gas-lift pipelines to an unmanned well jacket. This change would result in a saving to the lessee with no substantial increased risk of pollution. These pipelines are required to be provided with a low-pressure sensor to shut off the source of gas.

(d) Paragraph 8 addresses bidirectional pipelines which are not addressed in current OCS Order No. 9.

For a bidirectional pipeline, it has been a condition of approval to require a high- and low-pressure sensor and an SDV at each platform in lieu of the boarding-flow safety valve. No substantive change is intended.

6. In § 250.155, requirements are proposed for abandoning a pipeline. These requirements reflect policy developed over the years and have become standard operating procedure in the OCS. These procedures would assure consistency with the multiple-use concept in the OCS.

7. In § 250.156, requirements are proposed for additional information to be included in pipeline applications. Since the effective date of the current OCS Order No. 9, there has been considerable growth in the number of pipelines and in the technology used to design, install, and operate these pipelines. The additional information is needed by both the lessee and the MMS to properly assess whether the pipeline would provide a safe and pollution-free transportation of fluids while not unduly interfering with other uses of the OCS. At present, lessees include this information in pipeline applications; therefore, no additional burden would result.

8. Semiannual reports of testing of pipeline safety devices and annual reports of monthly pipeline inspections are proposed to be deleted. We believe these reports are no longer necessary, and this proposal will reduce the reporting burden on lessees. The test results and inspection data continue to be available to MMS.

Are further reductions in paperwork burdens associated with pipeline requirements feasible? What reductions in the paperwork burden in this area are recommended?

Sections 250.158 through 250.163 of Subpart J relate to rights-of-way and would be a redesignation of Subpart N of 30 CFR Part 256.

Subpart K—Production Rates

The requirements of current OCS Order No. 11, Oil and Gas Production Rates, Prevention of Waste, and Protection of Correlative Rights, presently effective in the Gulf of Mexico and Pacific OCS Regions, are proposed to be revised and incorporated into the new Subpart K, Production Rates. It should be noted that the proposed revisions and additions are in answer to comments received from 13 organizations in response to our solicitation for comments on an earlier proposed revision of OCS Order No. 11 published in the **Federal Register** on May 4, 1983 (48 FR 20152).

Proposed § 250.170, Definitions for production rates, would incorporate the requirements of Paragraph 1, *Definition of Terms*, of current OCS Order No. 11. Definitions for sensitive and nonsensitive reservoirs are proposed to be added to clarify the use of those terms in this context.

Proposed § 250.171, General requirements and classification of reservoirs, would incorporate the substance of Paragraph 2, *Classification of Reservoirs*, of current OCS Order No. 11. The new section would require reservoirs to be classified as oil reservoirs, oil reservoirs with an associated gas cap, or gas reservoirs, and to be subclassified as sensitive or nonsensitive. We believe this new proposal would reduce administrative costs by providing for identification of the nonsensitive reservoirs so that information collection and production-rate requirements could be eliminated for such reservoirs. The information collection requirements would be reduced because data need not be submitted for approval of Maximum Efficient Rate (MER) of production for nonsensitive reservoirs. Administrative and recordkeeping costs would be reduced because rates of production would not need to be balanced to meet MER's for nonsensitive reservoirs. All oil reservoirs with an associated gas cap would be initially classified as sensitive because studies have shown that, although most reservoirs can be classified as nonsensitive, the majority of oil reservoirs with an associated gas cap are sensitive. All other oil reservoirs and all gas reservoirs would initially be classified as nonsensitive. Reservoirs might be reclassified whenever information became available to warrant it.

Proposed § 250.172, Oil and gas production rates, would incorporate the requirements of the current § 250.16, Well potentials and permissible flow, and Paragraphs 3A, *Maximum Efficient Rate (MER);* 3B, *Maximum Production Rate (MPR);* 4A, *Production Variances;* 5C, *Quarterly Test;* and 6C, *Semiannual Test*, of current OCS Order No. 11. Proposed Paragraph (a), MER, would require determination of MER's and the balancing of production only for sensitive reservoirs, eliminating the requirement for nonsensitive reservoirs in current OCS Order No. 11. Proposed paragraph (b), MPR, would require the determination of MPR's for each well completion as presently required in OCS Order No. 11. However, the provisions of current OCS Order No. 11 would be amended to allow the revision of the MPR based on well tests submitted on the Form MMS–1869, Quarterly Oil Well Test Report, and Form MMS–1870, Semi-Annual Gas Well Test Report. This would eliminate the present requirement for submitting a Form MMS–1867, Request for Well Maximum Production Rate (MPR), and Form MMS–1868, Well Potential Test Report, in order to increase an MPR.

We believe this new proposal would reduce administrative costs by eliminating a large portion of the provisions of current OCS Order No. 11 that require the submittal of applications and recordkeeping for MER's and balancing of production.

Proposed § 250.173, Well production testing, would incorporate the substance of the current § 250.39, Tests, surveys, and samples, and Paragraphs 5, *Oil Well Testing Procedures;* 6, *Gas Well Testing Procedures;* and 7, *Witnessing Well Tests*, of current OCS Order No. 11. Paragraph 8, *Sale or Transfer of Production*, of current OCS Order No. 11 would be deleted as an unnecessary provision that is inherent under the terms of an OCS oil and gas lease.

Proposed § 250.173(a) would clarify the procedures for conducting well tests. Proposed § 250.173(b) would change the requirement for conducting a multipoint back-pressure test on all gas wells to be mandatory only when requested by the Regional Supervisor. This information is no longer routinely needed; therefore, the test data will be required only upon request.

Proposed § 250.173(c) would provide for the witnessing of well tests by a representative of the Regional Supervisor. We believe this new proposal would eliminate redundancy in current § 250.39 and OCS Order No. 11 and would clarify well-production testing procedures and requirements.

Proposed § 250.174, Bottomhole pressure survey, would incorporate the requirements of Paragraph 9, *Bottom-Hole Pressure Tests*, of current OCS Order No. 11. We believe this new proposal would reduce administrative costs by eliminating the requirement presently in OCS Order No. 11 for a bottomhole pressure survey for reservoirs with less than three producing well completions.

Proposed § 250.175, Flaring and venting of gas, would incorporate the substance of current § 250.55, Flaring and venting of natural gas, current Gulf of Mexico OCS Region's NTL 75–9 (effective 5/13/75), and Paragraph 10, *Flaring and Venting of Gas*, of current OCS Order No. 11. Proposed paragraph (a) defines the time limits and conditions under which gas flaring or venting may occur. Proposed paragraph (b) would clarify the information

required on applications to flare or vent gas for longer periods. Proposed paragraph (c) would specify the flaring or venting records required to be kept, the location where these records should be kept, and the length of time to keep them. We believe this new proposal would eliminate redundancy in current § 250.55, OCS Order No. 11, and NTL 75–9 and clarify MMS's procedures for approving the flaring or venting of gas.

Proposed § 250.176, Downhole commingling, would incorporate the requirements of current § 250.68, Commingling production, and Paragraph 12E, *Commingling*, of current OCS Order No. 11. Paragraph (a) is proposed to clarify the information required for a downhole commingling application. Paragraph (b) is proposed to require the lessee to notify all other lessees having an interest in the reservoir(s) of the pending application. We believe this new proposal would clarify MMS's requirements for downhole commingling.

Proposed § 250.177, Enhanced oil and gas recovery operations, would incorporate the substance of Paragraph 15, *Enhanced Oil and Gas Recovery Operations*, of current OCS Order No. 11. Details as to the type of projects to be submitted for approval and periodic reporting on project results have been added for clarity.

Subpart L—Production Measurement, Commingling, and Security

New Subpart L, Production Measurement, Commingling, and Security, proposes rules to ensure the accuracy and completeness of measurements used for royalty payment purposes. These proposed rules would govern the equipment and procedures to be used to measure the quantity of production leaving a lease or entering a storage tank, the procedures to be used if production from two or more leases is combined prior to measurement for royalty purposes (commingling), and the equipment to be used and procedures to be followed in establishing a site-security program.

Proposed Subpart L would replace current §§ 250.60, Measurement of oil; 250.61, Measurement of gas; 250.68, Commingling production; and 250.69, Measurement of sulphur; and current OCS Order No. 13, Production Measurement and Commingling. The proposed merging and revising of these rules would eliminate redundancy, clarify requirements, and address new technology. The following summarizes the major differences between the current rules and the proposed rules:

1. Requirements for the calibration of mechanical displacement provers every 5 years and for the monthly proving of allocation meters. Both requirements are intended to ensure that meters used in production measurement provide accurate readings. This reflects current widespread industry practice.

2. Requirements for preliminary runs would be deleted from the proposed rule. Preliminary runs are intended to ensure that the proving system is working properly prior to proving a meter. Proposed specifications for tolerances between results of consecutive runs obtained for meter proving would ensure that the system is working properly before results are actually used. This would negate any need for preliminary runs or records thereof.

3. Requirements to submit 14 specific items concerning gas calibration reports are proposed to be replaced by a requirement to retain results of calibration tests. This would reduce the reporting burden on the lessee while providing MMS access to information when necessary.

4. Specific requirements in current OCS Order No. 13 concerning automatic custody transfer (ACT) and ACT failures are proposed to be deleted. The proposed rules governing equipment and procedures for measurement of liquid hydrocarbons would apply to ACT facilities. Approval requirements would allow the Regional Supervisor to ensure that any unique aspects of ACT facilities would be properly accounted for prior to commencement of production.

5. Portions of current OCS Order No. 13 concerning reporting of accidents are proposed to be moved to Subpart A since requirements for reporting of accidents are proposed to be included in § 250.19, Accident reports, of Subpart A, General.

6. Requirements for the submittal of allocation schedules are proposed to be deleted from this rulemaking as they are proposed to be included in 30 CFR Part 216 by the Royalty Management office.

7. These proposed regulations establish requirements for site security in response to recommendations from the Linowes Commission Report and the Federal Oil and Gas Royalty Management Act of 1982.

Subpart M—Unitization

New § 250.190, Authority and requirements for unitization, is proposed to delete all reference to lease segregation in accordance with the DOI's Solicitor's Opinion M–36927 of December 16, 1980, to eliminate redundancy and excess verbiage and to clarify authority and requirements for unitization of operations on offshore leases as follows:

- Paragraphs (a), (b), (c), and (d) of current § 250.50 would be reworded to reduce excess verbiage and to delete reference to lease segregation. A requirement that the Regional Supervisor approve the costs and credits attributable to net profit share leases in accordance with applicable regulations is proposed to be included in § 250.190(d). No other substantive change is intended.
- Paragraphs (e) and (f) of current § 250.50 are proposed to be deleted as these provisions would be adequately addressed in the proposed Model Unit Agreements.
- Paragraph (g) of current § 250.50 is proposed to be deleted to conform with the Solicitor's Opinion of December 16, 1980, concerning lease segregation.
- Paragraph (h) of current § 250.50 is proposed to be redesignated as § 250.190(e). Editorial changes would be made for clarity, and all references to lease segregation would be deleted.
- Paragraphs (i) and (j) of current § 250.50 are proposed to be deleted as they contain references to lease segregation, and they are redundant as they also appear in proposed Articles XVII and XIII of the Exploration, Development, and Production Unit and Development and Production Unit Model Unit Agreements, respectively.

Proposed §§ 250.191, 250.192, and 250.193 would incorporate the requirements of current § 250.51, Procedures for unitization, and current OCS Order No. 11, Paragraph 16, *Competitive Reservoir Operations*, in order to clarify voluntary and compulsory unitization procedures. The following amendments are proposed:

- A new § 250.191, Competitive reservoir unitization, is proposed wherein operators having well completions in a competitive reservoir might be required to conduct operations under either voluntary joint Development and Production Plans or unitization agreements. No substantive change from the requirements of current OCS Order No. 11 is intended.
- Proposed § 250.192 would incorporate the requirements of current § 250.51–1, Voluntary unitization, and would be reworded to clarify required procedures.
- Proposed § 250.193 would incorporate the requirements of current § 250.51–2, Compulsory unitization, and editorial changes are proposed to clarify required procedures. Proposed subparagraph (c)(2) would allow questioning of both those seeking and those opposing compulsory unitization.

• Proposed § 250.194, Model unit agreements, would be added for use in unitization proposals initiated by lessees or required by the Regional Supervisor for the efficient exploration, development, and production of oil and gas in unproven areas and for unitization proposals for reservoirs that have been determined to be reasonably delineated and productive.

In lieu of a single Model Unit Agreement, two are proposed—a Model Unit Agreement for exploration, development, and production units and a Model Unit Agreement for development and production units involving a single reservoir. Both models are proposed for use in conjunction with §§ 250.190 through 250.193. The current Model Unit Agreement, published in the Federal Register on June 26, 1980 (45 FR 43256), is proposed to be amended and incorporated into the regulations in proposed § 250.194. Although there are relatively few differences in the two proposed Model Unit Agreements, we believe that they are necessary. Of the total 137 units in the Gulf of Mexico OCS Region, no two agreements proposed by lessees in different areas are alike in format although all are similar in concept. A Model Unit Agreement for OCS reservoir units would, therefore, be a significant aid for prospective unit operators, working-interest owners, and MMS personnel.

We believe that these two Model Unit Agreements would provide the flexibility to cover unitized exploration operations, unitized development operations following discovery by exploratory drilling, and unitized production operations for reasonably delineated reservoirs, including enhanced recovery operations. These Model Unit Agreements would serve the same purpose for unitization of Federal OCS oil and gas leases that the Model Unit Agreements previously found at 30 CFR 226.12 served for onshore oil and gas leases.

The following changes to the current Model Unit Agreement are proposed:

(a) *Model Unit Agreement for Exploration, Development, and Production Units:*

• The "whereas clauses" would be modified to replace "in the national interest" with "in the interest of conservation, prevention of waste, and protection of correlative rights" and to more properly recite the purposes of unitization. Since exploration, development, and production operations must be conducted in a timely and safe manner under the requirements of a single lease and under a unit agreement involving more than one lease, the current third "whereas clause" has been modified.

• In Article I, the definition of regulations would be modified; however, no substantive change is intended.

• The definition of reservoir would be modified to more accurately define the term.

• The definition of lease would be deleted since the term would be defined in proposed § 250.2, Definitions, of Subpart A, General.

• Two other definitions unitized substances and participating area, are proposed to be added.

• In Article II, the reference to sections 302 and 303 of the Department of Energy Organization Act would be deleted since those provisions have been repealed.

• In Article III, the descriptions of Exhibits A, B, and C would be modified to delete lease segregation provisions.

• In Article IV, a new paragraph is proposed to be added which now appears as Article VII in the current model form. Editorial changes would be made to provide for plans of operations and to require that such plans be consistent with the Act and proposed Subpart B.

• In Article V, redundant wording would be deleted.

• In Article VI, wording would be added to allow alternative voting procedures whereby a successor unit operator might be designated.

• Article VII would be amended and redesignated as paragraph 4.2 in Article IV.

• Article X would be redesignated Article IX and retitled, plans of operations, and modified to remove redundant verbiage. No substantive change is intended.

• Article XI would be redesignated Article X and modified to delete redundant language appearing elsewhere in new Articles XI, participating areas, and XIII, Automatic adjustment of unit area.

• New Article XI, participating areas, would be added to effect the purpose of an exploration/development unit and to provide for submittals to the Regional Supervisor of a schedule of all lands reasonably proven to be productive of unitized substances by drilling and completing a well.

• Article XII would be modified to reflect that allocation of production for exploration/development units might be proposed for approval on either a surface area or volumetric basis, depending upon the particular factual situation and timing of a unitization proposal.

• Article XV would be redesignated as Article XIII and modified and retitled, Automatic adjustment of the unit area, to provide for automatic adjustment down to the participating area on a particular anniversary date as approved by the Regional Supervisor and to delete the provision for lease segregation. Leases no longer subject to the agreement because of adjustment of the unit area in accordance with this article could be maintained only in accordance with the terms and provisions contained in the Act, regulations, and the leases affected.

• Article XIV, Relinquishment of leases, would be added to clarify that no relinquishment of interests within a participating area may be made without prior approval of the Regional Supervisor.

• Article XIII would be redesignated Article XV and be amended to reflect that unitization of operations would not alter the rental or minimum royalty obligation of leases committed to a unit agreement.

• In Article XIV, redesignated as Article XVI, editorial changes are proposed. No substantive change is intended.

• A new Article XVII, Leases and contracts conformed and extended, would be added to clarify that leases committed to a unit agreement would not expire as long as drilling for or production of unitized substances are being conducted on any unitized lease.

• Current Articles XVI, XVII, and XVIII would be renumbered XVIII, XIX, and XX, respectively, and amended by editorial changes and deletion of excess verbiage in the interest of clarity.

• New Articles XXI and XXII would be added for clarity.

(b) *Model Unit Agreement for Development and Production Units.* A separate Model Unit Agreement is proposed for reservoir units using the Proposed Model Unit Agreement for Exploration, Development, and Production Units as a guide but differs from it as follows:

• In the third "whereas clause," delete the word exploration.

• In Article I, Definitions, delete participating area.

• Article III, Unitized reservoir, unit area, and exhibits, is proposed to effect the purpose of a reservoir unit and to provide for submittal to the Regional Supervisor of a schedule of all land in the unit area overlying the unitized reservoir, the net-acre feet credited to each tract, and the unit participation of each tract in the unit area. The article would also specifically define unitized substances as all oil and/or gas produced from the particular unitized reservoir.

• New Article X, Revision of unit area and allocation of production, is proposed to reflect the bases for revisions of the unit area and production allocation for reservoir units. In the case of reservoir unit proposals generally, considerable geological and engineering data and other information obtained as a result of actual drilling is available on which to base revisions to the unit area and production allocation schedules, and the proposed Model Unit Agreement would thus be revised to reflect the requirement to utilize additional information in preparing such revisions.

Subpart N—Remedies and Penalties

The regulations relating to civil penalties are proposed to be revised to remove unnecessary and redundant provisions. Specifically, the regulations pertaining to investigations, current §§ 250.70, 250.71, and 250.72 are proposed to be deleted because they contain MMS internal procedures that are inappropriate as regulatory provisions. Likewise, the regulations pertaining to penalties, current § 250.80–2, are proposed to be deleted because they merely repeat provisions found in the Act or contain MMS internal procedures that are inappropriate as regulatory provisions. We anticipate the inclusion of internal procedural matters in the MMS Manual.

The regulations pertaining to remedies, proposed §§ 250.200 through 250.206 (current § 250.80–1), are proposed to be revised by removing unnecessary language. Except as described below, no substantive change is intended by these revisions.

Current § 250.80–1(a)(4) grants authority to the Reviewing Officer to administer oaths and issue subpoenas as "necessary to conduct a hearing." However, this provision is silent on the authority of the Reviewing Officer to issue orders to produce evidence. Since such authority is clearly necessary to conduct a hearing, MMS is proposing to provide for it in the revised regulations.

Similarly, new § 250.200 is proposed to revise current § 250.80–1(a)(1) by authorizing Regional Directors and Chairmen of Investigative Panels to administer oaths and issue subpoenas and orders to produce evidence in conducting investigations. This authority is needed by investigative panels to carry out their responsibilities and by Regional Directors long before a case reaches a Reviewing Officer. Its exercise might reduce the number of cases that are pursued beyond the investigative stage.

New § 250.200(a)(2) is included in these proposed regulations to provide for the circumstance where corrective action cannot be accomplished in a reasonable period of time after detection of a violation and notification has occurred. Examples of these violations include, but are not limited to, the following:

1. Conductor casing was not set, as approved in an APD, and surface casing has been set.

2. A diverter system was not used during drilling the surface hole as approved in an APD.

3. In floating drilling operations, excessive rig movement or anchor-line tension occurred prior to disconnect.

4. Well abandonment was not conducted, as approved, leaving a bottom protrusion, and damage occurred to fishing gear.

5. A blowout occurred, and it is determined that the diverter system was locked out of service and may have contributed to the problem which resulted in fire, damage, injury, and death.

Such violations could occur, and some have occurred, but they are not common occurrences. This provision is to inform lessees that MMS may pursue the imposition of a civil penalty in such circumstance where "any reasonable period allowed for corrective action" can only be zero time.

Executive Order 12291

As the major purpose of the proposal would be to reduce or eliminate unnecessary burdens on lessees, it is expected to reduce costs of operating on the OCS if implemented as proposed. It would not be expected to cause an increase in costs or prices to consumers, other industries, or governmental entities and, in fact, could cause a slight decrease as cost savings might be passed on.

The DOI has determined that this document does not constitute a major rule under Executive Order 12291, and therefore, a Regulatory Impact Analysis is not required.

Regulatory Flexibility Act

The DOI has also determined that this document will not have a significant economic effect on a substantial number of small entities because, in general, the entities that engage in activities offshore are not considered small due to the technical complexities and financial resources necessary to conduct such activities.

Paperwork Reduction Act

The information collection requirements contained in proposed 30 CFR Parts 250 and 256 have been either approved by or submitted to the OMB for approval under 44 U.S.C. 3504(h).

Authors

The principal authors of this proposed rule are Maurice Adams, Dale Bajema, Daniel Bourgeois, Elmer P. Danenberger, Bill Dockery, Ralph Melancon, David Schuenke, and Rodney Smith of the MMS, DOI.

List of Subjects

30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas reserves, Penalties, Pipelines, Public lands/mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 256

Administration practice and procedure, Continental shelf, Environmental protection, Government contracts, Minerals royalties, Oil and gas exploration, Oil and gas reserves, Pipelines, Public lands/mineral resources, Public lands/rights-of-way, Reporting and recordkeeping requirements, Surety bonds.

Dated: July 29, 1985.

Wm. D. Bettenberg,

Director, Minerals Management Service.

For the reasons set forth above, it is proposed that the OCS Orders be rescinded and 30 CFR Parts 250 and 256 be amended as shown:

* * * * *

1. The following OCS Orders are rescinded:

OCS Order No. 1, Identification of Wells, Platforms, Structures, Mobile Drilling Units, and Subsea Objects for all Regions.

OCS Order No. 2, Drilling Operations, for all Regions.

OCS Order No. 3, Plugging and Abandonment of Wells, for all Regions.

OCS Order No. 4, Determination of Well Producibility, for all Regions.

OCS Order No. 5, Production Safety Systems, for all Regions.

OCS Order No. 6, Completion of Oil and Gas Wells, for the Gulf of Mexico OCS Region.

OCS Order No. 6, Procedure for Completion of Oil and Gas Wells, for the Pacific OCS Region.

OCS Order No. 7, Pollution Prevention and Control, for all Regions.

OCS Order No. 8, Platforms and Structures, for all Regions.

OCS Order No. 9, Oil and Gas Pipelines, for the Gulf of Mexico OCS Region.

OCS Order No. 9, Approval Procedure for pipelines, for the Pacific OCS Region.

OCS Order No. 10, Sulphur Drilling procedures, for the Gulf of Mexico OCS Region.

OCS Order No. 10, Drilling of Twin Core Holes, for the Pacific OCS Region.

OCS Order No. 11, Oil and Gas Production Rates, Prevention of Waste, and Protection of Correlative Rights, for the Gulf of Mexico and Pacific OCS Regions.

OCS Order No. 12, Public Inspection of Records, for all Regions.

OCS Order No. 13, Production Measurement and Commingling, for the Gulf of Mexico OCS Region.

OCS Order No. 14, Approval of Suspensions of Production, for the Gulf of Mexico OCS Region.

PART 256—[AMENDED]

2. Part 256, Subpart N of Title 30 is removed.

3. Part 250 of Title 30 is revised to read as follows:

DERIVATION TABLE

New section	Old section
Subpart A—General	
250.0	250.0.
250.1	New Provision.
250.2	250.2.
250.3	New Provision.
250.4	250.10.[1]
250.5	250.11.[1]
250.6	250.13.[1]
250.7	250.18.[1]
250.8	250.31.[1]
250.9	250.32.[1]
250.10	250.12.
250.10(d)	New Provision.[2]
250.11	OCS Order No. 4.
250.12	250.12.[1]
250.13	250.35.
250.13(b)	New Provision.
250.14	250.53.
250.15	250.37; OCS Order No. 1.
250.16	250.58.
250.17	250.90.
250.18	250.3; OCS Order No. 12.
250.19	250.45.
250.20	250.46.[1]
250.21	250.19.
250.22	OCS Order No. 5, paragraph 1.
250.23	250.81.
Subpart B—Exploration and Development and Production Plans	
250.30	250.34-1 and -2.
250.31	250.34-1 and -2.
250.32	250.17; OCS Order No. 11.
250.33	250.34-1 and -3(a).
250.33(c)	New Provision.
250.34	250.34-2 and -3(b).
250.34(a)(2)	New Provision.
250.34(a)(4)	New Provision.
Subpart C—Pollution Prevention and Control	
250.40	250.43; OCS Order No. 7; OCS Order No. 1, paragraph 5.
250.40(b)(1)	New Provision.
250.40(b)(5)	New Provision.
250.40(c)(1)	New Provision.
250.40(c)(2)	New Provision.
250.40(c)(3)	New Provision.
250.40(c)(4)	New Provision.
250.40(d)	New Provision.
250.41	OCS Order No. 7.
250.42	250.43; OCS Order No. 7.
250.42(b)	New Provision.
250.42(c)	New Provision.
250.42(h)	New Provision.
250.42(i)	New Provision.
250.43	OCS Order No. 7.
250.44	250.2.[1]
250.45	250.57-1.[1]

DERIVATION TABLE—Continued

New section	Old section
250.46	250.57-2.[1]
Subpart D—Drilling Operations	
250.50	250.30; 250.42; 250.46.
250.51	
250.51(a)	OCS Order No. 2, paragraph 2, Alaska OCS Order.
250.51(b)	New Provision.
250.51(c)	OCS Order No. 2, paragraph 2.4.
250.51(d)	OCS Order No. 2, paragraph 2.3.
250.51(e)	250.39; 250.40; OCS Order No. 2, paragraph 4.
250.51(f)	OCS Order No. 8.
250.52	OCS Order No. 2, Alaska OCS Region, paragraph 2.1.6, OCS Order No. 5, paragraph 5.4.
250.53	OCS Order No. 2, Alaska OCS Region, paragraphs 12(a), (b), (e), and (f); OCS Order No. 5, paragraph 5.1.10.
250.54	3.250.41; OCS Order No. 2, paragraph
250.55	OCS Order No. 2, paragraph 3.6.
250.56	250.41; OCS Order No. 2, paragraph 5.
250.57	OCS Order No. 2, paragraph 5.7.
250.58	OCS Order No. 2, paragraph 5.9.
250.59	OCS Order No. 2, paragraphs 5.2, 5.3, 5.4.1, and 5.5.
250.60	250.41; OCS Order No. 2, paragraph 6.
250.61	250.44.
250.62	250.11; OCS Order No. 2, paragraph 10.
250.63	250.41; OCS Order No. 2, paragraph 7.
250.64	250.36, OCS Order No. 2, paragraphs 1.2 and 2.
250.65	250.92.
250.66	250.38; 250.92; 250.95.
250.67	OCS Order No. 2, paragraph 8; GSS-OCS-1.
250.68	250.42; OCS Order No. 2, paragraphs 5.9 and 7.3; MMSS-OCS-T1.
Subpart E—Well Completion Operations	
250.70	New Provision.
250.71	New Provision.
250.72	New Provision.
250.73	New Provision.
250.74	New Provision.
250.75	New Provision.
250.76	New Provision.
250.77	New Provision.
250.78	New Provision.
250.79	New Provision.
250.80	New Provision.
250.81	New Provision.
250.82	New Provision.
250.83	New Provision.
250.84	250.92.
250.85	New Provision.
250.86	New Provision.
250.87	New Provision.
250.88	OCS Order No. 6, paragraphs 1 and 2.
Subpart F—Well-Workover Operations	
250.90	New Provision.
250.91	New Provision.
250.92	New Provision.
250.93	New Provision.
250.94	New Provision.
250.95	New Provision.
250.96	New Provision.
250.97	New Provision.
250.98	New Provision.
250.99	New Provision.
250.100	New Provision.
250.101	New Provision.
250.102	New Provision.
250.103	New Provision.
250.104	250.92.
250.105	New Provision.
250.106	New Provision.

DERIVATION TABLE—Continued

New section	Old section
250.107	New Provision.
250.108	OSC Order No. 6, paragraphs 1 and 2.
250.109	New Provision.
Subpart G—Abandonment of Wells	
250.110	250.15; 250.44; OCS Order No. 3.
250.111	250.44; 250.92; OCS Order No. 3.
250.112	OCS Order No. 3.
250.113	OCS Order No. 3.
250.114	250.92; OCS Order No. 1.
Subpart H—Production Safety Systems	
250.120	OCS Order No. 5.
250.121	250.41; OCS Order No. 5, paragraph 3.
250.122	250.41(b); OCS Order No. 5, paragraph 4.
250.123	OCS Order No. 5, paragraph 5.
250.124	OCS Order No. 5, paragraphs 5.5 and 5.6.
250.125	OCS Order No. 5, paragraph 5.7.
250.126	OCS Order No. 5, paragraph 2.
250.127	New Provision.
Subpart I—Platforms and Structures	
250.130	OCS Order No. 8, paragraph 1.
250.131	OCS Order No. 8, paragraphs 2 and 3.
250.132	OCS Order No. 8, paragraph 1.4.1.
250.133	OCS Order No. 8, paragraph 1.4.1.
250.134	OCS Order No. 8, paragraph 1.4.2.
250.135	OCS Order No. 8, paragraph 1.4.2.
250.136	OCS Order No. 8, paragraph 1.4.2.
250.137	OCS Order No. 8, paragraph 1.4.2.
250.138	OCS Order No. 8, paragraph 1.4.2.
250.139	OCS Order No. 8, paragraph 1.4.2.
250.140	OCS Order No. 8, paragraph 1.4.2.
250.141	OCS Order No. 8, paragraph 1.4.2.
250.142	New Provision.
250.143	OCS Order No. 3, paragraph 2.9.
250.144	OCS Order No. 8, paragraph 4.
Subpart J—Pipelines and Pipeline Rights-of-Way	
250.150	250.20.
250.150(a)	New Provision.
250.150(c)	New Provision.
250.151	New Provision.
250.152	OCS Order No. 9.
250.152(a)	New Provision.
250.152(b)	New Provision.
250.152(c)	New Provision.
250.152(d)	New Provision.
250.152(e)	New Provision
250.152(g)	New Provision.
250.153	OCS Order No. 9, paragraph 1.C.
250.153(a)(2)	New Provision.
250.153(a)(3)	New Provision.
250.153(a)(4)	New Provision.
250.153(b)	New Provision.
250.153(c)	New Provision.
250.154	OCS Order No. 9, paragraphs 1.A(2)(a) and (c).
250.154(a)	New Provision.
250.154(b)(6)	New Provision.
250.154(b)(7)	New Provision.
250.154(b)(8)	New Provision.
250.154(b)(9)	New Provision.
250.154(c)	New Provision.
250.155	New Provision.
250.156	OCS Order No. 9, paragraphs 2. A, B, and C.
250.156(b)(5)	New Provision.
250.156(c)	New Provision.
250.157	OCS Order No. 9, paragraph 1.E.
250.157(e)	New Provision.
250.157(f)	New Provision.
250.157(g)	New Provision.
250.158	256.83; 256.85; and 256.89.[1]
250.159	256.92.
250.160	256.94.
250.161	256.95.
250.162	256.97.
250.163	256.98.
250.164	256.100.

DERIVATION TABLE—Continued

New section	Old section
250.165	256.101.
Subpart K—Production Rates	
250.170	OCS Order No. 11, paragraph 1.
250.170	New Provision—Enhanced Recovery Operations.
250.170	New Provision—Nonsensitive Reservoir.
250.170	New Provision—Sensitive Reservoir.
250.171	OCS Order No. 11, paragraph 2.
250.171(a)	New Provision.
250.171(c)	New Provision.
250.172	250.16; OCS Order No. 11, paragraphs 3 and 4.
250.172(a)(1)	New Provision.
250.172(a)(3)	New Provision.
250.172(a)(5)	New Provision.
250.172(a)(7)	New Provision.
250.172(a)(8)	New Provision.
250.172(b)(3)	New Provision.
250.172(b)(4)	New Provision.
250.172(b)(5)	New Provision.
250.172(c)	New Provision.
250.173	250.39; OCS Order No. 11, paragraphs 5, 6, 7, and 8.
250.174	OCS Order No. 11, paragraph 9.
250.174(a)	New Provision.
250.175	250.55; OCS Order No. 11, paragraph 10.
250.175(a)(2)(i)	New Provision.
250.175(a)(2)(ii)	New Provision.
250.175(c)	New Provision.
250.176	NTL 75-9 (5/13/75); 250.68; OCS Order No. 11, paragraph 12.
250.177	OCS Order No. 11, paragraph 15.
250.177(b)	New Provision.
250.177(c)	New Provision.
Subpart L—Production Measurement, Commingling, and Security	
250.180	250.60; OCS Order No. 13, paragraphs 2, 3, and 4.
250.181	250.61; OCS Order No. 13, paragraph 5.
250.182	250.68; OCS Order No. 13 paragraph 6.[1]
250.183	250.69.[1]
250.184	New Provision.
Subpart M—Unitization	
250.190	250.50.
250.191	OCS Order No. 11, paragraph 16.
250.192	250.51-1.
250.193	250.51-2.
250.194	Model Unit Agreement.
Subpart N—Remedies and Penalties	
250.200	250.80-1.
250.200(a)(2)	New Provision.
250.201	250.80-1.
250.202	250.80-1.
250.203	250.80-1.
250.204	250.80-1.
250.205	250.80-1.
250.206	250.80-2.

NOTE.—The following old sections were deleted as unnecessary and redundant with no substantive change intended; 250.1, 250.4, 250.5, 250.82, and 250.96.

[1] No substantive change.

[2] Codification of existing policy.

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

Subpart A—General

Subpart B—Exploration and Development and Production Plans

Subpart C—Pollution Prevention and Control

Subpart D—Drilling Operations

Authority: Sec. 204, Pub. L. 95-372, 92 Stat. 629 (43 U.S.C. 1334).

Subpart A—General

§ 250.0 Authority for information collection.

(a) The information collection requirements in Subpart A,General, have been submitted for approval to the Office of Management and Budget (OMB) under 44 U.S.C. 3501 et seq. The information would be collected to inform the Minerals Management Service (MMS) of general operations on the Outer Continental Shelf (OCS). The information will be used to ensure that operations on the OCS will meet statutory and regulatory requirements, are safe and pollution-free, and will result in diligent exploration, development, and production on OCS leases. The requirement to respond is mandatory.

(b) The information collection requirements in Subpart B, Exploration and Development and Production Plans, have been submitted for approval to OMB under 44 U.S.C. 3501 et seq. The information would be collected to inform a MMS, States, and the public of the planned exploration, development, and production activities on the OCS. The information will be used to ensure that operations on the OCS will meet statutory and regulatory requirements, are safe and pollution-free, and will result in diligent development of leases. The requirement to respond is mandatory.

(c) The information collection requirements in Subpart C, Pollution Prevention and Control, have been submitted for approval to OMB under 44 U.S.C. 3501 et seq.

The information would be collected to inform MMS of potential pollution of the environment. The information will be used to identify potential sources of pollution for the purpose of preventing incidents of pollution. The requirement to respond is mandatory.

(d) The information collection requirements in Subpart D, Drilling Operations, have been submitted for approval to OMB under 44 U.S.C. 3501 et seq. The information would be collected to inform MMS of the equipment and procedures used in drilling activities on the OCS. The information will be used to ensure that drilling operations are safe and pollution-free. The requirement to respond is mandatory.

(e) The information collection requirements in Subpart E, Well Completion Operations, have been submitted for approval to OMB under 44 U.S.C. 3501 et seq. The information would be collected to inform MMS of the equipment and procedures used during well-completion operations. The information will be used to ensure that well-completion operations are safe and pollution-free. The requirement to respond is mandatory?

(f) The information collection requirements in Subpart F, Well Workover Operations, have been submitted for approval to OMB under 44 U.S.C. 3501 et seq. The information would be collected to inform MMS of the equipment and procedures used during well-workover operations. The information will be used to ensure that well-workover operations are safe and pollution-free. The requirement to respond is mandatory.

(g) Subpart G, Abandonment of Wells, does not contain any information collection which requires OMB approval under 44 U.S.C. 3501 et seq.

(h) The information collection requirements in Subpart H, Production Safety Systems, have been submitted for approval to OMB under 44 U.S.C. 3501 et seq. The information would be collected to inform MMS of the equipment and procedures used during the production operations. The information will be used to ensure that oil and gas are produced in a safe and pollution-free manner. The requirement to respond is mandatory.

(i) The information collection requirements in Subpart I, Platforms and Structures, have been submitted for approval to OMB under 44 U.S.C. 3501 et seq. The information would be collected to inform MMS of the design, fabrication, and installation of platforms on the OCS. The information will be used to ensure the structural integrity of platforms installed on the OCS. The requirement to respond is mandatory.

(j) The information collection requirements in Subpart J, Pipelines and Pipeline Rights-of-Way, have been submitted for approval to OMB under 44 U.S.C. 3501 et seq. The information would be collected to inform MMS of the location, design, and operation of pipelines on the OCS. The information will be used to ensure that pipelines on the OCS will provide safe and pollution-free transportation of oil and gas. The requirement to respond is mandatory.

(k) The information collection requirements in Subpart K, Production Rates, have been submitted for approval to OMB under 44 U.S.C. 3501 et seq. The information would be collected to inform MMS of production rates for hydrocarbons produced on the OCS. The information will be used to ensure that wells are produced at rates which provide for efficient production of available hydrocarbons. The requirement to respond is mandatory.

(l) The information collection requirements in Subpart L, Production Measurement, Commingling, and Security, have been submitted for approval to OMB under 44 U.S.C. 3501 et seq. The information would be collected to inform MMS of the measurement of production, the commingling of hydrocarbons, and site-security plans and will be used to ensure that produced hydrocarbons are measured and commingled in a manner which results in accurate royalty payments. The requirement to respond is mandatory.

(m) The information collection requirements in Subpart M, Unitization, have been submitted for approval to OMB under 44 U.S.C. 3501 et seq. The information would be collected to information of the unitization of leases. The information will be used to ensure that unitization is conducted in a manner which prevents waste, conserves natural resources, and protects correlative rights. The requirement to respond is mandatory.

(n) The information collection requirements in Subpart N, Remedies and Penalties, have been submitted for approval to OMB under 44 U.S.C. 3501 et

seq. The information is being collected to inform MMS of evidence relating to violations of MMS rules. The information will be used to review violations and to determine whether the imposition of civil penalties is appropriate. The requirement to respond is mandatory.

(o) The information collection requirements for Form MMS–330 contained in Subpart D, Drilling Operations, and Subpart E, Well Completion Operations, have been approved by OMB under 44 U.S.C. 3501 et seq. and assigned clearance number 1010–0046. The information will be used to evaluate the technical, safety, and environmental factor involved in completing or recompleting a well. The obligation to respond is mandatory.

(p) The information collection requirements for Form MMS–331 contained in Subpart E, Well-Completion Operations, and Subpart F, Well-Workover Operations, and Subpart G, Abandonment of Wells, have been approved by OMB under 44 U.S.C. 3501 et seq. and assigned clearance number 1010–0045. The information will be used to evaluate the technical, safety, and environmental factors involved with wells offshore. The obligation to respond is mandatory.

(q) The information collection requirements for Form MMS–331C contained in Subpart D, Drilling Operations, have been approved by OMB under 44 U.S.C. 3501 et seq. and assigned clearance number 1010–0044. The information will be used to evaluate and approve the lessees' proposal to drill, deepen, or plug back a well. The obligation to respond is mandatory.

(r) The information collection requirements for Form MMS–1866 contained in Subpart K, Production Rates, have been approved by OMB under 44 U.S.C. 3501 et seq. and assigned clearance number 1010–0018. The information is collected to provide MMS with data concerning an oil or gas well and is used to ensure that a requested production rate will not waste oil and gas. The obligation to respond is mandatory.

(s) The information collection requirements for Form MMS–1867 contained in Subpart K, Production Rates, have been approved by OMB under 44 U.S.C. 3501 et seq. and assigned clearance number 1010–0019. The information is collected to establish a maximum production rate for a well to prevent waste of oil and gas. The obligation to respond is mandatory.

(t) The information collection requirements for Form MMS–1868 contained in Subpart K, Production Rates, have been approved by OMB under 44 U.S.C. 3501 et seq. and assigned clearance number 1010–0039. The information is collected to provide MMS with data concerning the potential of an oil or gas well for the purpose of verifying the requested production rate. The obligation to respond is mandatory.

(u) The information collection requirements for Form MMS–1869 contained in Subpart K, Production Rates, have been approved by OMB under 44 U.S.C. 3501 et seq. and assigned clearance number 1010–0016. The information is collected to provide MMS with data concerning the status and capacity of oil wells. The information is used to verify the production capacity of each oil well. The obligation to respond is mandatory.

(v) The information collection requirements for Form MMS–1870 contained in Subpart K, Production Rates, have been approved by OMB under 44 U.S.C. 3501 et seq. and assigned clearance number 1010–0017. The information is collected to provide MMS with data concerning the status and capacity of gas wells. The information is used to verify the production capacity of each gas well. The obligation to respond is mandatory.

§ 250.1 Documents incorporated by reference.

The documents listed below are incorporated by reference as requirements in this part. The Director of the Federal Register approved the incorporation by reference of these documents on [insert date of **Federal Register** approval]. These documents are incorporated as they exist on the date of the approval, and a notice of any change in these documents will be published as a rule change in the **Federal Register**. Each document or specific portion thereof is incorporated by reference in the corresponding sections noted. The entire document is incorporated by reference, unless the text of the corresponding sections calls for compliance with specific portions of the listed documents. In each instance, the applicable document is the specific edition or specific edition and supplement cited in this section. In accordance with § 250.3, performance requirements, the lessee may comply with a later edition of a specific document incorporated by reference provided the lessee can demonstrate that compliance with the later edition provides a degree of protection, safety, or performance equal to or better than that which would be achieved by compliance with the listed edition and provided the lessee obtains prior written approval of the Regional or District Supervisor, as appropriate, for such alternative compliance. The list includes the name and address of at least one organization from whom the document may be purchased. These documents are also available for inspection at the Office of the Federal Register Information Center, Room 8301, 1100 L Street, NW., Washington, D.C. 20408. In order to facilitate correlation of the text of the corresponding sections with the list of documents incorporated by reference, the documents are listed in alphanumerical order.

(a) *American Concrete Institute (ACI) Document.* The ACI document listed in this paragraph may be purchased from the American Concrete Institute, P.O. Box 19150, Detroit, Michigan 48219.

ACI Standard 318–83, Building Code Requirements for Reinforced Concrete, plus Supplement and Commentary, 1983, Incorporated by Reference at: § 250.138(b)(4)(i), (b)(6)(i), (b)(7), (b)(8)(i), (b)(9), (b)(10), (c)(3)(ii), (d)(1)(v), (d)(5), (d)(6), (d)(7), (d)(8), (d)(9), (e)(1)(i), and (e)(2)(i).

(b) *American Institute of Steel Construction (AISC) Document.* The AISC document listed in this paragraph may be purchased from the American Institute of Steel Construction, Inc., P.O. Box 4588, Chicago, Illinois 60611.

AISC Standard S326, Specification for the Design, Fabrication and Erection of Structural Steel for Buildings, 1978 Edition, Incorporated by Reference at: § 250.137(b)(1)(ii), (c)(4)(ii), and (c)(4)(vii).

(c) *American National Standards Institute/American Society of Mechanical Engineers (ANSI/ASME) Documents.* The ANSI/ASME documents listed in this paragraph may be purchased from the American National Standards Institute, Attention: Sales Department, 1430 Broadway, New York, New York 10018, and from the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, New York 10017.

ANSI/ASME Boiler and Pressure Vessel Code, Section I, Power Boilers, 1983 Edition, Incorporated by Reference at: § 250.123(b)(1)(i) and (iv).

ANSI/ASME Boiler and Pressure Vessel Code, Section IV, Heating Boilers, 1983 Edition, Incorporated by Reference at: § 250.123(b)(1)(i) and (iv).

ANSI/ASME Boiler and Pressure Vessel Code, Section VIII, Pressure Vessels, Divisions 1 and 2, 1983 Edition, Incorporated by Reference at: § 250.123(b)(1)(i) and (iv).

ANSI/ASME SPPE–1–1985, Quality Assurance and Certification of Safety and Pollution Prevention Equipment Used in Offshore Oil and Gas Operations, Incorporated by Reference at: §§ 250.121 (b) and (e)(4); 250.122 (c) and (d), 250.124(a)(1) and (4); and 250.126.

ANSI Z88.2–1980, Practices for Respiratory Protection, Incorporated by Reference at: § 250.67(h) (2)(iv) and (6)(i).

(d) *American Petroleum Institute (API) Documents.* The API documents listed in this paragraph may be purchased from the American Petroleum Institute, Production Department, 211 N. Ervay, Suite 1700, Dallas, Texas 75201, or American Petroleum Institute, 1220 L Street, NW., Washington, D.C. 20005.

API RP 2D, Recommended Practice for Operation and Maintenance of Offshore Cranes, Second Edition, June 20, 1984, API Stock No. 811–00500, Incorporated by Reference at: §§ 250.51(g) and 250.123(e).

API RP T–2, Recommended Practice for Qualification Programs for Offshore Production Personnel Who Work with Anti-Pollution Safety Devices, Revised October 1975, API Stock No. 811–13710, Incorporated by Reference at: § 250.125 (a) and (c).

API RP 14C, Recommended Practice for Analysis, Design, Installation, and Testing of Basic Surface Safety Systems for Offshore Production Platforms, Third Edition, April 1984, API Stock No. 811–07180, Incorporated by Reference at: §§ 250.122(b), and (e)(2); 250.123(b) (2)(i), (4), (5)(i), and (9)(v); 250.124(a) and (a)(5); and 250.152(e).

API RP 14E, Recommended Practice for Design and Installation of Offshore Production Platform Piping Systems, Fourth Edition, April 1984, API Stock No. 811–07185, Incorporated by Reference at: §§ 250.122(e)(3) and 250.152 (b) and (c).

API RP 14F, Recommended Practice for Design and Installation of Electrical Systems for Offshore Production Platforms, First Edition, July 1978, API Stock No. 811–07190, Incorporated by Reference at: §§ 250.53(c) and 250.123(b)(9)(v).

API RP 14G, Recommended Practice for Fire Prevention and Control on Open Type Offshore Production Platforms, First Edition, September 1978, API Stock No. 811–07194, Incorporated by Reference at: § 250.123(b) (8) and (9)(v).

API RP 500B, Recommended Practice for Classification of Areas for Electrical Installations at Drilling Rigs and Production Facilities on Land and on Marine Fixed and Mobile Platforms, Second Edition, July 1973, and Supplement 2, May 1981, API Stock No. 811–06000, Incorporated by Reference at: § 250.53(b).

API Standard 1101, American Standard Method for Measurement of Petroleum Liquid Hydrocarbons by Positive Displacement Meter, August 1960, API Stock No. 852–11010, Incorporated by Reference at: § 250.180 (c)(6)(iii) and (d)(3)(v)(D).

API RP 1111, Recommended Practice for Design, Construction, Operation and Maintenance of Offshore Hydrocarbon Pipelines, First Edition, March 1976, API Stock No. 831–11110, Incorporated by Reference at: § 250.152(a).

API Standard 2543, American Standard Method of Measuring the Temperature of Petroleum and Petroleum Products, 1965, also ANSI/American Society of Testing and Materials ANSI/ASTM D 1086, API Stock No. 852–25430, Incorporated by Reference at: § 250.180(c)(6)(i) and (f)(2)(i).

API Standard 2545, USA Standard Method of Gaging Petroleum and Petroleum Products, 1965, also ANSI/ASTM D 1085, API Stock No. 852–25450, Incorporated by Reference at: § 250.180(f)(2)(ii)(B).

API Standard 2550, Method for Measurement and Calibration of Upright Cylindrical Tanks, 1965, also ANSI/ASTM D 1220, API Stock No. 852–25500, Incorporated by Reference at: § 250.180(f)(2)(ii)(A).

API Standard 2551, Method for Measurement and Calibration of Horizontal Tanks, First Edition, 1965, also ANSI/ASTM D 1410, API Stock No. 852–25510, Incorporated by Reference at: § 250.180(f)(2)(ii)(A).

API Standard 2552, Measurement and Calibration of Spheres and Spheroids, First Edition, 1966, also ANSI/ASTM D 1408–65, API Stock No. 852–25520, Incorporated by Reference at: § 250.180(f)(2)(ii)(A).

API Standard 2555, Method for Liquid Calibration of Tanks, First Edition, 1966, also ANSI/ASTM D 1406–65, API Stock No. 852–25550, Incorporated by Reference at: § 250.180(f)(2)(ii)(A).

API RP 2556, Recommended Practice for Correcting Gage Tables for Incrustation, First Edition, 1968, API Stock No. 852–25560, Incorporated by Reference at: § 250.180(f)(2)(ii)(A).

The following chapter and section citations refer to the API Manual of Petroleum Measurement Standards:

Chapter 8.1, Manual Sampling of Petroleum and Petroleum Products, First Edition, October 1981, also ANSI/ASTM D 4057, API Stock No. 852–30161, Incorporated by Reference at: § 250.180 (c)(6)(ii)(A) and (f)(2)(ii)(C).

Chapter 9.1, Hydrometer Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products, First Edition, June 1981, also ANSI/ASTM D 1298–80, API Stock No. 852–30181, Incorporated by Reference at: § 250.180 (c)(6)(ii)(B) and (f)(2)(ii)(D).

Chapter 9.2, Pressure Hydrometer Test Method for Density or Relative Density, First Edition, April 1982, API Stock No. 852–30182, Incorporated by Reference at: § 250.180 (c)(6)(ii)(B) and (f)(2)(ii)(D).

Chapter 10.1, Determination of Sediment in Crude Oils and Fuel Oils by the Extraction Method, First Edition, April 1981, also ANSI/ASTM D 473, API Stock No. 852–30201, Incorporated by Reference at: § 250.180 (c)(6)(ii)(C) and (f)(2)(ii)(E).

Chapter 10.2, Determination of Water in Crude Oil by the Distillation Method, First Edition, April 1981, also ANSI/ASTM D 4006, API Stock No. 852–30202, Incorporated by Reference at: § 250.180 (c)(6)(ii)(C) and (f)(2)(ii)(E).

Chapter 10.3, Determination of Water and Sediment in Crude Oil by the Centrifuge Method (Laboratory Procedure), First Edition, April 1981, also ANS1/ASTM D 4007, API Stock No. 852–30203, Incorporated by Reference at: § 250.180 (c)(6)(ii)(C) and (f)(2)(ii)(E).

Chapter 10.4, Standard Methods of Test for Water and Sediment in Crude Oils, 1970, also ANSI/ASTM D 96–68, API Stock No. 825–30204, Incorporated by Reference at: § 250.180 (c)(6)(ii)(C) and (f)(2)(ii)(E).

Chapter 12.2, Calculation of Liquid Petroleum Quantities Measured by Turbine or Displacement Meters, First Edition, September 1981, API Stock No. 852–30302, incorporated by Reference at: § 250.180(d)(3)(v)(C).

Chapter 14.1, Measuring, Sampling, Testing, and Base Conditions for Natural Gas Fluids, First Edition, March 1975, API Stock No. 852–30341, Incorporated by Reference at: § 250.181(d)(1).

Chapter 14.3, Orifice Metering of Natural Gas, March 1978, also ANSI/API 2530, API Stock No. 852–30343, Incorporated by Reference at: § 250.181(d)(1).

Chapter 14.5, Calculation of Gross Heating Value, Specific Gravity, and Compressibility of Natural Gas Mixtures from Compositional Analysis, September 1981, also American Gas Association 2172, API Stock No. 852–30345, Incorporated by Reference at: § 250.181(d)(1).

Chapter 14.6, Installing and Proving Density Meters Used to Measure Hydrocarbon Liquid with Densities Between 0.3 to 0.7 gm/cc at 15.56°C (60°F) and Saturation Vapor Pressure, September 1979, API Stock No. 852–30346, Incorporated by Reference at: § 250.181(d)(1).

(e) *American Society for Testing and Materials (ASTM) Documents.* The ASTM documents listed below may be purchased from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

ASTM Standard C33–84, Specification for Concrete Aggregates, 1984, Incorporated by Reference at: § 250.138(b)(4)(i).

ASTM Standard C94–B3, Specification for Ready-Mixed Concrete, 1983, Incorporated by Reference at: § 250.138(e)(2)(i).

ASTM Standard C150–83b, Specification for Portland Cement, 1983, Incorporated by Reference at: § 250.138(b)(2)(i).

ASTM Standard C330–82a, Specification for Lightweight Aggregates for Structural Concrete, 1982, Incorporated by Reference at: § 250.138(b)(4)(i).

ASTM Standard C595–83a, Specification for Blended Hydraulic Cements, 1983, Incorporated by Reference at: § 250.138(b)(2)(i).

ASTM D–1250, Chapter 11.1, Volume I, 1980, Table 5A—Generalized Crude Oils, Correction of Observed API Gravity to API Gravity at 60°F, and Table 6A—Generalized Crude Oils, Correction of Volume to 60°F Against API Gravity at 60°F, Incorporated by Reference at: § 250.180 (c)(6)(ii)(D), (d)(3)(v)(B), and (f)(2)(ii)(F).

(f) *American Welding Society (AWS) Documents.* The AWS documents listed in this paragraph may be purchased from the American Welding Society, 550 NW LeJeune Road, P.O. Box 351040, Miami, Florida 33135.

D1.1–B4, Structural Welding Code—Steel, 1984, Incorporated by Reference at: § 250.137(b)(1)(i).

D1.4–79, Structural Welding Code—Reinforcing Steel, 1979, Incorporated by Reference at: § 250.138(e)(3)(ii).

(g) *National Association of Corrosion Engineers (NACE) Document.* The NACE documents listed in this paragraph may be purchased from the National Association of Corrosion Engineers, P.O. Box 218340, Houston, Texas 77218.

NACE Standard MR–01–75, Material Requirement, Sulfide Stress Cracking Resistant Metallic Material for Oil Field Equipment (1980 Revision), Supplement 1 issued September 1980, Supplement 2 issued May 1981, Supplement 3 issued November 1982, Supplement 4 issued January 1983, Supplement 5 issued July 1983, and Supplement 6 issued November 1983. Incorporated by Reference at: § 250.67(l) (1), (2), (3), and (6).

NACE Standard RP–01–76, Recommended Practice, Corrosion Control of Steel, Fixed Offshore Platforms Associated with Petroleum Production (1983 Revision), Incorporated by Reference at: § 250.137(d).

§ 250.2 Definitions.

Terms used in this part shall have the meanings given in the Act and as defined below:

"Act" means the OCS Lands Act, as amended (43 U.S.C. 1331 et seq.).

"Affected State" means, with respect to any program, plan, lease sale, or other activity proposed, conducted, or approved pursuant to the provisions of the Act, any State:

(1) The laws of which are declared, pursuant to section 4(a)(2) of the Act, to be the law of the United States for the portion of the OCS on which such activity is, or is proposed to be, conducted;

(2) Which is, or is proposed to be, directly connected by transportation facilities to any artificial island or installation or other device permanently or temporarily attached to the seabed;

(3) Which is receiving, or in accordance with the proposed activity will receive, oil for processing, refining, or transshipment which was extracted from the OCS and transported directly to such State by means of vessels or by a combination of means including vessels,

(4) Which is designated by the Secretary as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment, or a State in which there will be significant changes in the social, governmental, or economic infrastructure, resulting from the exploration, development, and production of oil and gas anywhere on the OCS; or

(5) In which the Secretary finds that because of such activity there is, or will be, a significant risk of serious damage, due to factors such as prevailing winds and currents to the marine or coastal environment in the event of any oil spill, blowout, or release of oil or gas from vessels, pipelines, or other transshipment facilities.

"Analyzed geological information" means data collected under a permit or a lease which have been analyzed. Analysis may include, but is not limited to, identification of lithologic and fossil content, core analysis, laboratory analysis of physical and chemical properties, well logs or charts, results from formation fluid tests, and descriptions of hydrocarbon occurrences or hazardous conditions.

"Coastal environment" means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone.

"Coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelands of the several coastal States, and includes islands, transition and intertidal areas, salt marshes, wetlands, and beaches, which zone extends seaward to the outer limit of the U.S. territorial sea and extends inland from the shorelines to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and the inward boundaries of which may be identified by the several coastal States, pursuant to the authority in section 305(b)(1) of the Coastal Zone Management Act (CZMA) of 1972.

"Data" means facts and statistics or samples which have not been analyzed or processed.

"Development" means those activities which take place following discovery of minerals in paying quantities, including geophysical activity, drilling, platform construction, and operation of all onshore support facilities and which are for the purpose of ultimately producing the minerals discovered.

"Director" means the Director of MMS of the U.S. Department of the Interior.

"District Supervisor" means the MMS officer with authority and responsibility for a district within an MMS Region.

"Eastern Gulf of Mexico" means all OCS areas in the Gulf of Mexico deemed by the Director to be adjacent to the State of Florida.

"Exploration" means the process of searching for minerals, including:

(1) Geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of such minerals, and

(2) Any drilling, whether on or off known geological structures, including the drilling of a well in which a discovery of oil or natural gas in paying quantities is made and the drilling of any additional delineation well after such discovery which is needed to delineate any reservoir and to enable the lessee to determine whether to proceed with development and production.

"Fair market value" means the value of any mineral (1) computed at a unit price equivalent to the average unit price at which such mineral was sold pursuant to a lease during the period for which any royalty or net-profit share is accrued or reserved to the United States pursuant to such lease, or (2) if there were no such sales, or if the Secretary finds that there were an insufficient number of such sales to equitably determine such value, computed at the average unit price at which such mineral was sold pursuant to other leases in the same Region of the OCS during such period, or (3) if there were no sales of such mineral from such Region during such period, or if the Secretary finds that there are an insufficient number of such sales to equitably determine such value, fair market value shall be computed at an appropriate price determined by the Secretary.

"Governor" means the Governor of a State, or the person or entity designated by, or pursuant to, State law to exercise the powers granted to such Governor pursuant to the Act.

"Human environment" means the physical, social, and economic components, conditions, and factors which interactively determine the State, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the OCS.

"Information" when used without a qualifying adjective, includes analyzed geological information, processed geological information, processed geophysical information, interpreted geological information, and interpreted geophysical information.

"Interpreted geological information" means knowledge, often in the form of schematic cross sections and maps, developed by determining the geological significance of data and analyzed geological information.

"Interpreted geophysical information" means knowledge, often in the form of schematic cross sections and maps, developed by determining the geological significance of geophysical data and processed geophysical information.

"Lease" means any form of authorization which is issued under section 8 or maintained under section 6 of the Act and which authorizes exploration for, and development and production of, minerals or the area covered by that authorization, whichever is required by the context.

"Major Federal action" means any action or proposal by the Secretary which is subject to the provisions of section 102(2)(C) of the National Environmental Policy Act of 1969 (i.e., an action which will have a significant impact on the quality of the human environment requiring preparation of an Environmental Impact Statement pursuant to section 102(2)(C) of the National Environmental Policy Act).

"Marine environment" means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the marine ecosystem, including the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the OCS.

"Minerals" includes oil, gas, sulphur, geopressured-geothermal and associated resources, and all other minerals which are authorized by an act of Congress to be produced from "public lands" as defined in section 103 of the Federal Land Policy and Management Act of 1976.

"Operator" means the individual, partnership, firm, or corporation having control or management of operations on the leased area or a portion thereof. The operator may be a lessee, designated agent of the lessee, or holder of rights under an approved operating agreement.

"Outer Continental Shelf (OCS)" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (Public Law 31, 83d Cong., 1st sess.), and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

"Person" includes, in addition to a natural person, an association, a State, a political subdivision of a State, or a private, public, or municipal corporation.

"Processed geological information" means data collected under a permit or a lease which have been processed. Processing involves changing the form of data so as to facilitate interpretation.

Processing operations may include, but are not limited to, applying corrections for known perturbing causes, rearranging or filtering data, and combining or transforming data elements.

"Processed geophysical information" means data collected under a permit or a lease which have been processed. Processing involves changing the form of data so as to facilitate interpretation. Processing operations may include, but are not limited to, applying corrections for known perturbing causes, rearranging or filtering data, and combining or transforming data elements.

"Production" means those activities which take place after the successful completion of any means for the removal of minerals, including such removal, field operations, transfer of minerals to shore, operation monitoring, maintenance, and workover drilling.

"Regional Director" means the MMS officer with responsibility and authority for a Region within MMS.

"Regional Supervisor" means the MMS officer with responsibility and authority for operations or other designated program functions within an MMS Region.

"Secretary" means the Secretary of the Interior.

"Western Gulf of Mexico" means all OCS areas of the Gulf of Mexico except those deemed by the Director to be adjacent to the State of Florida.

§ 250.3 Performance requirements.

(a) Nothing in this part shall preclude the use of new or alternative techniques, procedures, equipment, or activities, other than those prescribed in the regulations of this part, if such other techniques, procedures, equipment, or activities afford a degree of protection, safety, or performance equal to or better than that intended to be achieved by the regulations of this part, provided the lessee obtains the prior written approval of the District or Regional Supervisor, as appropriate, for the use of such new or alternative techniques, procedures, equipment, or activities.

(b) The District or Regional Supervisor may prescribe or approve, in writing or orally with subsequent written confirmation, departures from the operating requirements of the regulations of this part when such departures are necessary for the proper control of a well, the facilitation of the proper development of a lease, the conservation of natural resources, the protection of life (including fish and other aquatic life), property, or the marine, coastal or human environment.

§ 250.4 Jurisdiction.

(a) Subject to the supervisory authority of the Secretary, drilling and production operations, handling, measurement, and transportation of production, and other operations and activities conducted pursuant to a lease or right-of-way by or on behalf of a lessee or right-of-way holder are subject to the regulations in this part and are under the jurisdiction of the Director.

(b) In the exercise of that jurisdiction, the Director is authorized and directed to act upon the requests, applications, and notices submitted under the regulations in this part, to issue either written or oral orders to govern lease operations, and to require compliance with applicable laws, regulations, and lease terms so that all operations conform to sound conservation practice and are conducted in a manner which will preserve, protect, and develop mineral resources of the OCS in a manner which is consistent with the following need to:

(1) Make such resources available to timely meet the Nation's energy needs,

(2) Balance orderly energy resource development with protection of the human, marine, and coastal environments,

(3) Ensure the public a fair and equitable return on the resources of the OCS, and

(4) Preserve and maintain free enterprise competition.

§ 250.5 Functions.

The Director, in accordance with the regulations in this part, shall accomplish the following:

(a) Regulate all operations conducted under a lease or right-of-way to promote orderly exploration, development, and production of mineral resources and to prevent harm or damage to, or waste of, any natural resource (including any mineral deposits in areas leased or not leased), any life (including fish and other aquatic life), property, or the marine, coastal, or human environment.

(b) Require on all new and, whenever practicable, existing oil and gas operations the use of the best available and safest technologies which the Director determines to be economically feasible, wherever failure of equipment would have a significant effect on safety, health, or the environment, except where the Director determines that the incremental benefits are clearly insufficient to justify the incremental cost of utilizing such technologies.

(c) Conduct a scheduled onsite inspection at least once a year of each offshore facility which is subject to environmental or safety regulations promulgated pursuant to the Act. The inspection shall be to determine that environmental protection equipment and safety equipment designed to prevent or

ameliorate blowouts, fires, spillages, or other major accidents have been installed and are operating properly in accordance with the requirements of this part.

(d) Conduct a periodic onsite inspection without advance notice to the operator of such facility to assure compliance with applicable regulations.

(e) Cooperate and consult with or solicit advice from affected States, executives of affected local governments, other interested parties, and relevant Departments and Agencies of the Federal Government.

(f) Identify for those activities under the jurisdiction of the Director those States which are deemed to be affected States.

§ 250.6 Oral approvals.

The appropriate MMS official may give oral orders and oral approvals whenever the regulations in this part require a lessee to obtain such official's approval before commencing an operation or activity. In the event an oral order or oral approval has been given by an MMS official, the lessee shall obtain any formal approval required by the regulations of this part. Oral orders shall be confirmed in writing as promptly as practicable.

§ 250.7 Right of use and easement.

(a) In addition to the rights and privileges granted to a lessee under any lease issued or maintained under the Act, the Regional Supervisor may grant a lessee, subject to conditions prescribed by the Regional Supervisor, a right of use and easement on the OCS to construct off the lease and maintain platforms, artificial islands, and all installations and other devices which are permanently or temporarily attached to the seabed and which are used for conducting exploration, development, and production activities or other operations on or off the lease which are related to such activities. Rights of use and easement on the OCS shall be issued and exercised in accordance with the provisions of this section.

(b) A right of use and easement, if on an area subject to any lease issued or maintained under the Act, shall be granted only after the holder of the lease has been notified by the applicant and afforded an opportunity to comment on the application.

(c) The Regional Supervisor may require compliance with Subpart I and MMS approval for all platforms, artificial islands, and installations and other devices permanently or temporarily attached to the seabed as a condition of the granting of a right of use and easement under paragraph (a) of this section or as authorized under any lease issued or maintained under the Act.

(d) A lessee shall exercise a right of use and easement in accordance with the requirements of the regulations in this part.

(e) A right of use and easement shall be exercised only in a manner which does not interfere unreasonably with operations of any lessee under a lease.

(f) Once a right of use and easement has been exercised, the right shall continue, beyond the termination of any lease on which it may be situated, as long as it has been demonstrated to the Regional Supervisor that the right of use and easement is maintained by the holder of the right and serves the purpose specified in the grant. If the right of use and easement extends beyond the termination of any lease on which the right of use and easement may be situated or if it is situated on an unleased portion of the OCS, the rights of all subsequent lessees shall be subject to such right of use and easement.

§ 250.8 Designation of operator.

In all cases where operations are not conducted by an exclusive owner of record, a "designation of operator" shall be submitted to the District Supervisor prior to the commencement of operations. This designation will be accepted as authority for the operator, or the operator's local representative, to act on behalf of the lessee and to fulfill the lessee's obligations under the Act and the regulations in this part. All changes of address and any termination of the authority of the operator shall be reported immediately, in writing, to the District Supervisor. In case of a termination or in the event of a controversy between the lessee and the designated operator, both the lessee and the operator will be required to protect the interests of the lessor.

§ 250.9 Local agent.

When required by the Regional Supervisor or at the option of the lessee, the lessee shall designate a representative empowered to receive notices and comply with orders issued pursuant to the regulations in this part.

§ 250.10 Suspension of operations.

(a) The Regional Supervisor may, on the Regional Supervisor's initiative or at the request of the lessee, suspend or temporarily prohibit production or any other operation or activity on all or any part of a lease (suspension) when the Regional Supervisor determines that such suspension is in the national interest and that the suspension is necessary as follows:

(1) To facilitate proper development of a lease including reasonable time to construct production facilities, or

(2) To allow for the construction or negotiation for use of transportation facilities.

(b) The Regional Supervisor may also direct or, at the request of the lessee, approve a suspension of any operation or activity, including production, because of the following:

(1) The lessee failed to comply with a provision of any applicable law, regulation, or order, or provision of a lease or permit,

(2) There is a threat of serious, irreparable, or immediate damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment,

(3) The suspension is in the interest of national security or defense,

(4) The suspension is necessary for the implementation of the requirements of the National Environmental Policy Act or to conduct an environmental analysis,

(5) The suspension is necessary to facilitate the installation of equipment necessary for safety and environmental reasons, or

(6) The suspension is necessary to allow for undue delays encountered by the lessee in obtaining required permits or consents.

(c) If provided for by lease stipulation, the Regional Supervisor shall suspend or temporarily prohibit production or any other operation or activity pursuant to a lease when such lease is in water depths of 400 to 900 meters, provided that the suspension or temporary prohibition shall be for such period of time as is necessary to complete the activities described in a Development and Production Plan approved by the Regional Supervisor in accordance with § 250.34. However, in no case shall the suspension under this subsection be for periods of time which exceed a total of 5 years.

(d) A suspension pursuant to paragraph (a) of this section may not be issued if the suspension will extend the lease beyond its primary term unless a well on the lease for which the suspension is requested has been drilled and determined to be producible in paying quantities in accordance with § 250.11.

(e) Suspensions under this section may be granted for periods of time each of which shall not exceed 5 years.

(f) When the Regional Supervisor orders or approves a suspension pursuant to paragraphs (a), (b), or (c) of

this section, the term of the lease shall be extended for a period of time equal to the period that the suspension is in effect, except that no lease shall be so extended when the suspension is the result of the lessee's gross negligence or willful violation of the lease or governing regulations.

(9) The Regional Supervisor may, at any time within the period prescribed for a suspension issued pursuant to paragraph (b)(2) of this section, require the lessee to submit a plan for approval, disapproval, or modification in accordance with Subpart B, Exploration and Development and Production Plans.

(h) When the Regional Supervisor grants a suspension pursuant to paragraph (b)(2) of this section, the Regional Supervisor may require the lessee to conduct site-specific study(s) to identify and evaluate the cause(s) of the hazard(s) generating the suspension, the potential damage from the hazard(s), and the measures available for mitigating the hazard(s). The scope of the study(s) shall be approved by the Regional Supervisor. The lessee shall furnish copies and all results of the study(s) to the Regional Supervisor. The cost of the study(s) shall be borne by the lessee unless the Regional Supervisor arranges for the cost of the study(s) to be borne by a party other than the lessee. The Regional Supervisor shall make such results available to interested parties and to the public.

(i) The lessee must submit with a request for a suspension the reasons for requesting the suspension, a schedule of work leading to the initiation or restoration of production or any other operation or activity, and any other information the Regional Supervisor may require.

§ 250.11 Determination of well producibility.

Upon receiving a written request from the lessee, the District Supervisor will determine whether a well is capable of producing in paying quantities (production of oil and gas or both in quantities sufficient to yield a return in excess of operating costs). Such a determination shall be based upon the following:

(a) A production test for oil wells shall be of at least 2 hours' duration following stabilization of flow. A deliverability test for gas wells shall be of at least 2 hours' duration following stabilization of flow or a four-point back-pressure test. The lessee shall provide the District Supervisor a reasonable opportunity to witness all tests. Test data accompanied by the lessee's affidavit, or third-party test data, may be accepted in lieu of a witnessed test, provided approval is obtained from the District Supervisor prior to the performance of the test.

(b) In the Gulf of Mexico OCS Region, the following shall also be considered as reliable evidence that a well is capable of producing oil or gas in paying quantities:

(1) A resistivity or induction electric log of the well showing a minimum of 15 feet of producible sand in one section that does not include any interval which appears to be water-saturated. All of the section counted as producible shall exhibit the following properties:

(i) Electrical spontaneous potential exceeding 20 negative millivolts beyond the shale base line. If mud conditions prevent a 20-negative millivolt reading beyond the shale base line, a gamma ray log deflection of at least 70 percent of the maximum gamma ray deflection in the nearest clean water bearing sand may be substituted, and

(ii) A minimum true resistivity ratio of the producible section to the nearest clean water-bearing sand of at least 5:1.

(2) A porosity log indicating porosity in the producible section,

(3) Sidewall cores and core analyses which indicate that the section is capable of producing oil or gas or evidence that an attempt was made to obtain such cores, and

(4) A wireline formation test and/or mud-logging analysis or evidence that an attempt was made to obtain such tests.

§ 250.12 Cancellation of leases.

(a)(1) The Secretary may terminate a suspension and cancel a lease as follows after notice and opportunity for a hearing when:

(i) Continued activity pursuant to the lease or permit would probably cause serious harm or damage to life (including fish and other aquatic life), property, other mineral deposits (in areas leased or not leased), or the marine, coastal, or human environment,

(ii) The threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time,

(iii) The advantages of cancellation outweigh the advantages of continuing the lease or permit in force, and

(iv) The suspension has been in effect for at least 5 years, or the termination of suspension and lease cancellation are at the request of the lessee.

(2) If a lease is cancelled under this section or under Part 256 of this Title, the lessee shall be entitled to compensation pursuant to the provisions of this section.

(b) Whenever an Exploration Plan is disapproved because the Regional Supervisor determines that approval of the activities called for in the plan would probably cause serious harm or damage to life (including fish and other aquatic life), property, any mineral deposits (in areas leased or not leased), the national security or defense, or to the marine, coastal, or human environment and the proposed activity cannot be modified to avoid these dangers, the Secretary, once the primary lease term has been extended continuously for a period of 5 years following the disapproval or upon request of the lessee at an earlier time, may terminate the suspension or temporary prohibition and cancel the lease, and the lessee shall be entitled to compensation pursuant to paragraph (e) of this section.

(c)(1) Where a Development and Production Plan is submitted before the subsequent approval of a coastal zone management (CZM) program for an affected State, pursuant to the CZMA, and the plan is disapproved by the Regional Supervisor pursuant to § 250.34(k)(3)(ii), the following may occur:

(i) The term of the lease shall be duly extended and, at any time within 5 years after such disapproval, the lessee may reapply for approval of the same or a modified plan, and the Regional Supervisor shall approve, disapprove, or require modification of the plan in accordance with the provisions of § 250.34.

(ii) Upon expiration of the 5-year period described in paragraph (c)(1)(i) of this section or, at the Secretary's discretion, at an earlier time upon request of the lessee, if the Regional Supervisor has not approved a plan or required the lessee to submit a Development and Production Plan for approval or modification, the Secretary shall cancel the lease, and the lessee shall be entitled to compensation pursuant to paragraph (e) of this section.

(d) The lessee shall not be entitled to compensation when a lease expires or is cancelled where the following exists:

(1) A Development and Production Plan submitted after approval of a State's CZM program, pursuant to the CZMA, is disapproved because the lessee does not receive concurrence by the State pursuant to section 307(c)(3)(B)(i) or (ii) of the CZMA, and the Secretary of Commerce does not make the finding authorized by section 307(c)(3)(B)(iii) of the CZMA.

(2) A lessee fails to submit a Development and Production Plan in accordance with § 250.34 or fails to comply with an approved plan,

(3) The owner of a nonproducing lease fails to comply with a provision of the

Act, the lease, or the regulations issued under the Act, and the default continues for a period of 30 days after the mailing of a notice by registered letter to the lessee, or

(4) A Development and Production Plan is disapproved because of a failure to demonstrate compliance with the requirements of applicable Federal law.

(e) Cancellation of a lease under paragraphs (a), (b), and (c) of this section shall entitle the lessee to receive such compensation as the lessee shows the Director as being equal to the lesser of the following:

(1) The fair value of the cancelled rights as of the date of cancellation, taking into account both anticipated revenues from the lease and costs reasonably anticipated on the lease, including costs of compliance with all applicable regulations and operating orders and liability for cleanup costs or damages, or both, in the case of an oil spill, or

(2) The excess, if any, over the lessee's revenues from the lease (plus interest thereon from the date of receipt to date of reimbursement) of all consideration paid for the lease and all direct expenditures made by the lessee after the date of issuance of the lease and in connection with exploration or development, or both, pursuant to the lease (plus interest on this consideration and expenditures from date of payment to date of reimbursement), except as follows:

(i) With respect to leases issued before enactment of the Act, compensation shall be equal to the amount specified in paragraph (e)(1) of this section, and

(ii) In the case of jointly held leases which are cancelled due to the failure of one or more partners to exercise due diligence, innocent party(s) shall have the right to seek damages for losses from the responsible party(s) and the right to acquire the interests of the negligent party(s) and be issued the lease in question.

§ 250.13 Effect of production, drilling, or well-reworking on lease term.

(a) Producing, drilling, or well-reworking operations on a leased area shall continue the lease in effect so long as the producing, drilling, or well-reworking operations are conducted no more than 90 days before the expiration of the primary term. A lease continued beyond its primary term by production, drilling, or well-reworking operations shall be continued in effect by production, drilling, or well-reworking operations which are commenced on or before the 90th day after the date of completion of the last production, drilling, or well-reworking operation. No time lapse in production, drilling, or well-reworking operations of greater than 90 days shall continue the lease in effect unless operations on the lease have been suspended pursuant to § 250.10.

(b) Notwithstanding the limitations of paragraph (a) of this section, the Director may approve such other time periods between operations, not to exceed 180 days from the date of the last production, drilling, or well-reworking operations, provided the Director determines that such lease extension is in the national interest.

(c) Nothing in the section obviates the necessity of obtaining approval of plans or notices required by this part.

§ 250.14 Reinjection and subsurface storage of gas.

(a)(1) The Regional Supervisor may authorize the reinjection of gas in the OCS to promote conservation of natural resources and to prevent waste when it can be shown that no undue interference with operations under existing leases will result.

(2) An application for reinjection of gas may be approved for the purpose of the following:

(i) Enhanced recovery projects,

(ii) Preventing of the flaring of casinghead gas, or

(iii) Other conservation measures determined by the Regional Supervisor.

(b)(1) The Regional Supervisor may authorize subsurface storage of gas in the OCS for later commercial benefit when it can be shown that no undue interference with operations under existing leases will result.

(2) In each case authorized in (b)(1) above, a storage agreement will be required, and the authorization for storage will provide for the payment of a storage fee or rental.

(c) Reinjection or storage of gas may be approved for locations on or off lease, provided that when gas is reinjected or stored off the lease from which it was produced, royalties shall be paid at the time the gas is first produced. Gas produced from a reservoir containing both reinjected or stored gas and gas original to the reservoir shall be presumed to be made up of proportionate amounts of injected or stored gas and gas original to the reservoir in accordance with a formula approved by the Regional Supervisor.

(d) The use of all or any part of a lease area for subsurface storage of gas shall not affect the continuance or expiration of such lease.

(e) Gas may not be stored on unleased lands unless a right of use and easement has been approved by the Regional Supervisor in accordance with § 250.7.

§ 250.15 Identification.

(a) Platforms, structures, artificial islands, and mobile drilling units which have helicopter landing facilities shall be identified with at least one sign using letters and figures not less than 12 inches in height. Signs for smaller facilities shall use letters and figures not less than 3 inches in height. Signs shall be affixed at a location that is visible to approaching traffic and shall contain the following information which may be abbreviated:

(1) Name of the lease operator,

(2) The area designation based on OCS Official Protraction Diagrams,

(3) The block number, if available, in which the facility is located,

(4) The lease number,

(5) Platform, structure, or rig name, and

(6) The well number.

(b) For each singly completed well, the lease number and well number shall be painted on the wellhead or on a sign affixed to the wellhead. In wells with multiple completions, each completion shall be individually identified at the well head. For subsea wellheads, the required sign shall be affixed to the flowline at a convenient surface location on the platform to which it is connected. All identifying signs shall be maintained in a legible condition.

§ 250.16 Reimbursement.

(a) After the delivery to the Regional Supervisor of geological data, geophysical data, analyzed geological information, processed geological and geophysical information, reprocessed geological and geophysical information, and interpreted geological and geophysical information (whether retained by the Regional Supervisor or not) and upon receipt of a request for reimbursement and a determination by the Regional Supervisor that the requested reimbursement is proper, the lessee or third party shall be reimbursed for the reasonable costs of reproducing such data and information at the lessee's or third party's lowest rate or at the lowest commercial rate established in the area, whichever is less.

(b) After the delivery to the Regional Supervisor of processed or reprocessed geological or geophysical information (whether retained by the Regional Supervisor or not) and upon receipt of a request for reimbursement and a determination by the Regional Supervisor that the requested reimbursement is proper, the lessee or third party shall be reimbursed for the

reasonable costs attributable to processing and reprocessing such information (as distinguished from the cost of data acquisition) but only if the processing or reprocessing was in the form and manner of processing other than that used in the normal conduct of the lessee's business and was at the request of the Regional Supervisor.

(c) Requests for reimbursement shall identify processing and reprocessing costs separate from acquisition costs.

(d) The lessee shall not be reimbursed for the costs of analyzing geological information or for interpreting geological or geophysical information.

§ 250.17 Information and forms.

(a) Information, required to be submitted pursuant to the regulations in this part, shall be furnished in the manner and form prescribed in the regulations in this part or as ordered by the Director. Copies of forms may be obtained from the Regional or District Supervisor and shall be filled out completely and filed punctually with the Regional or District Supervisor.

(b) Reports submitted on forms prescribed under this part or otherwise required by the Director shall include a copy marked "Public Information" which shall include all required information except that exempt from public disclosure under § 250.18 or otherwise exempt from public disclosure under law or regulation.

§ 250.18 Data and information to be made available to the public.

(a) Except as provided in paragraph (c) of this section or in § 252.6 of this chapter, geophysical data, processed geophysical information, reprocessed geophysical information, and interpreted geological and geophysical information, submitted at any time pursuant to the requirements of this part, shall not be available for public inspection without the consent of the lessee as long as the lease remains in effect or for a period of 10 years after the date of submission, whichever is less, unless the Director determines that earlier release of such data and information is necessary for the proper development of the field or area.

(b) Except as provided in paragraph (c) of this section or in § 252.6 of this chapter, geological data, analyzed geological information, and processed geological information submitted at any time pursuant to the requirements of this part, shall not be available for public inspection without the consent of the lessee as long as the lease remains in effect or for a period of 2 years after the date of submission, whichever is less, unless the Director determines that earlier release of such data and information is necessary for the proper development of the field or area.

(c) Geophysical data, geological data, processed geological and geophysical information, and interpreted geological and geophysical information collected on a lease with high-resolution systems (including, but not limited to, bathymetry, side-scan sonar, subbottom profiler, and magnetometer) in compliance with stipulations concerning protection of environmental aspects of the lease may be made available to the public 60 days after submittal to the Regional Supervisor. However, unless the lessee can demonstrate to the satisfaction of the Regional Supervisor that release of the information or data would unduly damage the lessee's competitive position, the Regional Supervisor may release the data and information at an earlier time if the Regional Supervisor determines it is needed by affected States to make determinations under Subpart B, Exploration and Development and Production Plans, of this part.

(d) Data and information identified below shall not be available for public inspection without the consent of the lessee for the same periods as those provided in paragraph (a) of this section:

(1) On Form MMS–330, Well-Completion or Recompletion Report and Log—

(i) The following entries under Item 4, LOCATION OF WELL:

—At top Prod. interval reported below, and

—At total depth,

(ii) Item 18, TOTAL DEPTH, MD & TVD,

(iii) Item 19, PLUG BACK, T.D., MD & TVD,

(iv) Item 20, IF MULTIPLE COMPL., HOW MANY,

(v) Item 21, PRODUCING INTERVAL(S), OF THIS COMPLETION—TOP, BOTTOM, NAME (MD AND TVD),

(vi) Item 25, CASING RECORD,

(vii) Item 26, LINER RECORD,

(viii) Item 27, TUBING RECORD,

(ix) Item 28, PERFORATION RECORD,

(x) Item 29, ACID, FRACTURE, CEMENT SQUEEZE, ETC.,

(xi) The following entries under Item 30, PRODUCTION:

—HOURS TESTED,

—CHOKE SIZE,

—PROD'N. FOR TEST PERIOD: OIL—BBL., GAS—MCF., and WATER—BBL.,

—GAS-OIL RATIO,

—FLOW. TUBING PRESS.,

—CASING PRESSURE,

—CALCULATED 24-HOUR RATE: OIL—BBL., GAS—MCF., and WATER—BBL., and

—OIL GRAVITY-API (CORR.)

(xii) Item 35, SUMMARY OF POROUS ZONES, and

(xiii) Item 36, GEOLOGIC MARKERS.

(2) On Form MMS–331, Sundry Notices and Reports on Wells—

(i) The following entries under Item 4, LOCATION OF WELL:

—AT TOP PROD. INTERVAL; and

—AT TOTAL DEPTH; and

(ii) Portions of Item 16 pertaining to subsurface locations and measured and true vertical depths for all markers and zones not placed on production.

(3) On Form MMS–331C, Application for Permit to Drill, Deepen, or Plug Back—

(i) Item 4, LOCATION OF WELL: At proposed prod. zone, and

(ii) Item 20, PROPOSED CASING AND CEMENTING PROGRAM.

(e) Directional survey data released to the owner of an adjacent lease pursuant to § 250.51(e)(5) shall not be released to the public without the consent of the lessee from whose lease the directional survey was taken.

(f) Data and information obtained from beneath unleased land as a result of a well deviation shall be available to the public.

§ 250.19 Accident reports.

(a) The lessee shall immediately notify the District Supervisor of all serious accidents, any death or serious injury, and all fires, explosions, and blowouts connected with any activities or operations on the lease. All spills of oil or other liquid pollutants shall be reported as described in § 250.41(b).

(b) The owner of an easement, right-of-way, or other permit shall comply with paragraph (a) of this section by notification and report submittal to the Regional Supervisor for such incidents occurring on the area covered by the easement, right-of-way, or other permit.

§ 250.20 Safe and workmanlike operations.

(a) The lessee shall perform all operations in a safe and workmanlike manner and shall maintain all equipment in a safe condition for the protection of the lease and associated facilities, the health and safety of all persons, and for the preservation and conservation of property and the environment.

(b) The lessee shall immediately take all necessary precautions to control, remove, or otherwise correct any hazardous oil and gas accumulation or other health, safety, or fire hazard.

§ 250.21 Access to facilities.

(a) The lessee shall make available for inspection by MMS representatives, all platforms, artificial islands, and other installations located on offshore leases. For installations equipped with helicopter landing sites and refueling facilities, the lessee shall provide the use of those facilities for helicopters used by the MMS in the supervision of offshore operations.

(b) Lessee and nonlessee owners of easements, rights-of-way, or other permits shall make available at all reasonable times for inspection by MMS the area covered by the lease, easement, right-of-way, or permit and all improvements, structures, and fixtures thereon and all records relative to the design, construction, operation, maintenance, repairs, or investigations on or with regard to such area.

(c) The lessee shall, on request, furnish food, quarters, and transportation for MMS representatives to inspect lease facilities and operations. Upon request, the lessee will be reimbursed for the costs incurred for the food, quarters, and transportation provided MMS representatives as determined by the Regional Director.

§ 250.22 Best available and safest technologies.

(a) As research and product improvement result in increased effectiveness of existing procedures, safety equipment, or the development of new equipment systems, such procedures or equipment may be used and, if such technologies provide a significant cost-effective incremental benefit to safety, health, or the environment, shall be required to be used if determined to be best available and safest technologies (BAST).

(b) Conformance to the standards, codes, and practices referenced in this part will be considered to be the application of BAST. Specific equipment and procedures or systems not covered by standards, codes, or practices will be analyzed to determine if the failure of such would have a significant effect on safety, health, or the environment. If such are identified and until specific performance standards are developed by MMS and as directed by the Regional Supervisor on a case-by-case basis, the lessee shall submit such information necessary to indicate the use of BAST, the alternatives considered to the specific equipment or procedures, and the rationale as to why one alternative technology was considered in place of another. This analysis shall include a discussion of the costs involved in the use of such technology and the incremental benefits gained.

§ 250.23 Appeals, general.

Orders or decisions issued under the regulations in this part may be appealed in accordance with the provisions of Part 290 of this Title. The filing of an appeal with the Director shall not suspend the requirement for compliance with an order or decision other than the payment of a civil penalty. This requirement for compliance shall take precedence over any stay that may be granted other than a stay granted by the Secretary.

Subpart B—Exploration and Development and Production Plans

§ 250.30 Requirement for a plan.

All exploration, development, and production activities except for preliminary activities shall be conducted in accordance with an Exploration Plan or a Develoment and Production Plan approved by the Regional Supervisor. A proposed plan may apply to one or more leases held by an individual lessee or may be submitted by a group of lessees. The Regional Director may authorize lessees to jointly submit environmental information for leases that are in the same planning area and have similar environmental conditions. Any reference in this part to a Development and Production Plan shall be considered to include the Development Operations Coordination Document for the western Gulf of Mexico (see § 250.34(c)).

§ 250.31 Preliminary activities.

Preliminary activities are geological, geophysical, and other surveys necessary to develop a comprehensive Exploration Plan or Development and Production Plan. Such preliminary activities are those which do not result in any physical penetration of the seabed of greater than 500 feet and which do not result in any significant adverse impact on the natural resources of the OCS. The Regional Supervisor may require prior notification of the type, scope, and timing of any survey.

§ 250.32 Well spacing.

(a) The Regional Supervisor is authorized to approve well location and spacing programs necessary for exploration and development of a lease giving consideration to, among other factors, the location of drilling units and platforms, the geological and other reservoir characteristics of the field, the number of wells that can be economically drilled, the protection of correlative rights, and the minimization of unreasonable risk to the environment and interference with other uses offshore. Such location and spacing shall be determined independently for each lease or reservoir in a manner which will locate wells in the optimum structural position for the most effective production of reservoir fluids and avoid the drilling of unnecessary wells.

(b) For wells which could intersect or drain an offset property, the Regional Supervisor may require special measures to protect the rights of the lessor and objecting offset lessees. These may include special directional control measures, unitization requirements, production controls, and the release of certain well information.

§ 250.33 Exploration Plan.

(a) An Exploration Plan shall include the following:

(1) The proposed type and sequence of exploration activities to be undertaken together with a tentative timetable for their performance from commencement to completion,

(2) A description of the type of mobile drilling unit, platform, or artificial island to be used including a discussion of the important safety and pollution-prevention features. In the Alaska OCS Region, lessees shall include provisions for (i) drilling a relief well should a blowout occur, (ii) loss or disablement of a drilling unit, and (iii) loss or damage to support craft,

(3) A detailed discussion of new or unusual technology to be employed,

(4) A table indicating the appropriate location of each proposed exploratory well, including surface and projected bottom-hole locations, proposed well depths, and water depth at well sites,

(5) That data and information described below which the Regional Supervisor deems necessary to evaluate geologic conditions: (The release of this data and information shall be restricted in accordance with the provisions of § 250.18.)

(i) Current structure contour maps drawn to the top of each prospective hydrocarbon accumulation showing the approximate surface and bottomhole location of each proposed well,

(ii) Two full-scale interpreted, and if appropriate, migrated Common Depth Point seismic lines intersecting at or near the primary well locations,

(iii) A time versus depth chart based on the appropriate velocity analysis in the area of interpretation,

(iv) Interpreted structure sections corresponding to each seismic line submitted in paragraph (a)(5)(ii) of this section showing the location and proposed depth of each well,

(v) A generalized stratigraphic column from the surface to total depth,

(vi) A description of the geology of the prospect,

(vii) A plat showing exploration seismic coverage of the lease.

(viii) A bathymetry map showing surface locations of proposed wells, and

(ix) An analysis of submarine geologic hazards. The Regional Supervisor may require the submission of the data upon which the analysis is based.

(6) An Oil Spill Contingency Plan (OSCP) as described in § 250.42 or reference to an approved regional plan.

(7) A discussion of the measures that have been or will be taken to satisfy the conditions of lease stipulations.

(8) A list of the proposed drilling fluids, including components and their chemical compositions, information on the projected amounts and rates of drilling fluid and cuttings discharges, and method of disposal.

(9) Information concerning the presence of hydrogen sulfide (H_2S) and the following proposed precautionary measures:

(i) A classification of the lease area as to whether it is (A) a zone known to contain H_2S, (B) a zone where the presence of H_2S is unknown, or (C) a zone where the absence of H_2S has been confirmed as described in § 250.67 and the documentation supporting the classification, and

(ii) If the classification is a zone known to contain H_2S or a zone where the presence of H_2S is unknown, an H_2S Contingency Plan as required in § 250.67.

(10) The most likely travel routes for boat and aircraft traffic between offshore and onshore facilities, the probable location of onshore terminals, and the estimated frequency such routes will be traversed.

(11) For new or significantly expanded onshore support facilities, indicate the following:

(i) The location, size, number, and land requirements (including rights-of-way and easements) of the onshore support and storage facilities and, where possible, a timetable for the acquisition of lands and the construction or expansion of any facilities.

(ii) The estimated number of persons expected to be employed in support of offshore, onshore, and transportation activities and, where possible, the approximate number of new employees and families likely to move into the affected area.

(iii) Major supplies, services, energy, water, or other resources within affected States necessary for carrying out the related plan, and

(iv) The source, composition, frequency, and duration of emissions of air pollutants.

(12) The quantity, composition, and method of disposal of solid and liquid wastes and pollutants likely to be generated by offshore, onshore, and transportation operations.

(13) Historic weather patterns and other meteorological conditions of offshore areas including temperature, sky cover and visibility, precipitation, storm frequency and magnitude, wind direction and velocity, and freezing and icing conditions listing, where possible, the means and extremes of each.

(14) Physical oceanography including onsite direction and velocity of currents and tides, sea state, temperature and salinity, water quality, and icing conditions, where appropriate.

(15) Onsite flora and fauna including both pelagic and benthic communities, transitory birds and mammals that may breed or migrate through the area when proposed activities are being conducted, identification of endangered and threatened species and their critical habitats that could be affected by proposed activities, and typical fishing seasons and locations of fishing activities. The results of any biological surveys required by the Regional Supervisor (including a copy of survey reports or references to previously submitted reports) should be incorporated into this discussion.

(16) Environmentally sensitive areas (onshore as well as offshore), e.g., refuges, preserves, sanctuaries, rookeries, calving grounds, and areas of particular concern identified by an affected State pursuant to the Coastal Zone Management Act (CZMA) which may be affected by the proposed activities.

(17) Onsite uses of the area based on information available, e.g., shipping, military use, recreation, boating, commercial fishing, and other mineral exploration in the area.

(18) Archeological and cultural resources (including survey results) located within the area that may be disturbed by the proposed activities.

(19) Existing and planned monitoring systems that are measuring or will measure environmental conditions and provide information and data on the impacts of activities in the geographic areas.

(20) An assessment of the direct and cumulative effects on the offshore and onshore environments expected to occur as a result of implementation of the Exploration Plan, expressed in terms of magnitude and duration, with special emphasis upon the identification and evaluation of unavoidable and irreversible impacts on the environment. Measures to minimize or mitigate impacts should be identified and discussed.

(21) Certificate(s) of coastal zone consistency as provided in 15 CFR Part 930.

(22) For each OCS facility, the lessee shall submit such information described below needed to make the findings under § 250.45:

(i)(A) Projected emissions from each proposed or modified facility for each year of operation and the basis for all calculations to include—if the drilling unit has not yet been determined, the lessee shall use worst-case estimates for the type of unit proposed:

(*1*) For each source, the amount of the emission by air pollutant expressed in tons per year and the frequency and duration of emissions.

(*2*) For each facility, the total amount of emissions by air pollutant expressed in tons per year and, in addition for a modified facility only, the incremental amount of total emissions by air pollutant resulting from the new or modified source(s).

(*3*) A detailed description of all processes, processing equipment, and storage units, including information on fuels to be burned.

(*4*) A schematic drawing which identifies the location and elevation of each source, and

(*5*) If projected emissions are based on the use of emission-reduction control technology, a description of the controls providing the information required by paragraph (a)(22)(iv) of this section.

(B) The distance of each proposed facility from the mean high water mark (mean higher high water mark on the Pacific coast) of any State.

(ii)(A) The model(s) used to determine the effect on the onshore air quality of emissions from each facility, or from other facilities when required by the Regional Supervisor, and the results obtained through the use of the model(s). Only model(s) that have been approved by the Director may be used.

(B) The best available meteorological information and data consistent with the model(s) used stating the basis for the data and information selected.

(iii) The air quality status of any onshore area where the air quality is significantly affected (within the meaning of § 250.45) by projected emissions from each facility proposed in the plan. The area should be classified as nonattainment attainment, or unclassifiable to include the status of each area by air pollutant, the class of attainment area, and the air-pollution control agency whose jurisdiction covers the area identified, and

(iv) The emission-reduction controls available to reduce emissions, including the source, the emission-reduction

control technology, the reductions to be achieved, and the monitoring system the lessee proposes to use to measure emissions. The lessee shall indicate which emission-reduction control technology the lessee believes constitutes the best available control technology and the basis for that opinion.

(23) The name, address, and telephone number of an individual employee of the lessee to whom inquiries by the Regional Supervisor and the affected State(s) may be made, and

(24) Such other information and data as the Regional Supervisor may require.

(b) Information and data discussed in other documents may be incorporated by reference. The material being incorporated shall be cited and described briefly and include a statement of where the material is available for inspection. Any material based on proprietary data which is not itself available for inspection shall not be incorporated by reference.

(c) The Regional Director, after consultation with the Governor of the affected State(s) or the Governor's designated representative, the coastal zone management agency of affected State(s), and the Office of Ocean and Coastal Resource Management of the National Oceanic and Atmospheric Administration (NOAA) may limit the amount of information required to be included to that necessary to assure conformance with the Act, other laws, applicable regulations, and lease provisions.

(d) The Regional Supervisor shall determine within 10 working days after receipt of the Exploration Plan whether additional information is needed. If no such deficiencies are determined and the required number of copies have been received, the plan will be deemed submitted.

(e) Within 2 working days after the date an Exploration Plan has been deemed submitted, the Regional Supervisor shall transmit by receipted mail a copy of the plan, except for those portions determined to be exempt from disclosure under the Freedom of Information Act and the implementing regulations (43 CFR Part 2), to the Governor or the Governor's designated representative and the coastal zone management agency of each affected State. Receipt of the plan by the coastal zone management agency initiates the State coastal zone consistency review period.

(f) In accordance with the National Environmental Policy Act (NEPA), the Regional Supervisor shall evaluate the environmental impacts of the activities described in the Exploration Plan.

(g) In the evaluation of an Exploration Plan, the Regional Supervisor shall consider written comments from the Governor of an affected State or the Governor's designated representative which are received within 20 days of submission of the Exploration Plan. The Regional Supervisor may consult directly with affected States regarding matters contained in the comments.

(h) Within 30 days of submission of a proposed Exploration Plan, the Regional Supervisor shall accomplish one of the following:

(1) Approve the plan,

(2) Require the lessee to modify any plan which is inconsistent with the provisions of the lease, the Act, or the regulations prescribed under the Act including air quality, environmental, safety, and health requirements, or

(3) Disapprove the plan if it is determined that a proposed activity would probably cause serious harm or damage to life (including fish and other aquatic life), property, natural resources offshore including any mineral deposits (in areas leased or not leased), the national security or defense, or the marine, coastal, or human environment.

(i) The Regional Supervisor shall notify the lessee in writing of the reason(s) for disapproving an Exploration Plan or for requiring modification of a plan and the conditions that must be met for plan approval.

(j) An Exploration Plan which has been disapproved pursuant to paragraph (h) of this section may be modified and resubmitted to the Regional Supervisor in the same manner as for a new plan. Only information related to the proposed revisions need be submitted. The Regional Supervisor shall approve or disapprove a plan as resubmitted within 30 days of the resubmission date.

(k) If the Regional Supervisor disapproves an Exploration Plan, the Secretary may, subject to the provisions of section 5(a)(2)(B) of the Act and the implementing regulations in §§ 250.12 and 256.77, cancel the lease(s), and the lessee shall be entitled to compensation in accordance with the above authorities.

(l)(1) The Regional Supervisor shall periodically review the activities being conducted under an approved Exploration Plan and may request updated information on schedules and procedures. The frequency and extent of the Regional Supervisor's review shall be based upon the significance of any changes in available information and in other onshore or offshore conditions affecting or affected by exploration activities being conducted pursuant to the plan. If the review indicates that the plan should be revised to meet the requirements of this part, the Regional Supervisor shall require such revision.

(2) Revisions to an approved or pending Exploration Plan, whether initiated by the lessee or ordered by the Regional Supervisor, shall be submitted to the Regional Supervisor for approval. Only information related to the proposed revisions need be submitted. When the Regional Supervisor determines that a proposed revision could result in a significant change in the impacts previously identified and evaluated or requires additional permits, the revisions shall be subject to all of the procedures in this section.

(m) To ensure safety and environmental protection, the Regional Supervisor may authorize or direct the lessee to conduct geological, geophysical, biological, or other surveys or monitoring programs. The lessee shall provide the Regional Supervisor, upon request, with copies of any data obtained as a result of those surveys and monitoring programs.

(n) The lessee may not drill any well until the District Supervisor's approval of an Application for Permit to Drill, Deepen, or Plug Back (APD), filed in accordance with the requirements of § 250.64, has been received. The District Supervisor shall not approve any APD until all affected States with approved coastal zone management programs have concurred or have been conclusively presumed to concur with the applicant's coastal zone consistency certification accompanying a plan, or the Secretary of Commerce has made the finding authorized by section 307(c)(3)(B)(iii) of the CZMA. The APD's must conform to the activities described in detail in the related approved Exploration Plan and shall not be subject to a separate State coastal zone consistency review.

(o) Nothing in this section or in an approved plan shall limit the lessee's responsibility to take appropriate measures to meet emergency situations. In such situations, the Regional Supervisor may approve or require departures from an approved Exploration Plan.

§ 250.34 Development and Production Plan.

(a) A Development and Production Plan shall include the following:

(1) A description of and schedule for the development and production activities to be performed including plan commencement date, date of first production, total time to complete all development and production activities, and dates and sequences for drilling

wells and installing facilities and equipment.

(2) A description of technology and reservoir engineering practices intended to increase the ultimate recovery of oil and gas, i.e., secondary, tertiary, or other enhanced recovery.

(3) A description of any drilling vessels, platforms, pipelines, or other facilities and operations located offshore which are proposed or known by the lessee (whether or not owned or operated by the lessee) to be directly related to the proposed development, including the location, size, design, and important safety, pollution prevention, and environmental monitoring features of the facilities and operations.

(4) A detailed description of new or unusual technology to be employed.

(5) Geological and geophysical data and information, including the following: (The release of this data and information is restricted in accordance with § 250.18.)

(i) A plat showing the surface location of any proposed fixed structure or well.

(ii) A plat showing the surface and bottomhole locations and giving the measured and true vertical depths for each proposed well.

(iii) Current interpretations of relevant geological and geophysical data.

(iv) Current structure map(s) showing the surface and bottomhole location of each proposed well and the depths of expected productive formations.

(v) Interpreted structure sections showing the depths of expected productive formations.

(vi) A bathymetric map showing surface locations of fixed structures and wells or a table of water depths at each proposed site, and

(vii) A discussion of seafloor conditions including a shallow hazards analysis for proposed drilling and platform sites and pipeline routes.

(6) Information concerning the presence of H_2S and proposed precautionary measures, including the following:

(i) A classification of the lease area as to whether it is a zone known to contain H_2S, a zone where the presence of H_2S is unknown, or a zone where the absence of H_2S has been confirmed as described in § 250.67 and the documentation supporting the classification, or

(ii) If the classification is a zone known to contain H_2S or a zone where the presence of H_2S is unknown, an H_2S Contingency Plan as required in § 250.67.

(7) A description of the environmental safeguards to be implemented including an updated OSCP as described in § 250.42 or reference to an approved plan.

(8) A discussion of the steps that have been or will be taken to satisfy the conditions of lease stipulations.

(9) A brief description of the following:

(i) The location, description, and size of any offshore, and to the maximum extent practicable, land-based operations to be conducted or contracted for as a result of the proposed activity, including the following:

(A) The acreage required within a State for facilities, rights-of-way, and easements.

(B) The means proposed for transportation of oil and gas to shore, the routes to be followed by each mode of transportation, and the estimated quantities of oil or gas, or both, to be moved along such routes.

(C) An estimate of the frequency of boat and aircraft departures and arrivals, the onshore location of terminals, and the normal routes for each mode of transportation.

(D) A list of the proposed drilling fluids including components and their chemical compositions, information on the projected amounts and rates of drilling fluid and cuttings discharges, and method of disposal. If the information is provided in an approved Environmental Protection Agency National Pollutant Discharge Elimination System permit or a pending permit application, the lessee may reference these documents, and

(E) The quantities, types, and plans for disposal of other solid and liquid wastes and pollutants likely to be generated by offshore, onshore, and transport operations and, regarding any wastes which may require onshore disposal, the means of transportation to be used to bring the wastes to shore, the disposal methods to be utilized, and the location of onshore waste disposal or treatment facilities.

(ii) The following new or significantly expanded onshore support facilities:

(A) The approximate number, timing, and duration of employment of persons who will be engaged in onshore development and production activities, an approximate number of local personnel who will be employed for or in support of the development activities (classified by the major skills or crafts that will be required from local sources and estimated number of each such skill needed), and the approximate total number of persons who will be employed during the onshore construction activity and during all activities related to offshore development and production.

(B) The approximate number of people and families to be added to the population of local nearshore areas as a result of the planned development.

(C) An estimate of significant quantities of energy and resources to be used or consumed including electricity, water, oil and gas, diesel fuel, aggregate, or other supplies which may be purchased within an affected State.

(D) The types of contractors or vendors which will be needed, although not specifically identified, and which may place a demand on local goods and services, and

(E) The source, composition, frequency, and duration of emissions of air pollutants.

(iii) A narrative description of the existing environment with an emphasis placed on those environmental values that may be affected by the proposed action. This section shall contain a description of the physical environment of the area covered by the related plan. This portion of the plan shall include data and information obtained or developed by the lessee together with other pertinent information and data available to the lessee from other sources. The environmental information and data shall include the following, where appropriate:

(A) Summary conclusions of cultural and historical resource surveys of the lease(s) (including a copy of survey reports or reference to previously-submitted reports).

(B) The aquatic biota, including a description of fishery and marine mammal significance and utilization of the lease.

(C) The predevelopment, ambient water-column quality and temperature data for incremental depths for the areas encompassed by the plan.

(D) The physical oceanography, including ocean currents described as to prevailing direction, seasonal variations, and variations at different water depths in the lease.

(E) Historic weather patterns and other meteorological conditions, including storm frequency and magnitude, wind direction and velocity, freezing and icing conditions, and ambient air quality listing, where possible, the means and extremes of each.

(F) The other uses of the area known to the lessee, including military use for national security or defense, subsistence hunting, and other mineral exploration, and

(G) The existing or planned monitoring systems that are measuring or will measure impacts of activities on the environment in the planning area.

(10) An assessment of the effects on the environment expected to occur as a

result of implementation of the plan, identifying specific and cumulative impacts that may occur both onshore and offshore, and the measures proposed to mitigate these impacts. Such impacts shall be quantified to the fullest extent possible including magnitude and duration and shall be accumulated for all activities for each of the major elements of the environment (i.e., water, biota, etc.),

(11) A discussion of alternatives to the activities proposed that were considered during the development of the plan including a comparison of the environmental effects,

(12) Certificate(s) of coastal zone consistency as provided in 15 CFR Part 930,

(13) For each OCS facility, such information described below needed to make the findings under § 250.45:

(i)(A) Projected emissions from each proposed or modified facility for each year of operation and basis for all calculations to include the following:

(*1*) For each source, the amount of the emission by air pollutant expressed in tons per year and frequency and duration of emissions,

(*2*) For each proposed facility, the total amount of emissions by air pollutant expressed in tons per year, the frequency distribution of total emissions by air pollutant expressed in pounds per day and, in addition for a modified facility only, the incremental amount of total emissions by air pollutant resulting from the new or modified source(s),

(*3*) A detailed description of all processes, processing equipment, and storage units, including information on fuels to be burned,

(*4*) A schematic drawing which identifies the location and elevation of each source, and

(*5*) If projected emissions are based on the use of emission-reduction control technology, a description of the controls providing the information required by paragraph (a)(13)(iv)(A) of this section.

(B) The distance of each proposed facility from the mean high water mark (mean higher high water mark on the Pacific coast) of any State.

(ii)(A) The model(s) used to determine the effect on the onshore air quality of emissions from each facility, or from other facilities when required by the Regional Supervisor, and the result obtained through the use of the model(s). Only model(s) that have been approved by the Director may be used, and

(B) The best available meteorological information and data consistent with the model(s) used stating the basis for the information and data selected.

(iii) The air-quality status of any onshore area where the air quality is significantly affected (within the meaning of § 250.45) by projected emissions from each facility proposed in the plan. The area should be classified as nonattainment, attainment, or unclassifiable listing the status of each area by air pollutant, the class of attainment areas, and the air-pollution control agency whose jurisdiction covers the area identified,

(iv)(A) The emission-reduction controls available to reduce emissions including the source, the emission-reduction control technology, the reductions to be achieved, and the monitoring system the lessee proposes to use to measure emissions. The lessee shall indicate which emission-reduction control technology the lessee believes constitutes the best available control technology and the basis for that opinion, and

(B) The ownership of the offshore and onshore offsetting source(s) and the reduction obtainable from each offsetting source.

(14) A brief discussion of any approved or anticipated suspensions of production necessary to hold the lease(s) in an active status,

(15) The name, address, and telephone number of an individual employee of the lessee to whom inquiries by the Regional Supervisor and the affected State(s) may be directed, and

(16) Such other information and data as the Regional Supervisor may require.

(b) Information and data discussed in other documents may be incorporated by reference. The material being incorporated shall be cited and described briefly and include a statement of where the material is available for inspection. Any material based on proprietary data which is not itself available for inspection shall not be incorporated by reference.

(c)(1) Development and Production Plans will not be required for leases in the western Gulf of Mexico. For these leases, the Regional Supervisor may require submission of a Development Operations Coordination Document with that information necessary to assure conformance with the Act, other laws, applicable regulations, lease provisions, or as otherwise needed to carry out the functions and responsibilities of the Regional Supervisor.

(2) Any information required in paragraph (c)(1) of this section shall be considered a Development and Production Plan for the purpose of references in any law, regulation, lease provision, agreement, or other document referring to the preparation or submission of a plan.

(d) The Regional Director, after consultation with the Governor of the affected State(s) or the Governor's designated representative, the coastal zone management agency of affected State(s), and the Office of Ocean and Coastal Resource Management of NOAA may limit the amount of information required to be included in a Development and Production Plan to that necessary to assure conformance with the Act, other laws, applicable regulations, and lease provisions. In determining the information to be included in a plan, the Regional Director shall consider current and expected operating conditions together with experience gained during past operations of a similar nature in the area of proposed activities.

(e) The Regional Supervisor shall determine within 20 working days after receipt whether additional material is needed. If no such deficiencies are determined and the requested number of copies have been received, the plan shall be deemed submitted.

(f) Within 5 working days after a Development and Production Plan has been deemed submitted, the Regional Supervisor shall transmit a copy of the plan, except for those portions of the plan determined to be exempt from disclosure under the Freedom of Information Act and the implementing regulations (43 CFR Part 2), to the Governor or the Governor's designated representative and the coastal zone management agency of each affected State and to the executive of each affected local government that requests a copy. The Regional Supervisor shall make copies available to appropriate Federal Agencies, interstate entities, and the public. The plan will be available for review at the appropriate MMS Regional Public Information Office.

(g) The Governor or the Governor's designated representative and the coastal zone management agency of each affected State and the executive of each affected local government shall have 60 days from the date of receipt of the Development and Production Plan to submit comments and recommendations to the Regional Supervisor. The executive of any affected local government must forward all recommendations to the Governor of the State prior to submitting them to the Regional Supervisor. The Regional Supervisor shall accept those recommendations from the Governor that provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State. The Regional Supervisor shall

explain in writing the reasons for accepting or rejecting any recommendations. In addition, any interested Federal Agency or person may submit comments and recommendations to the Regional Supervisor. All comments and recommendations shall be made available to the public.

(h) The plan will be processed in accordance with the regulations in this section and the regulations governing Federal coastal zone management consistency procedures (15 CFR Part 930).

(i) The Regional Supervisor shall evaluate the environmental impact of the activities described in the Development and Production Plan and prepare the appropriate environmental documentation in accordance with NEPA. At least once in each planning area, as identified in lease sale offerings, other than the Western and Central Gulf of Mexico Planning Areas, the Director shall determine that an Environmental Impact Statement (EIS) is required. A determination by the Director that approval of a Development and Production Plan requires proceedings under NEPA shall have no effect upon the timeframe that a State has to complete its coastal zone consistency review. Copies of the draft EIS shall be transmitted to the Governor of each affected State and the executive of each affected local government that requests a copy. The Regional Supervisor shall also make copies of the EIS available to any appropriate Federal Agency, interstate entity, and the public.

(j) Prior to or immediately after a determination by the Director that approval of a Development and Production Plan requires that the procedures under NEPA shall commence, the Regional Supervisor may require lessees of tracts in the vicinity, for which Development and Production Plans have not been approved, to submit preliminary or final plans for their leases.

(k) No later than 60 days after the last day of the comment period or within 60 days of the release of the final EIS describing the proposed activities, the Regional Supervisor shall accomplish the following:

(1) Approve the plan,

(2) Require modification of the plan, or

(3) Disapprove the plan if one or more of the following occurs:

(i) The lessee fails to demonstrate that compliance with the requirements of the Act or other applicable Federal laws is possible,

(ii) State concurrence with the applicant's coastal zone consistency certification has not been received, the State's concurrence has not been conclusively presumed, or the State objects to the consistency certification, and the Secretary of Commerce does not make the determination authorized by section 307(c)(3)(B)(iii) of the CZMA,

(iii) Operations threaten national security or defense, or

(iv) Exceptional geological conditions in the lease area, exceptional resource value in the marine or coastal environment, or other exceptional circumstances exist, and all of the following:

(A) Implementation of the plan would probably cause serious harm or damage to life (including fish and other aquatic life), property, any mineral deposits (in areas leased or not leased), the national security or defense, or to the marine, coastal, or human environments,

(B) The threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time, and

(C) The advantages of disapproving the plan outweigh the advantages of development and production.

(l) The Regional Supervisor shall notify the lessee in writing of the reason(s) for disapproving a Development and Production Plan or for requiring modification of a plan and the conditions which must be met for plan approval.

(m) A Development and Production Plan which has been disapproved may be modified. Only information related to the proposed revisions need be submitted.

(n) Development and Production Plans disapproved pursuant to paragraph (k)(3) of this section are subject to the provisions of section 25(h)(2) of the Act and the implementing regulations in §§ 250.12 and 256.77.

(o)(1) The Regional Supervisor shall periodically review the activities being conducted under an approved Development and Production Plan. The frequency and extent of the Regional Supervisor's review shall be based upon the significance of any changes in available information and in onshore or offshore conditions affecting or impacted by development or production activities being conducted pursuant to the plan. If the review indicates that the plan should be revised to meet the requirements of this part, the Regional Supervisor shall require such revisions.

(2) Additions or modifications to an approved or pending Development and Production Plan, whether initiated by the lessee or ordered by the Regional Supervisor, shall be submitted to the Regional Supervisor for approval. Only information related to the proposed revisions need be submitted. When the Regional Supervisor determines that a proposed revision could result in a significant change in the impacts previously identified and evaluated, requires additional permits, or proposes activities not previously identified and evaluated, the revision shall be subject to all of the procedures in this section.

(3) When any revision to an approved Development and Production Plan is proposed by the lessee, the Regional Supervisor may approve the revision if it is determined that the revision is consistent with the protection of the marine, coastal, and human environments and will lead to greater recovery of oil and natural gas; will improve the efficiency, safety, and environmental protection of the recovery operation; is the only means available to avoid substantial economic hardship to the lessee; or is otherwise not inconsistent with the provisions of the Act.

(p) Whenever the lessee fails to submit a Development and Production Plan in accordance with provisions of this section or fails to comply with an approved plan, the lease may be cancelled in accordance with sections 5 (c) and (d) of the Act and the implementing regulations in §§ 250.12 and 256.77.

(q) To ensure safety and environmental protection, the Regional Supervisor may authorize or direct the lessee to conduct geological, geophysical, or other surveys. The lessee shall give the Regional Supervisor, upon request, copies of any data obtained as a result of the surveys.

(r) The lessee may not drill any well until the District Supervisor's approval of an APD, filed in accordance with the requirements of § 250.64, has been received. All applications for an APD to drill and applications to install platforms and structures, pipelines, and production equipment must conform to the activities described in detail in the related, approved Development and Production Plan and shall not be subject to a separate State coastal zone consistency review.

(s) Nothing in this section or approved plans shall limit the lessee's responsibility to take appropriate measures to meet emergency situations. In such situations, the Regional Supervisor may approve or require departures from an approved Development and production plan.

Subpart C—Pollution Prevention and Control

§ 250.40 Pollution prevention.

(a) During the exploration, development, production, and transportation of oil and gas, the lessee shall take measures to prevent pollution of the ocean. The lessee shall not create conditions which will adversely affect the public health, life, property, aquatic life, wildlife, recreation, navigation, commercial fishing, or other uses of the ocean.

(1) When pollution occurs as a result of operations conducted by or on behalf of the lessee and the pollution damages or threatens to damage life (including fish and other aquatic life), property, any mineral deposits (in areas leased or not leased), or the marine, coastal, or human environment, the control and total removal of the pollution shall be at the expense of the lessee. Immediate corrective action shall be taken in all cases where pollution has occurred. Corrective action taken under the lessee's Oil Spill Contingency Plan (OSCP) shall be subject to modification when directed by the District Supervisor.

(2) Upon failure of the lessee to control and remove the pollution, the Director, in cooperation with other appropriate Agencies of Federal, State, and local governments or in cooperation with the lessee, or both, shall have the right to control and remove the pollution. Such action shall not relieve the lessee of any responsibility provided for in the OSCP otherwise provided by law.

(b)(1) The District Supervisor may restrict the rate of drilling fluid discharges or prescribe alternative discharge methods. The District Supervisor may also restrict the use of components which could cause unreasonable degradation to the marine environment. No petroleum-based substances, including diesel fuel, may be added to the drilling mud system without prior approval of the District Supervisor.

(2) Approval of the method of disposal of drill cuttings, sand, and other well solids shall be obtained from the District Supervisor.

(3) All hydrocarbon-handling equipment for testing and production such as separators, tanks, and treaters shall be designed, installed, and operated to prevent pollution. Maintenance or repairs which are necessary to prevent pollution of the ocean shall be undertaken immediately.

(4) Curbs, gutters, drip pans, and drains shall be installed in all deck areas in a manner necessary to collect all contaminants and piped to a properly designed, operated, and maintained sump system which will automatically maintain the oil at a level sufficient to prevent discharge of oil into offshore waters. All gravity drains shall be equipped with a water trap or other means to prevent gas in the sump from migrating back up the line. Sump piles shall not be used as processing devices to treat or skim liquids but may be used to collect treated-produced water, treated-produced sand, or liquids from drip pans and deck drains and as a final trap for hydrocarbon liquids in the event of equipment upsets. Improperly designed, operated, or maintained sump piles which do not prevent the discharge of oil into offshore waters shall be replaced or repaired.

(5) On artificial islands, all vessels containing hydrocarbons shall be placed inside an impervious berm or otherwise protected to contain spills. Drainage shall be directed away from the drilling rig to a sump. Drains and sumps shall be constructed to prevent seepage.

(6) Disposal of equipment, cables, chains, containers, or other materials into the ocean is prohibited. The location and description of such disposal shall be reported in accordance with paragraph (d) of this section.

(c) Materials, equipment, tools, containers, and other items used on the OCS which are of such shape or configuration that they are likely to snag or damage fishing devices shall be handled and marked as follows:

(1) All loose material, small tools, and other small objects shall be kept in a marked container when not in use or before transport over open OCS waters,

(2) All cable, chain, or wire segments shall be recovered after use and securely stored,

(3) Skid-mounted equipment, portable containers, spools or reels, and drums shall be marked with the owner's name prior to use or transport over open OCS waters, and

(4) All markings must clearly identify the owner and must be durable enough to resist the effects of the environmental conditions to which they are exposed.

(d) Any equipment or material described in paragraphs (b)(6), (c)(2), and (c)(3) of this section that is lost overboard shall be recorded on the daily operations report of the facility, as appropriate, and reported to the District Supervisor and to the U.S. Coast Guard Guard.

§ 250.41 Inspections and reports.

(a) Drilling and production facilities shall be inspected daily or at intervals prescribed by the District Supervisor to determine if pollution is occurring. Necessary maintenance or repairs shall be made immediately. Records of such inspections and repairs shall be maintained at the facility or at a nearby manned facility for 2 years.

(b) All spills of oil and liquid pollutants, including pipeline spills, spills onto the surface of sea ice, and spills penetrating the surface of an artificial island, shall be reported orally to the District Supervisor. Spills of more than 1 barrel shall be confirmed in writing. All reports shall include the cause, location, volume of spill, and remedial action taken. Reports of spills of more than 50 barrels shall include information on the sea state, meteorological conditions, size, and appearance of a slick.

(1) Spills shall be reported orally within the following time limits:

(i) Within 12 hours, if spills are 10 barrels or less, and

(ii) Without delay, if spills are more than 10 barrels.

(2) Lessees shall notify each other of observed pollution resulting from another's operation.

§ 250.42 Oil Spill Contingency Plans.

The lessee shall submit an OSCP for approval by the Regional Supervisor with or prior to submitting an Exploration Plan or a Development and Production Plan. If an OSCP covering the area, such as a regional plan, has already been approved, it may be referred to in the Exploration Plan or the Development and Production Plan. An OSCP shall be reviewed and updated annually, and all modifications of the OSCP shall be submitted to the Regional Supervisor for approval. The OSCP shall contain the following:

(a) An oil spill risk analysis and complementary trajectory analysis indicating environmentally sensitive areas which may be impacted and strategies for their protection,

(b) Identification of response equipment, response times, materials, support vessels, and procedures to be employed in responding to continuous oil discharges (e.g., well blowout) and spills of short duration and limited maximum volume (e.g., tank overflows, hose failures). Response equipment and strategies shall be suitable for anticipated environmental conditions in the area of operations. Equipment capable of recovering at least 1,000 barrels of oil per day shall be positioned at a location where it can be deployed within a 12-hour period. After reviewing the risk analysis, the Regional Supervisor may specify greater recovery capabilities or reduced response times,

(c) Provisions for inspecting and maintaining response equipment,

(d) Establishment of procedures for the purpose of early detection and timely notification of an oil spill including a current list of names, telephone numbers, and addresses of the responsible persons and alternates on call to receive notification of an oil spill and the names, telephone numbers, and addresses of regulatory organizations and Agencies to be notified when an oil spill is discovered,

(e) An inventory of applicable equipment, materials, and supplies which are available locally and regionally, both committed and uncommitted,

(f) Well-defined and specific actions to be taken after discovery and notification of an oil spill including the following:

(1) Designation (by name or position) of an oil spill response operating team comprised of trained personnel available within a specified response time,

(2) Designation (by name or position) of a trained oil spill response coordinator who is charged with the responsibility and is delegated commensurate authority for directing and coordinating response operations, and

(3) A planned location for an oil spill response operation's center and a reliable communications system for directing the coordinated overall response operations,

(g) Provisions for disposal of recovered oil, oil-contaminated material, and other oily wastes,

(h) Provisions for monitoring spill movement, and

(i) In the Alaska OCS Region only, provisions for ignition of an uncontrollable oil spill and the guidelines to be followed in making the decision to ignite.

§ 250.43 Drills and training.

(a) Drills for familiarization with pollution-control equipment and operational procedures shall be held when the equipment is placed initially and at least once every 6 months by the lessee or a contractor serving the lessee. The personnel identified as the oil spill response operating team in the OSCP shall participate in these drills. The drills shall simulate conditions in the area of operations and shall include deployment of equipment. A time schedule with a list of equipment to be deployed shall be submitted to the Regional Supervisor for approval. The schedule shall provide sufficient advance notice to allow MMS personnel to witness any of the exercises. Drill conditions, results, and participants shall be recorded, and the records shall be maintained at the site and made available to MMS personnel. Where drill performance and results are deemed inadequate or where it is necessary to prepare for changing environmental conditions (e.g., open water to sea ice), the Regional Supervisor may initiate unscheduled drills, require an increase in the frequency, or a change in the location of the drills.

(b) The lessee shall ensure that training classes for familiarization with pollution-control equipment and operational procedures are provided for the oil spill response operating team. The personnel responsible for supervising the oil spill response operations shall receive more extensive instructions and shall be capable of directing the deployment and use of all response equipment. The lessee shall retain, at the lessee's field office nearest the OCS facility, course completion certificates or attendance records issued by the organization providing the instructions. These records shall be made available to any authorized representative of the MMS upon request.

§ 250.44 Definitions concerning air quality.

For purposes of §§ 250.45 and 250.46:

"Air pollutant" means any airborne agent or combination of agents for which the Environmental Protection Agency (EPA) has established, pursuant to section 109 of the Clean Air Act, national primary or secondary ambient air quality standards.

"Attainment area" means, for any air pollutant, an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator of EPA to be reliable) not to exceed any primary or secondary ambient air quality standards established by EPA.

"Best available control technology" (BACT) means an emission limitation based on the maximum degree of reduction for each air pollutant subject to regulation, taking into account energy, environmental and economic impacts, and other costs. The BACT shall be verified on a case-by-case basis by the Regional Supervisor and may include reductions achieved through the application of processes, systems, and techniques for the control of each air pollutant.

"Emission offsets" means emission reductions obtained from facilities, either onshore or offshore, other than the facility or facilities covered by the proposed Exploration Plan or Development and Production Plan.

"Existing facility" is an OCS facility described in an Exploration Plan or a Development and Production Plan submitted or approved prior to June 2, 1980.

"Facility" means any installation or device permanently or temporarily attached to the seabed which is used for exploration, development, and production activities and which emits or has the potential to emit any air pollutant from one or more sources. All equipment directly associated with the installation or device shall be considered part of a single facility if the equipment is dependent on, or affects the processes of, the installation or device. During production, multiple installations or devices will be considered to be a single facility if the installations or devices are directly related to the production of oil or gas at a single site. Any vessel used to transfer production from an offshore facility shall be considered part of the facility while physically attached to it.

"Nonattainment area" means, for any air pollutant, an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator of EPA to be reliable) to exceed any primary or secondary ambient air quality standard established by EPA.

"Projected emissions" means emissions, either controlled or uncontrolled, from a source or sources.

"Source" means an emission point. Several sources may be included within a single facility.

"Temporary facility" means activities associated with the construction of platforms offshore or with facilities related to exploration for or development of offshore oil and gas resources which are conducted in one location for less than 3 years.

"Volatile organic compound" (VOC) means any organic compound which is emitted to the atmosphere as a vapor. The unreactive compounds are exempt from the above definition.

§ 250.45 Facilities described in a new or revised Exploration Plan or Development and Production Plan.

(a) *New plans.* All Exploration Plans and Development and Production Plans shall include the information required to make the necessary findings under paragraphs (d) through (i) of this section, and the lessee shall comply with the requirements of this section as necessary.

(b) *Applicability of this section to existing facilities.* (1) The Regional Supervisor may review any Exploration

Plan or Development and Production Plan to determine whether any facility described in the plan should be subject to review under this section and has the potential to significantly affect the air quality of an onshore area. To make these decisions, the Regional Supervisor shall consider the distance of the facility from shore, the size of the facility, the number of sources planned for the facility and their operational status, and the air quality status of the onshore area.

(2) For a facility identified by the Regional Supervisor in paragraph (b)(1) of this section, the Regional Supervisor shall require the lessee to refer to the information required under § 250.33(a)(22) or 250.34(a)(13) and to submit only that information required to make the necessary findings under paragraphs (d) through (i) of this section. The lessee shall submit this information within 120 days of the Regional Supervisor's determination or within a longer period of time at the discretion of the Regional Supervisor. The lessee shall comply with the requirements of this section as necessary.

(c) *Revised facilities.* All revised Exploration Plans and Development and Production Plans shall include the information required to make the necessary findings under paragraphs (d) through (i) of this section. The lessee shall comply with the requirements of this section as necessary.

(d) *Exemption formulas.* To determine whether a facility described in a new, modified, or revised Exploration Plan or Development and Production Plan is exempt from further air quality review, the lessee shall use the highest annual-total amount of emissions from the facility for each air pollutant calculated in § 250.33(a)(22)(i)(A) or 250.34(a)(13)(i)(A) and compare these emissions to the emission exemption amount "E" for each air pollutant calculated using the following formulas: $E=3400D^{2/3}$ for carbon monoxide (CO); and $E=33.3D$ for total suspended particulates (TSP), sulphur dioxide (SO_2), nitrogen oxides (NO_x), and VOC (where E is the emission exemption amount expressed in tons per year, and D is the distance of the proposed facility from the closest onshore area of a State expressed in statute miles). If the amount of these projected emissions is less than or equal to the emission exemption amount "E" for the air pollutant, the facility is exempt from further air quality review by paragraphs (e) through (i) of this section.

(e) *Significance levels.* For a facility not exempt under paragraph (d) of this section for air pollutants other than VOC, the lessee shall use an approved air quality model to determine whether the projected emissions of those air pollutants from the facility result in an onshore ambient air concentration above the following significance levels:

SIGNIFICANCE LEVELS: AIR POLLUTANT CONCENTRATIONS ($\mu g/m^3$)

Air pollutant	Averaging time (hours)				
	Annual	24	8	3	1
SO_2	1	5		25	
TSP	1	5			
NO_2	1				
CO			500		2,000

(f) *Significance determinations.* (1) The projected emissions of any air pollutant other than VOC from any facility which result in an onshore ambient air concentration above the significance level determined under paragraph (e) of this section for that air pollutant, shall be deemed to significantly affect the air quality of the onshore area for that air pollutant.

(2) The projected emissions of VOC from any facility which is not exempt under paragraph (d) of this section for that air pollutant shall be deemed to significantly affect the air quality of the onshore area for VOC.

(g) *Controls required.* (1) The projected emissions of any air pollutant other than VOC from any facility, except a temporary facility, which significantly affect the quality of a nonattainment area, shall be fully reduced. This shall be done through the application of BACT and, if additional reductions are necessary, through the application of additional emission controls or through the acquisition of offshore or onshore offsets.

(2) The projected emissions of any air pollutant other than VOC from any facility which significantly affect the air quality of an attainment or unclassifiable area shall be reduced through the application of BACT.

(i) Except for temporary facilities, the lessee also shall use an approved air quality model to determine whether the emissions of TSP or SO_2 that remain after the application of BACT cause the following maximum allowable increases over the baseline concentrations established in 40 CFR 52.21 to be exceeded in the attainment or unclassifiable area:

MAXIMUM ALLOWABLE CONCENTRATION INCREASES ($\mu g/m^3$)

Air pollutant	Averaging times		
	Annual Mean[1]	24-hour maximum	3-hour maximum
Class I:			
TSP	5	10	—
SO_2	2	5	25
Class II:			
TSP	19	37	—
SO_2	20	91	512
Class III:			
TSP	37	75	—
SO_2	40	182	700

[1] For TSP—geometric; For SO_2—arithmetic.

No concentration of an air pollutant shall exceed the concentration permitted under the national secondary ambient air quality standard or the concentration permitted under the national primary air quality standard, whichever concentration is lowest for the air pollutant for the period of exposure. For any period other than the annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one onshore location.

(ii) If the maximum allowable increases are exceeded, the lessee shall apply whatever additional emission controls are necessary to reduce or offset the remaining emissions of TSP or SO_2 so that concentrations in the onshore ambient air of an attainment or unclassifiable area do not exceed the maximum allowable increases.

(3)(i) The projected emissions of VOC from any facility, except a temporary facility, which significantly affect the onshore air quality of a nonattainment area shall be fully reduced. This shall be done through the application of BACT and, if additional reductions are necessary, through the application of additional emission controls or through the acquisition of offshore or onshore offsets.

(ii) The projected emissions of VOC from any facility which significantly affect the onshore air quality of an attainment area shall be reduced through the application of BACT.

(4)(i) If projected emissions from a facility significantly affect the onshore air quality of both a nonattainment and an attainment or unclassifiable area, the regulatory requirements applicable to projected emissions significantly affecting a nonattainment area shall apply.

(ii) If projected emissions from a facility significantly affect the onshore air quality of more than one class of attainment area, the lessee must reduce projected emissions to meet the maximum allowable increases specified for each class in paragraph (9)(2)(i) of this section.

(h) *Controls required on temporary facilities.* The lessee shall apply BACT to reduce projected emissions of any air pollutant from a temporary facility which significantly affect the air quality of an onshore area of a State.

(i) *Emission offsets.* When emission offsets are to be obtained, the lessee must demonstrate that the offsets are equivalent in nature and quantity to the projected emissions that must be reduced after the application of BACT; a binding commitment exists between the lessee and the owner or owners of the source or sources; the appropriate air quality control jurisdiction has been notified of the need to revise the State Implementation Plan to include the information regarding the offsets; and the required offsets come from sources which affect the air quality of the area significantly affected by the lessee's offshore operations.

(j) *Review of facilities with emissions below the exemption amount.* If, during the review of a new, modified, or revised Exploration Plan or Development and Production Plan, the Regional Supervisor determines or an affected State submits information to the Regional Supervisor which demonstrates, in the judgment of the Regional Supervisor, that projected emissions from an otherwise exempt facility will, either individually or in combination with other facilities in the area, significantly affect the air quality of an onshore area, then the Regional Supervisor shall require the lessee to submit additional information to determine whether emission control measures are necessary. The lessee shall be given the opportunity to present information to the Regional Supervisor which demonstrates that the exempt facility is not significantly affecting the air quality of an onshore area of the State.

(k) *Emission monitoring requirements.* The lessee shall monitor, in a manner approved or prescribed by the Regional Supervisor, emissions from the facility. The lessee shall submit this information monthly in a manner and form approved or prescribed by the Regional Supervisor.

(l) *Collection of meteorological data.* The Regional Supervisor may require the lessee to collect, for a period of time and in a manner approved or prescribed by the Regional Supervisor, and submit meteorological data from a facility.

§ 250.46 Existing facilities.

(a) *Process leading to review of an existing facility.* (1) An affected State may request that the Regional Supervisor supply basic emission data from existing facilities when such data are needed for the updating of the State's emission inventory. In submitting the request, the State must demonstrate that similar offshore and onshore facilities in areas under the State's jurisdiction are also included in the emission inventory.

(2) The Regional Supervisor may require lessees of existing facilities to submit basic emission data to a State submitting a request under paragraph (a)(1) of this section.

(3) The State submitting a request under paragraph (a)(1) of this section may submit information from its emission inventory which indicates that emissions from existing facilities may be significantly affecting the air quality of the onshore area of the State. The lessee shall be given the opportunity to present information to the Regional Supervisor which demonstrates that the facility is not significantly affecting the air quality of the State.

(4) The Regional Supervisor shall evaluate the information submitted under paragraph (a)(3) of this section and shall determine, based on the basic emission data, available meteorological data and the distance of the facility or facilities from the onshore area, whether any existing facility has the potential to significantly affect the air quality of the onshore area of the State.

(5) If the Regional Supervisor determines that no existing facility has the potential to significantly affect the air quality of the onshore area of the State submitting information under paragraph (a)(3) of this section, the Regional Supervisor shall notify the State of and explain the reasons for this finding.

(6) If the Regional Supervisor determines that an existing facility has the potential to significantly affect the air quality of an onshore area of the State submitting information under paragraph (a)(3) of this section, the Regional Supervisor shall require the lessee to refer to the information requirements under §§ 250.33(a)(21) or 250.34(a)(12) and submit only that information required to make the necessary findings under paragraphs (b) through (e) of this section. The lessee shall submit this information within 120 days of the Regional Supervisor's determination or within a longer period of time at the discretion of the Regional Supervisor. The lessee shall comply with the requirements of this section as necessary.

(b) *Exemption formulas.* To determine whether an existing facility is exempt from further air quality review, the lessee shall use the highest annual total amount of emissions from the facility for each air pollutant calculated in §§ 250.33(a)(21)(i)(A) or 250.34(a)(12)(i)(A) and compare these emissions to the emission exemption amount "E" for each air pollutant calculated using the following formulas: $E=3400D^{2/3}$ for carbon monoxide (CO); and $E=33.3D$ for total suspended particulates (TSP), sulphur dioxide (SO_2), nitrogen oxides (NO^x), and VOC (where E is the emission exemption amount expressed in tons per year, and D is the distance of the facility from the closest onshore area of the State expressed in statute miles). If the amount of projected emissions is less than or equal to the emission exemption amount "E" for the air pollutant, the facility is exempt for that air pollutant from further air quality review required under paragraphs (c) through (e) of this section.

(c) *Significance levels.* For a facility not exempt under paragraph (b) of this section for air pollutants other than VOC, the lessee shall use an approved air quality model to determine whether projected emissions of those air pollutants from the facility result in an onshore ambient air concentration above the following significance levels:

SIGNIFICANCE LEVELS: AIR POLLUTANT CONCENTRATIONS ($\mu g/m^3$)

Air pollutant	Averaging time (hours)				
	Annual	24	8	3	1
SO_2	1	5	.....	25	.....
TSP	1	5	.....	.....	.....
NO_2	1	.....	.....	.....	.....
CO	.....	.....	500	.....	2,000

(d) *Significance determinations.* (1) The projected emissions of any air pollutant other than VOC from any facility which result in an onshore ambient air concentration above the significance level determined under paragraph (c) of this section for that air pollutant shall be deemed to significantly affect the air quality of the onshore area for that air pollutant.

(2) The projected emissions of VOC from any facility which is not exempt under paragraph (b) of this section for that air pollutant shall be deemed to significantly affect the air quality of the onshore area for VOC.

(e) *Controls required.* (1) The projected emissions of any air pollutant which significantly affect the air quality of an onshore area shall be reduced through the application of BACT.

(2) The lessee shall submit a compliance schedule for the application of BACT. If it is necessary to cease operations to allow for the installation of emission controls, the lessee may

apply for a suspension of operations under the provisions of § 250.11.

(f) *Review of facilities with emissions below the exemption amount.* If, during the review of the information required under paragraph (a)(6) of this section, the Regional Supervisor determines or an affected State submits information to the Regional Supervisor which demonstrates, in the judgment of the Regional Supervisor, that projected emissions from an otherwise exempt facility will, either individually or in combination with other facilities in the area, significantly affect the air quality of an onshore area, then the Regional Supervisor shall require the lessee to submit additional information to determine whether control measures are necessary. The lessee shall be given the opportunity to present information to the Regional Supervisor which demonstrates that the exempt facility is not significantly affecting the air quality of an onshore area of the State.

(g) *Emission monitoring requirements.* The lessee shall monitor, in a manner approved or prescribed by the Regional Supervisor, emissions from the facility following the installation of emission controls. The lessee shall submit this information monthly in a manner and form approved or prescribed by the Regional Supervisor.

(h) *Collection of meteorological data.* The Regional Supervisor may require the lessee to collect, for a period of time and in a manner approved or prescribed by the Regional Supervisor, and submit meteorological data from a facility.

Subpart D—Drilling Operations

§ 250.50 Control of wells.

The lessee shall take necessary precautions to keep its wells under control at all times. Operations shall be conducted in a safe and workmanlike manner. The lessee shall utilize the best available and safest drilling technology and state-of-the-art methods such as drilling-rate evaluation, shale-density analysis, or other appropriate methods in order to enhance the evaluation of conditions of abnormal pressure and to minimize the potential for the well to flow or kick. The lessee shall utilize personnel who are trained and competent and shall utilize and maintain equipment and materials necessary to assure the safety and protection of personnel, equipment, natural resources, and the environment.

§ 250.51 General requirements.

(a) *Fitness of drilling unit.* (1) Drilling units shall be capable of withstanding the oceanographic, meteorological, and ice conditions for the proposed season and location of operations.

(2) Prior to commencing operation, drilling units shall be made ready and available for a complete inspection by the District Supervisor.

(3) The lessee shall provide information and data on the fitness of the drilling unit to perform the proposed drilling operation. The information shall be submitted with or prior to the submission of Form MMS–331C, Application for Permit to Drill, Deepen, or Plug Back (APD), in accordance with § 250.64. In the Alaska OCS Region, the District Supervisor may require the submission of a third-party review of the design of drilling units proposed for use which are of a unique design and/or not proven in the arctic environment if the District Supervisor believes that the submitted information is insufficient to demonstrate suitability for site-specific use. A design Certified Verification Agent approved for the arctic in accordance with § 250.133 of this part shall be used for any required review.

(b) *Drilling unit safety devices.* (1) No later than [insert date 1 year from the effective date of these regulations], all drilling units shall be equipped with a safety device which is designed to prevent the traveling block from striking the crown block. The device shall be checked weekly for proper operation and after each drill-line slipping operation. The results of the operational check shall be entered in the driller's report.

(2) No later than [insert 1 year from the effective date of these regulations], all diesel engine air intakes shall be equipped with an automatic-shutdown device to prevent diesel engine runaway.

(c) *Oceanographic, meteorological, and drilling unit performance data.* Where such information is not otherwise readily available, upon request of the District Supervisor, lessees shall collect and report oceanographic, meteorological, and drilling unit performance data, and monitor ice conditions, if applicable, during the period of operations. The type of information to be collected and reported will be determined by the District Supervisor in the interests of safe conduct of operations and the structural integrity of the drilling unit.

(d) *Shallow hazards surveys requirements.* (1) In the design of all drilling programs, the lessee shall consider geologic and manmade conditions which could affect the safety of the proposed operations and the environment. Unless the lessee can demonstrate to the satisfaction of the District Supervisor that geologic and geophysical data sufficient to determine the presence or absence of such conditions are available, the lessee shall conduct a shallow hazards survey. Surveys shall be conducted in accordance with a survey strategy identifying the survey grid, navigation systems, data acquisition instrumentation, survey procedures, maps to be prepared, and the data records to be acquired. The lessee shall be required to survey areas outside the lease block if the District Supervisor determines that such information is necessary to evaluate geologic conditions which could affect the proposed operations. The proposed survey strategy shall be submitted to the District Supervisor for approval at least 20 days in advance of the date the lessee plans to initiate the survey.

(2) Prior to moving a jack-up rig with individual footings on location, the District Supervisor may require that a soil boring be drilled at the wellsite, considering seafloor and oceanographic conditions. Prior to moving a jack-up rig with mat-supported footings on location, the District Supervisor may require that a magnetometer survey be run at the wellsite and a soil boring.

(e) *Tests, surveys, and samples.* (1) The lessee shall conduct tests, obtain well and mud logs or surveys, and take samples to determine the reservoir energy; the presence, quantity, and quality of oil, gas, sulphur, water, and pressure in the formation; and casing, tubing, and other pressures. The lessee shall take formation samples or cores to determine the identity, fluid content, and character of any formation in accordance with requirements prescribed by the District Supervisor in the APD.

(2) Inclinational surveys shall be obtained on all vertical wells at intervals not exceeding 1,000 feet during the normal course of drilling. Directional surveys giving both inclination and azimuth shall be obtained on all directional wells at intervals not exceeding 500 feet during the normal course of drilling and at intervals not exceeding 100 feet in all planned angle-change portions of the hole.

(3) On both vertical and directional wells, directional surveys giving both inclination and azimuth shall be obtained at intervals not exceeding 500 feet prior to or upon setting surface or intermediate casing, liners, and at total depth. Composite directional surveys shall be prepared with the interval shown from the bottom of the conductor casing or, in the absence of conductor casing, from the bottom of the drive or structural casing to total depth. In

calculating all surveys, a correction from the true north to Universal-Transverse-Mercator-Grid-north or Lambert-Grid-north shall be made after making the magnetic-to-true-north correction. A composite dipmeter directional survey including a listing of the directionally computed inclinations and azimuths on a well classified as vertical will be acceptable as fulfilling the applicable requirements of this paragraph.

(4) Wells are classified as vertical if inclination does not exceed an average of 3 degrees from the vertical. If that inclination is exceeded, wells are classified as directional.

(5) The Regional Supervisor at the request of a holder of an adjoining lease may, for the protection of correlative rights, furnish a copy of the directional survey to that leaseholder.

(f) *Fixed drilling platforms.* Applications for installation of fixed drilling platforms or structures, including artificial islands, shall be submitted in accordance with the provisions of Subpart I, Platforms and Structures, of this part. Mobile drilling units which have their jacking equipment removed or have been otherwise immobilized are classified as fixed drilling platforms.

(g) *Crane Operations.* Cranes installed on fixed drilling platforms shall be operated and maintained in accordance with the provisions of API RP 2D to ensure the safety of facility operations. Records of inspection, testing, maintenance, and crane operators qualified in accordance with the provisions of API RP 2D shall be kept by the lessee at the lessee's field office nearest the OCS facility for a period of 2 years.

§ 250.52 Welding and burning practices and procedures.

(a) *General requirements.* (1) For the purpose of this rule, the terms "welding" and "burning" are defined to include arc or acetylene cutting and arc or acetylene welding.

(2) All offshore welding and burning shall be minimized by onshore fabrication when feasible. The requirements set forth in paragraphs (b), (c), and (d) of this section shall be applicable to any welding or burning practice or procedure performed on the following:

(i) An offshore mobile drilling unit during the drilling mode,

(ii) A mobile workover unit during any drilling, completion, recompletion, remedial, repair, stimulation, or other workover activity,

(iii) A platform, structure, artificial island, or other installation during any drilling, well-completion, well-workover, or production operation, and

(iv) A platform, structure, artificial island, or other installation which contains a well open to a hydrocarbon-bearing zone.

(3) All water-discharge-point sources from hydrocarbon-handling vessels shall be monitored in order to stop welding and burning operations in case flammable fluids are discharged as a result of equipment upset or malfunction.

(b) *Welding, burning, and hot tapping plan.* Each lessee shall file for approval by the District Supervisor a "Welding, Burning, and Hot Tapping Safe Practices and Procedures Plan" prior to beginning the first drilling and/or production operations on a lease. The plan shall include the qualification standards or requirements for personnel and the methods by which the lessee will assure that only personnel meeting such standards or requirements are utilized. A copy of this plan and approval letter shall be available on the facility where the welding is conducted. Any person designated as a welding supervisor shall be thoroughly familiar with this plan. An approved plan is required prior to conducting any welding, burning, or hot tapping operation. All welding and burning equipment shall be inspected by the welding supervisor or the lessee's designated person in charge prior to beginning any welding, burning, or hot tapping. All engine-driven welding machines shall be equipped with spark arrestors and drip pans. Welding leads shall be completely insulated and in good condition, oxygen and acetylene bottles shall be secured in a safe place, and leak-free hoses shall be equipped with proper fittings, gauges, and regulators.

(c) *Designated safe-welding and burning areas.* The lessee shall establish and designate areas determined to be safe-welding areas. These designated areas shall be identified in the plan, and a drawing showing the location of these areas shall be maintained on the facility.

(d) *Undesignated welding and burning areas.* All welding and burning, which cannot be done in an approved safe-welding area, shall be performed in compliance with the following:

(1) Prior to the commencement of any of these operations, the lessee's designated person in charge at the installation shall inspect the qualifications of the welder(s) to assure that the welder(s) is properly qualified in accordance with the lessee-approved qualification standards or requirements for welders. The designated person in charge and the welder(s) shall inspect the work area for potential fire and explosion hazards. After it has been determined that it is safe to proceed with the welding or burning operation, the designated person in charge shall issue a written authorization for the work.

(2) During these operations, one or more persons shall be designated as a Fire Watch. The person(s) assigned as a Fire Watch shall have no other duties while operations are in progress. If the operation is to be in an area which is not equipped with a gas detector, the Fire Watch shall also maintain a continuous surveillance with a portable gas detector during such operation.

(3) Prior to any of these operations, the Fire Watch shall have in his/her possession firefighting equipment in a usable condition.

(4) No such operation, other than approved hot tapping, shall be done on piping, containers, tanks, or other vessels which have contained a flammable substance unless the contents have been rendered inert and are determined to be safe for welding or burning by the designated person in charge.

(5) If drilling, workover, or wireline operations are in progress, welding operations in other than approved safe-welding areas shall not be conducted unless the well(s) where these operations are in progress contain noncombustible fluids and the entry of formation hydrocarbons into the well bore is precluded, and

(6) If such operations are conducted in the well-bay or production area, all producing wells shall be shut in at the surface safety valve.

§ 250.53 Electrical equipment.

The following requirements shall be applicable to all electrical equipment on all platforms, artificial islands, fixed structures, and their facilities:

(a) All engines with electrical ignition systems shall be equipped with a low-tension ignition system of low-fire-hazard type and shall be designed and maintained to minimize the release of sufficient electrical energy to cause ignition of an external, combustible mixture.

(b) All areas shall be classified in accordance with American Petroleum Institute (API) Recommended Practice (RP) for Classification of Areas for Electrical Installations at Drilling Rigs and Production Facilities on Land and on Marine Fixed and Mobile Platforms (API RP 500B).

(c) All electrical installations shall be made in accordance with API RP 14F for Design and Installation of Electrical Systems for Offshore Production

Platforms, except Sections 7.4, Emergency Lighting and 9.3, Aids to Navigation Equipment.

(d) Maintenance of electrical systems shall be by personnel who are trained and experienced with the area classifications, distribution system, performance characteristics and operation of the equipment, and with the hazards involved.

§ 250.54 Well casing and cementing.

(a) *General requirements.* (1) For the purpose of this subpart, the several casing strings in order of normal installation are the following:

(i) Drive or structural,

(ii) Conductor,

(iii) Surface,

(iv) Intermediate, and

(v) Production casing.

(2) The lessee shall case and cement all wells with a sufficient number of strings of casing in a manner necessary to prevent release of fluids from any stratum through the wellbore (directly or indirectly) into the sea, prevent communication between separate hydrocarbon-bearing strata, protect freshwater aquifers from contamination, support unconsolidated sediments, and otherwise provide a means of control of the formation pressures and fluids. Cement composition, placement techniques, and waiting time shall be designed and conducted so that the cement in place behind the bottom 500 feet of casing or total length of annular cement fill, if less, attains a minimum compressive strength of 500 pounds per square inch (psi).

(3) The lessee shall install casing designed to withstand the anticipated stresses imposed by tensile, compressive, and buckling loads; burst and collapse pressures; thermal effects; and combinations thereof. Safety factors in the casing program design shall be of sufficient magnitude to provide well control during drilling and to assure safe operations for the life of the well. Any portion of an annulus opposite a permafrost zone which is not protected by cement shall be filled with a liquid which has a freezing point below the minimum permafrost temperature to prevent internal freezeback and which is treated to minimize corrosion.

(4) In cases where cement has filled the annular space back to the mud line, the cement may be washed out or displaced to a depth not exceeding the depth of the structural casing shoe to facilitate casing removal upon well abandonment if the District Supervisor determines that subsurface protection against damage to freshwater aquifers and permafrost zones and against damage caused by adverse loads, pressures, and fluid flows is not jeopardized.

(5) If there are indications of inadequate cementing (such as lost returns, cement channeling, or mechanical failure of equipment), the lessee shall evaluate the adequacy of the cementing operations by pressure testing the casing shoe, running a cement bond log, running a temperature survey, or a combination thereof before continuing operations. If the evaluation indicates inadequate cementing, the lessee shall recement or take other remedial actions as approved by the District Supervisor.

(6) A pressure-integrity test shall be run below the surface casing, the intermediate casing(s), and the liner(s) used as intermediate casing(s). The District Supervisor may require a pressure-integrity test to be run at the conductor casing shoe due to local geologic conditions or planned casing setting depths. These tests shall be made after drilling new hole below the casing shoe and before drilling no more than 50 feet of new hole below a respective casing string and shall be conducted either by testing to formation leak-off or by testing to a predetermined equivalent mud weight as specified in the approved APD. Pressure-integrity and pore-pressure test results and related hole-behavior observations, such as gas-cut mud and well kicks made during the course of drilling, shall be used in planning the mud program and the setting depth of the next casing string. The results of all tests and of hole-behavior observations made during the course of drilling related to formation integrity and pore pressure shall be recorded in the driller's report.

(b) *Drive or structural casing.* This casing shall be set by driving, jetting, or drilling to a minimum depth of 100 feet below the mud line or to such other depths, as may be required or approved by the District Supervisor, in order to support unconsolidated deposits and to provide hole stability for initial drilling operations. If this portion of the hole is drilled, a quantity of cement sufficient to fill the annular space back to the mud line shall be used.

(c) *Conductor and surface casing setting and cementing requirements.*— (1) *Conductor and surface casing setting depths.* Conductor and surface casing design and setting depths shall be based upon relevant engineering and geologic factors including the presence or absence of hydrocarbons, potential hazards, and water depths. The proposed casing setting depths may be varied subject to District Supervisor approval to permit the casing to be set in a competent formation or through formations determined desirable to be isolated from the wellbore by casing for safer drilling operations. However, the conductor casing shall be set immediately prior to drilling into formations known to contain oil or gas or, if unknown, upon encountering such formations. Upon encountering unexpected formation pressures, the lessee shall submit a revised casing program to the District Supervisor for approval. The District Supervisor may waive the requirements for setting conductor casing at a well location provided an approved logging and mud-monitoring program of a previously drilled correlatable well demonstrates the absence of shallow hydrocarbons or hazards.

(2) *Conductor casing cementing requirements.* Conductor casing shall be cemented with a quantity of cement that fills the calculated annular space back to the ocean floor except as applicable to the bottom of an excavation (glory hole) or to the surface of an artificial island. Cement fill shall be verified by the observation of cement returns. In the event that observation of cement returns is not feasible, additional quantities of cement shall be used to assure fill to the mud line.

(3) *Surface casing cementing requirements.* (i) Surface casing shall be cemented with a quantity of cement that fills the calculated annular space to at least 200 feet inside the conductor casing. When geologic conditions such as near surface fractures and faulting exist, surface casing shall be cemented with a quantity of cement that fills the calculated annular space to the mud line, or as approved by the District Supervisor.

(ii) For floating drilling operations, a lesser volume of cement may be used to prevent sealing the annular space between the conductor casing and surface casing if the District Supervisor determines that the uncemented space is necessary to provide protection from burst and collapse pressures which may be applied inadvertently to the annulus between casings during blowout preventer (BOP) testing operations. Any annular space open to the drilled hole shall be sealed in accordance with the regulations for abandonment in Subpart G of this part.

(d) *Intermediate casing setting and cementing requirements.* (1) Intermediate casing string(s) shall be set for protection when geologic characteristics, wellbore conditions, or limitations of the drilling unit capability as anticipated or as encountered so indicate.

(2) Quantities of cement that cover and isolate all hydrocarbon zones in the well and isolate abnormal pressure intervals from normal pressure intervals shall be used. This requirement for isolation may be satisfied by squeeze cementing prior to completion, suspension of operations, or abandonment, whichever occurs first. Sufficient cement shall be used to provide annular fill-up to a minimum of 500 feet above the zones to be isolated or 500 feet above the casing shoe in cases where zonal coverage is not required.

(3) If a liner is used as an intermediate string, it shall be lapped a minimum of 100 feet into the previous casing string and cemented as required for intermediate casing. When such liner is used as production casing, it shall be extended to the surface and cemented to avoid surface casing being used as production casing.

(e) *Production casing.* (1) Production casing shall be cemented to cover or isolate all zones above the shoe which contain hydrocarbons; but in any case, a volume sufficient to fill the annular space at least 500 feet above the uppermost hydrocarbon-bearing zone shall be used.

(2) When a liner is used as production casing below intermediate casing, it shall be lapped a minimum of 100 feet into the previous casing string and cemented as required for the production casing.

§ 250.55 Pressure testing of casing.

(a) Prior to drilling the plug after cementing, all casing strings, except the drive or structural casing, shall be pressure tested to 70 percent of the minimum internal-yield pressure of the casing. If the pressure declines more than 10 percent in 30 minutes or if there is another indication of a leak, the casing shall be recemented, repaired, or an additional casing string run and the casing tested again. The above remedial actions shall be repeated until a satisfactory test is obtained. All casing pressure tests shall be recorded in the driller's report.

(b) Each liner lap shall be tested to 70 percent of the minimum internal-yield pressure of the casing into which the liner is lapped. The test shall be recorded on the driller's report. If the test indicates an improper seal, the top of the liner shall be squeeze cemented.

(c) In the event of prolonged drill-pipe rotation within a casing string run to the surface or extended operations such as milling, fishing, jarring, and washing over which could cause damage to the casing, the casing shall be pressure tested or evaluated by a logging technique such as a caliper every 30 days and the results submitted to the District Supervisor in the interest of assuring that integrity of the casing has not deteriorated to unsafe levels for service during drilling operations and over the life of the well.

(d) After cementing any string of casing other than structural, drilling shall not be resumed until there has been a time lapse of 8 hours under pressure for the conductor casing string or 12 hours under pressure for all other strings. Cement is considered under pressure if one or more float valves are shown to be holding the cement in place or when other means of holding pressure are used.

§ 250.56 Blowout preventer systems and system components.

(a) *General.* The BOP systems and system components shall be designed, installed, used, maintained, and tested to assure well control.

(b) *BOP stacks.* The BOP stacks shall consist of an annular preventer and the number of ram-type preventers as specified under paragraphs (e)(1), (f), and (g) of this section. The pipe rams shall be of proper size to fit the drill pipe in use.

(c) *Working pressure.* The working-pressure rating of any BOP shall exceed the surface pressure to which it may be anticipated to be subjected, except that the rated working pressure of the annular preventer need not exceed 5,000 psi. In the interest of well-control assurance, the District Supervisor may require a higher working pressure for the annular preventer upon a determination that the anticipated or actual well conditions place working-pressure demands on the annular preventer above 5,000 psi.

(d) *BOP equipment.* All BOP systems shall be equipped and provided with the following:

(1) An accumulator system which shall provide sufficient capacity to supply 1.5 times the volume necessary to close all BOP equipment units with a minimum pressure of 200 psi above the precharge pressure,

(2) A backup to the accumulator system which shall be automatic, supplied by a power source independent from the power source to the required accumulator system, and possess sufficient capability to close the BOP and hold it closed.

(3) At least one operable remote BOP control station in addition to the one on the drilling floor. This control station shall be in a readily accessible location away from the drilling floor,

(4) A drilling spool with side outlets if side outlets are not provided in the BOP body to provide for separate kill and choke lines,

(5) A choke line and a kill line each equipped with two full-opening valves. At least one of the valves on each choke line and the kill line shall be remotely controlled,

(6) A fill-up line above the uppermost preventer,

(7) A choke manifold designed with consideration of anticipated formation and surface pressures, method of well control to be employed, surrounding environment and corrosiveness, volume, and abrasiveness of fluids. The choke manifold shall also meet the following requirements:

(i) Manifold and choke equipment subject to well and/or pump pressure shall have a rated working pressure at least as great as the rated working pressure of the ram-type BOPs,

(ii) All components of the choke manifold system shall be protected from freezing by heating, draining, or filling with proper fluids, and

(iii) When buffer tanks are installed downstream of the choke assemblies for the purpose of manifolding the bleed lines together, isolation valves shall be installed on each line.

(8) Valves, pipes, flexible steel hoses, and other fittings upstream of, and including, the choke manifold shall have a pressure rating at least as great as the rated working pressure of the ram-type BOP's,

(9) A wellhead assembly with a rated working pressure at least as great as the minimum internal-yield pressure of the last full casing string, and

(10) The following system components:

(i) A kelly cock installed below the swivel (upper kelly cock), an essentially full-opening valve and a similar valve of such design that it can be run through the BOP stack installed at the bottom of the kelly (lower kelly cock), and a wrench to fit each valve stored in a location readily accessible to the drilling crew,

(ii) An inside BOP and an essentially full-opening, drill-string safety valve in the open position on the rig floor at all times while drilling operations are being conducted. These valves shall be maintained on the rig floor to fit all connections that are in the drill string. A wrench to fit the drill-string safety valve shall be stored in a location readily accessible to the drilling crew,

(iii) A safety valve available on the rig floor assembled with the proper connection to fit the casing string being run in the hole, and

(iv) Locking devices installed on the ram-type preventers.

(e) *Subsea BOP requirements.* (1) Prior to drilling below surface and intermediate casing, BOP stacks shall be installed consisting of at least four remote-controlled, hydraulically operated BOP's including at least two equipped with pipe rams, one with blind-shear rams, and one annular type. A subsea accumulator-type closing unit shall be installed to provide fast closure of the BOP's and to operate all critical functions in case of loss of power fluid connection to the surface. When proposed casing setting depths or local geology dictate the use of a BOP to provide safety during the drilling of the surface hole, the District Supervisor may require that a subsea BOP stack be installed prior to drilling below the conductor casing.

(2) The BOP system shall include operable dual-pod control systems when drilling below the surface casing. Each control pod shall contain all valves and regulators necessary to ensure proper and independent operation of the BOP stack functions and to prevent movement of the hydraulic fluid between the two control pods.

(3) Prior to the removal of the marine riser, the riser shall be displaced with seawater. Sufficient hydrostatic pressure shall be maintained within the wellbore to compensate for the reduction in pressure and to maintain a safe well condition.

(4) Any necessary repair or replacement of the BOP stack after installation shall be accomplished under safe conditions, such as after casing has been cemented but prior to drilling out the casing shoe or by setting a cement plug, bridge plug, or a packer.

(5) When a subsea BOP stack is to be used in an area which is subject to ice scour, the BOP stack shall be placed in an excavation (glory hole) with the top of the BOP stack below the deepest probable ice-scour depth.

(f) *Surface BOP requirements.* Prior to drilling below surface and intermediate casing, a BOP stack shall be installed consisting of at least four remote-controlled, hydraulically operated BOP's including at least two equipped with pipe rams, one with blind rams, and one annular type.

(g) *Tapered drill-string operations.* (1) Prior to commencing tapered drill-pipe operations, the BOP stack shall be equipped with conventional and/or variable-bore pipe rams installed in two or more ram cavities to provide the following:

(i) Two sets of pipe rams capable of sealing around the larger sized string, and

(ii) One set of pipe rams capable of sealing around the smaller sized string.

(2) Subsea BOP stacks shall have blind-shear ram capacity. Surface BOP stacks shall have blind ram capacity.

(3) Surface BOP stacks which employ only two sets of conventional pipe rams and which are capable of sealing only around the larger sized pipe are acceptable, provided that blind-shear ram capacity is present and a crossover sub to the larger sized pipe is readily available on the rig floor.

§ 250.57 Blowout preventer systems tests, actuations, inspections, and maintenance.

(a) Prior to conducting high-pressure tests, all BOP stacks shall be tested to a low pressure of 200 to 300 psi.

(b) Surface ram-type BOP's and the choke manifold shall be pressure tested to no less than 70 percent of the minimum internal-yield pressure of the casing. The annular-type BOP shall be pressure tested at 70 percent of its rated working pressure or 70 percent of the minimum internal-yield pressure of the casing, whichever is less.

(c) Subsea BOP stacks shall be stump pressure tested at the surface with water to their rated working pressure, except that the annular-type BOP shall not be pressure tested above 70 percent of its rated working pressure. After the installation of the BOP stack on the seafloor, the pipe rams and choke manifold shall be pressure tested to no less than 70 percent of the minimum internal-yield pressure of the casing.

(d) In conjunction with the weekly pressure test of surface and subsea BOP stacks, the choke manifold valves, upper and lower kelly cocks, inside BOP, and the drill-string safety valves shall be pressure tested to pipe-ram test pressures. Casing safety valves shall be actuated prior to running casing.

(e) Surface and subsea BOP stacks shall be pressure tested as follows:

(1) When installed,

(2) Before drilling out each string of casing,

(3) At least once each week, but not exceeding 7 days between pressure tests, alternating between control stations and pods. If either control system is not functional, further drilling operations shall be suspended until that system becomes operable. A period of more than 7 days between BOP tests is allowed when well operations which prevent pressure testing, such as stuck drill pipe and well-control operations and remedial efforts are being performed, provided that the pressure tests are conducted as soon as possible before normal operations resume and the reason for postponing pressure testing is entered into the driller's report. Pressure testing shall be performed at intervals to allow each drilling crew to operate the equipment. The weekly pressure test is not required for blind and blind-shear rams. These rams need be pressure tested only when installed and prior to drilling out after each casing string has been set.

(4) Blind and blind-shear rams shall be actuated at least once every 7 days. Closing pressure on the blind and blind-shear rams greater than that necessary to indicate proper operation of the rams is not required,

(5) Variable bore-pipe rams shall be pressure-tested against both sizes of pipe, and

(6) Following the disconnection or repair of any well-pressure containment seal in the wellhead/BOP stack assembly.

(f) All BOP systems and marine risers shall be inspected and maintained to assure that the equipment will function properly. The manufacturer's recommended inspection and maintenance procedures are acceptable as guidelines in complying with this requirement. The BOP systems and marine risers shall be visually inspected at least once each day if the weather and sea conditions permit the inspection. Inspection of BOP systems and marine risers may be accomplished by the use of television equipment.

(g) The results of all pressure tests, actuations, and inspections of the BOP system, system components, and marine risers shall be recorded in the driller's report.

§ 250.58 Well-control drills.

(a) Well-control drills shall be conducted for each drilling crew in accordance with the requirements in § 250.68(k) concerning well-control training.

(b) A well-control drill may be required by an MMS-authorized representative at any time during the drilling operations after notifying and consulting with the lessee's senior representative present.

§ 250.59 Diverter systems.

(a) When drilling a conductor and surface hole, all drilling units shall be equipped with a diverter system consisting of a diverter sealing element, diverter lines, and control systems unless otherwise approved by the District Supervisor for floating drilling operations. The diverter system shall be designed, installed, and maintained so as to divert gases, water, mud, and other materials away from the facilities and from personnel.

(b) No later than [insert 1 year from the effective date of these regulations], diverter systems shall be in compliance

with the requirements of this section. The requirements applicable to diverters which were in effect immediately prior to the effective date of these regulations shall remain in effect until the diverter systems are in compliance with the requirements of this section.

(c) The diverter system shall be equipped with remote-control valves in the flow lines that can be operated from at least one remote-control station in addition to the one on the drilling floor. All valves with automatic actuators shall be fail-safe open, and any valve used in a diverter system shall be full-opening. The use of manual and butterfly valves in a diverter system is prohibited. There shall be no more than two turns in any flow path downstream of the spool outlet flange with a minimum radius of curvature in any turn of three pipe diameters. Flexible hose may be used for diversion lines instead of rigid pipe if the flexible hose has integral end couplings. The entire diverter system shall be firmly anchored and supported. Diverter system controls and control lines shall be protected from damage at all times.

(d) For drilling operations conducted with a surface BOP configuration, the following shall apply:

(1) If the diverter system utilizes only one spool outlet, branch lines shall be installed to provide downwind diversion capability, and

(2) No spool outlet or diverter line internal diameter shall be less than 10 inches, except that dual spool outlets are acceptable provided that each outlet has a minimum internal diameter of 8 inches and that both outlets are piped to overboard lines and that each line downstream of the changeover nipple at the spool has a minimum internal diameter of 10 inches.

(e) For drilling operations conducted where a floating or semisubmersible type of drilling vessel is used and drilling fluids are circulated to the drilling vessel, the following shall apply:

(1) If the diverter system utilizes only one spool outlet, branch lines shall be installed to provide downwind diversion capability, and

(2) No spool outlet or diverter line internal diameter shall be less than 12 inches.

(f) The diverter sealing element, diverter valves, and diverter control systems (including the remote) shall be actuation-tested, and the diverter lines shall be tested for flow prior to spudding, and thereafter at least once each 24-hour period alternating between control stations. All test results shall be recorded in the driller's report.

(g) Diverter systems and components for use in subfreezing conditions shall be suitable for use under these conditions.

§ 250.60 Mud program.

(a) *General requirements.* The quantities, characteristics, use, and testing of drilling mud and the related drilling procedures shall be designed and implemented to prevent the loss of well control.

(b) *Mud control.* (1) Before starting out of the hole with drill pipe, the mud shall be properly conditioned by circulation with the drill pipe just off bottom to the extent that the annular volume is displaced. This procedure may be omitted if proper documentation in the driller's report shows the following:

(i) There is no indication of influx of formation fluids prior to starting to pull the drill pipe from the hole,

(ii) The weight of the returning mud is essentially the same as the weight of the mud entering the hole. In the event that the returning mud is lighter than the entering mud by a weight differential equal to or greater than 0.2 pounds per gallon (1.5 pounds per cubic foot), the mud shall be circulated until the annular volume is displaced, and the mud properties shall be checked for the influx of gas or liquid, and

(iii) Other mud properties recorded on the daily drilling log are within the specified ranges required by the mud program.

(2) When mud in the hole is circulated, the driller's report shall be so noted.

(3) When coming out of the hole with drill pipe, the annulus shall be filled with mud before the change in mud level decreases the hydrostatic pressure 75 psi or every five stands of drill pipe, whichever gives a lower decrease in hydrostatic pressure. The number of stands of drill pipe and drill collars that may be pulled prior to filling the hole and the equivalent mud volume shall be calculated and posted near the driller's station. A mechanical, volumetric, or electronic device for measuring the amount of mud required to fill the hole shall be utilized.

(4) Pipe and downhole tool running and pulling speeds shall be at controlled rates so as not to induce an influx of formation fluids from the effects of swabbing nor cause a loss of drilling fluid hydrostatic pressure from the effects of surging.

(5) When there is an indication of swabbing or influx of formation fluids, the safety devices and measures necessary to control the well shall be employed. The mud shall be circulated and conditioned, on or near bottom, unless well or mud conditions prevent running the drill pipe back to the bottom.

(6) For each casing string, the maximum pressure to be contained under the BOP, before controlling excess pressure by bleeding through the choke, shall be posted near the driller's control panel.

(7) In areas where permafrost and/or hydrate zones may be present or are known to be present, mud temperatures shall be controlled to drill safely through those zones.

(8) An operable degasser shall be installed in the mud system prior to commencement of drilling operations. The degasser shall be maintained for use throughout the drilling and completion of the well.

(9) The mud in the hole shall be circulated or reverse-circulated prior to pulling the drill-stem test tools from the hole.

(c) *Mud-testing and monitoring equipment.* (1) Mud-testing equipment shall be maintained on the drilling rig at all times, and mud tests shall be performed once each tour, or more frequently, as conditions warrant. Such tests shall be conducted in accordance with industry-accepted practices and shall include mud density, viscosity and gel strength, hydrogenion concentration (ph), filtration, and other tests as may be deemed necessary by the District Supervisor in the interests of monitoring and maintaining mud quality for safe operations, prevention of downhole equipment problems, and for kick detection. The results of the test shall be recorded in the driller's report.

(2) The following mud-system monitoring equipment shall be installed with derrick floor indicators and used when mud returns are established and throughout subsequent drilling operations:

(i) Recording mud-pit level indicator to determine mud-pit volume gains and losses. This indicator shall include both a visual and an audible warning device,

(ii) Mud-volume measuring device to accurately determine mud volumes required to fill the hole on trips,

(iii) Mud-return indicator to determine whether returns essentially equal the pump discharge rate. This indicator shall include both a visual and an audible warning device, and

(iv) Gas-detecting equipment to monitor the drilling mud returns with indicators located in the mud-logging compartment or on the rig floor. If the indicators are in the mud-logging compartment, there shall be a means of immediate communication with the rig floor, and the equipment shall be continually manned. If the indicators are

on the rig floor only, an audible alarm shall be installed.

(d) *Mud quantities.* (1) Quantities of mud and mud materials at the drill site shall be utilized, maintained, and replenished as necessary to ensure well control. Those quantities shall be based on known or anticipated drilling conditions to be encountered, rig storage capacity, weather conditions, and estimated time for delivery.

(2) Daily inventories of mud and mud materials including weight materials and additives at the drill site shall be recorded and records maintained at the well site.

(3) Drilling operations shall be suspended in the absence of sufficient quantities of mud and mud materials to maintain well control.

(e) *Safety precautions in enclosed mud-handling areas.* Enclosed mud-handling areas where dangerous concentrations of combustible gases may accumulate shall be equipped with a ventilation system and with gas monitors. These enclosed areas shall meet the following requirements after [insert date 1 year after the effective date of these regulations]. The following requirements in effect immediately prior to the effective date of these regulations shall continue in effect for 1 year after such date:

(1) Be ventilated with high-capacity mechanical ventilation systems capable of replacing the air within the enclosed area once every 5 minutes on signal from gas detectors that are operative at all times, indicating the presence of 1 percent or more of gas by volume.

(2) Be maintained at a negative pressure relative to the surrounding areas where discharge to an adjacent enclosed area may be hazardous. The negative-pressure areas are to be protected with a pressure-sensitive alarm.

(3) Be fitted with gas detectors and alarm, and

(4) Be equipped with either explosion-proof or pressurized electrical equipment to prevent the ignition of explosive gases. Where air is used for pressurizing, the air intake shall be located outside of, and as far as practicable from, hazardous areas.

§ 250.61 Well security.

A downhole safety device such as a cement plug, bridge plug, or packer shall be timely installed when drilling operations are interrupted by events such as those which force evacuation of the drilling crew, prevent station keeping, or require repairs to major drilling unit or well-control equipment. In floating drilling operations, the use of blind-shear rams may be approved by the District Supervisor in lieu of the above requirements if supported by evidence of special circumstances and/or the lack of sufficient lead time.

§ 250.62 Field drilling rules.

When geological and engineering information obtained from drilling operations in an area enables a District Supervisor to determine specific operating requirements appropriate to specific wells or a group of wells, on the District Supervisor's initiative, or in response to a request from a lessee, field drilling rules may be established. Such rules may authorize departure from identified requirements of this subpart. After field drilling rules have been established, development wells to which such rules apply shall be drilled in accordance with such rules and the requirements of this subpart which are not affected by such rules. Field drilling rules may be amended or cancelled for cause at any time upon the initiative of the District Supervisor or upon the approval of a request by a lessee.

§ 250.63 Supervision, surveillance, and training.

(a) The lessee shall provide onsite supervision of drilling operations on a 24-hour basis.

(b) From the time drilling operations are initiated and until the well is completed or abandoned, a member of the drilling crew or the toolpusher shall maintain rig-floor surveillance continuously, unless the well is secured with BOP's, bridge plugs, packer, or cement plugs.

(c) Lessee and drilling contractor personnel shall be trained and qualified in accordance with the provisions of § 250.68 concerning well-control. Records of specific training and refresher courses successfully completed, the dates of completion, and the names and dates of the courses shall be maintained at the drill site.

§ 250.64 Applications for permit to drill, deepen, or plug back.

(a) Prior to drilling under an approved Exploration Plan, Development and Production Plan, or Development Operations Coordination Document, the lessee shall file a Form MMS-331C, APD, with the District Supervisor for approval. Prior to commencing operations, written approval from the District Supervisor must be received by the lessee unless oral approval has been given.

(b) The APD's from mobile drilling units shall include the following:

(1) An identification of the maximum environmental and operational conditions the rig is designed to withstand.

(2) Current vessel certification documentation with operational limitations in the form of an American Bureau of Shipping classification or other appropriate classification and either a U.S. Coast Guard Certificate of Inspection (U.S.-flag vessels) or a U.S. Coast Guard Letter of Compliance (foreign-flag vessels).

(3) The design and operating limitations beyond which suspension, curtailment, or modification of the drilling or rig operations are required (e.g., vessel motion, offset, riser angle, anchor tensions, wind speed, wave height, currents, icing or ice-loading, settling, tilt or lateral movement, resupply capability) and contingency plans to be followed in the event the design or operating limitations are reached or exceeded, and

(4) A program which provides for safety in drilling operations where a floating or semisubmersible type of drilling vessel is used and formation competency at the structural and/or conductor casing setting depth(s) is (are) not adequate to permit circulation of drilling fluids to the vessel while drilling the conductor and/or surface hole. This program shall include all known pertinent information including seismic and geologic data, water depth, drilling-fluid hydrostatic pressure, a schematic diagram indicating the equipment to be installed from the rotary table to the proposed conductor and/or surface casing seat(s), and the contingency plan for moving off location.

(c) The APD's shall include rated capacities of the proposed drilling unit and of major drilling equipment.

(d) In those areas which are subject to subfreezing conditions, the lessee shall furnish evidence that the drilling equipment, drilling safety systems, diverter systems, and other associated equipment and materials are suitable for drilling operations under these conditions.

(e) After a drilling unit has been approved for use in a Region, the information listed in paragraphs (b) (1), (2), and (3), (c), and (d) of this section above need not be resubmitted unless required by the District Supervisor or there are changes in equipment that affect the rated capacity of the unit.

(f) An APD shall include the following in addition to a fully completed Form MMS-331C:

(1) A plat, drawn to a scale of 2,000 feet to the inch, showing the surface and subsurface location of the well to be drilled and of all the wells previously drilled in the vicinity from which

information is available. Locations shall be indicated in feet from the block line.

(2) The design criteria considered for the well and for well control, including the following:

(i) Pore pressures,

(ii) Formation fracture gradients,

(iii) Potential lost circulation zones,

(iv) Mud weights,

(v) Casing setting depths,

(vi) Anticipated surface pressure (which for purposes of this section are defined as the surface well pressure which can reasonably be expected to be exerted upon a casing string and its related wellhead equipment). In the calculation of anticipated surface pressure, the lessee shall take into account the drilling, completion, and producing conditions. The lessee shall consider mud densities to be used below various casing strings, fracture gradients of the exposed formations, casing setting depths, total well depth, formation fluid type, and other pertinent conditions. Considerations for calculating anticipated surface pressure may vary for each segment of the well. The lessee shall include as a part of the statement of anticipated surface pressure the calculations used to determine this pressure during the drilling phase and the completion phase, including the anticipated surface pressure used for production string design.

(vii) If a shallow hazards site survey is conducted, the lessee shall submit with or prior to the submittal of the APD, two copies of a summary report describing the geological and manmade conditions present. The lessee shall also submit two copies of the site maps and data records identified in the survey strategy, and

(viii) Permafrost zones, if applicable.

(3) A BOP equipment program including the following:

(i) A pressure rating of BOP equipment,

(ii) A well-control procedure for use of the annular preventer for those wells where the anticipated surface pressure exceeds the rated working pressure of the annular preventer,

(iii) A description of subsea BOP accumulator system or other type of closing unit proposed,

(iv) A dimensioned schematic drawing of the diverter system to be used (plan and elevation views) showing spool outlet internal diameter(s); diverter line lengths, burst strengths, and radius of curvature at each turn; valve type, working pressure rating, and location; the control instrumentation logic; and the operating procedure to be used by personnel, and

(v) A schematic drawing of the BOP stack showing the inside diameter of the BOP stack, and the number of annular, pipe ram, variable-bore pipe ram, blind ram, and blind-shear ram preventers.

(4) A casing program including the following:

(i) Casing size, weight, grade and setting depth,

(ii) Casing design safety factors for tension, collapse, and burst with the assumptions made to arrive at these values, and

(iii) In areas containing permafrost, casing programs that incorporate setting depths for conductor and surface casing based on the anticipated depth of the permafrost at the proposed well location and which utilize the current state-of-the-art methods to safely drill and set casing. The casing program shall provide protection from thaw subsidence and freezeback effect, proper anchorage, and well control until the next string of casing is set.

(5) The drilling prognosis including the following:

(i) Plans for coring at specified depths,

(ii) Plans for logging,

(iii) Estimated depths to the top of significant marker formations, and

(iv) Estimated depths at which encounters with water, oil, and gas are expected.

(6) A cementing program including type and amount of cement in cubic feet to be used for each casing string,

(7) A mud program including the minimum quantities of mud and mud materials, including weight materials, to be kept at the site,

(8) A directional survey program for directional wells,

(9) A plot of the estimated pore pressures and formation fracture gradients and the proposed mud weights and casing setting depths on the same sheet,

(10) A Hydrogren Sulfide (H_2S) Contingency Plan, if applicable, and not submitted previously, and

(11) Such other information as may be required by the Regional Supervisor or District Supervisor.

(g) Public information copies of the APD shall be submitted in accordance with § 250.17.

§ 250.65 Sundry notices and reports on wells.

(a) Notices of the lessee's intention to change plans, make changes in major drilling equipment, or engage in similar activities and subsequent reports pertaining to such operations shall be submitted to the District Supervisor on Form MMS-331, Sundry Notices and Reports on Wells. Prior to commencing operations, written approval must be received from the District Supervisor unless oral approval has been obtained.

(b) The Sundry Notices and Reports on Wells submittal shall contain a detailed statement of the proposed work that will materially change the approved APD. Information submitted shall include the present status of the well, including the production string or last string of casing, the well depth, the present production zones and productive capability, and all other information specified on Form MMS-331. After completion of the work, a subsequent detailed report of all the work done and the results obtained shall be submitted.

(c) A Form MMS-331 with a certified plat shall be filed as soon as the well's final surveyed surface location, water depth, and the rotary kelly bushing elevation have been determined.

(d) Public information copies of Sundry Notices and Reports on Wells shall be submitted in accordance with § 250.17.

§ 250.66 Well records.

(a) The lessee shall keep at the lessee's field office nearest the OCS facility or at other locations conveniently available to the District Supervisor accurate and complete records for each well and of all well operations. The records shall contain a description of any significant malfunction or problem; all the formations penetrated; the content and character of oil, gas, and other mineral deposits and water in each formation; the kind, weight, size, grade, and setting depth of casing; all well logs and surveys run in the wellbore; and all other information required by the District Supervisor in the interests of resource evaluation, conservation, protection of correlative rights, safety, and environmental protection.

(b) When drilling operations are suspended, or temporarily prohibited, the lessee shall, within 30 days after termination of the suspension or temporary prohibition or within 30 days after the completion of any activities related to the suspension or prohibition, transmit to the District Supervisor duplicate copies of the records of all activities related to and conducted during the suspension or temporary prohibition on, or attached to, Form MMS-330, Well-Completion or Recompletion Report and Log, or Form MMS-331, as appropriate.

(c) Upon request by the Regional Supervisor or District Supervisor, the lessee shall furnish the following:

(1) Copies immediately of the records of any of the well operations specified in paragraph (a) of this section,

(2) Paleontological reports identifying microscopic fossils by depth unless washed samples of drilling cuttings, normally maintained by the lessee for paleontological determinations, are made available to the MMS for inspection,

(3) Copies of the daily drilling report showing the location, description, and status of all wells on leased lands, and

(4) Legible, exact copies of service company reports on cementing, perforating, acidizing, analyses of cores, testing, or other similar services.

(d) As soon as available, the lessee shall transmit copies (field or final prints of individual runs) of logs or charts of electrical, radioactive, sonic, and other well-logging operations, directional well surveys, and analyses of cores. Composite logs of multiple runs and directional well surveys shall be transmitted to the District Supervisor in duplicate as soon as available but not later than 30 days after completion of such operations for each well.

(e) If the drilling unit moves from the wellbore prior to completing the well, the lessee shall submit to the District Supervisor copies of the well records with completed Form MMS–330, Well-Completion or Recompletion Report and Log, within 30 days after moving from the wellbore.

(f) If the District Supervisor determines that circumstances warrant, the lessee shall submit any other reports and records of operations requested.

§ 250.67 Hydrogen sulfide.

(a) *Performance requirements and applicability.* (1) The lessee shall take all necessary precautions and measures to protect personnel from the toxic effects of H_2S and to mitigate the adverse effects of H_2S to property and to the environment.

(2) The requirements of this section apply, as appropriate, to drilling, well-completion, well-workover (including well-servicing), and production operations in zones known to contain H_2S and to drilling, well-completion, and well-workover operations in zones where the presence of H_2S is unknown. The requirements are not applicable to operations in zones where the absence of H_2S has been confirmed.

(b) *Definitions.* As used in this section, terms shall have the meanings given below:

"Facility" means a vessel, a structure, or an artificial island used for drilling, well-completion, well-workover, and/or production operations.

"Well-control fluid" means drilling mud, completion fluid, or workover fluid as appropriate to the particular operation being conducted.

"Zones known to contain H_2S" means geologic formations where prior drilling operations or logging, coring, testing, or producing operations have confirmed that H_2S-bearing zones will be encountered that could potentially result in atmospheric concentrations of 20 parts per million (ppm) or more of H_2S.

"Zones where the absence of H_2S has been confirmed" means one of the following:

(1) Geologic formations where prior drilling operations or logging, coring, testing, or producing operations have indicated that H_2S-bearing zones have not been encountered that could potentially result in atmospheric concentrations of 20 ppm or more of H_2S,

(2) Geologic formations where analysis of produced gas samples have indicated the absence of H_2S in concentrations that could potentially result in atmospheric concentrations of 20 ppm or more of H_2S, or

(3) An area in a geological province in which there has been no prior drilling but from prior drilling in the surrounding areas, it can be shown by correlation of geological and seismic data that continuous and homogeneous bedding exists with an absence of H_2S throughout the area to be drilled.

"Zones where the presence of H_2S is unknown" means geologic formations where neither the presence nor absence of H_2S has been confirmed.

(c) *Request for classification of probability of encountering H_2S during operations.* Prior to beginning operations in an area, the lessee shall submit to the District Supervisor for approval a request for determination as to whether the proposed operations will be in areas classified as "Zones known to contain H_2S," "Zones where the presence of H_2S is unknown," or "Zones where the absence of H_2S has been confirmed." The classification request shall be supported by a recommendation drawn from available information such as geologic and geophysical data and correlations, well logs, formation tests, cores, and analyses of formation fluids.

(d) *Drilling, well-completion, and workover operations in zones known to contain H_2S.* Drilling, well-completion, and well-workover operations in zones known to contain H_2S shall be conducted in accordance with the requirements of this paragraph and of paragraphs (h), (i), (j), (k), (l) (1) through (5), and (m) (1) through (13) of this section.

(e) *Drilling and well-completion operations in zones where the presence of H_2S is unknown.* When drilling or completing in zones where the presence of H_2S is unknown, only the requirements of paragraph (h) of this section shall apply. In the event that H_2S is encountered that could potentially result in atmospheric concentrations of 20 ppm or more of H_2S, the requirements of paragraph (d) of this section shall apply.

(f) *Production operations in zones known to contain H_2S.* Production operations in zones known to contain H_2S shall implement the requirements in paragraphs (h), (l) (1) through (6), and (m) (7) through (16) of this section.

(g) *Simultaneous operations.* Any combination of drilling, well-completion, well-workover, and production operations conducted simultaneously shall implement all the requirements in this section applicable to each individual operation and in conformance with the coordinated Contingency Plan as required in paragraph (h)(1) of this section.

(h) *Personnel safety and protection.* The following requirements shall be implemented for personnel safety and protection.

(1) *Contingency Plan.* A Contingency Plan shall be submitted for approval to the District Supervisor prior to the commencement of operations and, as applicable, encompass simultaneous drilling, well-completion, well-workover, and production operations. A copy of the approved Contingency Plan shall be made available in the field area until operations are completed. The Contingency Plan shall include the following:

(i) Safety procedures and equipment, training, drills, and smoking rules,

(ii) Identity of the job position, title of the person responsible for the overall safety of personnel, and a description of the organization of assignments of functions, duties, and responsibilities of other identified job positions,

(iii) Duties, responsibilities, and operating procedures when the concentration of H_2S in the air has reached the following:

(A) 10 ppm level,

(B) 20 ppm level, and

(C) 50 ppm level.

(iv) Designation of briefing areas as locations for assembly of personnel during conditions of 20-ppm and 50-ppm concentrations. At least two briefing areas shall be established on each facility. The briefing area that is upwind of the H_2S source at any given time shall be the designated briefing area,

(v) Evacuation plan,

(vi) Agencies to be notified in case of an emergency, and

(vii) A list of medical personnel and facilities including addresses and telephone numbers.

(2) *Training Program.* An onsite H_2S-safety training program shall be established that includes the following:

(i) All personnel whether regularly assigned, contracted for, or employed on an unscheduled basis shall be informed of the hazards of H_2S and of sulphur dioxide (SO_2) resulting from burning H_2S and instructed in the provisions for personnel safety contained in the Contingency Plan,

(ii) All personnel shall be instructed in the proper use of safety equipment which they may be required to use,

(iii) All personnel shall be informed of the location of protective-breathing apparatus, H_2S detectors and alarms, ventilation equipment, briefing areas, warning systems, evacuation procedures, and the direction of the prevailing winds,

(iv) All personnel shall be informed of the restrictions and corrective measures concerning beards, spectacles, and contact lenses in conformance with ANSI Z88.2, practices for Respiratory Protection,

(v) Safety information shall be prominently posted on the facility and on vessels serving the facility,

(vi) A drill and training session shall be conducted for each crew prior to beginning operations and at least once during any subsequent 7-day period. Records of attendance shall be maintained on the facility until operations are completed,

(vii) Personnel shall be instructed in basic first-aid procedures applicable to victims of H_2S exposure. During all drills and training sessions, procedures for rescue and first aid for H_2S victims shall be addressed. Each facility shall have the following equipment readily available, and personnel shall be instructed as to the location and use of the following items:

(A) A first-aid kit of appropriate size and content for the number of personnel on the facility,

(B) Resuscitators complete with face masks, oxygen bottles, and spare oxygen bottles, and

(C) At least one litter or an equivalent device.

(vii) Personnel shall be informed of the meaning of all warning signals.

(3) *Visible warning system.* Visible warning systems shall comply with the following:

(i) Wind-direction equipment shall be installed at prominent locations to indicate to all personnel, on or in the immediate vicinity of the facility, the wind direction at all times to determine safe upwind areas in the event that H_2S or SO_2 is present in the vicinity, and

(ii) Operational danger signs shall be displayed from each side of the facility and a sufficient number of rectangular red flags shall be hoisted in a manner visible to watercraft and aircraft, and shall comply with the following:

(A) Each sign shall be of a minimum width of 8 feet and a minimum height of 4 feet and shall be a high-visibility yellow color with black lettering of a minimum of 12 inches in height reading as follows:

DANGER—HYDROGEN SULFIDE—H_2S

(B) Each red flag shall be of a minimum width of 3 feet and a minimum height of 2 feet,

(C) All signs and flags shall be illuminated at night and under conditions of poor visibility, and

(D) Only signs shall be displayed in cases where the concentration in the air reaches 20 ppm. Signs and flags shall be displayed in cases where the concentration in the air reaches 50 ppm.

(4) *Audible warning system.* A public address system and a siren, horn, or other similar warning device shall be installed at appropriate locations on the facility. The warning devices shall be explosion-proof and shall be activated by the H_2S-detection and H_2S-monitoring equipment. When the warning devices are activated, the designated responsible person shall inform personnel of the level of danger and issue instructions on appropriate protective measures.

(5) *H_2S-detection and H_2S-monitoring equipment.* (i) Each facility shall have an H_2S-detection and H_2S-monitoring system which activates audible and visible alarms when the concentration of H_2S exceeds 20 ppm. This system shall be capable of sensing a minimum of 10 ppm of H_2S in the air with sensing points located at the bell nipple, shale shaker, well-control fluid pit area, driller's station, living quarters, and other areas which are low, poorly ventilated, or confined where H_2S might accumulate in hazardous quantities,

(ii) The H_2S-detection and H_2S-monitoring equipment shall be calibrated daily when drilling approaches a potential H_2S-bearing zone and at least once every 8 hours when drilling, well-completion, and/or well-workover operations are being conducted in an H_2S environment. The H_2S detectors for production operations shall be calibrated at least twice weekly. The calibration shall be conducted by a person trained to calibrate the particular H_2S-detection and H_2S-monitoring equipment being used. All calibrations shall be recorded in the driller's or production operations report as applicable, and

(iii) The H_2S-detection ampoules or any other comparable H_2S-monitoring devices capable of detecting 20 ppm shall be available for use by all personnel. After H_2S has been initially detected, frequent inspections of all areas of poor ventilation shall be made with a portable H_2S-detection instrument.

(6) *Protective-breathing apparatus.* Protective-breathing apparatus and their use shall conform to the following:

(i) Personnel on a facility operating in known or unknown H_2S and/or SO_2 zones shall have immediate access to pressure-demand-type respirators. The design, selection, use, and maintenance of these respirators shall conform to ANSI Z88.2, Practices for Respiratory Protection. Accessory equipment such as voice-transmission devices and spectacle kits shall be made available as needed,

(ii) The storage location of protective-breathing apparatus shall be quickly and easily accessible to all personnel,

(iii) All breathing-air bottles shall be labeled as containing breathing-quality air for human use,

(iv) Workboats attendant to facilities operating in known or unknown H_2S and/or SO_2 zones shall carry a pressure-demand-type respirator for each crew member. When 20 ppm or more of H_2S is detected, workboats shall be notified to move upwind and stay under power until the H_2S is brought under control at the source. In frontier areas, the District Supervisor may require additional breathing-air equipment on workboats,

(v) Helicopters attendant to facilities operating in known H_2S zones shall carry pressure-demand-type respirators for the pilots. Facilities operating in unknown H_2S and/or SO_2 zones shall store pressure-demand-type respirators on the heliport for the use of pilots and copilots, and

(vi) For drilling, well-completion, and well-workover operations, a system of breathing-air manifolds, hoses, and masks shall be provided on the rig floor and in the briefing areas. A cascade air-bottle system shall be provided for the breathing-air manifolds and to refill individual protective-breathing apparatus bottles. The cascade air-bottle system may be recharged by a high-pressure compressor suitable for providing breathing-quality air provided the compressor suction is located in an uncontaminated atmosphere.

(7) *Additional personnel-safety equipment.* The following additional personnel-safety equipment shall be available:

(i) Portable H_2S detectors,

(ii) Retrieval ropes with safety harnesses to retrieve incapacitated personnel from contaminated areas,

(iii) Chalkboards and note pads for communication purposes located on the rig floor, shale-shaker area, the cement-pump rooms, well bay area, production processing equipment area, gas compressor area, and pipeline-pump area,

(iv) Bull horns and flashing lights, and

(v) Resuscitators.

(8) *Ventilation equipment.* All ventilation devices shall be explosion-proof and situated in areas where H_2S or SO_2 may accumulate. Movable ventilation devices shall be provided in work areas and be multidirectional and capable of dispersing H_2S or SO_2 vapors away from working personnel.

(9) *Notification of regulatory Agencies.* The MMS and U.S. Coast Guard shall be notified immediately in cases where the H_2S concentrations in the air have reached 20 ppm and 50 ppm levels.

(i) *Drilling, completion, and workover fluids program when operating in zones known to contain H_2S.*

(1) *Well-control fluid base.* Either water- or oil-base muds may be used in drilling formations containing H_2S.

(2) *Well-control fluid testing.* If water-base, well-control fluids are used, and if H_2S is detected by air sensors, either the Garrett-Gas-Train test or comparable test techniques for soluble sulfides shall be conducted immediately, and the results shall be compared with the readings of the other sensors. Personnel conducting the tests shall don protective-breathing apparatus conforming to paragraph (h)(6)(i) of this section.

(3) *Additives.* Sufficient quantities of additives for the control of H_2S, well-control fluid pH, and corrosion of equipment shall be maintained on the facility.

(i) *Scavengers.* When drilling within 100 feet of a known H_2S-bearing zone or when H_2S is detected, scavengers for control of H_2S shall be added to the oil- or water-base mud systems. Drilling shall be suspended until scavengers are circulated throughout the system.

(ii) *Control of pH.* Additives for the control of pH shall be added to water-base well-control fluids in sufficient quantities to maintain a pH of at least 10.0, and

(iii) *Corrosion inhibitors.* Additives for the control of corrosion shall be added to the well-control fluid system as needed.

(4) *Degassing.* Well-control fluids containing H_2S shall be degassed at the optimum location for the particular facility. The gases so removed shall be collected and burned in a closed flare system conforming to paragraph (m)(7) of this section.

(j) *Kick detection and well control.* In the event of a kick, the disposal of the well-influx fluids shall be accomplished by one of the following alternatives giving consideration to personnel safety, possible environmental damage, and possible facility well-equipment damage:

(1) Contain the well-fluid influx by shutting in the well and pumping the fluids back into the formation, or

(2) Control the kick by using appropriate well-control techniques to prevent formation fracturing in an open hole within the pressure limits of the well equipment (drill pipe, work string, casing, wellhead, BOP's, and related equipment). The disposal of H_2S and other gases shall be through pressurized or atmospheric mud-gas separator equipment depending on volume, pressure, and concentration of H_2S. The equipment shall be designed to recover well-control fluids and to vent to the atmosphere and burn the gases separated from the well-control fluid. The well-control fluid shall be treated to neutralize H_2S and restore and maintain the proper quality.

(k) *Well testing in an H_2S* zone. (1) Prior to initiation of a well test, safety meetings shall be conducted for all personnel who will be on the facility during the test. The meetings shall emphasize the use of personnel protective-breathing apparatus, first-aid procedures, and the Contingency Plan. Only competent personnel who are trained and are knowledgeable of the hazardous effects of H_2S shall be engaged in these tests.

(2) Well testing shall be performed with the minimum number of personnel in the immediate vicinity of the rig floor and with the appropriate test equipment to safely and adequately perform the test. During the test, H_2S levels shall be continuously monitored.

(3) All produced gases shall be vented and burned through a flare which meets the requirements of paragraph (m)(7) of this section. Gases from stored test fluids shall be vented into the flare outlet.

(4) Downhole test tools and wellhead equipment shall be suitable for H_2S service.

(5) Tubing suitable for H_2S service shall be used for well testing. Drill pipe shall not be used for well testing without the prior approval of the District Supervisor. When using a water cushion, it shall be thoroughly inhibited in order to prevent H_2S corrosion. The test string shall be flushed with treated fluid for this purpose after completion of the test.

(6) All surface test units and related equipment shall be designed for H_2S service.

(l) *Metallurgical properties of equipment for use in an H_2S zone*—(1) *General provisions.* Equipment used in H_2S environments shall be constructed of materials whose metallurgical properties resist or prevent sulfide stress cracking (also known as hydrogen embrittlement, stress corrosion cracking, and/or H_2S embrittlement). The metallurgical properties of the materials shall conform to NACE Standard MR-01-75, Material Requirement, Sulfide Stress Cracking Resistant Metallic Material for Oil Field Equipment.

(2) *Casing and tubing.* Casing, tubing, couplings, flanges, and related equipment shall be designed for H_2S service as specified in Table 4, Acceptable API and American Society of Testing and Materials Specifications for Tubular Goods of NACE Standard MR-01-75. Approval of the District Supervisor is required prior to commencing field welding on such casing (except conductor and surface strings).

(3) *Wellhead, BOP's, and pressure-control equipment.* The BOP stack assembly, wellhead, pressure-control equipment, and related equipment such as bolts, nuts, flanges, bonnet covers, and clamp-type connectors shall conform to NACE Standard MR-01-75. However, the BOP's manufactured prior to April 1978, which are not in compliance with NACE Standard MR-01-75, may be used in an H_2S zone provided the BOP's incorporate the manufacturer's own design considerations for H_2S service.

(4) *Downhole well-security equipment.* Temporary downhole well-security devices such as retrievable packers and bridge plugs shall be designed for H_2S service.

(5) *Production equipment.* Equipment used when producing zones bearing H_2S shall be constructed of materials capable of resisting or preventing sulfide stress cracking.

(6) *Installation or modification.* The use of welding shall be kept to a minimum during the installation or modification of the producing facility. Weldments shall be annealed and stress relieved according to the requirements of NACE Standard MR-01-75.

(m) *General requirements when operating in an H_2S zone.*—(1) *Additional precautions after penetration of an H_2S-bearing zone.* The H_2S levels shall be continuously monitored in the work areas in addition to monitoring

requirements in paragraph (h)(5)(i) during the following operations:

(i) When it is necessary to pull a wet string of drill pipe or workover string,

(ii) Circulating bottoms-up after a drilling break,

(iii) Cementing operations,

(iv) Logging operations, and

(v) Circulating to condition mud.

(2) *Coring operations.* When coring operations are conducted in H_2S-bearing zones, protective-breathing apparatus shall be worn by those personnel in the working area at least 10 stands in advance of retrieving the core barrel. Cores to be transported shall be sealed and marked for the presence of H_2S.

(3) *Logging operations.* Well-control fluid in use for logging operations shall be conditioned and treated to minimize the effects of H_2S on the logging equipment.

(4) *Stripping operations.* Displaced well-control fluid returns shall be monitored, and protective-breathing apparatus shall be worn by those personnel in the working area if H_2S is detected at levels of 20 ppm or above.

(5) *Gas-cut well-control fluid or well kick from H_2S-bearing zone.* Should a decision be made to circulate out a kick, protective-breathing apparatus shall be worn by those personnel in the working area prior to and subsequent to bottoms-up and during an extended-kill operation.

(6) *Drill-string and workover-string design and precautions.* Drill and workover strings shall be designed consistent with the anticipated depth, conditions of the hole, and reservoir environment to be encountered. Care shall be taken to minimize exposure of the drill or workover string to high stresses as much as is practical and consistent with well conditions. Proper handling techniques shall be employed to minimize notching and stress concentrations. Precautions shall be taken to minimize stresses caused by doglegs, improper stiffness ratios, improper torque, whip, abrasive wear on tool joints, and joint imbalance.

(7) *Flare system.* The flare outlet shall be of such diameter to allow easy nonrestricted flow of gas. Flare lines shall be located on the downwind side and as far from the facility as is feasible, taking into account the prevailing wind directions, the wake effects caused by the facility and adjacent structure(s), and the height of all such facilities and structures. The flare outlet shall be equipped with an automatic ignition system including a pilot-light gas source or an equivalent system. There shall be a backup ignitor for each flare. All vents from production process equipment, tanks, relief valves, burst plates, and similar devices shall be piped to the flare system.

(8) *Corrosion mitigation.* An effective means of controlling corrosion shall be used in both the downhole and surface portions of a production system. Specific corrosion monitoring and mitigating measures shall be taken in areas of unusually severe corrosion where accumulation of water and/or higher concentrations of H_2S exist.

(9) *Wireline lubricators.* Lubricators which may be exposed to fluids containing H_2S shall be of H_2S-resistant materials.

(10) *Fuel and/or instrument gas.* Gas containing H_2S shall not be used for fuel or instrument gas.

(11) *Instruments.* Metals used for instruments, sensing lines, and other safety-control devices shall be either externally coated or of H_2S-resistant materials if the metals are in an atmosphere with H_2S present in corrosive concentrations.

(12) *Threaded connections.* Threaded couplings and fittings shall have smooth-cut (free of galls) and tapered threads of appropriate lengths.

(13) *Elastomer seals.* All seals which may be exposed to fluids containing H_2S shall be of H_2S-resistant materials.

(14) *Water disposal.* Produced water disposed of by means other than subsurface injection shall be treated for removal of H_2S.

(15) *Deck drains.* Open deck drains shall be equipped with traps or similar devices to prevent backflow of H_2S gas into the atmosphere.

(16) *Sealed voids.* Precautions shall be taken to eliminate sealed spaces in piping designs (e.g., slip-on flanges, reinforcing pads) which can be invaded by atomic hydrogen when H_2S is present.

§ 250.68 Training in well control.

(a) *Training performance standard.* Personnel engaged in drilling activities on the OCS shall be trained in the use of well-control equipment, operations, and techniques to avoid hazards to personnel and property and to prevent pollution during drilling.

(b) *Personnel classifications.* The following drilling personnel shall be trained and qualified in accordance with the requirements of this section:

(1) Rotary helper,

(2) Derrickman,

(3) Driller,

(4) Toolpusher, and

(5) Operator's representative.

(c) *Training records.* Employers of personnel identified in paragraph (b) of this section shall maintain a record of training required by this section for each such employee and shall provide such employee with documentation of the successful completion of each training requirement of this section.

(d) *Training location.* Hands-on training and qualification drills required by this section for rotary helpers and derrickmen shall be performed at their job sites.

(e) *Rotary helper training.* Rotary helpers shall be trained in accordance with the following:

(1) The candidate shall receive general instructions on Government regulations that pertain to the work in regard to well-control activities. Copies of the regulations or abstracts of pertinent sections shall be furnished to the candidate. This material shall be kept current with the revisions or additions to Government requirements. These instructions shall include the following as a minimum:

(i) Drilling procedures,

(ii) Plugging and abandonment, and

(iii) Pollution and waste disposal.

(2) The candidate shall receive general instructions on BOP equipment consistent with the type of BOP stack utilized on the drilling rig upon which the candidate is employed. These instructions shall consist of the purpose, operation, and general care of the following:

(i) Annular BOP with and without diverter systems,

(ii) Diverter system,

(iii) Ram-type BOP,

(iv) Accumulator system,

(v) Drill string inside BOP,

(vi) Drill-string safety valve,

(vii) Kelly cock,

(viii) Choke manifold, and

(ix) In addition to the above, the candidate shall receive instructions on the purpose, operation, and general care of the following auxiliary equipment:

(A) Mud-pit level indicator,

(B) Mud-volume measuring device,

(C) Mud-return indicator,

(D) Gas detector,

(E) Mud-gas separator, and

(F) Trip tank.

(3) The candidate shall receive instructions on the standard warning signals of kicks including, but not limited to, the following:

(i) Gain in pit volume and/or increase in mud-return rate,

(ii) Hole not taking proper amount of mud during trips, and

(iii) Well flowing with pump shutdown.

(4) The candidate shall receive hands-on training at the job site for well-control operations such as operation of the choke manifold, stand pipe, and mud-room valves which require settings

for kill operations different from those used in normal drilling operations.

(f) *Derrickman training.* Derrickmen shall be trained in accordance with the following:

(1) The candidate shall have completed the training as a rotary helper or possess equivalent experience before enrolling in the derrickman course.

(2) The candidate shall receive general instructions on Government regulations that pertain to the work in regard to well-control activities. Copies of the regulations or abstracts of pertinent sections shall be furnished to the candidate. This material shall be kept current with the revisions or additions to Government requirements. These instructions shall include the following as a minimum:

(i) Drilling procedures,

(ii) Plugging and abandonment, and

(iii) Pollution and waste disposal.

(3) The candidate shall receive general instructions on BOP equipment consistent with the type of BOP stack utilized by the drilling rig upon which the candidate is employed. The candidate shall also receive instructions on the purpose, operation, and care of the following equipment:

(i) Equipment listed under paragraph (e)(2) of this section,

(ii) Degasser, and

(iii) Adjustable choke.

(4) The candidate shall receive general instructions on drilling fluids including the following:

(i) Density,

(ii) Viscosity,

(iii) Fluid loss,

(iv) Salinity,

(v) Gas cutting, and

(vi) Procedure for increasing mud density.

(5) The candidate shall receive general instructions consistent with assigned duties on warning signals that indicate a kick or conditions that can lead to a kick such as, but not limited to, the following:

(i) Items in paragraph (e)(3) of this section,

(ii) Sloughing shale and its appearance at surface,

(iii) Drilling rate change,

(iv) Change in salinity,

(v) Change in flow properties of drilling fluid, and

(vi) Trip, connection, and background gas changes.

(6) The candidate shall receive hands-on training at the job site on the items covered in paragraph (e)(4) of this section and general instructions on well-killing operations.

(g) *Driller training.* Drillers shall be trained in accordance with the following:

(1) The candidate shall have completed training as a rotary helper and derrickman or possess equivalent experience before enrolling in the driller's course.

(2) The candidate shall receive instructions on all applicable Government regulations that pertain to the work in regard to well-control operations and equipment. Copies of the regulations or abstracts of pertinent sections shall be furnished to the candidate. This material shall be kept current with the revisions or additions to Government requirements. These instructions shall include the following as a minimum:

(i) Drilling procedures including field drilling rules,

(ii) Plugging and abandonment, and

(iii) Pollution and waste disposal.

(3) The candidate shall receive instructions on drilling fluids including the following:

(i) Density,

(ii) Viscosity,

(iii) Fluid loss,

(iv) Salinity,

(v) Gas cutting, and

(vi) Procedure for increasing mud density.

(4) The candidate shall receive instructions on the major causes of kicks including the following:

(i) Failure to keep the hole full,

(ii) Swabbing effect of pulling the pipe,

(iii) Loss of circulation,

(iv) Insufficient density of drilling fluid,

(v) Abnormally pressured formations, and

(vi) Effect of too rapid lowering pipe in the hole.

(5) The candidate shall receive instructions on the importance of measuring the mud required to fill the hole during trips and methods for measuring and recording hole-fill volumes including such importance as it relates to shallow-gas conditions.

(6) The candidate shall receive instructions on the warning signals that indicate a kick or conditions that can lead to a kick including the following:

(i) Gain in pit volume,

(ii) Increase in return mud-flow rate,

(iii) Hole not taking proper amount of mud during trips,

(iv) Drilling rate change,

(v) Decrease in circulating pressure or increase in pump strokes,

(vi) Trip, connection, and background gas changes,

(vii) Gas-cut mud,

(viii) Water-cut mud or chloride change,

(ix) Sloughing shale and its appearance at the surface,

(x) Well flowing with pump shutdown, and

(xi) Change in flow properties of drilling fluid.

(7) The candidate shall receive instructions on the correct procedures for shutting in a well for well-control purposes, including controlling a well with the BOP system, the choke manifold, and/or the diverter system. These instructions shall include the sequential steps to be followed consistent with the type of BOP stack utilized by the drilling rig on which the candidate is employed.

(8) The candidate shall receive instructions on one of the following constant bottomhole pressure methods of well control including those conditions which may be unique to either the surface- or subsea-BOP stack utilized by the drilling rig upon which the candidate is employed:

(i) Driller's method,

(ii) Wait and weight method,

(iii) Concurrent (circulate and weight) method, and

(iv) Other applicable constant bottomhole pressure methods.

(9) A complete well-killing exercise shall be carried out using a simulator or a model well.

(10) The candidate shall be instructed on well-control calculations and the reasons for their use including the following:

(i) Mud-density increase required to control kick,

(ii) Conversion between mud density and pressures and the importance of the conversions in understanding formation breakdown, particularly with shallow casing setting,

(iii) Drop in pump pressure as mud density increases during kill operations: relationships between pump pressure, pump rate, and mud density, and

(iv) Pressure limitations on casings.

(11) The candidate shall receive the following instructions on unusual well-control situations to include as a minimum:

(i) When drill pipe is off bottom,

(ii) When out of hole,

(iii) When lost circulation occurs,

(iv) When drill pipe is plugged,

(v) Excessive casing pressure, and

(vi) Hole in drill pipe.

(12) The candidate shall receive instructions on the following:

(i) Controlling shallow gas kicks,

(ii) Use of diverters, and

(iii) Use of marine risers (subsea candidates only).

(13) The candidate shall receive instructions on the installation, operation, maintenance, and testing of the BOP and diverter systems.

(14) The candidate shall receive instructions on the purpose, installation, operation, and general maintenance of the following auxiliary equipment:

(i) Mud-pit level indicator,

(ii) Mud-volume measuring device,

(iii) Mud-return indicator,

(iv) Gas detector,

(v) Trip tank,

(vi) Mud-gas separator,

(vii) Degasser, and

(viii) Adjustable choke.

(15) The candidate shall receive instructions on proper accumulator precharge pressures and the relationship between precharge pressure, operating pressure, and usable volumes using appropriate problems including the maintenance of equipment.

(h) *Toolpusher training.* (1) The candidate shall have completed the training described in paragraph (g) of this section or possess the equivalent experience.

(2) The candidate shall receive instructions on all applicable Government regulations that pertain to the work in regard to well-control operations and equipment. Copies of the regulations or abstracts of pertinent sections shall be furnished to the candidate.

This material shall be kept current in accordance with the revisions or additions to Government requirements. These instructions shall include the following as a minimum:

(i) Drilling procedures including field drilling rules,

(ii) Plugging and abandonment, and

(iii) Pollution and waste disposal.

(3) The candidate shall receive instructions on the calculations required for well-control operations. Example calculations shall be practiced. The candidate shall also receive instructions on the calculation of equivalent pressures at the casing seat including the importance of casing-seat depth.

(4) The candidate shall receive instructions on the limitations of the various items of equipment which will be subjected to pressure and/or wear.

(5) The candidate shall receive instructions on the mechanics involved in various well-control situations including the following subjects:

(i) Gas-bubble migration and expansion,

(ii) Bleeding volume from a shut-in well during gas migration,

(iii) Excessive annular surface pressures,

(iv) Differences between a gas kick and a salt water and/or oil kick,

(v) Procedures and problems involved in stripping operations with drill pipe,

(vi) Special well-control techniques such as, but not limited to, barite plugs and cement plugs, and

(vii) Procedures and problems involved when experiencing loss circulation in well-killing operations.

(6) The candidate shall receive instructions on organizing and directing a well-killing operation and shall subsequently direct such an operation using a model well or equivalent simulation device.

(7) The candidate shall receive instructions on a diverter operation.

(8) The candidate shall receive instructions on the purpose and usage of closing units including the following:

(i) Charging procedures which include precharge and operating pressure,

(ii) Fluid volumes (usable and required),

(iii) Fluid pumps, and

(iv) Maintenance which includes charging fluid and inspection procedures.

(i) *Operator's representative.* (1) All candidates shall be familiar with the basic duties and training of the rotary helper, the derrickman, the driller, and the toolpusher during well-control situations.

(2) The candidate shall receive instructions on all applicable Government regulations that pertain to work in regard to well-control operations and equipment. Copies of the regulations or abstracts of pertinent sections shall be furnished to the candidate. This material shall be kept current with the revisions or additions to Government requirements. These instructions shall include the following as a minimum:

(i) Drilling procedures including field drilling rules,

(ii) Plugging and abandonment, and

(iii) Pollution and waste disposal.

(3) The candidate shall receive instructions on one of the constant bottomhole pressure methods of well control as set out under paragraphs (g)(8), (g)(9), and (g)(10) of this section. The candidate shall also receive instructions on the calculation of equivalent pressures at the casing seat including the importance of casing-seat depth.

(4) The candidate shall receive stripping and snubbing operations instructions on the use of the entire BOP system for working pipe in or out of a wellbore which is under well pressure.

(5) The candidate shall receive instructions on accepted practices used for detecting entry into abnormally pressured formations and the accompanying warning signals including the following:

(i) Penetration rate change,

(ii) Shale-density change,

(iii) Mud-chloride change,

(iv) Shale-cutting characteristics, and

(v) Trip, connection, and background gas changes.

(6) The candidate shall receive instructions on organizing and directing a well-killing operation and shall subsequently direct such an operation using a model well or equivalent simulation device.

(7) The candidate shall receive instructions on a diverter operation.

(j) *Qualification procedures.* No rotary helper, derrickman, driller, toolpusher, or operator's representative shall perform or participate in drilling operations on the OCS unless the qualification procedures of this section are met.

(1) *Rotary helpers* shall meet the following qualifications:

(i) A rotary helper candidate shall have satisfied the training criteria of paragraph (e) of this section within the first 6 months of initial employment,

(ii) A rotary helper candidate shall successfully complete a qualification test consisting of a crew performance drill that requires the rotary helper to carry out the assignment in a well-control drill within a prescribed time limit commensurate with anticipated operating circumstance, and

(iii) To maintain qualification, the candidate must participate in well-control drills, as prescribed in paragraph (k) of this section, and carry out the assignments within the time limit prescribed for the drill. The time required for the candidate to complete the drill shall be recorded on the driller's log. Appropriate documentation of initial qualification shall be furnished to the successful candidate.

(2) *Derrickmen* shall meet the following qualifications:

(i) The candidate shall have satisfied the criteria of paragraphs (f) and (j)(1) of this section,

(ii) A derrickman candidate shall successfully complete a qualification test consisting of a crew performance drill that requires the derrickman to carry out the assignment in a well-control drill within a prescribed time limit, and

(iii) To maintain the qualification, the candidate must participate in well-control drills, as prescribed in paragraph (k) of this section, and carry out the assignments within the time limit prescribed for the drill. The time required for the candidate to complete the drill shall be recorded on the driller's log. Appropriate documentation of initial qualification shall be furnished to the successful candidate.

(3) *Drillers* shall meet the following qualifications:

(i) The candidate shall have completed the training for rotary helper and derrickman or possess the equivalent experience and shall have completed the training identified in paragraph (g) of this section,

(ii) The candidate shall successfully complete written and/or verbal tests and hands-on demonstrations to verify that the candidate has a thorough understanding of the well-control equipment and techniques outlined in paragraph (g) of this section,

(iii) The candidate shall maintain qualification by the following:

(A) Successful repetition of the criteria set forth in paragraphs (g) and (j)(3) of this section every 4 years, and

(B) Successful completion of an annual refresher course in well-control operations consisting of a minimum of 8 hours and including instruction and training in the most recent improvements in equipment and methods for blowout prevention using a test well or simulator during the intermediate period.

(iv) Test results shall be entered in the candidate's training record, and appropriate documentation shall be furnished the candidate upon successful completion.

(4) *Toolpushers* shall meet the following qualifications:

(i) The candidate shall have completed the training for driller or possess the equivalent experience and shall have completed the training requirements in paragraph (h) of this section,

(ii) The candidate shall successfully complete written and/or verbal tests and hands-on demonstrations to verify that the candidate has a thorough understanding of the well-control equipment, techniques, and principles outlined in paragraph (h) of this section,

(iii) The candidate shall maintain the qualification by the following:

(A) Successful repetition of the criteria set forth in paragraphs (h) and (j)(4) of this section every 4 years; and

(B) Successful completion of an annual refresher course in well-control operations consisting of a minimum of 8 hours and including instruction and training in the most recent improvements in equipment and methods for blowout prevention and including the successful individual control of a well kick using a test well or simulator during the intermediate period.

(iv) Test results shall be recorded in the candidate's training file, and appropriate documentation shall be furnished the candidate upon successful completion.

(5) *Operators' representatives* shall meet the following qualifications:

(i) The candidate shall be familiar with the basic duties of rotary helper, derrickman, driller, and toolpusher during well-control operations and shall have completed the training requirements in paragraph (i) of this section,

(ii) The candidate shall successfully complete qualification tests and hands-on demonstrations to assure that the operator's representative candidate has a thorough understanding of the well-control equipment principles and practices in paragraph (i) of this section and is qualified to organize and direct a well-control operation,

(iii) The candidate shall maintain the qualification by the following:

(A) Successful repetition of the criteria set forth in paragraphs (i) and (j)(5) of this section every 4 years, and

(B) Successful completion of an annual refresher course in well-control operations consisting of a minimum of 8 hours and including instruction and training in the most recent improvements in equipment and methods for blowout prevention including the successful individual control of a well kick using a test well or simulator during the intermediate period.

(iv) Test results shall be recorded in the candidate's training file, and appropriate documentation shall be furnished the candidate upon successful completion.

(k) *Well-control drills.* (1) Drills shall be designed to acquaint each crew member with each member's function on the particular test station so each can perform it promptly and efficiently.

(2) A well-control drill plan, applicable to the particular site, shall be prepared for each crew member outlining the assignments each is to fulfill during the drill and establishing a prescribed time for the completion of each portion of the drill. A copy of the complete well-control drill plan shall be posted on the rig's floor and/or bulletin board.

(3) The drill shall be carried out during periods of activity selected to minimize the risk of sticking the drill pipe or otherwise endangering the operation. In each of these drills, the reaction time of participants shall be measured up to the point when the designated person is in the position to activate the closing sequence of the BOP. The total time for the crew to complete its entire pit drill assignment shall also be measured. This operation shall be recorded on the driller's log as "Well-Control Drill." All drills shall be initiated by the toolpusher through the raising of the float on the pit level device, activating the mud-return indicator, or their equivalent. This operation shall be performed at least once each week (well conditions permitting) with each crew. The drills shall be timed so they will cover a range of different operations which include on-bottom drilling and tripping. A diverter drill shall be developed and conducted in a similar manner for shallow operations.

(4) *On-bottom drilling.* A drill conducted while on bottom shall include the following as appropriate:

(i) Detect kick and sound alarm,

(ii) Position kelly and tool joints so connections are accessible from floor, but tool joints are clear of sealing elements in stack, stop pumps, check for flow, close in the well,

(iii) Record time,

(iv) Record drill pipe pressure and casing pressure,

(v) Measure pit gain and mark new level,

(vi) Estimate volume of additional mud in pits,

(vii) Weigh sample of mud from suction pit,

(viii) Check all valves on choke manifold and BOP stack for correct position (open or closed),

(ix) Check BOP stack and choke manifold for leaks,

(x) Check flow line and choke exhaust lines for flow,

(xi) Check accumulator pressure,

(xii) Prepare to extinguish sources of ignition,

(xiii) Alert standby boat or prepare safety capsule for launching,

(xiv) Place crane operator on duty for possible personnel evacuation,

(xv) Prepare to lower all escape ladders and prepare other abandonment devices for possible use,

(xvi) Determine materials needed to circulate out kick, and

(xvii) Time drill and enter drill report on driller's log.

(5) *Tripping pipe.* A drill conducted during a trip shall include the following as appropriate:

(i) Detect kick and sound alarm,

(ii) Install safety valve, close safety valve,

(iii) Position pipe, prepare to close annular preventer,

(iv) Install inside preventer, open safety valve,

(v) Record time,

(vi) Record casing pressure,

(vii) Check all valves on choke manifold and BOP stack for correct position (open or closed),

(viii) Check for leaks on BOP stack and choke manifold,

(ix) Check flowline and choke exhaust lines for flow,

(x) Check accumulator pressure,

(xi) Prepare to extinguish sources of ignition,

(xii) Alert standby boat or prepare safety capsule for launching,

(xiii) Place crane operator on duty for possible personnel evacuation,

(xiv) Prepare to lower escape ladders and prepare other abandonment devices for possible use,

(xv) Prepare to strip back to bottom, and

(xvi) Time drill and enter drill report on driller's log.

(l) *Relief assignments.* Any employee who acts as assigned relief for another employee with a higher classification (as covered by this section) shall meet the requirements of the higher classified job, unless such temporary duties are performed under direct supervision of an employee of higher classification.

(m) *General well-control training program.* Well-control training programs shall be submitted for approval as meeting the requirements of this section to the Deputy Associate Director for Offshore Operations in accordance with the following:

(1) All programs and related correspondence shall be mailed to the Deputy Associate Director for Offshore Operations, Minerals Management Service, Mail Stop 642, 12203 Sunrise Valley Drive, Reston, Virginia 22091,

(2) Three copies of the information required in paragraphs (n) and (o) of this section, including a listing of the materials contained therein, except for the information in paragraphs (n)(1)(viii), (n)(2)(ii), and (o)(8) of this section, shall be submitted to the Deputy Associate Director for Offshore Operations,

(3) Two copies of the information required in paragraphs (n)(1)(viii), (n)(2)(ii), and (o)(8) of this section shall be submitted to the Deputy Associate Director for Offshore Operations,

(4) A training plan containing a cross-reference of its training manual to these regulations shall be submitted by an applicant school,

(5) A training manual shall be representative of the subject matter addressed during the course of the school,

(6) Candidates who are absent from any part of the class shall make up the missed portion of the course before credits are awarded,

(7) Schools shall furnish the MMS-onsite evaluators a copy of their training manual during the onsite evaluation,

(8) Certified basic and refresher well-control schools shall retain all required records for the first 5 years from the date of school approval. At the end of the fifth year, a school may destroy the records of the first year, and at the end of the sixth year, a school may destroy the records of the second year, and so forth,

(9) Recertification shall be comprised of the following requirements:

(i) Basic well-control courses and refresher courses shall be approved for a maximum of 4 years, and

(ii) Previously approved schools shall forward to the Deputy Associate Director for Offshore Operations, at least 90 days prior to their 4-year anniversary date, a letter requesting certification and state the changes, additions, or deletions, if any, to their previously approved course material and curriculum.

(10) Certified schools shall be subject to unannounced onsite evaluations by MMS personnel.

(n) *Basic and refresher well-control training program.* Plans for these programs shall be submitted in accordance with the following:

(1) *Basic well-control course.* Organizations are required to submit a training plan to the MMS for approval. This plan shall contain the following:

(i) A curriculum outline describing subject matter content in relation to these regulations. The outline submitted shall be similar to the format listed below:

Job Classification—Driller
First Day—10 hours
Subject X—5 hours
  Detail A
  Detail B
  Detail C
  Subject Y—3 hours
  Detail D
Subject Z—2 hours
  Detail E
  Detail F
Second Day—10 hours
Subject M—5 hours
  Detail G
  Detail H
  Detail I
Subject N—5 hours
  Detail J
  Detail K

(ii) Qualifying credentials of instructors including education and experience (both work experience and teaching experience),

(iii) Class sizes of no more than 20 candidates per lecture, and no more than 4 candidates per (hands-on) lab exercise with a daily record of student attendance.

(iv) A description of the classroom and lab including equipment and simulator/test well,

(v) Classroom/lab time ratio,

(vi) Material presentation method (lecture, video, filmstrip, etc.,) indicating approximate percentages of overall instructional time presented by each method as shown in the following examples:

Lecture—70 percent
Video tape—10 percent
Film strips—10 percent
Simulator—10 percent

Method of presentation as shown in the following examples:

Subject X—4-hour lecture plus 1-hour video tape
Subject Y—2-hour lecture plus 1-hour film strips,

(vii) Testing methods (including a sample of the tests to be given) with the following requirements:

(A) Take-home tests shall not be permitted,

(B) The candidate shall satisfactorily and completely perform the hands-on test,

(C) The candidate shall answer at least 70 percent of all test questions correctly,

(D) The school shall submit the methods they will use to assure that the test shall be nonrepetitive and remain confidential,

(E) Retest (written or simulator) shall be authorized if accomplished within 48 hours. Test questions or problems on retest shall be different than those given candidates originally. If the candidate fails either the written or simulator retest, the candidate shall repeat the entire course, and

(F) Personnel trained and qualified for subsea-BOP stacks shall be automatically qualified for surface-BOP stacks.

(viii) A copy of handouts or materials to be provided candidates for use and retention for future reference. These handouts shall form a complete training manual,

(ix) A copy of the proposed certificate of successful completion including the following:

(A) Candidate's full name,

(B) Course and school,

(C) Date candidate successfully completed course,

(D) Job classification for which certification is awarded, and

(E) Surface or subsea qualification.

(x) Differences in instructional material for qualifying personnel employed on drilling rigs utilizing a surface-BOP stack versus a subsea-BOP stack,

(xi) School's method of updating curriculum and/or facilities to reflect technological advances on changes in Government regulations, such as the following:

(A) Attendance at technical meetings,

(B) Review of technical publications,

(C) Review of course by technical and industry advisory boards (e.g., International Association of Drilling Contractors, API, etc.),

(D) Feedback from prior candidates, and

(E) Input from company research and development programs.

(xii) Methods for performing candidates's hands-on qualification test including at least three practice problems with the candidate's position rotated as part of a team and one official test problem,

(xiii) Means to verify candidate entrance prerequisites,

(xiv) A course schedule submitted to the MMS after acceptance of training plan and on at least a semiannual basis thereafter,

(xv) A requirement to notify the Deputy Associate Director for Offshore Operations, by letter, of all the candidates that have successfully completed the course. This letter shall contain the following information:

(A) Candidate's full name,

(B) Name of school,

(C) Course type (Basic or Refresher),

(D) Date candidate successfully completed course,

(E) Name of instructor teaching each class,

(F) Candidate's social security number (optional),

(G) Candidate's employer,

(H) Job title of candidate,

(I) Job classification for which certification is awarded.

(J) Qualification achieved/awarded candidate (surface, subsea),

(K) Test score for each candidate awarded certificate,

(L) Name of last school attended by student, and

(M) Date of last well-control course taken by candidate.

(xvi) The applicant shall also state the methods they will use to instruct and test those individuals believed to be qualified but nonresponsive to conventional education and testing techniques. The methods employed may include, but not be limited to, oral tests, use of an interpreter, or tutorial assistance.

(2) *Refresher course.* Schools applying for refresher course certification shall submit information containing the following:

(i) Refresher course "Training plan" composed of the following:

(A) A curriculum outline showing, as a minimum, one constant bottomhole pressure method, a simulated well-kick control (as a minimum, one practice test run), improvements in BOP equipment and methods, and new Government requirements applicable to offshore operations, and

(B) Qualifying credentials of instructors including education and experience (both work experience and teaching experience).

(ii) A copy of a training manual comprised of the handouts or materials to be furnished the candidates for their use and retention for future reference (not required for schools certified for a basic well-control course),

(iii) A request for approval of refresher courses conducted by schools not certified to teach basic wall-control courses,

(iv) A requirement for a minimum of 8 hours of instruction of subject matter covered in the course curriculum outline,

(v) Class sizes of no more than 20 candidates per lecture and no more than 4 candidates per (hands-on) lab exercise with a daily record of candidate attendance,

(vi) A requirement that the candidate must satisfactorily and completely perform the hands-on test,

(vii) A requirement that the hands-on retest be authorized if accomplished within 48 hours. Test problems shall be different than those given the candidate originally. If the candidate fails the retest, the candidate shall repeat the entire course,

(viii) Certificates of successful completion including the following:

(A) Candidate's full name,

(B) Course and school name,

(C) Date of successful completion,

(D) Job classification, and

(E) Surface or subsea qualification;

(ix) A requirement that refresher course training be given on an annual basis and accomplished within 60 days before or after candidate's anniversary date. The anniversary date shall be established upon the candidate's successful completion of a basic course in well-control,

(x) A requirement that candidates can upgrade their qualifications, i.e., surface to subsea, driller to toolpusher, only by attendance at an approved basic course, and

(xi) A requirement that a school shall notify the Deputy Associate Director for Offshore Operations, by letter, of all the candidates that have successfully completed the course.

(o) *Rotary helper and derrickman well-control training program.* Organizations shall submit a training plan to MMS for approval. This plan shall contain the following:

(1) A curriculum outline describing subject matter content in relation to these regulations for rotary helper and derrickman classifications. The outline submitted shall be similar to the format listed below:

First Day—8 hours

Subject X—3 hours
- Detail A
- Detail B
- Detail C

Subject Y—3 hours
- Detail D

Subject Z—2 hours
- Detail E
- Detail F

Second Day—8 hours

Subject M—2 hours
- Detail G
- Detail H

Subject N—6 hours
- Detail I
- Detail J

(2) Identification and qualification of personnel responsible for providing the instructions of the applicable requirements of these regulations for their respective classification,

(3) Class sizes consisting of no more than 20 candidates per lecture where hands-on are completed with a representative rig crew,

(4) A description of the classroom unless training is conducted at the job site,

(5) Classroom/lab time ratio,

(6) Material presentation method (lecture, video, filmstrip, etc.,) indicating approximate percentages of overall instructional time presented by each method as shown in the following examples:

Lecture—70 percent
Video tape—10 percent
Film strips—10 percent
Hands-on—10 percent.

Method of presentation as shown in the following examples:

Subject X—4-hour lecture plus 1-hour video tape
Subject Y—2-hour lecture plus 1-hour filmstrip.

(7) A testing method to measure the candidate's successful completion of training course,

(8) A copy of handouts or materials to be provided candidates for their use and retention for future reference. These handouts shall form a complete training manual,

(9) A copy of proposed certificates of successful completion with the following information:

(i) Candidate's full name,

(ii) Course location,

(iii) Date candidate successfully completed initial qualification, and

(iv) Job classification for which certification is awarded.

(10) School's method of updating curriculum to reflect technological advances and changes in Government regulation, and

(11) Means to verify candidate's entrance prerequisite.

(p) *Records of training.* Operations including identification of all participants and results of testing shall be maintained by the lessee at the lessee's field office nearest the OCS facility for a period of 5 years.

Subpart E—Well-Completion Operations

§ 250.70 Performance standard.

Well-completion operations shall be conducted in a manner to protect against harm or damage to life (including fish and other aquatic life), property, natural resources of the OCS including any mineral deposits (in areas leased and not leased), the national security or defense, or the marine, coastal, or human environment.

§ 250.71 Definition.

When used in this subpart, the following term shall have the meaning given below:

"Well-completion operations" means the work conducted to establish the producibility of a well after the production-casing string has been set and cemented.

§ 250.72 Equipment movement.

The movement of well-completion rigs and related equipment on and off an offshore platform or from well to well on the same offshore platform, including rigging up and rigging down, shall be conducted in a safe manner. Prior to moving such rigs and related equipment, all wells which are capable of producing hydrocarbons shall be shut in and equipped with a pump-through-type tubing plug, a back-pressure valve, and a closed master valve. A surface-controlled subsurface safety valve of the pump-through type may be used in lieu of the pump-through-type tubing plug, provided that the surface control has been locked out of operation.

§ 250.73 Emergency shutdown system.

When well-completion operations are conducted on a platform where there are other hydrocarbon-producing wells or other hydrocarbon flow, an emergency Shutdown System manually controlled station shall be installed near the driller's console or well-servicing unit operator's work station.

§ 250.74 Hydrogen sulfide.

When a well-completion operation is conducted on a well in zones known to contain hydrogen sulfide (H_2S) or in zones where the presence of H_2S is unknown (as defined in § 250.67), the lessee shall take appropriate precautions to protect life and property on the platform or completion unit, especially during operations such as blowing the well down, dismantling wellhead equipment and flow lines, circulating the well, and pulling pumps and packers. The lessee shall comply with the requirements in § 250.67 as well as the appropriate requirements of this subpart.

§ 250.75 Subsea completions.

All subsea well completions shall be submitted for approval by the District Supervisor. The District Supervisor will approve the proposal on a case-by-case basis upon a determination that the proposed equipment and procedures will adequately control the well and permit safe production operations.

§ 250.76 Crew instructions.

Prior to engaging in well-completion operations, personnel shall be instructed in the safety requirements of the operations to be performed, possible hazards to be encountered, and general safety considerations to protect personnel, equipment, and the environment. Date and time of safety meetings shall be recorded in the operations log.

§ 250.77 Welding and burning practices and procedures.

All welding, burning, and hot tapping activities involved in well-completion operations shall be conducted with well maintained equipment, trained personnel, and appropriate procedures in order to minimize the danger to life and property on the platform or rig and according to the specific requirements in § 250.52.

§ 250.78 Electrical requirements.

All electrical equipment and systems involved in well-completion operations shall be designed, installed, equipped, protected, operated, and maintained so as to minimize the danger to life and property on the rig or platform and in accordance with the requirements in § 250.53.

§ 250.79 Well-completion structures on fixed OCS platforms.

Derricks, masts, substructures, and related equipment shall be selected, designed, installed, used, and maintained so as to be adequate for the potential loads and conditions of loading that may be encountered during the operations. The conditions affecting loading include, but are not limited to, setback, wind, possible icing, pulling and running tubular goods and subsurface equipment, and fishing and jarring operations. Prior to moving a well-completion rig or equipment onto a platform, the lessee shall determine the structural capability of the platform to safely support the equipment and operations taking into consideration the corrosion protection, age of platform, and previous stresses.

§ 250.80 Diesel engine air intakes.

All diesel engine air intakes shall be equipped with an automatic shutdown device that will prevent engine runaway after [insert date 1 year after the effective date of these regulations].

§ 250.81 Traveling-block safety device.

After [insert date 1 year after the effective date of these regulations], all units being used for well-completion operations shall be equipped with a safety device which is designed to prevent the traveling block from striking the crown block. The device shall be checked for proper operation weekly and after each drill-line slipping operation. The results of the operational check shall be entered in the operations log.

§ 250.82 Simultaneous operations.

No well-completion operations shall be conducted on a platform where there are production operations until a General Plan for Conducting Simultaneous Operations has been approved as described in § 250.123.

§ 250.83 Field well-completion rules.

When geological and engineering information obtained from drilling operations in an area enables a District Supervisor to determine specific operating requirements appropriate to specific wells or a group of wells, on the District Supervisor's initiative or in response to a request from a lessee, field well-completion rules may be established. Such rules may authorize departure from identified requirements of this subpart. After field well-completion rules have been established, well-completion operations, to which such rules apply, shall be conducted in accordance with such rules and the requirements of this subpart which are not affected by such rules. Field well-completion rules may be amended or cancelled for cause at any time upon the initiative of the District Supervisor or upon the request of a lessee.

§ 250.84 Approval and reporting for well-completion operations.

(a) No well-completion operation shall begin until the lessee receives written approval from the District Supervisor. If completion is planned and the data is available at the time the Application for Permit to Drill, Deepen, or Plug Back, Form MMS–331C (§ 250.64), is submitted, approval for a well completion may be requested on that form. If the completion has not been approved on that form or if conditions or plans have significantly changed, approval for such operations shall be requested on Form MMS–331, Sundry Notices and Reports on Wells. Approvals by the District Supervisor shall be based upon a determination that the operations will be conducted in a manner to protect against harm or damage to life (including fish and other aquatic life), property, natural resources of the OCS, including any mineral deposits (in areas leased or not leased), the national security or defense, or the marine, coastal, or human environment.

(b) The following information shall be submitted with Form MMS–331 (or with Form MMS–331C):

(1) The well-completion procedures to be followed and a statement of the expected surface pressure,

(2) A well schematic drawing showing the proposed zones and the subsurface well-completion equipment to be used,

(3) For multiple completions, a partial electric log showing the zones proposed for completion, if logs have not been previously submitted, and

(4) Where the well is in a zone known to contain H_2S or a zone where the presence of H_2S is unknown, a description of the safety precautions to be used.

(c) Within 30 days after completion, Form MMS–331, including a schematic of the tubing and the results of any well tests, shall be submitted to the District Supervisor. In addition, if Form MMS–330, Well-Completion or Recompletion Report and Log, has not been submitted previously, it shall accompany Form MMS–331.

§ 250.85 Well-control fluids, equipment, and operations.

(a) Well-control fluids, equipment, and operations shall be designed, utilized, maintained, and/or tested as necessary to control the well in foreseeable conditions and circumstances, including subfreezing conditions. The well shall be continuously monitored during well-completion operations and shall not be left unattended at any time unless the well is shut in and secured.

(b) Quantities of well-control fluids sufficient for well control shall be maintained and readily accessible at all times.

(c) The following well-control-fluid equipment shall be installed, maintained, and utilized:

(1) A fill-up line above the uppermost blowout preventer,

(2) A well-control fluid-volume measuring device for determining fluid volumes when filling the hole on trips,

(3) A recording mud-pit-level indicator to determine mud-pit-volume gains and losses. This indicator shall include both a visual and an audible warning device, and

(4) When coming out of the hole with drill pipe, the annulus shall be filled with well-control fluid before the change in such fluid level decreases the hydrostatic pressure 75 pounds per square inch (psi) or every five stands of drill pipe, whichever gives a lower decrease in hydrostatic pressure. The number of stands of drill pipe and drill collars that may be pulled prior to filling the hole and the equivalent well-control fluid volume shall be calculated and posted near the operator's station. A mechanical, volumetric, or electronic device for measuring the amount of well-control fluid required to fill the hole shall be utilized.

§ 250.86 Blowout prevention equipment.

(a) The blowout preventer (BOP) system and system components shall be designed, used, maintained, and tested in a manner necessary to assure well control in foreseeable conditions and circumstances, including subfreezing conditions. The working pressure of the BOP stack and BOP system components shall equal or exceed the expected surface pressure to which it may be subjected, except that the working pressure of the annular preventer need not exceed 5,000 psi. If the expected surface pressure exceeds the rated working pressure of the annular preventer, the lessee shall submit with Form MMS–331 or Form MMS–331C, as appropriate, a well-control procedure that indicates how the annular preventer will be utilized and the pressure limitations that will be applied during each mode of pressure control.

(b) The minimum BOP stack for well-completion operations shall consist of the following:

(1) Three preventers, when the expected surface pressure is less than 5,000 psi, consisting of an annular preventer, one preventer equipped with pipe rams, and one preventer equipped with blind or blind-shear rams,

(2) Four preventers, for multiple tubing strings or when the expected surface pressure is greater than 5,000 psi, consisting of an annular preventer, two preventers equipped with pipe rams, and one preventer equipped with blind or blind-shear rams. When dual tubing strings are being handled simultaneously, dual pipe rams shall be installed on one of the pipe-ram preventers, or

(3) When tapered drill pipe is used, regardless of the expected surface pressure, the minimum BOP stack shall consist of either of the following:

(i) An annular preventer, two sets of pipe rams capable of sealing around the larger sized string, one set of pipe rams capable of sealing around the smaller sized string, and a preventer equipped with blind or blind-shears rams, or

(ii) An annular preventer, two sets of pipe rams capable of sealing around the larger string, a preventer equipped with blind-shear rams, and a crossover sub to the larger sized pipe that shall be readily available on the rig floor.

(c) The BOP systems for well completions shall be equipped with the following:

(1) A hydraulic-actuating system that provides sufficient accumulator capacity to supply 1.5 times the volume necessary to close all BOP equipment units with a minimum pressure of 200 psi above the precharge pressure,

(2) A secondary power source, independent from the primary power source, with sufficient capacity to close all BOP's and hold them closed,

(3) Locking devices on the pipe-ram preventers,

(4) At least one remote BOP-control station and one BOP-control station on the rig floor, and

(5) A choke line and a kill line each equipped with two full opening valves and a choke manifold. One of the choke-line valves shall be remotely controlled. This equipment shall have a pressure rating at least equivalent to the ram preventers.

(d) An inside BOP or a spring-loaded, back-pressure safety valve and an essentially full-opening, work-string safety valve shall be maintained on the rig floor at all times during well-completion operations. A wrench to fit the inside BOP and work-string safety valve shall be readily available. Proper connections shall be readily available for inserting valves in the work string.

§ 250.87 Blowout preventer system testing, records, and drills.

(a) Prior to conducting high-pressure tests, all BOP's shall be successfully tested to a low pressure of 200 psi to 300 psi. Ram-type BOP's, related control equipment, including the choke and kill

manifolds, and safety valves shall be successfully tested to 70 percent of the minimum internal-yield pressure of the casing. The annular-type BOP shall be successfully tested at 70 percent of its rated working pressure or 70 percent of the minimum internal-yield pressure of the casing, whichever is less. Each valve in the choke and kill manifolds shall be successfully, sequentially pressure tested to the ram-type BOP test pressure.

(b) The BOP systems shall be tested at the following times:

(1) When installed,

(2) At least every 7 days, alternating between control stations and at staggered intervals to allow each crew to operate the equipment. If either control system is not functional, further operations shall be suspended until the nonfunctional system is operable. The test every 7 days is not required for blind or blind-shear rams. The blind or blind-shear rams shall be tested at least once every 30 days during operation, except that the periods between tests may be longer when there is a stuck pipe or pressure-control operation and remedial efforts are being performed. The tests shall be conducted as soon as possible and before normal operations resume. The reason for postponing testing shall be entered into the operations log, and

(3) Following repairs that require disconnecting a pressure seal in the assembly.

(c) All personnel engaged in well-completion operations shall participate in a weekly BOP drill to familiarize crew members with appropriate safety measures.

(d) The time, dates, and results of BOP tests, actuations, and crew drills shall be recorded in the operations log.

§ 250.88 Tubing and wellhead equipment.

(a) No tubing string shall be placed into service or continued to be used unless such tubing string has the necessary strength and pressure integrity and is otherwise suitable for its intended use.

(b) In the event of prolonged drilling or extended operations such as milling, fishing, jarring, or washing over that could damage the casing, the casing shall be pressure tested, calipered, or otherwise evaluated every 30 days and the results submitted to the District Supervisor.

(c) When the tree is installed, the wellhead shall be equipped to be monitored for sustained pressure in all of the annuli.

(d) Wellhead, tree, and related equipment shall be designed, installed, used, maintained, and tested so as to achieve and maintain pressure control. New wells completed as flowing or gas-lift wells shall be equipped with a minimum of one master valve and one surface safety valve in the vertical run of the tree.

(e) Subsurface safety equipment shall be installed, maintained, and tested in compliance with § 250.121.

Subpart F—Well-Workover Operations

§ 250.90 Performance standard.

Well-workover operations shall be conducted in a manner to protect against harm or damage to life (including fish and other aquatic life), property, natural resources of the OCS including any mineral deposits (in areas leased and not leased), the national security or defense, or the marine, coastal, or human environment.

§ 250.91 Definitions.

When used in this subpart, the following terms shall have the meanings given below:

"Workover operations" means the work conducted on wells after the initial completion for the purpose of maintaining or restoring the productivity of a well.

"Routine operations" means any of the following operations conducted on a well with the tree installed:

(a) Cutting paraffin,

(b) Removing and setting pump-through-type tubing plugs, gas-lift valves, and subsurface safety valves which can be removed by wireline operations,

(c) Bailing sand,

(d) Pressure surveys,

(e) Swabbing,

(f) Scale or corrosion treatment,

(g) Caliper and gauge surveys,

(h) Corrosion inhibitor treatment,

(i) Removing or replacing subsurface pumps,

(j) Through-tubing logging (diagnostics),

(k) Wireline fishing, and

(l) Setting and retrieving other subsurface flow-control devices.

§ 250.92 Equipment movement.

The movement of well-workover rigs and related equipment on and off an offshore platform or from well to well on the same offshore platform, including rigging up and rigging down, shall be conducted in a safe manner. Prior to moving such rigs and related equipment, all wells which are capable of producing hydrocarbons shall be shut in and equipped with a pump-through-type tubing plug, a back-pressure valve, and a closed-master valve. The well(s) from which or to which the rig or related equipment is to be moved shall be equipped with a pump-through-type tubing plug and a back-pressure valve prior to and during moving operations and prior to removing the tree and installing and testing the blowout-preventer (BOP) stack. A surface-controlled subsurface safety valve of the pump-through type may be used in lieu of the pump-through-type tubing plug provided that the surface control has been locked out of operation.

§ 250.93 Emergency shutdown system.

When well-workover operations are conducted on wells with the tree removed, an Emergency Shutdown System manually controlled station shall be installed near the driller's console or well-servicing unit operator's work station, except when there is no other hydrocarbon-producing well on the platform and there is no other hydrocarbon flow.

§ 250.94 Hydrogen sulfide.

When a well-workover operation is conducted on a well in zones known to contain hydrogen sulfide (H_2S) or in zones where the presence of H_2S is unknown (as defined in § 250.67), the lessee shall take appropriate precautions to protect life and property on the platform or rig, especially during operations such as blowing the well down, dismantling wellhead equipment and flow lines, circulating the well, pulling pumps and packers, and swabbing after acidizing operations. The lessee shall comply with the requirements in § 250.67 as well as the appropriate requirements of this subpart.

§ 250.95 Subsea workovers.

All nonroutine and routine subsea well-workover operations shall be submitted for approval by the District Supervisor. The District Supervisor will approve the proposal on a case-by-case basis upon a determination that the proposed equipment and procedures will maintain adequate control of the well and permit continued safe production operations.

§ 250.96 Crew instructions.

Prior to engaging in well-workover operations, personnel shall be instructed in the safety requirements of the operations to be performed, possible hazards to be encountered, and general safety considerations to protect personnel, equipment, and the environment. Date and time of safety meetings shall be recorded in the operations log.

§ 250.97 Welding and burning practices and procedures.

All welding, burning, and hot-tapping activities involved in well-workover operations shall be conducted with well maintained equipment, trained personnel, and appropriate procedures in order to minimize the danger to life and property on the platform or rig and according to the specific requirements of § 250.52.

§ 250.98 Electrical requirements.

All electrical equipment and systems involved in well-workover operations shall be designed, installed, equipped, protected, operated, and maintained so as to minimize the danger to life and property on the platform and in accordance with the requirements in § 250.53.

§ 250.99 Well-workover structures on fixed OCS platforms.

Derricks, masts, substructures, and related equipment shall be selected, designed, installed, used, and maintained so as to be adequate for the potential loads and conditions of loading that may be encountered during the operations. The conditions affecting loading include, but are not limited to, setback, wind, possible icing, pulling and running tubular goods and subsurface equipment, and fishing, drilling, and jarring operations. Prior to moving a well-workover rig or well-servicing equipment on to a platform, the lessee shall determine the structural capability of the platform to safely support the equipment and operations, taking into consideration the age of the platform, corrosion protection, and previous stresses.

§ 250.100 Diesel engine air intakes.

All diesel engine air intakes shall be equipped with an automatic shutdown device that will prevent engine runaway after (insert date 1 year after the effective date of these regulations).

§ 250.101 Traveling-block safety device.

After (insert date 1 year after the effective date of these regulations), all units being used for well-workover operations shall be equipped with a safety device which is designed to prevent the traveling block from striking the crown block. The device shall be checked weekly for proper operation and after each drill-line slipping operation. The results of the operational check shall be entered in the operations log.

§ 250.102 Simultaneous operations.

No well-workover operations shall be conducted on a platform where there are production operations until a General Plan for Conducting Simultaneous Operations has been approved as described in § 250.123.

§ 250.103 Field well-workover rules.

When geological and engineering information obtained from drilling and/or production operations in an area enables a District Supervisor to determine specific operating requirements appropriate to specific wells or a group of wells, on the District Supervisor's initiative or in response to a request from a lessee, field well-workover rules may be established. Such rules may authorize departure from identified requirements of this subpart. After field well-workover rules have been established, well-workover operations to which such rules apply shall be conducted in accordance with such rules and the requirements of this subpart which are not affected by such rules. Field well-workover rules may be amended or cancelled for cause at any time upon the initiative of the District Supervisor or upon the request of a lessee.

§ 250.104 Approval and reporting for well-workover operations.

(a) No workover operation except routine operations, as defined in § 250.91, shall begin until the lessee receives written approval from the District Supervisor. Approval for such operations shall be requested on Form MMS–331, Sundry Notices and Reports on Wells. Approvals by the District Supervisor shall be based upon a determination that the operations will be conducted in a manner to protect against harm or damage to life (including fish and other aquatic life), property, natural resources of the OCS, including any mineral deposits (in areas leased or not leased), the national security or defense, or the marine, coastal, or human environment.

(b) The following information shall be submitted with Form MMS–331:

(1) The well-workover procedures to be followed and a statement of the expected surface pressure,

(2) When changes in existing subsurface equipment are proposed, a well-schematic drawing showing the proposed zone and equipment, and

(3) Where the well is in zones known to contain H_2S or zones where the presence of H_2S is unknown, a description of the safety precautions to be used.

(c) The following additional information shall be submitted if completing to a new zone:

(1) Reason for abandonment of present zone, and

(2) A statement of anticipated or known surface pressure of the new zone.

(d) Within 30 days after completing the well-workover operation, except routine operations, Form MMS–331 shall be submitted to the District Supervisor and shall include the results of any well tests and a new schematic if any subsurface equipment has been changed.

§ 250.105 Well-control fluids, equipment, and operations.

The following requirements apply during all well-workover operations with the tree removed:

(a) Well-control fluids, equipment, and operations shall be designed, utilized, maintained, and/or tested as necessary to control the well in foreseeable conditions and circumstances, including subfreezing conditions. The well shall be continuously monitored during well-workover operations and shall not be left unattended at any time unless the well is shut-in and secured,

(b) Quantities of well-control fluids sufficient for well control shall be maintained and readily accessible at all times,

(c) When coming out of the hole with drill pipe or a workover string, the annulus shall be filled with well-control fluid before the change in such fluid level decreases the hydrostatic pressure 75 pounds per square inch (psi) or every five stands of drill pipe or workover string, whichever gives a lower decrease in hydrostatic pressure. The number of stands of drill pipe or workover string and drill collars that may be pulled prior to filling the hole and the equivalent well-control fluid volume shall be calculated and posted near the operator's station. A mechanical, volumetric, or electronic device for measuring the amount of well-control fluid required to fill the hole shall be utilized, and

(d) The following well-control-fluid equipment shall be installed, maintained, and utilized:

(1) A fill-up line above the uppermost BOP,

(2) A well-control, fluid-volume measuring device for determining fluid volumes when filling the hole on trips, and

(3) A recording mud-pit-level indicator to determine mud-pit-volume gains and losses. This indicator shall include both a visual and an audible warning device.

§ 250.106 Blowout prevention equipment.

(a) The BOP system and system components and related well-control equipment shall be designed, used,

maintained, and tested in a manner necessary to assure well control in foreseeable conditions and circumstances, including subfreezing conditions. The working pressure of the BOP stack and BOP system components shall equal or exceed the expected surface pressure to which it may be subjected, except that the working pressure of the annular preventer need not exceed 5,000 psi. If the expected surface pressure exceeds the rated working pressure of the annular preventer, the lessee shall submit with Form MMS-331, requesting approval of the well-workover operation, a well-control procedure that indicates how the annular preventer will be utilized and the pressure limitations that will be applied during each mode of pressure control.

(b) The minimum BOP stack for well-workover operations with the tree removed shall consist of the following:

(1) Three preventers, when the expected surface pressure is less than 5,000 psi, consisting of an annular preventer, one preventer equipped with pipe rams, and one preventer equipped with blind or blind-shear rams,

(2) Four preventers, for multiple tubing strings or when the expected surface pressure is greater than 5,000 psi, consisting of an annular preventer, two preventers equipped with pipe rams, and one preventer equipped with blind or blind-shear rams. When dual tubing strings are being handled simultaneously, dual pipe rams shall be installed on one of the pipe-ram preventers, or

(3) When tapered drill pipe is used, regardless of the expected surface pressure, the minimum BOP stack shall consist of either of the following:

(i) An annular preventer, two sets of pipe rams capable of sealing around the larger sized string, one set of pipe rams capable of sealing around the smaller sized string, and a preventer equipped with blind or blind-shear-rams, or

(ii) An annular preventer, two sets of pipe rams capable of sealing around the larger size string, a preventer equipped with blind-shear rams, and a crossover sub to the larger size pipe that shall be readily available on the rig floor.

(c) The BOP systems for well-workover operations with the tree removed shall be equipped with the following:

(1) A hydraulic-actuating system that provides sufficient accumulator capacity to supply 1.5 times the volume necessary to close all BOP equipment units with a minimum pressure of 200 psi above the precharge pressure,

(2) A secondary power source, independent from the primary power source, with sufficient capacity to close all BOP's and hold them closed,

(3) Locking devices on the pipe-ram preventers,

(4) At least one remote BOP-control station and one BOP-control station on the rig floor, and

(5) A choke line and a kill line each equipped with two full opening valves and a choke manifold. One of the choke-line valves shall be remotely controlled. This equipment shall have a pressure rating at least equivalent to the ram preventers.

(d) The minimum BOP-stack components for well-workover operations with the tree in place and performed through the wellhead inside of conventional tubing using small-diameter jointed pipe (usually ¾ inch to 1¼ inch) as a work string, i.e., small-tubing operations, shall consist of the following:

(1) Two sets of pipe rams, and

(2) One set of blind rams.

(e) The minimum BOP-stack components for well-workover operations with the tree in place and performed by manipulating spooled, non-jointed pipe through the wellhead, i.e., coiled-tubing operations, shall consist of the following:

(1) One set of pipe rams hydraulically operated,

(2) One two-way slip assembly hydraulically operated,

(3) One pipe-cutter assembly hydraulically operated,

(4) One set of blind rams hydraulically operated,

(5) One pipe-stripper assembly, and

(6) One spool with side outlets.

(f) The minimum BOP-stack components for well-workover operations with the tree in place and performed by moving tubing or drill pipe in or out of a well under pressure utilizing equipment specifically designed for that purpose, i.e., snubbing operations, shall consist of the following:

(1) One set of pipe rams hydraulically operated, and

(2) Two sets of stripper-type pipe rams hydraulically operated with spacer spool.

(g) An inside BOP or a spring-loaded, back-pressure safety valve and an essentially full-opening, work-string safety valve shall be maintained on the rig floor at all times during well-workover operations when the tree is removed or during well-workover operations with the tree installed and using small tubing as the work string. A wrench to fit the inside BOP and work-string safety valve shall be readily available. Proper connections shall be readily available for inserting valves in the work string. The full-opening safety valve is not required for coiled tubing or snubbing operations.

§ 250.107 Blowout preventer system testing, records, and drills.

(a) Prior to conducting high pressure tests, all BOP's shall be successfully tested to a low pressure of 200 psi to 300 psi. Ram-type BOP's, related control equipment, including the choke and kill manifolds, and safety valves shall be successfully tested to 70 percent of the minimum internal-yield pressure of the casing. The annular-type BOP shall be successfully tested at 70 percent of its rated working pressure or 70 percent of the minimum internal-yield pressure of the casing, whichever is less. Each valve in the choke and kill manifolds shall be successfully, sequentially pressure tested to the ram-type BOP test pressure.

(b) The BOP systems shall be tested at the following times:

(1) When installed,

(2) At least every 7 days, alternating between control stations and at stagered intervals to allow each crew to operate the equipment. If either control system is not functional, further operations shall be suspended until the nonfunctional system is operable. The test every 7 days is not required for blind or blind-shear rams. The blind or blind-shear rams shall be tested at least once every 30 days during operation, except that the periods between tests may be longer when there is a stuck pipe or pressure-control operation and remedial efforts are being performed. The tests shall be conducted as soon as possible and before normal operations resume. The reason for postponing testing shall be entered into the operations log, and

(3) Following repairs that require disconnecting a pressure seal in the assembly.

(c) All personnel engaged in well-workover operations shall participate in a weekly BOP drill to familiarize crew members with appropriate safety measures.

(d) The time, dates, and results of the BOP tests, actuations, and crew drills shall be recorded in the operations log.

§ 250.108 Tubing and wellhead equipment.

The lessee shall comply with the following requirements during well-workover operations with the tree removed:

(a) No tubing string shall be placed into service or continued to be used unless such tubing string has the necessary strength and pressure integrity and is otherwise suitable for its intended use.

(b) In the event of prolonged drilling or extended operations such as milling, fishing, jarring, or washing over that could damage the casing , the casing shall be pressure tested, calipered, or otherwise evaluated every 30 days and the results submitted to the District Supervisor.

(c) When reinstalling the tree, the wellhead shall be equipped to be monitored for sustained pressure in all of the annuli.

(d) Wellhead, tree, and related equipment shall be designed, installed, used, maintained, and tested so as to achieve and maintain pressure control. If the tree is removed during a well-workover operation, the tree shall be equipped with a minimum of one master valve and one surface safety valve in the vertical run of the tree when it is reinstalled.

(e) Subsurface safety equipment shall be installed, maintained, and tested in compliance with § 250.121.

§ 250.109 Wireline operations.

The lessee shall comply with the following requirements during routine, as defined in § 250.91, and nonroutine wireline workover operations:

(a) Wireline operations shall be conducted so as to minimize leakage. Such leakage which does occur shall be contained to prevent pollution.

(b) Each time the lubricator is installed on the wellhead, it shall be successfully pressure tested to the expected shut-in surface pressure.

Subpart G—Abandonment of Wells

§ 250.110 General requirements.

The lessee shall abandon all wells in a manner to assure downhole isolation of hydrocarbon zones, protection of freshwater aquifers, clearance of sites in a manner to avoid conflict with other uses of the OCS, and prevention of migration of formation fluids within the wellbore or to the seafloor. Any well which is no longer used or useful for lease operations shall be plugged and abandoned in accordance with the provisions of this subpart. However, no producing well shall be abandoned until its lack of capacity for further profitable production of oil, gas, or sulphur has been demonstrated to the satisfaction of the District Supervisor. No producing well shall be plugged if the plugging operation would jeopardize safe and economic operations of nearby wells.

§ 250.111 Approvals.

The lessee shall not commence abandonment operations without prior approval of the District Supervisor. The lessee shall submit a request for approval to abandon a well and a subsequent report of abandonment on Form MMS–331, Sundry Notices and Reports on Wells, in accordance with the following:

(a) A request for approval to abandon a well shall contain the reason for abandonment, a description and schematic of proposed work including depths, type, location, and length of plugs, the plans for mudding, cementing, shooting, testing, casing removal, and other pertinent information, and

(b) The subsequent report of abandonment shall be submitted within 30 days from the completion of the work and shall include a description of the manner in which the abandonment or plugging work was accomplished, including the nature and quantities of materials used in the plugging, and all information listed in (a) with a revised schematic. If an attempt was made to cut and pull any casing string, the subsequent report shall include a description of the methods used and results obtained.

§ 250.112 Permanent abandonment.

(a) In uncased portions of wells, cement plugs shall be set to extend from 100 feet below the bottom to 100 feet above the top of any oil, gas, or freshwater zones to isolate fluids in the strata in which they are found and to prevent them from escaping into other strata or to the seafloor. The placement of additional cement plugs to prevent the migration of formation fluids in the wellbore may be required by the District Supervisor.

(b) Where there is an open hole below the casing, a cement plug shall be placed in the deepest casing in accordance with paragraph (b)(1) or (b)(2) of this section. If lost circulation conditions have been experienced or are anticipated, a permanent type bridge plug may be placed within the first 150 feet above the casing shoe with 50 feet of cement on top of the bridge plug. This bridge plug shall be tested in accordance with paragraph (g) of this section.

(1) A cement plug shall be set by the displacement method and shall extend a minimum of 100 feet above and 100 feet below the casing shoe, or

(2) A cement retainer and a cement plug shall be set. The cement retainer shall have effective back-pressure control and shall be set not less than 50 feet and not more than 100 feet above the casing shoe. The cement plug shall use a cement volume to ensure that the plug extends at least 100 feet below the casing shoe and at least 50 feet above the retainer.

(c) A cement plug shall be set by the displacement method opposite all perforations which have not been squeezed with cement. The cement plug shall extend a minimum of 100 feet above the perforated interval and either 100 feet below the perforated interval or down to a casing plug, whichever is the lesser. In lieu of setting a cement plug by the displacement method, either of the following methods is acceptable, provided the perforations are isolated from the hole below:

(1) A cement retainer and a cement plug shall be set. The cement retainer shall have effective back-pressure control and shall be set not less than 50 feet and not more than 100 feet above the top of the perforated interval. The cement plug shall use a cement volume calculated to extend at least 100 feet below the bottom of the perforated interval with 50 feet placed above the retainer, or

(2) A permanent-type bridge plug shall be set within the first 150 feet above the top of the perforated interval with 50 feet of cement on top of the bridge plug.

(d) If casing is cut and recovered leaving a stub, the stub shall be plugged in accordance with either of the following methods:

(1) A stub terminating inside a casing string shall be plugged in accordance with one of the following:

(i) A cement plug shall be set to extend 100 feet above and 100 feet below the stub, or

(ii) A cement retainer or a permanent-type bridge plug shall be set 50 feet above the stub and capped with 50 feet of cement.

(2) If the stub is below the next larger string, plugging shall be accomplished as required to isolate zones or to isolate an open hole as described in paragraphs (a) and (b) of this section.

(e) Any annular space communicating with any open hole and extending to the mud line shall be plugged with cement.

(f) A cement plug which is at least 150 feet in length shall be set with the top of the plug within the first 150 feet below the mud line. The plug shall be placed in the smallest string of casing which extends to the mud line.

(g) The setting and location of the first plug below the surface plug shall be verified by one of the following methods:

(1) The lessee shall place a minimum pipe weight of 15,000 pounds on the cement plug, cement retainer, or bridge plug. The cement placed above the bridge plug or retainer is not required to be tested, or

(2) The lessee shall successfully test the plug with a minimum pump pressure of 1,000 pounds per square inch with a

result of no more than a 10 percent pressure drop during a 15-minute period.

(h) Each of the respective intervals of the hole between the various plugs shall be filled with mud fluid of sufficient density to exert a hydrostatic pressure exceeding the greatest formation pressure encountered while drilling the intervals between the plugs.

(i) All casing, wellhead equipment, and piling shall be removed to a depth of at least 15 feet below the mud line or to a depth approved by the District Supervisor after a review of the data on ocean-bottom conditions. The lessee shall verify that the location has been cleared of all obstructions in accordance with § 250.114. The requirement for removing subsea wellheads and for verifying location clearance may be reduced or eliminated when in the opinion of the District Supervisor the wellheads would not constitute a hazard to other users of the seafloor and other uses of that portion of the OCS or other legitimate uses of the area.

(j) Fluid left in the hole adjacent to permafrost zones shall have a freezing point below the temperature of the permafrost and shall be treated to inhibit corrosion.

(k) The cement used for cement plugs placed across permafrost zones shall be designed to set before freezing and to have a low heat of hydration.

§ 250.113 Temporary abandonment.

(a) Any drilling well which is to be temporarily abandoned shall meet the requirements for permanent abandonment except for the provisions of §§ 250.112(f), 250.112(i), 250.114, and the following:

(1) The lessee shall set a retrievable or a permanent-type bridge plug or a cement plug at least 100 feet in length in the casing within the first 200 feet below the mud line, and

(2) When a drilling well is temporarily abandoned, a bridge plug or a cement plug at least 100 feet in length shall be set at the base of the deepest casing string.

(b) If a cement plug is set, it is not necessary for the cement plug to extend below the casing shoe into the open hole.

(c) Identification and reporting of subsea wellheads or casing stubs extending above the mud line will be accomplished in accordance with the requirements of the U.S. Coast Guard.

§ 250.114 Site clearance.

(a) The lessees shall verify site clearance after abandonment by one or more of the following methods as approved by the District Supervisor:

(1) Dragging a trawl in two directions across the location,

(2) A diver search around the wellbore for a minimum radius of 100 feet,

(3) Using a side-scan or an on-bottom scanning sonar across the location, or

(4) Other methods based on particular site conditions.

(b) A letter from the company performing the work shall be submitted with Form MMS–331, Item 15, Subsequent Report of permanent Abandonment, certifying that the area was cleared of all obstructions, the date the work was performed, the extent of the area searched around the location, and the search method utilized.

Subpart H—Production Safety Systems

§ 250.120 General requirements.

The lessee shall conduct all production operations in accordance with current technology and state-of-the-art methods. Production safety equipment shall be designed, installed, used, maintained, and tested in a manner to assure the safety and protection of the human, marine, and coastal environments. Production safety systems operated in subfreezing climates shall utilize equipment and procedures selected with consideration of floating ice, icing, and other extreme environmental conditions that may occur in the area. Production shall not commence unless the production safety system has been approved and the preproduction test and inspection has been conducted.

§ 250.121 Subsurface safety devices.

(a) *General.* All tubing installations open to hydrocarbon-bearing zones shall be equipped with subsurface safety devices that will shut off the flow from the well in the event of an emergency unless, after application and justification, the well is determined by the District Supervisor to be incapable of flowing. These devices may consist of a surface-controlled subsurface safety valve (SSSV), a subsurface-controlled SSSV, an injection valve, a tubing plug, or a tubing/annular subsurface safety device.

(b) *Specifications for SSSV's.* Surface-controlled and subsurface-controlled SSSV's installed on new installations or replaced on old installations shall conform to the requirements of § 250.126. A valve qualified under a previous edition of American Petroleum Institute (API) Specification (Spec) for Subsurface Safety Valves (API Spec 14A) at the time such edition was current may also be used provided that the valve enters the manufacturer's inventory within 3 years of its qualifying performance test date. For purposes of this requirement, the term "replaced" means occurring when the SSSV is removed from service for remanufacture.

(c) *Surface-controlled SSSV's.* All tubing installations open to a hydrocarbon-bearing zone which is capable of natural flow shall be equipped with a surface-controlled SSSV, except as specified in paragraphs (g) and (h) of this section. The surface controls may be located on the site or a remote location.

(d) *Subsurface-controlled SSSV's.* Wells may be equipped with subsurface-controlled SSSV's in lieu of a surface-controlled SSSV provided the following criteria are met:

(1) Wells not previously equipped with surface-controlled SSSV shall be so equipped when the tubing is first removed and reinstalled,

(2) The subsurface-controlled SSSV is installed in wells completed from a single-well or multi-well satellite caisson or ocean-floor completions, and

(3) The subsurface-controlled SSSV is installed in wells with a surface-controlled SSSV that has become inoperable and cannot be repaired without removal and reinstallation of the tubing.

(e) *Design, installation, and operation of SSSV's.* The SSSV's shall be designed, installed, operated, and maintained to ensure reliable operation.

(1) The device shall be installed at a depth of 100 feet or more below the mud line within 2 days after production is established. In permafrost areas, the setting depth of the subsurface safety device shall be below the permafrost base as approved by the District Supervisor.

(2) Until a subsurface safety device is installed, the well shall be attended so that emergency actions may be taken while the well is open to flow. During testing and inspection procedures, the well shall not be left unattended while open to production unless a properly operating subsurface safety device has been installed in the well.

(3) The well shall not be open to flow while the subsurface safety device is removed, except when flowing of the well is necessary for a particular operation such as cutting paraffin, bailing sand, or similar operations.

(4) All SSSV's safety valves shall be inspected, installed, maintained, tested, removed, field repaired, remanufactured, and documented in accordance with § 250.126.

(f) *Inspection and maintenance of subsurface-controlled SSSV's.* Each

subsurface-controlled SSSV installed in a well shall be removed, inspected, and repaired or adjusted, as necessary, and reinstalled at intervals not exceeding the following:

(1) Six months for those valves not installed in a landing nipple, and

(2) Twelve months for those valves installed in a landing nipple.

(g) *Subsurface safety devices in shut-in wells.* New completions (perforated but not placed on production) and completions shut in for a period of 6 months shall be equipped with a pump-through type tubing plug or a surface controlled SSSV, provided the surface-control has been rendered inoperative. In permafrost areas, the setting depth of the subsurface safety device shall be below the permafrost base as approved by the District Supervisor.

(h) *Subsurface safety devices in injection wells.* A surface-controlled SSSV or an injection valve capable of preventing backflow shall be installed in all injection wells.

(i) *Temporary removal for routine operations.*

(1) Each wireline- or pumpdown-retrievable subsurface safety device may be removed, without further authorization or notice, for a routine operation which does not require the approval of a Form MMS–331, Sundry Notices and Reports on Wells, under § 250.91 for a period not to exceed 15 days.

(2) The well shall be identified by a sign on the wellhead stating that the subsurface safety device has been removed. The removal of the subsurface safety device shall be noted in the records as required by § 250.124(b). If the master valve is open, the well shall be attended in the immediate vicinity of the well so that emergency actions may be taken, if necessary.

(3) A platform well shall be monitored, but a person need not remain in the well bay area continuously if the master valve is closed. If the well is on a satellite structure, it must be attended or a pump-through plug installed in the tubing at least 100 feet below the mudline and the master valve closed, unless otherwise approved by the District Supervisor.

(4) The well shall not be allowed to flow while the subsurface safety device is removed, except when flowing the well is necessary for that particular operation. The provisions of this paragraph are not applicable to the testing and inspection procedures in § 250.124.

(j) *Additional safety equipment.* All tubing installations in which a wireline- or pumpdown-retrievable subsurface safety device is installed shall be equipped with a landing nipple with flow couplings or other protective equipment above and below to provide for the setting of the SSSV. The control system for all surface-controlled SSSVs shall be an integral part of the platform Emergency Shutdown System (ESD). In addition to the activation of the ESD by manual action on the platform, the system may be activated by a signal from a remote location. Surface-controlled SSSVs shall close in response to shut-in signals from the ESD system and the fire loop.

(k) *Emergency action.* In the event of an emergency, such as an impending storm, any well not equipped with a subsurface safety device shall have the device properly installed as soon as possible with due consideration being given to personnel safety.

§ 250.122 Design, installation, and operation of surface production-safety systems.

(a) *General.* All production facilities, including separators, treaters, compressors, headers, and flowlines shall be designed, installed, and maintained in a manner which will facilitate an efficient, safe, and pollution-free operation.

(b) *Platforms.* All platform production facilities shall be protected with a basic and ancillary surface safety system designed, analyzed, installed, tested, and maintained in operating condition in accordance with the provisions of API Recommended Practice (RP) for Analysis, Design, Installation and Testing of Basic Surface Safety Systems for Offshore Production Platforms (API RP 14C). If processing components are to be utilized, other than those for which Safety Analysis Checklists are included in API RP 14C, the analysis technique and docmentation specified therein shall be utilized to determine the effects and requirements of these components upon the safety system.

(c) *Specification for surface safety valves (SSV) and underwater safety valves (USV).* All wellhead SSV's, USV's, and their actuators which are installed on new installations or replaced on old installations shall conform to the requirements of § 250.126. For purposes of this requirement, the term "replaced" is defined as occurring when the SSV/USV or SSV/USV actuator is removed from service for remanufacture.

(d) *Use of SSV's and USV's.* All SSV's and USV's shall be inspected, installed, maintained, field repaired, remanufactured, and documented in accordance with § 250.126. If any SSV or USV does not operate properly or if leakage exceeds the allowable limits, the valve shall be repaired or replaced.

(e) *Approval of safety-systems design and installation features.* Prior to installation, the lessee shall submit in duplicate for approval to the District Supervisor information relative to design and installation features. Information concerning approved design and installation features shall be maintained by the lessee at the lessee's offshore field office nearest the OCS facility or other location conveniently available to the District Supervisor. All approvals are subject to field verifications. The information shall include the following:

(1) A schematic flow diagram showing tubing pressure, size, capacity, design working pressure of separators, flare scrubbers, treaters, storage tanks, compressors, pipeline pumps, metering devices, and other hydrocarbon-handling vessels,

(2) A schematic flow diagram (API RP 14C, Figure E1) and the related Safety Analysis Function Evaluation chart (API RP 14C, subsection 4.3c),

(3) A schematic piping diagram showing the size and maximum allowable working pressures as determined in accordance with API RP for Design and Installation of Offshore Production Platform Piping Systems (API RP 14E),

(4) Electrical system information including the following:

(i) A plan of each platform deck outlining any nonrestricted area, i.e., areas which are unclassified with respect to electrical equipment installations and outlining areas in which potential ignition sources, other than electrical, are to be installed. The area outline shall include the following information:

(A) Any surrounding production or other hydrocarbon source and a description of the deck, overhead, and firewall, and

(B) Location of generators, control rooms, panel boards, major cabling/conduit routes, and identification of the wiring method, including the identification of each wire and cable type that is utilized.

(ii) Elementary electrical schematic of any platform safety shut-down system with a functional legend.

(5) Certification that the design for the mechanical and electrical systems to be installed were approved by registered professional engineers. After these systems are installed, the lessee shall submit a statement to the District Supervisor certifying that new installations conform to the approved designs of this subpart, and

(6) The design and schematics of the installation and maintenance of all fire- and gas-detection systems shall include the following:

(i) Type, location, and number of detection heads,

(ii) Type and kind of alarm, including emergency equipment to be activated,

(iii) Method used for detection,

(iv) Method and frequency of calibration, and

(v) A functional block diagram of the detection system, including the electric power supply.

§ 250.123 Additional production system requirements.

(a) *General.* Lessees shall comply with the following production safety systems requirements (some of which are in addition to those contained in API RP 14C, incorporated by reference in § 250.122(b)).

(b) *Design, installation, and operation of additional production systems.*—(1) *Pressure vessels.* Pressure vessels shall be designed, fabricated, stamped, and maintained in accordance with appropriate sections of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code.

(i) Pressure relief valves shall be designed, installed, and maintained in accordance with applicable provisions of sections I, IV, and VIII of the ASME Boiler and Pressure Vessel Code. The relief valves shall conform to the valve-sizing and pressure-relieving requirements specified in these documents; however, the relief valves shall be set no higher than the maximum-allowable working pressure of the vessel. All relief valves and vents shall be piped in such a way as to prevent fluid from striking personnel or ignition sources.

(ii) Steam generators operating at less than 15 pounds per square inch gauge (psig) shall be equipped with a level safety low (LSL) sensor which will shut off the fuel supply when the water level drops below the minimum safe level. Steam generators operating at greater than 15 psig require, in addition to an LSL, a water-feeding device which will automatically control the water level.

(iii) The lessee shall determine by the use of pressure recorders the operating pressure ranges of all pressure-operated vessels in order to establish the pressure-sensor settings. Pressure-recorder charts shall be maintained by the lessee for a period of 2 years at the lessee's field office nearest the OCS facility or at other locations conveniently available to the District Supervisor. The high-pressure shut-in sensor shall be set no higher than 15 percent above the highest operating pressure of the vessel. This setting shall also be set sufficiently below (5 percent or 5 psi, whichever is greater) the relief valve's set pressure to assure that the pressure source is shut in before the relief valve starts relieving. The low-pressure shut-in sensor shall activate no lower than 15 percent or 5 psi, whichever is greater, below the lowest pressure in the operating range. The activation of low-pressure sensors on pressure vessels which operate at less than 5 psi shall be approved by the District Supervisor on a case-by-case basis.

(iv) All pressure or fired vessels installed after the effective date of this subpart for use in the production of oil or gas shall conform to the requirements stipulated in the edition of the ASME Boiler and Pressure Vessel Code, sections I, IV, and VIII, as appropriate.

(2) *Flowlines.* (i) All flowlines from wells shall be equipped with high- and low-pressure shut-in sensors located in accordance with section A.1 and Figure A1 of API RP 14C. Operating pressure ranges for downstream segments of a flowline may be based on a pressure recording taken at the separator provided there are no chokes or other control devices between the flowline and the separator. The lessee shall determine by the use of pressure recorders the operating pressure ranges of flowlines in order to establish pressure-sensor settings. Pressure-recorder charts shall be maintained by the lessee for a period of 2 years at the lessee's field office nearest the OCS facility or at other locations conveniently available to the District Supervisor. The high-pressure shut-in sensor(s) shall be set no higher than 15 percent above the highest operating pressure of the line. But in all cases, it shall be set sufficiently below the maximum shut-in wellhead pressure or the gas-lift supply pressure to assure actuation of the SSV. The low-pressure shut-in sensor(s) shall be set no lower than 15 percent or 5 psi, whichever is greater, below the lowest operating pressure of the line in which it is installed.

(ii) If a well flows directly to the pipeline before separation, the flowline and valves from the well located upstream of and including the header inlet valve(s) shall have a working pressure equal to or greater than the maximum shut-in pressure of the well unless the flowline is protected by one of the following:

(A) A relief valve which vents into the platform flare scrubber or some other location approved by the District Supervisor. The platform flare scrubber shall be designed to handle, without liquid-hydrocarbon carryover to the flare, the maximum-anticipated flow of liquid hydrocarbons which may be relieved to the vessel, and

(B) Two automatic shutdown valves with independent high-pressure sensors installed with adequate volume upstream of any block valve to allow sufficient time for the shutdown valve(s) (SDV) to close before exceeding the maximum allowable working pressure.

(3) *Safety sensors.* All safety sensors shall function in a manual reset mode. Sensors with integral automatic reset shall be equipped with an appropriate device to override the automatic reset mode.

(4) *ESD.* The ESD shall conform to the requirements of Appendix C, section C1, of API RP 14C, and the following:

(i) The manually operated ESD valve(s) shall be quick-opening and nonrestricted to enable the rapid actuation of the shutdown system. Only ESD stations at the boat landing may utilize a loop of breakable synthetic tubing in lieu of a valve,

(ii) The surface-controlled SSSV shall close in not more than 2 minutes after the shut-in signal has closed the SSV. Design-delayed closure time greater than 2 minutes shall be justified by the lessee based on the individual well's mechanical/production characteristics and be approved by the District Supervisor, and

(iii) A schematic of the ESD which indicates the control functions of all safety devices for platforms shall be maintained by the lessee on the platform and at the lessee's field office nearest the OCS facility or other location conveniently available to the District Supervisor.

(5) *Engines.* (i) *Engine exhaust.* Engine exhausts shall be equipped to comply with the insulation and personnel protection requirements of API RP 14C, section 4.2c(4). Exhaust piping from diesel engines shall be equipped with spark arresters.

(ii) *Diesel engine air intake.* After [insert date 1 year after effective date of these regulations], all diesel engine air intakes shall be equipped with an automatic-shutdown device so as to prevent diesel engine runaway.

(6) *Glycol dehydration units.* A pressure relief system or an adequate vent shall be installed on the glycol regenerator which will prevent overpressurization of all glycol dehydration units. The discharge of the relief valve shall be vented in a nonhazardous manner.

(7) *Gas compressors.* Compressor installations shall be equipped with the following protective equipment:

(i) A Pressure Safety High (PSH), a Pressure Safety Low (PSL), a Pressure Safety Valve, and a Level Safety High (LSH) to protect each interstage and suction scrubber.

(ii) An LSL to protect each interstage and suction scrubber, unless the fluid is dumped through a choke restriction to another pressure vessel. An LSL shut-in control(s) installed in interstage and suction scrubber(s) may be designed to actuate the automatic SDV's installed in the scrubber dump line(s).

(iii) A Temperature Safety High (TSH) on each compressor cylinder or other components as applicable.

(iv) The PSH and PSL shut-in sensors and LSH shut-in controls protecting compressor suction and interstage scrubbers designed also to actuate automatic SDV's located in each compressor suction and fuel gas line so that the compressor unit and the associated vessels can be isolated from all input sources. All automatic SDV's installed in compressor suction and fuel gas piping shall also be actuated by the shutdown of the prime mover. Unless otherwise approved by the District Supervisor, gas-well gas affected by the closure or the automatic SDV on a compressor suction shall be diverted to the pipeline or shut in at the wellhead, and

(v) *Small compressor installations.* A blowdown valve on the discharge line of a compressor installation of 745 kilowatts (1,000 horsepower) or greater.

(8) *Firefighting systems.* Firefighting systems installed after January 1, 1980, shall conform to Subsection 5.2, Fire Water Systems, of API RP for Fire Prevention and Control on Open Type Offshore Production Platforms (API RP 14G) and the following additional requirements:

(i) A firewater system consisting of rigid pipe with firehose stations shall be installed. The firewater system shall be installed to provide needed protection in all areas where production-handling equipment is located. A fixed waterspray system shall be installed in enclosed well-bay areas where hydrocarbon vapors may accumulate.

(ii) Fuel or power for firewater pump drivers shall be available for at least 30 minutes of run time during platform shut-in time. If necessary, an alternate fuel supply shall be installed to provide for this pump-operating time unless an alternate firefighting system has been approved by the District Supervisor.

(iii) A firefighting system using chemicals may be used in lieu of a water system if the District Supervisor determines that the use of a chemical system provides equivalent fire-protection control, and

(iv) A diagram of the firefighting system showing the location of all firefighting equipment shall be posted in a prominent place on the facility or structure.

(9) *Fire- and gas-detection system.* (i) Fire (flame, heat, or smoke) sensors shall be used in all enclosed high-hazard areas. Gas sensors shall be used in all inadequately ventilated, enclosed, high-hazard areas. Adequate ventilation means a change of air volume each 5 minutes or 1.5 cubic feet of air-volume flow per minute per square foot of area, whichever is greater.

(ii) All detection systems shall be capable of continuous monitoring. Fire-detection systems and portions of combustible gas-detection systems related to the higher gas concentration levels shall be of the manual-reset type. Combustible gas-detection systems related to the lower gas-concentration level may be of the automatic-reset type.

(iii) A fuel-gas odorant or an automatic gas-detection and alarm system is required in enclosed, continuously manned areas of the facility.

(iv) The District Supervisor may require the installation and maintenance of a gas detector or alarm in any potentially hazardous area.

(v) Fire- and gas-detection systems shall be an approved type, designed and installed in accordance with API RP 14C, API RP 14G, and API RP for Design and Installation of Electrical Systems for Offshore Production Platforms (API RP 14F).

(10) *Erosion.* A program of erosion control shall be in effect for wells or fields having a history of sand production. The erosion-control program may include sand probes, X-ray, ultrasonic, or other satisfactory monitoring methods. Records by lease, indicating the wells which have erosion-control programs in effect and the results of the programs, shall be maintained by the lessee at the lessee's field office nearest the OCS facility for a period of 2 years and made available for inspection by MMS representatives.

(c) *General platform operations.* (1) Surface or subsurface safety devices shall not be bypassed or blocked out of service unless they are temporarily out of service for startup, maintenance, or testing procedures. Only the minimum number of safety devices shall be taken out of service. Personnel shall monitor the bypassed or blocked-out functions until they are placed back in service. Any surface or subsurface safety device which is temporarily out of service shall be flagged by the person taking such device out of service.

(2) When wells are disconnected from producing facilities or equipped with a tubing plug or the master valves have been locked closed, compliance is not required with the provisions of API RP 14C or this regulation concerning the following:

(i) Installation of automatic fail-close SSV on wellhead assemblies,

(ii) Installation of the PSH and the PSL shut-in sensors downstream of the choke in flowlines from wells, and

(iii) Installation of flow safety valves in header individual flowlines.

(3) When pressure or atmospheric vessels are isolated from production facilities (e.g., inlet valve locked closed or inlet blind-flanged) and are to remain isolated for an extended period of time, safety device compliance with API RP 14C or this subpart is not required.

(4) All open-ended lines connected to producing facilities and wells shall be plugged or blind-flanged, except those lines designed to be open-ended such as flare or vent lines.

(d) *Simultaneous platform operations.* Prior to conducting activities simultaneously with production operations which could increase the possibility of occurrence of undesirable events, approval of a General Plan for Conducting Simultaneous Operations in a producing field shall be obtained from the District Supervisor. This plan shall be modified and updated by approved supplemental plans when simultaneous operations are scheduled which are significantly different from those covered in the plan. Activities requiring these plans include drilling, completion, workover, wireline, pumpdown, and major construction operations.

(1) *General Plan.* The General Plan for Conducting Simultaneous Operations shall include the following:

(i) A narrative description of operations indicating critical areas of simultaneous operations on the platform.

(ii) Procedures for the mitigation of potentially undesirable events including the following:

(A) Guidelines the lessee will follow to assure coordination and control of simultaneous activities, and

(B) Identity of the person having overall responsibility at the site for the safety of platform operations.

(2) *Supplemental Plan.* The Supplemental Plan for Conducting Simultaneous Operations shall include the following:

(i) An outline of any additional safety measures that are required for simultaneous operations, and

(ii) Specification of any added or special equipment or procedural conditions to be imposed when simultaneous activities are in progress.

§ 250.124 Production safety-system testing and records.

(a) *Testing.* The safety-system devices shall be successfully tested by the lessee at the interval specified below or more frequently if operating conditions warrant. Testing shall be in accordance with API RP 14C, Appendix D, and the following:

(1) Each surface-controlled subsurface safety device installed in a well, including such devices in shut-in and injection wells, shall be tested in place for proper operation when installed or reinstalled and thereafter at intervals not exceeding 6 months. If the device does not operate properly, it shall be removed, repaired, reinstalled, or replaced, and tested to ensure proper operation. The testing shall be in accordance with § 250.126.

(2) All relief valves such as PSV's shall be tested for operation at least once every 12 months. These valves shall be either bench-tested or equipped to permit testing with an external pressure source.

(3) The following safety devices shall be tested at least once each calendar month but at no time shall more than 6 weeks elapse between tests:

(i) All P5H or PSL,

(ii) All LSH and LSL controls, and

(iii) All automatic inlet SDV's which are actuated by a sensor.

(4) All SSSV's and USV's shall be tested for operation and for leakage at least once each calendar month but at no time shall more than 6 weeks elapse between tests. The testing shall be conducted pursuant to § 250.126.

(5) All flowline Flow Safety Valves (FSV) shall be checked for leakage at least once each calendar month, but at no time shall more than 6 weeks elapse between tests. The FSV's shall be tested for leakage in accordance with the test procedure specified in API RP 14C, Appendix D, section D4, Table D2, subsection D. If the leakage measured in step 6 exceeds a liquid flow of 200 cubic centimeters per minute or a gas flow of 5 cubic feet per minute, the FSV's shall be repaired or replaced.

(6) The TSH shutdown controls installed on compressor installations which can be nondestructively tested shall be tested every 6 months and repaired or replaced as necessary.

(7) All pumps for firewater systems shall be inspected and operated weekly.

(8) All fire- (flame, heat, or smoke) and gas-detection systems shall be tested for operation and recalibrated every 3 months.

(9) All TSH devices shall be tested at least once every 12 months, excluding those addressed in paragraph (a)(6) of this section and those which would be destroyed by testing. Burner safety low and flow safety low devices shall also be tested at least once every 12 months.

(10) The ESD system shall be tested for operation at least once each calendar month, but at no time shall more than 6 weeks elapse between tests. The test shall be conducted by alternating ESD stations monthly to close at least one wellhead SSV and verify a surface-controlled SSSV closure for that well as indicated by control circuitry actuation, and

(11) Prior to the commencement of production, the lessee shall notify the District Supervisor when the lessee is ready to conduct a preproduction test and inspection of the integrated safety system. The lessee shall also notify the District Supervisor upon commencement of production in order that a complete inspection may be conducted.

(b) *Records.* The lessee shall maintain records for a period of 2 years for each subsurface and surface safety device installed. These records shall be maintained by the lessee at the lessee's field office nearest the OCS facility or other locations conveniently available to the District Supervisor. These records shall be available for review by MMS. The records shall show the present status and history of each device, including dates and details of installation, removal, inspection, testing, repairing, adjustments, and reinstallation.

§ 250.125 Safety device training.

(a) Personnel installing, inspecting, testing, and maintaining these safety devices and personnel operating the production platforms shall be qualified under a program identified in API RP for Qualification Programs for Offshore Production Personnel Who Work with Anti-Pollution Safety Devices (API RP T-2). Instrument personnel shall repeat the basic API RP T-2 course every 4 years.

(b) Documented evidence of the qualifications of individuals performing these functions shall be maintained in the field area or other locations conveniently available to the District Supervisor.

(c) Manufacturers' representatives need not be qualified in accordance with API RP T-2 if they are working on equipment supplied by their company, provided they have received training and are qualified by the manufacturer to install, service, or repair the specific safety device or safety system and if they are directly supervised by an API RP T-2-qualified person who is capable of evaluating the impact of the work on the total system.

(d) On-the-job trainees working with safety devices shall be directly supervised by a qualified person.

§ 250.126 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 Standard ANSI/ASME SPPE-1, Quality Assurance and Certification of Safety and Pollution Prevention Equipment Used in Offshore Oil and Gas Operations.

§ 250.127 Hydrogen sulfide.

Production operations in zones known to contain hydrogen sulfide (H_2S) or in zones where the presence of H_2S is unknown, as defined in § 250.67, shall be conducted in accordance with that section and other relevant requirements of Subpart H, Production Safety Systems.

Subpart I—Platforms and Structures

§ 250.130 General requirements.

(a) The lessee shall design, fabricate, install, use, inspect, and maintain all platforms and structures on the OCS to assure the structural integrity of all platforms and structures for the safe conduct of drilling, workover, and production operations, considering the specific environmental conditions at the platforms location.

(b) All new fixed or bottom-founded platforms or other structures, e.g., single-well caissons, artificial islands (platforms), shall be designed, fabricated, installed, inspected, and maintained in accordance with all the requirements of this subpart, except §§ 250.132 and 250.133, and shall require the approval of the Regional Supervisor.

(c) All new platforms which meet any of the conditions listed below shall be designed, fabricated, and installed in accordance with the requirements of §§ 250.132 through 250.141 (Platform Verification Program) as well as §§ 250.131, 250.142, 250.143, and 250.144.

(1) Platforms installed in water depths exceeding 400 feet.

(2) Platforms having natural periods in excess of 3 seconds.

(3) Platforms installed in areas of unstable bottom conditions.

(4) Platforms having configurations and designs which have not previously

been used or proven for use in the area, and

(5) Platforms installed in seismically active areas.

(d) Major modification to any platform shall be subject to the requirements of this subpart and shall require the approval of the Regional Supervisor. Major modification means any structural changes which materially alter the original plan or causes a major deviation from operations.

(e)(1) Major repairs of damage to any platform shall require the approval of the Regional Supervisor. Major repairs of damage means operations involving members affecting the structural integrity of a portion of or all of the platform.

(2) Under emergency conditions, repairs to primary structural elements may be made to restore an existing permitted condition without prior approval. The Regional Supervisor shall be notified within 24 hours of the damage that occurred and repairs that were made. The Regional Supervisor's approval for repairs shall be obtained.

(f) The requirements for the reuse or conversion of the use of an existing fixed or mobile structure shall be determined on a case-by-case basis. An application shall be submitted to the Regional Supervisor for approval and shall include location, intended use, and details of the original design, operating history, cathodic protection system, and physical examination results to demonstrate the adequacy of the design and structural condition of the platform.

§ 250.131 Application for approval.

(a) All applications under the provisions of this subpart shall be submitted to the Regional Supervisor for approval. All significant changes or modifications to approved applications shall be submitted to the Regional Supervisor for approval.

(b) Applications for all new platforms or major modifications shall be submitted in triplicate and shall contain the following information:

(1) General platform information including the following:

(i) The platform designation, lease number, area name, and block number,

(ii) Longitude and latitude coordinates, Universal Transverse Mercator grid-system coordinates, state plane coordinates in the Lambert or Transverse Mercator Projection system, and a plat drawn to a scale of 1 inch=2,000 feet showing surface location of the platform and distance from the nearest block lines,

(iii) Drawings, plats, front and side elevations of the entire platform, and plan views that clearly illustrate essential parts, i.e., number and location of well slots design loadings of each deck; water depth; nominal size and thickness of all primary load-bearing jacket and deck structural members; and nominal size, makeup, thickness, and design penetration of piling,

(iv) Corrosion protection or durability details which consist of the corrosion-protection method; expected life; and durability criteria for the submerged, splash, and atmospheric zones, and

(v) In the Alaska OCS Region, the following additional information shall be submitted:

(A) Slope protection and berm elevation for gravel or silt islands,

(B) Wall thickness with size and placement of major steel reinforcement for concrete-gravity structures, and

(C) Shell thickness with size and location of major reinforcement members for steel-gravity structures.

(2) A summary of environmental data, as addressed in § 250.134, which has a bearing on the platform's design, installation, and operation, e.g., wave heights and periods, current, vertical distribution of wind and gust velocities, water depth, storm and astronomical tide data, marine growth, snow and ice effects, and air and sea temperatures,

(3) Foundation information including the following:

(i) A geotechnical investigation report containing a brief summary of the major strata encountered at the location of the boring(s) presented in tabular form, a detailed subsurface profile illustrating results of field and laboratory testing, a listing of field and laboratory investigations and tests with a basic summary of resultant determinations, the identification of properties and conditions of the seabed and the subsoil, and the identification of any manmade hazards or obstructions,

(ii) A description of the effect of the environmental and functional loads on the foundation,

(iii) A determination, with supporting information, of the susceptibility of the area to soil movement and, if susceptible, an analysis of slope and soil stability,

(iv) A summary of the foundation design criteria as specified in § 250.139, and

(v) A summary of the seafloor survey results specified in § 250.139(b)(2).

(4) Structural information including the following:

(i) The design life of the platform and the basis for such determination,

(ii) A summary description of the design load conditions and design load combinations, taking into consideration the worst environmental and operational conditions anticipated over the service life of the platform,

(iii) A listing and description of the appropriate material specifications,

(iv) Design strength criteria, i.e., elastic, inelastic, and ultimate,

(v) A summary of pertinent derived factors of safety against failure for major structural members, e.g., unity check ratios exceeding 0.85 for steel-jacket platform members, indicated on "line" sketches of jacket sections, and

(vi)(A) In the Alaska, Atlantic, and Pacific OCS Regions, a summary of the fatigue analysis as specified in §§ 250.135 through 250.139. The requirement for a fatigue analysis shall be determined by the Regional Supervisor on a case-by-case basis to determine the adequacy of the design and to assure the structural integrity of the platform, and

(B) In the Gulf of Mexico OCS Region, a summary of the fatigue analysis as specified in §§ 250.135 through 250.139. A fatigue analysis shall be performed for each steel template, pile-supported platform with natural periods greater than 3 seconds, and for each platform to be fabricated of high-strength steel (i.e., over 50 thousand pounds per square inch minimum yield) where components of high-strength steel are subjected to cyclic loading. The requirement for a fatigue analysis shall be determined by the Regional Supervisor on a case-by-case basis for all other platforms to determine the adequacy of the design and to assure the integrity of the platform.

(c) The information shall be submitted with or subsequent to the submittal of an Exploration Plan or Development and Production Plan. Additional detailed data and information may be requested by the Regional Supervisor in order to determine the adequacy of the design.

(d) For all new platforms and major modifications, the lessee shall submit detailed structural plans and specifications certified by a registered professional structural engineer or civil engineer specializing in structural design. Such plans shall be affixed with the professional engineer's stamp, and

(e) The lessee shall notify the Regional Supervisor at least 1 week prior to transporting the platform to the installation site.

§ 250.132 Platform Verification Program requirements.

(a) Requirements. These requirements apply to the design, fabrication, installation, and inspection of new fixed and/or bottom-founded steel, pile-supported, or concrete-gravity platforms. The applicability of these requirements

to other types of platforms shall be determined by the MMS on a case-by-case basis. For all new platforms or major modifications which meet any of the conditions contained in § 250.130(c), the lessee shall submit for approval to the Regional Supervisor the design, fabrication, and installation verification plans in accordance with paragraph (b) of this section. The design plan shall be submitted with or subsequent to the submittal of an Exploration Plan or Development and Production Plan. The fabrication and installation plans shall be submitted before such operations are initiated.

(b) *Verification plan requirements.*—(1) *General plan requirements.* Each verification plan shall be submitted in triplicate and include the following:

(i) A nomination of a Certified Verification Agent (CVA) who shall conduct specified reviews in accordance with § 250.133,

(ii) The CVA qualification statement consisting of the following:

(A) Previous experience in third-party verification or experience in the design, fabrication, and/or installation of offshore oil and gas platforms, gravel islands, or other marine structures,

(B) Technical capabilities of the individual or the primary staff to be associated with the CVA functions for the specific project,

(C) Size and type of organization or corporation,

(D) In-house availability of, or access to, appropriate technology, i.e., computer programs and hardware and testing materials and equipment,

(E) Ability to perform the CVA functions for the specific project considering current commitments, and

(F) Previous experience with MMS requirements and procedures.

(iii) The level of work to be performed by the CVA, and

(iv) A list of documents to be furnished to the CVA.

(2) *Design verification plan requirements.* The design plan shall also include the following:

(i) All design documentation specified in § 250.131(b), and

(ii) Abstracts of the computer programs used in the design process.

(3) *Fabrication verification plan requirements.* The fabrication plan shall also include fabrication drawings and material specifications for artificial island structures, major members of concrete- and steel-gravity structures, all the primary load-bearing members included in the space-frame analysis for jacket structures, and a summary description of the following:

(i) Structural tolerances,

(ii) Welding procedures,

(iii) Material (concrete, gravel, or silt) placement methods,

(iv) Fabrication standards,

(v) Material quality-control procedures,

(vi) Methods and extent of nondestructive examinations (NDE) for welds and materials, and

(vii) Quality assurance procedures.

(4) *Installation verification plan requirements.* Additionally, the installation plan shall include a summary description of the planned marine operations, contingencies considered, alternate courses of action, and the inspections to be performed including a graphical identification of areas to be inspected and the acceptance/rejection criteria.

(c) *Requirements for resubmittal.* All such plans shall be resubmitted for approval if the CVA is changed, if the CVA's personnel assigned to the project changes, or if the level of work to be performed by the CVA changes.

(d) *Combining of plans.* For gravel or silt islands or other platforms fabricated and installed in place, the fabrication and installation verification plans shall be combined.

§ 250.133 Certified Verification Agent duties and nomination.

(a) *CVA duties.* The CVA nominated by the lessee and approved by the Regional Supervisor shall conduct the appropriate reviews in accordance with the following:

(1) *Design phase.* (i) The CVA shall conduct the design verification to ensure that the proposed platform or major modification has been designed to withstand the maximum environmental and functional load conditions anticipated during the intended service life at the proposed location,

(ii) The design verification shall be conducted by, or be under the direct supervision of, a registered professional civil or structural engineer,

(iii) The CVA shall consider the applicable provisions of §§ 250.134 through 250.141 and use good engineering practice in conducting an independent assessment of the adequacy of all proposed planning criteria, environmental data, load determinations, stress analyses, material designations, soil and foundation conditions, safety factors, and other pertinent parameters of the proposed design,

(iv) Interim reports shall be submitted by the CVA, as appropriate, to the Regional Supervisor and the lessee, and

(v) Upon completion of the design verification, a final report shall be prepared which summarizes the material reviewed by the CVA and the findings and includes a recommendation that the Regional Supervisor either accept, request modification(s), or reject the proposed design. In addition, the report shall include the particulars of how, by whom, and when the independent review was conducted and any special comments considered necessary. The final report shall be submitted to the lessee and, in triplicate, to the Regional Supervisor within 6 weeks of the receipt of the design data or from the date the approval to act as a CVA was issued, whichever is later.

(2) *Fabrication verification.* The CVA shall monitor the fabrication of the platform or major modification to ensure that it has been built in accordance with the approved design plans and specifications and the fabrication plan, including the following:

(i) Periodic onsite inspections shall be made while fabrication is in progress. The following of the fabrication items, as appropriate, shall be verified:

(A) Quality control by lessee and builder,

(B) Fabrication site facilities,

(C) Material quality and identification methods,

(D) Fabrication procedures specified in the approved plan and adherence to such procedures,

(E) Welder and welding procedure qualification and identification,

(F) Structural tolerances specified and adherence to those tolerances,

(G) The NDE requirements and evaluation results of the specified examinations,

(H) Destructive testing requirements and results,

(I) Repair procedures,

(J) Installation of corrosion-protection systems and splash-zone protection,

(K) Erection procedures to ensure that overstressing of members does not occur,

(L) Alignment procedures,

(M) Dimensional check of the overall structure, and

(N) Status of quality-control records at various stages of fabrication.

(ii) The CVA shall consider the applicable provisions of §§ 250.134 through 250.141 and use good engineering practice in conducting an independent assessment of the adequacy of the fabrication of the platform or major modification,

(iii) Interim reports shall be submitted by the CVA, as appropriate, to the Regional Supervisor and the lessee,

(iv) If the CVA finds that fabrication procedures are changed or design specifications are modified, both the lessee and the Regional Supervisor shall be informed. The Regional Supervisor

may require submittal of additional applications for approval of design or fabrication plan changes, and

(v) A final report shall be prepared by the CVA covering the adequacy of the entire fabrication phase giving details of how, by whom, and when the independent monitoring activities were conducted and providing any special comments considered necessary. The final report is not required to cover aspects of the fabrication already included in interim reports. The final report shall describe the CVA's activities during the verification process, summarize the findings, contain a confirmation or denial of compliance with the design specifications and the approved fabrication plan, and a recommendation to accept or reject the fabrication. The report shall be submitted to the lessee and, in triplicate, to the Regional Supervisor immediately after completion of the fabrication of the platform.

(3) *Installation phase.* The CVA shall witness the loadout of the jacket, deck(s), and piles from the fabrication site(s); review the towing records; conduct an onsite survey after transportation to the proposed location; witness the actual installation of the platform or major modification; determine that the platform has been installed at the proposed location in accordance with the approved design and the installation plan; and shall comply with the following:

(i) The CVA shall consider the applicable provisions of §§ 250.134 through 250.141 and use good engineering practice in conducting an independent assessment of the adequacy of the installation activities. The following parts of the overall installation process, as appropriate, shall be verified:

(A) Loadout and initial flotation operations, if any,

(B) Towing operations to the specified location,

(C) Launching and uprighting operations,

(D) Submergence operations,

(E) Pile installation, and

(F) Final deck and/or component installation.

(ii) The CVA shall observe the installation activities, spot-check equipment, procedures, and recordkeeping, as necessary, to determine compliance with §§ 250.134 through 250.141 and the approved plans, and immediately report to the Regional Supervisor and the lessee any discrepancies or damage to structural members. Approval for modified installation procedures or for major deviation from approved installation procedures shall be obtained from the Regional Supervisor.

(iii) Interim reports shall be submitted by the CVA, as appropriate, to the Regional Supervisor and the lessee, and

(iv) A final report shall be prepared by the CVA covering the adequacy of the entire installation phase giving details of how, by whom, and when the independent monitoring activities were conducted and providing any special comments considered necessary. The final report shall describe the CVA's activities during the verification process, summarize the findings, contain a confirmation or denial of compliance with the approved installation plan, and a recommendation to accept or reject the installation. The report shall be submitted to the lessee and, in triplicate, to the Regional Supervisor within 2 weeks of completion of the installation of the platform.

(4) All data provided to the CVA shall be handled in the strictest confidence and not be released by the CVA without the consent of the lessee, and

(5) Individuals or organizations acting as CVA's for a particular platform shall not function in any capacity other than that of a CVA for that specific project, whenever any additional activities would create a conflict of interest.

(b) *CVA nomination*—(1) *Nomination.* Individuals or organizations shall be nominated by the lessee planning to use their services. The lessee shall specify whether the nomination is for the design, fabrication, or installation phase of verification or for all three phases.

(2) *Qualifications.* Qualification submissions shall contain sufficient information to determine compliance with § 250.132(b)(1)(ii).

§ 250.134 Environmental conditions.

(a) *General.* The performance standards of this section pertain to all platforms covered by these requirements regardless of the fabrication material.

(1) *Environmental considerations.* All environmental phenomena appropriate to the areas of fabrication, transportation, and installation of an offshore platform shall be considered and their influence on the platform accounted for. Such phenomena shall include wind, waves, current, temperature, tide, marine growth, chemical components of air and water, snow and ice, earthquakes, tsunami, seiche, and other appropriate phenomena.

(2) *Environmental data.* Statistical data and defensible statistical and mathematical models shall be employed to describe the range of pertinent expected variations of environmental phenomena. Defensible data supplied by meteorologists, oceanographers, or other appropriate specialists are acceptable as the basis for design. Where possible, environmental phenomena shall be described by the characteristic parameters most relevant in the evaluation of effects on the platform.

(b) *Statistical methods.*—(1) When statistical methods are employed in the determination of parameters characterizing environmental phenomena, the statistical methods and distributions employed shall be appropriate to their application as evidenced by relevant statistical tests, confidence limits, and other measures of statistical significance.

(2) Short-term and long-term variations of environmental phenomena such as wind, waves, and current shall be described by statistical distributions relevant to the parameter considered. Defensible statistical modeling techniques shall be used in the prediction of extreme values.

(3) When hindcasting techniques are employed to approximate environmental parameters, the validity of the model used shall be defensible.

(c) *Design considerations.*—(1) *General.* A thorough assessment of the environment in the vicinity of the installation site shall be made to determine the conditions expected to occur at the site over the life of the platform.

(2) *Design environmental condition.* (i) "Design environmental condition" means the environmental factors producing the most unfavorable effects on the platform. Parameters describing the design environmental condition are given in paragraphs (c)(2)(ii) (A), (B), and (C) of this section.

(ii) The design environmental condition shall reflect the various environmental events that individually or collectively represent the most severe conditions the platform is anticipated to experience. Such conditions shall be formulated with a set of parameters that describe the relevant environmental events, including the following:

(A) The maximum wave corresponding to a selected recurrence period together with the associated wind, current, and appropriate ice and snow effects,

(B) The minimum air and sea temperatures appropriate to the event being treated, and

(C) The maximum water level due to tide and storm surge.

(iii) Consideration shall be given to other combinations of the parameters specified in paragraph (c)(2)(ii) (A) of this section involving either maximum

wind, maximum current, or maximum ice load which may cause a greater response of the platform,

(iv) In general, the recurrence period chosen for the events specified in paragraphs (c)(2)(ii) (A) and (C) of this section shall primarily be based on the design service life of the platform. For platforms designed for a service life of 20 years, the recurrence period chosen for the determination of these events shall not be less than 100 years unless sufficient justification for a reduction of this value can be provided, and

(v) For installation sites located in seismically active areas, see paragraph (d)(8) of this section.

(3) *Operating environmental conditions.* Operating environmental conditions means the set of characteristic parameters of environmental conditions associated with a normal function or operation to be conducted on the platform. For each such intended normal function or operation, the lessee shall determine a set of characteristic parameters of environmental conditions.

(d) *Specific environmental conditions.*—(1) *Waves.* The following shall apply:

(i) Wave conditions considered for design shall be described by defensible statistical and/or deterministic methods,

(ii) Parameters characterizing design environmental waves shall be based on wave statistics or the results of defensible analytic prediction methods such as hindcasting techniques,

(iii) When using probabilistic analyses, the probability of occurrence of various wave height groups classified by directionality and for a wide range of possible periods (i.e., tables of exceedance) shall be determined. Where required by the method selected to predict extreme values, the average duration of various wave-height groups (i.e., persistence data) shall be determined. All extrapolations and long-term wave data analyses shall use defensible techniques, and available data on extreme values measured in the vicinity of the site shall be included in the long-term prediction,

(iv) When using deterministic methods, waves shall be described by the parameters, height, period, and other relevant shape characteristics. The design-wave formulation used shall be valid for the problem considered,

(v) Breaking-wave criteria appropriate to the installation site shall be determined using defensible formulations, and

(vi) If spectral wave data is established for the dynamic analysis of structural response to waves, such data shall be derived in accordance with defensible methods. If spectral data is not available in adequate quantities for the intended application, defensible mathematical formulations that best fit the available data shall be used.

(2) *Wind.* The following shall apply:

(i) Wind velocities shall be classified on the basis of their duration. Wind velocities having a duration of less than 1 minute are referred to as gust winds. Wind velocities having a duration equal to or greater than 1 minute are referred to as sustained winds. The reference elevation is 33 feet above still-water level (SWL),

(ii) Wind conditions considered for design shall be described by defensible statistical or deterministic methods,

(iii) Wind profiles shall be determined on the basis of defensible statistical or mathematical models. Corrections of wind velocity data to averaging periods other than those employed in the collection of data shall be based on defensible methods, and

(iv) Distribution of the direction and speed of wind approach to the platform shall be determined, or alternatively, winds shall be considered to approach from any direction.

(3) *Currents.* The following shall apply:

(i) Current velocities to be used in design shall be determined on the basis of the best statistics available. Tidal current, wind-generated current, density current, circulation current, and river-outflow current shall be combined on the basis of their probability of simultaneous occurrence in arriving at current velocities to be used in design,

(ii) Current velocity profiles shall be determined on the basis of site-specific studies or defensible empirical relationships. Unusual profiles due to bottom currents and stratified effects in regions near the mouth of large rivers shall be accounted for, and

(iii) Directional data on currents which exist in the absence of waves shall be described for each month or by season. Unless a detailed study of current directions is made, currents shall be assumed to run in any direction.

(4) *Tide.* The following shall apply:

(i) The design storm-tide elevation shall be identified for the installation site. For design purposes, the design environmental wave height shall be superimposed on the storm-tide elevation,

(ii) Variations in the elevation of the daily lunar tide shall be used in determining the elevations of boat landings, barge fenders, and the corrosion-prevention treatment of platforms in the splash zone (see § 250.138(c)(5)),

(iii) The assumed maximum or storm tide shall include astronomical tide, wind tide, and pressure-induced storm surge. Minimum-tide estimates shall be based on either the astronomical or lunar tide only. The water depth shall be referenced to a datum (e.g., mean low/water or mean low low/water) consistent with all other references to elevations and depths, and

(iv) If data directly applicable to the installation site are not available, the best estimate based on data for nearby locations shall be used.

(5) *Temperature.* The following shall apply:

(i) Extreme values of low temperatures shall be expressed in terms of the most probable, lowest values with their corresponding recurrence periods, and

(ii) Air, sea surface, and seabed temperatures shall be accounted for in describing the environment and in justifying the temperatures used in design.

(6) *Snow and ice.* The following shall apply:

(i) If the platform is to be located in an area where sea ice may develop or drift, ice conditions shall be accounted for. Data shall be derived from actual field investigations, laboratory analyses, or other appropriate analogous sources,

(ii)(A) Relevant statistical and physical data on the sea-ice and snow conditions shall be described with particular attention to the following:

(*1*) Concentration and distribution of ice and snow,

(*2*) Morphology of sea ice (ice floes, ice ridges, rafted ice, etc.),

(*3*) Mechanical properties of ice (mode of failure),

(*4*) Drift speed and direction,

(*5*) Thickness of ice and keel depth of pressure ridges,

(*6*) Probability of encountering icebergs, ice floes, ice-floe fragments, and hummocks.

(B) The weight of the maximum snow and ice anticipated to accumulate on the platform shall be determined.

(*7*) *Marine growth.* The following shall apply:

(i) When assessing the potential for marine growth, account shall be taken of relevant observations and experience in the area. In the absence of such information, defensible analytical techniques shall be employed to assess the potential for marine growth. These techniques shall take into account salinity, oxygen content, hydrogen-ion concentration value, current, temperature, water turbidity, and other appropriate factors,

(ii) Consideration shall be given to the selection of surface coatings which resist breakdown by micro-organisms which reduce the onset of corrosion, and

(iii) Particular attention shall be paid to the effects that marine growth has on surface roughness characteristics of submerged structural members.

(8) *Earthquake.* The following shall apply:

(i) The effects of earthquakes on platforms located in areas known to be seismically active shall be addressed.

(ii) Except for the provision of § 250.137(c)(5)(ii), the seismicity of the site shall be determined. Preferably, this shall be based on site-specific data. However, regional data shall be deemed acceptable for use when site-specific data is not available and the regional data is interpreted in a manner to produce the most adverse effect on a platform at the specific site. The following data shall be obtained:

(A) Recurrence interval of seismic events appropriate to the design life of the structure,

(B) Proximity to active faults,

(C) Type of faulting,

(D) Attenuation of ground motion between the faults and the site,

(E) Subsurface soil conditions, and

(F) Records from past seismic events at the site or from analogous sites.

(iii) The use of available data to describe the seismic characteristics of the site is permitted where it can be shown that such data is consistent with the requirements of paragraph (d)(8)(ii) of this section, and

(iv) The seismic data shall be used to establish a quantitative design earthquake criterion describing the design earthquake-induced ground motion. In addition to ground motion and as applicable to the installation site, the following earthquake-related phenomena shall be taken into account:

(A) Liquefaction of subsurface soils,

(B) Submarine slides,

(C) Tsunamis, and

(D) Fluid motions in tanks.

§ 250.135 Loads.

(a) *Introduction.* This section covers the identification, definition, and determination of the loads to which a fixed offshore platform may be exposed during and after its transportation and installation. The requirements contained in paragraphs (b) through (d) of this section apply to both steel-piled platforms and concrete-gravity platforms. Additional requirements covering steel-piled platforms are contained in paragraph (e) of this section. Additional requirements covering concrete-gravity platforms are contained in paragraph (f) of this section.

(b) *General.* (1) All types of loads specified in paragraphs (c)(1) through (c)(5) of this section shall be accounted for in the design and operation of the platform.

(2) Where applicable, the effects of increased dimensions and weight due to marine growth and snow and ice accumulation shall be addressed in the design.

(c) *Load definition.*—(1) *Dead loads.* Dead loads associated with the platform are loads that do not change during the mode of operation under consideration. Dead loads include the following:

(i) Weight in air of the platform (see paragraphs (e)(2) and (f)(2) of this section for itemizations of weight for steel-piled platforms and concrete-gravity platforms, respectively),

(ii) Weight of permanent ballast and the weight of permanent machinery including liquids at operating levels,

(iii) External hydrostatic pressure and buoyancy in calm sea conditions, calculated on the basis of the design waterline, and

(iv) Static earth pressure.

(2) *Live loads.* Live loads associated with the normal operation and use of the platform are loads that could change during the mode of operation considered. Live loads acting after construction and installation include the following:

(i) Weight of drilling and production equipment that can be removed such as derrick, draw works, mud pumps, mud tanks, separators, and tanks,

(ii) Weight of crew and consumable supplies such as mud, chemicals, water, fuel, pipe, cable, stores, drill stem, casing, etc.,

(iii) Weight of liquids in storage tanks,

(iv) Forces exerted on the platform due to drilling, e.g., the maximum derrick reaction when placing or pulling casing,

(v) The forces exerted on the platform during the operation of cranes and vehicles,

(vi) The forces exerted on the platform by vessels moored to the platform, and

(vii) The forces exerted on the platform by helicopters during takeoff and landing or while parked on the platform.

When applicable, the dynamic effects on the platform of the forces specified in paragraphs (c)(2) (iv) through (vii) of this section shall be taken into account. Live loads occurring during transportation and installation shall be determined for each specific operation involved, and the dynamic effects of such loads shall be addressed (see § 250.142).

(3) *Deformation loads.* Deformation loads are loads due to deformations imposed on the platform. For an itemization of deformation loads applicable to steel-piled platforms, and concrete-gravity platforms, see paragraphs (e)(2) and (f)(2) of this section, respectively.

(4) *Accidental loads.* Consideration shall be given to accidental loadings, and where such loadings are incorporated in design, they shall be quantified. Accidental loads are loads that could occur as the result of an accident or exceptional conditions, such as the following:

(i) Extreme impact loads caused by supply boats, barges, and other craft anticipated to work in the vicinity of the platform,

(ii) Impact loads caused by dropped objects, such as drill collars, casing, blowout-preventer (BOP) stacks,

(iii) Loss of internal pressure required to resist hydrostatic loading and to maintain buoyancy during the installation of the platform,

(iv) Explosion,

(v) Effects of fire, and

(vi) Iceberg collision.

(5) *Environmental loads.* The following shall apply:

(i) Environmental loads are loads due to wind, waves, current, ice, snow, earthquake, and other environmental phenomena,

(ii) The characteristic parameters defining an environmental load shall be appropriate to the installation site as determined by the studies required by § 250.134. Operating environmental loads are loads derived from the parameters characterizing operating environmental conditions (see § 250.134(c)(3)). Design environmental loads are loads derived from the parameters characterizing the design environmental condition (see § 250.134(c)(2)),

(iii) Environmental loads shall be applied to the platform from directions producing the most unfavorable effects on the platform unless site-specific studies allow for a less stringent requirement,

(iv) The combination and severity of design environmental loads shall be consistent with the likelihood of their simultaneous occurrence. The simultaneous occurrence of environmental loads shall be modeled by appropriate superposition methods, and

(v) Earthquake loads and loads resulting from accidental or rare environmental phenomena need not be combined with other environmental loads unless site-specific conditions

indicate that such combination is appropriate.

(d) *Determination of environmental loads.*—(1) *Wave loads.* The following shall apply:

(i) Wave-induced loads shall be calculated using defensible methods or shall be obtained from adequate model or field test data,

(ii) A sufficient range of waves and wavecrest positions relative to the platform shall be investigated to ensure an accurate determination of the maximum wave load on the platform,

(iii) Wave impact loads on structural members below the design wave crest elevation shall be accounted for by defensible theoretical methods or relevant model test or full-scale data,

(iv) Where applicable, the possibility of dynamic excitation of the platform due to flow-induced cyclic loading shall be addressed,

(v) For additional requirements pertaining to steel-piled platforms and concrete gravity-platforms, see paragraphs (e)(3) and (f)(3) of this section, respectively, and

(vi) Additional hydrostatic loading effects shall be addressed.

(2) *Wind loads.* The following shall apply:

(i) Wind loads, local wind pressures, and wind profiles shall be determined on the basis of defensible analytical methods or wind tunnel tests on a representative model of the platform,

(ii) In determining design environmental loads on the overall platform, wind loads calculated on the basis of the design-sustained wind velocity shall be combined with other design environmental loads,

(iii) The design gust wind load shall be used in the design of local structure unless the effects of the load combination described in paragraph (d)(2)(ii) of this section are more severe, and

(iv) Where appropriate, the dynamic effects due to the cyclic nature of gust wind and cyclic loads due to vortex shedding shall be taken into account. Both the drag and lift components of loads due to vortex shedding shall be taken into account.

(3) *Current loads.* The following shall apply:

(i) Current-induced loads on immersed members of the platform shall be accounted for by defensible methods or the results of model test or site-specific data,

(ii) The lift and drag coefficients used in the determination of current loads shall be appropriate to the current velocity and structural configuration,

(iii) Current velocity profiles used in design shall be appropriate to the installation site,

(iv) For determination of loads induced by the simultaneous occurrence of wave and current fields, the total velocity field shall be computed by defensible methods before computing the total force, and

(v) Where appropriate, flutter and load amplification due to vortex shedding shall be addressed.

(4) *Ice and snow loads.* The following shall apply:

(i) Contact loads caused by floating ice shall be determined according to defensible theoretical methods, model test data, or full-scale measurements,

(ii) In locations where platforms are subject to ice and snow accumulation, the additional weight of snow and ice on the platform shall be addressed,

(iii) The effects of ice accumulation and ice jam, including the effects of changes in configuration due to adhesion, shall be accounted for in the determination of the total environmental load, and

(iv) The incident pressure due to pack ice, pressure ridges, and where appropriate, ice island fragments impinging on the platform shall be addressed.

(5) *Earthquake loads.* The following shall apply:

(i) For platforms located in seismically active areas, design earthquake-induced ground motions shall be determined on the basis of seismic data applicable to the installation site. Design earthquake ground motions shall be described by either applicable ground motion records or response spectra consistent with the recurrence period appropriate to the design life of the platform,

(ii) Available and defensible standardized spectra applicable to the region of the installation site are acceptable if such spectra reflect those site-specific conditions affecting frequency content and energy distribution. These conditions include the type of active faults in the region, the proximity of the site to the potential source faults, the attenuation or amplification of ground motion between the faults and the site, and the soil conditions at the site,

(iii) Ground-motion descriptions shall consist of three components corresponding to two orthogonal horizontal directions and the vertical direction. All three components shall be applied to the platform simultaneously,

(iv)(A) When the response spectrum method is used for structural analysis, input values of ground motion (spectral acceleration representation) shall not be less severe than the following:

(*1*) One hundred percent in a principal horizontal direction,

(*2*) Sixty-seven percent in the orthogonal horizontal direction, and

(*3*) Fifty percent in the vertical direction.

(B) The horizontal components shall also be applied in the alternative orthogonal horizontal directions.

(v) If the time history method is used for structural analysis, at least three sets of ground-motion time histories shall be employed. The manner in which the time histories are used shall account for the potential sensitivity of the platform's response to variations in the phasing of the ground-motion records, and

(vi) When applicable, effects of soil liquefaction and/or loads resulting from submarine slides or creep, tsunamis, and earthquake motions shall be addressed.

(e) *Loads on steel pile-supported platforms.* The following requirements apply to loads on steel pile-supported platforms and shall be applied together with the requirements in paragraphs (b), (c), and (d) of this section:

(1) The dead load of the platform shall include, as appropriate, the weight in air of the jacket, piling, grout, superstructure modules, stiffeners, decking, piping, heliport, and any other fixed structural part less buoyancy, with due allowance for flooding.

(2) The deformation loads to be accounted for are those resulting from temperature variations leading to thermal stresses in the platform, and where appropriate, those resulting from soil displacements (e.g., differential settlements or lateral displacements).

(3) *Wave loads.* The following shall apply:

(i) For platforms composed of members having diameters that are negligible in relation to the wave lengths considered, semiempirical formulations accounting for wave-induced drag and inertia forces based on the water particle velocities and accelerations on an undisturbed, incident flow field are acceptable,

(ii) When a method as described in paragraph (e)(3)(i) of this section is used, the wave field shall be described by a defensible wave theory appropriate to the wave heights, wave periods, and water depth at the installation site,

(iii) The coefficients of drag and inertia used in calculating wave loads shall be determined on the basis of model test results, published data, or full-scale measurements appropriate to the structural configuration, surface roughness, and wave field, and

(iv) For platforms composed of members whose diameters are not negligible in relation to the wave lengths

considered and for structural configurations that will substantially alter the undisturbed, incident flow field, diffraction forces and the hydrodynamic interaction of structural members shall be taken into account.

(f) *Loads on concrete-gravity platforms.* The following requirements apply to loads on concrete-gravity platforms and shall be applied together with the requirements described in paragraphs (b), (c), and (d) of this section.

(1) The dead load of the platform shall include, as appropriate, the weight in air of the foundation, skirts, columns, superstructure modules, decking, piping, heliport, and any other fixed structural part less buoyancy with due allowance for flooding. Weight calculations based on nominal dimensions and mean values of density are acceptable.

(2) The deformation loads to be accounted for are those due to prestress, shrinkage and expansion, creep, temperature variations, and differential settlements.

(3) *Wave loads.* The following shall apply:

(i) For platforms composed of large gravity bases and one or more columns whose diameters are not negligible in relation to the wave lengths considered, defensible wave-load theories which account for the drag, inertia, and diffraction forces on the platform shall be employed.

(ii) For complex structural configurations, the hydrodynamic interaction of large, immersed structural members shall be addressed.

(iii) When diffraction forces and hydrodynamic interaction are negligible, only semiempirical formulations comparable to those mentioned in paragraphs (e)(3) (i) and (iii) of this section accounting for drag and inertia forces are acceptable, and

(iv) The undisturbed, incident flow field shall be addressed by a defensible wave theory appropriate to the wave heights, wave periods, and water depth at the installation site.

§ 250.136 General design requirements.

(a) *General.* This section specifies the general concepts and methods of analysis to be incorporated in the design of a platform.

(b) *Analytical approaches.*

(1) *Structural response.* The following shall apply:

(i) Methods of analysis employed in association with the specifications of these requirements shall treat geometric and material nonlinearities in a defensible manner. When nonlinear methods of analysis are used to assess collapse mechanisms, it shall be demonstrated that the platform has sufficient ductility to develop the required resistance or structural displacements, and

(ii) Where theoretically based analytical procedures covering the platform or parts thereof are unavailable or not well defined, model studies shall be utilized. The acceptability of model studies depends on the procedures employed, including enumeration of the possible sources of errors, the limits of applicability of the model test results, and the methods of extrapolation to full-scale data.

(2) *Loading formats.* The following shall apply:

(i) Either a deterministic or spectral format shall be employed to describe various load components. When a static approach is used, it shall be demonstrated, where appropriate, that the general effects of dynamic amplification were addressed. The influence of waves other than the highest waves shall be investigated for their potential to produce maximum peak stresses resulting from possible resonance with the platform,

(ii) When considering the design earthquake as discussed in § 250.135, a dynamic analysis shall be performed. A dynamic analysis shall also be performed to assess the effects of environmental or other types of loads if significant dynamic amplification is expected, and

(iii) For fatigue analysis, the long-term distribution of the stress range, with proper consideration of dynamic effects, shall be obtained for relevant loadings anticipated during the design life of the platform (see §§ 250.137(c)(6) and 250.138(c)(6)).

(3) *Combination of loading components.* The following shall apply:

(i) Loads imposed during and after installation shall be taken into account. Of the various loads described in § 250.134, those loads to be considered for design shall be combined in a manner consistent with their probability of simultaneous occurrence. However, earthquake loadings shall be applied without consideration of other environmental effects unless conditions at the site necessitate their inclusion. The direction of applied environmental loads shall be that producing the highest possible influences on the platform, considering the platform's orientation and location with respect to bottom topography, direction of fetch, and nearby land masses,

(ii) While it is required to obtain and use those loading components which produce realistic maximum effects on the platform, loading combinations corresponding to conditions after installation shall reflect both operating and design environmental loadings. Sections 250.137, 250.138, and 250.139 give the minimum load combinations to be considered, and

(iii) The operating environmental conditions and the maximum tolerable environmental loads during installation shall be specified.

(c) *Overall design considerations.*

(1) *Design life.* The design service life of the platform shall be specified as prescribed in § 250.134(c)(2)(iv).

(2) *Air gap.* An air gap of 5 feet shall be provided between the maximum crest elevation of the design wave (including tidal effects) and the lowest portion of the platform upon which wave forces have not been included in the design. After accounting for the initial and long-term settlements resulting from consolidation and subsidence, the elevation of the crest of the design wave shall be based on the elevation of the mean low-water line, astronomical and storm tides, wave runup, the tilting of the platform, and where necessary, tsunamis.

(3) *Long-term and secondary effects.* The following effects shall be addressed, as appropriate, for the planned platform:

(i) Local vibration due to machinery, equipment, and vortex shedding,

(ii) Stress concentrations at critical joints,

(iii) Secondary stresses induced by large deflections (P-Δ effects),

(iv) Cumulative fatigue,

(v) Corrosion,

(vi) Marine growth, and

(vii) Ice abrasion.

(4) *General arrangement.* The platform and equipment shall be arranged to minimize the potential of structural damage and personal injury resulting from accidents. In this regard, the consequences of the arrangement or placement of the following components and their effects shall be addressed:

(i) Equipment and machinery—noise and vibration,

(ii) High-pressure piping—leakage in closed spaces,

(iii) Lifting devices—dropped loads, and

(iv) Vessel mooring devices—line breakage and tripping quick-release mechanisms.

(5) *Corrosion-protection zones.* Measures taken to mitigate the effects of corrosion as required by §§ 250.137(d) and 250.138(c)(5) shall be specified and described in terms of the following definitions for corrosion-protection zones:

(i) Submerged zone—that part of the platform below the splash zone,

(ii) Splash zone—that part of the platform between the highest and lowest water levels reached by sea states exceeded for 1 percent of the time annually when superimposed on the highest and lowest levels of tide with due allowance for high and low installation of the platform,

(iii) Atmospheric zone—that part of the platform above the splash zone,

(iv) Ice zone—that part of the platform which can reasonably be expected to come into contact with floating or submerged ice annually.

§ 250.137 Steel platforms.

(a) *Materials.*

(1) *General.*

(i) This section covers specifications for materials used for the construction of offshore steel pile-supported platforms. Steels shall be suitable for their intended service as demonstrated by testing under relevant service conditions or previous satisfactory performance under service conditions similar to those intended. Steels shall be of good commercial quality, defined by specification, and free of injurious defects,

(ii) Steels shall exhibit satisfactory formability and weld-ability characteristics and fracture toughness satisfactory for the intended applications. Materials for structural members which are fracture critical or for members which sustain significant tensile stress and whose fracture would pose a threat to the survival of the platform shall have sufficient toughness to guard against brittle fracture. Materials selected for members which are subjected to significant tensile stress shall have toughness suitable to their intended application, and

(iii) In cases where principal loads from either service or weld residual stresses are imposed normal to the plate, appropriate precautions shall be taken to avoid lamellar tearing parallel to the plate surface.

(2) *Material selection.* The following shall apply:

(i) Steels for structural members shall be selected according to criteria that take into account the required yield strength, fracture toughness, service temperature (see paragraph (a)(3) of this section), and intended application,

(ii) Bolts and nuts shall have mechanical and corrosion properties comparable to the structural elements being joined. Materials for bolts and nuts shall be defined by and tested in accordance with material standards compatible with those for the joined structural members,

(iii) When new alloys are used, the adequacy of fracture toughness shall be supported by appropriate fracture tests, and

(iv) When materials other than steel are used, the mechanical and durability properties necessary for their intended function shall be designated, including toughness and fatigue characteristics, where necessary.

(3) *Service temperature.* Service temperature means the temperature that the material is expected to achieve in the operational environment.

(i) For material at or below the waterline, the minimum service temperature shall be the lowest average daily water temperature applicable to the particular depth. For material above the waterline, the minimum service temperature shall be the lowest 1-day average daily atmospheric temperature over a 10-year period, unless the material is warmed by auxiliary heating, and

(ii) In all cases where material temperature is reduced by localized cryogenic storage or other cooling means, such factors shall be accounted for in establishing minimum service temperature.

(4) *Classification of applications.* When considering the welding requirements given in subsequent sections, materials shall be considered as "Weld Class A" if the members are critical or special structural elements, "Weld Class B" if the members are primary load-carrying members of the platform, or "Weld Class C" if the members are secondary structural elements.

(5) *Material designation.* All material employed in platform construction shall be described and designated by a material specification.

(b) *Fabrication and welding.*

(1) *General.* The following shall apply:

(i) Welding shall be performed in accordance with the applicable provisions of the American Welding Society (AWS) publication, AWS D1.1, Structural Welding Code—Steel, or other appropriate welding codes, and

(ii) Fabrication other than welding shall be performed in accordance with the American Institute of Steel Construction (AISC) publication, S326, Specification for the Design, Fabrication, and Erection of Structural Steel for Buildings, or other appropriate codes. The code to be followed during fabrication and construction shall be specified on design documents.

(2) *Welding.* The following shall apply:

(i) Welding procedures and filler metals shall be selected to produce sound welds, and the filler metal shall have strength and toughness compatible with the base metal. Workmanship shall be in compliance with paragraph (b)(1)(i) of this section,

(ii) Forming processes shall not degrade the base metals below their minimum required properties. A heat treatment shall be employed to provide the required properties, where necessary,

(iii) Misalignment, between parallel (abutting) members shall be minimized. Weld size for fillet welds shall be sufficient to compensate for the gap between faying surfaces of the members. Lapped joints shall possess sufficient overlaps. Both edges of an overlap joint shall have continuous fillet welds,

(iv) When arc-air gouging is employed, the carbon buildup and burning of the weld or base metals shall be minimized, and

(v) Peening shall not be used for single-pass welds or for the root or cover passes of multipass welds. Peening shall be used only after cleaning of weld passes. Fairing by heating, flame shrinking, or other methods, when applied to Weld Class A or B structural elements, shall be performed without damaging the base metals. Such corrective measures shall be kept to a minimum when treating high-strength steels.

(3) *Quality assurance.* A documented inspection plan shall be prepared and followed and shall cover the following items:

(i) A suitable system for material identification and quality control during all stages of construction,

(ii) Requirements for welding procedures and welder qualifications,

(iii) The extent of weld inspection (including nondestructive examination methods) and the criteria for weld acceptance or rejection, and

(iv) Necessary dimensional tolerances.

(4) *Weld nondestructive examination.* The following shall apply:

(i) All welds shall be subjected to visual examination. Nondestructive examination shall be conducted to the extent indicated in paragraph (b)(4)(ii) of this section after all forming and post weld heat treatments have been completed. Welding examination procedures shall be adequate to detect delayed weld cracking in cases involving high-strength steels or high-hydrogen welding processes,

(ii) As called for in paragraph (b)(3)(iii) of this section, a plan for nondestructive examination of the welds shall be prepared and followed. The extent of inspection of Weld Classes A and B structural elements shall be consistent with the application

involved. Important welds of Weld Classes A and B structural elements are those inaccessible or very difficult to inspect in service. Important welds shall be subjected to an increased level of nondestructive examination during fabrication, and

(iii) If the proportion of unacceptable welds becomes excessive, the frequency of nondestructive examination shall be increased.

(c) *Design and analysis.*

(1) *General.* The following shall apply:

(i) The objective of this subsection is to ensure that steel platforms are adequately designed and analyzed to withstand the loads to which they are likely to be exposed during their design life. This subsection requires that the effects on the platform be determined for a minimum set of loading conditions by using a defensible method, and that the resulting responses do not exceed the safety criteria appropriate to the methods employed.

(ii) The use of design methods, other than those specifically covered in this section, and their associated safety criteria are allowed if it can be demonstrated that such alternative methods will result in a structural safety level equivalent to that provided by the direct application of these requirements, and

(iii) Sections 250.135 and 250.136 shall be consulted regarding definitions and requirements pertinent to the determination of loads and general design requirements.

(2) *Loading conditions.* The following shall apply:

(i) Appropriate loading conditions that produce the most adverse effects on the platform during and after fabrication and installation shall be considered, and

(ii) Loadings corresponding to conditions after installation shall include at least those relating to both the operating and design environmental conditions, combined with other pertinent loads in the following manner:

(A) Operating environmental conditions combined with dead and live loads appropriate to the function and operation of the platform,

(B) Design environmental conditions combined with dead and live loads appropriate to the function and operation of the platform, and

(C) Design environmental conditions combined with dead loads and minimum live loads appropriate to the function and operation of the platform.

(iii) For platforms located in seismically active areas, design-earthquake loads shall be combined with dead and live loads appropriate to the operation and function of the platform.

(3) *Methods of design and analysis.* The following shall apply:

(i) The nature of loads and loading combinations as well as the local environmental conditions shall be considered in the selection of design methods. Methods of analysis and their associated assumptions shall be compatible with the overall design principles.

(ii) Linear, elastic methods (working stress methods) of design and analysis are acceptable if proper measures are taken to prevent general and local buckling failure. Regarding structural instability as a possible mode of failure, the effects of initial stresses and geometric imperfection shall be taken into account.

(iii) Dynamic effects shall be accounted for if the wave energy in the frequency range of the structural resonance frequencies is of sufficient magnitude to produce significant stresses in the platform. The determination of dynamic effects shall be accomplished either by computing the dynamic amplification effects in conjunction with a deterministic analysis or by a random dynamic analysis based on a spectral formulation. In the latter case, the analysis shall be accompanied by a statistical description and evaluation of the relevant input parameters.

(iv) The interaction of the soil with the platform's piles shall be included in the analytical model used to obtain the structural response (see § 250.139(d)(1)(iv)).

(v) For static loads, plastic methods of design and analysis shall be employed only when the properties of the steel and the connections exclude the possibility of brittle fracture and allow for formation of plastic hinges with sufficient plastic rotation capacity and adequate fatigue resistance.

(vi) Whenever plastic analysis is used, it shall be demonstrated that the collapse mode (mechanism) corresponding to the smallest loading intensities has been used for the determination of the ultimate strength of the platform. The effect of buckling and other destabilizing nonlinear effects shall be taken into account in the plastic analysis of platforms with compressive forces. Whenever nonmonotonic or repeating loads are present, it shall be demonstrated that the structure will not fail by incremental collapse or fatigue, and

(vii) Under dynamic loads when plastic strains may occur, the considerations specified in paragraph (c)(3)(v) of this section shall be satisfied and any buckling and destabilizing nonlinear effects shall be taken into account.

(4) *Allowable stresses and load factors.* The following shall apply:

(i) When the design is based on a working-stress method (see paragraphs (c)(1)(ii) and (c)(3)(ii) of this section), the safety criteria shall be expressed in terms of appropriate basic allowable stresses in accordance with requirements specified in paragraphs (c)(4) (ii) through (vi) of this section.

(ii) For structural members and loadings covered by the AISC publication, S326, Part 1, with the exception of earthquake loadings (see paragraph (c)(4)(v) of this section) and tubular structural members under the combined loading of axial compression and bending, the basic allowable stresses of the members shall be obtained using the AISC specification. For tubular members subjected to the aforementioned interaction, stress limits shall be set in accordance with a defensible formulation.

(iii) Where stresses in members listed in paragraph (c)(4)(ii) of this section are shown to result from forces imposed by the design environmental conditions acting alone or in combination with dead and live loads (see paragraph (c)(2)(ii) of this section), the basic allowable stresses cited in paragraph (c)(4)(ii) of this section, modified by a factor of four-thirds, are permitted for the design environmental load contribution if the resulting structural member sizes are not less than those required for dead and live loads plus operating environmental conditions without the one-third increase in allowable stresses.

(iv) For any two- or three-dimensional stress fields within the scope of the working-stress formulation, the equivalent stress (e.g., the von Mises stress intensity) shall be limited by an appropriate allowable stress less the yield stress, with the exception of stresses of a highly localized nature. In the latter case, local yielding of the structure is acceptable if it can be demonstrated that such yielding does not lead to progressive collapse of the overall platform and that the general structural stability can be maintained.

(v) When considering loading combinations on individual members or on the overall platform, which include loads defined as accidental (see § 250.135(c)(4)), or in pursuing structural analysis for earthquake loads (see paragraph (c)(2)(iii) of this section), the allowable stress set at a level of the minimum yield or buckling strength of the material shall be considered appropriate.

(vi) Whenever elastic instability, overall or local, may occur before the compressive stresses reach the minimum specified yield strength of the material, appropriate allowable buckling stresses shall govern,

(vii) Whenever the ultimate strength of the platform is used as the basis for the design of its members, the safety factors or the factored loads shall be formulated in accordance with the requirements of AISC publication, S326, Part 2, or an equivalent code. The capability of the primary structural members to develop their predicted ultimate load capacity shall be demonstrated, and

(viii) For details of high-stress concentration, consideration shall be given to safety against brittle fracture and to material quality-control procedures.

(5) *Structural response to earthquake loads.* The following shall apply:

(i) Platforms located in seismically active areas shall be designed to possess adequate strength and stiffness as well as sufficient ductility to withstand the effects of the design earthquake combined with other loads (see paragraph (c)(2)(iii) of this section) and to remain stable during rare motions of greater severity,

(ii) For platforms in seismically active areas, the adequacy of structural strength and ductility shall be demonstrated by a strength analysis and a ductility analysis,

(iii) The platform shall be capable of withstanding the loadings specified in paragraph (c)(2)(iii) of this section with no significant structural damage. The analysis to verify this strength requirement shall demonstrate that the nominal stresses in structural members do not exceed the material yield strength or the buckling stresses, and

(iv) The ductility check shall demonstrate that the platform-foundation system is capable of absorbing at least four times the amount of energy associated with the level of structural response determined in the strength analysis with the platform remaining stable.

(6) *Fatigue assessment.* The following shall apply:

(i) Structural members and joints for which fatigue is a probable mode of failure and for which past experiences are insufficient to ensure safety from possible cumulative fatigue damage shall be analyzed. Emphasis shall be given to joints and members in the splash zone, those that are difficult to inspect and repair after the platform is in service' and those susceptible to corrosion-accelerated fatigue, and

(ii) For structural members and joints which require a detailed analysis of cumulative fatigue damage, the results of the analysis shall indicate a minimum calculated life of twice the design life (see § 250.136(c)(1)) of the platform if there is sufficient structural redundancy to prevent catastrophic failure of the platform as a result of fatigue failure of the member or joint under consideration. If such redundancy does not exist or if the desirable degree of redundancy is significantly reduced as a result of fatigue damages, the results of a fatigue analysis shall indicate a minimum calculated life of three times the design life of the platform.

(d) *Corrosion protection.* All materials shall be protected from the effects of corrosion by a corrosion-protection system. The design of such systems shall take into account the possible existence of stress corrosion, corrosion fatigue, and galvanic corrosion. If the intended sea environment contains unusual contaminants, any special corrosive effects of such contaminants shall also be considered. Protection systems shall be designed in accordance with the National Association of Corrosion Engineers (NACE) publication, NACE Standard RP–01–76, Recommended Practice, Corrosion Control of Steel, Fixed Offshore Platforms Associated with Petroleum Production, or other comparable standards.

(e) *Connection of piles to structure.* The attachment of the jacket structure to the piles shall be accomplished by positive, controlled means. Such attachments shall be capable of withstanding the static and long-term cyclic loadings to which they will be subjected.

§ 250.138 Concrete-gravity platforms.

(a) *General.*

(1) This section covers the materials, analysis, design, and construction of reinforced and/or prestressed concrete-gravity platforms.

(2) Materials, structural systems, methods of design, and methods of construction that do not conform to the requirements of this section shall not be used unless it is shown that they will result in a safety level at least equivalent to that provided by the direct application of this section.

(b) *Materials.*

(1) *General.* All materials shall be selected with due attention to their strength and durability in the marine environment. All material tests shall be performed in accordance with the latest, applicable standards of the American Society for Testing and Materials (ASTM).

(2) *Cement.* The following shall apply:

(i) Cement shall be equivalent to Type I, II, or III portland cement as specified by ASTM C150, Specification for Portland Cement, or portland-pozzolan cement as specified by ASTM C595, Specification for Blended Hydraulic Cements. However, the suitability of Type III cement to serve its intended function shall be demonstrated,

(ii) The tricalcium aluminate content of the cement shall be such as to enhance the corrosion protection of reinforcing steel without impairing the durability of concrete, and

(iii) If oil storage is planned and the oil is expected to contain soluble sulfates in amounts that may impair the durability of concrete, the tricalcium content shall be reduced or a suitable coating employed to protect the concrete.

(3) *Water.* The following shall apply:

(i) Water used in mixing concrete shall be clean and free from injurious amounts of oils, acids, alkalis, salts, organic materials, or other substances that may be deleterious to concrete or steel,

(ii) If nonpotable water is used, the proportions of materials in the concrete shall be based on test concrete mixes using water from the same source. The strength of mortar test cubes made with nonpotable water shall not be significantly below the strength of similar cubes made with potable water, and

(iii) Water for reinforced or prestressed concrete or grout shall not contain chlorides and sulfates in amounts detrimental to the durability of the platform.

(4) *Aggregates.* The following shall apply:

(i) Aggregates shall conform to the requirements of ASTM C33, Specifications for Concrete Aggregates. Lightweight aggregates conforming to ASTM C330, Specifications for Lightweight Aggregates for Structural Concretes, shall only be permitted if they do not pose durability problems and where they are used in accordance with the applicable provisions of the American Concrete Institute (ACI) publication, ACI 318, Comb, Building Code Requirements for Reinforced Concrete, plus Supplement and Commentary.

(ii) Marine aggregates shall be washed with fresh water before use to remove the surface and soluble chlorides and sulfates so that the total chloride and sulfate content of the concrete mix water does not exceed the limits of paragraph (b)(3)(iii) of this section, and

(iii) The maximum size of the aggregate shall be such that the concrete can be placed without voids.

(5) *Admixtures.* The admixture shall be shown capable of maintaining essentially the same composition and performance throughout the work as the product used in establishing concrete proportions. Admixtures containing chloride ions shall not be used in prestressed concrete or in concrete containing aluminum embedments.

(6) *Reinforcing and prestressing systems.* The following shall apply:

(i) Reinforcing and prestressing systems shall conform to the requirements of ACI 318.

(ii) Structural steel used in composite structures shall conform to the requirements of § 250.137.

(7) *Concrete.* The concrete shall be designed to ensure sufficient strength and durability. The quality control of concrete shall conform to ACI 318. The mixing, placing, and curing of concrete shall conform to the requirements of paragraph (e) of this section. The water-cement ratio shall be strictly controlled and in no case shall it exceed 0.45.

(8) *Grout for bonded tendons.* The following shall apply:

(i) Grout for bonded tendons shall conform to ACI 318, and

(ii) The maximum allowable contents of chlorides and sulfates determined in accordance with paragraph (b)(3)(iii) of this section shall also apply to grout mixes.

(9) *Post-tensioning ducts.* Post-tensioning ducts shall conform to the requirements of ACI 318. Ducts and duct splices shall be watertight and grout-tight and shall be of suitable thickness to prevent crushing, deformation, and blockage.

(10) *Post-tensioning anchorages and couplers.* Post-tensioning anchorages and couplers shall conform to the requirements of ACI 318.

(c) *Design requirements.*

(1) *General.* The following shall apply:

(i) The strength of the platform shall be adequate to resist failure of the platform or its components. Among the modes of possible failure that shall be considered are the following:

(A) Loss of overall equilibrium,

(B) Failure of critical sections, and

(C) Instability (buckling).

(ii) Additionally, the following items shall be considered in relation to their potential influences on the platform:

(A) Cracking or spalling,

(B) Deformations,

(C) Corrosion of reinforcement or deterioration of concrete, and

(D) Vibrations.

(2) *Required strength.* The following shall apply:

(i) The required strength of the structure and each member (U) shall be equal to or greater than the maximum of the following:

$$U = 1.2\,(D+T) + 1.6\,L_{max} + 1.0\,E_o$$
$$U = 1.2\,(D+T) + 1.2\,L_{max} + \gamma\,L^{E}_{max}$$
$$U = 0.9\,(D+T) + 0.9\,L_{min} + \gamma\,L^{E}_{max}$$

in which

$\gamma L = 1.3$ for wave, current, wind, or ice load,
$= 1.4$ for earthquake loads, and
$= 1.0$ for accidental loads.

(ii) In the formulas specified in paragraph (c)(2)(i) of this section, the symbols D, T, and L represent dead load, deformation load, and live load, respectively. The symbol E_o represents the operating environmental loads, E_{max} represents the design environmental loads (see § 250.135(c)(5)(ii)), and L_{min} and L_{max} represent minimum and maximum expected live loads, respectively, and

(iii) For loads of type D, the load factor 1.2 shall be replaced by 1.0 if it leads to a more unfavorable load combination. For strength evaluation, the effects of deformation load may be ignored if adequate ductility is available.

(3) *Design strength.* The following shall apply:

(i) The design strength of a member or a section shall be taken as the nominal strength multiplied by a strength-reduction factor,

(ii) The values of the strength-reduction factors shall be as specified in ACI 318,

(iii) For shell structures, the strength-reduction factor shall be equal to 0.7, and

(iv) Design strength of nonprestressed reinforcement shall not be based on a yield strength in excess of 80,000 pounds per square inch.

(4) *Other design requirements.* The following shall apply:

(i) In considering those items listed in paragraph (c)(1)(ii) of this section, the ability of the platform to withstand unfactored loads in the following combination shall be demonstrated:

$$D+T+L+E_o$$

where L represents the most unfavorable live load.

(ii) Crack control design shall be achieved by limiting the crack width in concrete subjected to tension or by limiting the tensile stress in reinforcing steel and prestressing tendons.

(5) *Durability.* The following shall apply:

(i) Materials, design, construction procedures, and quality control shall be such as to produce satisfactory durability of platforms in a marine environment, and

(ii) The following items shall be considered in the four zones of exposure (see § 250.136(c)(5)):

(A) Submerged zone—chemical deterioration of the concrete, corrosion of the reinforcement and hardware, and abrasion of the concrete,

(B) Splash zone—freeze-thaw durability, corrosion of the reinforcement and hardware, the chemical deterioration of the concrete, and fire hazards,

(C) Atmospheric zone—freeze-thaw durability, corrosion of reinforcement and hardware, and fire hazards, and

(D) Ice zone—mechanical deterioration resulting from the abrasive action of moving ice.

(6) *Fatigue.* Platforms for which fatigue is a probable mode of failure shall be designed to limit the effects of cumulative material fatigue. The effects of fatigue induced by normal stress and those resulting from shear and bond stress shall be considered. Particular attention shall be given to submerged areas subjected to the low-cycle, high-stress components of the anticipated loading history. If an analysis of the fatigue life is performed in lieu of employing other methods to obviate the possibility of fatigue damage, the calculated fatigue life of the platform shall be at least twice the design life (see § 250.136(c)(1)).

(d) *Analysis and design.*

(1) *General.* The following shall apply:

(i) The analysis of platforms shall be pursued under the assumptions of linearly elastic materials and linearly elastic structural behavior, except as listed in paragraphs (d)(1) (ii) and (iii) of this section,

(ii) The inelastic behavior of concrete, based on the true variation of the modulus of elasticity with stress, shall be taken into account whenever its effect reduces the strength of the platform,

(iii) The geometric nonlinearities and the effect of initial deviation of the platform from the design geometry shall be taken into account whenever their effects reduce the strength of the platform,

(iv) Where appropriate, dynamic effects shall be taken into account. The dynamic response shall be determined by a defensible method that includes the effects of the foundation—platform interaction and the effective mass of the surrounding water, and

(v) The material properties used in the analysis shall be based on actual laboratory tests or shall follow the appropriate sections of ACI 318.

(2) *Analysis of frames.* The analysis of frames shall be performed by a

defensible method of structural mechanics. The buckling strength of the frame shall be assessed, and the safety against buckling failure shall be ensured to a degree consistent with the requirements in paragraphs (c)(2) and (c)(3) of this section.

(3) *Analysis of plates, shells, and folded plates.* The analysis of plates, shells, and folded plates shall be performed by a defensible method of the theory of plates and shells. The analysis shall determine the resultant forces and moments. The building strength of these platforms shall be determined, and a sufficient safety margin against instability shall be ensured.

(4) *Determination of deflections.* Deflections shall be determined by a defensible method. In addition to the immediate (instantaneous) deflections, the long-term deflections due to creep shall be accounted for.

(5) *Analysis and design for bending and axial loads.* The provisions of ACI 318 shall apply to the analysis and design of members subject to flexure or axial loads or to combined flexure and axial loads.

(6) *Analysis and design for shear and torsion.* The provisions of ACI 318 shall apply to the analysis and design of members subject to shear or torsion or to combined shear and torsion.

(7) *Analysis and design of prestressed concrete.* The analysis and design of prestressed concrete members and structures shall comply with ACI 318. In addition, the safety requirements of paragraph (c) of this section shall be satisfied.

(8) *Details of reinforcement and prestressing systems.* Details of reinforcement and prestressing systems shall conform to the requirements of ACI 318 with special attention given to the fatigue resistance and ultimate behavior of offshore structures.

(9) *Minimum reinforcement.* The minimum amount of reinforcement shall conform to the requirements of ACI 318. Additionally, sufficient reinforcement shall be provided to control crack growth, especially at surfaces exposed to severe hydraulic pressures.

(10) *Concrete cover of reinforcement and prestressing tendons.* The concrete cover of reinforcement and prestressing tendons shall be sufficient to provide for corrosion protection of the steel.

(11) *Seismic analysis.* A dynamic analysis shall be performed to determine the response of the platform to design-earthquake loading. The platform shall be designed to withstand this loading without damage. In addition, a ductility check shall also be performed to ensure that the platform has sufficient ductility to experience deflections more severe than those resulting from the design-earthquake loading without the collapse of the platform or its foundation or any primary structural component.

(12) *Seismic design.* The design of structural members and details of platforms subjected to seismic loading shall ensure maximum ductility at critically loaded sections.

(e) *Construction.*

(1) *General.* The following shall apply:

(i) Construction methods and workmanship shall conform to the provisions of ACI 318 and to the following requirements, and

(ii) At each stage of construction, i.e., fabrication, initial flotation, towing, and installation in situ, the forces acting on the platform shall be kept within the safety limits listed in paragraph (c) of this section. Appropriate static and/or dynamic analysis shall be performed for the operating loading conditions of each of the construction operations mentioned above. Buoyancy and stability shall be considered during all phases of construction.

(2) *Mixing, placing, and curing of concrete.* The following shall apply:

(i) Mixing of concrete shall conform to the requirements of ACI 318 and ASTM C94, Specification for Ready Mixed Concrete,

(ii) When concreting in cold weather, the temperature of the fresh concrete shall be maintained sufficiently above freezing until the process of hardening is well in progress,

(iii) In hot weather, the temperature of the fresh concrete shall be controlled so that it does not impair attainment of the desired strength and durability,

(iv) The methods for curing concrete shall ensure maximum compressive and tensile strength, durability, and a minimum of cracking, and

(v) The location and workmanship of construction joints shall not impair the strength, crack resistance, and watertightness of the platform.

(3) *Reinforcement.* The following shall apply:

(i) Reinforcement shall be free from loose rust, grease, oil, deposits of salt, or any other material that may adversely affect the strength, durability, or bond of the reinforcement. The specified cover of reinforcement shall be maintained accurately. The cutting, bending, and fixing of reinforcement shall ensure that it is correctly positioned and rigidly held, and

(ii) The welding of reinforcement shall conform to the requirements of AWS publication, AWS D1.4, Structural Welding Code—Reinforcing Steel.

(4) *Prestressing tendons, ducts, and grouting.* The following shall apply:

(i) Steps shall be taken to ensure that the achieved prestressing force is that specified in the design,

(ii) Tendons and ducts shall be in a condition that ensures the required strength, durability, and bond, and

(iii) The grouting procedures shall produce the required bond strength of the tendons and provide permanent corrosion protection for the tendons. Anchorages shall also be protected adequately against corrosion.

§ 250.139 Foundation.

(a) *General.*

(1) *Coverage.* Soil investigations, design considerations for the supporting soil, and the influence of the soil on the foundation structure are addressed in this section, including criteria for the strength and deformation characteristics of the foundation employed by both steel pile-supported and concrete-gravity platforms.

(2) *Guidelines.* The following shall apply:

(i) The degree of design conservatism shall reflect prior experience under similar conditions, the manner and extent of data collection, the scatter of design data, and the consequences of failure,

(ii) For cases where the limits of applicability of any method of calculation employed are not well defined or where the soil characteristics are quite variable, the use of more than one method of calculation or a parametric study of the sensitivity of the important design variables shall be considered, and

(iii) A listing of design parameters, necessary calculations, and test results shall be retained by the designer.

(b) *Site investigation.*

(1) *General.* The following shall apply:

(i) The actual extent, depth, and degree of precision to be obtained in the site investigation program shall reflect the type, site, and intended use of the platform, familiarity of the area based on previous site studies or platform installations as well as the consequences of a failure of the foundation. The site investigation program shall consist of three major phases as follows:

(A) Seafloor survey (see paragraph (b)(2) of this section) to obtain relevant geophysical data,

(B) Geological survey (see paragraph (b)(3) of this section) to obtain data of a regional nature concerning the site, and

(C) Subsurface investigation and testing (see paragraph (b)(4) of this section) to obtain the necessary geotechnical data.

The results of these investigations shall be the bases for the additional site-related studies specified in paragraph (b)(5) of this section, and

(ii) A complete site-investigation program shall be accomplished for each offshore platform. Due attention shall be given to the accuracy of positioning devices used on the vessel employed in the site investigation as well as those used during the installation of the platform to ensure that the data obtained are pertinent to the actual final location of the platform.

(2) *Seafloor survey.* The following shall apply:

(i) Consistent with the objectives of paragraph (b)(1)(i) of this section, a high-resolution or acoustic-profiling survey shall be performed to obtain information on the conditions existing at and near the surface of the seafloor, and

(ii) The information to be obtained from this survey shall include the following items, as appropriate, for the planned platform:

(A) Contours of the sea bed,

(B) Presence of boulders, obstructions, and small craters,

(C) Shallow faults,

(D) Gas seeps,

(E) Slump blocks,

(F) Occurrence of shallow gas, and

(G) Ice scour of seafloor sediments.

(3) *Geological survey.* The following shall apply:

(i) Background geological data shall be obtained to provide regional information that can affect the design and siting of the platfom. The data shall be considered in planning the subsurface investigation and shall be used to ensure that the findings of the subsurface investigation are consistent with known geological conditions,

(ii) Where necessary, the seismic activity at the site shall be assessed. Fault zones, the extent and geometry of faulting, and attenuation effects of conditions in the vicinity of the site shall be identified, and

(iii) For platforms located in a producing area, the possibility of seafloor subsidence due to a drop in reservoir pressure shall be considered.

(4) *Subsurface investigation and testing.* The following shall apply:

(i) The primary objective of the subsurface investigation and testing program shall be the attainment of reliable geotechnical data concerning the stratigraphic and engineering properties of the soil. These data shall be used to determine if the desired structural safety level can be obtained and to assess the feasibility of the proposed method of installation,

(ii) The subsurface investigation and soil testing program shall consist of adequate in situ testing, boring, and sampling to examine all important soil and rock strata. The testing program shall reveal the necessary strength, classification, and deformation properties of the soil. Further tests, as needed, shall describe the dynamic characteristics of the soil,

(iii) At least one borehole shall be drilled at the installation site for a pile-supported platform, having a minimum depth of the anticipated length of the pile plus a zone of influence. The zone of influence shall be sufficient to ensure that punch-through failures will not occur. Additional boreholes of a lesser depth shall be required by the Regional Supervisor if discontinuities in the soil are indicated to exist in the area of the platform,

(iv) For a gravity-type platform foundation, the required depth of the borehole shall be at least equal to the largest horizontal dimension of the base. In situ tests shall be performed, where possible, to a depth that will include the anticipated shearing failure zone,

(v) When samples from the field are sent to a laboratory for further testing, they shall be labeled accurately, and the results of the visual inspection shall be recorded,

(vi) A summary report showing the results of the soil testing program shall be prepared. The report shall describe briefly the various field and laboratory test methods employed and shall indicate the applicability of these methods as they relate to the quality of the sample, the type of soil, and the anticipated design application, and

(vii) The engineering properties of the soil to be used in the design shall be listed for each stratum. The selected design properties shall specify the uncertainties inherent in the overall testing program and in the reliability and applicability of the individual test methods.

(5) *Additional requirements.* Based on the results of the overall site investigation program, studies shall be performed, as applicable, to assess the following effects of the installed platform:

(i) Scouring potential of the seafloor,

(ii) Hydraulic instability and the occurrence of sand waves,

(iii) Instability of slopes in the area where the platform is to be placed,

(iv) Liquefaction and/or possible reduction of soil strength due to increased pore pressures, and

(v) Degradation of subsea permafrost layers.

(c) *Foundation design requirements.*

(1) *General.* The following shall apply:

(i) The loadings used in the analysis of the safety of the foundation shall include those defined in paragraph (c)(6)(ii) of this section. Loadings experienced by the foundation during installation shall also be considered,

(ii) Foundation displacements shall be evaluated to ensure that they are within limits that do not impair the intended function and safety of the platform, and

(iii) The soil and the platform shall be considered as an interactive system, and the results of the analysis as required in paragraphs (c)(2) through (c)(6) of this section shall be evaluated from this point of view.

(2) *Cyclic loading effects.* Evaluation of the short-term and long-term effects of cyclic loading, whether caused by conditions during installation, seismic activity, or storms with respect to changes in soil characteristics shall be accomplished by using defensible methods.

(3) *Scour.* The following shall apply:

(i) If scour is not accounted for in design, either effective protection shall be furnished soon after the installation of the structure or frequent visual inspection shall be carried out, particularly after major storms, and

(ii) For unprotected foundations, the depth and lateral extent of scouring, as determined in the site investigation program, shall be accounted for in design.

(4) *Settlements and displacements.* The following shall apply:

(i) Tolerable limits of settlements and lateral deflections shall be established and based on the type and the function of the platform and the effects of these movements on risers, piles, and other components which interact with the platform, and

(ii) Maximum allowable values of platform movements, as limited by these structural considerations or overall platform stability, shall be considered in the design.

(5) *Dynamic considerations.* The following shall apply:

(i) For dynamic-loading conditions, a defensible method shall be employed to simulate the interactive effects between the soil and the platform, and

(ii) The evaluation of the dynamic response of the platform shall account for, as appropriate, the nonlinear and inelastic characteristics of the soil, the possible deteriorating soil strength, the increased or decreased damping due to cyclic soil loading, and the influence of nearby platforms.

(6) *Loading Conditions.* The following shall apply:

(i) Loadings producing the worst effects on the foundation during and after installation shall be addressed, and

(ii) Postinstallation loadings to be checked shall include at least those relating to both the operating and design environmental conditions, combined in accordance with the following:

(A) Operating environmental conditions with dead and live loads appropriate to the function and operation of the platform,

(B) Design environmental conditions with dead and live loads appropriate to the function and operation of the platform, and

(C) Design environmental conditions with dead and minimum live loads appropriate to the function and operation of the platform.

(d) *Pile foundations.*

(1) *General.* The following shall apply:

(i) The following requirements apply to foundations employing piles. Pertinent parts of these requirements dealing with steel design shall be consulted regarding the design of the steel piles.

(ii) In the design of individual piles and piles in a group, the effects of axial, bending, and lateral loads shall be addressed.

(iii) The design of a pile shall reflect the interactive behavior between the soil and the pile and between the pile and the platform.

(iv) Methods of pile installation shall be consistent with the type of soil at the site and the installation equipment available. If unexpectedly high-driving resistance or other conditions lead to a failure of the pile to reach the desired penetration, the pile's capacities shall be reevaluated by considering the actual installation situation.

(v) Pile driving shall be performed and supervised by qualified and experienced personnel, and driving records including such information as estimated hammer performance and stoppages shall be retained, and

(vi) Where necessary, the effects of bottom instability in the vicinity of the platform shall be assessed.

(2) *Axial piles.* The following shall apply:

(i) For piles in compression, the axial capacity shall be considered to consist of the skin friction, Q_f, developed along the length of the pile and the end bearing, Q_p, at the tip of the pile. The various parameters needed to evaluate Q_f and Q_p shall be predicted by using a defensible analytical method that employs reliably obtained soil data consistent with the prediction method selected. The acceptability of any method used to predict the components of pile resistance shall be demonstrated by showing satisfactory performance of the method under conditions similar to those existing at the actual site.

(ii) The results of the dynamic pile driving analysis alone shall not be used to predict the axial load capacity of a pile.

(iii) For piles driven through clay, the estimated skin friction developed over any increment of the pile surface shall not exceed the in situ shear strength of the clay.

(iv) The capacity of the internal plug of an open-ended pile shall be considered since it may limit the estimated end bearing to the pile.

(v) When combining side friction and end-bearing effects in determining axial pile capacity, the load deflection response of the soil-pile system shall be addressed, and

(vi) For piles subjected to pullout loads, the contribution of the end resistance of the pile to its axial capacity shall not be considered. The possible variation of predicted pile-skin friction between the compressive and tensile modes of the axial-pile loading shall be considered.

(3) *Laterally loaded piles.* The following shall apply:

(i) In evaluating the pile's behavior when acted upon by lateral loadings, the combined load deflection characteristics of the soil and the pile and the pile and the platform shall be addressed.

(ii) The representation of the soil's lateral displacement when it is subjected to lateral loads shall adequately reflect the deterioration of the lateral bearing capacity when the soil is subjected to cyclic loading.

(iii) The description of the lateral load versus displacement characteristics for the various soil strata shall be based on constitutive data obtained from suitable soil tests. The use of empirical methods to provide the description of the soil's lateral response shall be permitted if such methods are documented.

(iv) Where applicable, the rapidly deteriorating cyclic-bearing capacity of stiff clays, especially those exhibiting the presence of a secondary structure, shall be addressed in the design, and

(v) Calculation of pile deflection and stress induced by lateral loads shall account for the nonlinear interaction between the soil and the pile.

(4) *Pile groups.* Where applicable, the effects of close spacing on the load and deflection characteristics of pile groups shall be determined. The allowable load for a group, both axial and lateral, shall not exceed the sum of the apparent individual pile allowable loads.

(5) *Plastic analysis.* When the design of a platform is based on the formation collapse mechanisms associated with a plastic analysis method, the influence of the soil's support on the pile shall be addressed.

(e) *Gravity platforms.*

(1) *General.* The following shall apply:

(i) The following requirements apply to soil foundations for gravity platforms. Section 250.138 shall be consulted regarding the design of the base slab.

(ii) The influence of hydraulic and slope instability, if any, shall be determined for the structural loading cases that include the design environmental loading.

(iii) The effects of adjacent platforms and the variation of soil properties in the horizontal direction shall be considered, as appropriate.

(iv) The stability of the foundation with regard to bearing and sliding failure modes shall be investigated by employing the soil shear strengths determined with consideration of paragraphs (b)(4) and (c)(2) of this section.

(v) When an underpressure or overpressure is experienced by the seafloor under the platform, provisions shall be made to prevent piping that could impair the integrity of the foundation.

(vi) Initial, consolidation, and secondary settlements, as well as permanent horizontal displacements, shall be determined, and

(vii) If the intended site is not level, the predicted tilt of the overall platform shall be based on the average bottom slope of the seafloor and the tolerance of the elevation measuring device used in the site-investigation program. Differential settlement shall also be calculated, and the tilting of the platform caused by this settlement shall be combined with the mentioned predicted structural tilt. Any increased loading effects caused by tilting of the platform shall be addressed in stability requirements specified for the foundation.

(2) *Stability.* The following shall apply:

(i) The bearing capacity and lateral resistance shall be calculated by considering the most unfavorable combination of loads. The long-term redistribution of bearing pressures under the base slab shall be considered to ensure that the maximum edge pressures are used in the design of the base.

(ii) The lateral resistance of the platform shall be investigated considering various potential shearing planes. The presence of any soft layers shall require special consideration.

(iii) Calculations for overturning moment and vertical forces induced by the passage of a wave shall include the vertical pressure distribution across the top of the foundation and along the seafloor. The foundation shall not lose

contact with the soil due to uplift created by the maximum overturning moment.

(iv) The capacity of the foundation to resist a deep-seated bearing failure shall be analyzed, and

(v) Where present, the additional effects of penetrating walls or skirts that transfer vertical and lateral loads to the soil shall be investigated for their contribution to bearing load capacity and lateral resistance.

(3) *Soil reaction on the platform.* The following shall apply:

(i) For conditions during and after installation, the reaction of the soil against all structural members seated on or penetrating into the seafloor shall be determined and accounted for in the design of these members.

(ii) The distribution of soil reactions shall be based on the results obtained in paragraphs (b)(2) and (b)(4) of this section, and the calculations of soil reactions shall account for any deviation from a plane surface, the load-deflection characteristics of the soil, and the geometry of the platform base.

(iii) Where applicable, effects of local soil stiffening, nonhomogeneous soil properties, and boulders and other obstructions shall be addressed in the design. During installation, the possibility of local contact pressures due to irregular contact between the base and the seafloor shall be considered. Such pressures shall be added to the hydrostatic pressure, and

(iv) The penetration resistance of structural elements projecting into the sea floor below the foundation structure shall be analyzed. The design of the ballasting system shall reflect uncertainties associated with achieving the required penetration of the platform.

§ 250.140 Marine operations.

(a) *General.*

(1) Marine operations means all activities necessary for the transportation and installation of an offshore platform from the time it enters the marine environment until it is fixed in place at its final destination. Marine operations generally include such activities as follows:

(i) Lifting and mooring,

(ii) Loadout or initial flotation,

(iii) Fabrication afloat,

(iv) Towing,

(v) Launching and uprighting,

(vi) Submergence,

(vii) Pile installation, and

(viii) Final field erection.

(2) The requirements of this section apply to all platforms covered by this subpart, regardless of structural type or material of construction.

(b) *Objective.* The objective of these requirements is to ensure that the structural strength and integrity are not reduced or otherwise jeopardized by the performance of the activities required to install the platform on site. This objective shall be achieved by analysis as required in paragraph (c) of this section, except where the use of proven and well-controlled methods of fabrication and installation are proposed and justified. The lessee shall provide the necessary systems to ballast the platform safely. The systems shall have sufficient redundancy and feedback to ensure reliable control of ballasting operations.

(c) *Analysis.*

(1) Analyses shall be performed to determine the type and magnitude of the loads and load combinations to which the platform will be exposed during the performance of marine operations.

(2) Analyses shall be performed to ensure that the structural design is sufficient to withstand the type and magnitude of the loads and load combinations determined, in accordance with paragraph (c)(1) of this section, without loss or degradation of structural integrity.

(3) Analyses shall be performed to ensure that the platform or its means of support has sufficient hydrostatic stability and reserve buoyancy to allow for successful execution of all phases of marine operations.

§ 250.141 Inspection during construction.

(a) *General*—(1) *Coverage.* The following shall apply:

(i) This section covers inspections during the construction of pile-supported and gravity platforms. These requirements apply to all platforms covered by this subpart. Additional requirements for steel pile-supported platforms are contained in paragraph (b) of this section, and additional requirements pertaining to concrete-gravity platforms are contained in paragraph (c) of this section, and

(ii) The phases of construction subject to inspection include material manufacture, fabrication, loadout, transportation, positioning, installation, and final field erection.

(2) *Objective.* The objective of inspection during construction is to verify that the platform is constructed in accordance with the approved plan. Any unusual or innovative application of materials or method of construction not adequately covered by the requirements of this section shall receive special inspection relevant to its effect on the integrity of the planned platform in accordance with the stated objective for inspection.

(3) *Remedial action.* If the results of an inspection performed pursuant to the requirements of this section reveal that materials, procedures, or workmanship deviate significantly from the approved design, remedial action shall be taken.

(4) *Identification of materials.* The origin of materials used in the platform and the results of relevant material tests for all significant structural materials shall be retained and made readily available for inspection by MMS representatives during all stages of construction. Records shall be kept of the location throughout the platform of the various heat numbers for such materials.

(b) *Steel pile-supported platforms*—(1) *Scope.* Inspections of steel pile-supported platforms shall address the following topics, as appropriate:

(i) Material quality and forming,

(ii) Welder and welding procedure qualifications,

(iii) Weld inspection,

(iv) Tolerances and alignments, and

(v) Corrosion-control systems.

(2) *Material quality and forming.* Inspection shall verify that all materials employed are of good quality and suitable for their intended service as specified in the approved design. Inspection shall ensure the compliance of materials to the relevant material standard selected in the design of the platform. Inspection shall ensure that formed members satisfy the dimensional tolerances listed in the design.

(3) *Welder and welding-procedure qualifications.* The following shall apply:

(i) Welders shall be tested and possess a current welder's certification, and

(ii) All welding procedures to be employed shall be tested and certified for the production of satisfactory welds. Welding procedures previously tested and certified shall be considered prequalified.

(4) *Weld inspection.* The following shall apply:

(i) Inspection shall include, but not be limited to, visual inspection of all welds and representative magnetic particle or dye penetrant inspection of welds of Weld Classes A and B materials (see § 250.137(a)(4)) not subjected to ultrasonic or radiographic inspection. The extent of ultrasonic or radiographic inspection shall be specified and shall emphasize, but not be confined to, welds of Weld Class A materials.

(ii) The extent and methods of inspection shall be consistent with the classification of applications (see § 250.137(a)(14)) of the area being examined. The extent of inspection shall

reflect a relatively increased level of scrutiny for field welds and welds in areas that will be inaccessible or very difficult to inspect in service, and

(iii) Any welding not meeting the acceptance criteria specified in the inspection plan shall be rejected and appropriate remedial action taken.

(5) *Tolerances and alignments.* Overall dimensional tolerances, forming tolerances, and local alignment tolerances shall be commensurate with those considered in developing the structural design. Inspections shall ensure that the dimensional tolerance criteria are being met. Out of roundness of structural elements for which buckling is the anticipated mode of failure shall receive individual inspection.

(6) *Corrosion-control systems.* Corrosion-control systems employed on the platform shall be inspected to ensure that they are installed as specified in the approved design. Inspection shall ensure that proper protection against galvanic effects, especially in locations where nonferrous materials are used in conjunction with steel, has been provided in the corrosion-control system.

(7) *Additional inspection items.* (i) The provisions of paragraphs (b)(2) through (b)(6) of this section relate only to matters directly affecting the onshore construction phases of the platform. Other items relating to the onshore construction site and the construction phases from loadout to final erection shall also be performed,

(ii) The construction site shall be inspected to ensure that adequate consideration has been given to the following items:

(A) Support of the platform during construction,

(B) Employment of a sufficient number of certified welders and inspectors to maintain an adequate quality of work, and

(C) Weathertight storage of welding consumables under conditions specified by their manufacturers.

(iii) Inspection shall verify that the following operations have been accomplished in a manner conforming to approved plans or drawings:

(A) Loadout,

(B) Tie down,

(C) Positioning at the site,

(D) Installation (see § 250.139(d)(1)(v) for piles), and

(E) Final field erection.

(iv) To determine if overstressing of the platform during transportation has occurred, towing records shall be reviewed to ascertain if conditions during towing operations exceeded those employed in the analyses required by § 250.140(c), and

(v) When the inspections indicate that overstressing has occurred during loadout, transportation, or installation, the affected parts of the platform shall be surveyed to determine the extent of actual damage, if any. Where necessary, a reevaluation of the structural capacity shall be carried out, considering the results of the survey.

(8) *Records.* The following construction records shall be compiled, retained, and made available for inspection by MMS representatives:

(i) Mill certificates,

(ii) Weld-procedure qualification records,

(iii) Weld inspection records,

(iv) Dimensional tolerance reports,

(v) Towing records, and

(vi) Pile driving records.

(c) *Concrete-gravity platforms*—(1) *Scope.* Inspection of concrete-gravity platforms shall address the following topics, as appropriate:

(i) Preparation for concrete production and placement,

(ii) Batching, mixing, and placing concrete,

(iii) Form removal and concrete curing,

(iv) Pretensioning and grouting,

(v) Joints, and

(vi) Finished concrete.

(2) *Preparation for concrete production and placement.* The following shall apply:

(i) Inspection shall ensure that the pertinent physical properties of cement, reinforcing steel, prestressing tendons, and appurtenances comply with those specified in the approved design,

(ii) Forms and shoring supporting the forms shall be inspected to ensure that they are adequate in number and type and are located correctly,

(iii) The dimensional tolerances of the forms shall be inspected to ensure that the finished dimensional tolerances are comparable to those allowed for in the approved design, and

(iv) Reinforcing steel, prestressing tendons, post-tensioning ducts, anchorages, and any other embedded steel shall be inspected, as appropriate, for size, bending, spacing, location, firmness of installation, surface condition, vent locations, proper duct coupling, and duct capping.

(3) *Batching, mixing, and placing concrete.* The following shall apply:

(i) Inspection shall be performed to ensure that the procedures for the production and placement of concrete provide a well-mixed and well-compacted concrete. The procedures shall also limit segregation, loss of material, contamination, and premature initial set during all operations,

(ii) Inspection shall verify that the mix components of each batch of concrete are properly proportioned and within allowable variations specified in the approved design. Inspection shall ensure that the water/cement ratio of each batch is within the limit specified in § 250.138(b)(7),

(iii) Aggregate gradation, cleanliness, moisture content, and unit weight shall be tested. The frequency of testing shall be determined taking into account the uniformity of the supply source, volume of concrete used, and variations of atmospheric conditions,

(iv) Mix water shall be tested for purity following specified methods and schedules, and

(v) Testing during the production of concrete shall be performed to monitor, as a minimum, the following concrete qualities:

(A) Consistency,

(B) Air content, and

(C) Strength.

(4) *Form removal and concrete curing.* The following shall apply:

(i) Inspection shall ensure that forms and form supports are not removed until the platform has attained sufficient strength to bear its own weight, construction loads, and anticipated environmental loads without undue deformation and that they are removed according to schedule,

(ii) Inspection shall ensure that curing of concrete is accomplished in accordance with the provisions of a predetermined procedure, and

(iii) Where the construction procedures require the submergence of recently placed concrete, inspection shall ensure that methods for protecting the concrete from the effects of salt water are properly executed.

(5) *Pretensioning and grouting.* The following shall apply:

(i) Inspection shall verify that the sequence of tendon tensioning and the resulting elongation and force are in accordance with provisions specified in the approved design,

(ii) Pretensioning or post-tensioning stress shall be determined by measuring both tendon elongation and tendon force. Inspection shall verify that the variation of measurements does not exceed a specified amount,

(iii) Inspection shall verify that grout mix proportions and ambient conditions during mixing are in accordance with provisions designated in the approved design. Tests for grout, viscosity expansion, bleeding, compressive strength, and setting time shall be performed to ensure compliance with

design requirements. Procedures shall be observed to ensure that ducts are completely filled, and

(iv) Anchorages shall be inspected to ensure that they are located and sized as specified in the design and are provided with adequate cover to mitigate the effects of corrosion.

(6) *Joints.* Where appropriate, leak testing of construction joints shall be performed by using specified procedures. When deciding which joints to inspect, consideration shall be given to the hydrostatic head on the subject joint during normal operation, the consequence of a leak at the subject joint, and the ease of repair once the platform is in service.

(7) *Finished concrete.* The following shall apply:

(i) The surface of the hardened concrete shall be completely inspected for cracks, honeycombing, popouts, spalling, and other surface imperfections,

(ii) The platform shall be examined by using a calibrated rebound hammer or a similar nondestructive examination device. Inspection shall verify that the results of surface inspection, cylinder strength test, or nondestructive examination are in accordance with the approved design criteria, and

(iii) The completed sections of the platform shall be checked for compliance to specified design tolerances of thickness and alignment and, to the extent practicable, the location of reinforcing and prestressing steel and post-tensioning ducts.

(8) *Additional inspection items.* The following shall apply:

(i) While the provisions of paragraphs (c)(2) through (c)(7) of this section relate only to some matters directly affecting the onshore or nearshore construction phases of the platform, other items relating to such phases and from loadout to final erection shall also be considered,

(ii) Inspection shall ensure that adequate consideration has been given the following items:

(A) Support of the structure during construction,

(B) Employment of a sufficient number of competent workmen and inspectors to maintain an adequate quality of work,

(C) Storage of cement and prestressing tendons in weathertight areas,

(D) Storage of admixtures and epoxies according to manufacturers' specifications, and

(E) Storage of aggregates to limit segregation, contamination by deleterious substances, and moisture variations within the stockpile.

(iii) Inspection shall verify that the following operations, as applicable to the planned platform, have been accomplished in a manner conforming to approved plans or drawings developed for these operations:

(A) Loadout,

(B) Towing arrangements,

(C) Positioning at the site,

(D) Installation, and

(E) Final field erection.

(iv) To determine if overstressing of the platform during transportation has occurred, towing records shall be reviewed to ascertain if conditions during the towing operations exceeded those employed in the analyses required by § 250.140(c).

(9) *Records.* The following construction records shall be compiled, retained, and made available for inspection by MMS representatives:

(i) Material certificates and test reports,

(ii) Tensioning and grouting records,

(iii) Concreting records including weight, moisture content, mix proportions, test methods and results, ambient conditions during the pour, and test equipment calibration data,

(iv) Deviations from design or fabrication specifications and repairs carried out,

(v) Towing records, and

(vi) Data on initial structural settlements.

§ 250.142 Periodic inspection and maintenance.

(a) All platforms installed on the OCS shall be inspected periodically to determine the condition of the entire structure. Proper maintenance shall be performed to assure the structural integrity of the platform as a work base for oil and gas operations.

(b) A report shall be submitted annually on November 1 to the Regional Supervisor stating which platforms have been inspected in the preceding 12 months, the extent and area of inspection, and the type of inspection employed, i.e., visual, magnetic particle, ultrasonic testing. A summary of the testing results shall be submitted indicating what repairs, if any, were needed and the overall structural condition of the platform.

§ 250.143 Platform removal and location clearance.

(a) The lessee shall remove all structures in a manner approved by the Regional Supervisor to assure that the location has been cleared of all obstructions to other activities in the area.

(b) All platforms (including casing, wellhead equipment, templates, and piling) shall be removed by the lessee to a depth of at least 15 feet below the ocean floor or to a depth approved by the Regional Supervisor based upon the type of structure or ocean-bottom conditions.

(c) The lessee shall verify by appropriate means that the location has been cleared of all obstructions. The results of the location clearance survey shall be submitted to the Regional Supervisor by means of a letter from the company performing the work certifying that the area was cleared of all obstructions, the date the work was performed, the extent of the area surveyed, and the survey method used.

§ 250.144 Records.

The lessee shall compile, retain, and make available to MMS representatives for the functional life of all platforms, the as-built structural drawings, the design assumptions and analyses, and a summary of the NDE records.

Subpart J—Pipelines and Pipeline Rights-of-Way

§ 250.150 General requirements.

(a) Pipelines and the associated valves, flanges, and fittings shall be designed, installed, operated, maintained, and abandoned to provide safe and pollution-free transportation of fluids in a manner which does not unduly interfere with other uses in the OCS.

(b) Approval by the Regional Supervisor is required for the design, fabrication, and plan of installation of pipelines.

(c) Pipelines which are not wholly contained within the boundaries of a single lease, unitized leases, or contiguous (not cornering) leases of the same owner or operator shall not be installed until a right-of-way has been granted in accordance with this subpart.

§ 250.151 Definition.

"Pipelines" mean the piping, risers, and appurtenances installed for the purpose of transporting oil, gas, sulphur, and produced water that are under the jurisdiction of the Department of the Interior. (Piping confined to a production platform or structure is covered in Subpart H, Production Safety Systems, and is excluded from this subpart.)

§ 250.152 Design requirements.

(a) The internal design pressure for submerged piping shall be in accordance with the provisions of section 2 of American Petroleum Institute (API) Recommended Practice (RP) for Design, Construction, Operation and

Maintenance of Offshore Hydrocarbon Pipelines (API RP 1111).

(b) The internal design pressure for risers shall be in accordance with the provisions of section 2 of API RP for Design and Installation of Offshore Production Platform Piping Systems (API RP 14E).

(c) The internal design pressure for valves installed as integral parts of a pipeline shall be in accordance with Table 3.1, API RP 14E.

(d) The maximum allowable operating pressure (MAOP) shall not exceed the least of the following:

(1) Internal design pressure of the pipelines, valves, flanges, and fittings,

(2) Eighty percent of the hydrostatic test pressure of the pipeline, or

(3) The MAOP of the receiving pipeline located downstream of the pipeline.

(e) If the maximum source pressure (MSP) exceeds the MAOP of the pipeline, redundant safety devices meeting the requirements of Section A9 of API RP for Analysis Design, Installation and Testing of Basic Surface Safety Systems for Offshore Production Platforms (API RP 14C) shall be installed and maintained. Pressure safety valves (PSV) may be used only after determination by the Regional Supervisor that the pressure will be relieved in a safe and pollution-free manner. The setting level at which the primary and redundant safety equipment actuates shall not exceed the MAOP of the pipeline.

(f) Pipelines shall be provided with an external protective coating capable of minimizing underfilm corrosion and a cathodic protection system designed to mitigate corrosion for a minimum 20-year life.

(g) Pipelines shall be designed and maintained to withstand the effects of water currents, storm or ice scouring, soft bottoms, mud sides, earthquakes, subfreezing temperatures, and other environmental factors.

§ 250.153 Installation and testing requirements.

(a)(1) Pipelines greater than 8⅝ inches in diameter shall be buried to a depth of 3 feet in water depths less than 200 feet unless located in pipeline-congested or seismically active areas as determined by the Regional Supervisor. The Regional Supervisor may also require pipeline burial if the Supervisor determines that such burial will reduce the likelihood of environmental degradation, or that the pipeline may constitute a hazard to trawling operations or other uses. A trawl test or diver survey may be required to determine whether the pipeline is buried. Burial is not required in seismically active areas.

(2) Pipeline valves, taps, tie-ins, capped lines, and repaired sections that could be obstructive shall be provided with at least 3 feet of cover unless the Regional Supervisor determines that such items present no hazard to trawling or other operations. The use of a protective device to cover an obstruction in lieu of burial may be used if it is approved by the Regional Supervisor prior to installation.

(3) Pipelines shall be installed with a minimum separation of 18 inches from other pipelines and obstructions.

(4) Pipeline risers installed after (insert effective date of regulation) shall be protected from physical damage that could result from floating vessels. Riser protection on structures installed before (insert effective date of regulation) may be required when the Regional Supervisor determines that significant damage potential exists.

(b)(1) Pipelines shall be hydrostatically tested with water at a stabilized pressure of at least 1.25 times the MAOP for an 8-hour period when installed, relocated, uprated, reactivated after being out of service for more than 6 months, or following repairs during which segments or components were replaced.

(2) Pipelines shall not be hydrostatically tested at a pressure which produces a stress in the pipeline in excess of 95 percent of the pipe's specified minimum-yield strength. A temperature recorder synchronized with the pressure recorder along with deadweight test readings shall be employed for the duration of all hydrostatic testing.

(3) Prior to returning a pipeline to service after a repair which does not require the replacement of any segment or component, the pipeline shall be pressure tested with water or processed natural gas at a minimum stabilized pressure of 1.25 times the MAOP for 4 hours.

(c) The lessee shall notify the Regional Supervisor at least 48 hours prior to commencing the installation, relocation, or repair of a pipeline or conducting a hydrostatic test.

§ 250.154 Safety equipment requirements.

(a) The lessee shall install, operate, and maintain the safety devices required by this subpart on all incoming, departing, and crossing pipelines including those not operated or owned by the lessee. Lessees with platforms in existence on (insert effective date of regulation) shall comply with the following requirements by (insert date 12 months after effective date of this regulation) and until such time shall comply with regulations in effect immediately prior to (insert effective date of this regulation).

(b)(1) Incoming pipelines to a platform shall be equipped with a flow safety valve (FSV) located upstream of all safety equipment to prevent backflow.

(2) Incoming pipelines delivering to production facilities shall be equipped with an automatic shutdown valve (SDV) immediately upon boarding the platform. The SDV shall be connected to both the automatic- and remote-emergency shut-in systems.

(3) Departing pipelines receiving production from production facilities shall be protected by high- and low-pressure sensors (PSHL) to directly or indirectly shut in all production facilities.

(4) Incoming pipelines on production or manned nonproduction platforms delivering to departing pipelines shall be equipped with an SDV immediately upon boarding the platform. The SDV shall be operated by a PSHL on the departing pipelines and connected to the platform automatic- and remote-emergency shut-in systems.

(5) The Regional Supervisor may require all oil pipelines to have a metering system to provide a continuous volumetric comparison of input to the line at the structure(s) with deliveries onshore. The system shall include an alarm system and shall be of adequate sensitivity to detect significant variations between input and discharge volumes.

(6) Pipelines incoming to a subsea tie-in shall be equipped with a block valve to isolate the existing pipeline and an FSV immediately upstream to isolate the proposed pipeline.

(7) Lift-gas or water-injection pipelines on unmanned well jackets which contain only wellhead assemblies may be equipped with only an FSV installed immediately upstream of each casing annulus.

(8) Bidirectional pipelines shall be equipped with a PSHL and an SDV immediately upon boarding the platform at each incoming pipeline riser to prevent backflow.

(9) All pipeline pumps shall be equipped with PSHL shut-in devices. The PSHL shall be located upstream of any FSV.

(c) If the required safety equipment is rendered ineffective or removed from service on pipelines which are continued in operation, an equivalent degree of safety shall be provided. If required equipment is to be out of service for more than 12 hours, prior written approval shall be obtained from

the Regional Supervisor who shall be notified upon return to service.

§ 250.155 Abandonment requirements.

(a) Pipelines shall be abandoned or taken temporarily out of service only after submitting an application for abandonment and obtaining written approval from the Regional Supervisor.

(b) A pipeline may be abandoned in place if, in the opinion of the Regional Supervisor, it does not constitute a hazard to navigation or commercial fishing operations. Pipelines to be abandoned in place shall be flushed, filled with seawater cut, and plugged with the ends buried at least 3 feet.

(c) Pipelines abandoned by removal shall be pigged and flushed with water prior to removal unless the Regional Supervisor determines that such procedure is not practical.

(d) Pipelines taken out of service for a period not exceeding 6 months shall be blind flanged or isolated with a closed block valve at each end.

(e) Pipelines out of service for a period exceeding 6 months shall be flushed and filled with seawater and either blind flanged or capped at both ends. The Regional Supervisor shall be notified in writing of the action taken within 10 days of completion. Such pipelines shall be returned to service within 5 years or be abandoned in accordance with this section.

§ 250.156 Applications and approvals.

(a) Prior to the installation, modification, or change of service of pipelines, the lessee shall submit for approval an application to the Regional Supervisor.

(b) Applications for the installation of new pipelines shall include the following:

(1) Plat(s) with a scale of 1" = 2,000' showing the major features and other pertinent data, including area, lease and block designations, water depths, route, length, connecting facilities, size, product(s) to be transported with anticipated gravity or density, burial depth, direction of flow, coordinates of key points, and the location of other pipelines within 1,000 feet of the proposed pipeline(s),

(2) A schematic drawing showing the size, weight, grade, wall thickness, and type of line pipe and risers, pressure-regulating devices (including back-pressure regulators), sensing devices and settings with associated pressure-control lines, PSV's and settings, SDV's, FSV's, block valves, and manifolds. This schematic drawing shall also show input source(s), i.e., wells, pumps, compressors, vessels; maximum input pressure(s); rated working pressure or American National Standards Institute/API series of all valves, flanges, and fittings; the initial receiving equipment and its rated working pressure; and associated safety equipment and pig launchers and receivers,

(3) General information is as follows:

(i) Description of cathodic protection system. If pipeline anodes are used, specify the type, size, weight, number, spacing, and anticipated life,

(ii) Description of external pipeline coating system,

(iii) Description of internal protective measures,

(iv) Specific gravity of the empty pipe,

(v) Maximum and minimum operating pressures,

(vi) MSP,

(vii) MAOP and calculations used in its determining,

(viii) Hydrostatic test pressure, medium, and period of time to which the line will be tested,

(ix) MAOP of receiving pipeline/facility,

(x) Proposed date for commencing installation and estimated number of days for construction, and

(xi) Type of protection to be afforded subsea valve, tap, and manifold assemblies (if applicable).

(4) The application shall include a description of any design precautions which were taken to enable the pipeline to withstand the effects of water currents, storm or ice scouring, soft bottoms, mud slides, earthquakes, permafrost, and other environmental factors, and

(5) The pipeline application shall include a shallow hazards analysis which covers the entire length of the pipeline and which is in accordance with § 250.51.

(c) Applications for a modification shall be submitted by the lessee when any of the following changes in pipeline service are contemplated:

(1) An uprated MAOP,

(2) Reversal of flow,

(3) Major changes in products to be transported,

(4) Conversion to bidirectional flow,

(5) Rerouted pipelines, or

(6) Proposed application revisions.

(d) Applications to abandon or to temporarily take a pipeline out of service shall include the following:

(1) Reason for operation,

(2) Proposed procedures,

(3) "As-built" location plat,

(4) Length in feet of segment abandoned or taken out of service, and

(5) Length in feet of segment remaining.

§ 250.157 Inspection and reporting requirements.

(a) The lessee shall submit a report to the Regional Supervisor within 90 days after completion of pipeline construction. The report shall include an "as-built" location plat with a scale of 1" = 2,000' showing the location, length, completion date, proposed date of first operation, and hydrostatic test data.

(b) The lessee shall inspect pipeline routes at least monthly for indication of pipeline leakage. The results of these inspections will be retained by the lessee at the lessee's field office nearest the OCS facility or at a location conveniently available to the Regional Supervisor for at least 2 years.

(c) All spills or leakages that are in any way related or suspected to be related to pipeline systems or component failures shall be orally reported to the Regional Supervisor when discovered. Both oral and written reports shall be submitted to the Regional Supervisor in accordance with the requirements of § 250.41(b) within 15 days after completion of the repairs.

(d) A detailed report of the repair to the pipeline or component shall be submitted to the Regional Supervisor within 15 days after completion of the repairs. The report shall include the following:

(1) Description of repairs,

(2) Results of hydrostatic test, and

(3) Date returned to service.

(e) The Regional Supervisor may require lessees to inspect and analyze pipeline failures and select samples of the failed section for laboratory examination to assist in determining the cause. A comprehensive written report of the information obtained shall be submitted to the Regional Supervisor as soon as available.

(f) If the effects of scouring, soft bottoms, or other environmental factors are observed to be detrimentally affecting a pipeline, the lessee shall, within 30 days of the observation, submit plans to the Regional Supervisor for approval of proposed corrective action. A report of the remedial action taken shall be submitted to the Regional Supervisor within 30 days after completion.

(g) When pipelines are protected by rectifiers or anodes for which the initial life expectancy of the cathodic protection system either cannot be calculated or calculations indicate a life expectancy of less than 20 years, such pipelines shall be inspected by taking measurements of pipe-to-electrolyte potential measurements annually but not to exceed 15-month intervals. The results and conclusions shall be

submitted to the Regional Supervisor before March of each year.

§ 250.158 Pipeline rights-of-way.

(a) In addition to applicable requirements under §§ 250.150 through 250.157 or regulations of the Department of Transportation (DOT), Department of the Army, or the Federal Energy Regulatory Commission (FERC), when a pipeline will not be wholly contained within the boundaries of a single lease, unitized leases, or contiguous (not cornering) leases of the same owner or operator, the pipeline shall not be installed until a right-of-way has been requested and granted in accordance with this subpart. Such right-of-way shall include the site on which the pipeline and associated structures are situated and shall not exceed 200 feet in width for pipelines unless safety and environmental factors during construction and operations require a greater width and shall be limited to the area reasonably necessary for pumping stations or other accessory structures.

(b) An applicant, by accepting a right-of-way grant, agrees to comply with the terms and conditions of the right-of-way and the requirements set out below.

(1) The holder shall comply with all existing and future regulations which the Secretary determines to be necessary and proper in order to provide for the prevention of waste, the conservation of the natural resources of the OCS, and protection of correlative rights therein,

(2) The holder shall pay the United States or its lessees or right-of-way holders, as the case may be, the full value for all damages to the property of the United States or its said lessees or right-of-way holders and shall indemnify the United States against any and all liability for damages to life, person, or property arising from the occupation, and use of the area covered by the right-of-way grant.

(3) The Regional Supervisor shall be kept informed at all times of the holder's address and, if a corporation, the address of its principal place of business and the name and address of the officer or agent authorized to receive service of notice,

(4) The granting of the right-of-way shall be subject to the express conditions that the rights granted shall not prevent or interfere in any way with the management, administration, or the granting of other rights by the United States, either prior or subsequent to the right-of-way grant. Moreover, the holder agrees to allow the occupancy and use by the United States, its lessees, or other right-of-way holders of any part of the right-of-way grant not actually occupied or necessarily incident to its use for any necessary operations involved in the management, administration, or the enjoyment of such other granted rights,

(5) For the first calendar year or fraction thereof, and annually thereafter, the holder shall pay the MMS, in advance, an annual rental of $15 for each statute mile or fraction thereof, traversed by the right-of-way and $75 for each area applied for as a site for an accessory to the right-of-way, including, but not limited to, a platform. Payments may be on an annual basis for a 5-year period or for multiples of the 5-year period,

(6) Upon abandonment, relinquishment, revocation, or termination of the right-of-way grant, the holder shall remove any platforms, structures, domes over valves, pipes, taps, and valves along the right-of-way in accordance with regulations governing abandonment on a lease. Any improvement required to be removed shall be removed by the holder within 1 year of the effective date of the relinquishment, revocation, termination, or abandonment. All such structures, accessories thereto, or improvements not removed within the time provided herein shall become the property of the United States, but that shall not relieve the holder of liability for the cost of their removal or for restoration of the site. Furthermore, the holder is responsible for accidents or damages which might occur as a result of failure to timely remove equipment and restore a site. Any application for relinquishment of a right-of-way shall be filed in accordance with this subpart,

(7) The holder shall suspend operations of any pipeline for a period of time specified by the Regional Supervisor upon a determination by the Regional Supervisor that continued operation would threaten or result in serious, irrepairable, or immediate harm to life (including fish and other aquatic life), property, mineral deposits, or the marine, coastal, or human environments. The Regional Supervisor may, to aid in the determination, request and consider the views and recommendations of appropriate Federal and State agencies. The Regional Supervisor may also suspend operations if the holder fails to comply with applicable laws, regulations, or terms of the grant. The Secretary may cancel a grant under section 5(a)(2) of the Act,

(8) The holder shall assure that such oil and gas pipelines shall, at the option of the FERC, either transport or purchase oil or natural gas produced from submerged lands in the vicinity of the pipeline without discrimination and in such proportionate amounts as the FERC may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things, conservation and the prevention of waste,

(9) Unless otherwise exempted by the FERC pursuant to section 5(f)(2) of the Act, the holder shall provide open and non-discriminatory access to the pipelines to both owner and nonowner shippers, and

(10) The holder shall comply with the provisions of section 5(f)(1)(B) of the Act under which the FERC may order an expansion of the throughput capacity of a pipeline which is authorized after September 18, 1978, and which is not located in the Gulf of Mexico or the Santa Barbara Channel.

(c) Failure to comply with the Act, regulations, or any conditions of approval prescribed by the Regional Supervisor as to the right-of-way and the survey, location, and width of a pipeline shall be grounds for forfeiture of the grant in an appropriate judicial proceeding instituted by the United States in any U.S. District Court having jurisdiction under the provisions of section 23 of the Act.

(d) Any right-of-way granted under the provisions of this subpart shall be for so long as the pipeline is properly maintained and used for the purpose for which the grant was made, unless otherwise expressly stated in the grant. Temporary cessation or suspension shall not terminate the grant. Where pipeline segments become corroded or otherwise worn and need replacement, proper maintenance may be performed under a temporary cessation of use. If the purpose of the grant ceases to exist or use of the pipeline is permanently discontinued for any reason, the grant shall be subject to forfeiture.

§ 250.159 Applications for right-of-way.

(a) No special form of application is required. The application shall be filed in triplicate with the Regional Supervisor. It shall specify that it is made pursuant to the Act and these regulations and that the applicant agrees that if the right-of-way grant is approved, the grant shall be subject to the terms and conditions of the regulations in this part. It shall also state the primary purpose for which the right-of-way is to be used. If the right-of-way has been utilized prior to the time the application is made, the application shall state the date such utilization commenced, and by whom, and the date the applicant obtained control of the improvement. A nonrefundable filing fee of $1,400 and the rental required herein

under § 250.158(b)(5) shall accompany the application. A separate application shall be filed for each right-of-way.

(b) Each copy of the application shall be accompanied by a map showing the center line of the right-of-way properly identified so that the right-of-way can be accurately located. The map shall comply with the following requirements:

(1) The scale shall be at least 1":4,000' or such other scale as may be approved by the Regional Supervisor,

(2) Distances of the center line of the right-of-way and grid references for all turning points shall be given either on the margin of the map or on attached sheet(s) with the courses referring to the true or grid meridian, either by deflection from a line of known bearing or by independent observation, and calculated distances in feet and decimals,

(3) The total distance and width of the right-of-way shall be given, and the diameter of the pipeline shall be specified,

(4) The initial and terminal points of the right-of-way and any continuation into State jurisdiction shall be accurately located by grid references, even though the right-of-way may have an onshore terminal point, and

(5) Each copy of the map shall bear upon its face a signed certificate of the engineer who made the map that the right-of-way is accurately represented upon the map and that the design characteristics are in accordance with applicable regulations.

(c) Rights-of-way issued pursuant to section 5(e) of the Act may be acquired or held only by citizens and nationals of the United States, aliens lawfully admitted for permanent residence in the United States as defined in 8 U.S.C. 1101(a)(20), private, public, or municipal corporations organized under the laws of the United States or territory thereof, the District of Columbia, or of any State, or associations of such citizens, nationals, resident aliens, or private, public, or municipal corporations, States or political subdivisions of States.

(d)(1) An individual applicant shall submit with the application a statement of citizenship or nationality. An applicant who is an alien lawfully admitted for permanent residence in the United States shall also submit with the application evidence of such status,

(2) If the applicant is an association (including a partnership), the application shall also be accompanied by a certified copy of the articles of association or appropriate reference to the record of the MMS in which such a copy has already been filed, with a statement as to any subsequent amendments, or

(3) If the applicant is a corporation, the following additional information shall be submitted with the application:

(i) A statement certified by the Secretary or Assistant Secretary of the corporation with the corporate seal showing the State in which it is incorporated and the name of the person(s) authorized to act on behalf of the corporation, or

(ii) In lieu of such a statement, an appropriate reference to statements or records previously submitted to the MMS (including material submitted in compliance with prior regulations).

(e)(1) An applicant shall show where the right-of-way applied for intersects mineral leases and all rights-of-way granted by or pipelines permitted by MMS including those of the applicant. The application shall contain a statement that a copy of the application has been delivered personally or by registered or certified mail to each lessee, or right-of-way or pipeline-permit holder whose lease, right-of-way, or pipeline permit is so affected. When the statement is filed, no final action shall be taken on the right-of-way grant application until 30 days have elapsed after the date of service of such papers in order to afford the parties concerned ample opportunity to comment on the granting of the right-of-way. A copy of the comments shall be filed with the Regional Supervisor.

(2) If the Regional Supervisor determines that a change in the application, as filed, should be made based on the comments received, the Regional Supervisor shall notify the applicant that an amended application shall be filed subject to stipulated changes. The Regional Supervisor shall determine whether the applicant shall deliver copies of the amended application to other parties for comment pursuant to paragraph (e)(1) of this section.

§ 250.160 Right-of-way approval.

(a) In considering the application for a right-of-way, the Regional Supervisor shall consider the potential effect of the pipeline on the human, marine and coastal environments, life (including aquatic life), property, and mineral resources in the entire area during construction and operational phases. The Regional Supervisor shall prepare an environmental analysis in accordance with applicable policies and guidelines. To aid in the evaluation and determinations, the Regional Supervisor may request and consider views and recommendations of appropriate Federal Agencies, may hold public meetings after appropriate notice, and may consult, as appropriate, with State agencies, organizations, industries, and individuals. The Regional Supervisor shall attach, as a condition of approval, special stipulations and conditions necessary to protect human, marine and coastal environments, life (including aquatic life), property, and mineral resources located on or adjacent to the proposed right-of-way. In approving the pipeline right-of-way, consideration shall be given to any recommendation of the intergovernmental planning program, or similar process, for the assessment and management of OCS oil and gas transportation.

(b) If the right-of-way, as applied for, crosses any lands not subject to disposition by leasing or restricted from oil and gas activities, it shall be rejected unless the Federal Agency in charge of such excluded or restricted area gives its consent to the granting of the right-of-way. In such case, the applicant, upon request filed within 30 days after receipt of the rejection notice, shall be allowed an opportunity to file an amended application rerouting the proposed right-of-way so as to eliminate the conflict.

(c) Should the proposed route of the right-of-way adjoin and subsequently cross any State submerged lands, the applicant shall submit to the Regional Supervisor evidence that the State(s) so affected have reviewed the application. The applicant shall also submit any comment received, including any recommendations to relocate the route if such relocation is considered necessary. In the event of a State recommendation to relocate the proposed route, the Regional Supervisor shall coordinate with the appropriate State officials on all applications for right-of-way grants that pass from Federal to State submerged lands.

(d) If an application is for a right-of-way grant affecting any land or water use in the coastal zone of any State with a coastal zone management (CZM) program approved under section 306 of the Coastal Zone Management Act (CZMA) of 1972 (16 U.S.C. 1455), then the application shall not be approved unless the affected State concurs that it is consistent with the approved CZM program or until the Secretary of Commerce makes a finding that the right-of-way will be consistent with the objectives or purposes of the CZMA of 1972 or is necessary in the interest of national security. However, if the application is for a grant for a right-of-way that has been described in detail in an approved Development and Production Plan, then the application may be approved without a further finding of consistency with any approved CZM program or a further

finding on the part of the Secretary of Commerce.

(e) If the application and other required information are found to be in compliance with applicable laws and regulations, the right-of-way may be granted. If the application is rejected, the decision shall be in writing and shall state the reasons for the decision.

§ 250.161 Requirements for construction under right-of-way.

(a) Failure to construct the pipeline within 5 years from the date of the grant shall be deemed to be an abandonment of the grant and deemed to be a forfeiture. Proof of construction shall be submitted to the Regional Supervisor within 90 days after completion of construction of the pipeline. Such proof shall consist of drawings of the pipeline as built in triplicate, a signed certificate by the engineer that the pipeline is accurately represented, grid references for all turning points on the line, and other data as required by the Regional Supervisor. If there is substantial deviation from the right-of-way as shown on the original map, the unused portion of the grant shall be relinquished, and maps of the location of the right-of-way as constructed shall be furnished in triplicate to the Regional Supervisor as soon as possible after the deviation is determined to be necessary or advisable. Any deviation made prior to approval of such supplemental plat shall be at the risk of the holder of the right-of-way.

(b) Right-of-way grants shall be reviewed annually prior to commencement of construction of any pipeline. Any significant change in conditions subsequent to the granting of a right-of-way, but prior to commencement of construction, may be grounds for a request to alter the grant by the Regional Supervisor. The Regional Supervisor shall give consideration to any recommendation of the intergovernmental planning program or similar process.

§ 250.162 Assignment of right-of-way.

(a) Assignment may be made of a right-of-way grant, in whole or of any lineal segment thereof, subject to the approval of the Regional Supervisor. Any such proposed assignment shall be filed in triplicate, accompanied by an application for approval in which the assignee shall make the showing required by § 250.159(c) and agree to the terms and conditions prescribed in § 250.158(b).

(b) Any proposed assignment, in whole or in part, of any right, title, or interest in a right-of-way grant shall be accompanied by the same showing of qualifications of the assignees as is required of an applicant and shall be supported by a stipulation that the assignee agrees to comply with and to be bound by the terms and conditions of the right-of-way grant. No transfer shall be recognized unless and until it is first approved, in writing, by the Regional Supervisor. A nonrefundable fee of $50 shall accompany the application for the approval of an assignment.

§ 250.163 Relinquishment of right-of-way.

A right-of-way grant or a portion thereof may be surrendered by the record holder by filing a written relinquishment in triplicate with the Regional Supervisor. A relinquishment shall take effect on the date it is filed subject to the satisfaction of all requirements for abandonment in § 250.158(b)(6).

§ 250.164 Change of use or flow under right-of-way.

A change may be made by the holder in the use of the pipeline or direction of flow from that specified in the approved permit only if prior approval is obtained from DOT, where applicable, and the Regional Supervisor. Application for such a change shall be filed not less than 15 working days in advance of the proposed change of use or flow.

§ 259.165 Bonding.

(a) Prior to the issuance of a right-of-way grant, the applicant shall furnish the Regional Supervisor a corporate surety bond in the sum of $300,000 conditioned on compliance with all the terms of the grant. Such bond shall not be required if the applicant already maintains or furnishes a bond in the sum of $300,000 conditioned on compliance with the terms of all right-of-way grants held by the applicant on the OCS for the area in which the grant to be issued is situated. This bond shall be, in addition to any bond, required of a lessee in Part 256, Outer Continental Shelf Minerals and Rights-of-Way Management, General, of this Title.

(b) For the purposes of this subpart, listed below are the four areas:

(1) The Alaska OCS Region,

(2) The Atlantic OCS Region,

(3) The Gulf of Mexico OCS Region, and

(4) The Pacific OCS Region.

(c) If, as the result of a default, the surety on a right-of-way grant bond makes payment to the Government of any indebtedness under a grant secured by the bond, the face amount of such bond and the surety's liability shall be reduced by the amount of such payment.

(d) A new bond in the amount of $300,000 shall be posted within 6 months or such shorter period as the Regional Supervisor may direct after a default. Failure to post a new bond shall, at the discretion of the Regional Supervisor, be the basis of cancellation of all grants covered by the defaulted bond.

Subpart K—Production Rates

§ 250.170 Definitions for production rates.

Terms used in this subpart shall have meanings given below:

"Correlative Rights," when used with respect to lessees of adjacent tracts, means the right of each lessee to be afforded an equal opportunity to explore for, develop, and produce, without waste, oil or gas, or both, from a common source.

"Enhanced Recovery Operations" means pressure maintenance operations, secondary and tertiary recovery, cycling, and similar recovery operations which alter the natural forces in a reservoir to increase the ultimate recovery of oil or gas.

"Gas Reservoir" means a reservoir that contains hydrocarbons predominantly in a gaseous (single-phase) state.

"Gas-Well Completion" means a well completed in a gas reservoir or in the gas-cap of an oil reservoir with an associated gas cap.

"Maximum Efficient Rate" (MER) means the maximum sustainable daily oil or gas withdrawal rate from a reservoir classified as sensitive which will permit economic development and depletion of that reservoir without detriment to ultimate recovery.

"Maximum Production Rate" (MPR) means the approved maximum daily rate at which oil or gas may be produced from a specified oil-well or gas-well completion.

"Nonsensitive Reservoir" means a reservoir in which ultimate recovery is not affected by total reservoir production rates and individual well production rates.

"Oil Reservoir" means a reservoir that contains hydrocarbons predominately in a liquid (single-phase) state.

"Oil Reservoir with an Associated Gas Cap" means a reservoir that contains hydrocarbons in both a liquid and gaseous (two-phase) state.

"Oil-Well Completion" means a well completed in an oil reservoir or in the oil accumulation of an oil reservoir with an associated gas cap.

"Sensitive Reservoir" means a reservoir in which ultimate recovery is affected by total reservoir production rates or individual well production rates.

"Waste of Oil and Gas" means (1) the physical waste of oil and gas; (2) the inefficient, excessive, or improper use of, or the unnecessary dissipation of reservoir energy; or (3) the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well(s) in a manner which causes or tends to cause a reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; and (4) the inefficient storage of oil.

§ 250.171 General requirements and classification of reservoirs.

(a) Wells and reservoirs shall be produced at rates that will provide economic development, depletion of the hydrocarbon resources in a manner that would maximize the ultimate recovery, and without adversely affecting correlative rights.

(b) Each producing reservoir shall be classified by the lessee to be an oil reservoir, an oil reservoir with an associated gas cap, or a gas reservoir and shall also be classified as sensitive or nonsensitive.

(c) All oil reservoirs with associated gas caps shall be initially classified as sensitive and shall require establishing a maximum efficient production rate and balancing of production in accordance with § 250.172(a) (1) and (5). All other oil reservoirs and all gas reservoirs shall be initially classified as nonsensitive.

(d) A reservoir may be reclassified as to type and sensitivity at any time during its productive life when information becomes available showing that such reclassification is warranted.

§ 250.172 Oil and gas production rates.

(a) *MER.* (1) The lessee shall propose an MER for each producing sensitive reservoir and submit Form MMS–1866, Request for Reservoir MER, with the appropriate supporting information to the Regional Supervisor for approval within [Insert date 6 months after the effective date of this regulation]. Thereafter, the lessee shall determine an MER and submit Form MMS–1866 within 45 days of discovering that a reservoir is sensitive.

(2) The lessee may propose to revise an MER by submitting Form MMS–1866 with appropriate supporting information.

(3) The effective date of an MER, or revision thereof, shall be the first day of the month in which Form MMS–1866 was submitted.

(4) When approved, the MER shall not be exceeded.

(5) If a reservoir is produced at a rate in excess of the MER for any month, the lessee shall take measures necessary to balance production during the next succeeding month. All overproduction shall be balanced by the end of the next succeeding calendar quarter following the quarter in which the overproduction occurred. Any operation in an overproduction status in any reservoir for two successive calendar quarters shall be shut in from that reservoir until the actual production is equivalent to the approved MER, unless an alternative plan is approved by the Regional Supervisor.

(6) The lessee shall review the MER for each producing sensitive reservoir at least once a year and submit Form MMS–1866 with appropriate supporting information.

(7) The lessee may request the reclassification of a reservoir as sensitive or nonsensitive and request approval for termination of an MER by submitting Form MMS–1866 with information supporting the reclassification or termination.

(8) At the request of the Regional Supervisor, the lessee shall furnish the information specified on Form MMS–1866 for any producing nonsensitive reservoir.

(b) *MPR.* (1) The lessee shall propose an MPR for each producing well completion together with full information on the method used in its determination. The MPR shall be based on well tests and any limitations imposed by well and surface equipment, sand production, gas-oil and water-oil ratios, location of perforated intervals, and prudent operating practices.

(2) The lessee shall have 30 days from the date of first continuous production to conduct a well-flow potential test on all new, recompleted, and reworked well completions. Within 15 days after the end of the test period, the lessee shall submit a proposed MPR for the individual well completion on Form MMS–1867, Request for Well MPR, with the results of the well-flow potential test on Form MMS-1868, Well Potential Test Report. The initial MPR shall not exceed 110 percent of the test rate submitted and shall be effective on the first day of the month following the end of the test period if approved by the Regional Supervisor. During the 30-day period allowed for testing, the lessee may produce a new, recompleted, or reworked completion at rates necessary to establish the MPR. After the 30-day period and prior to approval of the initial MPR, a well completion may be produced at a rate not to exceed the proposed rate. The lessee shall report the total production obtained during the test period and shall identify all wells completed in the reservoir on Form MMS–1868.

(3) At least one well test shall be conducted and submitted during a calendar quarter for oil-well completions on Form MMS–1869, Quarterly Oil Well Test Report, and during a calendar half for gas-well completions on Form MMS–1870, Semi-Annual Gas Well Test Report. Well tests shall be submitted within 45 days of the day the test was conducted.

(4) Unless otherwise ordered by the Regional Supervisor, a revised MPR shall automatically be approved for each well completion for each well test submitted equal to 110 percent of the test rate. The revised MPR will be effective on the first day of the month following the date the well test was conducted. Prior to the approval of a proposed increase of the MPR, a well completion may be produced at a rate not to exceed the proposed increased rate.

(5) When a well test is not submitted during a calendar quarter for an oil-well completion or during a calendar half for a gas-well completion, the MPR will be cancelled effective on the first day of the appropriate following calendar period.

(6) When the results of a quarterly well test for an oil-well completion or a semiannual well test for a gas-well completion cannot be submitted within the specified time, the lessee shall request an extension of time for submitting those test results. The extension must be approved in advance to continue production under the last approved MPR.

(7) When approved by the Regional Supervisor, an MPR shall not be exceeded, except as provided in paragraph (c) of this section.

(c) *Temporary rates.* Temporary production rates resulting from normal variations and fluctuations exceeding a well MPR or reservoir MER shall not be considered a violation, provided that such excess is balanced by production in the succeeding month.

§ 250.173 Well production testing.

(a) The required well testing shall be conducted for a period of not less than 4 consecutive hours. Immediately prior to the 4-hour test period, the well completion shall have produced under stabilized conditions for a period of not less than 6 consecutive hours. The 6-hour pretest period shall not begin until after the recovery of a volume of fluid equivalent to the amount of fluids introduced into the formation for any purpose. Measured gas volumes shall be adjusted to the standard conditions of

15.025 pounds per square inch absolute (psia) (14.73 psia in the Pacific OCS Region) and 60 °F for all tests. When orifice meters are used a specific gravity for the gas shall be obtained or estimated, and a specific gravity-correction factor shall be applied to the orifice coefficient. The Regional Supervisor may require a prolonged test or retest of a well completion if the test is determined to be necessary for the establishment of a well MPR or a reservoir MER. The Regional Supervisor may approve test periods of less than 4 hours and pretest stabilization periods of less than 6 hours for well completions provided that test reliability can be demonstrated under such procedures.

(b) At the request of the Regional Supervisor, the lessee shall conduct a multipoint back-pressure test to determine the theoretical open-flow potential of a gas well. The test shall be conducted within 30 days of the Regional Supervisor's request or within the time period specified by the Regional Supervisor.

(c) The MMS may witness any well test of oil-well and gas-well completions. Upon request, a lessee shall notify the Regional Supervisor of the time and date of well tests.

§ 250.174 Bottomhole pressure survey.

(a) For each new reservoir, the lessee shall conduct a static bottomhole pressure survey within 3 months after the date of first continuous production.

(b) For each producing reservoir with three or more producing completions, the lessee shall conduct annual, static bottomhole pressure surveys in a sufficient number of key wells to establish an average reservoir pressure. The Regional Supervisor may require a survey of specific wells.

(c) The results of all bottomhole pressure surveys obtained by the lessee shall be filed with the Regional Supervisor within 60 days after the date of the survey.

§ 250.175 Flaring and venting of gas.

(a) Oil-well and gas-well gas shall not be flared or vented without the approval of the Regional Supervisor except in the following situations:

(1) If gas vapors are released in small volumes from storage and other low-pressure production vessels and cannot be economically recovered,

(2) During temporary situations such as a compressor or other equipment failure or the relief of abnormal system pressures except the following:

(i) Oil-well gas shall not be flared for more than 24 hours without the approval of the Regional Supervisor. Flaring at a point shall not continue beyond a cumulative time of 144 hours during any calendar month without the approval of the Regional Supervisor, and

(ii) The flaring of gas-well gas shall not be permitted beyond the time required to eliminate a temporary emergency or to immediately shut in the gas wells contributing to the flare.

(3) During the unloading or cleaning of a well, and

(4) During drill-stem tests, production or other well-evaluation tests for periods not to exceed 24 hours.

(b) Except as provided in paragraph (a) of this section, oil-well gas shall not be flared unless the flaring will be for a period not exceeding 1 year and is approved by the Regional Supervisor in the following situations:

(1) The lessee has initiated an action which, when completed, will eliminate flaring or venting, or

(2) The lessee has submitted an evaluation supported by engineering, geologic, and economic data indicating that the oil and gas produced from the well(s) will not economically support the facilities necessary to save and sell the gas or that sufficient quantities of gas are not available for marketing.

(c) Records detailing flare occurrences shall be maintained for each flare point and shall be available for inspection by MMS representatives. These records shall include daily volumes of gas flared, number of hours of flaring on a daily basis, reasons for flaring, and a list of producing wells contributing to the flare along with respective gas-oil ratio data. These records shall be maintained by the lessee at the lessee's field office nearest the OCS facility or other locations conveniently available to the Regional Supervisor for a minimum of 2 years.

§ 250.176 Downhole commingling.

(a) An application to commingle hydrocarbons produced from multiple reservoirs within a common wellbore shall be submitted to the Regional Supervisor for approval and shall include all pertinent well information, geologic and reservoir engineering data, and a schematic diagram of well equipment. The application shall provide the estimated recoverable reserves as well as any available alternate drainage points which might be used to produce the reservoirs separately.

(b) For all competitive reservoirs, notice of intent to submit the application shall be sent by the applicant to all other lessees having an interest in the reservoirs prior to submitting the application to the Regional Supervisor.

(c) The application shall specify the well-completion number to be used for subsequent reporting purposes.

§ 250.177 Enhanced oil and gas recovery operations.

(a) The lessee shall timely initiate enhanced oil and gas recovery operations for all competitive and noncompetitive reservoirs where such operations would result in an increased ultimate recovery of oil or gas under sound engineering and economic principles.

(b) A proposed plan for pressure maintenance, secondary and tertiary recovery, cycling, and similar recovery operations to increase the ultimate recovery of oil and/or gas from a reservoir shall be submitted to the Regional Supervisor for approval before such operations are initiated.

(c) Periodic reports of the volumes of oil, gas, or other products injected, produced, or reproduced shall be submitted as required by the Regional Supervisor.

Subpart L—Production Measurement, Commingling, and Security

§ 250.180 Measurement of liquid hydrocarbons.

(a) *General.* Production measurement, commingling, and security procedures and equipment shall be designed, installed, used, maintained, and tested so as to accurately and completely measure the hydrocarbons produced on a lease for purposes of royalty determination.

(b) *Application and approval.* The lessee shall not commence production of liquid hydrocarbons unless the Regional Supervisor has approved an application for the measurement of liquid hydrocarbons and for commingling, if applicable. The application shall be submitted to the Regional Supervisor for approval and shall contain information sufficient to demonstrate that the requirements of this section will be met.

(c) *Sales meter facility requirements.* (1) A meter upon which royalty is based shall be considered a sales meter.

(2) Sales meter facilities shall include the following components which shall be compatible with the systems to which they are connected:

(i) A positive-displacement or other meter approved by the Regional Supervisor. The meter shall be equipped with a nonreset totalizer,

(ii) A calibrated prover tank, a master meter, a mechanical displacement prover, or other devices capable of proving the meter approved by the Regional Supervisor, and

(iii) A proportional-to-flow sampling device which is pulsed by the meter counter.

(3) Sales meters for liquid hydrocarbons shall be designed and installed to include the following:

(i) The piping system is arranged to prevent reversal of flow of liquid through the meter,

(ii) Meters subjected to pressure pulsation or surges are adequately protected by surge tanks, expansion chambers, or similar devices,

(iii) The meter is not subjected to shock pressures which are greater than its maximum-rated working pressure,

(iv) All meters are operated within the gravity range specified by the manufacturer, and

(v) The pressure and flow rate through each meter are maintained within manufacturer's maximum and minimum specifications for rated capacity.

(4) The required sampling device shall conform to the following:

(i) The sampling device shall be installed such that the sampling point is in the flow stream immediately upstream or downstream of the meter or diverter valve,

(ii) The sample container for the sampling device is vaportight and includes a mixing device to permit complete mixing of the sample prior to removal from the container, and

(iii) The sampling device is installed such that the sample probe is in the center of the flow piping in a vertical run and is at least three pipe diameters downstream of any pipe fitting where a region of turbulent flow exists.

(5) No equipment other than that which meets the requirements of this subsection shall be used unless it is approved by the Regional Supervisor prior to use.

(6) When obtaining net volume and associated measurement parameters, the lessee shall use procedures and correction factors in accordance with the following standards:

(i) American Petroleum Institute (API) Standard 2543, American Standard Method of Measuring the Temperature of Petroleum and Petroleum Products (American Society of Testing and Materials (ASTM) D 1086-64),

(ii) The following chapters of API Manual of Petroleum Measurement Standards:

(A) Chapter 8, Sampling.

(B) Chapter 9, Density Determination.

(C) Chapter 10, Sediment and Water.

(D) Chapter 11.1, Volume 1, Table 5A, Generalized Crude Oils Correction of Observed API Gravity to API Gravity at 60°F, and Table 6A, Generalized Crude Oils Correction of Volume to 60°F Against API Gravity at 60°F.

(iii) API Standard 1101, American Standard Method for Measurement of Petroleum Liquid Hydrocarbons by Positive Displacement Meter.

(7) Sales meter facility shall be appropriately located as approved by the Regional Supervisor.

(d) *Sales meter provings.* Sales meters for liquid hydrocarbons shall be proved and calibrated in accordance with the following requirements:

(1) The MMS representatives may witness any regularly scheduled provings or any proving requested by the Regional Supervisor.

(2) The integrity of the calibration of each mechanical displacement prover, prover tank, master meter, or other type of prover shall be traceable to test measures which have been certified by the National Bureau of Standards.

(3) Master meters, mechanical-displacement provers, and prover tanks shall be designed and calibrated in accordance with the following requirements:

(i) The master meter shall be calibrated within the manufacturer's specifications to obtain a master meter factor before using the master meter to establish an operating meter factor. The master meter shall be calibrated with a similar gravity crude and a similar flow rate monthly but not to exceed 42 days or other period as approved by the Regional Supervisor,

(ii) The lessee shall calibrate a master meter by conducting and recording runs until the results of two consecutive runs, if a prover tank is used, or five out of six consecutive runs, if a mechanical-displacement prover is used, produce results such that the greatest difference between runs is not greater than 0.0002. The average of the two or the five runs which produced the acceptable results shall be used to compute the master meter factor,

(iii) The master meter shall be installed with a back-pressure valve downstream of the operating master meter and a check valve to prevent back flow,

(iv) Mechanical-displacement provers shall be calibrated every 5 years, and

(v) When calibrating meters with a mechanical-displacement prover, prover tank, or master meter, the following appropriate correction factors shall be taken into account:

(A) The change in prover volume due to pressure in the steel pipe (Cps) using API Manual of Petroleum Measurement Standards, Chapter 12, Section 2, Appendix A, Table A-3, Pressure Correction Factors for Steel, Cps,

(B) The change in volume of the test liquid with the change in temperature (Ctl) using API Manual of Petroleum Measurement Standards, Chapter 11.1, Volume I, Table 6A, Generalized Crude Oils Correction of Volume to 60°F Against API Gravity at 60°F,

(C) The change in tank shell dimensions with the change in temperature (Cts) using API Manual of Petroleum Measurement Standards, Chapter 12, Section 2, Appendix A, Table A-1, Temperature Correction Factors for Mild Steel, and Table A-2, Temperature Correction Factors for Stainless Steel. Where applicable, the API table that combines the correction factors Cts and Ctl may be used, and

(D) The change in volume of the test liquid with the change in pressure (Cpl) using API Standard 1101, Appendix B, Table II, Compressibility Factors.

(4) Each operating sales meter shall be proved to determine the meter factor monthly but not to exceed 42 days. Meter provings shall be in accordance with the following:

(i) When establishing an operating meter factor with a prover tank, proof runs shall be made and recorded until two consecutive runs produce results such that the difference between results is not greater than .05 percent of the prover tank volume. The average of the results of these two runs shall be used to compute the meter factor,

(ii) When establishing an operating meter factor with a master meter, proof runs shall be made until three consecutive runs produce results such that the difference between results is not greater than 0.0005. The volume of each of these runs shall be at least 10 percent of the hourly rated capacity of the operating meter and shall be of sufficient amount for the determination of an accurate operating meter factor. The average of the results of these three runs shall be used to compute the meter factor, and

(iii) When establishing an operating meter factor with a mechnical-displacement prover, proof runs shall be made and recorded until five out of six consecutive runs produce results such that the difference between results is not greater than 0.0005. The average of the results of the five runs shall be used to compute the meter factor.

(5) The lessee shall submit results of all prover calibrations and meter proving reports of sales and master meters to the Regional Supervisor within 10 days after the calibration or the proving.

(i) A meter factor is considered a malfunction factor when the deviation between the factor and the previous factor exceeds 0.0025. In the event of such a malfunction, the meter shall be immediately removed from service,

adjusted and/or repaired, and reproven prior to return to service. The arithmetic average of the malfunction factor and the previous factor shall be applied to the production measured through the meter between the date of the previous factor and the date of the malfunction factor. Malfunction meter factors shall be clearly indicated on the proving report which shall also contain all appropriate remarks regarding subsequent repairs and/or adjustments.

(ii) When a malfunction results in the failure of the meter to register production, the meter shall be immediately removed from service, repaired, and reproven prior to returning it to service. The previous meter factor shall be applied to the production run between the date of that factor and the date of the failure. Any unregistered production shall be estimated by the best possible means and shall be reported as estimated production, and

(iii) When the results of a sales meter proving exceed the run tolerance criteria and all measures excluding the adjustment and/or repair of the meter and meter components cannot bring the proving results to within tolerance, a factor shall be established using proving results made prior to any adjustment and/or repair of the meter and meter components. The established factor shall be considered a malfunction factor and treated in accordance with paragraph (d)(5)(i) of this section.

(6) To correct gross volumes metered under nonstandard conditions (standard conditions are 0 psig and 60 °F), Cpl factors shall be calculated into the meter factor or listed on the appropriate run ticket. The Ctl factors shall be listed on the appropriate run ticket when the meter is not automatically temperature compensated.

(7) Run tickets shall be pulled at the time of any proving which is conducted for the purpose of establishing a monthly meter factor or which results in the establishment of a malfunction meter factor. All run tickets shall be sent to the Regional Supervisor within 10 days of being pulled or made up and shall clearly identify all correction factors not included in the meter factor.

(e) *Allocation meter facility requirements.* (1) Allocation meter facilities shall include a meter or other measuring device approved by the Regional Supervisor, a device capable of proving the allocation meter, and a continuous sampling system.

(2)(i) Allocation meters measuring 50 barrels of oil per day or more shall be proven monthly in accordance with paragraphs (d)(4), (d)(4) (i), (ii), and (iii) of this section.

(ii) Allocation meters measuring less than 50 barrels of oil per day shall be proven quarterly in accordance with paragraphs (d)(4) (i), (ii), and (iii) of this section.

(3) A copy of allocation meter proving reports must be kept by the lessee on file at the lessee's field office nearest the OCS facility for a period of 6 years.

(4) If an allocation meter proving results in a meter factor which differs from the previous meter factor by an amount greater than 0.02 and less than 0.07, the allocation meter shall be adjusted and reproven prior to return to service.

(5) If an allocation meter proving results in a meter factor which differs from the previous meter factor by an amount equal to or greater than 0.07, the allocation meter shall be repaired and reproven prior to return to service.

(f) *Sales tank requirements.* (1) Sales tank facilities designated by the Regional Supervisor as a sales location on which royalty shall be based shall be equipped with a vaportight thief hatch and vent-line valve and a fill line designed to minimize free fall and splashing.

(2) A complete set of calibration charts (tank tables) shall be submitted to the Regional Supervisor prior to use of the tank for sales measurement purposes. The volume and other measurement parameters of the liquid production in sales tanks shall be obtained using correction factors and procedures in accordance with the following standards:

(i) API Standard 2543, American Standard Method of Measuring the Temperature of Petroleum and Petroleum Products, ASTM D 1086-64.

(ii) The following chapters of API Manual of Petroleum Measurement Standards:

(A) Chapter 2, Tank Calibration (except Standards 2553 and 2554),

(B) Chapter 3, Tank Gauging,

(C) Chapter 8, Sampling,

(D) Chapter 9, Density Determination,

(E) Chapter 10, Sediment and Water, and

(F) Chapter 11.1, Volume 1, Table 5A, Generalized Crude Oils Correction of Observed API Gravity to API Gravity at 60 °F, and Table 6A, Generalized Crude Oils Correction of Volume to 60 °F, Against API Gravity at 60 °F.

(3) All run tickets written from gaugings shall be submitted to the Regional Supervisor within 10 days of being written.

§ 250.181 Measurement of gas.

(a) *General.* The lessee shall measure all gas production in accordance with the requirements of this section.

(b) *Applicability.* This section applies to all gas meters designated by the Regional Supervisor as gas sales or allocation meters.

(c) *Applications and approvals.* The lessee shall not commence production of gas hydrocarbons unless the Regional Supervisor has approved an application for measurement of gas production. The application shall be submitted to the Regional Supervisor for approval and shall contain information sufficient to demonstrate that the requirements of this section will be met.

(d) *Gas meter requirements.* (1) The measuring equipment shall be installed and operated in accordance with the recommendations contained in the API Manual of Petroleum Measurement Standards, Chapter 14, Natural Gas Fluids Measurement.

(2) The unit of volume for gas measurement shall be 1 cubic foot at a base temperature of 60 °F and at a base pressure of 15.025 pounds per square inch absolute (psia) (14.73 psia for Pacific OCS Region), and the measurement unit shall be 1,000 cubic feet (Mcf) of gas.

(3) Gas meters shall be operated in accordance with the following requirements:

(i) The MMS representatives shall be permitted to witness regularly scheduled calibrations and any calibration requested by the Regional Supervisor,

(ii) The integrity of the calibration equipment shall be in accordance with the standards in paragraph (d)(1) of this section,

(iii) Each gas meter shall be calibrated at reasonable intervals not to exceed 45 days. The calibration shall be conducted at the average hourly rate of flow for the period since the last calibration. The lessee shall retain calibration test data at the field location for a period of 6 years,

(iv) Whenever a meter is not functioning or not registering within the limits of accuracy prescribed by the manufacturer, it shall be immediately removed from service and not returned to service until repaired or adjusted to read accurately, and

(v) During calibration, if the meter readings of static and differential pressure are found to be within contractual tolerances with respect to test device readings, previous meter readings shall be considered correct in computing deliveries of gas since the previous calibration. If the readings are greater than contractual tolerances, the volume measured since the last calibration shall be corrected as follows:

(A) If the time the error occurred is ascertainable, the volume adjustment

shall be calculated for that period of time. No retroactive adjustment of volumes metered for allocation beyond a 23-day period is required, or

(B) If the time the error occurred is not ascertainable, the volume adjustment shall be applied to one-half of the time elapsed since the last date of calibration or 23 days, whichever is less.

§ 250.182 Commingling of production.

(a) *General requirements.* Commingling of production from different leases prior to measurement for royalty sales determination shall be in accordance with this section.

(b) *Applications and approvals.* (1) The lessee shall not commence commingling of production unless the Regional Supervisor has approved the commingling and the method of measurement. The lessee shall submit an application for commingling to the Regional Supervisor for approval, and the application shall contain appropriate information regarding the method of allocation measurement, processing, if applicable, and the manner of entry into the particular commingling system.

(2) All allocation methods and procedures and changes thereto shall be approved by the Regional Supervisor.

(c) *Well tests.* The lessee shall conduct a well test for allocation purposes at least once every 2 months or other period as determined by the Regional Supervisor and shall retain test data at the lessee's field office nearest the OCS facility for a period of 6 years.

§ 250.183 Measurement of sulphur.

The lessee shall not commence production of sulphur until the Regional Supervisor has approved the method of measurement. Proposed method of measurement shall be submitted to the Regional Supervisor for approval and shall contain appropriate information to demonstrate that the method of measurement provides for accurate measurement of produced sulphur.

§ 250.184 Site security.

All locations where oil, gas, or both are measured shall be operated and maintained to ensure against the loss or theft of production and to assure accurate measurement for royalty purposes. At each location, a written copy of a site-security program shall be maintained and used in the transportation, measurement, and storage of production. Production, transportation to shore, and sales activities shall comply with the following requirements:

(a) The components of sales measuring devices (metering units and tanks) shall be sealed in a manner to preclude tampering. Wire or other acceptable types of seals shall be numbered and recorded. The list of seal numbers and the installation location shall be maintained by the lessee at the lessee's field office nearest the OCS facility and be available for inspection by MMS representatives.

(1) The following metering unit components shall be sealed in such a manner that the component cannot be opened, closed, or altered in any way without destroying the seal:

(i) All meter stack component connections from the base of the stack to the register,

(ii) The gravity selector, registration adjustment, and thermal system components of the Automatic Temperature and Gravity (ATG) Compensator,

(iii) The ATG inspection plate,

(iv) The thermal system component of the Automatic Temperature Compensator (ATC),

(v) The cover of the transmitter that paces the sampling device,

(vi) The right angle drive when the meter is ATC compensated,

(vii) The meter housing,

(viii) The meter drain,

(ix) All fittings on the sampler system tubing (liquid seals permissible),

(x) The sampler container lid,

(xi) The sampler drain,

(xii) The following sampler sight glass connections,

(A) Sight glass petcocks (drain valves), or

(B) Sight glass packing nuts (liquid seals permissible), and

(xiii) Additional components as required by the Regional Supervisor for unusual metering units.

(2) All valves on lines leaving an oil storage tank including load-out line valves, drain-line valves, and connection-line valves between sale and nonsale tanks shall be sealed in such a manner that the valve is closed and cannot be opened without destroying the seal.

(b) Each storage tank shall be clearly identified by a sign that contains the name of the lessee, the size of the tank, and the tank number.

(c) All deliveries from meters and tanks, whether onshore or offshore, shall be properly recorded and available for inspection by MMS representatives.

(d) No one shall bypass MMS-approved allocation meters, royalty sales meters, and tanks.

(e) Evidence of theft or mishandling of production from an offshore lease, or of tampering or bypassing with metering or proving devices, or of falsifying any measurement of production from an offshore lease shall be reported to the Regional Supervisor as soon as possible but not later than the next business day after discovery of the theft or mishandling.

Subpart M—Unitization

§ 250.190 Authority and requirements for unitization.

(a) Unitization may be approved or required by the Regional Supervisor for the prevention of waste, the conservation of the natural resources of the OCS, and for the protection of correlative rights therein, including the protection of Federal royalty interests. Lessees may agree among themselves to unitization, subject to the Regional Supervisor's approval (voluntary unitization), or the Regional Supervisor may require unitization on the initiative of one or more lessees or on the Regional Supervisor's own initiative (compulsory unitization).

(b) Unitized operations may be approved when the Regional Supervisor has determined that such action will expedite and promote exploration and development efforts. Unitized operations may also be approved or required by the Regional Supervisor when a reservoir has been determined to be reasonably delineated and productive and such action is found to be necessary for the prevention of waste, conservation of natural resources of the OCS, or for the protection of correlative rights.

(c) A unit area shall include the minimum number of leases required to permit one or more mineral reservoirs or potential hydrocarbon accumulations to be served by a minimum number of platforms, facility installations, and wells necessary for the efficient exploration for or development and production of oil and gas.

(d) A unit agreement shall provide for the appointment of a unit operator and the allocation of benefits to the unitized leases. The unit operator and the owners of working interests shall enter into a unit operating agreement which shall describe how all costs and liabilities incurred in maintaining or conducting operations pursuant to the unit agreement shall be apportioned. In units involving one or more net-profit share leases, approval by the Regional Supervisor of the costs and credits attributable to the net-profit share leases shall be required.

(e) Upon the expiration or termination of a unit agreement, or when there is an adjustment of a unit area that results in the elimination of a lease from the unit agreement, each lease that was but is no longer subject in whole or in part to the unit agreement shall expire unless (1) its

initial term has not expired, (2) drilling, production, or well-reworking operations are being conducted thereon in accordance with applicable regulations, or (3) a suspension of production or operations has been ordered or approved for the excluded lease.

§ 250.191 Competitive reservoir unitization.

(a) The Regional Supervisor may require development and production operations in a reservoir in which there are one or more well completions on each of two or more leases from which the lessees plan future production (competitive reservoir) to be conducted under either a voluntary joint Development and Production Plan or unitization agreement.

(b) Lessees may request at any time that the Regional Supervisor make a preliminary determination as to whether a reservoir is competitive. The Regional Supervisor shall notify the lessees upon making such determination. The lessees, within 30 days of such notice or such time as approved by the Regional Supervisor, shall advise the Regional Supervisor of their concurrence or submit an objection with supporting evidence. The Regional Supervisor will make a final determination and notify the lessees.

(c) When drilling and/or production operations are conducted in a competitive reservoir, the lessees shall submit a joint plan for approval governing the applicable operations. The joint plan shall be submitted within 90 days after the final determination by the Regional Supervisor that the reservoir is competitive and shall provide for the development and/or production of the reservoir and may provide for the submittal of supplemental plans for approval by the Regional Supervisor. If agreement on a joint Development and Production plan cannot be reached by the lessees within the approved period of time and the Regional Supervisor determines that conservation will be best served by unitization of operations, unitization may be required.

§ 250.192 Voluntary unitization.

(a) Lessees who seek approval of unitization shall file a request with the Regional Supervisor accompanied by a draft of the proposed unit agreement, supporting geological, geophysical, and engineering data, and any other information that may be necessary to show that the unitization proposal meets the criteria of § 250.190.

(b) The proposed unit agreement shall conform to the appropriate Model Unit Agreement in § 250.194. The Regional Supervisor may require or upon request approve variations from the Model Unit Agreement. Any request for variation shall be made at the time the proposed unit agreement is submitted to the Regional Supervisor.

(c) After the Regional Supervisor approves the proposed unit agreement, lessees shall execute the unit agreement and file with the Regional Supervisor such copies of the unit agreement, unit operating agreement, and the initial plan of operations (including appropriate environmental considerations) as the Regional Supervisor may require.

§ 250.193 Compulsory unitization.

(a) If it is determined by the Regional Supervisor that unitization of operations within the proposed unit area is necessary for the prevention of waste, conservation of the natural resources of the OCS, and the protection of correlative rights therein or if unitization is proposed by less than all lessees of the proposed unit area, unitization shall be imposed according to a unitization plan which shall consist of the following:

(1) Conformance to Model Unit Agreement in 250.194, unless variation from the Model Unit Agreement has been approved by the Regional Supervisor, or

(2) Conformance to a previously approved unit agreement executed by less than all of the lessees, unless good cause exists for variation from the proposed unit agreement and the reasons for the variation are stated in writing and are approved by the Regional Supervisor.

(b)(1) Lessees who seek compulsory unitization shall file a request with the Regional Supervisor accompanied by a proposed unit agreement conforming to the appropriate Model Unit it Agreement, a proposed unit operating agreement, and a proposed initial plan of operations together with supporting geological, geophysical, and engineering data, and any other information that may be necessary to show that unitization meets the criteria of § 250.190. The proposed unit agreement shall include a counterpart executed by each lessee seeking compulsory unitization. Lessees seeking compulsory unitization shall serve copies of the request, the proposed unit agreement with executed counterparts, the proposed unit operating agreement, and the proposed initial plan of operations on the nonconsenting lessees.

(2) If the Regional Supervisor initiates compulsory unitization, all lessees of the proposed unit area shall be served with a copy of the proposed unit agreement or unitization plan and a statement of reasons for the proposed unitization.

(c)(1) The Regional Supervisor may not require compulsory unitization until all lessees of the proposed unit area are provided reasonable notice and an opportunity for a hearing. Any lessee owning an interest in the proposed unit area may request a hearing within 30 days of service of notice by the Regional Supervisor or service of a request for compulsory unitization by a lessee.

(2) No hearing may be held pursuant to this paragraph until written notice has been provided to all parties owning interests which would be made subject to the unit agreement at least 30 days in advance of the hearing. The Regional Supervisor shall afford all lessees of the proposed unit area an opportunity to submit views orally and in writing and to question both those seeking and those opposing compulsory unitization. Adjudicatory procedures are not required, but the decision of the Regional Supervisor shall be based upon a record of the hearing including any written information made a part of the record. A party to a hearing may, at its own expense, cause a verbatim transcript to be made by a court reporter. If a verbatim transcript is made, three copies of the transcript shall be provided to the Regional Supervisor without charge within 10 days after the hearing.

(d) The Regional Supervisor may issue an order(s) that requires or disapproves compulsory unitization. Any such order shall include a statement of reasons for the action taken including identification of those parts of the record which form the basis of the decision. The final order of the Regional Supervisor may be appealed in accordance with 30 CFR Part 290.

§ 250.194 Model unit agreements.

(a) *Model unit agreement for exploration, development, and production units.*

Unit Agreement for Outer Continental Shelf Exploration, Development, and Production Operations on the ——— Unit Blocks ——, Area Offshore ——— Contract No. ———

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Witnesseth:

WHEREAS, section 5(a) of the Act authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations which shall provide for unitization, pooling, and drilling agreements;

WHEREAS, pursuant to the rules and regulations of the Secretary, 30 CFR 250.190, et seq., it is deemed to be in the interest of conservation, prevention of waste, and the protection of correlative rights to unitize the oil and gas interest in the unit area; and

WHEREAS, it is deemed to be in the interest of conservation to conduct exploration, development, and production operations in the unit area as though the area were subject to a single lease;

NOW, THEREFORE, in consideration of the premises and promises contained herein, it is agreed that:

Article I—Definitions

The following definitions of terms shall apply to this Agreement:

ACT means the OCS Lands Act of 1953, as amended, 43 U.S.C. 1331, et seq.

AGREEMENT means this unit agreement, approved by the Regional Supervisor for conducting exploration, development, and production operations within the unit area.

BLOCK means an area designated as a block on a U.S. Official Leasing Protraction Diagram for an area of the OCS.

PARTICIPATING AREA is that part of the unit area that is reasonably proven by producible wells, geological information, and engineering data to be capable of producing hydrocarbons in paying quantities.

REGIONAL SUPERVISOR means the Regional Supervisor of the MMS, Department of the Interior (DOI), or a designee, authorized and empowered to regulate and approve unit operations.

REGULATIONS means all rules prescribed or adopted pursuant to the Act. They include all regulations prescribed or amended at any time to provide for the prevention of waste, conservation of natural resources of the OCS, and the protection of correlative rights therein.

RESERVOIR means an underground porous, permeable medium containing an accumulation of oil or gas or both. Each zone of a general structure containing such an accumulation that is separated from any other accumulation of oil or gas or both in the structure is a separate "reservoir."

UNIT AREA means the area of the OCS which is made subject to his Agreement and described in Article III.

UNIT OPERATING AGREEMENT means an agreement made between the working interest owners and the unit operator providing for the apportionment of costs and liabilities incurred in conducting operations pursuant to this Agreement and the establishment of such other rights and obligations as they deem appropriate.

UNIT OPERATOR means the person, association, partnership, corporation, or other business entity designated by the working-interest owners and approved by the Regional Supervisor to conduct operations within the unit area in accordance with plans of operations approved pursuant to the Act, applicable regulations, and this Agreement.

UNITIZED SUBSTANCES means oil and/or gas within the reservoir(s) that underlie the unitized lands and which are recovered or produced by operations pursuant to this Agreement.

WORKING INTEREST means an interest in the unit area held by virtue of a lease, operating agreement, or other contractual arrangement under which, except as otherwise provided in this Agreement, the rights or authority to explore for, develop, and produce oil and gas are conferred. The right delegated to the unit operator by this Agreement is not a working interest.

Article II—Incorporation

All provisions of the Act, the regulations, other applicable laws, and the leases covering OCS lands within the unit area are made part of this Agreement.

Article III—Unit area and exhibits

3.1 The following described offshore area as shown on the U.S. Official Leasing Protraction Diagram is subject to valid leases and constitutes the unit area.

3.2 Exhibit "A", which is attached to this Agreement and made a part hereof, is a plat identifying the unit area and component blocks and leases.

3.3 Exhibit "B", which is attached to this Agreement and made a part hereof, is a schedule listing the component leases and the ownership of each.

3.4 Exhibit "C", which will be submitted in accordance with the provisions of this Agreement and will be made a part hereof, is a schedule listing the component parts of the participating area(s) by lease and the percentage of oil or gas, or both, that is to be allocated to each lease.

3.5 Exhibits "A", "B", and "C" shall be revised by the unit operator whenever changes in the unit area, changes in the participating area, changes in the ownership of one or more leases, or changes in the percentages of oil or gas, or both, allocated to the individual leases render such changes necessary. Four copies of the revised exhibits shall be submitted to the Regional Supervisor for approval.

Article IV—Designation of unit operator

4.1 ——— is designated as the unit operator and agrees to accept the rights and obligations of the unit operator to explore for, develop, and produce oil and/or gas as provided in this Agreement.

4.2 Except as otherwise provided in this Agreement and subject to the terms and conditions of approved plans of operations, the exclusive rights and obligations of the owners of working interests to conduct unit operations to explore for, develop, and produce oil and/or gas in the unit area are delegated to and shall be exercised by the unit operator. This delegation neither relieves a lessee of the obligation to comply with all lease terms nor transfers title to any lease or operating agreement.

Article V—Resignation or removal of unit operator

5.1 The unit operator shall have the right to resign at any time. Such resignation shall not become effective until 60 days after written notice of an intention to resign has been delivered by the unit operator to the working -interest owners and the Regional Supervisor and until all platforms, artificial islands, installations, and other devices, including wells used for conducting operations in the unit area, are placed in a condition satisfactory to the Regional Supervisor for suspension or abandonment of operations. However, if a successor unit operator is designated and approved as provided in Article VI, the resignation shall be effective upon the designation and approval of the successor unit operator.

5.2 The unit operator may be subject to removal by the same percentage vote of the owners of working interests as provided by Article VI for the designation of a successor unit operator. This removal shall not be effective until the working-interest owners notify the Regional Supervisor and the unit operator and until the Regional Supervisor approves the designation of a successor unit operator.

5.3 The resignation or removal of the unit operator shall not release the unit operator from liability for any failure to meet any obligations which accrued before the effective date of resignation or removal.

5.4 The resignation or removal of the unit operator shall not terminate any right, title, or interest as the owner of a working interest or other interest in the unit area. However, when the resignation or removal of the unit operator becomes effective, the unit operator shall relinquish to the successor unit operator all wells, platforms, artificial islands, installations, devices, records, and any other assets used for conducting operations for the unit area.

Article VI—Successor unit operator

6.1 Whenever the unit operator tenders its resignation as unit operator or is removed as provided in Article V, a successor unit operator may be designated by (a) an affirmative vote of the owner(s) of a majority of the working interests, based on (1) their respective shares of the acreage subject to this Agreement; (2) their respective estimated volume of oil or gas, or both, originally in place; or (3) their decision pursuant to the unit operating agreements, and (b) the successor unit operator's acceptance in writing of the rights and obligations of the unit operator. The successor unit operator shall file with the Regional Supervisor four executed copies of the designation of successor. However, the designation shall not become effective until approved by the Regional Supervisor.

6.2 If no successor unit operator is designated as herein provided within 60 days following notice to the Regional Supervisor of

the resignation or removal of a unit operator, the Regional Supervisor may elect to designate one of the working-interest owners other than the unit operator as successor unit operator or may declare this Agreement terminated.

Article VII—Unit operating agreement

7.1 The owners of working interests and the unit operator shall enter into a unit operating agreement which shall describe how all costs and liabilities incurred in maintaining or conducting operations pursuant to this Agreement shall be apportioned and assumed. The unit operating agreement shall also describe how the benefits which may accrue from operations conducted on the unit area shall be apportioned.

7.2 The owners of working interests and the unit operator may establish by means of one or more unit operating agreements such other rights and obligations as they deem necessary or appropriate. However, no provision of the unit operating agreement shall be deemed to modify the terms and conditions of this Agreement or to relieve the working-interest owners or the unit operator of any obligation set forth in this Agreement. In case of any inconsistency or conflict between this Agreement and the unit operating agreement, the terms of this Agreement shall prevail.

7.3 Three copies of the unit operating agreement executed in conjunction with the first paragraph of this Article shall be attached to this Agreement when it is filed with the Regional Supervisor with a request for approval. Three copies of all other unit operating agreements and any amendments thereto also shall be filed with the Regional Supervisor.

Article VIII—Appearances and notices

8.1 The unit operator shall, after notice to other parties affected, have the right to appeal on behalf of all working-interest owners before the DOI or any other body legally empowered to issue decisions concerning orders or regulations of the DOI and to appeal from these decisions. The expense of these appearances shall be paid and apportioned as provided in a unit operating agreement. However, any affected working-interest owners shall have the right at their own expense to be heard in any proceeding.

8.2 Any order or notice relating to this Agreement which is given to the unit operator by the Regional Supervisor shall be deemed given to all working-interest owners of the unit area. All notices required by this Agreement to be given to the unit operator or the owners of working interests shall be deemed properly given if given in writing and delivered personally or sent by prepaid registered or certified mail to the addresses set forth below or to such other addresses as may have been furnished in writing to the party sending the notice.

Article IX—Plan of operations

9.1 The unit operator shall submit a plan of operations which is consistent with the requirements for Exploration Plans or Development and Production Plans as required by the Act, Subpart B of 30 CFR Part 250, and other sections of the regulations. All operations within the unit area shall be conducted in accordance with an approved plan.

9.2 When no oil or gas is being produced in paying quantities from the unit area and when all or part of the area is subject to one or more leases beyond the primary term, a continuous drilling or well-reworking program shall be maintained with lapses of no more than 90 days per lapse between such operations unless a suspension of production or other operations has been ordered or approved by the Regional Supervisor. Plans may call for a cessation of drilling operations for a reasonable period of time between the discovery and delineation of a reservoir when such a pause in drilling activities is warranted to permit the design, fabrication, and erection of platforms and other installations needed for development and production operations, provided a suspension of production or other operations has been ordered or approved by the Regional Supervisor.

9.3 An acceptable initial plan of operations shall be submitted at the time this Agreement is filed for the Regional Supervisor's approval. Each plan of operations shall expire on the date specified in the plan. At least 60 days before the scheduled expiration of any plan, unless the Regional Supervisor grants an extension for good cause, the unit operator shall file an acceptable subsequent plan of operations for approval in accordance with this Article.

Article X—Revision of unit area

10.1 The unit area may be further revised by additions necessary for unit operations or for the inclusion of an area capable of producing oil and/or gas in paying quantities whenever such action appears proper to include additional lands, or may be further revised by the contraction of the unit area when such contraction is necessary or advisable to conform with the purposes of this Agreement. Such additions or contractions shall be effected by the unit operator on its own motion after preliminary concurrence of the Regional Supervisor or on demand of the Regional Supervisor. The effective date of any expansion or contraction of the unit area shall be the first of the month following the date of approval of the expansion or contraction by the Regional Supervisor provided, however, that a more appropriate effective date may be used if justified by the unit operator and approved by the Regional Supervisor.

10.2 The unit area shall not be reduced on account of the depletion of the unitized substances for which it was established, but the unit area established under the provisions of this article shall terminate automatically whenever operations are permanently abandoned in the unit.

Article XI—Participating areas

11.1 Prior to commencement of production of unitized substances, or as soon thereafter as required by the Regional Supervisor, the unit operator shall submit to the Regional Supervisor, as Exhibit "C," a schedule by lease of (a) all land reasonably proven to be productive of unitized substances in paying quantities by the drilling and completion of producible wells, geological information, and engineering data, and (b) the percentage of unitized substances to be allocated as provided in Article XII to each lease. All lands in said schedule, upon approval thereof by the Regional Supervisor, shall constitute the initial participating area, effective as of the date such production commences. The participating area shall be described in parcels no smaller than ¼ x ¼ x ¼ blocks.

11.2 Subject to approval of the Regional Supervisor, the participating area(s) so established shall be revised from time to time to include additional land reasonably proven to be productive in the same manner as provided in paragraph 11.1 of this Article, or lands proven not to be productive to be excluded in the same manner, and Exhibit "C" shall be revised accordingly. The effective date of any revision shall be the first of the month in which the information is obtained which provides the basis for the approval of the revision by the Regional Supervisor provided, however, that a more appropriate effective date may be used if justified by the unit operator and approved by the Regional Supervisor. No land shall be excluded from the participating area(s) on account of depletion of the unitized substances.

11.3 A separate participating area may be established for each accumulation of unitized substances or for any group thereof which is produced as a single pool or zone and any two or more participating areas so established may be combined into one, all subject to approval of the Regional Supervisor.

11.4 Nothing herein contained shall be construed as requiring any retroactive adjustment for production obtained prior to the effective date of the revision of the participating area.

Article XII—Allocation of production

12.1 The unit operator shall pay all production royalties and make deliveries of oil and gas which are payments of royalties taken-in-kind or which, pursuant to the Act, are purchased by the United States. Unitized substances shall be allocated within the participating area(s) on (a) a volumetric basis of oil and gas in place under original reservoir conditions, or (b) a surface area basis, and proportionally credited to the respective leases committed hereto. The unit operator shall furnish the Regional Supervisor geological and engineering maps and data sufficient to support the net-acre feet determination for volumetric allocation between leases. Oil and gas produced from the unit area prior to the effective date of this Agreement shall not be allocated under this Agreement. The royalty payments under leases subject hereto shall be based and calculated upon the production allocated to the leases as specifically provided herein. The oil and gas saved, removed, or sold from a unit area shall be allocated in this manner, regardless of where any well is drilled and produced in the unit area.

12.2 For the purpose of determining royalty obligations, unitized substances on which royalty has been paid and which are

used for repressuring, stimulation of production, or increasing ultimate recovery from the unit area, in conformity with an approved plan of operations, may be deemed to be a portion of the gas and liquid-hydrocarbon substances subsequently saved, removed, or sold from the unit area. In such instances, a like amount of gas and liquid-hydrocarbon substances similar to that previously used may be saved, removed, or sold from the unit area without paying a royalty thereon. However, as to dry gas, only dry gas and not products extracted therefrom may be saved, removed, or sold royalty free. The royalty-free withdrawal shall be accomplished in accordance with an approved plan of operations and the amounts of gas and liquid-hydrocarbon substances withdrawn that are to be recognized as free of royalty charges shall be computed in accordance with a formula approved or prescribed by the Regional Supervisor. Any withdrawal of royalty-free gas or liquid-hydrocarbon substances shall terminate upon the termination of this Agreement, unless otherwise permitted. For the purposes of this paragraph, liquid-hydrocarbon substances include natural gasoline and liquid-petroleum gas fractions.

Article XIII—Automatic adjustment of unit area

13.1 Any lease(s) not entitled to receive an allocation of unit production on the fifth/tenth anniversary of the effective date of the initial participating area established under this Agreement shall be eliminated automatically from the unit area as of said fifth/tenth anniversary; and thereafter, the unit area shall only be comprised of the participating area(s) subject to the provisions of Articles X and XVII.

13.2 If a lease is no longer subject to this Agreement in accordance with the provisions of this Article, that lease shall only be maintained and continued in force and effect in accordance with the terms and provisions contained in the Act, regulations, and the lease.

Article XIV—Relinquishment of leases

Pursuant to the provisions of the leases and applicable regulations, a lessee of record shall, subject to the provisions of the unit operating agreement, have the right to relinquish any of its interests committed hereto, in whole or in part, provided that no relinquishment shall be made of any interests within a participating area without the prior approval of the Regional Supervisor. In the event such relinquishments result in the leasehold interest of only one lease remaining committed hereto, this Agreement shall terminate automatically effective as of the date that only one lease remains subject to the Agreement.

Article XV—Rentals and minimum royalties

15.1 Rentals or minimum royalties due on leases committed hereto shall be paid by the working-interest owners responsible therefore at the time and rate(s) specified in their respective lease from the United States unless such rental or minimum royalty is suspended or reduced by law or by approval of the Secretary.

15.2 If there is production from the unit area during the lease year, the amount of royalty paid for production allocated to a lease during the lease year shall be credited against the minimum royalty obligation of the lease.

Article XVI—Effective date and termination

16.1 This Agreement shall be effective on ——— and shall terminate when oil and gas is no longer being produced from the unit area and drilling or well-reworking operations are no longer being conducted in accordance with the provisions of Article IX of this Agreement. If the Regional Supervisor has ordered or approved a suspension of operations or production on all or part of the unit area pursuant to the regulations, this Agreement shall be continued in force and effect for the period of time equal to the length of the authorized suspension and thereafter so long as operations are being conducted in accordance with the provisions of Article IX herein.

16.2 This Agreement may be terminated, with the approval of the Regional Supervisor, at any time by an affirmative vote of the owner(s) of a majority of the working interests in each tract committed to this Agreement or as otherwise specified in the unit operating agreement.

Article XVII—Leases and contracts conformed and extended

17.1 The terms, conditions, and provisions of all leases, subleases, and other contracts relating to exploration, drilling, development, or production operations for oil or gas on lands committed to this Agreement are hereby modified and amended only to the extent necessary to make the same conform to the provisions hereof but otherwise shall remain in force and effect.

17.2 The Regional Supervisor, by the approval hereof, does hereby establish, alter, suspend, change, or revoke the drilling, production, rental, minimum royalty, and royalty requirements of the Federal leases committed hereto, to conform said requirements to the provisions of this Agreement, and without limiting the generality of the foregoing, all leases, subleases, and contracts are particularly modified in accordance with the following:

(a) Drilling and/or producing operations performed hereunder upon any unitized lease will be accepted and deemed to be performed upon and for the benefit of each and every unitized lease, and no lease committed to this Agreement shall be deemed to expire by reason of failure to drill or produce a well thereon.

(b) Suspension of drilling or producing operations on all unitized lands, pursuant to direction or consent of the Secretary or a duly authorized representative, shall be deemed to constitute such suspension pursuant to such direction or consent as to each and every unitized lease.

(c) Each lease committed hereto shall continue in force as to all lands covered thereby for the term so provided therein, or as extended by law, and so long thereafter as gas or oil and/or condensate is produced from a unit well in paying quantities, drilling or well-reworking operations pursuant to the regulations are conducted within the unit area, or operations are suspended hereunder as provided herein and operations are being conducted pursuant to the provisions of Article IX of this Agreement. This subsection shall not operate to continue in force any whole lease excluded from the unit area by adjustment.

17.3 Upon termination of this Agreement, the leases committed hereto may be continued in force and effect in accordance with the terms and conditions contained in the Act, the regulations, and the leases.

Article XVIII—Counterparts

This Agreement may be executed in any number of counterparts, no one of which needs to be executed by all parties. If this Agreement is executed in counterparts, all counterparts taken together shall have the same effect as if all parties had signed the same instrument.

Article XIX—Subsequent joinder

The Regional Supervisor may order or, upon request, approve a subsequent joinder to this Agreement pursuant to the expansion provisions of Article X. A request for a subsequent joinder shall be accompanied by a signed counterpart to this Agreement and shall be submitted by the unit operator at the time a notice of proposed expansion is submitted pursuant to Article X. A subsequent joinder shall be subject to the requirements which may be contained in the unit operating agreement, if any, except that the Regional Supervisor may require modifications of any provision in a unit operating agreement which would prevent a subsequent joinder.

Article XX—Remedies

20.1 The failure of the unit operator to conduct operations in accordance with an approved plan of operations, to timely submit an acceptable plan for approval by the Regional Supervisor, or to comply with any other requirement of this Agreement in a timely manner shall, after notice of default to the unit operator with copies to all working-interest owners by the Regional Supervisor and after failure of the unit operator to remedy any default within a reasonable time as determined by the Regional Supervisor, result in automatic termination of this Agreement effective as of the first day of the default.

20.2 This remedy is in addition to any remedy which is prescribed in the Act, the regulations, or a lease committed to this Agreement or any action which may be brought by the United States to compel compliance with the provisions thereof.

Article XXI—No waiver of certain rights

Nothing contained in this Agreement shall be construed as a waiver by any party hereto of the right to assert any legal or constitutional right or defense pertaining to the validity or invalidity of any law of the United States, or regulations issued thereunder, in any way affecting such party or as a waiver by any such party of any right beyond such party's authority to waive.

Article XXII—Covenants run with the land

22.1 The covenants herein shall be construed to be covenants running with the land with respect to the interest of the parties hereto and their successors in interest until this Agreement terminates, and any grant, transfer, or conveyance of interest in land or leases subject hereto shall be and hereby are conditioned upon the assumption of all privileges and obligations hereunder by the grantee, transferee, or other successor in interest.

22.2 No assignment or transfer of any working interest or other interest subject hereto shall be binding upon the unit operator until the first day of the calendar month after the unit operator is furnished with the original, photostatic, or certified copy of the instrument of transfer.

In Witness Whereof, the working-interest owners and the unit operator have caused this Agreement to be executed as follows:

ACCEPTANCE OF RIGHTS AND OBLIGATIONS BY UNIT OPERATOR

I hereby accept and assume all rights and obligations of the unit operator as set forth above.

Dated: _____
Authorized Signature: _____
Name: _____
Title: _____
Corporation: _____
Subscribed and sworn to me this —— day of 19—.
Notary Public: _____
My Commission Expires: _____

Approval by Working-Interest Owner(s)

As an owner of a working interest in the unitized area, I hereby agree to the terms and conditions as set forth in this Agreement.

Dated: _____
Authorized Signature: _____
Name: _____
Title: _____
Corporation: _____
Address: _____
Subscribed and sworn to me this —— day of 19—.
Notary Public: _____
My Commission Expires: _____

(b) Model unit agreement for development and production units.

Unit Agreement for Outer Continental Shelf Development and Production Operations on the ——— Unit Blocks ———, ——— Area Offshore ——— Contract No. ———

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Witnesseth:

WHEREAS, section 5(a) of the Act authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations which shall provide for unitization, pooling, and drilling agreements;

WHEREAS, pursuant to the rules and regulations of the Secretary, 30 CFR 250.190, et seq., it is deemed to be in the interest of conservation, prevention of waste, and protection of correlative rights to unitize the oil and gas interests in the unit area; and

WHEREAS, it is deemed to be in the interest of conservation to conduct development and production operations in the unit area as though the area were subject to a single lease;

NOW, THEREFORE, in consideration of the premises and promises contained herein, it is agreed that:

Article I—Definitions

The following definitions of terms shall apply to this Agreement:

ACT means the OCS Lands Act of 1953, as amended, 43 U.S.C. 1331, et seq.

AGREEMENT means this unit agreement, approved by the Regional Supervisor for conducting development and production operations within the unit area.

BLOCK means an area designated as a block on a U.S. Official Leasing Protraction Diagram for an area of the OCS.

REGIONAL SUPERVISOR means the Regional Supervisor of MMS, DOI, or a designee authorized and empowered to regulate and approve unit operations.

REGULATIONS means all rules prescribed or adopted pursuant to the Act. They include all regulations prescribed or amended at any time to provide for the prevention of waste, conservation of natural resources of the OCS, and the protection of correlative rights therein.

RESERVOIR means an underground porous, permeable medium containing an accumulation of oil or gas or both. Each zone of a general structure containing such an accumulation that is separated from any other accumulation of oil or gas or both in the structure is a separate "reservoir."

UNIT AREA means the area of the OCS which is made subject to this Agreement and described in Article III.

UNIT OPERATING AGREEMENT means an agreement made between the working-interest owners and the unit operator providing for the apportionment of costs and liabilities incurred in conducting operations pursuant to this Agreement and the establishment of such other rights and obligations as they deem appropriate.

UNIT OPERATOR means the person, association, partnership, corporation, or other business entity designated by the working-interest owners and approved by the Regional Supervisor to conduct operations within the unit area in accordance with a plan of operations approved pursuant to the Act and applicable regulations.

UNITIZED SUBSTANCES means oil and/or gas within the reservoir(s) that underlie the unitized lands and which are recovered or produced by operations pursuant to this Agreement.

WORKING INTEREST means an interest in the unit area held by virtue of a lease, operating agreement, or other contractual arrangement under which, except as otherwise provided in this Agreement, the rights or authority to explore for, develop, and produce oil and gas are conferred. The right delegated to the unit operator by this Agreement is not a working interest.

Article II—Incorporation

All provisions of the Act, the regulations, other applicable laws, and the leases covering OCS lands within the unit area are made part of this Agreement.

Article III—Unitized reservoir, unit area, and exhibits

3.1 The (———, reservoir ———) is defined as that productive zone occurring within the interval —— feet to —— feet, electric log depths, in Well No. —— hereinafter referred to as the unitized reservoir.

3.2 All land committed to this Agreement shall constitute land referred to in Exhibit "A." The area specified in Exhibit "A" is hereby designated and recognized as overlying the unitized reservoir and as constituting the unit area containing —— acres, more or less. All oil and/or gas produced from the unitized reservoir, which lies within the unit area, are unitized under the terms of this Agreement and are referred to herein as unitized substances.

3.3 The above unit area may, subject to appropriate approval, be expanded to include therein additional acreage whenever such expansion is necessary or advisable to conform with the purposes of this Agreement.

3.4 Exhibit "A," attached hereto and made a part hereof, is a plat showing the unit area, boundaries, and oil and gas leases in said area. Exhibit "B," attached hereto and made a part hereof, is a schedule showing the acreage, percentage, and kind of ownership of oil and gas interests in all land in the unit area. Exhibit "C," attached hereto and made a part hereof, is a schedule setting out the number of productive net —— acre-feet creditable to each tract under original reservoir conditions and the percentage of unit participation credited to each tract in the unit area. The number of net —— acre-feet and the percentage of unit participation credited to each tract in Exhibit "C" are accepted and approved by the Regional Supervisor. Exhibits "A," "B," and "C" shall be revised by the unit operator whenever changes render it necessary, and four copies shall be filed with the Regional Supervisor for approval.

Article IV—Designation of unit operator

4.1 ——— is designated as the unit operator and agrees to accept the rights and obligations of the unit operator to explore for, develop, and produce oil and/or gas as provided in this Agreement.

4.2 Except as otherwise provided in this Agreement and subject to the terms and

conditions of approved plans of operations, the exclusive rights and obligations of the owners of working interests to conduct unit operations to explore for, develop, and produce oil and/or gas in the unit area are delegated to and shall be exercised by the unit operator. This delegation neither relieves a lessee of the obligation to comply with all lease terms nor transfers title to any lease or operating agreement.

Article V—Resignation or removal of unit operator

5.1 The unit operator shall have the right to resign at any time. Such resignation shall not become effective until 60 days after written notice of an intention to resign has been delivered by the unit operator to the working-interest owners and the Regional Supervisor and until all platforms, artificial islands, installations, and other devices, including wells used for conducting operations in the unit area, are placed in a condition satisfactory to the Regional Supervisor for suspension or abandonment of operations. However, if a successor unit operator is designated and approved as provided in Article VI, the resignation shall be effective upon the designation and approval of the successor unit operator.

5.2 The unit operator may be subject to removal by the same percentage vote of the owners of working interests as provided in Article VI for the designation of a successor unit operator. This removal shall not be effective until the working-interest owners notify the Regional Supervisor and the unit operator and until the Regional Supervisor approves the designation of a successor unit operator.

5.3 The resignation or removal of the unit operator shall not release the unit operator from liability for any failure to meet any obligations which accrued before the effective date of resignation or removal.

5.4 The resignation or removal of the unit operator shall not terminate any right, title, or interest as the owner of a working interest or other interest in the unit area. However, when the resignation or removal of the unit operator becomes effective, the unit operator shall relinquish to the successor unit operator all wells, platforms, artificial islands, installations, devices, records, and any other assets used for conducting operations for the unit area.

Article VI—Successor unit operator

6.1 Whenever the unit operator tenders a resignation as unit operator or is removed as provided in Article V, a successor unit operator may be designated by (a) an affirmative vote of the owner(s) of a majority of the working interests, based on (1) their respective shares of the acreage subject to this Agreement; (2) their respective estimated volumes of oil or gas, or both, originally in place; or (3) their decision pursuant to the unit operating agreements, and (b) the successor unit operator's acceptance in writing of the rights and obligations of the unit operator. The successor unit operator shall file with the Regional Supervisor four executed copies of the designation of successor. However, the designation shall not become effective until approved by the Regional Supervisor.

6.2 If no successor unit operator is designated as herein provided within 60 days following notice to the Regional Supervisor of the resignation or removal of a unit operator, the Regional Supervisor may elect to designate one of the working-interest owners other than the unit operator as successor unit operator or may declare this Agreement terminated.

Article VII—Unit operating agreement

7.1 The owners of working interests and the unit operator shall enter into a unit operating agreement which shall describe how all costs and liabilities incurred in maintaining or conducting operations pursuant to this Agreement shall be apportioned and assumed. The unit operating agreement shall also describe how the benefits which may accrue from operations conducted on the unit area shall be apportioned.

7.2 The owners of working interests and the unit operator may establish by means of one or more unit operating agreements such other rights and obligations as they deem necessary or appropriate. However, no provision of the unit operating agreement shall be deemed to modify the terms and conditions of this Agreement or to relieve the working-interest owners or the unit operator of any obligation set forth in this Agreement. In case of any inconsistency or conflict between this Agreement and a unit operating agreement, the terms of this Agreement shall prevail.

7.3 Three copies of the unit operating agreement executed in conjunction with the first paragraph of this Article shall be attached to this Agreement when it is filed with the Regional Supervisor with a request for approval. Three copies of all other unit operating agreements and any amendments thereto also shall be filed with the Regional Supervisor.

Article VIII—Appearances and notices

8.1 The unit operator shall, after notice to other parties affected, have the right to appeal on behalf of all working-interest owners before the DOI or any other body legally empowered to issue decisions concerning orders or regulations of the DOI and to appeal from these decisions. The expense of these appearances shall be paid and apportioned as provided in a unit operating agreement. However, any affected working-interest owners shall have the right at their own expense to be heard in any proceeding.

8.2 Any Order or notice relating to this Agreement which is given to the unit operator by the Regional Supervisor shall be deemed given to all working-interest owners of the unit area. All notices required by this Agreement to be given to the unit operator or the owners of working interests shall be deemed properly given if in writing and delivered personally or sent by prepaid registered or certified mail to the addresses set forth below or to such other addresses as may have been furnished in writing to the party sending the notice.

Article IX—Plan of operations

9.1 The unit operator shall submit a plan of operations which is consistent with the requirements for a Development and Production Plan as required by the Act, Subpart B of 30 CFR Part 250, and other sections of the regulations. All operations within the unit area shall be conducted in accordance with an approved plan.

9.2 When no oil or gas is being produced in paying quantities from the unit area and when all or part of the area is subject to one or more leases beyond the primary term, a continuous drilling or well-reworking program shall be maintained with lapses of no more than 90 days per lapse between such operations unless a suspension of production or other operations has been ordered or approved by the Regional Supervisor. The plan may call for a cessation of drilling operations for a reasonable period of time after the discovery and delineation of a reservoir when such a pause in drilling activities is warranted to permit the design, fabrication, and erection of platforms and other installations needed for development and production operations, provided a suspension of production or other operations has been ordered or approved by the Regional Supervisor.

9.3 An acceptable initial plan of operations shall be submitted at the time this Agreement is filed for the Regional Supervisor's approval. Each plan of operations shall expire on the date specified in the plan. At least 60 days before the scheduled expiration of any plan, unless the Regional Supervisor grants an extension for good cause, the unit operator shall file an acceptable subsequent plan of operations for approval in accordance with this Article.

Article X—Revision of unit area and allocation of production

10.1 Unitized substances produced from the unit area shall be allocated on the basis of net acre-feet, under original reservoir conditions, credited to the respective tracts committed hereto. A net acre-foot as used in this Agreement means one acre of producing formation which contains one foot of net —— pay. Oil and/or gas produced from the unit area prior to the effective date of this Agreement shall not be allocated under this Agreement. The royalty payments under leases committed hereto shall be based and calculated upon the production allocated to the tracts as specifically provided herein.

10.2 The unit area so established shall be revised from time to time, subject to the approval of the Regional Supervisor, whenever such action appears proper as a result of further drilling operations or otherwise to include additional lands or to exclude lands. The effective date of any revision of the unit area shall be the first day of the month in which is obtained the knowledge or information on which such revision is predicated, provided that a more appropriate effective date may be used if justified by the unit operator and approved by the Regional Supervisor.

10.3 In the event any lands are added to the unit area, a reasonable and fair participation shall be allocated to the new lands on the basis of net acre-feet. The determination of the net acre-feet creditable to such lands shall be done in the same

manner and by the same procedures used to determine the tract percentages of participation as shown on Exhibit "C." If the unit area is so expanded, the net acre-feet credited to land originally in the unit area shall not be subject to change. The only change will be to increase the total number of net acre-feet in the unit area by adding to the original total the total number of net acre-feet allocated to new lands, provided that there shall never be any retroactive allocation of interest in the unitized substances produced, or the proceeds thereof, by reason of any revision.

10.4 The unit operator shall pay all production royalties and make deliveries of oil and gas which are payments of royalties taken-in-kind or which, pursuant to the Act, are purchased by the United States.

10.5 For the purpose of determining royalty obligations, gas and liquid-hydrocarbon substances on which royalty has been paid and which are used for repressuring, stimulation of production, or increasing ultimate recovery from the unit area, in conformity with an approved plan of operations, may be deemed to be a portion of the gas and liquid-hydrocarbon substances subsequently saved, removed, or sold from the unit area. In such instances, a like amount of gas and liquid-hydrocarbon substances similar to that previously used may be saved, removed, or sold from the unit area without paying a royalty thereon. However, as to dry gas, only dry gas and not products extracted therefrom may be saved, removed, or sold royalty free. The royalty-free withdrawal shall be accomplished in accordance with an approved plan of operations, and the shares of gas and liquid-hydrocarbon substances withdrawn that are to be recognized as free of royalty charges shall be computed in accordance with a formula approved or prescribed by the Regional Supervisor. Any withdrawal of royalty-free gas or liquid-hydrocarbon substances shall terminate upon the termination of this Agreement, unless otherwise permitted. For the purposes of this paragraph, liquid hydrocarbon substances include natural gasoline and liquid-petroleum gas fractions.

Article XI—Rentals and minimum royalties

11.1 Rentals or minimum royalties due on leases committed hereto shall be paid by the working-interest owners responsible therefore at the time and rate(s) specified in their respective lease from the United States unless such rental or minimum royalty is suspended or reduced by law or by approval of the Secretary.

11.2 If there is production from the unit area during the lease year, the amount of royalty paid for production allocated to a lease during the lease year shall be credited against the minimum royalty obligation of the lease.

Article XII—Effective date and termination

12.1 This Agreement shall be effective on ——— and shall terminate when oil and/or gas is no longer being produced from the unit area and drilling or well-reworking operations are no longer being conducted in accordance with the provisions of Article IX of this Agreement. If the Regional Supervisor has ordered a suspension of operations or production on all or part of the unit area pursuant to the regulations, this Agreement shall be continued in force and effect for the period of time equal to the length of the authorized suspension and thereafter so long as operations are being conducted in accordance with the provisions of Article IX herein.

12.2 This Agreement may be terminated, with the approval of the Regional Supervisor, at any time by an affirmative vote of the owner(s) of a majority of the working interests in each tract committed to this Agreement or as otherwise specified in the unit operating agreement.

Article XIII—Leases and contracts conform and extended

13.1 The terms, conditions, and provisions of all leases, subleases, and other contracts relating to exploration, drilling, development, or production operations for oil or gas on lands committed to this Agreement are hereby modified and amended only to the extent necessary to make the same conform to the provisions hereof but otherwise shall remain in force and effect.

13.2 The Regional Supervisor, by the approval hereof, does hereby establish, alter, suspend, change, or revoke the drilling, production, rental, minimum royalty, and royalty requirements of the Federal leases committed hereto, to conform said requirements to the provisions of this Agreement, and without limiting the generality of the foregoing, all leases, subleases, and contracts are particularly modified in accordance with the following:

(a) Drilling and/or producing operations performed hereunder upon any unitized lease will be accepted and deemed to be performed upon and for the benefit of each and every unitized lease, and no lease committed to this Agreement shall be deemed to expire by reason of failure to drill or produce a well thereon.

(b) Suspension of drilling or producing operations on all unitized lands pursuant to direction or consent of the Secretary, or a duly authorized representative, shall be deemed to constitute such suspension pursuant to such direction or consent as to each and every unitized lease.

(c) Each lease committed hereto shall continue in force as to all lands covered thereby for the term so provided therein, or as extended by law, and so long thereafter as gas or oil and/or condensate are produced from a unit well in paying quantities, drilling or well-reworking operations pursuant to the regulations are conducted within the unit area, or operations are suspended hereunder as provided herein, and operations are being conducted pursuant to the provisions of Article IX of this Agreement. This subsection shall not operate to continue in force any whole lease excluded from the unit area by adjustment.

13.3 Upon termination of this Agreement, the leases committed hereto may be continued in force and effect in accordance with the terms and conditions contained in the Act, the regulations, and the leases.

Article XIV—Counterparts

This Agreement may be executed in any number of counterparts, no one of which needs to be executed by all parties. If this Agreement is executed in counterparts, all counterparts taken together shall have the same effect as if all parties had signed the same instrument.

Article XV—Subsequent joinder

The Regional Supervisor may order or, upon request, approve a subsequent joinder to this Agreement pursuant to the expansion provisions of Article X. A request for a subsequent joinder shall be accompanied by a signed counterpart to this Agreement and shall be submitted by the unit operator at the time a notice of proposed expansion is submitted pursuant to Article X. A subsequent joinder shall be subject to the requirements which may be contained in the unit operating agreement, if any, except that the Regional Supervisor may require modifications of any provision in a unit operating agreement which would prevent a subsequent joinder.

Article XVI—Remedies

16.1 The failure of the unit operator to conduct operations in accordance with an approved plan of operations, to timely submit an acceptable plan for approval by the Regional Supervisor, or to comply with any other requirement of this Agreement in a timely manner shall, after notice of default to the unit operator with copies to all working-interest owners by the Regional Supervisor and after failure of the unit operator to remedy any default within a reasonable time as determined by the Regional Supervisor, result in automatic termination of this Agreement effective as of the first day of the default.

16.2 This remedy is in addition to any remedy which is prescribed in the Act, the regulations, or a lease committed to this Agreement or any action which may be brought by the United States to compel compliance with the provisions thereof.

Article XVII—No waiver of certain rights

Nothing contained in this Agreement shall be construed as a waiver by any party hereto of the right to assert any legal or constitutional right or defense pertaining to the validity or invalidity of any law of the United States, or regulations issued thereunder, in any way affecting such party or as a waiver by any such party of any right beyond such party's authority to waive.

Article XVIII—Covenants run with the land

18.1 The covenants herein shall be construed to be covenants running with the land with respect to the interest of the parties hereto and their successors in interest until this Agreement terminates, and any grant, transfer, or conveyance of interest in land or leases subject hereto shall be and hereby are conditioned upon the assumption of all privileges and obligations hereunder by the grantee, transferee, or other successor in interest.

18.2 No assignment or transfer of any working interest or other interest subject

hereto shall be binding upon the unit operator until the first day of the calendar month after the unit operator is furnished with the original, photostatic, or certified copy of the instrument of transfer.

In Witness Whereof, the working-interest owners and the unit operator have caused this Agreement to be executed as follows:

Acceptance of Rights and Obligations by Unit Operator

I hereby accept and assume all rights and obligations of the unit operator as set forth above.

Dated:———
Authorized Signature:———
Name:———
Title: ———
Corporation: ———
Address: ———
Subscribed and sworn to me this —— day of ———, 19—.
Notary Public: ———
My Commission Expires: ———

Approval by Working-Interest Owner(s)

As an owner of a working interest in the unitized area, I hereby agree to the terms and conditions as set forth in this Agreement.

Dated:———
Authorized Signature:———
Name:———
Title: ———
Corporation: ———
Address: ———
Subscribed and sworn to me this —— day of ———, 19—.
Notary Public: ———
My Commission Expires: ———

Subpart N—Remedies and Penalties

§ 250.200 Remedies.

(a)(1) Whenever the Regional Director determines, on the basis of sufficient evidence, that a violation of or failure to comply with any provision of the Act, or any provision of a lease, license, or permit issued pursuant to the Act, or any provision of any regulation issued under the Act (hereinafter referred to as "violation") probably occurred and that such violation continued beyond actual notice of the violation and the expiration of any reasonable period allowed for corrective action, the Regional Director may direct the preparation of a case file and shall appoint an employee of MMS to serve as a Reviewing Officer. In making this determination, the Regional Director shall have the authority to summon witnesses, administer oaths, and issue orders to produce evidence. Chairmen of investigative panels appointed to investigate violations, accidents, or other matters shall also have such authority in conducting investigations.

(2) Notwithstanding any other provision of this subpart, the Regional Director may direct the preparation of a civil penalty case file in the event a violation has occurred and the granting of any time for correction would be unreasonable in that such correction is no longer useful or possible and the violation has resulted in increased risk to human safety or the environment, or actual harm occurred.

(3) The Reviewing Officer shall have no other responsibility, direct or supervisory, for the investigation or prosecution of the case.

(4) The Reviewing Officer shall decide each case on the basis of the evidence.

(5) The Reviewing Officer may administer oaths and issue subpoenas requiring the attendance of witnesses at hearings or for the taking of depositions and may issue orders to produce evidence.

(6) The Reviewing Officer may assess civil penalties and, when appropriate, recommend the initiation of criminal proceedings.

(b) If the Reviewing Officer determines that there is sufficient evidence that a violation probably occurred and that the violation continued beyond any notice of such failure and the expiration of any reasonable period allowed for corrective action, except as provided in paragraph (a)(2) of this section, the Reviewing Officer shall notify in writing the person alleged to have committed the violation (hereinafter referred to as "party") of the following:

(1) The alleged violation, citing the applicable provision of the Act, or the applicable term of a lease, license, or permit issued pursuant to the Act, or the applicable provision of a regulation or order issued under the Act upon which the action is based,

(2) The amount of penalty that appears would be appropriate in the event it is determined that the party is responsible for the alleged violation based upon the material then available to the Reviewing Officer,

(3) The party's right to examine the material in the case file and to have a copy of all written documents provided upon request, except those which would, in a civil proceeding, disclose or lead to the disclosure of a confidential informant, and

(4) The fact that, subject to the provisions of § 250.201, the party has a right to a hearing before the Reviewing Officer prior to any finding of fact regarding the alleged violation.

(c) A party has the right to be represented by counsel, qualified to practice before the Department under 43 CFR Part 1, at all stages of the proceeding. After receiving notification that a party is represented by counsel, the Reviewing Officer shall direct all further communications to the counsel.

§ 250.201 Hearings.

(a) Within 30 working days after receipt of a notice pursuant to § 250.200(b), the party may accomplish one of the following:

(1) Request a hearing before the Reviewing Officer,

(2) Provide any written evidence and arguments in lieu of a hearing, or

(3) Pay the amount specified in the notice.

(b) A request for a hearing before the Reviewing Officer shall be in writing and shall specify the particular issues which are in dispute. Failure to specify a nonjurisdictional issue will preclude its consideration except as the Reviewing Officer determines to be necessary or desirable in the interest of obtaining a fair resolution of the case.

(1) The Reviewing Officer may grant the party additional time to submit a request for a hearing.

(2) The Reviewing Officer shall promptly schedule all requested hearings to be held in the office of the Reviewing Officer or such other location as the Reviewing Officer may designate. The Reviewing Officer shall grant any delays or continuances which the Reviewing Officer determines to be necessary or desirable in the interest of obtaining a fair resolution of the case.

(c) Prior to a hearing, the party may examine all evidence in the case file except material that would disclose or lead to the disclosure of the identity of a confidential informant.

(d)(1) Confidential treatment shall be accorded to all or a portion of any document at the request of the person supplying the information if the information is as follows:

(i) Confidential financial information, trade secrets, or other material exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552),

(ii) Information required to be held in confidence by these regulations, or

(iii) Information that is otherwise exempt by law from disclosure.

(2) The person desiring confidential treatment of information shall submit a written request to the Reviewing Officer stating the reasons justifying nondisclosure.

(e) The Regional Director may, upon request of a party, transfer the case to another Reviewing Officer or direct that the hearing be held at a location other than that specified by the Reviewing Officer.

(f)(1) The testimony of any witness may be presented either through a personal appearance or through a written statement.

(2) A witness may be required to attend a hearing or deposition at a place

not more than 100 miles from the place of service.

(3) Witnesses subpoenaed shall be paid the same fees and mileage paid for similar services in the U.S. District Courts. These expenses shall be paid by the party at whose insistence the witness appears.

(4) Any witness who attends a hearing or the taking of a deposition at the request of the party, without having been subpoenaed to do so, shall be entitled to the same mileage and attendance fees paid to a subpoenaed witness. The witness fees and mileage shall be paid by the party at whose insistence the witness appears.

(5) In cases where an individual cannot be required to appear as a witness, the Reviewing Officer may move the hearing to the location of the desired witness, accept a written statement, or accept a stipulation in lieu of testimony.

§ 250.202 Hearing procedures.

(a) Material in the case file which is pertinent to the issues shall be presented to the party who may respond to or rebut this material. The party may offer any facts, statements, explanations, documents, sworn or unsworn testimony, or other items which bear on the issues or which may be relevant to the amount of the penalty to be assessed if the party is found to be guilty of the alleged violation. The Reviewing Officer may require the authentication of any written exhibit or statement.

(b) The party may request an opportunity to submit additional written testimony for consideration by the Reviewing Officer. The Reviewing Officer shall allow a reasonable time for submission of additional written testimony and shall specify the date by which it must be received.

(c) The Reviewing Officer may take notice of matters which are subject to a high degree of indisputability and are commonly known in the community or are ascertainable from readily available sources of known accuracy. Prior to taking notice of a matter, the Reviewing Officer shall give the party an opportunity to show why notice should not be taken. In any case in which such notice is taken, the Reviewing Officer shall place in the record a written statement on the matter of which notice was taken and the basis for taking such notice. The Reviewing Officer's statement shall indicate that the party consented to notice being taken or shall include a summary of the party's objections to notice being taken of a specific matter.

(d) In evaluating the evidence presented, the Reviewing Officer shall give due consideration to the reliability and relevance of each item of evidence but is not bound by strict rules of evidence.

(e)(1) A verbatim transcript of hearings before a Reviewing Officer need not be prepared. The Reviewing Officer shall prepare notes on the material and points raised by the party in sufficient detail to permit a full and fair review and resolution of the case should it be appealed.

(2) A party may, at its own expense, cause a verbatim transcript to be made. If a verbatim transcript is made and the Reviewing Officer's decision is appealed, the party shall submit a copy of the verbatim transcript with the appeal to the Director and to the Reviewing Officer for inclusion in the case file.

§ 250.203 Reviewing Officer's decision.

(a) The Reviewing Officer's decision shall be in writing and shall include the Reviewing Officer's conclusions and the basis for them. Any decision shall be based upon substantial evidence in the record. If the Reviewing Officer finds that there is not substantial evidence in the record establishing that the alleged violation occurred, or that the required notice of the alleged violation was not provided, or that the alleged violation did not continue after the termination of any period provided for the taking of corrective action, except as provided in § 250.200(a)(2), the Reviewing Officer shall dismiss the case and remand it to the Regional Director. A dismissal is without prejudice to the Regional Director's right to refile the case and have it reheard if additional evidence is obtained. A dismissal following a rehearing is final and with prejudice.

(b) The Reviewing Officer's decision shall contain a statement advising the party of the right to an administrative appeal to the Director pursuant to Part 290 of this Title. The party shall be advised that failure to submit an appeal within the prescribed time will bar its consideration and that failure to appeal on the basis of a particular issue will constitute a waiver of that issue in any subsequent proceeding. An appeal from any interim ruling of the Reviewing Officer shall be reserved and considered only at the time of and as part of an appeal from the Reviewing Officer's final decision.

§ 250.204 Appeals from Reviewing Officer's decision.

(a)(1) Any appeal from a decision of the Reviewing Officer, together with any supporting argument, shall be submitted by a party to the Director within 30 working days after the date of receipt of the decision. The appellant shall provide a copy of the notice of appeal and supporting brief to the Reviewing Officer. Except as provided in § 250.205, the only issues which will be considered on appeal are jurisdictional questions and those issues specified in the notice of appeal which were properly raised before the Reviewing Officer.

(2) The Reviewing Officer may extend the time allowed for filing an appeal if the party so requests within 30 working days after receipt of the decision.

(3) The failure to file a notice of appeal within the time prescribed (or as extended by the Reviewing Officer) shall result in the action of the Reviewing Officer becoming the final action of the U.S. Department of the Interior (DOI) in the case.

(b) A copy of all of the Reviewing Officer's comments on the appeal submitted to the Director shall be provided to the appellant.

(c)(1) The Director may affirm, reverse, or modify the Reviewing Officer's decision or remand the case for new or additional proceedings.

(2) The Director may increase, remit, mitigate, or suspend, in whole or in part, any penalty assessed by the Reviewing Officer.

(d) The Director's decision shall be in writing, and copies shall be provided to the appellant and the Reviewing Officer.

(e) Decisions issued under the regulations in this part may be appealed in accordance with the provisions of Part 290 of this title. The filing of an appeal with the Director or the DOI Board of Land Appeals shall not suspend the requirement for compliance with an order or decision issued under these regulations, except that payment of any civil penalty shall not be due until 30 working days after the Director's decision is received by the appellant.

§ 250.205 Reopening a case.

(a)(1) At any time prior to final MMS action in a civil penalty case, a party may petition to reopen the hearing on the basis of newly discovered evidence.

(2) Petitions to reopen a case must be in writing. Petitions shall describe the newly found evidence and state why the evidence would probably produce a different result favorable to the petitioner. The petitioner shall state whether the evidence was known to the petitioner at the time of the hearing and, if not, why the newly found evidence could not have been discovered during the original proceedings. The party shall submit the petition to the Reviewing

Officer and provide a copy to the Regional Director.

(3) The Reviewing Officer shall consider a petition to reopen a case unless an appeal has been filed. In those cases where an appeal has been timely filed, a petition to reopen a case shall be considered by the Director.

(4) A petition to reopen a case shall be granted only when the Reviewing Officer determines that the petition explains why newly found evidence that would have a direct and material bearing on the issue(s) of the case was not and could not have been produced at the time of the hearing. A decision on a petition to reopen a case shall be in writing and, if issued by the Reviewing Officer, may be appealed to the Director in accordance with § 250.203.

(b) The denial of a petition to reopen a case shall be final and may not be appealed in an action separate from the appeal of the case pursuant to § 250.203 or Part 290 of this title.

(c) The Regional Director may, on the basis of newly found evidence that would probably produce a different result, reopen a case at any time.

§ 250.206 Civil penalties.

(a)(1) The MMS Associate Director for Royalty Management shall collect civil penalties assessed by a Reviewing Officer, the Director, or DOI's Board of Land Appeals.

(2) Payment of a civil penalty shall be in accordance with instructions that accompany the bill sent to the party upon whom the penalty is imposed.

(b) Within 30 working days after receipt of the bill issued by the MMS Accounting Center, the party shall submit payment of the assessed penalty to the MMS Accounting Center or file an appeal in accordance with § 250.203. Failure to either make timely payment or file a timely appeal will result in the collection of the amount assessed plus interest from the date of assessment until the date of payment as determined by MMS. Interest shall be computed on a daily basis at the rate applicable under section 6651 of the Internal Revenue Code of 1954. Such failure may also result in the initiation of additional enforcement proceedings including, if appropriate, cancellation of the lease or permit under this part.

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Tuesday
March 18, 1986

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 1

Federal Acquisition Regulation (FAR); Ratification of Unauthorized Commitments; Proposed Rule

Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1

Federal Acquisition Regulation (FAR); Ratification of Unauthorized Commitments

AGENCIES. Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a change to Federal Acquisition Regulation (FAR) 1.602 to provide uniform guidance concerning ratification of unauthorized commitments.

COMMENTS: Comments should be submitted to the FAR Secretariat at the address shown below on or before May 19, 1986 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4041, Washington, DC 20405.

Please cite FAR Case 85–25 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

Federal agencies have expressed a need for guidelines concerning ratification of unauthorized commitments and have requested that coverage on this subject be included in the FAR.

B. Regulatory Flexibility Act

The proposed change to FAR 1.602 appears not to have a significant economic impact on a substantial number of small entities because very few ratification actions are necessary.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this proposed change to FAR 1.602 does not contain any additional information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Part 1

Government procurement.

Dated: March 12, 1986.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

PART 1—FEDERAL ACQUISITION REGULATION SYSTEM

Therefore, it is proposed that 48 CFR Part 1 be amended as follows:

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

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

2. Section 1.602–3 is added to read as follows:

1.602–3 Ratification of unauthorized commitments.

(a) *Definitions.*

"Ratification," as used in this subsection, means the act of approving an unauthorized commitment by an official who has the authority to do so.

"Unauthorized commitment," as used in this subsection, means an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government.

(b) *Policy.* (1) Subject to the limitations in paragraph (c) of this subsection, the head of the contracting activity, unless a higher level official is designated by the agency, may ratify an unauthorized commitment only if—

(i) The Government has obtained a benefit resulting from the unauthorized commitment;

(ii) The ratifying official could have granted authority to enter into a contractual commitment at the time it was made and still has the authority to do so; and

(iii) The resulting contract would otherwise have been proper if made by a contracting officer.

(2) The ratification authority in subparagraph (b)(1) may be delegated in accordance with agency procedures, but in no case shall the authority be delegated below the level of chief of the contracting office.

(3) Agencies should process unauthorized commitments using the ratification authority of this subsection instead of referring such actions to the General Accounting Office for resolution as "quantum meruit/quantum valebat" claims.

(4) Unauthorized commitments that would involve claims subject to resolution under the Contract Disputes Act of 1978 should be processed in accordance with Subpart 33.2, Disputes and Appeals.

(c) *Limitations.* The authority in subparagraph (b)(1) may be exercised only when—

(1) Supplies or services have been provided to and accepted by the Government;

(2) The contracting officer determines the price to be fair and reasonable;

(3) The contracting officer recommends payment and legal counsel concurs in the recommendation;

(4) Funds are available and were available at the time the unauthorized commitment was made; and

(5) The ratification is in accordance with any other limitations prescribed under agency procedures.

(d) *Agency procedures.* Cases that do not meet the above requirements, but appear to be meritorious, should be processed in accordance with any supplementary agency procedures governing the ratification of unauthorized commitments.

(e) *Nonratifiable commitments.* Cases that are not ratifiable under this subsection or agency procedures may be subject to resolution as recommended by the General Accounting Office under its claim procedure (GAO Policy and Procedures Manual for Guidance of Federal Agencies, Title 4, Chapter 2), or as authorized by FAR Part 50. Legal advice should be obtained in these cases.

[FR Doc. 86–5842 Filed 3–17–86; 8:45 am]

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Federal Register

Tuesday
March 18, 1986

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91, 121, and 135

Pilot Oxygen Mask Requirements; Withdrawal of Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, and 135

[Docket No. 23243; Ref. Notice No. 82-11]

Pilot Oxygen Mask Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of Notice of Proposed Rulemaking.

SUMMARY: This notice withdraws a notice of proposed rulemaking which proposed amendments to the pilot oxygen mask requirements applicable to operations under certain Federal Aviation Regulations. The proposal, if adopted, would have allowed the operation of airplanes to higher altitudes without requiring at least one pilot at the controls to wear and use an oxygen mask.

FOR FURTHER INFORMATION CONTACT: Larry Bedore, Project Development Branch (AFS-240), Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone (202) 472-4621.

SUPPLEMENTARY INFORMATION:

Background

On August 12, 1982, the FAA published Notice of Proposed Rulemaking (NPRM) No. 82-11, Pilot Oxygen Mask Requirements (47 FR 35146), which proposed amendments to certain sections of Parts 91, 121, and 135 of the Federal Aviation Regulations (FAR). The pertinent sections of those Parts specify maximum altitudes to which a pressurized aircraft may be operated without requiring at least one pilot to wear and use an oxygen mask. The availability of an approved quick-donning type of oxygen mask at each flight crewmember's station permits operation to another, higher maximum altitude above which at least one pilot must wear and use that mask. In operations conducted under Part 135 of the FAR, at least one pilot at the controls must wear and use an oxygen mask when conducting operations above 35,000 feet mean sea level, commonly referred to as flight level (FL 350). Under Parts 91 and 121 of the FAR, one pilot at the controls must wear and use an oxygen mask when conducting operations above FL 410.

Notice 82-11 proposed to allow an aircraft whose total pressure volume is 20,000 cubic feet or more to be operated up to and including FL 450 or the maximum certificated altitude of the aircraft, whichever is lower, without one pilot at the controls having to wear and use an oxygen mask. Aircraft whose total pressure volume is less than 20,000 cubic feet would not be allowed to operate above FL 410 without one pilot at the controls having to wear and use an oxygen mask.

Discussion of Comments

Sixteen public comments were received in response to Notice 82-11. In summary, thirteen commenters agree with the proposals, three disagree. The thirteen concurrences are from the Air Transport Association of America (ATA), Air Line Pilots Association (ALPA), National Business Aircraft Association, Inc. (NBAA), one air carrier, and various consultant, sales and service, corporate, charter, and air taxi organizations. Those not concurring are an aeronautical consultant, the Aerospace Industries Association of America, Inc. (AIA), and the United States Air Force (USAF).

ALPA comments that § 135.89(b)(2) should be amended to further describe an approved quick-donning type oxygen mask as one ". . . that can be placed on the face from the ready position within 5 seconds, supplying oxygen and properly secured and sealed." ALPA stated that this change would bring § 135.89 in line with mask requirements as essentially stated in current §§ 91.32 and 121.333 of the FAR.

The three commenters opposed to the proposed amendments raise the question of potentially severe physiological consequences resulting from high altitude decompression that possibly would incapacitate the flight crew and result in an accident. AIA states that despite the structural integrity of modern technology aircraft, rapid decompressions do occur. The theoretical 168 square-inch fuselage skin-panel rupture considered in Notice 82-11 does not consider a rupture in or near the vicinity of the cockpit nor bigger ruptures (e.g., door failure) that can and have occurred. AIA states that at 45,000 feet the pressure demand regulatory and quick-donning mask combination provide only marginal respiratory protection for the flight crew; the aerage time of useful consciousness at 45,000 feet is only 10-12 seconds.

The aeronautical consultant comments that should a penetration of the aircraft fuselage or windshield occur, and the crew compartment door is closed or closes, the crew compartment will decompress in a very short time, resulting in decreased flight crew performance capability or loss of consciousness.

The USAF states that its regulations for pressurized aircraft stipulate that above 41,000 feet through 45,000 feet, oxygen is required to be used by the pilot and must be immediately available to all other crewmembers at their duty stations. These requirements are based on physiological needs to preclude hypoxia and decompression effects. The USAF states that if depressurized, the time of useful consciousness at 35,000 feet is 30-60 seconds, 15-20 seconds at 40,000 feet, and 9-12 seconds at 43,000 feet. To avoid decompression sickness and loss of consciousness in the event of depressurizations resulting in aircraft ambient cabin altitudes of 41,000 through 45,000 feet, it is desirable for the pilot to prebreathe 100 percent oxygen for a minimum of 20 to 30 minutes to denitrogenate the body. The aircraft cabin volume and the quick-donning oxygen mask will not preclude adverse physiological effects in the altitude range 41,000 feet to 45,000 feet. USAF requirements make it clear that prebreathing 100 percent oxygen at ambient cabin altitude above 41,000 feet through 45,000 feet is essential to meet the minimum physiological requirements of the pilot in all USAF aircraft regardless of the volume of the Pressurized cabin and the quick-donning oxygen equipment provided.

Physiological and Operational Considerations

The FAA is concerned regarding the effects on crewmember performance in the event a rapid decompression occurs above FL 350. The technological advances in aircraft engines and airframe design has facilitated increased flight operations of modern turbojets in the high altitude stratum. Notwithstanding the technological accomplishments of the aviation industry, the aircraft is only one element to consider in the total operational environment. An equally important and esential element that must be considered is the finite physiological limit of the human body.

The body has a great capacity to adjust to its surroundings. It constantly makes adjustments for changes in external temperature; acclimates to barometric pressure variations from one habitat to another; and compensates for motion in space and postural changes in relation to gravity. The body performs all of these adjustments while meeting changing energy requirements for varying amounts of physical and mental activity.

In aviation, the demands upon the compensatory mechanisms of the body are numerous and of considerable magnitude. One of the environmental changes of greatest physiological

significance related to flight is a marked change in atmospheric pressure. In unpressurized aircraft, as altitude increases, the atmospheric pressure decreases and the body enters a physiological deficient zone where oxygen deficiency becomes an ever increasing problem. To overcome this deficiency and allow aircraft operations to be conducted at higher flight altitudes, aircraft cabins are pressurized to a cabin altitude lower than the aircraft flight altitude with the cabin altitude gradually increasing as the aircraft climbs to its cruise altitude, but generally not exceeding a cabin altitude of 8,000 feet. In the event a cabin depressurization occurs while flying at today's high operating altitudes, other methods are necessary to provide for a person's physiological needs. Supplying supplemental oxygen to the user at sufficient pressure to maintain the partial pressure of oxygen in the blood, due to the rapid reduction of pressure on the body, is one method. As ambient altitude increases, a greater positive oxygen pressure is required to enable the user's lungs to be pressurized with oxygen.

Ultimately, the increased oxygen pressure must be countered by some form of external body pressure garment which counters the increased internal body pressure. There is no alternative. Studies show that persons lacking oxygen under pressure at ambient altitudes above approximately 41,000 feet (tests at significantly higher altitudes pose an unacceptable risk and have not been performed), and lacking pressure garments at ambient altitudes above 45,000 feet, will become hypoxic and a lower ambient altitude must be attained or eventual loss of consciousness or death will result.

Hypoxia is the lack of adequate oxygen in the tissues of the body. When the state of oxygen deficiency is sufficient to impair functions of the brain and other organs, hypoxia becomes a definite threat to pilot performance and aviation safety. In pressurized aircraft, the exposure to higher altitudes as a result of loss of pressurization is of great concern. The period of time between an individual's sudden deprivation of oxygen at a given altitude (assuming that supplemental oxygen is not being used) and the onset of physical or mental impairment which prohibits rational action is considered the effective performance time (EPT) or is sometimes referred to as the time of useful consciousness. This period represents the time during which the individual can recognize the problem, establish a supplemental oxygen supply (don his/her oxygen mask) and/or initiate a descent to lower altitude. The EPT is primarily related to the aircraft's pressurized cabin altitude and the length of time for the cabin altitude to equal the flight altitude of the aircraft following depressurization, but is also influenced by individual tolerance and physical activity.

Tests conducted without the use of an oxygen mask (i.e., a "shirtsleeve" environment) show that, in sudden depressurizations to altitudes below 30,000 feet, the EPT may differ considerably from the time to unconsciousnes. Above 35,000 feet, the period between the EPT and time to unconsciousness becomes shorter and eventually coincides with the time it takes for the blood to circulate from the lungs to the brain. In a pressurized aircraft, the cabin altitude at the time of depressurization represents the "environmental condition" prior to exposure. In a rapid depressurization to 30,000 feet actual (flight) altitude, the average EPT would be about 1 minute. At 35,000 feet the average EPT is about 30 to 40 seconds. EPT in a depressurization at altitudes near 41,000 feet is reduced to 10 to 20 seconds. In studies using data obtained in altitude chamber tests conducted at ambient altitudes of about 41,000 feet or below, the expectations are that at 45,000 feet and above, the time of consciousness is about 10 seconds or less, and even if the pilot is able to don a mask successfully, a loss of useful consciousness will most likely occur. Consciousness may not be recovered for 2–3 minutes or more, depending upon rate of descent initiated by the conscious pilot. In depressurizations to altitudes between approximately 41,000 feet and 45,000 feet, if the pilot has not been breathing 100 percent oxygen for several minutes beforehand, the 80 percent nitrogen which exists in the lungs during pressurized flight will cause consciousness to be lost in about 10 seconds for most flight crewmembers even if an oxygen mask with 100 percent oxygen is donned at the instant of depressurization. Assuming that the oxygen mask was donned promptly in such a depressurization, this loss of consciousness will last briefly—perhaps 10 or 20 seconds for most individuals. Even such a brief loss of consciousness could be expected to be intolerable in most situations involving a depressurization, and recovery of control of the aircraft is questionable. These assumptions are based upon worst case scenarios where the pilot was not prebreathing 100 percent oxygen and may not necessarily reflect what has actually occurred during flight operations.

Reasons for Withdrawal

It was stated in Notice 82–11 that because of its large-volume cabin, a wide-body airplane (defined here as those airplanes whose total pressure volume is 20,000 cubic feet or more) can operate safely up to and including FL 450 or its maximum certificated altitude, whichever is lower, without requiring at least one pilot, seated at the controls, to wear and use an oxygen mask at all times above FL 450. The example cited to support this statement is based on an analysis of a hyhothetical, 168-square-inch pressure vessel rupture resulting in depressurization in approximately 3 minutes that allows the crew sufficient time to realize that an emergency has occurred, don their masks, and initiate an emergency descent that ensures the safety of the crew and passengers.

The assumption that any structural failure will not exceed the hypothetical example and that cabin volumes of 20,000 cubic feet or more ensure safety cannot be supported. As noted by AIA, rapid depressurization may be caused by other than a fuselage skin-panel rupture of 168 square inches. For example, a rapid depressurization of a DC–10 at 39,000 feet over New Mexico in 1973 as reported by the National Transportation Safety Board (NTSB) indicates that when an engine fan assembly disintegrated, fragments of the fan caused the loss of a 160 square-inch cabin window, as well as puncturing the lower fuselage skin in six areas, each area ranging between 170 and 540 square inches.

The NTSB accident report concerning the DC–10 aircraft depressurization over New Mexico in 1973 stated that the aircraft was at 39,000 feet, well below its maximum certificated altitude of 43,000 feet or the 45,000 feet maximum altitude proposed for wide-body aircraft in Notice 82–11. The first officer was in the passenger cabin; therefore, the captain was already wearing an oxygen mask. An emergency descent was initiated immediately following the engine fan assembly failure and yet the NTSB calculated a decompression profile which indicated that the aircraft depressurized to about 34,000 feet in 26 seconds. The loss of a passenger through the cabin window opening indicates the extent and immediacy of the depressurization. Calculations further indicate that aircraft occupants were exposed to altitudes above 30,000 feet for about 1 minute and to altitudes above 25,000 feet for more than 2 minutes. Five persons reported that they

became unconscious, two of which were flight attendants seated in the lower galley area.

The NTSB stated that there was evidence indicating that a significant pressure differential existed between the passenger cabin and the lower galley. The depressurization profile for the lower galley could have been significantly steeper and thus would have exposed the two galley occupants to an altitude above 35,000 feet. Overall, the extensive compartmentalization of the aircraft and its intricate interconnections may account, in part, for the disparity between the expected physiological effects on the aircraft occupants and those actually encountered.

This accident occurred under relatively fortuitous circumstances; the flight altitude of 39,000 feet was 4,000 feet below the maximum certificated altitude, and the captain was already wearing an oxygen mask. However, as noted above, the potential adverse physiological consequences become increasingly severe as altitude increases. Large cabin volume aircraft may appear to offer a relative degree of safety because of size alone, but it is not possible to quantify a cabin volume that ensures safety on that basis alone. A rapid depressurization above 41,000 feet, such as that cited above, could result in the incapacitation of both pilots with subsequent disastrous results.

Since 1977, more than 700 incidents involving pressurization problems have been reported to the FAA. It is probable that additional incidents have occurred and have not been reported. In 50 of the more than 700 incidents, emergency action was imperative to ensure the survival of the aircraft's occupants. Unfortunately, the reports of these more serious incidents are highly subjective and do not provide adequate data to substantiate a rule change to permit operations above FL 410 without at least one pilot at the controls wearing and using an oxygen mask secured, sealed, and supplying oxygen. Data regarding sudden or rapid depressurizations normally fail to show pilot reaction time, time until start of emergency descent, rate of increase in cabin altitude, maximum cabin altitude attained, and time required to reach an altitude at which supplemental oxygen was no longer required by the occupants. These data inadequacies thwart any rational assessment of regulatory options which would eliminate the need for at least one pilot at the controls to wear and use an oxygen mask at altitudes above FL 410 while providing, in the event of a rapid or explosive depressurization, the minimum safety standards necessary in the public interest for the operation of an air carrier.

It was also stated in Notice No. 82–11 that while it would take approximately 3 minutes for the cabin of a B–747 airplane to depressurize in the event of a 168-square-inch skin-panel rupture, many "business jet" airplanes have small, pressurized cabins of perhaps 1/50 the volume of a wide-body airplane. The failure of even a small (3 or 4-square-inch) fuselage skin area of a "business jet" could result in a rapid decompression to flight altitude in less than 10 seconds. Thus, the Part 135 requirement that at least one pilot at the controls wear and use an oxygen mask when operating above FL 350 should be retained in the interest of public safety.

The question of potentially severe physiological consequences resulting from high altitude depressurization in both large and small cabin volume aircraft warrants further consideration. The concerns expressed by those opposed to the proposals contained in Notice No. 82–11 prompted the FAA to reconsider the proposed amendments and supporting rationale. That reconsideration has led the FAA to conclusions different from those expressed in Notice No. 82–11. Clearly, sound technical and medical data and valid operational data are lacking to support any rulemaking which establishes cabin volume as the sole criterion which governs at which altitudes an oxygen mask should be worn, used, and supplying oxygen to at least one pilot at the controls.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, Notice No. 82–11 is withdrawn. This action does not preclude the FAA from considering rulemaking in the future or commit it to any future course of action on this subject.

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 21, 1983).

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

Authority: 49 U.S.C. 1354(A), 1355(A), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

Issued in Washington, D.C. on February 3, 1986.

William T. Brennan,

Acting Director of Flight Standards.

[FR Doc. 86–5841 Filed 3–17–86 8:45 am]

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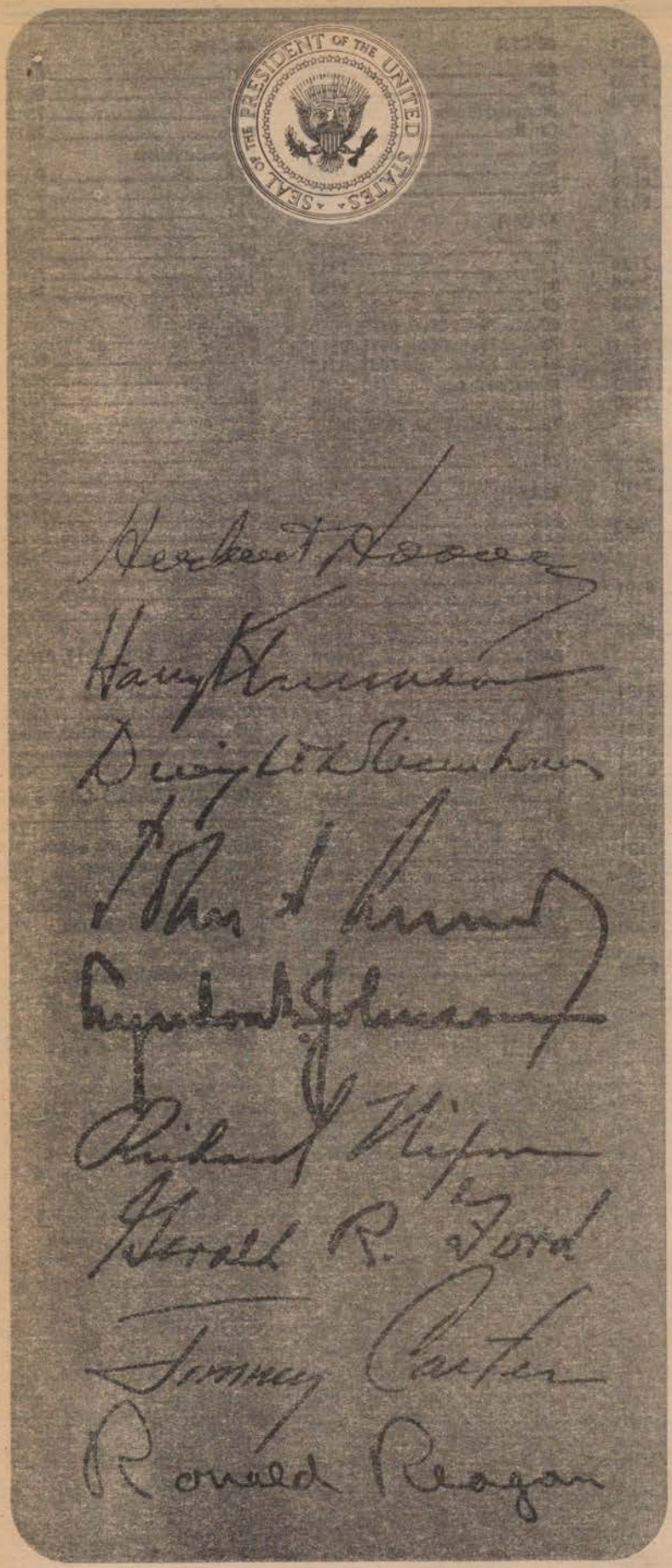

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