10-30-87
Vol. 52 No. 210
Pages 41685-41942

federal register

Friday
October 30, 1987

Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

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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.

WASHINGTON, DC

WHEN: November 20, at 9 a.m.
WHERE: National Archives and Records Administration, Room 410, 8th and Pennsylvania Avenue NW., Washington, DC.
RESERVATIONS: Robert D. Fox, 202–523–5239.

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Presidential Documents

Title 3—

The President

Executive Order 12612 of October 26, 1987

Federalism

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to restore the division of governmental responsibilities between the national government and the States that was intended by the Framers of the Constitution and to ensure that the principles of federalism established by the Framers guide the Executive departments and agencies in the formulation and implementation of policies, it is hereby ordered as follows:

Section 1. *Definitions.* For purposes of this Order:

(a) "Policies that have federalism implications" refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

(b) "State" or "States" refer to the States of the United States of America, individually or collectively, and, where relevant, to State governments, including units of local government and other political subdivisions established by the States.

Sec. 2. *Fundamental Federalism Principles.* In formulating and implementing policies that have federalism implications, Executive departments and agencies shall be guided by the following fundamental federalism principles:

(a) Federalism is rooted in the knowledge that our political liberties are best assured by limiting the size and scope of the national government.

(b) The people of the States created the national government when they delegated to it those enumerated governmental powers relating to matters beyond the competence of the individual States. All other sovereign powers, save those expressly prohibited the States by the Constitution, are reserved to the States or to the people.

(c) The constitutional relationship among sovereign governments, State and national, is formalized in and protected by the Tenth Amendment to the Constitution.

(d) The people of the States are free, subject only to restrictions in the Constitution itself or in constitutionally authorized Acts of Congress, to define the moral, political, and legal character of their lives.

(e) In most areas of governmental concern, the States uniquely possess the constitutional authority, the resources, and the competence to discern the sentiments of the people and to govern accordingly. In Thomas Jefferson's words, the States are "the most competent administrations for our domestic concerns and the surest bulwarks against antirepublican tendencies."

(f) The nature of our constitutional system encourages a healthy diversity in the public policies adopted by the people of the several States according to their own conditions, needs, and desires. In the search for enlightened public policy, individual States and communities are free to experiment with a variety of approaches to public issues.

(g) Acts of the national government—whether legislative, executive, or judicial in nature—that exceed the enumerated powers of that government under the Constitution violate the principle of federalism established by the Framers.

(h) Policies of the national government should recognize the responsibility of—and should encourage opportunities for—individuals, families, neighborhoods, local governments, and private associations to achieve their personal, social, and economic objectives through cooperative effort.

(i) In the absence of clear constitutional or statutory authority, the presumption of sovereignty should rest with the individual States. Uncertainties regarding the legitimate authority of the national government should be resolved against regulation at the national level.

Sec. 3. *Federalism Policymaking Criteria.* In addition to the fundamental federalism principles set forth in section 2, Executive departments and agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have federalism implications:

(a) There should be strict adherence to constitutional principles. Executive departments and agencies should closely examine the constitutional and statutory authority supporting any Federal action that would limit the policymaking discretion of the States, and should carefully assess the necessity for such action. To the extent practicable, the States should be consulted before any such action is implemented. Executive Order No. 12372 ("Intergovernmental Review of Federal Programs") remains in effect for the programs and activities to which it is applicable.

(b) Federal action limiting the policymaking discretion of the States should be taken only where constitutional authority for the action is clear and certain and the national activity is necessitated by the presence of a problem of national scope. For the purposes of this Order:

(1) It is important to recognize the distinction between problems of national scope (which may justify Federal action) and problems that are merely common to the States (which will not justify Federal action because individual States, acting individually or together, can effectively deal with them).

(2) Constitutional authority for Federal action is clear and certain only when authority for the action may be found in a specific provision of the Constitution, there is no provision in the Constitution prohibiting Federal action, and the action does not encroach upon authority reserved to the States.

(c) With respect to national policies administered by the States, the national government should grant the States the maximum administrative discretion possible. Intrusive, Federal oversight of State administration is neither necessary nor desirable.

(d) When undertaking to formulate and implement policies that have federalism implications, Executive departments and agencies shall:

(1) Encourage States to develop their own policies to achieve program objectives and to work with appropriate officials in other States.

(2) Refrain, to the maximum extent possible, from establishing uniform, national standards for programs and, when possible, defer to the States to establish standards.

(3) When national standards are required, consult with appropriate officials and organizations representing the States in developing those standards.

Sec. 4. *Special Requirements for Preemption.* (a) To the extent permitted by law, Executive departments and agencies shall construe, in regulations and otherwise, a Federal statute to preempt State law only when the statute contains an express preemption provision or there is some other firm and palpable evidence compelling the conclusion that the Congress intended preemption of State law, or when the exercise of State authority directly conflicts with the exercise of Federal authority under the Federal statute.

(b) Where a Federal statute does not preempt State law (as addressed in subsection (a) of this section), Executive departments and agencies shall construe any authorization in the statute for the issuance of regulations as authorizing preemption of State law by rule-making only when the statute expressly authorizes issuance of preemptive regulations or there is some other firm and palpable evidence compelling the conclusion that the Congress intended to delegate to the department or agency the authority to issue regulations preempting State law.

(c) Any regulatory preemption of State law shall be restricted to the minimum level necessary to achieve the objectives of the statute pursuant to which the regulations are promulgated.

(d) As soon as an Executive department or agency foresees the possibility of a conflict between State law and Federally protected interests within its area of regulatory responsibility, the department or agency shall consult, to the extent practicable, with appropriate officials and organizations representing the States in an effort to avoid such a conflict.

(e) When an Executive department or agency proposes to act through adjudication or rule-making to preempt State law, the department or agency shall provide all affected States notice and an opportunity for appropriate participation in the proceedings.

Sec. 5. *Special Requirements for Legislative Proposals.* Executive departments and agencies shall not submit to the Congress legislation that would:

(a) Directly regulate the States in ways that would interfere with functions essential to the States' separate and independent existence or operate to directly displace the States' freedom to structure integral operations in areas of traditional governmental functions;

(b) Attach to Federal grants conditions that are not directly related to the purpose of the grant; or

(c) Preempt State law, unless preemption is consistent with the fundamental federalism principles set forth in section 2, and unless a clearly legitimate national purpose, consistent with the federalism policymaking criteria set forth in section 3, cannot otherwise be met.

Sec. 6. *Agency Implementation.* (a) The head of each Executive department and agency shall designate an official to be responsible for ensuring the implementation of this Order.

(b) In addition to whatever other actions the designated official may take to ensure implementation of this Order, the designated official shall determine which proposed policies have sufficient federalism implications to warrant the preparation of a Federalism Assessment. With respect to each such policy for which an affirmative determination is made, a Federalism Assessment, as described in subsection (c) of this section, shall be prepared. The department or agency head shall consider any such Assessment in all decisions involved in promulgating and implementing the policy.

(c) Each Federalism Assessment shall accompany any submission concerning the policy that is made to the Office of Management and Budget pursuant to Executive Order No. 12291 or OMB Circular No. A–19, and shall:

(1) Contain the designated official's certification that the policy has been assessed in light of the principles, criteria, and requirements stated in sections 2 through 5 of this Order;

(2) Identify any provision or element of the policy that is inconsistent with the principles, criteria, and requirements stated in sections 2 through 5 of this Order;

(3) Identify the extent to which the policy imposes additional costs or burdens on the States, including the likely source of funding for the States and the ability of the States to fulfill the purposes of the policy; and

(4) Identify the extent to which the policy would affect the States' ability to discharge traditional State governmental functions, or other aspects of State sovereignty.

Sec. 7. *Government-wide Federalism Coordination and Review.* (a) In implementing Executive Order Nos. 12291 and 12498 and OMB Circular No. A–19, the Office of Management and Budget, to the extent permitted by law and consistent with the provisions of those authorities, shall take action to ensure that the policies of the Executive departments and agencies are consistent with the principles, criteria, and requirements stated in sections 2 through 5 of this Order.

(b) In submissions to the Office of Management and Budget pursuant to Executive Order No. 12291 and OMB Circular No. A–19, Executive departments and agencies shall identify proposed regulatory and statutory provisions that have significant federalism implications and shall address any substantial federalism concerns. Where the departments or agencies deem it appropriate, substantial federalism concerns should also be addressed in notices of proposed rule-making and messages transmitting legislative proposals to the Congress.

Sec. 8. *Judicial Review.* This Order is intended only to improve the internal management of the Executive branch, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

Ronald Reagan

THE WHITE HOUSE,
October 26, 1987.

[FR Doc. 87–25331
Filed 10–28–87; 4:33 pm]
Billing code 3195–01–M

Presidential Documents

Proclamation 5733 of October 28, 1987

National Adult Immunization Awareness Week, 1987

By the President of the United States of America

A Proclamation

We have good reason to set aside a week to remind ourselves of the benefits of adult immunization: The lives of many adults could be saved each year by inoculation with vaccines readily available and approved by the United States Food and Drug Administration. Vaccination against infectious diseases saves lives and lowers health care costs as well, as the Surgeon General has repeatedly reminded our Nation.

Many adults needlessly become victims of diseases that vaccination prevents. Influenza and pneumonia kill more than 70,000 adult Americans each year, in part because approximately 80 percent of people at high risk for influenza-related complications have not been vaccinated. Estimates are that more than 200,000 cases of hepatitis B occur in the United States every year, yet 70 percent of those who should be protected remain unimmunized. Between 10 and 15 percent of women of childbearing age—more than 11 million women—are unprotected against rubella. As many as seven million adults born after 1956 remain susceptible to measles, and the majority of Americans over 60 are not protected from tetanus and diphtheria.

In recognition of the importance of adult immunization and the benefits of public awareness, the Congress, by Senate Joint Resolution 168, has designated the week beginning October 25, 1987, as "National Adult Immunization Awareness Week" and authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning October 25, 1987, as National Adult Immunization Awareness Week. I call upon all government agencies and the people of the United States to observe this week with appropriate activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of October, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-25356
Filed 10-29-87; 10:44 am]
Billing code 3195-01-M

Rules and Regulations

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Friday, October 30, 1987

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 451

[Doc. No. 4806S]

Canning and Processing Peach Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Canning and Processing Peach Crop Insurance Regulations (7 CFR Part 451), effective for the 1988 crop year only, by extending the date for filing contract changes specified in the policy for insuring canning and processing peaches. The intended effect of this rule is to provide additional time in which to complete the actuarial transition for existing canning and processing peaches (Clingstone Peaches) in California to type IV under the proposed Stonefruit Endorsement, published in a separate document. The provisions currently contained in 7 Part 451 will be issued as an endorsement to the newly issued 7 CFR Part 401, General Crop Insurance Regulations (401.122, Stonefruit Endorsement), effective for the 1988 and succeeding crop years. 7 CFR Part 401 is a standard set of regulations and a master policy for insuring most crops authorized under the provisions of the Federal Crop Insurance Act, as amended, and substantially reduces: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATES: *Effective Date:* October 30, 1987.

Comment Date: Written comments, data, and opinions on this interim rule must be submitted not later than December 29, 1987, to be sure of consideration.

ADDRESS: Written comments on this interim rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is May 15, 1989.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program 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 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Section 16 of the Canning and Processing Peach Crop Insurance policy provides that any changes in the contract must be placed on file in the service office by October 31. The contract consists of the application, the policy, and the actuarial table. In order to provide sufficient time for completion of the workload involved in the actuarial transition for existing canning and processing peaches (Clingstone Peaches) in California to type IV under the proposed Stonefruit Endorsement, to be issued as an endorsement to the newly issued 7 CFR Part 401, General Crop Insurance Regulations (401.122, Stonefruit Endorsement), the contract change filing date must be extended from October 31 to November 31, effective for the 1988 crop year only.

FCIC is currently reviewing the actuarial tables for the regulations referred to herein to determine whether the adequacy of current actuarial structures and rate levels offered under the canning and processing peach crop insurance policy are consistent with sound actuarial principles and if not to make adjustments where necessary. The amount of work involved is such that these reviews will not be completed prior to the date for filing such actuarial data in the service offices for the counties involved unless the filing date is extended.

E. Ray Fosse, Manager, FCIC, has determined and certifies that an emergency situation exists which warrants publication of this rule without providing for a period for public comment before such publication. Without this review, the statutory mandate that the program be actuarially sound could not be met. The workload involved in these actuarial changes will not be completed in time to permit filing of these actuarial tables by the present contract change date of October 31.

There is not sufficient time to provide for public comment and implement these changes prior to October 31. It has been determined that the date by which such changes are required to be placed on file in the service office will be extended from October 31, 1987, until November 31, 1987, and made effective for the 1988 crop year only.

The changes in the actuarial tables affected by this rule may be beneficial in some instances and detrimental in others. All policyholders should be aware of the changes in the actuarial table affecting their individual crop insurance contract and of the additional time provided for FCIC to file such changes.

FCIC is soliciting public comment on this rule for 60 days after publication in the **Federal Register**. This rule will be scheduled for review in order that any amendment made necessary by public comment may be published in the **Federal Register** as quickly as possible.

Any comments received pursuant to this rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC., 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 451

Crop Insurance; Canning and processing peaches.

Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Canning and Processing Peach Crop Insurance Regulations, effective for the 1988 crop year only (7 CFR Part 451) in the following instances:

PART 451—[AMENDED]

1. The Authority citation for 7 CFR Part 451 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR § 51.7(d)16 is revised to read as follows:

§ 451.7 Application and policy.

* * * * *

(d) * * *

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by October 31 preceding the cancellation data (November 31 for the 1988 crop year only). Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

* * * * *

Done in Washington, DC., on October 15, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87–25128 Filed 10–29–87; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 657]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule with request for comments.

SUMMARY: Regulation 657 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period October 30, 1987 through November 5, 1987. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

DATES: Regulation 657 (§ 907.957) is effective for the period October 30, 1987, through November 5, 1987. Comments are due November 30, 1987.

ADDRESS: Interested persons are invited to submit written comments concerning the possible impact of volume regulations on small entities. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, Room 2085–S, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the office of the Docket Clerk during regular working hours.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 (7 CFR Part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

At the beginning of each marketing year, the Navel Orange Administrative Committee (NOAC) submits a marketing policy to the U.S. Department Of Agriculture (USDA) which discusses, among other things, the potential use of volume and/or size regulations for the ensuing season. The NOAC, in its 1987–88 season marketing policy, considered the use of volume regulation for the season. The USDA reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

There are approximately 123 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order, and approximately 4,065 producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The great majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

Although handlers and/or marketers are affected by issuance of weekly volume regulations, the intent of the Act is to benefit agricultural producers. The California-Arizona navel orange industry is characterized by a large number of growers located over a wide area. The production area is divided into four districts which span Arizona and part of California. The highest proportion of the production is located in District 1, Central California, which represented 84 percent of the total

production in 1986–87. District 2 is located in the southern coastal area of California and represented 13 percent of the 1986–87 production; District 3 is the desert area of California and Arizona, which represented 2 percent. The estimated production for the 1987–88 crop season is 49,000 cars (1 cars equals 1,000 cartons; 1 carton equals 37 ½ pounds).

The three basic outlets for California-Arizona navel oranges are the domestic fresh, export, and processing markets. The domestic (regulated) fresh market is the preferred market for California-Arizona navel oranges. It is estimated that 75 percent of the 1987–88 crop of 49,000 cars will be utilized in fresh domestic channels (36,600 cars), with the remainder being reported fresh (10 percent) or processed (15 percent). This compares to 47,621 cars shipped to fresh domestic markets in 1986–87, about 66 percent of the 1986–87 crop, totalling 71,874 cars.

Volume regulations issued under the authority of the Act and Marketing Order No. 907 are intended to provide benefits to both producers and consumers. Producers benefit in areas such as increased grower returns and improved market conditions. Reduced fluctuations in supplies and price result from pre-planned shipping levels, resulting in a more stable market. Consumers are assured of a steady supply of oranges in the market throughout the marketing season.

Benefits and costs of issuing regulations are difficult to quantify, as indicated in various studies regarding effects of marketing orders and criteria for measuring the effects. Although the information currently available to AMS is limited, the known costs to growers of implementing the regulations appear to be significantly offset when compared to the potential benefits or regulation.

The reporting and recordkeeping requirements under M.O. 907 are incurred by handlers of navel oranges. However, handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

If volume regulations were not to be used for the 1987–88 season, it is likely that most of these reporting and recordkeeping functions would still be carried out. The method of calculating the quantities of navel oranges for fresh shipments by handlers for any given week is based on information gathered over several previous weeks. Therefore, there is an incentive to keep and maintain records in anticipation of future implementation of regulation.

The foundation for the use of volume regulations under this marketing order is to foster market stability and enhance grower revenue. Prices for navel oranges, as well as other perishable agricultural commodities, tend to be relatively inelastic at the grower level. Thus, even a small variation in shipments can have a great impact on grower revenue. Under these circumstances, strong arguments can be advanced as to the benefits incurred by growers, particularly for smaller growers. Consequently, when weighing costs and benefits derived from the use of volume regulations, it seems highly probable that if actual data were available, the monetary benefit would far outweigh the costs. Therefore, it is the USDA's view that if a "significant economic impact on a substantial number of small entities" would be present, this impact would be positive rather than adverse.

The Fruit and Vegetable Division of the AMS, however, encourages the submission of comments on the potential economic impact upon small entities from all interested parties. The USDA's position on this certification of the regulatory action will be further evaluated in view of the applicable comments received.

This action is consistent with the marketing policy for 1987–88 adopted by the NOAC. The NOAC met publicly on October 27, 1987, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended by a vote of 8 to 2, a quantity of navel oranges deemed advisable to be handled during the specified week. The NOAC reports that the market for fresh navel oranges is good.

Based on consideration of supply and market conditions, and the evaluation of alternatives to the implementation of prorate regulations, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared purposes of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (navel).

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

PART 907—[AMENDED]

1. The authority citation for 7 CFR Part 907 continues to read as follows:

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

2. Section 907.957 is added to read as follows:

§ 907.957 Navel Orange Regulation 657.

The quantity of navel oranges grown in California and Arizona which may be handled during the period October 30, 1987, through November 5, 1987, are established as follows:

(a) District 1: 958,007 cartons;

(b) District 2: Unlimited cartons;

(c) District 3: 88,001 cartons;

(d) District 4: Unlimited cartons.

Dated: October 28, 1987.

Robert C. Keeney,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87–25325 Filed 10–29–87; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 910

[Lemon Regulation 585]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 585 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 265,855 cartons during the period November 1 through November 7, 1987. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 585 (§ 910.885) is effective for the period November 1 through November 7, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act", 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987–88. The committee met publicly on October 27, 1987, in Los Angeles, Calfiornia, to consider the current and prospective conditions of supply and demand and recommended, by an 11 to 1 vote, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market is good for large sized lemons, fair but improving for smaller sizes.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing Agreements and Orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

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

2. Section 910.885 is added to read as follows:

§ 910.885 Lemon Regulation 585.

The quantity of lemons grown in California and Arizona which may be handled during the period November 1 through November 7, 1987, is established at 265,855 cartons.

Dated: October 28, 1987.

Robert C. Keeney,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87–25327 Filed 10–29–87; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 945

[Amdt. No. 2]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Change in Handling Regulations To Limit Inspection Certificate Validity

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes a limit on the length of time for which inspection certificates required by the Federal marketing order for Idaho-Eastern Oregon potatoes shall be valid. Currently, there is no limit on the length of time for which inspection certificates remain valid for purposes of the handling regulation issued pursuant to the marketing order. Under certain circumstances, the condition of potatoes can deterioriate rapidly. The action will require handlers to obtain another inspection on potatoes not shipped from the production area within four days of the issuance of an inspection certificate. The purpose of this requirement is to help assure the condition of potatoes in the marketplace. This action is based on a unanimous recommendation of the Idaho-Eastern Oregon Potato Committee. The committee works with the Department in administering the marketing order.

EFFECTIVE DATE: October 30, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V Division, AMS, USDA, P.O. Box 96458, Room 2523–S, Washington, DC 20090–6456; telephone 202–447–5697.

SUPPLEMENTARY INFORMATION: This action is being issued under Marketing Order No. 945, as amended, regulating the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon (the order). This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the "Act." The authority for the action is contained in § 945.65(c) of the order, which provides that for purposes of the inspection and certification requirements of the order, the length of time for which an inspection certificate is valid may be established by the committee with the approval of the Secretary.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been designated as a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such action in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 71 handlers of Idaho-Eastern Oregon potatoes will be subject to regulation under this marketing order during the

current season. In addition, there are about 3,400 producers in the production area. The majority of these handlers and producers may be classified as small entities as defined by the Small Business Administration (SBA). The SBA defines small agricultural service firms, which would include handlers, as those whose gross annual receipts are less than $3.5 million and small agricultural producers as those having average annual gross revenues for the last three years of less than $100,000 (13 CFR 121.2)

A proposal inviting comments on this action was published in the **Federal Register** on September 8, 1987 (52 FR 33834). Interested persons were invited to submit comments until September 28, 1987. No comments were received.

This action will provide that inspection certificates for potatoes shipped outside the production area will not be valid for meeting the requirements of the handling regulation unless the inspection certificate is issued within four days of shipment of such potatoes. The industry has experienced some problems with poor condition potatoes arriving in the marketplace. This action is intended to improve the condition of potatoes in the marketplace.

Shipments of consistently good quality and condition potatoes improve industry returns by increasing buyer confidence. Experience has shown that less desirable potatoes drive the price down for all shipments regardless of quality and condition.

The condition of potatoes can deteriorate rapidly after they are removed from a controlled temperature and moisture environment and exposed to extreme cold or hot temperatures. Condition defects are defects which are subject to change during shipment and storage, such as discoloration, bruising, and firmness. According to the committee, potatoes sometimes sit on shippers' loading docks outside of controlled storage waiting for transportation for up to 10 days after they are inspected and certified as meeting order quality and condition requirements. Currently, such potatoes do not have to be inspected and certified again as meeting the condition requirements established under the order even though the condition of the potatoes may deteriorate.

A time limitation on the validity of inspection certificates for potatoes being shipped from the production area would help prevent the shipment of potatoes which have deteriorated in condition after inspection, and thereby help assure the condition of potatoes in the marketplace. This should help provide potatoes that are more appealing and desirable to the consumer. The end result will provide greater economic returns to growers and handlers of Idaho-Eastern Oregon potatoes.

Exemptions to the inspection and certification requirements of the order would continue to be available to handlers. Shipments of potatoes for canning, freezing, and other processing are exempt from such requirements. Also, each handler may ship up to five hundredweight of potatoes, except yellow fleshed Finnish-type potatoes, any day without regard to the quality, maturity, pack, inspection and assessment requirements of the program. Handlers of yellow fleshed Finnish-type potatoes may ship up to 200 hundredweight per day of such potatoes free from the inspection, quality, maturity and pack requirements of the order. Exemptions to the maturity requirements also are authorized under certain circumstances.

On the basis of the foregoing, the impact of this change on growers and handlers is expected to be positive and benefit the Idaho-Eastern Oregon potato industry as a whole. Additional costs will be incurred for new inspections when potatoes are not shipped within four days from the date of the original inspection. However, the anticipated benefits of assuring good quality and condition potatoes and thus increasing consumer confidence in the product should outweigh the potential additional costs of this final rule.

After consideration of the information and recommendation submitted by the committee, the information in the proposal, and other information, it is hereby found and determined that this action, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** in that: (1) The 1987 harvest and shipment of Idaho-Eastern Oregon potatoes has already begun, and this action should be effective for as much of the current season as possible to assure the condition of potatoes in the marketplace; and (2) the provisions in this final rule are the same as those in the proposal, and handlers are prepared to operate in accordance therewith.

List of Subjects in 7 CFR Part 945

Marketing agreements and orders, Potatoes, Idaho, Oregon.

For the reasons set forth in the preamble, 7 CFR Part 945 is amended as follows:

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR Part 945 continues to read as follows:

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

2. Section 945.341 is amended by adding paragraph (d)(3)to read as follows:

§ 945.341 Handling regulation (Amendment No. 2).

* * * * *

(d) * * *

(3) Inspection certificates for potatoes to be shipped outside the area of production which are required by this section must be issued within four days of such shipment. Otherwise, such potatoes can only be shipped outside the area of production if another inspection is performed and the potatoes are certified as meeting the minimum grade, size, maturity, and pack requirements specified in paragraphs (a), (b), and (c) of this section and if the potatoes are then shipped within the four day period specified above.

* * * * *

Dated: October 26, 1987.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87–25156 Filed 10–29–87; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Parts 906, 910, 919, 920, 922, 926, 927, 928, 929, 958, and 966

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Orders 906, 910, 919, 920, 922, 926, 927, 928, 929, 958, and 966 for the respective 1987–88 fiscal year for each order. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATES: April 1, 1987–March 31, 1988 (§§ 922.227, and 926.227); July 1, 1987–June 30, 1988 (§§ 919.226, 927.227, 928.217, and 958.231); August 1, 1987–July 31, 1988 (§§ 906.227, 910.225, 920.203, 966.225); and September 1, 1987–August 31, 1988 (§ 919.228).

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and

Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456; telephone 202–447–5697.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order Nos. 906, 910, 919, 920, 922, 926, 927, 928, 929, 958, and 966 (7 CFR Parts 906, 910, 919, 920, 922, 926, 927, 928, 929, 958, and 966), as amended, regulating the handling of citrus grown in Texas; lemons grown in California and Arizona; peaches grown in Colorado; kiwifruit grown in California; apricots grown in Washington; Tokay grapes grown in California; winter pears grown in Washington, Oregon, and California; papayas grown in Hawaii; cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in New York; onions grown in Idaho and Oregon; and tomatoes grown in Florida. These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 22 handlers of Texas citrus, 85 handlers of California-Arizona lemons, 32 handlers of Colorado peaches, 65 handlers of California kiwifruit, 56 handlers of Washington apricots, 14 handlers of California Tokay grapes, 96 handlers of Oregon, Washington, California winter pears, 100 handlers of Hawaiian papayas, 31 handlers of cranberries, 23 handlers of Idaho-Eastern Oregon onions, and 103 handlers of Florida tomatoes. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The great majority of handlers of these commodities may be classified as small entities.

Each marketing order requires that the assessment rate for a particular fiscal period shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the Department of Agriculture for approval. The members of administrative committees are handlers and producers of the regulated commodities. This is appropriate because they are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings; thus all directly affected persons have an opportunity to participate and provide input.

While this action may impose some additional costs on handlers, including small entities, the costs are in the form of uniform assessments on all handlers which do not impose a significant economic impact on the small entities involved.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity (e.g., pounds, tons, boxes, cartons, etc.). That rate is applied to actual shipments to produce income sufficient to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited in order that the committees will have funds to pay their expenses.

Based on the foregoing, the Secretary finds that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and to engage in public rulemaking procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553). It is found that the specified expenses and assessment rates will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Parts 906, 910, 919, 920, 922, 926, 927, 928, 929, 958, and 966

Marketing agreements and orders, Oranges, Grapefruit (Texas) Lemons (California-Arizona), Peaches (Colorado), Kiwifruit (California), Apricots (Washington), Grapes (California), Winter Pears (Oregon-Washington-California), Papayas (Hawaii), Cranberries (Massachusetts-Rhode Island-Connecticut-New Jersey-Wisconsin-Michigan-Minnesota-Oregon-Washington-New York), Onions (Idaho-Oregon), Tomatoes (Florida).

For the reasons set forth in the preamble, §§ 906.227, 910.225, 919.226, 920.203, 922.227, 926.227, 927.227, 928.217, 929.228, 958.231, and 966.225 are added as follows:

1. The authority citation for 7 CFR Parts 906, 910, 919, 920, 922, 926, 927, 928, 929, 958, and 966 continues to read as follows:

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

2. New §§ 906.227, 910.225, 919.226, 920.203, 922.227, 926.227, 927.227, 928.217, 929.228, 958.231, and 966.225 are added (the following sections prescribe annual expenses and assessment rates and will not be published in the Code of Federal Regulations):

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

§ 906.227 Expenses and assessment rate.

Expenses of $857,400 by the Texas Valley Citrus Committee are authorized, and an assessment rate of $0.10 per 7/10 bushel carton of assessable oranges or grapefruit is established for the fiscal period ending July 31, 1988. Unexpended funds may be carried over as a reserve.

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

§ 910.225 Expenses and assessment rate.

Expenses of $695,000 by the Lemon Administrative Committee are authorized and an assessment rate of $0.045 per carton of assessable lemons is established for the fiscal year ending July 31, 1988. Unexpended funds may be carried over as a reserve.

PART 919—PEACHES GROWN IN MESA COUNTY, COLORADO

§ 919.226 Expenses.

Expenses of $683 by the Administrative Committee are authorized for the fiscal year ending June 30, 1988. Unexpended funds may be carried over as a reserve.

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

§ 920.203 Expenses and assessment rate.

Expenses of $112,618 by the Kiwifruit Administrative Committee are authorized and an assessment rate of $0.0125 per tray or equivalent is established for the fiscal year ending July 31, 1988. Unexpended funds may be carried over as a reserve.

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

§ 922.227 Expenses and assessment rate.

Expenses of $5,802 by the Washington Apricot Marketing Committee are authorized, and an assessment rate of $1.25 per ton of assessable apricots is established for the fiscal year ending March 31, 1988. Unexpended funds may be carried over as a reserve.

PART 926—TOKAY GRAPES GROWN IN SAN JOAQUIN COUNTY, CALIFORNIA

§ 926.227 Expenses and assessment rate.

Expenses of $55,050 by the Tokay Industry Committee are authorized, and an assessment rate of $0.16 per 23 pound lug of grapes is established for the fiscal year ending March 31, 1988. Unexpended funds may be carried over as a reserve.

PART 927—WINTER PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

§ 927.227 Expenses and assessment rate.

Expenses of $3,396,563 by the Winter Pear Control Committee are authorized, and an assessment rate of $0.30 per standard box, or equivalent, of pears is established for the fiscal period ending June 30, 1988. In addition, a supplemental assessment rate of $0.16 per standard box, or equivalent, of Comice variety pears is established for the same fiscal period for promotion. Unexpended funds may be carried over as a reserve.

PART 928—PAPAYAS GROWN IN HAWAII

§ 928.217 Expenses and assessment rate.

Expenses of $628,140 by the Papaya Administrative Committee are authorized, and an assessment rate of $0.007 per pound of assessable papayas is established for the fiscal year ending June 30, 1988. Unexpended funds may be carried over as a reserve.

PART 929—CRANBERRIES GROWN IN STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

§ 929.228 Expenses and assessment rate.

Expenses of $154,400 by the Cranberry Marketing Committee are authorized, and an assessment rate of $0.043 per 100-pound barrel of cranberries is established for the fiscal year ending August 31, 1988. Unexpended funds may be carried over as a reserve.

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

§ 958.231 Expenses and assessment rate.

Expenses of $802,000 by the Idaho-Eastern Oregon Onion Committee are authorized, and an assessment rate of $0.09 per hundredweight of assessable onions is established for the fiscal period ending June 30, 1988. Unexpended funds may be carried over as a reserve.

PART 966—TOMATOES GROWN IN FLORIDA

§ 966.225 Expenses and assessment rate.

Expenses of $763,500 by the Florida Tomato Committee are authorized and an assessment rate of $0.015 per 25-pound container of tomatoes is established for the fiscal period ending July 31, 1988. Unexpended funds may be carried over as a reserve.

Dated: October 26, 1987.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87-25155 Filed 10-29-87; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Parts 982, 984, and 989

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Order Nos. 982, 984, and 989 for the 1987–88 fiscal year for each order. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATES: July 1, 1987—June 30, 1988 (§ 982.332); August 1, 1987—July 31, 1988 (§ 984.339); August 1, 1987—July 31, 1988 (§ 989.338).

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Room 2523, South Building, F&V, AMS, USDA, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order Nos. 982, 984, and 989 (7 CFR Parts 982, 984, and 989), as amended, regulating the handling of filberts/hazelnuts grown in Oregon and Washington, walnuts grown in California and raisins produced from grapes grown in California. These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has considered and economic impact on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are an estimated 22 handlers of Oregon-Washington filberts/hazelnuts, 59 handlers of California walnuts, and 23 handlers of California raisins subject to regulation under these marketing orders, and approximately 1,100 producers of Oregon-Washington filberts/hazelnuts, 8,000 producers of California walnuts and 5,000 producers of California raisins. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose gross annnual receipts are less than $3,500,000. The great majority of handlers and producers of filberts/hazelnuts, walnuts, and raisins may be classified as small entities.

Each marketing order requires that the assessment rate for a particular marketing year shall apply to all assessable commodities handled from

the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the Department of Agriculture for approval. The members of committees are handlers and producers of the regulated commodities. This is appropriate because they are familiar with the committees' needs and with the costs for goods, services and personnel in their local areas, and are thus in a position of formulate appropriate budgets. The budgets are formulated and discussed in public meetings, thus all directly affected persons have an opportunity to participate and provide input.

While this action may impose some additional costs on handlers, including small entities, the costs are in the form of uniform assessments on all handlers which do not impose a significant economic impact on the small entities involved.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity (e.g. pounds, tons, cartons, etc.). That rate is applied to actual shipments to produce income sufficient to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts and expenses are incurred on a continuous basis, therefore, budget and assessment rate approvals must be expedited in order that the committees will have funds to pay their expenses.

Based on available information, the Administrator of the Agricultural Marketing Service has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, the Secretary finds that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and to engage in public rulemaking procedures with respect to this action, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553). It is found that the specified expenses and assessment rates will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Parts 982, 984, and 989

Marketing agreements and orders, Oregon, Washington, Filberts/Hazelnuts, California, Walnuts, Raisins.

For the reasons set forth in the preamble, §§ 982.332, 984.339, and 989.338 are added as follows:

1. The authority citation for 7 CFR Parts 982, 984, and 989 continues to read as follows:

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

2. Sections 982.332, 984.339, and 989.338 are added to read as follows (the following sections prescribe the annual expenses and assessment rates and will not be published in the Code of Federal Regulations):

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

§ 982.332 Expenses and assessment rate.

Expenses of $386,590 by the Filbert/Hazelnut Marketing Board are authorized, and an assessment rate of $14.00 per ton of filberts/hazelnuts is established for the marketing year ending June 30, 1988. Unexpended funds may be carried over as a reserve.

PART 984—WALNUTS GROWN IN CALIFORNIA

§ 982.339 Expenses and assessment rate.

Expenses of $1,280,936 by the Walnut Marketing Board are authorized, and an assessment rate of $0.007 per kernelweight pound of merchantable walnuts is established for the marketing year ending July 31, 1988. Unexpended funds may be used temporarily during the first five months of the subsequent marketing year, but must be made available to the handlers from whom collected within that period.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

§ 989.338 Expenses and assessment rate.

Expenses of $325,000 by the Raisin Administrative Committee are authorized, and an assessment rate payable by each handler in accordance with § 989.80 of $1.25 per ton of assessable raisins is established for the crop year ending July 31, 1988. Any unexpended funds from that crop year shall be credited or refunded to the handler from whom collected.

Dated: October 26, 1987.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87–25154 Filed 10–29–87; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Part 1910

Credit Reports (Individual)

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding credit reports on individuals. The circumstance requiring this action is a change in the method of ordering credit reports for individual applicants and applicants and their spouse. The effect of this action is to reduce the cost of ordering credit reports on applicants.

EFFECTIVE DATE: October 30, 1987.

FOR FURTHER INFORMATION CONTACT: Reginal D. Rountree, Loan Officer, Single Family Housing Processing Division, Farmers Home Administration, USDA, Room 5346, South Agricultural Building, 14th and Independence Avenue, SW., Washington, DC 20250, telephone: (202) 475–4209.

SUPPLEMENTARY INFORMATION: This proposed action had been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be exempt from those requirements because to the extent, it involves more than only internal Agency management it results in a lower pass-through cost to applicants for loans with no adverse impact on the Government. At the present time, FmHA County Office employees are not authorized to order joint credit reports on an applicant and spouse from the credit report contractor. Instead, two more costly individual credit reports are being ordered. This action will permit the FmHA County Office to order credit reports on individual applicants and joint credit reports on an applicant and spouse for rural housing loans thus reducing the cost associated with credit reports.

It is the policy of this department to publish for comment rules relating to public property, loans, grants, benefits, or contracts not withstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves only internal Agency management a reduction in costs to applicants with no increase to the Government and is a matter involving contracts. Therefore, publication for comment is unnecessary.

This activity impacts two programs listed in the Catalog of Federal Domestic

Assistance (under numbers 10.405, Farm Labor Housing Loans and Grants and 10.420, Rural Self-Help Housing Technical Assistance, which are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR 3015, Subpart V, 48 FR 29112, June 24, 1983.

The other programs this activity impacts, Low Income Housing Loans (10.410), Very Low Income Housing Repair Loans and Grants (10.417), and (10.421) Indian Tribes and Tribes and Tribal Corporation Loans, are excluded from the scope of Executive Order 12372.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FMHA that this action does not constitute a major Federal action signficantly 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.

List of Subjects in 7 CFR Part 1910

Administrative practice and procedure, Credit, Government contracts, Reporting and recordkeeping requirements.

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

PART 1910—GENERAL

1. The authority citation for Part 1910 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

2. Section 1910.52 is amended by revising paragraph (a) to read as follows:

§ 1910.52 General.

(a) FmHA obtains credit reports from credit reporting companies (contractors) listed in Exhibit A of this subpart (available in any FmHA office) authorized by the contracting Officer, FmHA. County Supervisors are cautioned to order only from those firms. Furthermore, special reports, supplemental employment reports, commercial credit reports, and special services are not authorized.

* * * * *

3. Section 1910.53 is amended by revising paragraph (d) to read as follows:

§ 1910.53 Policy.

* * * * *

(d) The County Supervisor will determine when credit reports will be ordered for both the applicant and co-applicant except as indicated in paragraph (g) of this section, credit reports will always be ordered when the income of both applicant and co-applicant are needed to show repayment ability. If the applicant and co-applicant are not married, then two individual credit reports will be ordered. If the applicant and co-applicant are married, then a joint report will be ordered.

* * * * *

4. Section 1910.54 is amended by redesignating current paragraph (f) through (j) as paragraphs (g) through (k) and by adding a new paragraph (f) to read as follows:

§ 1910.54 Definitions.

* * * * *

(f) "Joint Report" is a report providing information on applicant and spouse. It may be supplemented by "antecedent" and/or "supplemental credit reference" reports to provide all the information required by the 2-year report period.

* * * * *

5. Section 1910.55 is amended by revising paragraph (a) to read as follows:

§ 1910.55 Credit reporting company requirements.

(a) The contractor must provide all credit and public record information available for the report period as defined in 1910.54(h) of this subpart.

* * * * *

6. Section 1910.59 is revised to read as follows:

§ 1910.59 Type of credit report to be ordered.

Pursuant to the Equal Credit Opportunity Act (ECOA), credit reporting companies will maintain credit information in three different forms on a married couple: individual accounts of each spouse; joint accounts covering both spouses; and, undesignated accounts (those accounts not designated by the credit grantor as either individual of joint accounts). "Joint" report will be ordered on applicant and spouse. If credit report information is needed on other persons to complete the credit investigation, a separate "individual" report request, which will be paid by the applicant, is prepared for each person as opposed to the more costly "special services" reports. See § 1910.53 (d) of this subpart for requirements concerning when two "individual" credit reports must be ordered.

7. Section 1910.60 is amended by revising paragraph (c) to read as follows:

§ 1910.60 Processing order tickets.

* * * * *

(c) For both "individual" and "joint" reports the applicant as defined in 1910.54(b) of this subpart must complete in the "Subject" blocks the "Former Name," "Previous Residence Address" and "Length of residence." If an applicant has resided less than 2 years at the present address, the "Subject Previous Residence Address" block must be completed so that the contractor will know where to obtain an antecedent report.

* * * * *

Date: September 28, 1987.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 87–25239 Filed 10–29–87; 8:45 am]

BILLING CODE 3410–07–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 150

Minor Nomenclature Amendment; Statement of Organization and General Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations pertaining to Agreement States and Offshore Waters to correct an oversight that was made when a final rule regarding the NRC's organizational structure was recently published in the **Federal Register.** This amendment corrects references to a now defunct unit of the agency. The amendment is necessary to inform the public and affected licensees of the nomenclature changes.

EFFECTIVE DATE: October 30, 1987.

FOR FURTHER INFORMATION CONTACT: David L. Meyer (301) 492–7086.

SUPPLEMENTARY INFORMATION: On August 21, 1987, the NRC published a final rule that completely revised 10 CFR Part 1, "Statement of Organization and General Information," and made numerous conforming amendments to other parts of the 10 CFR to reflect chiefly nomenclature changes (52 FR 31601). Overlooked in that revision was a section in 10 CFR Part 150 that contained multiple references to a now defunct unit of the agency. This amendment corrects that oversight.

Because this amendment deals solely with agency organization and

procedures, the notice and comment provisions of the Administrative Procedure Act do not apply under 5 U.S.C. 553(b)(A). The amendment is effective upon publication in the Federal Register. Good cause exists to dispense with the usual 30-day delay in the effective date, because the amendment is of a minor and administrative nature dealing with the agency's organization.

Environmental Impact; Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

Regulatory Analysis

This final rule pertains solely to the organization of the NRC; therefore, no backfit analysis has been prepared.

List of Subjects in 10 CFR Part 150

Hazardous materials—transportation, Intergovernmental relations, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendment to 10 CFR Part 150.

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

1. The authority citation for Part 150 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. In § 150.20, paragraph (b)(1) is revised to read as follows:

§ 150.20 Recognition of Agreement State licenses.

* * * * *

(b) * * *

(1) Except as specified in paragraph (c) of this section, shall, at least 3 days before engaging in each such activity, file 4 copies of Form–241 (revised), "Report of Proposed Activities in Non-Agreement States," and 4 copies of its Agreement State specific license with the Regional Administrator of the U.S. Nuclear Regulatory Commission Regional Office listed in Appendix D of Part 20 of this chapter for the Region in which the Agreement State that issued the license is located. That Regional Administrator may authorize the licensee to begin the activity upon notification by telephone of the licensee's intent to conduct the proposed activity under the general license: *Provided, however,* That 4 copies of Form–241 (revised) and 4 copies of the Agreement State license shall be filed within 3 days after the telephone notification. The Regional Administrator of the U.S. Nuclear Regulatory Commission Regional Office may waive the requirement for filing additional Forms–241 (revised) during the remainder of the calendar year following the receipt of the initial Form–241 (revised) from a person engaging in activities under the general license provided in this section;

* * * * *

Dated at Bethesda, Maryland, this 23rd day of October 1987.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 87–25062 Filed 10–29–87; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 514

[No. 87–1098]

Federal Savings and Loan Insurance Corporation Industry Advisory Committee

Date: October 22, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule; request for comments.

SUMMARY: On August 10, 1987, the Federal Savings and Loan Insurance Corporation Recapitalization Act of 1987 (the "Recapitalization Act") was enacted into law as part of the Competitive Equality Banking Act of 1987. The Recapitalization Act creates a new advisory committee, to be called the Federal Savings and Loan Insurance Corporation Industry Advisory Committee ("Advisory Committee") by which means the savings and loan industry will become involved in the efforts to strengthen the Federal Savings and Loan Insurance Corporation.

The Federal Home Loan Bank Board ("Board") is adopting regulations that will establish the minimum procedures defining the responsibilities of its members. These regulations will also establish the method of operation and administration of the Advisory Committee. Although these regulations are effective immediately, the Board is soliciting postpromulgation comment on these regulations for possible subsequent amendment.

DATES: These regulations are effective October 30, 1987. Comments on the regulations must be received on or before November 30, 1987.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Richard J. Hotaling, Assistant Director, Office of District Banks, (202) 377–6715; Charles J. Szlenker, Attorney, Office of General Counsel, (202) 377–6664, Federal Home Loan Bank Board, at the above address.

SUPPLEMENTARY INFORMATION: Congress established the Advisory Committee by the enactment of the Recapitalization Act (Pub. L. No. 100–86, 101 Stat. 595, *to be codified at* 12 U.S.C. 1441 *et seq.*). The Recapitalization Act, at section 302(i), includes some minimal procedures and requirements for the operation of the Advisory Committee. However, any other rules or procedures governing the Advisory Committee's operations must be promulgated under Board authority because Congress excluded the Advisory Committee from the auspices of the Federal Advisory Committee Act. This Part supplements those minimum procedures and requirements and establishes a basic framework of procedures that will enable the Advisory Committee to begin functioning as soon as possible. The purpose of this regulation is to implement the intent of Congress through the timely commencement of Advisory Committee activities.

The Board finds that the interests of the public and the Federal Savings and Loan Insurance Corporation are served if the Advisory Committee begins functioning as soon as possible. Consequently, these rules will be effective immediately and without prior notice and opportunity for public comment. The Board is taking this action pursuant to 12 CFR 508.11 and 508.14. Nevertheless, the Board is offering a period of time for the public to

express its comments on these regulations. Pubic comment, even after the fact, affords the opportunity for members of the public to bring matters to the Board's attention that it may wish to address.

List of Subjects in 12 CFR Part 514

Federal Savings and Loan Insurance Corporation, Federal Savings and Loan Insurance Corporation Industry Advisory Committee.

Accordingly, the Board hereby amends Subchapter A by adding a new Part 514, Subchapter A, Chapter V, Title 12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER A—GENERAL

1. Subchapter A is amended by adding a new Part 514 to read as follows:

PART 514—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION INDUSTRY ADVISORY COMMITTEE

Sec.

Authority: Sec. 302, 101 Stat. 595, (12 U.S.C. 1441).

§ 514.1 Scope.

The following sections establish the minimum requirements and provide guidelines for the operation and administration of the Federal Savings and Loan Insurance Corporation Industry Advisory Committee established pursuant to the Recapitalization Act, Pub. L. No. 100–86, section 302(i), 101 Stat. 595.

§ 514.2 Definitions.

As used in this Part 514—

(a) *Advisory Committee.* The Federal Savings and Loan Insurance Corporation Industry Advisory Committee.

(b) *Bank.* A Federal Home Loan Bank.

(c) *Board.* A Federal Home Loan Bank Board.

(d) *Corporation.* The Federal Savings and Loan Insurance Corporation.

(e) *FADA.* The Federal Asset Disposition Association.

(f) *Insured savings institution.* A Federal savings and loan association, Federal savings bank, interim Federal association, a savings and loan association, a building and loan association, homestead association, a cooperative bank, or an interim state institution whose accounts are insured by the Federal Savings and Loan Insurance Corporation.

(g) *Officer.* The president, any vice-president, (including executive, senior, assistant, second vice-presidents or similarly titled officers), the secretary, the treasurer, the comptroller, or other employee performing similar duties for any insured savings institution. The term also includes the chairman of the board of directors of an insured savings institution if the chairman is authorized by the institution's charter or by-laws to participate in its operating management.

(h) *Sensitive information.* Any information or data whether contained in reports, records, schedules, forms, or other format, and belonging to an/or related to the Board, Corporation, or FADA, which has not become part of the body of public information. The term "sensitive information" includes any part of such information or data and any reproduction or informative synopsis of such information or data.

§ 514.3 Duties and responsibilities of the Advisory Committee.

The Advisory Committee shall perform the following functions:

(a) Review the reports and budgets of the Corporation prepared pursuant to section 402(k) of the National Housing Act (Pub. L. No. 100–86, sec. 306(i), 101 Stat. 603 (12 U.S.C. 1725(k)); and any other matter that the Board may present for its consideration.

(b) Confer with the Board on the reports, budgets, and other matters reviewed under paragraph (a).

(c) Prepare written comments and recommendations for the Board and the Coporation with respect to the reports, budgets, and matters reviewed under paragraph (a) of this section, which shall be submitted to the Board no later than 45 days following the close of each Advisory Committee meeting.

(d) Submit, not later than January 15th of each calendar year, a report to the Committee on Banking, Finance, and Urban Affairs of the United States House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the United States Senate, which report shall describe the Advisory Committee's activities during the preceding calendar year as well as any reports and recommendations made by the Advisory Committee to the Board or the Corporation.

§ 514.4 Membership.

(a) *Elected members.* The elected directors of the board of directors of each Bank shall, on an annual basis under such procedures as they may adopt, elect an individual to the membership of the Advisory Committee for a term of one year commencing February 1st of each calendar year and running through January 31st of the subsequent calendar year, provided that:

(1) Only current officers of insured institutions that are members of the electing Bank shall be eligible for election to the Advisory Committee membership; and

(2) The elected directors of each Bank, responsible for the election of Advisory Committee members pursuant to this Part, may provide for the recall of any elected Advisory Committe member elected in accordance with § 514.4, under such procedures as they may deem to be appropriate.

(b) *Chairperson.* The Chairman of the Board shall, on an annual basis, appoint an individual, who is currently an officer of an insured savings institution, to the Advisory Committee membership to hold the position of Chairperson for a term of one year commencing February 1st of each calendar year and running through January 31st of the subsequent calendar year, provided that:

(1) The Chairperson shall, during each term of office, be subject to removal by the Chairperson of the Board; and

(2) only individuals who are not Board members or employees, Corporation employees, or Bank directors are eligible for appointment as the Advisory Committee Chairperson.

(c) *Continuing eligibility.* Any member of the Advisory Committee, whether elected or appointed, who ceases to be an officer of an insured institution within a term of office shall cease to be a member of the Advisory Committee.

(d) *Other committee membership.* Current members of the Federal Savings and Loan Advisory Council shall be ineligible for election or appointment to the Advisory Committee unless they resign their membership on the Advisory Council.

(e) *Notification.* (1) *Elected members.* The president of each Bank completing an election pursuant to § 514.4 shall forward the name and address of the elected Advisory Committee member, along with a written certification of the election date and results, to the Director, Office of District Banks, of the Board by January 15th of the year the elected member's term begins.

(2) *Chairperson.* The Chairman of the Board shall inform the Board, in writing,

of the name, address, and date of appointment of the Advisory Committee Chairperson, by January 15th of the year the term commences.

(f) *Initial term.* The term of office of any member of the Advisory Committee, whether elected or appointed on or before January 31, 1988, shall run through January 31, 1989.

§ 514.5 Vacancies.

(a) *Procedures.* Vacancies occurring on the Advisory Committee during the year shall be filled in the following manner as soon as practicable after the vacancy occurs:

(1) Any vacancy in the elected membership through resignation, recall, ineligibility, death, or incapacity of an elected member will be filled through an interim election by the appropriate Bank's elected board of directors for the remainder of the term; and

(2) A vacancy in the Chairperson position through resignation, removal, ineligibility, death, or incapacity will be filled by an interim appointment by the Chairman of the Board for the remainder of the term.

(b) *Notification*—(1) *Elected membership.* In the event a vacancy occurs in the Advisory Committee's elected membership, the President of the appropriate Bank shall promptly give written notification of the vacancy to the Director, Office of District Banks, of the Board.

(2) *Chairperson.* In the event a vacancy occurs in the Advisory Committee's Chairperson position, the Chairman of the Board shall promptly give written notification of the vacancy to the Board.

§ 514.6 Chairperson responsibilities and duties.

In addition to any other powers contained in this Part, or contained in any rules or procedures promulgated by the Advisory Committee, the Chairperson shall have the following duties and responsibilities:

(a) The Chairperson shall be the chief administrative officer of the Advisory Committee and shall call and preside over its meetings;

(b) The Chairperson shall be the Advisory Committee's liaison to the Board, the Corporation, and FADA;

(c) The Chairperson shall notify the Advisory Committee members and Board of the date, time, and place of any Advisory Committee meeting, but such notice shall be given not less than two weeks before such meeting is to be held;

(d) The Chairperson shall be the Advisory Committee's liaison with the Federal Savings and Loan Advisory Council in order to coordinate efforts and avoid, to the extent possible, unnecessary duplication of tasks, projects, and responsibilities by the Advisory Committee and the Advisory Council; and

(e) The Chairperson shall be responsible for the implementation of any security procedures and rules promulgated pursuant to § 514.10 of this part.

§ 514.7 Meeting procedures.

The meetings of the Advisory Committee shall be held in accordance with such procedures and guidelines as may be promulgated by the Advisory Committee, except that:

(a) No Advisory Committee meeting may be convened unless a quorum of at least seven members is present;

(b) All motions passed by the Advisory Committee shall be by a majority of the members present at a meeting;

(c) The Federal Advisory Committee Act shall be inapplicable to the conduct of meetings of the Advisory Committee, as provided in Pub. L. No. 100–86, section 302(i)(6), 101 Stat. 596; and

(d) Meetings may be called at any time at the discretion of the Chairperson, except that the Chairperson shall call a meeting when requested to do so by a majority of Advisory Committee members.

§ 514.8 Travel expense reimbursement.

Advisory Committee members shall serve without pay, but while engaged in the performance of their duties away from their homes or regular places of business, shall be allowed travel expenses, including per diem in lieu of subsistence, in the following manner:

(a) The Advisory Committee's Chairperson shall be reimbursed by the Board in accordance withthe Federal Travel Regulations, as amended, as authorized by section 5703 of Title 5, United States Code, for persons serving intermittently in the Government service, and in the manner prescribed by Board regulations and policies; and

(b) Each of the Advisory Committee's elected members shall be reimbursed by the Bank that elected such member in accordance with the procedures and policies of that Bank and in the manner prescribed by such Bank.

§ 514.9 Conflicts of interest and disclosure of sensitive information.

(a) Advisory Committee members shall not use their positions for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for themselves or another person.

(b) Advisory Committee members shall not use any sensitive information, as defined in this Part and obtained as a result of membership on the Advisory Committee, for private gain for themselves or another person, either directly or indirectly, or by counsel, recommendation, or suggestion to another person.

(c) Advisory Committee members shall not use their official positions to obtain from any person, group, or business or corporate entity any benefit and shall not solicit or accept from anyone anything of value as gift, gratuity, loan, entertainment, or favor or any other thing of monetary value for themselves or any other person where such solicitation or acceptance may result in, or create the appearance of, a conflict of interest.

(d) Advisory Committee members shall not, directly or indirectly, disclose, or permit the disclosure of, sensitive information to any person, group, or business or corporate entity unless authorized by the Board or the Corporation; and each Advisory Committee member shall take all reasonable measures to avoid unintentional or inadvertent disclosure of sensitive information.

§ 514.10 Advisory Committee responsibility for safeguarding sensitive information.

The Advisory Committee shall establish security procedures and rules to insure the safeguarding and protection of any sensitive information which the Advisory Committee may receive periodically from the Board, the Corporation, or FADA.

§ 514.11 Execution of agreement with Corporation.

In addition to any other provisions of this Part, the Corporation may require all Advisory Committee members, including the Chairperson, to execute an agreement, in a form prescribed by the Corporation, for the purpose of safeguarding sensitive information.

By the Federal Home Loan Bank Board.

John F. Chizzoni,

Assistant Secretary.

[FR Doc. 87–25249 Filed 10–29–87; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-85-AD; Amdt. 39-5763]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which currently requires structural inspections and repair, as necessary, of the aft lower cargo doorway frames. This amendment permits repairs to be made in accordance with Boeing Service Bulletin 737-53-1096, Revision 1, dated April 2, 1987, or later FAA-approved revision, and provides an optional terminating action for the inspections required by the AD.

EFFECTIVE DATE: December 17, 1987.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara J. Baillie, Airframe Branch, ANM-120S; telephone (206) 431-1927. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to revise AD 87-06-08, Amendment 39-5584; 52 FR 7566; March 12, 1987), which requires visual inspections and repair, as necessary, of cracks of the aft lower cargo doorway frames was published in the **Federal Register** on July 31, 1987 (52 FR 28564).

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

One comment was received from the Air Transport Association (ATA) of America on behalf of two ATA members. The member airlines requested that operators be allowed to repair cracks in accordance with the Boeing 737 Structural Repair Manual (SRM) in addition to the repair procedure outlined in Boeing Service Bulletin 737-53-1096 because of a 30-week lead time in getting the repair kits required by the service bulletin. The FAA has determined that the SRM repair is adequate on a temporary basis and has revised the AD accordingly. Terminating action, however, remains that outlined by Boeing Service Bulletin 737-53-1096, Revision 1. Repairs made in accordance with the SRM require continued repetitive inspections as outlined in the AD.

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

It is estimated that 475 airplanes of U.S. registry will be affected by this AD. Since this is an optional or relieving action there is no additional cost impact.

For these reasons, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 and significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Boeing Model 737 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

2. By revising AD 87-06-08, Amendment 39-5584 (52 FR 7566; March 12, 1987), by revising paragraph B. and adding a new paragraph E., to read as follows:

Boeing: Applies to all Model 737 series airplanes, listed in Boeing Service Bulletin 737-53-1096, dated July 24, 1986, certificated in any category.

To prevent rapid loss of cabin pressure resulting from undetected frame cracking, accomplish the following prior to the accumulation of 20,000 landings or within the next 1,000 landing after the effective date of this AD, whichever occurs later, unless previously accomplished within the last 3,000 landings.

A. Conduct a close visual inspection of the forward and aft body frames adjacent to the aft lower cargo door for cracks, in the areas identified in Boeing Service Bulletin 737-53-1096, dated July 24, 1986, or later FAA-approved revisions. Thereafter, repeat the close visual inspections at intervals not to exceed 4,000 landings.

B. If cracks are found, repair prior to further flight in accordance with Boeing Service Bulletin 737-53-1096, Revision 1, dated April 2, 1987, or later FAA-approved revisions, or the Boeing 737 Structural Repair Manual.

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

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Repair or modification of the forward and aft frames in accordance with Boeing Service Bulletin 737-53-1096, Revision 1, dated April 2, 1987, or later FAA-approved revision, constitutes terminating action for the repetitive inspections required by paragraph A. of this AD.

All persons affected by this directive who have not already received the appropriate service bulletin from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective December 17, 1987.

Issued in Seattle, Washington, on October 23, 1987.

Mel Yoshikami,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-25114 Filed 10-29-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-113-AD; Amdt. 39-5737]

Airworthiness Directives; McDonnell Douglas Model DC-10 and KC-10A Series Airplanes (Correction)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction of final rule.

SUMMARY: This action corrects Airworthiness Directive (AD) 87-21-04, applicable to McDonnell Douglas Model DC-10 and KC-10A series airplanes, which requires inspections and replacement, if necessary, of the inboard slat drive arm. The effective date for this AD was specified as October 14, 1987, but the final rule was not published in the **Federal Register** until October 19, 1987. This correction is necessary to establish an effective date which provides the affected operators with a sufficient period of time in which to comply with the rule.

EFFECTIVE DATE: October 30, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Kyle L. Olsen, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6321.

SUPPLEMENTARY INFORMATION: The FAA issued a final rule on September 17, 1987, applicable to McDonnell Douglas Model DC-10 and KC-10A series airplanes, which requires inspections and replacement, if necessary, of the inboard slat drive arm. When the AD was issued the FAA assigned an effective date of October 14, 1987, with the assumption that the final rule would be published in the **Federal Register** within 10 days after issuance. However, the AD was not published in the **Federal Register** until October 19, 1987, thereby depriving affected operators of a sufficient time in which to comply with the rule. Therefore, this correction establishes an effective date which provides the affected operators with an adequate period of time in which to comply with the rule.

Since this action only corrects an error in a final rule, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Correction

Pursuant to the Authority delegated to me by the Administer, the Federal Aviation Administration corrects § 39.19 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 40 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By correcting the effective date of AD 87-21-04, Amendment 39-5737 (52 FR 38747) September 17, 1987, to read as follows: "(upon publication in the **Federal Register**)".

This amendment becomes effective October 30, 1987.

Issued in Seattle, Washington on October 23, 1987.

Mel Yoshikami,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-25110 Filed 10-29-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket Number 86-ANE-34; Amdt. 39-5755]

Airworthiness Directives; Pratt & Whitney (PW) JT9D-7R4D, D1, E, E1, E4, G2, and H1 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires installation of containment shields in the fan case assembly and stronger material B-flange bolts on certain PW JT9D-7R4 turbofan engines prior to December 31, 1990. The AD is needed to prevent fragments of a failed fan blade from penetrating the fan case assembly which could result in damage to the aircraft.

DATES: *Effective*—December 17, 1987.

Compliance Schedule—As prescribed in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register as of December 17, 1987.

ADDRESSES: The applicable service bulletins (SB's) may be obtained from Pratt & Whitney, Publications Department, P.O. Box 611, Middletown, Connecticut 06457.

A copy of the SB's is contained in Rules Docket Number 86-ANE-34, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Diane Kirk, Engine Certification Branch, ANE-142, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7082.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include a new AD requiring the installation of containment shields in the fan case assembly and stronger material B-flange bolts on certain PW JT9D-7R4 turbofan engines, was published in the **Federal Register** on March 11, 1987, (52 FR 7443).

The proposal was prompted by four fan blade failure events on the JT9D-7R4G2 engines in which the blade fragments penetrated the fan case assembly forward of B-flange, three of which were uncontained. Field experience and analysis indicated that the energy of a failed fan blade may have the required force to penetrate the fan case assembly. Since fan blade failures result in uncontained events, the improvement of the containment capability of the fan case assembly in the B-flange area is necessary.

Since this condition is likely to exist in other engines of the same type design, the AD requires modification of the fan case assembly by incorporating containment shields forward and rearward of B-flange, and replacement of B-flange bolts with stronger material bolts to improve fan containment capability on PW JT9D-7R4 series engines prior to December 31, 1990.

Interested persons have been afforded the opportunity to participate in the making of this amendment, and due consideration has been given to all relevant data and comments received. Six comments were received concerning the proposed rule.

Discussion of Comments

Three commenters requested that the proposed compliance period be extended one year to December 31, 1990, because the parts required to incorporate PW SB 72-311 or SB 72-312 on the JT9D-7R4 engines, in accordance with the proposed AD, are not presently available. Parts delivery will commence during the fourth quarter of 1987. The FAA has determined that a one year extension of the compliance period does not substantially affect the risk analysis for an uncontained failure event and

therefore results in an acceptable level of safety. Further reduction in the probability of an uncontained failure is provided by voluntary compliance with daily fan blade inspections. Therefore, the FAA concurs with extending the compliance period to December 31, 1990.

The fourth commenter requested a correction to the paragraph under the caption "SUPPLEMENTARY INFORMATION" starting with "The FAA has determined . . .". The commenter stated that Pratt & Whitney has no record of a fan case penetration on a JT9D–7R4E powered B767 aircraft. The commenter is correct. All four events have occurred on JT9D–7R4G2 powered B747 aircraft in which the fan blade fractured and punctured the fan case forward of the B-flange. Three were uncontained events resulting in engine and aircraft damage.

The fifth commenter opposed the inclusion of the JT9D–7R4D engine in this proposed AD because a fan blade fracture event had not occurred on JT9D–7R4D powered aircraft. This commenter also stated that the risk of a fan blade failure event occurring in his fleet decreased with the incorporation of daily visual blade inspections in accordance with PW SB 72–255 and the implementation of the fan blade modifications in accordance with PW SB 72–273. Although the risk of an uncontained fan blade failure event has decreased with the incorporation of PW SB's 72–255 and 72–273, analysis indicates that the basic fan case design of all JT9D–7R4 engine models is similar to the JT9D–7R4G2 engine. This design deficiency in all JT9D–7R4 series engine fan cases does not meet the minimum fan blade containment requirement. Therefore, the FAA does not concur with excluding JT9D–7R4D engines from the proposed AD.

The sixth commenter questioned whether the bonding agent specified in the modification instructions (PW SB 72–311 or SB 72–312) is appropriate. This commenter stated that this agent has caused corrosion in this particular application and requested that the manufacturer revise work instructions before the proposed modifications begin. The FAA has no data to support the statement that the bonding agent, PWA 36003 adhesive, used in accordance with PW SB 72–311 or SB 72–312, causes corrosion. This silicone adhesive has been widely used on other applications with good results.

In light of the comments received, the FAA has determined that the compliance period can be extended to December 31, 1990. Except for this change and minor changes for clarity, the AD is adopted as proposed.

Conclusion

The FAA has determined that this proposed regulation involves 619 total engines at an approximate cost of $520,000. It has also been determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since this proposed regulation affects only operators using B767, B747, A310, or A300 aircraft in which the JT9D–7R4 series engines are installed, none of which are believed to be small entities. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

List of Subjects in 14 CFR Part 39

Engines, Air Transportation, Aircraft, Aviation safety, Incorporation by Reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

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

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

2. By adding to § 39.13 the following new airworthiness directive (AD):

Pratt & Whitney: Applies to Pratt & Whitney (PW) JT9D–7R4D, D1, E, E1, E4, G2, and H1 turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent fan blade fragment penetration of the fan case assembly, accomplish the following prior to December 31, 1990.

(a) For JT9D–7R4G2 series turbofan engines:

(1) Modify fan case assembly by installing shield, Part Number (P/N) 802094, using bolts, P/N 1A7544, at B-flange, in accordance with PW Service Bulletin (SB) 72–311, Revision 2, dated August 19, 1987.

(2) Modify outer front fan exit case assembly (fan exit case and vane assembly), by installing ring segments, P/N's 803264–01, 803265–01, and 802448, in accordance with PW SB 72–311, Revision 2, dated August 19, 1987.

(3) Reidentify the modified fan case assembly, outer front fan exit case assembly, and the fan exit case and vane assembly, in accordance with PW SB 72–311, Revision 2, dated August 19, 1987.

(b) For JT9D–7R4D, D1, E, E1, E4, and H1 series turbofan engines:

(1) Modify fan case assembly by installing shield, P/N 802095, for JT9D–7R4D, D1, E, E1, and H1 series engines, and shield, P/N 802096, for JT9D–7R4E series, using bolts, P/N MS9209–16, at B-flange, in accordance with PW SB 72–312, Revision 2, dated June 26, 1987.

(2) Modify outer front fan exit case assembly, or detail of fan exit case and vane assembly, and install ring segments, P/N's 803261–01, 803262–01, and 802447, in accordance with PW SB 72–312, Revision 2, dated June 26, 1987.

(3) Reidentify the modified fan case assembly, the outer front fan exit case assembly, and the fan exit case and vane assembly, in accordance with PW SB 72–312, Revision 2, dated June 26, 1987.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance time specified in this AD.

PW SB 72–311, Revision 2, dated August 19, 1987, and SB 72–312, Revision 2, dated June 26, 1987, identified and described in this document, are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Pratt & Whitney, Publications Department, P.O. Box 611, Middletown, Connecticut 06457. These documents also may be examined in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Rules Docket Number 86–ANE–34, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective on December 17, 1987.

Issued in Burlington, Massachusetts, on October 9, 1987.

Jack A. Sain,

Acting Director, New England Region.

[FR Doc. 87–25113 Filed 10–29–87; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Dkt. C-3191]

Occidental Petroleum Corp., et al; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, among other things, allows Occidental Petroleum Corp. to proceed with its tender offer for MidCon Corp. and their subsequent merger. Respondent is required to divest MidCon's subsidiary, Mississippi River Transmission Corp. (MRT), within one year after the order becomes final. Additionally, respondent and its subsidiary, Cities Service Oil and Gas Corp., is prohibited from entering into any new agreements to sell natural gas to MRT until the divestiture is completed.

DATE: Complaint and Order issued June 25, 1986 [1].

FOR FURTHER INFORMATION CONTACT: FTC/S-3302, Marc G. Schildkraut, Washington, DC 20580. (202) 326-2622.

SUPPLEMENTARY INFORMATION: On Monday, March 17, 1986, there was published in the **Federal Register**, a proposed consent agreement with analysis In the Matter of Occidental Petroleum Corporation and MidCon Corp., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order, approving the divestiture, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Acquiring Corporate Stock Or Assets: Section 13.5 Acquiring corporate stock or assets; § 13.5-20 Federal Trade Commission Act. Subpart—Combining Or Conspiring: Section 13.470 To restrain and monopolize trade. Subpart—Corrective Actions And/Or Requirements: Section 13.533 Corrective actions and/or requirements; § 13.533-45 Maintain records; §13.533-50 Maintain means of communication.

List of Subjects in 16 CFR Part 13

Mergers, Natural gas, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Emily H. Rock,

Secretary.

[FR Doc. 87-25109 Filed 10-29-87; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 45

[DoD Instruction 1336.1]

Certificate of Release or Discharge From Active Duty (DD Form 214/5 Series)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule amendment.

SUMMARY: Reserve component members servicing in a new category—active duty for special work (ADSW) may serve tours of only one or two days. Preparing Forms 214 in such cases imposes significant administrative difficulties. This amendment would require preparation of Forms 214 only for ADSW tours of 90 days or more, as is already the case for active duty for training (ADT) tours and Army's temporary tours of active duty (TTAD) program.

EFFECTIVE DATE: June 12, 1987.

FOR FURTHER INFORMATION CONTACT: Lt Colonel S. Strobridge, Office of the Assistant Secretary of Defense (Force Management and Personnel), Pentagon, Washington, DC 20301, telephone (202) 695-6312.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 45

Armed forces reserves, Military personnel.

PART 45—CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY (DD FORM 214/5 SERIES)

Accordingly, Title 32 CFR Part 45 is amended to read as follows:

1. The authority citation for Part 45 continues to read as follows:

Authority: 10 U.S.C. 1168 and 972.

2. In § 45.3 paragraphs (b)(2), (c)(2), and (e)(1)(v) are revised to read as follows:

§ 45.3 Policy and procedures.

* * * * *

(b) * * *

(2) *Release from Active Duty, or Active Duty for Special Work.* Personnel being separated from a period of active duty for training, full-time training duty, or active duty for special work will be furnished a DD Form 214 when they have served 90 days or more, or when required by the Secretary concerned for shorter periods. Personnel shall be furnished a DD Form 214 upon separation for cause or for physical disability regardless of the length of time served on active duty.

* * * * *

(c) * * *

(2) Personnel whose active duty, active duty for training, full-time training duty or active duty for special work is terminated by death.

* * * * *

(e) * * *

(1) * * *

(v) *Copy No. 5.* To the Louisiana UCX/UCFE, Claims Control Center, Louisiana Department of Labor, P.O. Box 94246, Capital Station, Baton Rouge, Louisiana 70804-9246.

* * * * *

3. In § 45.3(d)(5), change "1978" to read "the current".

4. In § 45.3(g), change "(Manpower, Reserve Affairs, and Logistics) (ASD(MRA&L))" to "(Force Management and Personnel) (ASD(FM&P))".

§ 45.4 [AMENDED]

5. In § 45.4(d)(1), change "Bureau of Naval Personnel, (PERS 3)" to "Naval Military Personnel Command".

6. In § 45.5, the entry for "Delaware" is revised to read as follows:

§ 45.5 State Directors of Veterans Affairs.

* * * * *

Delaware

Chairman, Commission of Veterans Affairs, P.O. Box 1401, Dover DE 19901"

* * * * *

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 26, 1987.

[FR Doc. 87-25150 Filed 10-29-87; 8:45 am]

BILLING CODE 3810-01-M

32 CFR Part 72

Acquisition of Educational Program in Overseas Areas

AGENCY: Office of the Secretary, DoD.

ACTION: Interim rule.

SUMMARY: The Office of the Secretary of Defense issued a directive-type memorandum pending issuance of a Department of Defense Instruction to implement Pub. L. 99–145, section 1212(b), codified at 10 U.S.C., section 113 note. The memorandum establishes criteria for acquisition of civilian post-secondary education programs in overseas areas. Specifically, the memorandum sets controls to avoid unnecessary duplication of educational programs on an installation.

DATE: Effective October 30, 1987.

Written comments from the public are solicited and must be received by November 30, 1987. Comments will be considered in the preparation of the Instruction that will supersede the interim rules set forth below. The Instruction will be published for public notice and comment prior to issuance.

ADDRESS: Office of the Assistant Secretary of Defense (Force Management and Personnel), The Pentagon, Room 3E764, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: Lenore E. Saltman, 202–695–1760.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 72

Education.

Accordingly, Title 32 is amended to add Part 72 as follows:

PART 72—ACQUISITION OF EDUCATIONAL PROGRAMS IN OVERSEAS AREAS

Sec.

Authority: Pub. L. 99–145, sec. 1212(b).

§ 72.1 Purpose.

(a) Pending the signing of a DoD issuance implementing Pub. L. 99–145, section 1212(b), this part establishes uniform procedures for the Services to avoid the unnecessary duplication of post-secondary educational offerings. It constitutes an interim regulation under Pub. L. 99–145, section 1212(b), and is issued pursuant to DoD Directives 5124.2 [1] and 5025.1 [2]. The procedures set forth below will be reissued in accordance with subsection D.3. of DoD Directives 5025.1.

(b) Pursuant to Pub. L. 99–145, this part:

(1) Reflects the statutory requirement, subject to the exceptions in paragraph (b)(2) of this section that no solicitation, contract or agreement for the provision of off-duty post-secondary education services for military members, civilian employees of the Department of Defense, or the dependents of such military members or employees, other than for services at the graduate or postgraduate level, may limit the offering of such services or any group, category or level of courses to a single academic institution;

(2) Prescribes criteria for avoiding the unnecessary duplication of educational services by exercising the authority in Pub. L. 99–145, section 1212(b), to grant exceptions, when required, to paragraph (b)(1) of this section;

(3) Assigns responsibility for the implementation of this part.

§ 72.2 Applicability and scope.

This part applies to the Office of the Secretary of Defense and the Military Departments, and its requirements shall be extended to all persons seeking or receiving off-duty post-secondary education services, as described in § 72.1(b)(1).

§ 72.3 Responsibilities.

(a) Each overseas Theater Commander shall implement this part.

(b) Theater Commanders, may, when necessary to avoid unnecessary duplication of offerings of post-secondary educational services, authorize the issuance of solicitations and the execution of contracts and agreements that define the requirement so as to limit the provision of such offerings on an installation to one institution or a prescribed number of institutions.

(c) Theater Commanders may delegate the authority in paragraph (b) of this section but not below the level of a general or flag officer, or a civilian equivalent.

§ 72.4 Criteria for the control of unnecessary duplication.

(a) For the purpose of this part, "unnecessary duplication" means any duplication that is detrimental to the educational services program within the theater.

(b) The following criteria must be satisfied in order to limit the number of providers of post-secondary education services:

(1) The demographic distribution of the potential student population precludes the effective delivery of post-secondary educational services by multiple offerers.

(2) Adequate classroom space to meet educational program needs is not available to multiple providers.

(3) Adequate administrative space needed to support educational programs is not available for multiple providers.

(4) DoD educational staff at installation level that is needed to manage educational programs is not available.

(5) The Theater Commander cannot reasonably provide logistic support to installations and those employees employed in providing educational programs if there are multiple providers. Logistic support includes military supplies, services, facilities, transportation, privileges and other benefits provided to nongovernmental entities or individuals.

(6) Status of Forces Agreements (SOFAs) preclude multiple providers.

(c) Where necessary, the enrollment generated at large installations must be used to balance the enrollments at small/remote locations in the interest of providing for economies of scale and to ensure availability of the widest range of educational services possible at a reasonable tuition rate.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 26, 1987.

[FR Doc. 87–25145 Filed 10–29–87; 8:45 am]

BILLING CODE 3810–01–M

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 301, 5801 Tabor Avenue, Philadelphia, PA 19120.

[2] See footnote 1 to § 72.1(a).

32 CFR Part 249

[DoD Instruction 5230.27]

Presentation of DoD-Related Scientific and Technical Papers at Meetings

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part provides policy and procedural guidance for considering national security in the dissemination of DoD-sponsored scientific and technical information at meetings, whether such meetings are conducted by the U.S. Government or private organizations.

EFFECTIVE DATE: October 6, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. F. Sobieszczyk, Office of the Under Secretary of Defense (Acquisition), the

Pentagon, Washington, DC 20301, telephone (202) 694–0205.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 249

Meetings, Conferences, Classified information, Information release and dissemination.

Accordingly, Title 32 is amended to add Part 249 as follows:

PART 249—PRESENTATION OF DoD-RELATED SCIENTIFIC AND TECHNICAL PAPERS AT MEETINGS

Sec.
249.1 Purpose.
249.2 Applicability and scope.
249.3 Definitions.
249.4 Policy.
249.5 Procedures.
249.6 Responsibilities.

Authority: 10 U.S.C. 130.

§ 249.1 Purpose.

This part amplifies policy set forth in DoD Directive 3200.12,[1] assigns responsibilities, prescribes procedures, and provides guidance for consideration of national security concerns in the dissemination of scientific and technical information in the possession or under the control of the Department of Defense at conferences and meetings. It supports current policies regarding classified meetings and requirements for review of scientific and technical papers; provides guidance for reviewing and presenting papers containing export-controlled DoD technical data; establishes procedures for containing DoD advice on independently-produced scientific and technical papers; and provides criteria for identifying fundamental research activities performed under contract or grant that are excluded from review requirements.

§ 249.2 Applicability and scope.

This part applies to the Office of the Secretary of Defense (OSD) DoD Field Activities, the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Defense Agencies, and the Unified and Specified Commands (hereafter referred to collectively as "DoD Components").

§ 249.3 Definitions.

Contracted Fundamental Research

Includes grants and contracts that are (a) funded by budget Category 6.1 ("Research"), whether performed by universities or industry or (b) funded by budget Category 6.2 ("Exploratory Development") and performed on-campus at a university. The research shall not be considered fundamental in those rare and exceptional circumstances where the 6.2-funded effort presents a high likelihood of disclosing performance characterics of military systems or manufacturing technologies that are unique and critical to defense, and where agreement on restrictions have been recorded in the contract or grant.

DoD Personnel. All civilian officers and employees, including special Government employees, of all DoD Components, and all active duty officers (commissioned and warrant) and enlisted members of the Army, Navy, Air Force, and Marine Corps.

§ 249.4 Policy.

It is DoD policy to:

(a) Encourage the presentation of scientific and technical information generated by or for the Department of Defense at technical meetings consistent with United States laws and the requirements of national security.

(b) Permit DoD Components to conduct scientific and technical conferences, and to permit DoD Component personnel to attend and participate in scientific and technical conferences that are of demonstrable value to the Department of Defense, and consult with professional societies and associations in organizing meetings of the societies and associations that are mutually beneficial.

(c) Allow the publication and public presentation of unclassified contracted fundamental research results. The mechanism for control of information generated by DoD-funded contracted fundamental research in science, technology, and engineering performed under contract or grant at colleges, universities, and non-government laboratories is security classification. No other type of control is authorized unless required by law.

(d) Release information at meetings in a manner consistent with statutory and regulatory requirements for protecting the information. Such requirements include, but are not limited to, protection of classified, unclassified export-controlled, proprietary, privacy, and foreign government provided information.

(e) Provide timely review of DoD employee and contractor papers intended for presentation at scientific and technical conferences and meetings, and if warranted and authorized by contract in the case of contractor employees, prescribe limitations on these presentations. Dissemination restrictions shall be used only when appropriate authority exists.

(f) Assist DoD contractors and, when practical, others in determining the sensitivity of or the applicability of export controls to technical data proposed for public disclosure.

(g) Approve release of classified or controlled unclassified DoD information to foreign representatives when such release promotes mutual security or advances the interests of an international military agreement or understanding in accordance with foreign disclosure policies of the Department of Defense. Presentation of such information at technical meetings attended by foreign representatives is appropriate when the release is made under the terms of existing security arrangements and when the Department of Defense and receiving government have established an understanding or agreement in that specific scientific or technical area.

(h) Refrain from interfering with the planning and organizing of meetings sponsored and conducted by non-government organizations. The type and level of DoD participation in such meetings will be determined taking account of such factors as benefit to the Department of Defense and how the meetings are being conducted.

§ 249.5 Procedures.

(a) *General* Conferences organized by DoD Components, DoD contractors, scientific and engineering societies, and/or professional associations, among others, can enhance the value of research and development sponsored by the Federal Government, and in such cases require full cooperation of all involved parties to obtain maximum benefits. Every effort should be made to develop presentations that are appropriate for delivery to the widest appropriate audience consistent with the interests of national security. In general, national security concerns related to the disclosure of DoD scientific and technical information at meetings are influenced by two mutually dependent factors; i.e. the sensitivity of the material to be presented, and the identity of proposed recipients of the material. These considerations and their impact on proposed meetings can be evaluated only through consultation among authors, conference organizers, and officials responsible for authorizing release of DoD information. The purpose of this consultation is to ascertain which combination of factors will support the most productive exchange of information consistent with U.S. laws and the requirements of national

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Attn: Code 301, Philadelphia PA 19120.

security. Interaction among concerned parties should commence at least six months before the meeting date.

(b) *Information to be Presented.* Possibilities range from completely unclassified/unlimited through classified information. Other considerations having an impact on meeting organization include, but are not limited to, proprietary data, export-controlled data, Privacy Act information, and foreign government-provided data.

(1) Classified information may be presented only at meetings organized in accordance with DoD Directive 5200.12.[2]

(2) Unclassified export-controlled DoD technical data may be presented only in sessions where recipients are eligible to receive such data as established by 32 CFR Part 250.

(3) Presentation of proprietary information, privacy data, and foreign government-provided data requires approval of the party controlling that information.

(c) *Location of Meetings and Access Controls.* To a large degree location of and access to meetings are dependent on the type of material to be presented.

(1) Papers which have been cleared for public release may be presented at any location and before any audience.

(2) Criteria established by 32 CFR Part 250 for releasing unclassified documents containing unclassified export-controlled DoD technical data also are applicable to presentations containing such data. Unclassified export-controlled DoD technical data may be released to:

(i) United States and Canadian government officials, with the understanding that the information is to be used for official government purposes only. Technical data that falls outside the exemptions for export to Canada in United States export regulations may not be transferred under this and the following provision.

(ii) United States and Canadian citizens and resident aliens when disclosure is subject to the terms of a current (DD Form 2345) "Militarily Critical Technical Data Agreement."

(iii) Foreign nationals and United States citizens acting as representatives of foreign interests where disclosure is made in accordance with a license, approval, or exemption under the International Traffic in Arms Regulations or the Export Administration Regulations.

(3) Non-government organizations who organize meetings in the United States at which unclassified export-controlled DoD technical data is to be presented will be required to ensure that physical access to the presentations is limited to those eligible to receive such data (as described in paragraph (c)(2) of this section) before being permitted to present such data.

(4) Meetings sponsored by a United States Government agency at which unclassified export-controlled DoD technical data is to be presented may be held in any location in the United States when control of physical access to the sessions is provided by a United States Government employee or a contractor specifically tasked by Department of Defense for that duty.

(5) Presentation of unclassified export-controlled DoD technical data in meetings held outside the United States may be permitted on a case-by-case basis after review of the situation by officials authorized to do so by the Director of Defense Research and Engineering, Office of the Under Secretary of Defense (Acquisition) or heads of DoD Components.

(6) When it is necessary to limit access to presentations of DoD-related scientific and technical papers, and private or professional organizations are unwilling or unable to provide required controls, DoD Components may, at their discretion, conduct meetings which correlate in place and topic with open meetings of such societies to take advantage of the fact that interested parties are already gathered.

(7) Classified information may be presented only at meetings held in a secure government or cleared contractor facility, unless a waiver has been granted in accordance with DoD Directive 5200.12. Personnel access controls for classified meetings also are specified in DoD Directive 5200.12.

(d) *Foreign Representative Access to Meetings.* (1) For classified meetings sponsored by the Department of Defense and conducted at a contractor facility, guidelines for foreign participation are established in DoD Directive 5230.11 [3] and DoD Instruction 5230.20.[4] Guidelines for the reporting of foreign participation in classified meetings are contained in DoD Directive 5200.12.

(2) For unclassified meetings sponsored and conducted by organizations other than the Department of Defense, the sole responsibility of determining whether foreign access is appropriate rests with the sponsor. The level and type of DoD participation in the meeting shall take into account the presence of foreign representatives, if any.

(3) In order to advance the interests of an international military agreement or understanding, the Department of Defense may wish to release to certain foreign nationals unclassified export-controlled DoD technical data being presented at unclassified, restricted access meetings sponsored and conducted by non-government societies and associations. Release in such cases by Department of Defense shall be pursuant to appropriate exemptions to the International Traffic in Arms Regulations (22 CFR Part 126), which relieves the society or association from responsibility to obtain export approvals for these presentations. DoD sponsorship is for the sole purpose of granting access to DoD-sponsored technical information. When societies or associations agree to DoD sponsorship of foreign attendance under these circumstances, the visit request procedures established in DoD Instruction 5230.20 shall be used to obtain and process requests from foreign representatives for sponsorship, and to inform the requestor and the meeting sponsor of the decision to release the information and conditions pertaining to such release.

(e) *Clearance for Public Release.* A review is required by DoD Directive 5230.9 [5] for all public releases by DoD personnel, including all presentations from DoD laboratories. DoD contractors are required to submit proposed presentations for review if that is a specific contractual requirement. Papers resulting from unclassified contracted fundamental research are exempt from prepublication controls and this review requirement.

(1) Proposed presentations shall be reviewed to:

(i) Determine what information, if any, in the submitted paper and/or abstract is subject to security classification, is subject to withholding from public disclosure under 32 CFR Part 250 or is otherwise restricted by statute, regulation or DoD policy.

(ii) Recommend specific changes, if any, to allow the paper to be presented as requested.

(iii) Indicate on the document its releasibility in original and amended versions.

(iv) Provide information on appeal procedures to be followed if requested clearance is denied.

(2) Reviews shall be completed as speedily as possible after receipt of the document by an appropriate public clearance authority. If a review cannot be completed in a timely manner, an explanation shall be provided. Every

[2] See footnote 1 to § 249.1.

[3] See footnote 1 to § 249.1.

[4] See footnote 1 to § 249.1.

effort shall be made to complete the review in:

(i) Ten working days for all abstracts.

(ii) Twenty working days for papers submitted for presentation at sessions that will have unlimited access.

(iii) Thirty working days for papers submitted for presentation at unclassified sessions that will have limited access.

(iv) Thirty working days for papers submitted for presentation at sessions that will be classified.

(f) *Voluntary Submissions.* Authors or organizations not subject to mandatory reviews may submit their papers to DoD activities to obtain advice on national security concerns. Resources permitting, DoD public release activities shall arrange review of the papers and

(1) Inform the author that the Department of Defense has no objection to public presentation or

(2) Inform the author that the Department of Defense advises that presentation in a public forum would not be in the interest of national security, and provide appropriate reasons for the determination. The clearance for public presentation, paragraph (f)(1) of this section, satisfies an exemption from requirements for government review under the International Traffic in Arms Regulations. The latter determination, paragraph (f)(2) of this section, does not legally bar presentation. It is an advisory statement that, for the presentation concerned, Department of Defense is not providing the authority for public release. Such DoD action does not preclude recourse by the author through normal State Department export license procedures.

(g) *Submission Procedures.* (1) Authors shall submit full text and/or abstract of paper for review before submitting it to conference organizers. Clearance of abstract does not satisfy any requirement for clearance of the full paper. Requests for review shall identify the conference sponsor(s), site, and access restrictions specified by the session organizers, and shall state whether the paper is for presentation at a session that is to be unclassified with unlimited access, unclassified with limited access, or classified. Level of classification and access restrictions shall be specified, where appropriate.

(2) Papers shall be submitted for public and/or foreign disclosure clearance in sufficient time to allow adequate review and possible revision. Authors should allow adequate time for their presentation to reach the appropriate review authority in addition to the review targets set in paragraph (e)(2) of this section.

(3) At time of submission of the full text of the presentation to the Conference Program Committee, authors should state that their papers have been approved for presentation at the meeting and specify the security level of degree of access control required. When submitting abstracts that have been cleared for release, authors should indicate when and what kind of approval is expected on the presentation in its final form.

(h) In accordance with DoD Directive 3200.12, copies of proceedings and/or reprints of papers sponsored by the Department of Defense for all scientific and technical meetings will be provided to the Defense Technical Information Center, Defense Logistics Agency, Cameron Station, Alexandria, VA 22304 for secondary distribution.

§ 249.6 Responsibilities.

(a) The *Under Secretary of Defense for Acquisition* (USD(A)) shall be responsible for implementing this part.

(b) The *Deputy Under Secretary of Defense for Research and Advanced Technology* shall:

(1) Administer and monitor compliance with this part.

(2) Provide, when necessary, technical assistance to DoD Components in determining sufficiency of protection of unclassified technical information that is to be presented at meetings.

(3) Provide, upon request, information and advice regarding controls on unclassified DoD information to scientific and engineering societies and professional associations.

(c) The *Under Secretary of Defense for Policy* (USD(P)) shall develop and promulgate, as required, policy guidance to DoD Components for implementing this instruction.

(d) The *Deputy Under Secretary for Defense (Policy)* (DUSD(P)) shall establish and monitor compliance with policies and procedures for disclosure of classified information at meetings.

(e) The *Heads of DoD Components* shall:

(1) Promulgate this part within 180 days.

(2) Designate an individual who will be responsible for reviewing and approving requests for export-controlled meetings outside the United States, and for ensuring compliance with this part.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 27, 1987.

[FR Doc. 87-25240 Filed 10-29-87; 8:45 am]

BILLING CODE 3810-01-M

National Security Agency

32 CFR Part 299a

[NSA/CSS Reg. 10-35]

Privacy Act Systems of Records; Disclosures and Amendment Procedures; Specific Exemptions, National Security Agency

AGENCY: National Security Agency (NSA), DoD.

ACTION: Amendment of a final exemption rule.

SUMMARY: An existing specific exemption rule is amended for NSA record system: GNSA10, entitled: NSA/CSS Personnel Security File. This system of records is subject to the Privacy Act of 1974 (5 U.S.C. 552a) and an expanded exemption is required to protect testing and examination materials maintained therein. Exemption from certain provisions of the Privacy Act of 1974 is required to protect the objectivity and fairness of the testing or examination procedures.

DATE: This amendment is a final rule and effective November 30, 1987.

ADDRESS: Send any comments to Patricia Schuyler, Office of Policy, National Security Agency, Fort George G. Meade, MD, 20755-6000. Telephone: 301-688-6527.

FOR FURTHER INFORMATION CONTACT: Vito T. Potenza, Assistant General Counsel (Litigation), Office of General Counsel, National Security Agency, Fort George G. Meade, MD 20755-6000. Telephone: 301-688-6054.

SUPPLEMENTARY INFORMATION: This amendment of a specific exemption rule for an existing NSA record system, GNSA 10, NSA/CSS Personnel Security Files, is being made pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a(k) so as to exempt record system GNSA 10 from certain subsections of the Privacy Act by invoking and adding the (k)(6) exemption. The publication requirements of this amended exemption rule is made in accordance with the requirements of 5 U.S.C. 553. This amendment to 32 CFR Part 299a consists of changing § 299a.10(b)(10) by adding to the "Authority" citation—(k)(6) and giving the rationale for claiming this exemption by adding a new paragraph at the end of the "Reasons" citation.

List of Subjects in 32 CFR Part 299a

Privacy, Exemptions.

For the reasons set out in the preamble, § 299a.10(b)(10) of 32 CFR

Part 299a is amended as set forth below by amending the "Authority" caption and adding a new paragraph to the "Reasons" caption.

1. The authority citation continues to read as follows:

Authority: 5 U.S.C. 552a, the Privacy Act of 1974; 5 U.S.C. 552, the Freedom of Information Act as amended by Pub. L. 93–502; Pub. L. 86–36, Pub. L. 88–290 and 18 U.S.C. 798.

2. Amend § 299a.10(b)(10) by revising the authority paragraph as follows:

§ 299a.10 Specific exemptions.

* * * * *

(10) * * *

Authority: 5 U.S.C. 552a (k)(1), (k)(2), (k)(5), and (k)(6)

Reasons * * *

3. Add a new paragraph to the *Reasons* paragraph as follows:

* * * * *

This system of records is exempted from all subsections cited pursuant to exemption (k)(6) to protect testing or examination materials and procedures, the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

* * * * *

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 26, 1987.

[FR Doc. 87–25147 Filed 10–29–87; 8:45 am]

BILLING CODE 3810–01–M

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Part 307

Cost of Living Adjustment of the Mechanical Royalty Rate

AGENCY: Copyright Royalty Tribunal.

SUMMARY: The Copyright Royalty Tribunal announces an adjustment of the mechanical royalty rate based upon the change in the Consumer Price Index from December, 1985 to September, 1987. The rate is increased to either 5.25 cents, or 1 cent per minute of playing time or fraction thereof, whichever amount is larger. The adjustment is being made in accordance with § 307.3(d) of the Tribunal's rules.

EFFECTIVE: January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street NW., Suite 450, Washington, DC. 20036 (202) 653–5175.

SUPPLEMENTARY INFORMATION: Earlier this year, the Copyright Royalty Tribunal conducted a proceeding to determine the method by which the mechanical royalty rate would be adjusted for the ten-year period beginning January 1, 1988 and ending December 31, 1997. The Tribunal adopted a joint proposal submitted by the National Music Publishers' Association, The Songwriters Guild of America and the Recording Industry Association of America, Inc. to make periodic adjustments to the mechanical royalty rate based upon changes in the Consumer Price Index (CPI), except when the CPI declined, in which case the mechanical rate could go no lower than the rates in effect in 1986–1987, and except when the CPI increased by more than 25%, in which case the rates would be no greater than 25%. *1987 Adjustment of the Mechanical Royalty Rate*, 52 FR 22637 (June 15, 1987), as corrected, 52 FR 23546 (June 23, 1987).

The first of the rate adjustments is to be made for the period January 1, 1988 to December 31, 1989 based upon the change in the CPI from December, 1985 to September, 1987, rounded off to the nearest 1/20th of a cent.

Accordingly, it is announced that the change in the cost of living as determined by the Consumer Price Index (all urban consumers, all items) is 5.19% (December, 1985's Index was 327.4 and September, 1987's Index was 344.4). The current mechanical rate is 5 cents, or .95 cent per minute of playing time or fraction thereof, whichever amount is larger. Adjusting that rate upward by 5.19% and rounding off the results to the nearest 1/20th of a cent, the new rate, to become effective January 1, 1988, shall be 5.25 cents, or 1 cent per minute of playing time or fraction thereof, whichever amount is larger. Section 307.3 is revised as shown below.

List of Subjects in 37 CFR Part 307

Copyright, Music, Recordings.

For the reasons set forth in the preamble, the Tribunal amends 37 CFR Part 307 as follows:

PART 307—[AMENDED]

1. The authority citation for Part 307 continues to read as follows:

Authority: 17 U.S.C. 801(b)(1) and 804.

§ 307.3 [Amended]

2. Section 307.3(d) is revised to read as follows:

* * * * *

(d) For every phonorecord made and distributed on or after January 1, 1988, the royalty payable with respect to each work embodied in the phonorecord shall be either 5.25 cents, or 1 cent per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraph (e) of this section.

* * * * *

3. Section 307.3(e)(1) is revised to read as follows:

* * * * *

(e)(1) On November 1, 1989, and each November 1 biennially thereafter until November 1, 1995 (that is, November 1, 1991, 1993, and 1995), the Copyright Royalty Tribunal (CRT) shall publish in the **Federal Register** a notice of the percent change in the Consumer Price Index (all urban consumers, all items) (CPI) from the Index published for the September two years earlier to the Index published for the September of the year in which such notice is published, and the underlying calculations.

* * * * *

J.C. Argetsinger,

Chairman.

Dated: October 26, 1987.

[FR Doc. 87–25192 Filed 10–29–87; 8:45 am]

BILLING CODE 1410–09–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 65

[FRL–3279–5]

Delayed Compliance Order for Rexworks, Milwaukee, WI

AGENCY: U.S. Environmental Protection Agency (U.S. EPA).

ACTION: Final rulemaking.

SUMMARY: The Administrator of the U.S. EPA hereby issues a Delayed Compliance Order (DCO) to Rexworks. The Order requires the company to bring volatile organic compound (VOC) emisions from its paint spray booths into compliance with Wisconsin Rule Natural Resources (NR) 154.13(4)(m), contained in the federally approved Wisconsin State Implementation Plan (SIP). Compliance with the Order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act (Act) for violations of the SIP regulation covered by the Order during the period the Order is in effect.

EFFECTIVE DATE: This final rulemaking becomes effective October 30, 1987.

FOR FURTHER INFORMATION CONTACT: Susan Perdomo, Office of Regional Counsel, U.S. Environmental Protection Agency, Chicago, Illinois 60604, (312) 886–0557.

ADDRESS: The Delayed Compliance Order and supporting material are

available for public inspection and copying during normal business hours at: Office of Regional Counsel, U.S. EPA, Region V, 111 West Jackson Street, Trans Union Building—Third Floor, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION: On May 28, 1987, the Regional Administrator of U.S. EPA's Region V office published in the **Federal Register**, 52 FR 19893, a notice setting out the provisions of a proposed delayed compliance order for Rexworks located in Milwaukee, Wisconsin. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed Order.

No comments were received; therefore, a delayed compliance order effective this date is issued to Rexworks by the Administrator of U.S. EPA, pursuant to the authority of section 113(d)(1) of the Act, 42 U.S.C. 7413(d)(1). The Order places Rexworks on a schedule to bring its paint spray booths into compliance as expeditiously as practicable with NR 154.13(m)(3)(c), a part of the Wisconsin SIP. The company is unable to comply immediately with the regulation. If the conditions of the Order are met, the Order will permit Rexworks to delay demonstration of compliance with the SIP regulations covered by the Order until December 31, 1987.

Compliance with the Order by Rexworks will preclude Federal enforcement action under section 113 of the Act for violations of the SIP regulation covered by the Order during the period that the Order is in effect. Similarly, citizen suits, under section 304, are precluded. If the Administrator determines that Rexworks is in violation of a requirement contained in the Order, one or more of the actions required by section 113(d)(9) of the Clean Air Act will be initiated. Publication of this notice for final rulemaking constitutes final Agency action for the purpose of judicial review under section 307(b) of the Clean Air Act.

Air Pollution Control

U.S. EPA has determined that the Order shall be effective upon publication of this notice because of the need to immediately place Rexworks on a schedule for compliance with the applicable requirements of the Wisconsin SIP. Rexworks has consented to the terms of the Order. The notice of proposed rulemaking asked that public comments be received by June 29, 1987. No public comments were received. Therefore, a Delayed Compliance Order, effective (today's date), is issued to Rexworks for its facility located in Milwaukee, Wisconsin. Source compliance with the Order preclude suits under the Federal enforcement and citizen suit provision of the Clean Air Act.

Under section 307(b) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 29, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 65

Intergovernmental relations, Air pollution control.

Dated: October 23, 1987.

Lee M. Thomas,

Administrator.

[FR Doc. 87-25200 Filed 10-29-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6767]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

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

EFFECTIVE DATES: The dates listed in the third column of the table.

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 64—[AMENDED]

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

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

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

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

§ 64.6 List of eligible communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Pennsylvania: Manorville, Borough of, Armstrong County	420098	Apr. 7, 1975, Emerg.; July 2, 1987, Reg.; July 2, 1987, Susp.; Aug. 3, 1987, Rein.	July 2, 1987.
Wisconsin:			
*Hammond, Village of, St. Croix County	550382	Oct 23, 1975, Emerg.; July 16, 1987, Reg.; July 16, 1987, Susp.; Aug. 4, 1987, Rein.	July 16, 1987.
*Mineral Point, City of, Iowa County	550180	July 25, 1975, Emerg.; July 16, 1987, Reg.; July 16, 1987, Susp.; Aug. 4, 1987, Rein.	Do.
Michigan: *Ironwood, Township of, Gogebic County	260403	Mar. 6, 1978, Emerg.; July 1, 1987, Reg.; July 1, 1987, Susp.; Aug. 5, 1987, Rein.	July 1, 1987.
Iowa: *Quasqueton, Town of, Buchanan County	190332	May 6, 1977, Emerg.; July 2, 1987, Reg.; July 2, 1987, Susp.; Aug. 6, 1987, Rein.	July 2, 1987.
Georgia: *Thunderbolt, Town of, Chatham County	130460	Apr. 22, 1980, Emerg.; July 2, 1987, Reg.; July 2, 1987, Susp.; Aug. 6, 1987, Rein.	Do.
Michigan: Hudson, Township of, Mackinac County	[1] 260807	Aug. 6, 1987, Emerg	Do.
Georgia: Coffee County, unincorporated areas	130465	Aug. 11, 1987, Emerg	Apr. 21, 1987.
New Mexico: Red River, Town of, Taos County	350079	Apr. 18, 1975, Emerg.; July 1, 1987, Reg.; July 1, 1987, Susp.; Aug. 7, 1987, Rein.	July 1, 1987.
Pennsylvania: *Oswayo, Township of, Potter County	421982	Apr. 29, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.; Aug. 5, 1987, Rein.	Aug. 1, 1987.
Oklahoma: *Marshall, Town of, Logan County	400306	Aug. 13, 1976, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.; Aug. 5, 1987, Rein.	Do.
West Virginia:			
*Terra Alta, Town of, Preston County	540257	Sept. 3, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.; Aug. 5, 1987, Rein.	Do.
*Wardensville, Town of, Hardy County	540245	Apr. 17, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.; Aug. 5, 1987, Rein.	Do.
*Tucker County, unincorporated areas	540191	Dec. 24, 1975, Emerg.; July 1, 1987, Reg.; July 1, 1987, Susp.; Aug. 11, 1987, Rein.	July 1, 1987.
Pennsylvania: *South Buffalo, Township of, Armstrong County.	421210	Apr. 17, 1987, Emerg.; June 18, 1987, Reg.; June 18, 1987, Susp.; Aug. 11, 1987, Rein.	June 18, 1987.
Illinois: Alexis, Village of, Mercer and Warren Counties	170674	May 9, 1975, Emerg.; July 2, 1987, Reg.; July 2, 1987, Susp.; Aug. 12, 1987, Rein.	July 2, 1987.
New Hampshire: South Hampton, Town of, Rockingham County.	330193	Sept. 2, 1987, Emerg	Jan. 28, 1975.
Ohio: Crawford County, unincorporated areas	390811	Sept. 2, 1987, Emerg	Aug 25, 1987.
Alabama: *Castleberry, Town of, Conecuh County	010050	June 7, 1976, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.; Aug. 14, 1987, Rein.	Aug. 1, 1987.
Virginia: *Culpeper County, unincorporated areas	510041	Nov. 26, 1974, Emerg.; July 1, 1987, Reg.; July 1, 1987, Susp.; Sept. 2, 1987, Rein.	July 1, 1987.
Kentucky: *Shepherdsville, City of, Bullitt County	210028	June 7, 1976, Emerg.; Jan 2, 1987, Reg.; Jan. 2, 1987, Susp.; Sept. 3, 1987, Rein.	Jan. 2, 1987.
West Virginia:			
Grafton, City of, Taylor County	540190	June 12, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.; Sept. 2, 1987, Rein.	Aug. 1, 1987.
Putnam County, unincorporated areas	540164	May 11, 1976, Emerg.; June 18, 1987, Reg.; June 18, 1987, Susp.; Sept. 4, 1987, Rein.	June 18, 1987.
*Bruceton Mill, Town of, Preston County	540162	May 22, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug 1, 1987, Susp.; Sept. 4, 1987, Rein.	Aug. 1, 1987.
*Grant County, unincorporated areas	540038	Oct. 22, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.; Sept. 4, 1987, Rein.	Do.
Kentucky: Warsaw, City of, Gallatin County	210080	Jan. 19, 1976, Emerg.; Aug. 19, 1987, Reg.; Aug. 19, 1987, Susp.; Sept. 8, 1987, Rein.	Aug. 19, 1987.
Arkansas: La Mar, City of, Johnson County	050113	Apr. 3, 1975, Emerg.; July 1, 1987, Reg.; July 1, 1987, Susp.; Sept. 9, 1987, Rein.	July 1, 1987.
New Mexico: Mora County, unincorporated areas	350043	Oct. 22, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.; Sept. 9, 1987, Rein.	Aug. 1, 1987.
Texas:			
Roaring Springs, City of, Motley County	480496	Feb. 12, 1976, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.; Sept. 9, 1987, Rein.	Do.
Rotan, City of, Fisher County	480224	Aug. 7, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.; Sept. 9, 1987, Rein.	Do.
Somervell County, unincorporated areas	481186	Sept. 11, 1979, Emerg.; Aug. 4, 1987, Reg.; Aug. 4, 1987, Susp.; Sept. 9, 1987, Rein.	Aug. 4, 1987.
Virginia: Amelia County, unincorporated areas	510314	Mar. 22, 1976, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.; Sept. 10, 1987, Rein.	Sept. 1, 1987.
West Virginia: Franklin, Town of, Pendleton County	540154	July 2, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.; Sept. 10, 1987, Rein.	Do.
Iowa: Clear Lake, City of, Cerro Gordo County	190059	Aug. 7, 1975, Emerg.; Aug. 4, 1987, Reg.; Aug. 4, 1987, Susp.; Sept. 11, 1987, Rein.	Aug. 4, 1987.
Pennsylvania:			
Penn, Borough of, Westmoreland County	420895	Mar. 19, 1975, Emerg.; Feb. 4, 1981, Reg.; Feb. 4, 1981, Susp.; Aug. 18, 1987, Rein.	Feb. 4, 1987.
*Decatur, Township of, Mifflin County	421880	Dec. 2, 1975, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp.; Aug. 18, 1987, Rein.	June 1, 1987.
Iowa: *Elgin, City of, Fayette County	190125	June 18, 1975, Emerg.; Aug. 4, 1987, Reg.; Aug. 4, 1987, Susp.; Aug. 19, 1987, Rein.	Aug. 4, 1987.
Florida: Orchid, Town of, Indian River County	120122	July 24, 1975, Emerg.; Apr. 15, 1980, Reg.; Apr. 15, 1980, Susp.; Sept. 14, 1980, Rein.	Apr. 15, 1987.
Minnesota: West St. Paul, City of, Dakota County	[1] 270729	Sept. 8, 1987, Emerg	

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
North Carolina: Lowell, City of, Gaston County	370323	Sept. 15, 1987, Emerg	Oct. 13, 1987
Michigan: Marion, Township of, Charlevoix County	[1] 260808	do	
Texas: Floydada, City of, Floyd County	480226	do	May 31, 1974
Minnesota: North Branch, City of, Chisago County	270072	do	
Oklahoma: *Stillwell, City of, Adair County	400001	Nov. 14, 1975, Emerg.; Aug. 4, 1987, Reg.; Aug. 4, 1987, Susp.; Sept. 15, 1987, Rein.	Aug. 4, 1987.
North Carolina: Mars Hill, Town of, Madison County	370385	Oct. 4, 1979, Emerg.; Aug. 19, 1987, Reg.; Aug. 19, 1987, Susp.; Sept. 17, 1987, Rein.	Aug. 19, 1987
Arkansas: Newark, City of, Independence County	050092	Aug. 8, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.; Sept. 30, 1987, Rein.	Sept. 1, 1987.
Ohio: Lucas, Village of, Richland County	390661	Sept. 24, 1987, Emerg	Apr. 5, 1974.
Texas:			
LaWard, City of, Jackson County	481074	Mar. 23, 1977, Emerg.; Sept. 28, 1979, Reg.; Dec. 4, 1979, Susp.; Sept. 25, 1987, Rein.	Dec. 4, 1979.
Sterling, City of, Sterling County	480579	July 29, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.; Sept. 18, 1987, Rein.	July 29, 1975.
Region III—Minimals Conversions			
West Virginia: Franklin, Town of, Pendleton County	540154	Sept. 1, 1987, suspension withdrawn	Sept. 1, 1987.
Region IV			
North Carolina: Trenton, Town of, Jones County	370141	do	Do.
Tennessee: White Pine, City of, Jefferson County	470332	do	Do.
Mississippi:			
Montgomery County, unincorporated areas	280212	do	Do.
Perry County, unincorporated areas	280233	do	Do.
North Carolina: Fairmont, Town of, Robeson County	370205	do	Do.
South Carolina:			
Hartsville, City of, Darlington County	450062	do	Do.
Kingstree, Town of, Williamsburg County	450190	do	Do.
Oconee County, unincorporated areas	450157	do	Do.
Region V			
Illinois: Sublette, Village of, Lee County	170421	do	Do.
Indiana: Ripley County, unincorporated areas	180221	do	Do.
Minnesota: Fisher, City of, Polk County	270366	do	Do.
Ohio:			
Corning, Village of, Perry County	390440	do	Do.
Fredericksburg, Village of, Wayne County	390576	do	Do.
Hanoverton, Village of, Columbiana County	390082	do	Do.
Orrville, City of, Wayne County	390577	do	Do.
Malta, Village of, Morgan County	390421	do	Do.
Sunbury, Village of, Delaware County	390152	do	Do.
Warsaw, Village of, Coshocton County	390733	do	Do.
Steward, Village of, Lee County	170420	do	Do.
Lakeview, Village of, Logan County	390341	do	Do.
Van Wert County, unincorporated areas	390784	do	Do.
Region VI			
Louisiana: Roseland, Town of, Tangipahoa Parish	220212	do	Do.
Oklahoma:			
Canadian County, unincorporated areas	400485	do	Do.
Chelsea, City of, Rogers County	400187	do	Do.
Jefferson, Town of, Grant County	400065	do	Do.
Texas:			
Bartonville, Town of, Denton County	481501	do	Do.
Boyd, City of, Wise County	480676	do	Do.
Giddings, City of, Lee County	480435	do	Do.
Premont, City of, Jim Wells County	480396	do	Do.
San Jacinto County, unincorporated areas	480553	do	Do.
Terrell County, unincorporated areas	480619	do	Do.
Yoakum, City of, Lavaca County	480434	do	Do.
Region VII			
Iowa:			
Ainsworth, City of, Washington County	190525	do	Do.
Calumet, City of, O'Brien County	190712	do	Do.
Lake Park, City of, Dickinson County	190367	do	Do.
Nora Springs, City of, Floyd County	190384	do	Do.
Rockford, City of, Floyd County	190129	do	Do.
Titonka, City of, Kossuth County	190840	do	Do.
Region V—Minimal Conversions			
Illinois:			
Deland, Village of, Piatt County	170547	Sept. 4, 1987, suspension withdrawn	Sept. 4, 1987.
Towanda, Village of, McLean County	170504	do	Do.
Indiana: Ohio County, unincorporated areas	180406	do	Do.
Minnesota:			
Dumont, City of, Traverse County	270481	do	Do.
Hinckley, City of, Pine County	270347	do	Do.
Keewatin, City of, Itasca County	270205	do	Do.
Lester Prairie, City of, McLeod County	270265	do	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
White Bear Lake, City of, Ramsey County	270386	do	Do.
Ohio:			
Zoar, Village of, Tuscarawas County	390752	do	Do.
Caldwell, Village of, Noble County	390430	do	Do.
East Palestine, City of, Columbiana County	390079	do	Do.
Galena, Village of, Delaware County	390149	do	Do.
Ravenna, City of, Portage County	390458	do	Do.
Region VII			
Nebraska:			
Meadow Grove, Village of, Madison County	310146	do	Do.
Tilden, City of, Antelope and Madison Counties	310401	do	Do.
Lindsay, Village of, Platte County	310177	do	Do.
Region I—Regular Conversions			
Maine:			
Greenbush, Town of, Penobscot County	230107	do	Do.
Hampden, Town of, Penobscot County	230168	do	Do.
Region III			
Pennsylvania:			
Carroll, Township of, Perry County	421949	do	Do.
East Earl, Township of, Lancaster County	421770	do	Do.
Glade, Township of, Warren County	422122	do	Do.
West Virginia:			
Hamlin, Town of, Lincoln County	540089	do	Do.
West Hamlin, Town of, Lincoln County	540090	do	Do.
Region IV			
Mississippi: Moss Point, City of, Jackson County	285258	do	Do.
Region V			
Indiana: Bedford, City of, Lawrence County	180148	do	Do.
Region IX			
Arizona:			
Greenlee County, unincorporated areas	040110	do	Do.
Marana, Town of, Pima County	040118	do	Do.
California:			
Antioch, City of, Contra Costa County	060026	do	Do.
Lassen County, unincorporated areas	060092	do	Do.
Region X			
Oregon:			
Bend, City of, Deschutes County	410056	do	Do.
Vale, City of, Malheur County	410153	do	Do.
Region VI			
Arkansas: Van Buren, City of, Crawford County	050053	Aug. 4, 1987	Do.
Region I—Regular Conversions			
Maine: Lincoln, Town of, Penobscot County	230109	Sept. 18, 1987, suspension withdrawn	Sept. 18, 1987.
Region III			
Pennsylvania: St. Clair, Township of, Westmoreland County.	422191	do	Do.
West Virginia:			
Lincoln County, unincorporated areas	540088	do	Do.
Westmoreland County, unincorporated areas	510250	do	Do.
Region IV			
Mississippi: Hancock County, unincorporated areas	285254	do	Do.
Region V			
Illinois: Wood Dale, City of, DuPage County	170224	do	Do.
Ohio: Brecksville, City of, Cuyahoga County	390098	do	Do.
Region VI			
Louisiana:			
Clarence, Village of, Natchitoches Parish	220130	do	Do.
Natchitoches Parish, unincorporated areas	220129	do	Do.
Region VII			
Iowa: Des Moines, City of, Polk County	190227	do	Do.
Region VIII			
North Dakota: Alexander, City of, McKenzie County	380055	do	Do.
Region IX			
California: Clearlake, City of, Lake County	060714	do	Do.
Region X			
Alaska: Anchorage, Municipality of, Anchorage Division	020005	do	Do.
Oregon:			
Canyon City, City of, Grant County	410075	do	Do.
Mt. Vernon, City of, Grant County	410080	do	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Minimals Conversions			
Region IV			
Mississippi:			
Baldwyn, City of, Prentiss and Lee Counties	280134	do	Do.
Saltillo, Town of, Lee County	280261	do	Do.
Region V			
Minnesota:			
Fillmore County, unincorporated areas	270124	do	Do.
Raymond, City of, Kandiyohi County	270222	do	Do.
Ohio:			
Portage County, unincorporated areas	390453	do	Do.
Wyandot County, unincorporated areas	390787	do	Do.
Hemlock, Village of, Tioga County	390708	do	Do.
Region VII			
Nebraska: Stanton, City of, Stanton County	310217	do	Do.
Region I—Regular Conversions			
Maine:			
Medway, Town of, Penobscot County	230175	Sept. 30, 1987, suspension withdrawn	Sept. 30, 1987.
Winslow, Town of, Kennebec County	230071	do	Do.
Region III			
Pennsylvania:			
Lewis, Township of, Union County	422104	do	Do.
Lynn, Township of, Lehigh County	421812	do	Do.
Mayberry, Township of, Montour County	421923	do	Do.
Polk, Township of, Monroe County	421893	do	Do.
Springboro, Borough of, Crawford County	420353	do	Do.
West Virginia:			
Milton, Town of, Cabell County	540019	do	Do.
Cabell County, unincorporated areas	540016	do	Do.
Wayne, Town of, Wayne County	540231	do	Do.
Region IV			
Tennessee: Lauderdale County, unincorporated areas	470333	do	Do.
Region V			
Ohio: Tuscarawas County, unincorporated areas	390782	do	Do.
Region VIII			
Colorado:			
Douglas County, unincorporated areas	080049	do	Do.
Parker, Town of, Douglas County	080310	do	Do.
North Dakota:			
Bowman County, unincorporated areas	380355	do	Do.
Gascoyne, City of, Bowman County	380677	do	Do.
Mandan, City of, Morton County	380072	do	Do.
Morton County, unincorporated areas	380148	do	Do.
Reiles Acres, City of, Cass County	380324	do	Do.
Scranton, City of, Bowman County	380014	do	Do.
Region IX			
California:			
Imperial Beach, City of, San Diego County	060291	do	Do.
Loomis, Town of, Placer County	060721	do	Do.
Minimal Conversions			
Region VI			
New Mexico: Colfax County, unincorporated areas	350126	do	Do.
Region VIII			
Nebraska: Ogallala, City of, Keith County	310129	do	Do.

[1] New.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

Issued: October 26, 1987.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-25143 Filed 10-29-87; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-450; RM-5382]

Radio Broadcasting Services; Monticello and Logansport, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 299A to Monticello, Indiana as that community's second FM channel at the request of Edward A. Holderly. It also reallocates Channel 237A currently allotted at Logansport, Indiana to Monticello to reflect its actual usage in that community. With this action, this proceeding is terminated.

DATES: Effective December 7, 1987. The window period for filing applications will open on December 8, 1987, and close on January 7, 1988.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–450, adopted September 25, 1987, and released October 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding the entry of Channel 237A and Channel 299A to Monticello, Indiana and deleting the entry of Channel 237A at Logansport, Indiana.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

William J. Tricarico,

Secretary.

[FR Doc. 87–25173 Filed 10–29–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 97

[PR Docket No. 86–161; FCC 87–321]

Amateur Radio Service Rules; Privileges Available to Novice Operators; Action on Petitions for Reconsideration

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By *Memorandum Opinion and Order*, the FCC (a) denies requests for expansion of Novice operator privileges in the 1.25 meter band; (b) denies the request for Advanced operators to administer the written examination for the General operator license; (c) denies the request to change the percentage of questions on each topic for examination element 2; and (d) makes minor editorial changes in § 97.61 of the amateur service rules. This action affirms existing rules with respect to Novice operation, Novice examinations and the administration of the General class operator written examination.

EFFECTIVE DATE: October 30, 1987.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Private Radio Bureau, Washington, DC 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order*, adopted October 9, 1987 and released October 21, 1987.

1. The full text of this Commission decision and the rule amendment is available for inspection and copying during normal hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision and the rule amendment may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

2. David Bly, Karl Pagel and Richard S. Moseson in petitions for reconsideration of Novice enhancement rule amendments adopted January 28, 1987, requested further privileges in the 1.25 meter band so that Novice operators in their areas could access local repeaters. The FCC denied those requests stating that subband 222.10–223.91 MHz was chosen because it represents the generally accepted national voluntary band plan. The FCC also said that there are numerous repeater stations in all parts of the country using 222.10–223.91 MHz to accommodate Novice operators who want to access them. The FCC also pointed out that by upgrading to Technician operator, Novice operators could obtain privileges in the entire 1.25 meter band.

3. Harley Gabrielson requested reconsideration of § 97.28 to allow Advanced operators as well as Amateur Extra operators to administer the written examination, element 3(B), for a General operator license. In denying the request, the FCC said that Amateur Extra operators had demonstrated the greatest degree of expertise in amateur radio and therefore are the most qualified to be volunteer examiners. In addition, the FCC said that there did not appear to be any shortage of volunteer examiners.

4. David Popkin requested that the percentage of questions on each topic for examination element 2 in § 97.21(d) be changed and that editorial changes be made in § 97.61. Existing rule § 97.21(d) was affirmed since the matter of the percentage of questions was disposed of in a recent FCC proceeding concerning transfer of the question pools to the Volunteer Examiner Coordinators (VECs). (See PR Docket No. 85–196.) However, the minor editorial changes requested by Popkin have been made in the interest of clarity.

5. It is ordered that Part 97 is amended as set forth at the end of this document. It is further ordered that these rule amendments shall become effective upon publication in the **Federal Register**. It is further ordered that the petitions for reconsideration of David C. Bly, Harley Gabrielson, Karl Pagel and Richard S. Moseson are denied; the petition for reconsideration of David Popkin is granted in part. It is further ordered that this proceeding is terminated.

6. The authority for this action is contained in 47 U.S.C. 154(i) and 303(r).

List of Subjects in 47 CFR Part 97

Amateur radio, Emissions, Examinations, Frequencies.

William J. Tricarico,

Secretary.

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is amended, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read, as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. The line entry in the table in § 97.61(a) which shows frequency band 28000–29700 kHz and A1A emission is removed.

3. Section 97.61(d)(3) is revised to read, as follows:

§ 97.61 Authorized emissions.

* * * * *

(d) * * *

(3) A station with a Novice or Technician control operator is authorized to transmit only emissions A1A and J3E in frequency subband 28300–28500 kHz.

[FR Doc. 87–24859 Filed 10–29–87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 395

[OMCS Docket No. MC-119]

Hours of Service of Drivers

AGENCY: Federal Highway Administration, (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending Part 395, Hours of Service of Drivers, of the Federal Motor Carrier Safety Regulations (FMCSR) to (1) eliminate four items currently required on the driver's record of duty status; (2) clarify the present exemption pertaining to the preparation of a driver's record of duty status within 100-mile radius of the driver's work reporting location; (3) redefine the retail store delivery exemption (December 10 to December 25); (4) incorporate the current interpretation of both the 60-hour and 70-hour on-duty weekly limitation into the hours of service regulations; (5) revise the definition of on-duty time; and (6) revise the applicability section of this part. These amendments will reduce the paperwork burden, provide more judicious accounting of time worked thereby reducing the possibility of accrued driver fatigue, and make the regulations more easily understood. This action is in accord with the provisions of Section 206 of the Motor Carrier Safety Act of 1984 (Act).

EFFECTIVE DATE: November 30, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards, (202) 366-2999; or Mrs. Kathleen S. Markman, Office of the Chief Counsel (202) 366-0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The FHWA published a notice of proposed rulemaking (NPRM) in the **Federal Register** on May 9, 1986 (51 FR 17214), proposing to revise certain sections of 49 CFR Part 395, Hours of Service of Drivers. The NPRM specifically pointed out that the proposed revisions, as well as those sections not being revised, would be applicable to operators of commercial motor vehicles that (1) have a gross vehicle weight rating of 10,001 or more pounds; (2) are designed to transport more than 15 passengers, including the driver; or (3) are used in the transportation of materials found by the Secretary to be hazardous for the purposes of the Hazardous Materials Transportation Act and are transported in a quantity requiring placarding under regulations issued by the Secretary.

Violations of the hours of service requirements, including the recordkeeping requirements, may subject the motor carrier and/or the driver to civil or criminal penalties. Violations may be discovered during audits of the motor carrier's records and during driver/vehicle roadside inspections.

Background

As the first step in implementing section 206 of the Act, 49 U.S.C. App. 2505 (Supp. III 1985), the FHWA published an advanced notice of proposed rulemaking (ANPRM), BMCS Docket No. 114, Notice No. 85-1, in the **Federal Register** on January 23, 1985 (50 FR 2998). This ANPRM sought public comment on the amendments being considered. Due to the complexity of reissuing the FMCSR, a separate rulemaking action was established for each Part. Proposed amendments to Part 395, Hours of Service to Drivers, were set forth in an NPRM and published in the **Federal Register** on May 9, 1986 (51 FR 17214), BMCS Docket No. MC-119, Notice No. 86-2. Included in that NPRM was a discussion of the comments to the final rule issued in BMCS Docket No. MC 99-1 (49 FR 46145) pertaining to the court order, *International Brotherhood of Teamsters v. U.S.*, 735 F. 2d 1525, (D.C. Cir. June 12, 1984), which required the FHWA to amend the FMCSR relative to to the 100-mile radius exemption and the driver's record of duty status.

Comments

The FHWA received a total of 26 comments to this docket, MC-119.

These responses included:

12 from truck and bus industry trade organizations;
8 from individual motor carriers;
2 from labor organizations;
2 from State enforcement agencies;
1 from a State governmental agency; and
1 from a truck driver.

Driver's Record of Duty Status

Section 395.8(d) of the FMCSR currently requires that 15 items of information be included on the driver's record of duty status. The purpose of this requirement is to promote highway safety. The FHWA proposed to eliminate 4 of the 15 items currently required on the driver's record of duty status: (1) "Total mileage today", (2) "home terminal address", (3) "origin" and (4) "destination or turnaround point". These items were proposed for deletion because they were considered duplicative of other motor carrier records and/or information sources, and safety would not be compromised as a result of these deletions. The following discussion addresses each item separately. Included in this discussion is a summary of the comments received along with the rationale for the FHWA's decision to delete each item.

Total Mileage Today

Only four of the 26 commenters (Commercial Vehicle Safety Alliance, International Brotherhood of Teamsters (IBT), Transcontinental Refrigerated Lines, and United Bus Owners of America) objected to the elimination of the "total mileage today" item. Only the IBT submitted a reason for their opposition to the proposal. The IBT argued that it would require an examination of both driver's logs, when a two-man operation is being used, during a roadside inspection to make sure the logs have not be falsified.

We do not believe this to be a valid concern. The "total mileage today" figure would not be available until the end of the day, and therefore, that information would not be entered at the time of a roadside check. The total mileage to the time of the roadside check can be determined by information available from the "remarks section" of the graph grid. The location of each change of duty status is recorded in the "remarks section" of the driver's record of duty status. This information can be used to determine the total mileage the driver has driven. Even though the method of computing the mileage will be only an estimate and would be based on the assumption that the driver drove the most direct route, the FHWA believes it to be adequate for its intended purpose.

The "total mileage today" item is used as a secondary source of information to check the item of primary concern to FHWA and motor carrier safety, the hours the driver has spent on duty and on duty driving. The "total mileage today" is used in coordination with the recorded time driving to obtain the driver's average speed. Motor carrier safety investigations normally do not result in citing drivers for speeding based on information obtained from the driver's record of duty status.

Since the information is obtainable from other documents and does not affect safety in any way, elimination of the requirement is consistent with the FHWA's intention to reduce the paperwork burden whenever possible without compromising safety.

Home Terminal Address

These same four commenters and the California Highway Patrol oppose elimination of the "home terminal address" item. They contend that the proposal will compound an already difficult enforcement task and require additional time and effort by enforcement personnel. The FHWA does not envision the problem becoming a reality. It believes that the "home terminal address" information is duplicative of the "main office address" information and can easily be obtained from information in the driver's possession. The vast majority of motor carriers operate fleets of 10 or less vehicles. (Office of Motor Carriers Information Management and Analysis' figures indicate that approximately 90 pecent of the motor carriers of record have 10 or less vehicles). It is the FHWA's opinion that, for these fleets, the "main office address" and the "home terminal address" would be the same. In those cases where they differ, the "main office address" information is most critical for enforcement purposes, since it is the location where all driver's records are to be maintained, unless otherwise permitted.

Origin and Destination

The same commenters objected to the elimination of the "origin" and "destination" entries. They contend that the information provides an immediate indication of the driver's travel or travel plan for a particular tour of duty and is especially important when a trip involves more than one calendar day. They contend that the entries provide immediate information and are useful to enforcement officers. However, there has been considerable confusion as to what the proper "origin" and "destination" should be for trips involving more than one calendar day. Take for example, a tour of duty from point "A" today to point "B" tomorrow and return. The origin is "A" and destination or turnaround point is "B" for the first day. The "origin" and "destination" for the next day should be the same. However, some will show the origin as being the location the driver spent 8 consecutive hours off duty enroute to destination "B". The return movement, if the same tour of duty, should show the same "origin" and "destination." In most cases, the "origin" will be shown as the "destination" and the "destination" as the "origin."

Since this information is recorded in the "remarks section" of the driver's record of duty status in a less confusing manner, the FHWA is eliminating this duplication. The FHWA believes that the elimination of these items will not affect safety and may, in fact, reduce confusion during enforcement actions.

The FHWA's primary concern in maintaining the driver's record of duty status is to enable FHWA field staff and State and local enforcement personnel to monitor an individual's compliance with the hours of service regulations, which are directed at promoting safety. The FHWA believes that eliminating these four items does not in any way reduce safety. Furthermore, the opponents to FHWA's proposal did not submit any substantive safety impact data to support retention of the four items. The change is consistent with the FHWA's intention to reduce the paperwork burden on motor carriers and drivers where feasible, without compromising safety. The FHWA estimates that the elimination of these four items will reduce the motor carrier industry record preparation burden by approximately 4 million person-hours annually.

As noted in the NPRM, the FHWA has authorized a motor carrier to utilize an on-board computer system to automatically record data for their driver's records of duty status to further reduce the paperwork burden. Subsequently, six other motor carriers have been granted permission to use on-board computers to record the driver's record of duty status. In addition, an ANPRM was issued on July 13 requesting comments about the use of on-board recording devices in commercial motor vehicles (52 FR 26289). This notice was issued in reponse to a petition filed by the Insurance Institute for Highway Safety requesting the FHWA to require motor carriers to use on-board recording devices for recording the driver's hours of service.

An in-depth examination of the on-board computer systems that motor carriers are authorized to use in controlling a driver's hours of service will be conducted shortly after the first of the year. At that time a determination will be made as to what further rulemaking action will be taken.

100-Air Mile Radius Exemption

Section 395.8(1)(1) currently provides that a driver (except a driver salesperson) may be exempted from the preparation of the driver's record of duty status, while operating within a 100-air-mile radius of the driver's work-reporting location, provided the driver returns to that location and is released from work within 12 hours. As explained in the NPRM, the FHWA always intended this to mean 12 "consecutive" hours. However, the agency's intent in this regard has been questioned from time to time. The NPRM, therefore, proposed to clarify this exemption by adding the word "consecutive" to the term "12 hours."

Commenters opposed the addition of "consecutive" and/or wanted the 12-hour period extended 3 hours. Concerning the addition of "consecutive", comments specifically claimed that their drivers, in certain instances are unable to return within a 12 consecutive hour period every day and would therefore be required to prepare a driver's record of duty status for those days. However, the FHWA believes that drivers who do not return within a 12-consecutive-hour period must prepare a driver's record-of-duty status for any day that they do not return within that time period. It is our belief that any extension beyond 13 hours would encourage abuse by increasing the likelihood that drivers would be able to exceed the 10-hour driving limitation without detection. The interpretation adopted here does not change the FHWA's understanding of the current rule and is merely intended to clarify the regulation.

With respect to those respondents who wanted to add 3 extra hours to the exemption, they did not supply information which showed that the records of motor carriers were such that an enforcement officer would be able to determine that a driver had not driven more than 10 hours within a 15-hour period. As stated above, it is our belief that an extension beyond 12 consecutive hours would increase the likelihood that drivers would be able to exceed the 10-hour driving limitation without detection. The NPRM addressed this same point inresponse to comments to MC 99–1, and commenters have raised no new arguments. Further, opponents have failed to supply adequate data to support their contention that safety would not be adversely affected. Therefore, the FHWA has determined that there is justification both in retaining the 12-hour limitation and in adding the word "consecutive" to dispel any doubt as to the intent of the rule.

Retail Store Delivery

Section 395.3(c) currently provides that the maximum driving and on-duty time limitations shall not apply with respect to drivers of motor vehicles engaged solely in making deliveries from retail stores to consumers, during the period from December 10 to December 25, both inclusive, each year. The FHWA proposed to include in this exemption the local deliveries of

merchandise from catalog-type retailers and to limit this exemption to a 100 air-mile radius of the local driver's work-reporting location. As noted in the NPRM, the original purpose of this exemption was to allow the delivery of large volumes of holiday merchandise from retail stores to the ultimate consumer without imposing unnecessary regulatory burdens. However, since the granting of the exemption, the nature of holiday purchasing has changed and many consumer purchases are now made from catalog-type retailers.

Because of this change in marketing, the United Parcel Service, in its comments dated March 8, 1985, to Docket No. MC–114, Hours of service of drivers, requested a change to expand the exemption to include catalog-type retail deliveries. In addition, commenters in favor of the proposal argued that mail order contribution to package volume during the Christmas season has been increasing substantially over the last several decades. The volume that must be handled in December places a burden on the company's delivery drivers that could not be met without an exemption from duty time limitation. Those in opposition argued for the complete repeal of the exemption because a large number of companies now employ catalog sales for marketing, sales and economic reasons, thus increasing the number of vehicles and drivers which potentially could fall under the exemption. For this reason and due to the potential for inclement weather and traffic conditions during the exemption period, these commenters argued that the requested expansion of the exemption could result in increased commercial vehicle accidents.

The FHWA sees no logical distinction between the two types of "local" (as defined in 89 M.C.C. 19, at 30–31 (1962)) delivery and therefore will expand the exemption accordingly. The purpose of the exemption is to allow the delivery of large volumes of Christmas merchandise to the ultimate consumer by regular delivery drivers who are familiar with the consumer locations. In addition, opponents did not furnish any data to support their position. Therefore, the FHWA is including the local deliveries of merchandise from catalog-type retailers to the consumer in this exemption.

This change is not intended to apply to the line haul transport of small shipments to a local distribution warehouse or to a motor carrier's local terminal. Further, the exemption does not apply to the delivery of merchandise from a warehouse to a local retail outlet. In addition, as noted above, the exemption is limited to a 100-air mile radius of the local driver's work-reporting location.

60-Hour and 70-Hour On-Duty Limitation

Currently Section 395.3(b) states that no driver shall be on duty in excess of 60 hours in any period of 7 consecutive days or 70 hours in any period of 8 consecutive days (except driver salespersons). The FHWA proposed to clarify the regulation to recognize the interpretation, issued March 16, 1981, that stated that a driver could perform nondriving duties after reaching the current limits and not be in violation of the hours of service regulations. The responses to this proposal were: six in favor of the proposal; four opposed; and the other respondents made no comment one way or the other. The four that were opposed to the to the interpretation were two labor organizations, one driver, and a public transportation agency. Opponents claimed that if drivers are overly exhausted from having to perform nondriving duties after reaching the 60- or 70-hour driving limit, then the minimal sleeping time allotted will no longer be adequate. The FHWA disagrees with the opponents claims because drivers are not permitted to drive again until such time as the total on-duty time falls within the 60- or 70-hour limitation following a minimum of 8 consecutive hours off-duty. In addition, despite the fact that the NPRM stated that this proposal was "recognized as a possible safety sensitive issue," none of the commenters provided substantive evidence to support their viewpoints, nor did those who opposed it provide any known cases of accidents whose causal factors might be directly linked to a driver having worked (not driven) after reaching the 60- or 70-hour limit. In the late 1970's, the FHWA and the National Highway Traffic Safety Administration (NHTSA) conducted several studies to determine the relationship between accumulated fatigue and accident causation. For commercial motor vehicle drivers, these studies showed that accidents tend to occur more often during the first 4 hours of a driver's on-duty time and between the hours of 3:00 a.m. to 6:00 a.m. However, none of these studies concluded that there is an unsafe effect on commercial motor vehicle operation by permitting a driver to work beyond the current hours of service limits in a nondriving status. Drivers on duty not driving after 60 or 70 hours would, of course, have to be off duty thereafter, for the total number of consecutive hours necessary to accrue time available for driving during a given 7- or 8-day period. Therefore, the FHWA has determined that incorporation of the present interpretation into the FMCSR will not compromise highway safety.

On-Duty Time

Section 395.2(a)(8) currently states that the term "on-duty time" shall include "performing any other work in the capacity of, or in the employ or service of a common, contract, or private motor carrier." The FHWA proposed to amend § 395.2(a)(8) of the FMCSR to include, as "on-duty time," all time a driver spends "performing any compensated work for any person." The National Transportation Safety Board (NTSB) also recommended that the term "on-duty time" be revised to include all time worked by a commercial vehicle driver for all full-time or part-time employers. The NTSB correctly stated that the "on-duty time," as defined in § 395.2 of the FMCSR and recorded on the driver's record of duty status, does not include the time that a commercial motor vehicle driver is employed on a job other than with another motor carrier. This recommendation reflects the NTSB's concern that drivers employed in full-time or part-time jobs, other than with a motor carrier, also may become fatigued and their ability to safely operate a commercial motor vehicle may be seriously impaired.

Responses to this proposal were: 11 in favor of the proposal; and 5 opposed. Those opposed claimed that the proposal would create insurmountable complexities for carriers monitoring driver compliance and would impose a legal responsibility for monitoring activities of drivers over which they have no control, thereby placing motor carriers in an untenable position. The FHWA disagrees. If the carrier makes reasonable efforts to monitor compliance and the driver nevertheless fails to advise the motor carrier that he/she is employed in another capacity, then it would be the driver, not the carrier, that would be in violation and subject to prosecution. In addition, two of the respondents, both of whom were in favor of the proposal, raised questions as to the clarity and/or intent of the proposed new wording of the rule. The first question concerned the fact that some drivers, in some private motor carrier operations, are paid for some of their off-duty time. Thus, the respondent argued that "if these drivers had to log such time as 'on-duty', simply because they had been compensated for it, it would cause a needless interruption to their operations." This could arguably be extended to the situation wherein

drivers are paid a weekly salary, regardless of whether their employer assigns them any work. Would such drivers have to log the whole week as "on-duty time" simply because they had been compensated for the week? The answer is obviously not, as the FHWA's intention is simply to have drivers account for all time worked for someone other than a motor carrier. Although no changes have been made in the final rule, our intention is to include in the definition of on-duty time only the hours during which work is performed.

Applicability of Part 395

Consistent with the Act, § 395.1 is amended to make the rules in Part 395 applicable only to commercial motor vehicles that have a gross vehicle weight rating (GVWR) of 10,001 pounds or more, or are used to transport more than 15 passengers, or transport hazardous materials.

The lightweight mail truck exemption, § 395.1(b), is being eliminated since those vehicles, by definition, have a GVWR of 10,000 pounds or less and thus will no longer be subject to the requirements of Part 395. In addition, § 395.3(c) is being amended for the same reason by eliminating the exemption provided to drivers who only operate motor vehicles having not more than two axles and a GVWR of not more than 10,000 pounds.

The FHWA has determined that this document does not contain a major rule under Executive Order 12291. Pursuant to Executive Order 12498, this rulemaking has been included on the Regulatory Program for significant actions. The principal impact anticipated as a result of this rulemaking action will be a reduction in the paperwork burden placed on the motor carrier industry. It is further anticipated that any impact will be a cost savings to the motor carrier industry. Accordingly, a full regulatory evaluation is not required. For this reason, and under the criteria of the Regulatory Flexibility Act, it is hereby certified that this action does not have a significant economic impact on a substantial number of small entities.

The information collection requirement contained in this regulation has been approved by the Office of Management and Budget and assigned control number 2125–0016.

List of Subjects in 49 CFR Part 395

Highways and roads, Highway safety, Motor carriers, Driver's hours of service, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: October 23, 1987.

R.A. Barnhart,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA is amending Title 49, Code of Federal Regulations, Subtitle B, Chapter III, Part 395 as follows:

PART 395—HOURS OF SERVICE OF DRIVERS

1. The authority citation for Part 395 is revised to read as follows:

Authority: 49 U.S.C. App. 2505; 49 U.S.C. 3102; 49 CFR 1.48 and 301.60.

2. Section 395.1 is revised to read as follows:

§ 395.1 Scope, compliance and knowledge of the rules in this part.

(a) The rules in this part to drivers of commercial motor vehicles that—

(1) Have a gross vehicle weight rating of 10,001 pounds or more;

(2) Are used to transport more than 15 passengers; or

(3) Transport hazardous materials of such type and in such quantity as to require the vehicle to be specifically placarded under § 177.823 of this title, or when operated without cargo under conditions which require the vehicle to be placarded under the cited regulations.

(b) Every employer and its employees shall comply with the rules in this part, and every employee shall require that its officers, employees, and representatives know and comply with the rules in this part.

3. Section 395.2 is amended by adding a new subparagraph (a)(9) to read as follows:

§ 395.2 Definitions.

* * * * *

(a) *On-duty time.* * * *

(9) Performing any compensated work for any nonmotor carrier entity.

* * * * *

4. Section 395.3(b), (c) and (e) are revised to read as follows:

§ 395.3 Maximum driving and on-duty time.

* * * * *

(b) No motor carrier shall permit or require a driver of a commercial motor vehicle, regardless of the number of motor carriers using the driver's services, to drive for any period after—

(1) Having been on duty 60 hours in any 7 consecutive days if the employing motor carrier does not operate every day in the week; or

(2) Having been on duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates motor vehicles every day of the week.

(3) Exception: This paragraph shall not apply to any driver driving a motor vehicle in the State of Alaska, as provided in paragraph (e) of this section, or to any driver-salesperson whose total driving time does not exceed 40 hours in any period of 7 consecutive days.

(c) The provisions of paragraph (a) of this section shall not apply with respect to drivers of motor vehicles engaged solely in making local deliveries from retail stores and/or retail catalog businesses to the ultimate consumer, when driving solely within a 100-air mile radius of the driver's work-reporting location, during the period from December 10 to December 25, both inclusive, of each year.

* * * * *

(e) A driver who is driving a motor vehicle in the State of Alaska must not drive or be permitted to drive—

(1) More than 15 hours following 8 consecutive hours off duty;

(2) After being on duty for 20 hours or more following 8 consecutive hours off duty;

(3) After being on duty for 70 hours in any period of 7 consecutive days, if the employing motor carrier does not operate every day of the week; or

(4) After being on duty for 80 hours in any period of 8 consecutive days, if the employing motor carrier operates motor vehicles every day in the week.

* * * * *

5. Section 395.8(d) and (l)(1)(ii) are revised to read as follows:

§ 395.8 Driver's record of duty status.

* * * * *

(d) The following information must be included on the form in addition to the grid:

(1) Date;

(2) Total miles driving today;

(3) Truck or tractor and trailer number;

(4) Name of carrier;

(5) Driver's signature/certification;

(6) 24-hour period starting time (e.g. midnight, 9:00 a.m., noon, 3:00 p.m.);

(7) Main office address;

(8) Remarks;

(9) Name of co-driver;

(10) Total hours (far right edge of grid); and

(11) Shipping document number(s), or name of shipper and commodity.

* * * * *

(l) Exceptions—*(1) 100 air-mile radius driver.* A driver is exempt from the requirements of this section if:

* * * * *

(ii) The driver, except a driver salesperson, returns to the work reporting location, and is released from work within 12 consecutive hours;

* * * * *

[FR Doc. 87-25194 Filed 10-29-87; 8:45 am]
BILLING CODE 4910-22-M

Proposed Rules

Federal Register
Vol. 52, No. 210
Friday, October 30, 1987

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Doc. No. 4843S]

General Administrative Regulations; Standards for Approval; Agency Sales and Service Contract

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of intent not to renew present contract, and advance notice of proposed rulemaking.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith gives notice of its intention not to renew the present Agency Sales and Service contract for the 1989 contract year, and of its intention to offer instead a new contract to incorporate requirements for electronically transmitting and receiving information with respect to the original executed crop insurance documents.

Present eligible contractors, under an Agency Sales and Service Contract with FCIC, and any other eligible interested private entities, will be offered a new contract on July 1, 1988.

In addition, FCIC herewith gives advance notice of its intent to publish a Notice of Proposed Rulemaking (NPRM) to amend the Standards for Approval; Agency Sales and Service Contract, to provide standards of performance relative to the new system of transmitting and receiving electronic data which will become applicable to the new contract.

The current contract provides for continuation from year to year with a renewal date of July 1, unless FCIC or the Contractor gives at least 90 days advance notice in writing to the other party that the contract is not to be renewed. This notice does not constitute such written notice but serves as an additional means of informing all interested parties of FCIC's intent not to renew the current contract for the 1989 contract year.

FCIC intends to serve all present contractors with appropriate written notice of non-renewal in accordance with the 90-day notification requirement.

The new contract, to be effective on July 1, 1988, will be offered to all eligible present contractors and any other eligible interested private entities meeting the requirements set forth in the Standards for Approval. The contract will incorporate requirements with respect to transmitting and receiving information on the original executed crop insurance document.

FOR FURTHER INFORMATION CONTACT: For further information on this notice contact Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325. For information on the Agency Sales and Service Contract, or application for such contract, contact David W. Gabriel, Assistant Manager for Program Administration, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–4407.

(Authority: 7 U.S.C. 1501 et seq.)

Done in Washington, DC, on October 15, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87–25129 Filed 10–29–87; 8:45 am]

BILLING CODE 3410–08–M

7 CFR Part 401

[Amdt. No. 16; Doc. No. 4769S]

General Crop Insurance Regulations; Peanut Crop Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by adding a new subpart, 7 CFR 401.125, to be known as the Peanut Crop Endorsement. The intended effect of this rule is to provide the regulations and endorsement containing the provisions of crop insurance protection on peanuts in an endorsement to the general crop insurance policy which contains the standard terms and conditions common to most crops. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than November 30, 1987, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations in August 1, 1992.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program 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.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith proposes to add to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.125, the Peanut Crop Endorsement, effective for the 1988 and succeeding crop years, to provide the provisions for insuring peanuts.

Upon publication as a final rule, the provisions for insuring peanuts contained in 7 CFR 401.125 will supersede those provisions for insuring peanuts contained in 7 CFR Part 425 the Peanut Crop Insurance Regulations, effective with the beginning of the 1988 crop year. The present policy contained in 7 CFR Part 425 will be terminated at the end of the 1987 crop year and later removed and reserved. FCIC will propose to amend the title of 7 CFR Part 425 by separate document so that the provisions therein are effective only through the 1987 crop year.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Peanut Endorsement to 7 CFR Part 401 as outlined below, FCIC proposes changes in the provisions for insuring peanuts. FCIC itemizes such changes as follows:

1. *Section 1.* Add as provision indicating that peanuts destroyed to comply with other U.S. Department of Agriculture programs will not be insured. This provision was added to prevent insurance from attaching to a crop that is destroyed to comply with other programs.

2. *Section 5.* Add unit division guidelines and add a clause to specify that division of units may result in the insured paying additional premium for guideline unit division in accordance with actuarial studies which show an increased risk when units are divided. Add language to provide that nonirrigated corners of a center pivot irrigation system are part of the irrigated unit. The production from the total unit, both irrigated and nonirrigated, is combined to determine your unit for the purpose of determining the guarantee for the unit.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register**. Written comments received pursuant to this proposed rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

General crop insurance regulations, Peanut crop endorsement.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority. Secs. 506, 516, Pub.L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.125 Peanut Crop Endorsement, effective for the 1988 and Succeeding Crop Years, to read as follows:

§ 401.125 Peanut crop endorsement.

The provisions of the Peanut Crop Insurance Endorsement for the 1988 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Peanut Crop Endorsement

1. Insured crop.

a. The crop insured will be peanuts planted for the purpose of digging, maturing, and marketing as farmers stock peanuts, which are grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. In addition to the peanuts not insurable in section 2 of the general crop insurance policy, we do not insure any peanuts, which were destroyed or where the acreage was put to another use for the purpose of conforming with any other program administered by the United States Department of Agriculture; or

2. Causes of loss.

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;

b. Fire;

c. Insects;

d. Plant disease;

e. Wildlife;

f. Earthquake;

g. Volcanic eruption; or

h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting; unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual premium.

a. The annual premium amount is computed by multiplying the production guarantee for the unit (insured acreage time the applicable production guarantee) which may consist of quota and non-quota (additional) peanuts, times the applicable price election, times the premium rate, times your share at the time of planting.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insurance experience through the 1983 crop year under the terms of the experience table contained in the peanut policy in effect for the 1984 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction amount will not increase because of favorable experience;

(3) The premium reduction amount will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1984 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

4. Insurance period.

The calendar date for the end of the insurance period is as follows:

a. Duval and La Salle Counties, Texas, and all other States except New Mexico and Oklahoma, November 30.

b. New Mexico, Oklahoma, and all other Texas Counties, December 31.

5. Units.

Acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay additional premium as required by the actuarial table and if for each proposed unit you maintain written, verifiable records of planted acreage and harvested produciton for at least the previous crop year; and either

a. Acreage planted to the insured peanuts is located in separate, legally identifiable sections (except in Florida) or, in the absence of section descriptions (and in Florida) the land is identified by separate Agricultural Stabilization and Conservation Service (ASCS) Farm Serial Numbers, provided:

(1) The boundaries of the sections or Farm Serial Numbers are clearly identified, and the insured acreage can be easily determined; and

(2) The peanuts are planted in such a manner that the planting pattern does not continue into an adjacent section or Farm Serial Number; or

b. The acreage planted to the insured crop is located in a single section or Farm Serial Number and consists of acreage on which both irrigated and nonirrigated practices are carried out, provided:

(1) The irrigated acreage does not continue into nonirrigated acreage in the same rows or planting pattern (nonirrigated corners of a center pivot irrigation system are part of the irrigated unit. Production for the total unit both irrigated and non-irrigated will be combined to determine the yield for the purpose of determining the guarantee for the unit.); and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized good irrigated and nonirrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between units will cause the production from those units to be combined for the purpose of calculating an indemnity.

6. Notice of damage or loss.

For purposes of section 8 of the general crop insurance policy; the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

7. Claim for indemnity.

a. An indemnity will be determined for each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of peanuts to be counted (see subsection 7.c.);

(3) Multiplying the remainder applicable to quota or non-quota (additional) production by the applicable price election; and

(4) Multiplying this product by your share.

b. The total production to count will be identified as quota and/or non-quota (additional) production by:

(1) Counting all threshed and appraised production less than or equal to the unit's effective poundage quota as quota production; and

(2) Counting any threshed and appraised production in excess of the unit's effective poundage quota as non-quota (additional) production.

c. The total production to be counted for a unit will include all threshed and appraised production.

(1) Threshed production will be the net weight in pounds shown on the United States Department of Agriculture "Inspection Certificate and Sales Memorandum."

(2) Mature peanut production which is damaged, due to insurable causes, will be adjusted by:

(a) Dividing the value per pound for the insured type of peanuts by the applicable average price per pound; and

(b) Multiplying the result by the number of pounds of such production.

(3) To enable us to determine the net weight and quality of production of any peanuts for which a United States Department of Agriculture "Inspection Certificate and Sales Memorandum" has not been issued, we must be allowed to have such peanuts inspected and graded before you dispose of them. If you dispose of any production without giving us the opportunity to have the peanuts inspected and graded the gross weight of such production will be used in determining total production to count unless you submit a marketing record satisfactory to us which clearly shows the net weight and quality of such peanuts.

(4) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good peanut farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use (other than harvest) without our prior written consent or damaged solely by an uninsured cause;

(c) Only the appraised production in excess of the lesser of 250 pounds or 20% of the production guarantee per acre for all other unharvested acreage will be counted.

(d) Our appraised production on unharvested acreage (as limited by subsection (c));

(e) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(i) Not put to another use before harvest of peanuts becomes general in the country;

(ii) Harvested; or

(iii) Further damaged by an insured cause and reappraised by us.

d. A replanting payment is available under this endorsement if we determine it is practical to replant. The replanting payment per acre will not exceed 250 pounds or 20 percent of the production guarantee multiplied by the price election, (the quota price up to an including the units effective quota and non-quota price of any additional peanuts) multiplied by your share. If the crop is replanted under a practice that was uninsurable as an original planting, the guarantee will be reduced by the amount of the replant payment.

In accordance with paragraph 9.h. of the general crop insurance policy, no replanting payment will be made on acreage on which our appraisal exceeds 90 percent of the guarantee.

8. Cancellation and termination dates.

State and county	Cancellation and termination dates
Duval and La Salle counties, Texas.	February 15.
New Mexico; Oklahoma; Baylor, Brown, Callahan, Collingsworth, Comanche, Dallam, Eastland, Erath, Gaines, Garza, Hood, Jones, Montague, Motley, Palo Pinto, Parker, Somervell, and Stonewall counties, Texas; and Virginia.	April 15.
All other Texas counties and all other states.	March 31.

9. Contract changes.

Contract changes will be available at your service office by December 31 prior to the cancellation date for counties with an April 15 cancellation date and by November 30 prior to the cancellation date for all other counties.

10. Meaning of terms.

a. "County" means the land defined in the general crop insurance policy and any land identified by an ASCS Farm Serial Number for the county but physically located in another county.

b. "Effective poundage marketing quota" means the farm marketing quota as established and recorded by ASCS.

c. "Harvest" means the completion on a per acre basis of digging of peanuts on any acreage for the purpose of combining or threshing, from which acreage, at least the lesser of 250 pounds or 20 percent of the production guarantee per acre (as contained in the actuarial table) is dug.

d. "Replanting" means performing the cultural practices necessary to replant insured acreage to the same crop.

e. "Unit", in lieu of paragraph 17.q. of the general crop insurance policy, means all insurable acreage of peanuts in the county in which you have an insured share on the date of planting for the crop year and which is identified by a single ASCS farm serial number at the time insurance first attaches under this policy for the crop year. Units will be determined when the acreage is reported.

We may reject or modify any ASCS reconstitution for the purpose of unit definition if the reconstitution was in whole or in part to defeat the purpose of the Federal Crop Insurance Program or to gain disproportionate advantage under this policy. Errors in reporting units may be corrected by us when adjusting a loss.

f. "Value per pound" means the "value per pound including loose shell kernels" as shown on the United States Department of Agriculture "Inspection Certificate and Sales Memorandum," except for Segregation II, III, and non-quota (additional) peanuts for which the value per pound will be determined by us after reference to local market conditions and the support rate.

Done in Washington, DC, on October 15, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-25131 Filed 10-29-87; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 401

[Amdt. No. 17; Doc. No. 4834S]

General Crop Insurance Regulations; Hybrid Corn Seed Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by adding a new subpart, 7 CFR 401.126, to be known as the Hybrid Corn Seed Endorsement. The intended effect of this rule is to provide the regulations and endorsement containing the provisions of crop insurance protection on hybrid corn seed in an endorsement to the general crop insurance policy which contains the standard terms and conditions common to most crops. The authority for the promulgation of this

rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than November 30, 1987, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington. DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date stablished for these regulations is established as September 1, 1992.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program 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.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith proposes to add to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.126, the Hybrid Corn Seed Endorsement, effective for the 1988 and succeeding crop years, to provide the provisions for insuring hybrid corn seed.

Upon publication as a final rule, the provisions for insuring hybrid corn seed contained in 7 CFR 401.126 will supersede those provisions contained in 7 CFR Part 443, the Hybrid Seed Crop Insurance Regulations, effective with the beginning of the 1988 crop year. The present policy contained in 7 CFR Part 443 will be terminated at the end of the 1987 crop year and later removed and reserved. FCIC will propose to amend the title of 7 CFR Part 443 by separate document so that the provisions therein are effective only through the 1987 crop year.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Hybrid Corn Seed Endorsement to 7 CFR Part 401, FCIC proposes to make other changes in the provisions for insuring hybrid corn seed as follows:

1. Section 1—Add a provision indicating that hybrid corn seed destroyed to comply with other U.S. Department of Agriculture programs will not be insured.

2. Section 4—Provide that insurance will begin on each unit or portion of a unit. This change is made to avoid instances when delayed planting of part of a unit until after the final planting date would prevent insurance from attaching on timely planted acreage.

3. Section 5—Add unit division guidelines and add a clause to provide that division of units may result in the insured paying additional premium for guideline unit division in accordance with actuarial studies which show an increased risk when units are divided.

Add language to provide that nonirrigated corners of a center pivot irrigation system are part of the irrigated unit. The production from the total unit, both irrigated and nonirrigated, is combined to determine your yield for the purpose of determining the guarantee for the unit.

6. Section 10—Change definitions of "female plant", "harvest", "inadequate germination", "male plant", "non-seed production", "sample", "seed company", "seed production," and "variety" for clarification purposes to provide compatibility with the general crop insurance policy.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register**. Written comments received pursuant to this proposed rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

General crop insurance regulations; Hybrid corn seed endorsement.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75.430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.126, Hybrid Corn Seed Endorsement, effective for the 1988 and Succeeding Crop Years, to read as follows:

§ 401.126 Hybrid corn seed endorsement.

The provisions of the Hybrid Corn Seed Crop Insurance Endorsement for the 1988 and subsequent crop years are as follows:

Federal Crop Insurance Corporation Hybrid Corn Seed Endorsement

1. Insured crop.

a. The crop insured will be the female corn seed which is:

((1) Planted for harvest and the production is intended for use as commercial seed to produce corn for grain or silage, and

(2) Grown under a written contract with a seed company executed before the acreage reporting date.

b. An instrument in the form of a "lease" under which you retain control of the acreage on which the insured crop is grown and which provides for delivery of the crop under certain conditions and at a stipulated price will be treated as a contract under which you have the share in the crop.

c. In addition to the hybrid corn seed acreage not insurable under section 2.e. of the general crop insurance policy, we do not insure any hybrid corn seed acreage:

(1) When a mixture of female and male seed is planted in the same row;

(2) Planted and occupied by the male plants;

(3) Planted for experimental purposes;

(4) Planted for any purpose other than for commercial seed;

(5) Grown under a contract with any seed company and that seed company refuses to provide us with the records we require to determine the dollar value per bushel of production for each type and variety; or

(6) Destroyed or put to another use in order to comply with other U.S. Department of Agriculture programs.

2. Causes of loss.

a. The insurance provided is against unavoidable loss of hybrid corn seed production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to the causes of loss not insured against in section 1.b. of the general crop insurance policy, we will not insure against any loss of production due to:

(1) The use of unadapted, incompatible or genetically deficient male or female seed;

(2) The failure to follow the grower provisions of the seed contract;

(3) Frost or freeze after the date set by the actuarial table;

(4) Inadequate germination of the hybrid corn seed even though such inadequate germination is the direct result of an insured cause of loss unless inspected and accepted by us before harvest is completed; or

(5) The failure to plant the male corn seed at a time sufficient to assure adequate pollination of the female plant.

3. Annual premium.

a. The annual premium amount is computed by multiplying the amount of insurance per acre times the premium rate, times the insured acreage, times your share at the time of planting.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the experience table contained in the hybrid corn seed policy for the 1984 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1984 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

4. Insurance period.

In addition to the provisions of section 7 of the general crop insurance policy, the following will apply:

a. Insurance attaches on each unit or part of a unit for each type and variety when both the male plant seed and the female plant seed are completely planted in accordance with the production management practices of the seed company. However, insurance will not attach to any part of a unit where the female plant seed for the type and variety is not planted by the final planting date shown in the actuarial documents.

b. The calendar date for the end of the insurance period is October 31 of the crop year.

5. Unit division.

Hybrid corn seed acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay additional premium if required by the actuarial table and if for each proposed unit you maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year, and either:

a. The acreage planted to insured hybrid corn seed is located in separate, legally identifiable sections or, in the absence of section descriptions the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the sections or Farm Serial Numbers are clearly identified and the insured acreage is easily determined; and

(2) The hybrid corn seed is planted in such a manner that the planting pattern does not continue into the adjacent section or ASCS Farm Serial Number; or

b. The acreage planted to the insured hybrid corn seed is located in a single section or ASCS Farm Serial Number and consists of acreage on which both an irrigated and a nonirrigated practice are carried out, provided:

(1) Hybrid corn seed planted on irrigated acreage does not continue into nonirrigated acreage in the same rows or planting pattern (nonirrigated corners of a center pivot irrigation system are part of the irrigated unit); and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized good dryland and irrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

6. Notice of damage or loss.

In addition to the notices required in section 8 of the general crop insurance policy, in case of damage or probable loss you must give us written notice of probable loss at least 15 days before the beginning of harvest if you anticipate a germination rate of less than 80 percent on any unit. For purposes of section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

7. Claim for indemnity.

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the amount of insurance per acre;

(2) Subtracting from this product the sum of:

(a) The dollar amount obtained by multiplying seed production to count for each type and variety by the respective dollar value per bushel of production plus;

(b) The dollar amount obtained by multiplying non-seed production to count (see section 7.b.) by the local market price of such production on the earlier of the date the loss is adjusted or the date such production is sold; and

(c) Multiplying this result by your share.

b. The total production to be counted for a unit will include all harvested and appraised seed and non-seed production.

(1) Total seed production to count will include:

(a) All corn delivered to and accepted by the seed company;

(b) All corn which would pass over 16/64 screen unless the germination rate is less than 80 percent warm test as determined by a certified seed test conducted from a cleaned sample taken at the time of delivery or if the mature corn is appraised, at the time of appraisal; and

(c) All harvested and appraised production which does not qualify under (a) and (b) above because the damage was due to uninsured causes.

(2) For the purpose of determining the quantity of mature production:

(a) Shelled corn will be adjusted .12 percent for each .1 percentage point of moisture to 15.5; and

(b) Ear corn will be measured at 70 pounds of ear corn equaling 56 pounds (one bushel) of shelled corn. The weight of ear corn required to equal one bushel of shelled corn will be increased 2 pounds for each percentage point of moisture in excess of 14 percent.

(3) When records of seed production, provided by the seed company, have been adjusted to a shelled corn basis of 15.5 percent moisture, and 56-pound test weight (2) above will not apply for harvested production and the records of the seed company will be used to determine the amount of indemnity; provided that such production records are based on the same moisture and test weights criteria as the criteria used to determine the dollar value per bushel.

(4) Appraised production to count as seed production will include:

(a) Unharvested production on harvested acreage and the percent of the approved yield lost due to uninsured causes;

(b) Not less than the dollar amount of insurance for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Any appraisal of non-mature production; and

(d) Any appraised production on unharvested acreage.

(5) Any appraisal we have made on insured acreage and given written consent to be put to another use will be considered as seed production unless such acreage is:

(a) Not put to another use before harvest of the crop becomes general in the county and reappraised by us; or

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

In addition to the provisions of section 9.n. in the general crop insurance policy, the fair market value of production on the unit before the loss is limited to 1½ times the highest price election available.

8. Cancellation and termination dates.

The cancellation and termination dates are April 15.

9. Contract changes.

The contract change date is December 31 preceding the cancellation date.

10. Meaning of terms.

a. "Approved yield" means the result obtained by dividing the amount of insurance per acre by the dollar value per bushel of production.

b. "Commercial seed" means the offspring of two individual seeds of different genetic character which is produced as a result of crossing. A portion of this resultant offspring is the product intended for the purpose or use on a commercial basis by an agricultural producer to produce a field crop type for grain or silage.

c. "Female plant" means those plants pollinated by male plants and grown from foundation seed stock for the purpose of being harvested as hybrid seed corn.

d. "Harvest" means the combining, threshing, or picking of the female seed parent for use as hybrid seed corn.

e. "Inadequate germination" means the hybrid seed corn produced from the female plants having a warm test germination rate of less than 80% as determined by a certified seed test conducted from a field run sample which has passed over a 16/64 screen.

f. "Male plant" means the plants grown from foundation seed stock for the purpose of pollinating the female plants and are not insurable under this endorsement.

g. "Non-seed production" means all hybrid seed corn with inadequate germination (Designation as non-seed production under this definition may be appraised production to count under section 9 if inadequate germination was due to an uninsurable cause (see section 7.b.(4)(a)).

h. "Sample" means at least 3 pounds of shelled hybrid seed corn representative (field run) for each variety of seed corn grown on the unit.

i. "Seed company" means a company which issues a grower a written contract to produce or grow hybrid seed corn.

j. "Seed production" means all hybrid seed corn with a warm test germination rate of at least 80 percent using clean seed as determined by a certified seed test conducted from a field run sample which has passed over a 16/64 screen.

k. "Shelled corn" means grain (corn) after its removal from the cob.

l. "Variety" means a specific cross between genetically identifiable foundation seed parents.

Done in Washington, DC, on October 15, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-25130 Filed 10-29-87; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 426

[Amdt. No. 2; Doc. No. 4819S]

Combined Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Combined Crop Insurance Regulations (7 CFR Part 426), effective for the 1988 crop year. The intended effect of this proposed rule is to maintain the effectiveness of the present Combined Crop Insurance Regulations only through the 1987 crop year. It is proposed to terminate the Combined Crop Insurance Regulations effective with the end of the 1987 crop year. The authority for the promulgation of this rule is the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than November 30, 1987, to be sure of consideration.

ADDRESS: Written comments, data, and opinions on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation. Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250. Written comments will be available for public inspection in the Office of the Manager, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC during regular business hours. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 1, 1988.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program 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.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

The combined crop insurance program, begun in the 1948 crop year, was, at one time, offered in a majority of counties throughout the country as a means of insuring a variety of crops at a reduced premium rate. The concept of a combined crop insurance program was designed to reflect the crop insurance needs of farmers which leaned strongly toward less risk management through crop diversification and covered Barley, Flax, Oats, Rye, Soybeans, and Wheat.

Over the years, participation in the combined crop insurance program dwindled to only five counties in North Dakota. Several of these counties had extremely low participation with the majority of producers preferring crop insurance coverage on an individual basis.

On Thursday, November 29, 1979, FCIC published a final rule in the **Federal Register** at 44 FR 68431, which determined that, while the combined crop insurance program would be maintained for those producers who wished to continue to insure their crops under a continuous combined crop insurance policy, no new applications would be accepted.

The determination to discontinue accepting new applications for combined crop insurance, while affecting only new policyholders, afforded them a greater flexibility in insurance coverage by allowing them to select varying levels of coverage on individual crops to reduce premium

costs. The same benefit accrued to existing combined crop insurance policyholders who determined that individual crop coverage would be more beneficial. These policyholders were permitted to transfer any good insuring experience discount to an individual crop program.

On October 9, 1986, the Board of Directors requested that the Corporation determine the feasibilty of terminating combined crop insurance with the end of the 1987 crop year.

Approximately 602 policyholders currently remaining under the combined crop insurance program will be offered individual crop insurance coverage under any of the above endorsements for the 1988 crop year.

Any of these policyholders with a continuing benefit from good insuring experience discount will be permitted to continue receiving this benefit through the 1989 crop year.

Beginning with the 1988 crop year, the crops formerly insured under the combined crop insurance program will be incorporated as separate endorsements under the General Crop Insurance Policy (7 CFR Part 401, published on July 30, 1987, at 52 FR 28443), as follows:

Barley—Section 401.103

Flax—Section 401.116

Oats—Section 401.105

Rye—Section 401.106

Soybeans—Section 401.117

Wheat—Section 401.101

FCIC herein proposes to amend the subpart heading of these regulations to provide that 7 CFR Part 426 be effective for the 1986 and 1987 crop years only.

List of Subjects in 7 CFR Part 426

Crop insurance, Combined crops.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Subpart heading to the Combined Crop Insurance Regulations (7 CFR Part 426), as follows:

PART 426—[AMENDED]

1. The authority citation for 7 CFR Part 426 continues to read as follows:

Authority: Secs. 506, 516, Pub.L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. The subpart heading in 7 CFR Part 426 is revised to read as follows:

Subpart—Regulations for the 1986 and 1987 Crop Years

Done in Washington, DC, on October 14, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87–25132 Filed 10–29–87; 8:45 am]

BILLING CODE 3410–08–M

Agricultural Marketing Service

7 CFR Part 947

Potatoes Grown in Designated Areas in California and Oregon; Handling Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would make permanent the relaxed minimum size requirements currently in effect for high quality potatoes shipped for market expansion purposes. The current requirements were made effective on a temporary basis until March 7, 1988. The relaxed requirements are designed to develop and expand the market for potatoes.

DATE: Comments must be received by November 30, 1987.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments should be sent to: Docket Clerk, Fruit and Vegetable Division, AMS: USDA, P.O. Box 96456, Room 2085–S Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the date and page number of this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 447–5697.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 947, as amended (7 CFR Part 947), regulating the handling of Irish potatoes grown in Modoc and Siskiyou Counties, California, and in all Counties in Oregon, except Malheur County. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

The information collection requirements contained in this proposed rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and have been assigned OMB No. 0581–0112.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 42 handlers of Oregon-Northern California potatoes subject to regulation under the marketing order, and approximately 469 potato producers in Oregon and Northern California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose gross annual revenues are less than $3,500,000. The majority of handlers and producers of Oregon-Northern California potatoes may be classified as small entities.

The handling requirements for fresh Oregon-California potatoes are specified in § 947.340 (46 FR 47757, September 30, 1981; 48 FR 38203, August 23, 1983; 52 FR 7120, March 9, 1987). The most recent amendment relaxed the minimum size requirements for potatoes shipped under specific conditions for market expansion purposes for the period February 25, 1987, through March 7, 1988, and permanently exempted all non-white fleshed varieties of potatoes from handling regulations.

Potatoes shipped under the temporarily relaxed minimum size requirements specified in the March 9, 1987, final rule must grade at least U.S. No. 1, and be packed in quantities of 50 pounds or more per container. In addition, all such potatoes of the red-skinned varieties must be at least "Size

B," while all other regulated varieties must be smaller than 1½ inches in diameter.

Prior to shipping any such potatoes under the relaxed size requirements, handlers must apply for and obtain from the committee each marketing season a special purpose certificate authorizing shipment of the potatoes. In addition, handlers who ship potatoes under the relaxed minimum size provisions are required to promptly report information requested by the committee relating to such shipments, including the grade and usage of the potatoes, once the shipments are concluded. The reporting requirements are designed to provide adequate safeguards to assure that the potatoes shipped under these provisions are shipped to the intended market for the stated purpose, and to provide the committee with information necessary to monitor and evaluate the effects of such shipments on the market.

This proposal to make the current rule permanent is designed to further the development of new markets and further expand marketing opportunities for potato growers in Oregon and Northern California. This action was recommended by the Oregon-California Potato Committee.

The committee reports that about 600 pounds of potatoes have been test marketed as samples to prospective customers e.g., restaurants, under the relaxed minimum size requirements. These shipments have been well received and, with the onset of the 1987 crop harvest, shipments of potatoes under the relaxed requirements are expected to increase considerably. The committee is of the opinion that the procedures set up on a temporary basis for keeping track of those shipments to make sure that the potatoes do not end up in the markets for larger-sized Oregon-California potatoes will work on a permanent basis. Further, the committee believes that such shipments will not adversely impact the market for larger-sized potatoes and, hence, these requirements should be established on a permanent basis. For potatoes shipped to markets desiring larger-sized potatoes, the minimum size requirements are 2 inches in diameter or 4 ounces in weight for potatoes shipped within the continental United States, and 1½ inches in diameter for potatoes shipped outside such area, while the minimum grade requirement is U.S. No. 1 for potatoes packed in 50-pound cartons and U.S. No. 2 for potatoes packed in other size containers.

Based on the above, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 947

Marketing agreements and orders, Potatoes, Oregon, California.

For reasons set forth in the preamble, it is proposed that 7 CFR Part 947 be amended as follows:

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

1. The authority citation for 7 CFR Part 947 continues to read as follows:

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

2. Section 947.340 (46 FR 47757, September 30, 1981; 48 FR 38203, August 23, 1983; 52 FR 7120, March 9, 1987) is amended by revising paragraph (b) to read as follows:

§ 947.340 Handling regulation.

* * * * *

(b) *Size Requirements.* Such potatoes shipped to points within the continental United States shall be at least 2 inches in diameter or weigh at least 4 ounces, and such potatoes shipped to export destinations shall be at least 1½ inches in diameter: *Provided,* That any person may handle all varieties of such potatoes, except red-skinned varieties of potatoes, that measure less than 1½ inches in diameter, and all red-skinned varieties of potatoes which are Size B, if such potatoes otherwise grade at least U.S. No. 1, and they are packed in quantities of 50 pounds or more per container: *Provided further,* That any person who desires to so handle potatoes shall each season prior to shipment apply for and obtain a special purpose certificate from the committee authorizing shipment of the potatoes for market expansion purposes: *Provided further,* That any person who so handles potatoes for market expansion purposes shall promptly report the shipment, grading, and usage of the potatoes to the committee.

* * * * *

Dated: October 26, 1987.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87–25153 Filed 10–29–87; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

High-Level Waste Licensing Support System Advisory Committee (Negotiated Rulemaking); Third Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of third meeting.

SUMMARY: The Nuclear Regulatory Commission will hold the third meeting of the High-Level Waste Licensing Support System Advisory Committee on November 19–20, 1987. The committee, established under authority of the Federal Advisory Committee Act (FACA), is tasked with developing recommendations for revision of the Commission's Rules of Practice in 10 CFR Part 2 related to the adjudicatory proceeding for the issuance of a license for a geolgic repository for the disposal of high-level waste (HLW). The Committee is attempting to negotiate a consensus on proposed revisions related to the submission and management of records and documents for the HLW licensing proceeding.

DATES: The third meeting of the HLW Licensing Support System Advisory Committee will be held November 19–20, 1987, beginning at 10:00 a.m. on November 19 and 8:30 a.m. on November 20.

ADDRESS: The location of the November 19–20, 1987 meeting of the HLW Licensing Support System Advisory Committee is the Regency Hotel and Conference Center, 3900 Elati Street, Denver, Colorado, 80216.

FOR FURTHER INFORMATION CONTACT: Donnie H. Grimsley, Director, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: 301–492–7211.

SUPPLEMENTARY INFORMATION: The third meeting of the HLW Licensing Support System Advisory Committee ("negotiating committee") is scheduled to include negotiation on several preliminary issues related to a high-level waste licensing support system and procedural issues regarding the negotiation process, such as use of working groups, and use by the negotiating committee of a single negotiating text.

Dated at Bethesda, Maryland, this 26th day of October, 1987.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Rules and Records, Office of Administration and Resources Management.

[FR Doc. 87-25208 Filed 10-29-87; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-131-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9 and C-9 (Military) Series Airplanes, Fuselage Numbers 1 through 1371

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD, applicable to certain McDonnell Douglas Model DC-9 series airplanes, which currently requries inspection and repair, if necessary, of the upper anticollision light doubler. This action would expand the applicability of the AD to include Model DC-9-80 (MD-80) series airplanes, fuselage numbers 1249 through 1371, since the incorporation of production equivalent changes was not accomplished on these airplanes prior to delivery.

DATE: Comments must be received no later than December 29, 1987.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-131-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60).

This information may be examined at the Northwest Mountain Region, 17900 Pafific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Sr., Aerospace Engineer, Airframe Branch, ANM-122L, FAA Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6319.

SUPPLEMENTARY INFORMATION:

Comments invited

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

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: Attention: Airworthiness Rules Docket No. 87-NM-131-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

DISCUSSION: On December 17, 1985, FAA issued AD 85-19-03-R1, Amendment 39-5200 (50 FR 52766; December 26, 1985), to require inspection and repair, as necessary, of the upper anticollision light doubler at one or both ends of the cutout in the longitudinal axis of the doubler, originating at a nut plate clearance hole. That action was prompted by reports of cracks in the upper anticollision light doubler, the failure of which could result in damage to the adjacent structure and subsequent loss of cabin structural integrity.

Since issuance of that AD, the FAA has become aware that a number of Model DC-9-80 (MD-80) series airplanes, beginning with fuselage number 1249, were assembled and certificated without Engineering Drawing Number 5911415, change letter BP, dated December 18, 1984, incorporated. The engineering change was intended to be the production equivalent of AD 85-19-03.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would expand the applicability of AD 85-19-03 to include Model DC-9-80 (MD-80) series airplanes, fuselage numbers 1249 through 1371, to require inspection of the upper anticollision light doubler of those airplanes, and repair, if necessary.

It is estimated that 122 airplanes of U.S. registry would be affected by this AD, that it would take approximately 10 manhours per airplane to accomplish the required repair and 4 manhours per airplane to accomplish the required inspection, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $68,320.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model DC-9 and C-9 (Military) series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

2. By revising the applicability statement of AD 85-19-03 R1, Amendment 39-5200 (50 FR 52766; December 26, 1985), to read as follows:

". . . Applies to McDonnell Douglas ModelDC-9 and C-9 (Military) series airplanes, fuselage numbers 1 through 1371, certificated . . ."

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard,

Long Beach, California 90846, Attention: Director of Publications, C1–L00 (54–60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on October 23, 1987.

Mel Yoshikami,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–25111 Filed 10–29–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 87–ANM–25]

Proposed Alteration of Transition Area; Eagle, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to amend the Eagle, Colorado, transition area to provide controlled airspace for aircraft executing a new approach procedure and associated holding pattern at the Eagle County Airport.

DATE: Comments must be received on or before November 30, 1987.

ADDRESS: Send comments on the proposal to: Manager, Airspace & System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 87–ANM–25, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

The official docket may be examined in the Office of Regional Counsel at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–530, Federal Aviation Administration, Docket No. 87–ANM–25, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, Telephone: (206) 431–2536.

SUPPLEMENTARY INFORMATION:

Comments Invited

Considerable effort has been expended over the past year to certify the TVOR as an integral component for the procedure. The ski season is again approaching and the new procedure is needed now to provide lower minimums. It is, therefore, considered in the public interest to establish a 30-day period for public comment in this case.

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87–ANM–25". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking any action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace & System Management Branch, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide controlled airspace for aircraft executing a new instrument approach procedure at the Eagle County Airport, Colorado.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

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

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

Eagle, Colorado, Transition Area [Amended]

After lat. 40°21'00" N., long. 106°42'00" W.; add the following: "to lat. 40°00'00" N., long. 106°42'00" W., to lat. 40°00'00" N., long. 106°00'00" W.; to lat. 39°19'00" N., long. 106°42'00" W.; to the point of beginning excluding all controlled airspace which overlaps this airspace."

Issued in Seattle, Washington, on October 19, 1987.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division Northwest Mountain Region.

[FR Doc. 87–25112 Filed 10–29–87; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 456

Ophthalmic Practices Trade Regulation Rule; Oral Presentations and Availability of Staff Documents

AGENCY: Federal Trade Commission.

ACTION: Notice of date for oral presentations before the Commission; placement of documents on the rulemaking record.

SUMMARY: The Federal Trade Commission has decided to afford interested parties the opportunity to make oral presentations before the Commission, pursuant to Commission

Rules of Practice § 1.13(i), in the Ophthalmic Practices Rulemaking proceeding ("Eyeglasses II"). Six prior participants in the proceeding have been invited to appear before the Commission.

The Federal Trade Commission has also placed on the rulemaking record for the proposed Eyeglasses II Trade Regulation Rule the final recommendations of the rulemaking staff and of the Directors of the Bureaus of Consumer Protection and Economics. A staff summary of the comments filed by the public on the reports of the staff and the Presiding Officer is also on the rulemaking record.

DATE: Oral presentations before the Commission will be heard at the Commission's open meeting on November 5, 1987 at 9:00 a.m.

ADDRESS: The meeting will be held in Room 432, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ruth Fitzpatrick, Federal Trade Commission, Washington, DC 20580, at (202) 326–3277.

SUPPLEMENTARY INFORMATION: Pursuant to § 1.13(h) of the Commission's Rules of Practice, comments were invited from the public on the final reports of the staff and the Presiding Officer in the Eyeglasses II rulemaking proceeding, and interested parties who had previously participated in the proceeding were invited to submit requests to participate in oral presentations, pursuant to § 1.13(i) of the Commission's Rules of Practice. 51 FR 43217. The comment period, extended in response to Motions of the American Optometric Association and the California Optometric Association, closed on March 13, 1987. 52 FR 2723.

All comments received were placed on the rulemaking record and the rulemaking staff prepared a summary of those comments. That summary is available for public inspection on the rulemaking record in this proceeding.

The Federal Trade Commission has directed that the final recommendations of the rulemaking staff and the Directors of the Bureaus of Consumer Protection and Economics, submitted to the Commission after the conclusion of the post-record comment period specified in § 1.13(h) of the Commission's Rules of Practice, be placed on the rulemaking record in this proceeding for public inspection.

The Federal Trade Commission has offered six interested parties the opportunity to make oral presentations. The prior participants in the proceeding who have been invited to appear include: The American Optometric Association, the California Optometric Association, the National Association of Optometrists and Opticians, the Opticians Association of America, Dr. Joseph Seriani of U.S.A. Lens, Inc., and Mr. Roy Ferguson of 20/20 Optical.

Each participant will be permitted either fifteen or thirty minutes, as stipulated by the Commission, to address comments to the Commission. No additional written comments may be submitted to the Commission. Oral presentations at the meeting must be restricted to the evidence already in the rulemaking record in this proceeding.

The meeting before the Commission will commence at 9:00 a.m. on November 5, 1987, in Room 432, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

List of Subjects in 16 CFR Part 456

Trade practices, Ophthalmic practice rules.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 87–25107 Filed 10–29–87; 8:45 am]

BILLING CODE 6750–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 12

Reparation Proceedings; Date of Reparation Order; Filing of Double Bond in Court of Appeals

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: Under section 14(e) of the Commodity Exchange Act, 7 U.S.C. 18(e), litigants who wish to file a petition for Court of Appeals review of a reparation order issued by the Commodity Futures Trading Commission ("Commission") must file a double bond within 30 days of "the date of the reparation order." The Commission is proposing an interpretative rule to clarify that the 30-day period for filing the bond runs from the date that the Commission's order is received by the Commission's Proceedings Clerk, a date that is routinely stamped on the first page of the order.

DATE: Comments must be received on or before November 30, 1987.

ADDRESS: Comments may be submitted to Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, Attention: Office of the Secretariat. Telephone: (202) 254–6314.

FOR FURTHER INFORMATION CONTACT: Curt Bohling, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone (202) 254–9880.

SUPPLEMENTARY INFORMATION: Section 14(e) of the Commodity Exchange Act, 7 U.S.C. 18(e), specifies the procedure for obtaining review in the United States Court of Appeals of a reparation order issued by the Commission. That section provides, *inter alia*, that a reparation appeal:

> Shall not be effective unless within 30 days from and after the date of the reparation order the appellant also files with the clerk of the court a bond in double the amount of the reparation awarded against the appellant conditioned upon the payment of the judgment entered by the court, plus interest and costs, including a reasonable attorney's fee for the appellee, if the appellee shall prevail.

The United States Court of Appeals for the District of Columbia Circuit has held that the time for filing the Section 14(e) bond "must be construed as both jurisdictional and unalterable." *Kessenich* v. *CFTC*, 684 F.2d 88, 93 (DC Cir. 1982). Likewise, the United States Court of Appeals for the Ninth Circuit has recently stated that "the timely filing of [the Section 14(e)] bond is a prerequisite for appellate jurisdiction." *Chicago Commodities, Inc.* v. *CFTC*, 811 F.2d 1262, 1263 (9th Cir. 1987). Should a reparations litigant in the Court of Appeals miscompute the 30-day period for filing the jurisdictional section 14(e) bond, his petition for review is subject to dismissal by the Court of Appeals. *See, e.g., Clayton Brokerage Co.* v. *Bunzel*, 820 F.2d 1459 (9th Cir. 1987) ("*Bunzel*").

As the *Bunzel* decision illustrates, the phrase "the date of the reparation order" as used in section 14(e) may be subject to more than one interpretation. The *Bunzel* court held that, pursuant to the terms of the Commission's order in that particular case, "the date of the reparation order" was "the date that the order . . . was served." 820 F.2d at 1462. Since the date of service of the order was not obvious on the face of the order, the Court required the Commission to supplement the record with evidence concerning the date of service. Upon reviewing this evidence, the Court determined that the order had been served 31 days before the petitioners filed their section 14(e) bond. The Court therefore dismissed the petition for review.

To avoid these procedural questions for litigants and to provide certainty as to the measuring date for the filing of the jurisdictional bond, the Commission is hereby proposing a rule to define "the date of the reparation order" in section 14(e) as the date on which the order is filed with the Commission's Proceedings Clerk. This date is routinely stamped on the first page of the Commission's opinion and order or order of summary affirmance. Thus, parties receiving a Commission reparation order will know with certainty the date upon which the 30-day period begins to run.

Litigants should rarely be prejudiced by delays in service of Commission reparation orders because the Commission routinely serves its reparation orders either on the date that they are filed or on the next business day. For example, in *Bunzel,* the date of filing of the Commission's order, as indicated by the date stamp, was the same as the date of service of the order, as determined by the Court. A party may file with the Commission a motion to vacate and refile a reparation order only upon a showing that the party was prejudiced by a delay in service of the order.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* requires agencies to consider the economic impact of proposed rule changes on small business entities. The rule proposed herein would not affect the amount of the bond required to be filed in order to obtain judicial review of a Commission reparation order and thus would not have any economic impact on small business entities. Accordingly, the Acting Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the rule proposed herein, if promulgated, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 12

Administrative practice and procedure, Commodity futures, Reparations.

For the reasons set forth in the preamble, the Commission proposes to amend Title 17, Part 12 of the Code of Federal Regulations as follows:

PART 12—[AMENDED]

1. The authority citation for Part 12 is revised to read as follows:

Authority: 7 U.S.C. 4a(j), 12a(5), 18(b) (1982).

2. Section 12.406 is amended by adding a new paragraph (d) as follows:

§ 12.406 Final decision of the Commission.

* * * * *

(d) *Date of the reparation order.* For purposes of computing the 30-day period for filing the appeal bond required by section 14(e) of the Act, 7 U.S.C. 18(e), "the date of the reparation order" shall be the date that the Commission's opinion and order (or order of summary affirmance, as the case may be) is filed with the Proceedings Clerk. This date shall be reflected by the date stamp on the first page of the Commission's order.

Issued in Washington, DC, on October 23, 1987 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-25123 Filed 10-29-87; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 19, 112, and 146

Proposed Customs Regulations Amendments Concerning Suspension or Revocation of License of Warehouse Proprietor, Container Station Operator, Cartman, Lighterman, or Foreign Trade Zone Operator

AGENCY: U.S. Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations concerning the suspension or revocation of the license of a warehouse proprietor, container station operator, cartman, lighterman, or foreign trade zone operator. Currently, one of the enumerated circumstances under which a district director may suspend or revoke such a license is when the holder of that license, or the officers of a corporation holding that license, is convicted of a felony, or is convicted of a misdemeanor involving theft, smuggling, or a theft-connected crime.

It has come to Customs attention that a literal interpretation of these regulations allows corporation officers to commit acts constituting the specified offenses, resign from the corporation before conviction, and therefore, allow the corporation before conviction, and therefore, allow the corporation to retain its particular license. This may occur even if the officer resigns in name only but continues to exercise control over the corporation. Therefore, Customs proposes to amend its regulations to permit suspension or revocation of these licenses if the officer of a corporation holding one of the licenses is convicted of a felony or is convicted of a misdemeanor involving theft, smuggling, or a theft-connected crime, if the criminal act was committed while the person was still an officer of that corporation. These amendments, if adopted, would end the ploy of resigning to avoid suspension or revocation of the license and would more accurately reflect Customs attitude that those demonstrating criminal behavior are not entitled to the position of trust involved in these professions.

It is also proposed to amend the regulations concerning container station operators and cartmen and lightermen to include commission of acts constituting the offenses specified, as opposed to convictions resulting from those acts, as grounds for suspension or revocation of the ability to operate those businesses. Such language already appears in the regulations concerning warehouse proprietors and foreign trade zone operators.

DATES: Comments must be received on or before December 29, 1987.

ADDRESSES: Comments (preferably in triplicate) should be submitted to and may be inspected at the Regulations Control Branch, Room 2426, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Kathleen McGuigan, Office of the Chief Counsel, (202-566-6245).

SUPPLEMENTARY INFORMATION:

Background

On August 26, 1986, Customs published a notice in the **Federal Register** (51 FR 30376), proposing to amend § 112.30, Customs Regulations (19 CFR 112.30), concerning the suspension or revocation of a cartman's or lighterman's license. One of the enumerated circumstances under which a district director may suspend or revoke such a license is when the holder of that license, or the officer of a corporation holding that license, is convicted of a felony, or is convicted of a misdemeanor involving theft, sumggling, or a theft-connected crime.

The proposal was prompted because it had come to Customs attention that a literal interpretation of § 112.30 was allowing corporation officers to commit acts constituting the specified offenses, resign from the corporation before conviction, and therefore allow the corporation to retain its cartman or lighterman license. This could occur even if the officer resigned in name only but continued to exercise control over the corporation.

Customs sought to make it clear that application of this regulation is dependent upon a conviction arising from an act or acts committed while a person was a corporate officer. The person's employment status with the corporation at the time of conviction is unimportant. Therefore, resignation, discharge, demotion, or promotion, or any change in the employment status of the corporate officer prior to conviction will not preclude the district director from suspending or revoking the corporation's cartman or lighterman license.

Therefore, Customs proposed to amend § 112.30(a)(5) to permit suspension or revocation of a cartman or lighterman license if the officer of a corporation holding such a license is convicted of a felony, or is convicted of a misdemeanor involving theft, smuggling, or a theft-connected crime, if the criminal act was committed while the person was still an officer of that corporation. If adopted, the amendment would end the ploy of the corporate officer resigning to avoid the corporation losing its cartman or lighterman license even if the resignation was in name only. The amendment would also more accurately reflect Customs attitude that those demonstrating criminal behavior are not entitled to the position of trust involved in the professions of cartman and lighterman.

No comments were received on the proposal. However, in reviewing the matter, it was determined that a similar interpretation problem exists in the regulations relating to warehouse proprietors, container station operators, and foreign trade zone operators. In § 19.3(e)(3), Customs Regulations (19 CFR 19.3(e)(3)), concerning the right of a proprietor to continue the bonded status of a warehouse; in § 19.48(a)(3), Customs Regulations (19 CFR 19.48(a)(3)), concerning the privilege of operating a container station; and in § 146.82(a)(3), Customs Regulations (19 CFR 146.82(a)(3)), concerning the activated status of a foreign trade zone, one of the circumstances that can trigger suspension or revocation of the ability to conduct one of the particular businesses is the conviction of an officer of a corporation engaged in the business for a felony, or a misdemeanor involving theft, smuggling, or a theft-connected crime.

Due to the similar wording of these regulations and the regulations concerning cartmen and lightermen, it was determined that these regulations should also be amended to clarify that suspension or revocation of a license is dependent upon a conviction arising from an act or acts committed while the person was still an officer of a corporation engaged in one of these businesses. The person's employment status with the corporation at the time of conviction is unimportant. To address the problem for all of the professions, it was deemed advisable to revise the proposal.

Also, in an effort to establish a uniform regulatory approach to the various professions, it is proposed to amend the regulations concerning container station operators and cartmen and lightermen to include commission of acts constituting the specified offenses, as opposed to conviction resulting from the specified offenses, as grounds for suspension or revocation of those licenses. Such language already exists in the regulations concerning warehouse proprietors and foreign trade zone operators.

Comments

Before adopting these proposals, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was John Doyle, Regulations Control Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 19

Customs duties and inspection, Imports, Warehouses.

19 CFR Part 112

Administrative practice and procedures, Customs duties and inspection, imports.

19 CFR Part 146

Administrative practice and procedures, Foreign Trade Zones, Imports.

Proposed Amendments

It is proposed to amend Parts 19, 112, and 146, Customs Regulations (19 CFR Parts 19, 112, 146), as set forth below.

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

1. The authority citation for Part 19 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624.

Section 19.48 also issued under 19 U.S.C. 1499, 1623.

§ 19.3 [Amended]

2. It is proposed to amend § 19.3(e)(3) by removing the semicolon, replacing it with a period, and adding the following, "Any change in the employment status of the corporate officer (*e.g.*, discharge, resignation, demotion, or promotion) prior to conviction for a felony or prior to conviction of a misdemeanor involving theft, smuggling, or a theft-connected crime, resulting from acts committed while a corporate officer, will not preclude application of this provision."

3. It is proposed to amend § 19.48(a)(3) to read as follows:

§ 19.48 Suspension or revocation of the privilege of operating a container station; hearings.

(a) * * *

(3) The container station operator or an officer of a corporation which has been granted the privilege of operating a container station is convicted of or has committed acts which would constitute a felony, or a misdemeanor involving theft, summggling, or a theft-connected crime. Any theft, smuggling, or a theft-connected crime. Any change in the employment status of the corporate officer (*e.g.*, discharge, resignation, demotion, or promotion) prior to conviction for a felony or prior to

conviction for a misdemeanor involving theft, smuggling, or a theft-connected crime, resulting from acts committed while a corporate officer, will not preclude application of this provision.

* * * * *

PART 112—CARRIERS, CARTMEN, AND LIGHTERMEN

1. The authority citation for Part 112 continues to read as follows:

Authority: 19 U.S.C. 66, 1551, 1565, 1623, 1624.

2. It is proposed to amend § 112.30(a)(5) to read as follows:

§ 112.30 Suspension or revocation of license.

(a) * * *

(5) The holder of such a license or an officer of a corporation holding such a license is convicted of or has committed acts which would constitute a felony, or a misdemeanor involving theft, smuggling, or a theft-connected crime. Any change in the employment status of the corporate officer (*e.g.*, discharge, resignation, demotion, or promotion) prior to conviction for a felony or prior to conviction for a misdemeanor involving theft, smuggling, or a theft-connected crime, resulting from acts committed while a corporate officer, will not preclude application of this provisions.

* * * * *

PART 146—FOREIGN TRADE ZONES

1. The authority citation for Part 146 continues to read as follows:

Authority: 19 U.S.C. 66, 81a–81u, 1202 (Gen. Hdnote 11), 1623, 1624.

2. It is proposed to amend § 146.82(a)(3) to read as follows:

§ 146.82 Suspension.

(a) * * *

(3) The Operator, or any officer of a corporation which has been granted the right to operate a zone, is convicted of or has committed acts which would constitute a felony, or a misdemeanor involving theft, smuggling, or a theft-connected crime. Any change in the employment status of the corporate officer (*e.g.*, discharge, resignation, demotion, or promotion) prior to conviction for a felony or prior to conviction for a misdemeanor involving theft, smuggling, or a theft-connected crime, resulting from acts committed while a corporate officer, will not preclude application of this provision.

* * * * *

Michael H. Lane,

Acting Commissioner of Customs.

Approved: April 7, 1987.

John P. Simpson,

Actg. Assistant Secretary of the Treasury.

Editorial note: This document was received at the Office of the Federal Register on October 27, 1987.

[FR Doc. 87–25170 Filed 10–29–87; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Placement of Cathinone and 2,5-Dimethoxy-4-ethylamphetamine (DOET) in Schedule I and Cathine, Fencamfamin, Fenproporex and Mefenorex in Schedule IV

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice is a proposed rule to place cathinone and 2,5-dimethoxy-4-ethylamphetamine (DOET) in Schedule I and cathine, fencamfamin, fenproporex and mefenorex in Schedule IV of the Controlled Substances Act (21 U.S.C. *et seq.*). This action is being taken to enable the United States to meet its obligations under the 1971 Psychotropic Convention. This notice of proposed rulemaking is issued by the Administrator of the Drug Enforcement Administration (DEA) pursuant to 21 U.S.C. 811(d)(3)(B).

DATE: Comments must be submitted on or before December 29, 1987.

ADDRESS: Comments and objections should be submitted to the Administrator, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633–1366.

SUPPLEMENTARY INFORMATION: During its February 1986 session, the United Nations Commission on Narcotic Drugs (CND) included 17 phenethylamines in the schedules of the Convention on Psychotropic Substances (NAR/CL.2/1986, dated February 28, 1986).

Nine of the 17 substances are already controlled under the Controlled Substances Act (CSA) and do not require any additional action by the United States. The nine substances already controlled in the United States are: Dimethoxyamphetamine (DMA), N-ethylamphetamine, fenethylline, levamphetamine, levomethamphetamine, para-methoxyamphetamine (PMA), trimethoxyamphetamine, 5-methoxy-3,4-methylenedioxyamphetamine (MMDA) and 3,4-methylenedixoyam-phetamine (MDMA). Two of the eight substances which are controlled by the CND (propylhexedrine and pyrovalerone) are the subject of a separate **Federal Register** Notice. The remaining six psychotropic substances added to the schedules by the CND decision are not currently controlled in the United States and do not have currently accepted medical use in treatment in the United States. These substances are cathine, cathinone, 2,5-dimethoxy-4-ethylamphetmine (DOET), fencamfamin, fenproporex and mefenorex.

The CND, accepting the World Health Organization (WHO) recommendations, determined that, in accordance with Article 2, paragraph 5 of the 1971 Convention of Psychotropic Substances, cathinone and DOET should be included in Schedule I of that Convention. (Decisions 1 S–IX and 5 S–IX, respectively.) The CND decided to place cathine (Decision 11 S–IX) in Schedule III of the 1971 Convention, even though the WHO had recommended listing it in Schedule II. The remaining three psychotropic substances recommended for control by the WHO (fencamfamin, fenproporex and mefenorex) were placed in Schedule IV of the 1971 Convention by the CND. (Decisions 13 S–IX through 15 S–IX, respectively.) The Secretary of Health and Human Services accepted the CND decisions regarding cathinone, DOET, cathine, fencamfamin, fenproporex and mefenorex and determined that existing controls in the United States were not sufficient to meet international drug control treaty obligations.

The CSA requires the Secretary of Health and Human Services, should he concur with the CND scheduling decision and should he feel that control measures under the CSA are not adequate to meet the requirements of the schedules specified in the notification, to recommend to the Attorney General that he initiate proceedings for scheduling the substance (see 21 U.S.C. 811(d)(3)(B)). By letter dated July 2, 1987, the Assistant Secretary of Health recommended to the Administrator of DEA that he initiate scheduling actions under the CSA to

assure compliance with international requirements.

The Administrator finds that cathine, cathinone, 2,5-dimethoxy-4-ethylamphetamine (DOET), fencamfamin, fenproporex and mefenorex must be controlled under the CSA in order to meet the requirements imposed by the Convention on Psychotropic Substances. He further finds that the most appropriate schedules into which these substances should be placed, based on the CND action, are Schedule I for cathinone and 2,5-dimethoxy-4-ethylamphetamine (DOET) and Schedule IV for the remaining four substances.

All interested persons are invited to submit their comments in writing regarding this proposal. Comments should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative.

Pursuant to 5 U.S.C. 805(b), the Administrator certifies that the placement of cathinone and 2, 5-dimethoxy-4-ethylamphetamine into Schedule I and cathine, fencamfamin, fenproporex and mefenorex into Schedule IV of the CSA will have no impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96–354). None of the substances listed above are marketed in the United States. This action must be carried out in order to fulfill United States international treaty obligations.

In accordance with the provisions of 21 U.S.C. 811(d), this scheduling action is a formal rulemaking that is required by the United States obligations under international convention, that is, the Convention on Psychotropic Substances, 1971. Such formal proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, have been exempted from the consultation requirements of Executive Order 12291 (46 FR 13193).

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Based upon the notification of the Secretary-General of the United Nations and in accordance with the recommendations of the Assistant Secretary for Health of the Department of Health and Human Services and under the authority vested in the Attorney General by 21 U.S.C. 811(d)(3)(B) and delegated to the Administrator by the regulations of the Department of Justice (28 CFR Part 0.100), the Administrator hereby proposes that 21 CFR be amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. New paragraph (d)(3) is added to § 1308.11 and existing paragraphs (d)(3) through (d)(25) are redesignated as (d)(4) through (d)(26) as follows:

§ 1308.11 Schedule I.

* * * * *

(d) * * *

(3) 2,5-dimethoxy-4-ethylamphetamine (DOET)..... 7399

* * * * *

3. Section 1308.11 is further amended by redesignating existing paragraphs (f)(1) and (2) as (f)(2) and (3) and add a new paragraph (f)(1) to read as follows:

* * * * *

(f) * * *

(1) Cathinone..... 1235

4. Section 1308.14 is amended by redesignating existing paragraph (e)(1) as (2), existing paragraph (e)(2) as (5) and existing paragraph (e)(3) through (6) as (e)(7) through (10) and adding new paragraph (e)(1), (3) (4) and (6) to read as follows:

§ 1308.14 Schedule IV.

* * * * *

(e) * * *

(1) Cathine..... 1230

* * * * *

(3) Fencamfamin..... 1760

(4) Fenproporex..... 1575

* * * * *

(6) Mefenorex..... 1580

* * * * *

John C. Lawn,

Administrator, Drug Enforcement Administration.

Dated: October 21, 1987.

[FR Doc. 87–24807 Filed 10–29–87; 8:45 am]

BILLING CODE 4410–09–M

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21 CFR Part 1308

Schedules of Controlled Substances; Placement of Propylhexedrine and Pyrovalerone in Schedule V

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice is a proposed rule to place propylhexedrine and pyrovalerone in Schedule V of the Controlled Substances Act (21 U.S.C. *et seq.*) This action is being taken to enable to the United States to meet its obligations under the 1971 Psychotropic Convention. This notice of proposed rulemaking is issued by the Administrator of the Drug Enforcement Administration (DEA) pursuant to 21 U.S.C. 811(d)(4)(B).

ADDRESS: Comments and objections should be submitted to the Administrator, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633–1366.

SUPPLEMENTARY INFORMATION CONTACT: During its February 1986 session, the United Nations Commission on Narcotic Drugs (CND) decided to include 17 phenethylamines in the schedules of the Convention on Psychotropic Substances (NAR/CL.2/1986, dated February 28, 1986).

Nine of the 17 substances are already controlled under the Controlled Substances Act (CSA) and do not require any additional action by the United States. Eight of the 17 phenethylamines added to the schedules of the 1971 Convention by the CND decisions are not currently controlled within the United States. Six of them are the subject of a separate **Federal Register** Notice. The remaining two, propylhexedrine and pyrovalerone, are among the psychotropic substances newly added to Schedule IV of the 1971 Convention by Decisions 16 (S–IX) and 17 (S–IX), respectively, of the CND. While pyrovalerone is not marketed in the United States, propylhexedrine is the active ingredient in over-the-counter nasal inhalers.

The CSA allows the Secretary, Department of Health and Human Services (DHHS), should he not concur with a CND scheduling decision, to request the Secretary of State to transmit a notice of qualified acceptance to the Secretary-General of the United Nations (see 21 U.S.C. 811(d)(3)(C)(ii)). The Secretary (DHHS) may also request the Secretary of State to take appropriate action under the Convention to initiate proceedings to remove a substance from the schedules under the Convention (see 21 U.S.C. 811(d)(3)(C)(iv)).

Because the Secretary did not concur with the CND decisions to control propylhexedrine and pyrovalerone

internationally, the United States Government transmitted to the Secretary-General of the United Nation as, pursuant to 21 U.S.C. 811(d)(3)(C)(ii) and paragraph 7 of Article 2 of the Psychotropic Convention, a notice of qualified acceptance for each of these two drugs.

Even though the U.S. Government has notified the Secretary-General of a qualified acceptance of the decisions to control propylhexedrine and pyrovalerone in Schedule IV of the 1971 Convention, it must apply, as a minimum, certain control measures pending resolution of the matter. Among the minimum control measures which must be applied is the requirement for licensing (registration) of manufacturers and distributors (including importers and exporters) of both substances. Currently, pyrovalerone is neither manufactured nor distributed commercially within the United States. Propylhexedrine is marketed in the United States as the active ingredient in over-the-counter nasal decongestant inhalers. To retain the over-the-counter status of the preparations containing propylhexedrine in the United States, a notification has been sent by DEA informing the Secretary-General of the United Nations that the U.S. Government, under the provisions of Article 3 of the 1971 Convention, had decided to exempt certain preparations of propylhexedrine from specified measures of international control. The control measures from which propylhexedrine preparations will be exempted will include but not be limited to prescription requirements. This will permit the continuation of the present over-the-counter status of nasal inhalers containing propylhexedrine.

The Administrator, Drug Enforcement Administration, in accordance with the recommendations of the Assistant Secretary for Health, Department of Health and Human Services hereby proposes, pursuant to 21 U.S.C. 811(d)(4)(B) and 21 U.S.C. 811(d)(4)(C), to control propylhexedrine and pyrovalerone under Schedule V of the Controlled Substances Act. This action is proposed in order to carry out the minimum United States obligations under paragraph 7 of Article 2 of the 1971 Convention in the case of a drug or substance for which a notice of qualified acceptance has been transmitted.

All interested persons are invited to submit their comments in writing regarding this proposal. Comments should be submitted to the Administrator, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative.

Pursuant to 5 U.S.C. 805(b), the Administrator certifies that the placement of propylhexedrine and pyrovalerone into Schedule V of the CSA will have no impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96-354). This action must be carried out in order to fulfill United State Intenational treaty obligations.

In accordance with the provisions of 21 U.S.C. 811(d), this scheduling action is a formal rulemaking that is required by the United States obligations under international convention, that is, the Convention of Psychotropic Substances, 1971. Such formal proceeding are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, have been exempted from the consultation requirements of Executive Order 12991 (46 FR 13193).

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Accordingly, based upon the notification of the Secretary-General of the United Nations, the requests by the Government of the United States relative to a qualified acceptance of the scheduling decisions regarding propylhexedrine and pyrovalerone and in accordance with the recommendations of the Assistant Secretary for Health, DHHS, under the authority vested in the Attorney General by 21 U.S.C. 811(d)(4)(B) and (C) and delegated to the Administrator by regulations of the Department of Justice (28 CFR 0.100), the Administrator hereby proposes that 21 CFR 1308.15 be amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. A new paragraph (d) is added to § 1308.15 to read as follows:

§ 1308.15 Schedule V.

* * * * *

(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

(1) Propylhexedrine.....8161

(2) Pyrovalerone.....1485

John C. Lawn,

Administrator, Drug Enforcement Administration.

Dated: October 21, 1987.

[FR Doc. 87-24808 Filed 10-29-87; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Utah Permanent Regulatory Program; Utah

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

ACTION: Reopening and extension of public comment period.

SUMMARY: OSMRE is reopening the period for review and public comment on the substantive adequacy of program amendments submitted by the State of Utah to modify the Utah Permanent Regulatory Program (hereinafter referred to as the Utah program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments pertain to civil penalty assessments. OSMRE is reopening the comment period because the State has made revisions to the proposed amendments and submitted clarifying statements regarding the amendments since OSMRE announced receipt of the original proposed amendments in the March 27, 1987, **Federal Register.**

DATE: Written comments not received on or before 4:00 p.m. November 16, 1987 will not necessarily be considered.

ADDRESSES: Written comments should be mailed or hand-delivered to: Mr. Robert H. Hagen, Field Office Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue SW., Suite 310, Albuquerque, NM 87102.

Copies of the Utah program, the proposed amendments to the program, and all written comments received in response to this notice will be available for review at the OSMRE offices and the office of the State Regulatory Authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting the OSMRE Albuquerque Field Office listed under **ADDRESSES.** The aforementioned documents are available for review at the following locations:

Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue SW., Suite 310, Albuquerque, NM 87102, Telephone: (505) 766–1486;
Office of Surface Mining Reclamation and Enforcement, Room 5131, 1100 L Street NW., Washington, DC 20240, Telephone: (202) 343–5492; and
Utah Division of Oil, Gas and Mining, 355 West North Temple, 3 Triad Center, Suite 350, Salt Lake City, UT 84180–1203, Telephone: (801) 538–5340.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Hagan, Field Office Director, Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 625 Silver Avenue SW., Suite 310, Albuquerque, NM 87102, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background

Information regarding the general background for the Utah State Program, including the Secretary's findings, the disposition of comments and detailed explanation of the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899–5915).

Subsequent actions concerning the conditions of approval and program amendments are included in 30 CFR 944.10, 944.12, 944.15, and 944.16.

II. Proposed Amendments

On February 17, 1987, Utah submitted proposed amendments to the Utah program for OSMRE's review and approval. The proposed amendments at SMC/UMC 845.15 pertain to civil penalty assessments.

On March 27, 1987, OSMRE published a notice in the **Federal Register** announcing receipt of the proposed amendments to the Utah program and inviting public comment on the adequacy of the proposed amendments (52 FR 9891). After reviewing the proposed amendments and all comments received, OSMRE notified Utah on June 10, 1987, of a provision in its proposal that appeared to be inconsistent with the Federal regulations (Administrative Record No. UT–453). By letter dated July 7, 1987, Utah provided clarification of the amendment contents (Administrative Record No. UT–455). OSMRE requested additional clarification of the amendment contents by letter to Utah dated August 7, 1987 (Administrative Record No. UT–456). Utah responded to this request by letter dated August 31, 1987 by proposing additional language to the proposed amendments and providing further clarification (Administrative Record No. UT–457). Therefore, OSMRE is reopening and extending the comment period to allow the public an opportunity to comment on the additional material.

The full text of the proposed program amendments and subsequent clarification submitted by Utah is available for public inspection at the locations listed under **"ADDRESSES"**, or a copy of the proposed amendments and subsequent clarification can be obtained from the OSMRE Albuquerque Field Office as explained under **ADDRESSES"**.

The Director is seeking public comment on the adequacy of these proposed amendments. If OSMRE finds the amendments to be no less stringent than SMCRA and no less effective than the Federal regulations, OSMRE will approve them and they will become part of the Utah program.

III. Written Comments

Written comments on the issues proposed in this rulemaking should be specific, pertain only to the issues proposed, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the OSMRE Albuquerque New Mexico Field Office will not necessarily be considered and included in the Administrative Record for this proposed rulemaking.

List of Subjects in 30 CFR Part 944

Coal mining, Intergovernmental relations, Surface mining, Undergound mining.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

Date: October 21, 1987.

[FR Doc. 87–25204 Filed 10–29–87; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 946

Virginia; Proposed Regulatory Program Amendment; Remining

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

ACTION: Reopening and extension of public comment period.

SUMMARY: On January 16, 1987, the Virginia Department of Mines, Minerals, and Energy submitted to OSMRE proposed amendments to the Virginia Permanent Regulatory Program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments propose alternate effluent limitations for surface coal remining operations which will affect existing pollutional discharges, a limit to the amount of information required of applicants for self-bonding of underground mine permits, and revisions to the time period needed for partial bond release under Virginia's alternative bonding program.

OSMRE published a notice in the **Federal Register** March 27, 1987 (52 FR 9892–9894) announcing receipt of the amendments and inviting public comment on their adequacy. The public comment period ended on April 27, 1987. OSMRE received no public comments.

Comments were also solicited from various Federal agencies with an actual or potential interest in Virginia's program as required by section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i). The Supervisor of the Jefferson National Forest, United States Forest Service and the Environmental Protection Agency (EPA) submitted comments on the proposed rules concerning bonding. Disposition of these comments may be found in the **Federal Register** dated August 17, 1987 (52 FR 30669).

Part of the proposed amendment would alter effluent limitations established under the national Pollutant Discharge Elimination System (NPDES) program pursuant to the Clean Water Act as amended (33 U.S.C. 1251 *et seq.*), the Clean Air Act as amended (42 U.S.C. 7401 *et seq.*) and their implementing regulations. Section 503(b)(2) of SMCRA and 30 CFR 732.17(h)(10)(ii) require that the Administrator of EPA concur with all State program provisions relating to air or water quality standards promulgated under the authority of the Clean Water Act or the Clean Air Act. By letter dated March 31, 1987, EPA conditioned its concurrence on the revision of several of the proposed regulatory changes pertaining to alternative effluent limitations.

On August 17, 1987, the Director published notification in the **Federal Register** (52 FR 30668–30670) of approval of those parts of the amendment dealing with bonding and deferring approval of that part establishing alternate effluent limitations. Also on that date, OSMRE advised Virginia of revisions required to address EPA's concerns.

On September 10, 1987, Virginia submitted revisions intended to address the issues presented to it on August 17, 1987. Accordingly, OSMRE is reopening and extending the public comment period for Virginia's proposed amendment concerning alternate effluent limitations. This action is being taken to provide the public an opportunity to reconsider the adequacy

of the proposed amendment in light of the revisions.

DATES: Written comments relating to Virginia's proposed modifications of its program not received on or before 4:00 p.m. on November 16, 1987, will not necessarily be considered in the Director's decision to approve or disapprove the amendments.

ADDRESSES: Written comments should be mailed or hand-delivered to Mr. William R. Thomas, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Room 200, Powell Valley Square Shopping Center, Route 23, Big Stone Gap, Virginia 24219; Telephone (703) 523–4303.

Copies of the Virginia program, the proposed amendment, and all written comments received concerning this action will be available for review at the following locations during normal business hours Monday through Friday, excluding holidays.

Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting the OSMRE Field Office.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5315, 1100 L Street NW., Washington, DC 20240; Telephone (202) 343–5492

Office of Surface Mining Reclamation and Enforcement, Eastern Field Operations, Building 10, Parkway Center, Pittsburgh, PA 15220; Telephone (412) 937–2910

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Box 626, Room 220, Powell Valley Square Shopping Center, Route 23, Big Stone Gap, Virginia 24219; Telephone (703) 523–4303

Virginia Division of Mined Land Reclamation, P.O. Drawer U, 622 Powell Avenue, Big Stone Gap, Virginia 24219; Telephone (703) 523 2925

FOR FURTHER INFORMATION CONTACT: Mr. William R. Thomas, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Room 220 Powell Valley Square Shopping Center, Route 23, Big Stone Gap, Virginia 24219; Telephone (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program

The Secretary of the Interior granted conditional approval of the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the December 15, 1981 **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Discussion of the Proposed Amendment

By letter dated September 10, 1987, (Administrative Record Number VA 647) Virginia submitted revisions to its proposed program amendment submitted January 16, 1987 (Administrative Record Number VA 591).

These revisions are intended to address issues presented to Virginia by letter dated August 17, 1987 (Administrative Record Number VA 596). The proposed revisions are summarized briefly below.

Proposed section 480–03–19.785.19(b) is changed to clarify that the authorization to approve alternate effluent limitations for the remining of "previously mined areas" applies only to areas mined prior to the effective date of SMCRA.

Proposed section 480–03–19.785.19(d) is changed to add a demonstration that the remining operations will result in the potential for improved water quality from the remining operations.

Proposed section 480–03–19.825.12(b) has been reworded to clarify that approved alternate effluent limitations will not allow discharge of pollutants in excess of the baseline pollution load and to add the requirement that any discharge from or affected by remining operations shall be in accordance with applicable State effluent limitations.

Proposed section 480–03–19.825.14(c)(4) has been changed to clarify bond release procedures to insure compliance with all applicable bond release provisions of Virginia's program.

The preamble to the proposed amendment has been changed to clarify that the proposal will allow approval of alternate effluent limitations and not modified stream water quality standards.

The full text of the proposed amendment and the additional material are available for review at the locations listed above under **"ADDRESSES."**

Accordingly, the Director, OSMRE, now seeks public comments on whether the proposed amendments are no less effective than the Federal Regulations. If approved, the amendments will become part of the Virginia program.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comment on whether the amendment proposed by Virginia satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendment is deemed adequate, it will become part of the Virginia program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Big Stone Gap Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. *Procedural Determinations*

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Compliance with Executive Order No. 12291:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

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

4. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 946

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

Rex L. Wilson,

Acting Assistant Director, Eastern Field Operations, Office of Surface Mining Reclamation and Enforcement.

Date: October 20, 1987.

[FR Doc. 87-25203 Filed 10-29-87; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 948

Public Comment Period and Opportunity for Public Hearing on Proposed Modifications to the West Virginia Permanent Regulatory Program

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and for a public hearing on the substantive adequacy of certain program amendments submitted by the State of West Virginia as modifications to its permanent regulatory program (hereinafter referred to as the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments concern the regulation of blasts using less than five pounds of explosives and the State's blaster certification program.

This notice sets forth the times and locations that the West Virginia program and the proposed modifications are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing.

DATES: Written comments must be received on or before 4:00 p.m. on November 30, 1987, to be considered. If requested, a public hearing on the proposed amendments will be held from 7:00 p.m. to 9.00 p.m. on November 24, 1987, at the OSMRE Charleston Field Office listed below under **"ADDRESSES."** Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. November 16, 1987.

ADDRESSES: Written comments should be mailed or hand delivered to: Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, Attention: West Virginia Administrative Record, 603 Morris Street, Charleston, West Virginia 25301; Telephone: (304) 347-7158.

Copies of the West Virginia program, proposed modifications to the program, and the administrative record on the West Virginia program are available for public review and copying at the OSMRE offices and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays.

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

Office of Surface Mining Reclamation and Enforcement; Administrative Record; 1100 L Street NW., Room 5131; Washington, DC 20240; Telephone: (202) 343-5447

West Virginia Department of Energy; 1615 Washington Street, East; Charleston, West Virginia 25311; Telephone: (304) 348-3500

In addition, copies of the proposed amendments are available for inspection and copying during regular business hours at the following locations:

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

Office of Surface Mining Reclamation and Enforcement; Beckley Area Office; 101 Harper Park Drive; Beckley, West Virginia 25801; Telephone: (304) 255-5265

Each requester may receive, free of charge, one single copy of the proposed program amendment by contacting the OSMRE Charleston Field Office listed above.

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

SUPPLEMENTARY INFORMATION: .

I. Background on the West Virginia Program

On March 3, 1980, the Secretary of the Interior received a proposed regulatory program from the State of West Virginia. On October 22, 1980, following a review of the proposed program in accordance with 30 CFR Part 732, the Secretary approved in part and disapproved in part the proposed program (45 FR 69249-69271).

West Virginia resubmitted its proposed program on December 19, 1980, which was conditionally approved on January 21, 1981. Information concerning the general background of the permanent program submission, as well as the Secretary's findings, the disposition of comments and explanation of the initial conditions of approval of the West Virginia program can be found in the January 21, 1981, **Federal Register** (46 FR 5915-5956). Subsequent actions concerning the West Virginia program are identified at 30 CFR Part 948.

II. Discussion of the Proposed Amendments

On September 20, 1984, the Director of OSMRE approved West Virginia's blaster training, examination and certification program with the exception of three minor deficiencies (49 FR 36837-36840). On November 20, 1984, West Virginia submitted a proposed regulation and a policy statement to resolve the deficiencies. On April 23, 1985, the Director approved the revisions, but required the State to submit an Attorney General's opinion confirming that the policy statement involved could legally override a conflicting regulation, or to otherwise amend its program to achieve the same effect (50 FR 15889-15891). On September 24, 1985, the Director extended the deadline to amend sections 4C.01 and 4C.02 of the State's blasting regulations, because the State decided to resolve the conflict by formal rulemaking through the legislative process rather than seeking an Attorney General's opinion. The State was required to amend its program to provide that all surface blasting operations, including those using less than five pounds of explosives and those involving surface activities at underground operations, must be conducted under the direction of a certified blaster (51 FR 38651-38653).

On June 8, 1987, West Virginia submitted revisions to its blasting regulations at section 4C. These revisions were filed with the Secretary of State as emergency regulations on April 9, 1987, and are intended to satisfy the requirements at 30 CFR 948.16(a) regarding blasting operations using less than five pounds of explosives (Administrative Record No. WV 724).

As stated at 30 CFR 948.15(e) and (f), West Virginia's blaster certification regulations were submitted to OSMRE as proposed regulations. OSMRE's approval of those regulations was contingent upon the State's promulgation of final regulations in the identical form as those initially submitted for OSMRE's review and approval. On June 8, 1987, West Virginia

submitted its "Rules and Regulations Governing the Standards for Certification of Blasters for Surface Coal Mines" and Surface Areas of Underground Coal Mines (Administrative Record No. WV 725). The regulations were filed as emergency regulations with the Secretary of State on May 12, 1987, and as proposed legislative rules with the West Virginia Rule Making Review Committee on the same date. The State did not indicate that there were any significant differences between the recently submitted regulations and those blaster certification regulations that were approved by the Director on September 20, 1984, and April 23, 1985.

As explained in the April 23, 1985, **Federal Register** notice, blaster certifications training could be accomplished through three methods. These include classroom training sponsored by the State, blaster training sessions conducted by manufacturers, or self study by the individual using a study guide. At the time, the Director found that only State sponsored training could satisfy the training requirements of 30 CFR 850.13(b).

The Director advised West Virginia that self study could not be utilized until self study training materials providing instruction in all areas required by 30 CFR 850.13(b) and a procedure to verify that the self study had actually been conducted were developed. On June 8, 1987, the State submitted its revised "Study Guide for West Virginia Surface Mine Blasters" (Administrative Record No. WV 726). According to the State, the Study Guide is intended to assist blasters in preparing for the blaster certification examination. The State intends to use the Study Guide in two ways. The State has acknowledged that the Study Guide is the required text for all formal training sessions. Individuals can also participate in the State's self study program by using the study guide without having to attend formal classroom training. Individuals are required to verify that they have completed self study by submitting completed work sheets from the Study guide with their applications for the blasters examination. The State's "Surface Mine Blasters Examination Application" was submitted along with the Study Guide on June 8, 1987. The application requests, in part, information relating to the applicant's training, whether through self study or other formal training and the applicant's certification of completion of such training.

In the April 23, 1985, **Federal Register** notice, the Director also found that training by explosives manufacturers could not be accepted until procedures were developed by the State to verify that the training meets the requirements of 30 CFR 850.13(b) and the process for verifying completion of the course was developed. In its June 8th submission, the State provided OSMRE "Guidelines For Approval and Conduct of Extragovernmental Training for Blasters Certification." The guidelines are intended to ensure that all extragovernmental training sessions, whether they be conducted by mining companies, or explosives manufacturers, meet the requirements of 30 CFR 850.13(b) and are approved by the State prior to being offered. Upon the completion of the formal training, the instructor is to submit a "Surface Blaster Training Record" to the Department of Energy for each participant. The Record, an example of which was also submitted to OSMRE on June 8, 1987, indicates the dates and subjects in which each individual received formal training. This Record, together with the application for blaster certification discussed above, was developed by the State to enable verification of the completion of industry sponsored blaster training by participants (Administrative Record No. WV 725).

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comments from the public on the proposed amendments submitted by the State of West Virginia to its permanent regulatory program. Comments should specifically address whether the proposed amendments are in accordance with SMCRA and no less effective than its implementing regulations. If approved, the amendments will become part of the West Virginia program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under "DATES" or at locations other than the OSMRE Charleston Field Office will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by the close of business on November 16, 1987. If no one has requested an opportunity to participate in the hearing by that date, the hearing will not be held.

If only one person requests to comment at a hearing, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will also allow OSMRE officials to prepare appropriate questions. The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE Charleston Field Office listed under "Addresses" by contacting the person listed under "FOR FURTHER INFORMATION CONTACT."

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Compliance with Executive Order No. 12291:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

3. *Compliance with the Regulatory Flexibility Act:* The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility

Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

4. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 948

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

Carl C. Close,

Assistant Director, Eastern Field Operations.

Date: October 22, 1987.

[FR Doc. 87-25205 Filed 10-29-87; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 85

[FRL-3283-7]

Aftermarket Catalytic Converter Policy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Enforcement Policy; Notice of public meeting.

SUMMARY: This notice announces a public meeting to answer questions, exchange information, receive ideas and comments on the implementation of the Agency's interim and proposed enforcement policy on the Sale and Use of Aftermarket Catalytic Converters published in the **Federal Register** on August 5, 1986 (51 FR 28114 and 51 FR 28132). Suggestions for the agenda items or issues to be discussed should be submitted to the Agency contact listed below at least two weeks before the meeting. EPA requests that all persons planning to attend the meeting pre-register with the Agency contact at the address below; at least two weeks before the meeting.

DATE: The meeting will be held December 10, 1987 beginning at 9.30 a.m.

ADDRESSES: The meeting will be held in the Main Conference Room (B-118), Dept. of Public Social Services, 3401 Rio Hondo Ave., El Monte, California 91731.

Any written comments and information may be submitted to Public Docket No. A-84-31, located at the Environmental Protection Agency, Central Docket Section, Room 4, South Conference Center (LE-131), Waterside Mall, 401 M Street SW., Washington, DC 20460 within 30 days following the meeting. The docket may be inspected weekdays between 8 a.m. and 3:00 p.m. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Steve Albrink, (202) 382-2640, Field Operations and Support Division (EN-397F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The EPA's interim and proposed enforcement policy on the sale and use of aftermarket catalytic converters for motor vehicles has been in place on an interim basis for over a year and a number of manufacturers and remanufacturers have indicated they are producing catalytic converters which meet EPA's policy requirements. In addition to test procedures and converter standards, the policy includes reporting and record keeping requirements for both manufacturers and installers, and installation requirements for the installers. EPA may consider finalizing the policy or possibly promulgating proposed regulations and is interested in getting suggestions and comments on problems or areas which need to be revised or clarified in subsequent actions by the Agency. Some persons may also wish to discuss or ask questions about how the Agency is presently dealing with various issues regarding its implementation and enforcement of the policy.

The following issues are possible agenda items which may be discussed. The meeting will not necessarily be limited to these issues, but they are offered to serve as examples of possible items to be discussed. Additional agenda suggestions are requested.

1. New converter test procedures
   a. Adequacy
   b. Additional requirements or revisions
   c. More stringent requirements to make them identical to California's proposed requirements or otherwise
   d. Alternative mileage accumulation
   e. Accelerated aging cycle
   f. Manufacturer reporting requirements
   g. Quality control requirements
   h. Labeling on the bottom of converters and format
   i. Warranty coverage and reimbursement of labor costs
2. Used converters test procedure
   a. Type of equipment
   b. Quality control
   c. More specific requirements
   d. NOx requirement
   e. Test result records
   f. Revision of standards or procedures
   g. Adequacy of standards
   h. Small converter procedures
3. Installer issues
   a. Record keeping and converter retention
   b. Vehicle application catalog adequacy
   c. Converters from salvage yards
   d. Old type aftermarket converters
   e. Converter prices

Dated: October 22, 1987.

J. Craig Potter,

Assistant Administrator for Air & Radiation.

[FR Doc. 87-25039 Filed 10-29-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-451, RM-5631, RM-5639, RM-5647, RM-5655, RM-5695, RM-5763]

Radio Broadcasting Services; Cordova, Demopolis, Evergreen, Hartselle, Linden, Marion, Trinity, and Tuscaloosa, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on six mutually-exclusive petitions for rule making in the state of Alabama. One of the petitions proposes a new allotment at Hartselle on Channel 291A. Five of the petitions propose modification of facilities as follows: (1) *Tuscaloosa*—seeks to substitute Channel 225C2 for Channel 224A. This proposal also seeks to substitute Channel 223A for Channel 225A at Cordova, as well as the substitution of Channel 291A for Channel 223A at Trinity, AL, for which seven applications are pending, to accommodate petitioner's modification plans. (2) *Linden*—seeks to substitute Channel 226C2 for 296A; (3) *Marion*—seeks to substitute Channel 226C1 for Channel 280A; (4) *Evergreen*—seeks to substitute Channel 227C2 for Channel 228A; (5) *Hartselle*—seeks the allotment of Channel 291A as that community's first local FM service; and (6) *Demopolis*—seeks to substitute Channel 293C2 for Channel 292A.

DATES: Comments must be filed on or before December 14, 1987, and reply comments on or before December 29, 1987.

ADDRESSES: Federal Communications Cosmmission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the

petitioners, or their counsel or consultant, as follows:

Clifton G. Moor, 1331 Ocean Blvd., Suite 201, St. Simons Island, GA 31522, (Consultant to Radio Hartselle (RM-5631)

L. Lynn Henley, 1602 Merle Circle, Opelika, AL 36801 (Petitioner for Linden, AL (RM-5639))

Erwin G. Krasnow, Esq., Laurie B. Horvitz, Esq., Verner, Liipfert, Bernhard, McPherson and Hand, 1660 L St. NW., Suite 1000, Washington, DC 20036 (Counsel for Radio South, Inc. (RM-5647))

James K. Edmundson, Esq., Kenkel, Barnard & Edmundson, 1220 19th Street NW., Suite 202, Washington, DC 20036, (Counsel for Southstar Communications, Inc. (RM-5655))

Israel Teitelbaum, Esq., 1000 Connecticut Avenue, NW., Suite 1112, Washington, DC 20036 (Counsel for Marion Radio, Inc. (RM-5695))

Dennis J. Kelly, Esq., Cordon and Kelly, 1920 N Street NW., 2d Flr., Washington, DC 20036 (Counsel for Wolff Broadcasting Corporation (RM-5763)).

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, MM Docket No. 87-451, adopted September 29, 1987, and released October 23, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

The six mutually-exclusive petitions were filed by: (1) Radio South, Inc., licensee of Station WTUG(FM) (Channel 224A), Tuscaloosa, requesting the substitution of Channel 225C2 for Channel 224A and modification of its license to specify operation on Channel 225C2, as that community's second wide coverage area FM service (RM-5647). Although the modification could be implemented at petitioner's present site, its proposal also requires the substitution of Channel 223A for Channel 225A at Cordova, as well as the substitution of Channel 291A for Channel 223A at Trinity, for which seven applications are pending. (2) L. Lynn Henley, permittee of Station WDAL(FM) (Channel 296A), Linden, seeks to substitute Channel 226C2 for Channel 296A and modification of its permit to specify operation on Channel 226C2, as that community's first wide coverage area FM service (RM-5639). Also, Channel 253C2 is suggested as a second equivalent channel in the event other interests are expressed. Channel 226C2 at Linden requires a site restriction 7.8 kilometers east, while Channel 253C2 can be accommodated at a site restriction approximaterly 32.0 kilometers southeast. (3) Marion Radio, Inc., licensee of Station WJAM(FM) (Channel 280A), Marion, seeks to substitutes Channel 226C1 for Channel 280A, and modification of its license to specify operation on Chanel 226C1 as that community's first wide coverage area station (RM-5695). Propoosed Channel 226C1 requires a site restriction 14.0 kilometers east. (4) Wolff Broadcasting Corporation, licensee of Station WEGN-FM (Channel 228A), Evergreen, seeks to substitute Channel 227C2 for Channel 228A and modification of its license to specify operation on Channel 227C2, as that community's first expanded coverage area FM station (RM-5763). Proposed Channel 227C2 can be accommodated at the present site of Station WEGN-FM. (5) Radio Hartselle requests the allotment of Channel 291A to Hartselle, as that community's first local FM service. Proposed Channel 291A can be allotted in compliance with the minimum distance separation requirements contained in § 73.207(b) of the Commission's Rules. (6) Southstar Communications, Inc., licensee of Station WZNJ(FM) (Channel 292A), Demopolis, seeks to substitute Channel 293C2 for channel 292A and modification of its license to specify operation on Channel 293C2, as that community's first expanded coverage FM service. Channel 293C2 at Demopolis requires a site restriction 26 kilometers southeast, and would require the substitution of Channel 253A for Channel 296A at Linden, should the latter's modification proposal fail.

This Notice solicits comments and showings to aid the Commission in the comparative evaluation of the conflicting proposals to determine which communities will receive allotments. The basic issue to be resolved concerns the preference to be accorded a new primary service, represented by a new allotment vs. an increase in existing service, represented by a modification proposal. Based on existing policies and procedures, we are initially proposing the allotment which favors a new primary service at Hartselle, AL (Channel 291A). Modification requests which do not conflict with the new service allotment proposal at Hartselle (Channel 291A) are those proposed at Evergreen (Channel 227C2 for Channel 228A); or Linden (Channel 226C2) and Demopolis (Channel 293C2); or Marion (Channel 226C1). The only modification proposal which would be precluded by the allotment of a new primary service is Tuscaloosa (Channel 225C2), which requires related changes at Cordova and Trinity. However, since this Notice invites comments from all proponents and requests further showings to demonstrate a preference under our allocation priorities, we are provisionally proposing allotments at all communities pending evaluation of the comments and showings received.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-25179 Filed 10-29-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-456, RM-5917]

Radio Broadcasting Services; Port Charlotte, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Charlotte Broadcasting Company, licensee of Station WEEJ(FM), Port Charlotte, Florida, which proposes to substitute Channel 261C1 for Channel 261A at Port Charlotte, and to modify its Class A license to specify the channel.

DATES: Comments must be filed on or before December 14, 1987, and reply comments on or before December 29, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In

addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Howard W. Simcox, Jr., Borsari and Paxson, 2100 M Street NW., Suite 610, Washington, DC 20037 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–456, adopted October 1, 1987, and released October 23, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Fedeal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–25176 Filed 10–29–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–455, RM–5899]

Radio Broadcasting Services; Perry, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Rahu Braodcasting, Inc., which proposes the allotment of Channel 295A to Perry, Florida, as a second FM service.

DATES: Comments must be filed on or before December 14, 1987, and reply comments on or before December 29, 1987.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jerrold Miller, Miller and Fields, P.C., P.O. Box 33003, Washington, DC 20033, (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–455, adopted September 30, 1987, and released October 23, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–25175 Filed 10–29–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–453, RM–5739]

Radio Broadcasting Services; Bremen, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Margaret Karwatka proposing the allotment of FM Channel 245A to Bremen, Indiana, as that community's first FM broadcast service.

DATES: Comments must be filed on or before December 14, 1987, and reply comments on or before December 29, 1987.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Stanley G. Emert, Jr., Watson & Emert, 2108 Plaza Tower, Knoxville, Tennessee 37929 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–453, adopted September 25, 1987, and released October 23, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–25177 Filed 10–29–87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-457, RM-5874]

Radio Broadcasting Services; Whitehall, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Pyramid Broadcasting, Inc., requesting the allocation of FM Channel 273A to Whitehall, Michigan, as that community's second FM service. Concurrence of the Canadian government is required for the allocation of Channel 273A at Whitehall.

DATES: Comments must be filed on or before December 14, 1987, and reply comments on or before December 29, 1987.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Allan G. Moskowitz, Kaye, Scholer, Fierman, Hays and Handler, 1575 Eye Street NW., Washington, DC 20005, (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-457, adopted September 30, 1987, and released October 23, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longe subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-25178 Filed 10-29-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-410; RM-5469, RM-5428, RM-5688 and RM-5792]

Radio Broadcasting Services; Columbia, Eldon, Centralia, Cabool and Mountain Grove, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document is issued in response to the *Notice of Proposed Rule Making*, 1 FCC Rcd 465 (1986), proposing the allotment of Channels 230A and 223A to Columbia, Missouri. The *Notice* was issued in response to petitions filed by George Thomas and Gail C. Mooney. A counterproposal was filed by The Clair Group requesting the substitution of Channel 230A for Channel 221A at Centralia, Missouri. A second counterproposal was filed by Southwest Communications, Inc., requesting the substitution of Channel 224C2 for Channel 224A at Eldon, Missouri and modification of its license for Station KLDN(FM), Eldon, to reflect the new channel. George Thomas and Gail C. Mooney failed to file comments. However Thomas filed reply comments expressing a willingness to participate in bringing a new station to Columbia. The purpose of this Request for Supplemental Information is to clarify Mr. Thomas' pleading as to its intentions to apply for, construct and operate a station at Columbia.

The Clair Group indicated interference on its current channel exists from an unnamed high power noncommercial educational station. The counterproposal filed by Southwest Communications, Inc. proposed the substitute of Channel 224C2 for Channel 224A at Eldon, Missouri, and modification of its license for Station KLDN(FM). Channel 224C2 can be allocated to Eldon provided channel changes are made at Mountain Grove and Cabool, Missouri. Therefore, in response to the counterproposal filed by Southwest Communications, Inc., we have issued a separate *Order to Show Cause* to the licensees of Station KLRS, Channel 224A, Mountain Grove, Missouri, and KVVC, Channel 292A, Cabool, Missouri, why their licenses should not be modified to specify Channels 293A and 251A, respectively.

DATES: Comments are due on or before December 14, 1987, and replies on or before December 29, 1987.

ADDRESSES: Tom L. Mason, President and General Manager, Radio Station KVVC(FM), KVVC Broadcasting, Inc., Box 514, Junction M and Business Route 60, Cabool, Missouri 65689; Larry D. Spence, President, Radio Station KLRS(FM), Communications Works, Inc., Route 4, Box 1360, Mountain Grove, Missouri 65711; and, Martin R. Leader, Ann K. Ford, John J. McVeigh, Fisher, Wayland, Cooper & Leader, 1255 23rd Street NW., Suite 800, Washington, DC 20037, (Counsel for Southwest Communications, Inc.)

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-410, adopted September 28, 1987, and released October 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-25179 Filed 10-29-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-458, RM-5901]

Radio Broadcasting Services; West Plains, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests

comments on a petition filed by C M Broadcasting Company, proposing the substitution of FM Channel 273C2 for Channel 272A at West Plains, Missouri, and modification of the license for Station KKDY-FM to specify operation on Channel 273C2.

DATES: Comments must be filed on or before December 14, 1987, and reply comments on or before December 29, 1987.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert S. Stone, McCampbell & Young, Suite 2021, Plaza Tower, Knoxville, Tennessee 37901-0550, (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-458, adopted September 30, 1987, and released October 23, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-25180 Filed 10-29-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-454, RM-6026]

Radio Broadcasting Services; Gleneden Beach, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Hal D. Fowler proposing the allocation of Channel 264C2 to Gleneden Beach, Oregon, as the community's first local FM service. Petitioner and other interested parties are requested to furnish additional information concerning the status of Gleneden Beach as a community for allotment purposes. Channel 264C2 can be allocated to Gleneden Beach in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, if it is determined to be a community.

DATES: Comments must be filed on or before December 14, 1987, and reply comments on or before December 29, 1987.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: William M. Barnard, Mark Van Bergh, Kenkel, Barnard & Edmundson, 1220 19th Street NW., Suite 202, Washington, DC 20036 (Counsel to petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-454, adopted September 30, 1987, and released October 23, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037. Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-25181 Filed 10-29-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-452, RM-5970]

Radio Broadcasting Services; Ellensburg, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Lord Broadcasting Company, licensee of Station KQBE(FM), proposing the substitution of Class C2 Channel 276 for Channel 276A at Ellensburg and modification of its station's license to specify operation on the higher class channel. The proposal could provide that community with a first wide coverage area FM station. Concurrence by the Canadian government must be obtained.

DATES: Comments must be filed on or before December 14, 1987, and reply comments on or before December 29, 1987.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Margaret L. Tobey, Esquire, Sidley & Austin, 1722 Eye Street NE., Washington, DC 20006 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-452, adopted September 25, 1987, and released October 23, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International

Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–25182 Filed 10–29–87; 8:45 am]

BILLING CODE 6712–10–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1090

[Ex Parte No. 230 (Sub-7)]

Improvement of TOFC/COFC Regulations (Pickup and Delivery)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: After reviewing the exemption established in Ex Parte No. 230 (Sub-No. 6), *Improvement of TOFC/COFC Regulations (Railroad-Affiliated Motor Carriers and Other Motor Carriers)*, ___ I.C.C.2d ___, 52 FR 23660 (June 24, 1987), the Commission has concluded that its prior exemption does not apply to motor carrier trailer-on-flatcar and container-on-flatcar (TOFC/COFC) services arranged independently with the shipper or receiver and performed immediately before or after a TOFC/COFC movement by rail. The Commission seeks comment on whether its prior exemption should be expanded to cover this additional class of service. The exemption, if adopted, would be effected by amending 49 CFR 1090.2 as described below.

DATES: Interested parties must notify the Commission, in writing, of their intent to participate by November 16, 1987, so that the Commission can issue a service list 15 days thereafter. Comments from interested parties are due December 14, 1987, and reply comments are due December 29, 1987. All comments and reply comments must be served on all parties on the service list.

ADDRESS: An original and 15 copies of comments should be sent to: Case Control Branch, Office of the Secretary, Interstate Commerce Commission, 12th and Constitution Avenue NW., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Craig M. Keats, (202) 275–7602 (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: The proposed rule is set forth below. Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423, or call (202) 275–7428 (assistance for the hearing impaired is available through TDD Services (202) 275–1721).

Initial Regulatory Flexibility Analysis

Because we are not aware of any potential for market abuse, we preliminarily conclude that the proposed rule revisions will not, if adopted, have a significant adverse economic impact on a substantial number of small entities, but that to the extent it has any effect it should enhance small independent motor carriers' ability to compete and the quality of the service they provide. Eliminating tariff filings under the proposed action will not entail any additional recordkeeping or other administrative burdens.

Environment and Energy Considerations

We preliminarily conclude that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1090

Intermodal transportation, Motor carriers, Railroads.

Decided: October 23, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Commissioner Simmons concurred with a separate expression.

Noreta R. McGee,

Secretary.

Title 49, Chapter X of the Code of Federal Regulations is proposed to be amended as follows:

PART 1090—[AMENDED]

1. The authority citation for 49 CFR Part 1090 continues to read:

Authority: 49 U.S.C. 10321, 10505, and 5 U.S.C. 553.

2. Part 1090 is proposed to be amended by revising § 1090.2 to read as follows:

§ 1090.2 Exemption of rail and highway TOFC/COFC service.

Except as provided in 49 U.S.C. 10505 (e) and (g), 10922(1), and 10530, rail TOFC/COFC service and highway TOFC/COFC service provided by a rail carrier either itself or jointly with a motor carrier as part of a continuous intermodal freight movement is exempt from the requirements of 49 U.S.C. Subtitle IV, regardless of the type, affiliation, or ownership of the carrier performing the highway portion of the service. Motor carrier TOFC/COFC pickup and delivery services arranged independently with the shipper or receiver (or its representative/agent) and performed immediately before or after a TOFC/COFC movement provided by a rail carrier are similarly exempt. Tariffs heretofore applicable to any transportation service exempted by this section shall no longer apply to such service. The exemption does not apply to a motor carrier service in which a rail carrier participates only as the motor carrier's agent (Plan I TOFC/COFC).

[FR Doc. 87–25162 Filed 10–29–87; 8:45 am]

BILLING CODE 7035–01–M

Notices

Federal Register
Vol. 52, No. 210
Friday, October 30, 1987

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 COMMERCE

Minority Business Development Agency

Business Development Center Program Applications, Alabama

October 26, 1987.

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first *12* monhts is estimated at *$194,118* for the project performance of *04/01/88 to 03/31/89*. The MBDC will operate in the *Birmingham, Alabama* Standard Metropolitan Statistical Area (SMSA). The first year cost for the MBDC will consist of *$165,000* in Federal funds and a minimum of *$29,118* in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The Project Number is *04–10–88006–01* for the *Birmingham, Alabama* SMSA.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance, and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance, the firm's proposed approach to performing the work requirements included the application; and the firm's estimated cost for providing such assistance. It is advisable that applications have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is *December 4, 1987*. Applications must be postmarked on or before *December 4, 1987*.

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street NE., Suite 505, Atlanta, Georgia 30309, (404) 347–3438.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street NE., Suite 505, Atlanta, Georgia, Monday, November 23, 1987, at 9:00 a.m.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

October 26, 1987.

[FR Doc. 87–25139 Filed 10–29–87; 8:45 am]

BILLING CODE 3510–21–M

Business Development Center Program Applications, Alabama

October 26, 1987.

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first *12* months is estimated at *$194,118* for the project performance of *04/01/88 to 03/31/89*. The MBDC will operate in the *Mobile, Alabama* Standard Metropolitan Statistical Area (SMSA). The first year cost for the MBDC will consist of *$165,000* in Federal funds and a minimum of *$29,118* in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The Project Number is *04–10–88008–01* for the Mobile, Alabama SMSA.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance, and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance, the firm's proposed approach to performing the work requirements included the application; and the firm's estimated cost for

providing such assistance. It is advisable that applications have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is *December 4, 1987.* Applications must be postmarked on or before *December 4, 1987.*

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia 30309, (404) 347-3438

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia, Monday, November 23, 1987, at 9:00 a.m.

Carlton L. Eccles,

Regional Director, Regional Office.

October 26, 1987.

[FR Doc. 87-25140 Filed 10-29-87; 8:45 am]

BILLING CODE 3510-21-M

Business Development Center Applications; Alabama

October 26, 1987.

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first *12* months is estimated at *$194,118* for the project performance of *04/01/88 to 03/31/89.* The MBDC will operate in the *Montgomery, Alabama* Standard Metropolitan Statistical Area (SMSA). The first year cost for the MBDC will consist of *$165,000* in Federal funds and a minimum of *$29,118* in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The Project Number is *04-10-88009-01* for the *Montgomery, Alabama* SMSA.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and eduational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance, and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance, the firm's proposed approach to performing the work requirements included the application; and the firm's estimated cost for providing such assistance. It is advisable that applications have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satifactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is *December 4, 1987.* Applications must be postmarked on or before *December 4, 1987.*

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street, NE., suite 505, Atlanta, Georgia 30309, (404) 347-3438.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regualtions can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

A pre-application conference to assist all interesated applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street NE., Suite 505, Atlanta, Georgia, Monday, November 23, 1987, at 9:00 a.m.

October 26, 1987.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

[FR Doc. 87-25141 Filed 10-29-87; 8:45 am]

BILLING CODE 3510-21-M

Business Development Center Program Applications; Florida

October 26, 1987.

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first *12* months is estimated at *$194,118* for the project performance of *04/01/88 to 03/31/89.* The MBDC will operate in the *West Palm Beach, Florida* Standard Metropolitan Statistical Area (SMSA). The first year cost for the MBDC will consist of *$165,000* in Federal funds and a minimum of *$29,118* in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The Project Number is *04-10-88007-01* for the *West Palm Beach, Florida* SMSA.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance, and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance, the firm's proposed approach to performing the work requirements included the application; and the firm's estimated cost for providing such assistance. It is advisable that applications have an existing office in the geographic region for which they are applying.

The MBDA will oeprate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is *December 4, 1987.* Applications must be postmarked on or before *December 4, 1987.*

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia 30309, (404) 347–3438.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATON: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia, Monday, November 23, 1987, at 9:00 a.m.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

October 26, 1987.

[FR Doc. 87–25142 Filed 10–29–87; 8:45 am]

BILLING CODE 3510–21–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of Bangladesh

October 26, 1987.

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 November 2, 1987. For further information contact Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to establish import restraint limits for cotton and man-made fiber textile products in Categories 338/339, 342.642 and 638/639, produced or manufactured in the People's Republic of Bangladesh and exported to the United States. As a result, the limit for Category 338/339, which is currently filled, will re-open.

Background

A CITA directive dated June 10, 1987 (52 FR 22835) established an import restraint limit for cotton textile products in Category 338/339, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 28, 1987 and extends through February 27, 1988.

On July 17, 1987 and October 13, 1987 notices were published in the **Federal Register** (52 FR 27042 and 52 FR 37999) which announced that the United States Government, under Article 3 of the Agreement Regarding International Trade in Textiles and Section 204 of the Agricultural Act of 1956, as amended, had requested the Government of the People's Republic of Bangladesh to enter into consultations concerning exports of cotton and man-made fiber textile products in Categories 342/642 and 638/639, respectively.

The Governments of the United States and Bangladesh have agreed in consultations held September 14–17, 1987 to further amend their Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated February 19 and 24, 1986, to establish specific limits for cotton and man-made fiber textile products in Categories 338/339, 342/642 and 638/639, produced or manufactured in Bangladesh and exported during the periods which began, in the case of Category 338/339, on June 1, 1987; in the case of Category 342/642, on July 1, 1987; and, in the case of Category 638/639, on September 1, 1987; and extend through Januaryl 31, 1988.

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), July 14, 1986 (51 FR 25386), July 28, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register.**

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

October 26, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive cancels and supersedes the directive of June 10, 1987 from the Chairman of the Committee for the Implementation of Textile Agreements, which established a restraint limit for certain cotton textile products in Category 338/339, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 28, 1987 and extends through February 27, 1988.

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 further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated February 19 and 24, 1986, between the Governments of the United States and Bangladesh; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on November 2, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories

338/339, 342/642 and 638/639, produced or manufactured in Bangladesh and exported during the periods which began, in the case of Category 338/339, on June 1, 1987; in the case of Category 342/642, on July 1, 1987; and, in the case of Category 638/639, on September 1, 1987, and extend through January 31, 1988, in excess of the following levels of restraint: [1]

Category	Import restraint limit
338/339	400,000 dozen.
342/642	115,500 dozen.
638/639	322,917 dozen.

Textile products which have been exported to the United States prior to June 1, 1987, in the case of Category 338/339; July 1, 1987, in the case of Category 342/642; and September 1, 1987, in the case of Category 638/639; shall not be subject to this directive.

Textile products in Categories 342/642 and 638/639 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.

The foregoing limits are subject to adjustment in the future according to the terms of the agreement, effected by exchange of notes dated February 19 and 24, 1986, as amended, which provide, in part, that specific limits may be adjusted by designated percentages for swing, carryforward, carryover and special shift.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-25187 Filed 10-29-87; 8:45 am]

BILLING CODE 3510-DR-M

Import Limit for Certain Wool Textile Products Produced or Manufactured in the People's Republic of China

October 26, 1987.

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 November 2, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to establish a new restraint limit for wool textile products in Category 433, produced or manufactured in the People's Republic of China and exported during 1987. As a result, the limit for Category 433, which is currently filled, will re-open.

Background

A CITA directive dated December 23, 1986 (51 FR 47041) established import restraint limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which begin on January 1, 1987 and extends through December 31, 1987.

A subsequent CITA directive dated February 24, 1987 was published in the **Federal Register** (52 FR 6057) which established an import restraint limit for wool textile products in Category 433, among others, for the same twelve-month period.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China, agreement was reached, effected by exchange of letters dated September 10, 1987 and October 15, 1987, to convert to a specific limit of 21,287 dozen the current designated consultation level for wool suit-type coats in Category 433, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987. In addition, the limit for Category 433 is being increased by application of swing, as requested by the Government of the People's Republic of China. The reduction to account for the swing applied to Category 433 is being made in a separate directive. The United States Government has decided to control imports of this category at the new level.

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), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register**.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

October 26, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive, amends but does not cancel, the directive issued to you on December 23, 1986, as amended on February 24, 1987, by the Chairman, Committee for the Implementation of Textile Agreements, concerning certain cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on November 2, 1987, the directive of December 23, 1986, as amended, is hereby further amended to include a new restraint limit of 22,351 dozen for wool textile products in Category 433.[1]

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,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-25188 Filed 10-29-87; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Pakistan

October 26, 1987.

The Chairman of the Committee for the Implementation of Textile

[1] The limits have not been adjusted to account for any imports exported after May 30, 1987 for Category 338/339; June 30, 1987 for Category 342/642; and August 31, 1987 for Category 638/639.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1986.

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 November 2, 1987. For further information contact Pamela Smith, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 343–6498. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the restraint limits for Categories 338, 339, 341, 342, 347/348, 351 and 352 for the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Background

A CITA directive dated July 24, 1987 (52 FR 28325) established import limits for certain specified categories of cotton and man-made fiber textile products, including Categories 338, 339, 341, 342, 347/348, 351 and 352, produced or manufactured in Pakistan and exported during the agreement year which began on January 1, 1987 and extends through December 31, 1987. Under the terms of the Bilateral Cotton and Man-Made Fiber Textile Agreement, effected by exchnage of notes dated May 20, 1987 and June 11, 1987 between the Governments of the United States and Pakistan and at the request of the Government of Pakistan, the limits for Categories 338, 339, 341, 342, 347/348, 351 and 352 are being increased for carryforward.

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), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register.**

The letter published below and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

October 26, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of July 24, 1987, issued to you by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports of cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on November 2, 1987, the directive of July 24, 1987 is amended to include adjustments to the following previously established restraint limits, under the terms of the Bilateral Cotton and Man-Made Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and July 11, 1987: [1]

Category	Adjusted 12-mo. limit [1]
338	3,051,000 dozen.
339	734,500 dozen.
341	274,040 dozen.
342	90,400 dozen.
347/348	356,598 dozen.
351	45,200 dozen.
352	226,000 dozen.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1986.

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).

[1] The agreement provides, in part, that: (1) With the exception of Category 363, specific limits may be increased by designated percentages for swing; (2) specific limits may be adjusted for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–25189 Filed 10–29–87; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of an Import Restraint Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Romania

October 26, 1987.

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 November 2, 1987. For further information contact Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4712. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 343–6497. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to reduce the limit for man-made fiber textile products in Category 604, produced or manufactured in Romania and exported in 1987.

Background

On December 31, 1986 a notice was published in the **Federal Register** (51 FR 47280), which announced import limits for certain specified categories of wool and man-made fiber textile products, including man-made fiber textile products in Category 604, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Under the terms of the Bilateral Wool and Man-Made Fiber Textile Agreement of November 7 and 16, 1984, between the Government of the United States and the Socialist Republic of Romania, the 1987 limit for Category 604 is being adjusted for carryforward used in 1986.

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), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register.**

James H. Babb

Chairman, Committee for the Implementation of Textile Agreements.

October 26, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 23, 1986, which directed you to prohibit entry of certain wool and man-made fiber textile products, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on November 2, 1987, the directive of December 23, 1986 is hereby further amended to include an adjusted import restraint limit of 3,128,809 pounds [1] for Category 604, under the terms of the bilateral agreement of November 7 and 16, 1984.[2]

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 rulemanking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-25190 Filed 10-29-87; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after December 31, 1986.

[2] The bilateral agreement provides, in part, that: (1) specific limits may be increased for carryover and carryforward; (2) consultations may be held to adjust levels for categories not subject to specific limits; and (3) adminstrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Adjustment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Thailand

October 26, 1987.

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 October 27, 1987. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards on each Customs port or call (202 343-6581. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the previously established import restraint limit for Category 605-T, produced or manufactured in Thailand and exported during 1987.

Background

A CITA directive dated December 23, 1986 (51 FR 47046) established import restraint limits for cotton, wool and man-made fiber textile products, including Category 605-T, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 27 and August 8, 1983, as amended and extended, and at the request of the Government of Thailand, the limit for Category 605-T is being increased by application of carryforward.

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), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedles of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register.**

The letter to the Commissioner of Customs and the actions taken pursuant to it are designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

October 26, 1987.

Committee for the Implementation of Textile Agreements

Commisioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 23, 1986, concerning imports into the United States of certain cotton, wool and man-made fiber, textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on Octoer 27, 1987, the directive of December 23, 1986 is further amended to include an adjustment to the previously established restraint limit for man-made fiber textile products in Category 605-T [1] to a level of 616,810 pounds,[2] under the terms of the bilateral agreement of November 21 and December 4, 1986, as amended.[3]

The Committee for the Implementation of Textile Agreements had determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James R. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-25191 Filed 10-29-87; 8:45 am]

BILLING CODE 3510-DR-M

[1] In Category 605-T, only TSUSA number 310.9500.

[2] The limit has not been adjusted to account for any imports exported after December 31, 1986.

[3] The provisions of the agreement provide, in part, that: (1) under certain specific conditions any non-apparel specific limit or Sublimit may be exceeded by not more than 7 percent, provided that the amount of the increase is compensated for by an equal square yard equivalent decrease in another specific limit in the same group; (2) specific levels of restraint may be increased for carryover and carryforward up to 11 percent of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Proposed Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Availability of the Terms and Conditions of Proposed Commodity Option Contracts.

SUMMARY: The Chicago Board of Trade ("CBT" or "Exchange") has applied for designation as a contract market in options on 5,000-ounce silver futures and options on 100-ounce gold futures. The applications also contain petitions for an exemption from the volume requirement for the underlying futures contracts specified in the Commission's rules. The Commission has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before November 30, 1987.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Richard A. Shilts, Deputy Director, Market Analysis Section, Division of Economic Analysis, 2033 K Street NW., Washington, DC. 20581.

SUPPLEMENTARY INFORMATION: In addition to requesting comment on the terms and conditions of the proposed silver and gold option contracts, the Commission also is requesting comment on the merits of a petition filed by the CBT pursuant to § 33.11 of the Commission's rules[1] That petition requests exemptive relief for these proposed contracts from the trading volume tests set forth in the Commission's rules. In that regard, § 33.4(a)(5)(iii) of the Commission's rules requires, as a condition of designation for proposed options on futures contracts, that the exchange demonstrate that:

> . . . the volume of trading in all contract months for futures delivery of the commodity for which the option designation is sought has averaged at least 3,000 contracts per week on such board of tade for the 12 months preceding the date of application for option contract market designation, or alternatively, that such futures contract market, based on its trading history, substantially meets this total volume requirement in less than the 12 month preceding the date of application; . . .

As the Commission has previously noted, the numerical volume criterion is meant to ensure that the underlying futures market would not be affected adversely by option trading and to ensure that a trader would be able to exercise an option into a sufficiently liquid market so that the resulting position could be offset without suffering a substantial loss of the option's true economic value. (51 FR. 17467) (May 13, 1986).)

The Commission has noted that, in certain cases, it may be appropriate for the Commission to consider the alternative test in § 33.4(a)(5)(iii) with respect to volume in the underlying futures contract. With request to that alternative test, the Commission stated that

> . . . this provision will be most useful in instances where a newly introduced futures contract or an existing one which beings to exhibit higher volume than in the past, trades above the 3,000 contract a week level, substantially meeting the required volume level in less than a year. Under this test, the higher the trading volume the less time would be needed to demonstrate a liquid market, but in no event could the test be met until there has been some history concerning deliveries on the contract. (51 FR. 17468)

Under the alternative test, the Commission has designated options on futures contracts for which there has been less than a full year's trading experience. These cases involved a sufficiently high and sustained level of trading volume in the underlying futures contract to support a reasonable expectation that sufficient liquidity would continue to exist in the underlying futures contract; among other things, in each case of an option the Commission designated under the alternative criterion the underlying futures contract had a trading history of at least six months with several successful expirations, and trading volume was in the range of at least 5,000 contracts per week.

The CBT began futures trading for its 5,000-ounce silver and 100-ounce gold futures contracts on September 13, 1987. During the first three weeks of trading in the contracts, average weekly trading volume was about 1,900 contracts for 5,000-ounce silver futures and about 2,700 contracts for 100-ounce gold futures. Therefore, for both proposed option contracts, the numerical volume requirement has not been met as required by § 33.4(a)(5)(iii). Further, the underlying futures contracts have not had any expirations. (The first delivery month listed for both contracts is October 1987.) Thus, the proposed option contracts currently are not eligible for designation under either the one-year or the alternative standard of § 33.4(a)(5)(iii).

The CBT noted in its applications that gold and silver market participants "have expressed a strong desire to see competitive opportunities provided among futures and futures options exchange for trading precious metals contracts." The CBT further noted that participants in a CBT 5,000-ounce silver futures options or a CBT 100-ounce gold futures option market will be able to retain the full value of these options because of the inter-relationship between the proposed futures option markets and the underlying cash markets.

The Commission continues to believe that option trading should be permitted only when it is unlikely to cause adverse effects on the underlying futures market and when exercise of the option affords a reasonable opportunity to realize the option's true economic value. The Commission, therefore, intends to move cautiously in granting any exemption from the requirements set forth in § 33.4(a)(5)(iii). In this context, the Commission will consider several factors, as discussed below, in determining whether to grant an exemption from the requirements of that regulation as it pertains to options on futures which involve delivery of the physical commodity.[2]

The Commission believes that, at the minimum, the underlying cash market for the commodity must exhibit a high level of liquidity. Cash market liquidity would be evidenced by extensive and frequent trading activity, a large number of participants in the market, and tight bid/ask spreads. Further, the terms of the futures contract should ensure the opportunity for arbitrage and close alignment between the cash and futures markets. In combination, the liquidity of the underlying cash market and the opportunities for arbitrage are major factors in determining the extent to which a less liquid futures contract could be disrupted by the exercise of options and the alternatives available to those exercising the options. In addition,

[1] Commission Rule 33.11, adopted on August 10, 1987, provides that:

> The Commission may, by order, by written request or upon its own motion, exempt any person, either unconditionally or on a temporary or other conditional basis, from any provision of this part, other tahn § 33.9 and § 33.10, if it finds, in its discretion, that it would not be contrary to the public interest to grant such exemption.

[2] With respect to further possible exemptions of option contracts on futures in which the underlying futures contract has not met the volume requirement test, such petitions for an exemption from § 33.4(a)(5)(iii) will be considered on a case-by-case basis.

to enable position holders to evaluate accurately the value of their option positions in the absence of active trading in the underlying futures contract, the Commission believes that there should exist an accurate and widely available price series which would be representative of values of the commodity underlying the future.

In requesting comment on the CBT's options on 5,000-ounce silver and 100-ounce gold futures, the Commission is seeking specific comment on whether it should grant the CBT's requests for exemptions from the requirements of § 33.4(a)(5)(iii) for these two proposed contracts. Commenters are requested to consider the issues noted above. Also, the Commission requests commenters to address whether, if the petitions were granted, additional surveillance activities and expiration reviews, particularly at the outset of trading, should be implemented by the CBT for these proposed contracts.[3]

Copies of the terms and conditions of the proposed contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CBT in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the petition and the terms and conditions of the proposed contracts, or with respect to other materials submitted by the CBT in support of the applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on October 23, 1987, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–25124 Filed 10–29–87; 8:45 am]

BILLING CODE 6351-01-M

[3] The Commission notes that in those cases where the underlying futures contract fails to develop a sufficient level of trading volume, the option on the futures contract would become subject to the delisting criteria set forth in § 5.4 of the Commission's rules. Specifically, if the volume in the underlying futures contract market falls below an average weekly volume of 1,000 contracts for all months listed for the six-month period following designation of the option contract, no new option contract month may be listed until the volume in the underlying futures contract rises above an average of 2,000 contracts per week for all trading months listed for a period of three consecutive months.

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: The DOD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Thursday, 22 October and 0900, Friday, 23 October 1987.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: David Slater, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the areas of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II section 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 26, 1987.

[FR Doc. 87–25151 Filed 10–29–87; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Wednesday, 21 October 1987.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Harold Summer, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S. C. App. II section 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 26, 1987.

[FR Doc. 87–25152 Filed 10–29–87; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Intent To Prepare an Environmental Impact Statement; Williams Air Force Base, AZ

The United States Air Force will prepare an Environmental Impact Statement (EIS) for the proposed acquisition and construction of a permanent auxiliary airfield for Williams Air Force Base, Arizona pilot training. All of the proposed sites are located within Pinal County, Arizona. The permanent airfield will replace the Coolidge Florence Auxiliary Airfield currently leased from the City of Coolidge. Do nothing is the alternative to construction of a new airfield. The proposed action will eliminate safety hazards from joint use by sky divers and general aviation at Coolidge Florence, improve operations, and reduce costs.

The Air Force is planning to conduct scoping meetings to determine the nature, extent, and scope of the issues and concerns that should be addressed in the EIS. Notice of the time and place of the planned scoping meetings will be made available to public officials and announced in the news media.

For further information concerning the preparation of the Environmental Impact Statement contact: Air Training Command/DEEV, Lt Col Saenz, Randolph Air Force Base, Texas 78150–5000, Telephone: (512) 652–3240.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87–25158 Filed 10–29–87; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information; Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (1) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Extension

Health-Related Survey—Individual Facility Report; DA Form 4723–2–R (OMB NO. 0704–0175).

Information is collected to assign soldiers to areas where they can receive services for their exceptional family members.

State or local governments, businesses or other for profit, and non-profit institutions.

Responses: 1,245

Burden Hours: 1,215

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington DC 20503 and Ms. Pearl Rascoe-Harrison, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Ms. Angela R. Petrarca, SAIS–ADR, Room 1C638, The Pentagon, Washington, DC 20310–0107, telephone (202) 694–0754.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 26, 1987.

[FR Doc. 87–25149 Filed 10–29–87; 8:45 am]

BILLING CODE 3810–01–M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 16 and 17 November 1987.

Time of Meeting: 0830—1600 hours, both days, Pentagon, Washington, DC.

Agenda: The Army Science Board Ad-Hoc Panel on Army Competition in Contracting will meet to geather facts for its study. On the first day, the panel will hear briefings from the Army's Competition Advocate General and Major Command Personnel. On the second day, the panel will hear briefings presented by representatives from the Army's Office of General Counsel and Legislative Liaison. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87–25125 Filed 10–29–87; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 17 and 18 November 1987.

Time of Meeting:

0900—1700 hours, 17 November 1987

0830—1500 hours, 18 November 1987.

Place: HQ, AMSAA, Aberdeen Proving Ground, Maryland.

Agenda: The Army Science Board Ad Hoc Subgroup for Army Analysis will meet for briefings by analytic agencies. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87–25126 Filed 10–29–87; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: 18 November 1987.

Times of Meeting: 0830–1630 hours.

Place: The Pentagon, Washington, DC.

Agenda: An Army Science Board's Subgroup concerning a unique Army Space Program will meet to review in detail and receive classified briefings on programs in support of the Army's space program. This meeting will be closed to the public in accordance with Section 552 (c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be

contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87–25127 Filed 10–29–87; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers, Department of the Army

Request for Information; Report on Timesaving Methods for Obtaining Permits Construction of Harbor and Inland Harbor Navigation Projects

AGENCY: Corps of Engineers, Department of the Army DoD.

ACTION: Notice.

SUMMARY: The Army Corps of Engineers seeks information and comments on recent experiences of non-Federal interests in obtaining Federal, State and local permits for the construction of harbor and inland harbor navigation projects.

EFFECTIVE DATE: October 30, 1987.

ADDRESS: Send comments to: HQUSACE, Directorate of Civil Works, Attn: CECW–RP Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Dr. Robert N. Stearns, (202) 272–0120.

SUPPLEMENTARY INFORMATION: Section 205(i) of Public Law 99–662 requires the Secretary of the Army to prepare a report estimating the time required for the issuance of all Federal, State, and local permits related to the construction of navigation projects for harbors or inland harbors and associated activities. The report shall include recommendations for further reducing the amount of time required for the issuance of those permits, including any proposed changes in existing law.

The Corps is soliciting comments from non-Federal interests which would be helpful in preparing this report. It is especially interested in problems that non-Federal interests have had in obtaining permits in a timely fashion, and in any suggestions that may be advanced for improving the existing procedures. Comments must be received no later than November 30, 1987, in order to be addressed in the Secretary's report.

Dated: 23 October 1987.

Richard V Gorski,

Colonel, Corps of Engineers, Acting Executive Officer, OASA(CW).

[FR Doc. 87–25137 Filed 10–29–87; 8:45 am]

BILLING CODE 3710–92–M

Department of the Army

Procedures for Establishment of Port or Harbor Dues by Non-Federal Interests, Department of Army Responsibilities

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Section 208 of Public Law 99–662 permits local sponsors of Federal harbor navigation projects cost-shared under the terms of section 101 of the Act and of harbor projects constructed under the terms of section 204 or 205 to charge port or harbor dues to recover the local share of construction, operation and maintenance, and provisions of emergency response services. The sponsor is required to hold a public hearing prior to imposition of the fees. Section 208 also gives the Secretary of the Army certain responsibilities in order to facilitate the process of implementation. This notice delineates these responsibilities and provides guidance to non-Federal interests on how to proceed.

ADDRESS: HQUSACE, Director of Civil Works, Attn: CECW-RP, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Dr. Robert N. Stearns, (202) 272–0120.

SUPPLEMENTARY INFORMATION: Under section 208 of Pub. L. 99–662, the decision to establish port or harbor user fees to recover the non-Federal share of costs of construction, and operation and maintenance of harbor improvement, or to provide emergency response services, is made exclusively by the non-Federal interest. The fees must be structured to meet the conditions specified in subsections 208(a)(3) and 208(a)(4). Subsection 208(a)(5) requires that certain information be sent to the Secretary of the Army, so that a public notice regarding the intended fees can be submitted to the **Federal Register.** In addition, subsection 208(a)(6)(A) states that a copy of the fee schedule, once adopted by the non-Federal interest, must be filed with the Secretary of the Army and with the Federal Maritime Commission.

Non-Federal interests desiring to initiate the public hearing process shall send a notice of intent concurrently to the District Engineer in the District in which the work was done and to the Assistant Secretary of the Army for Civil Works. The District Engineer will transmit the submittal to the **Federal Register** for publication.

As required by subsection 208(a)(5), the non-Federal interest's notice will include the following information:

(1) The text of the proposed law, regulation, or ordinance that would establish the port or harbor dues, including provisions for their administration, collection, and enforcement;

(2) The name, address, and telephone number of an official to whom comments on and requests for further information on the proposal are to be directed;

(3) The date by which comments on the proposal are due and a date for a public hearing on the proposal at which any interested party may present a statement;

(4) A written statement signed by an appropriate official that the non-Federal interest agrees to be governed by the provisions 208 of Pub. L. 99–662.

The District Engineer will submit items (1), (2), and (3) above for inclusion in the **Federal Register** Notice. If the non-Federal interest's submittal does not appear to contain all the necessary information, the District Engineer will communicate this finding to the non-Federal interest. The notice when published, must allow at least 45 days between the time of publication and the date of the public hearing and at least 60 days between the time of publication and the date that comments are due.

After a non-Federal interest has established its fees, a copy of the schedule must be transmitted concurrently to the District Engineer, to the Assistant Secretary of the Army for Civil Works, and to the Federal Maritime Commission. The non-Federal interest must also meet all record keeping requirements as outlined in subsection 208(a)(6).

Any modifications made to an existing fee structure must be made following the same procedures as outlined above.

Dated: October 23, 1987.

Richard V. Gorski,

Colonel, Corps of Engineers, Acting Executive Officer, OASA(CW).

[FR Doc. 87–25138 Filed 10–29–87; 8:45 am]

BILLING CODE 3710–92–M

National Security Agency

Privacy Act of 1974; Altered Record System

AGENCY: National Security Agency (NSA), DoD.

ACTION: Notice of an altered record system subject to the Privacy Act for public comment.

SUMMARY: The National Security Agency (NSA) proposes to alter an

existing system of records identified as GNSA10 and subject to the Privacy Act of 1974 (5 U.S.C. 552a).

DATE: This proposed action will be effective without further notice November 30, 1987, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Patricia Schuyler, Office of Policy, National Security Agency, Fort George G. Meade, MD, 20755–6000. Telephone: 301–688–6527.

FOR FURTHER INFORMATION CONTACT: Vito T. Potenza, Assistant General Counsel (Litigation), Office of General Counsel, National Security Agency, Fort George G. Meade, MD 20755–6000. Telephone: 301–688–6054.

SUPPLEMENTARY INFORMATION: The National Security Agency systems of records notices, subject to the Privacy Act of 1974, have been published in the **Federal Register** as follows:

FR Doc. 85–10237 (50 FR 22584) May 29, 1985 (Compilation)
FR Doc. 87–22694 (52 FR 36818) October 1, 1987

The specific changes to the exemption caption of the record system notice being amended is set forth below followed by the caption, as amended, published in its entirety.

An altered system report as required by 5 U.S.C. 552a(o) of the Privacy Act was submitted on October 15, 1987, pursuant to paragraph 4b of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985. This alteration consists of adding the (k)(6) exemption to the existing exemption rule in order to protect testing and examination materials in the record system.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 26, 1987.

Altered Record System

GNSA10

SYSTEM NAME:

NSA/CSS Personnel Security File (50 FR 22593) May 29, 1985.

CHANGES:

EXEMPTIONS CLAIMED FOR THE SYSTEM:

In line 3 after the reference to: "* * * (k)(2) * * *", delete the word "and" insert a comma in its place and add the words "* * * (k)(5) and (k)(6)."

GNSA10

* * * * *

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Individual records in this file may be exempt pursuant to 5 U.S.C., section 552 (k)(1), (k)(2), (k)(5), and (k)(6). For additional information see agency rules contained in 32 CFR Part 299a.

[FR Doc. 87–25148 Filed 10–29–87; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

National Advisory Committee on Accreditation and Institutional Eligibility; Meeting

AGENCY: Education.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming public meeting of the National Advisory Committee on Accreditation and Institutional Eligibility. This notice also describes the functions of the Committee. Notice of this meeting is required under section 10 (a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: November 15, 1987, 7:00 p.m. until 10:00 p.m.; November 16, 8:30 a.m. until 10:00 p.m.; and November 17, 8:30 a.m. until 4:00 p.m. local time. Requests for oral presentations should be received on or before November 9, 1987. Written comments may be submitted at any time prior to the meeting and will be considered by the Advisory Committee.

ADDRESS: Georgetown Marbury Hotel, 3000 M Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: H. Reed Saunders, Director, Higher Education Management Services, Office of Postsecondary Education 400 Maryland Avenue SW., (Room 3012, ROB–3) U.S. Department of Education, Washington, DC 20202 (202) 732–4922.

SUPPLEMENTARY INFORMATION: The National Advisory Committee on Accreditation and Institutional Eligibility is authorized under section 1205 of the Higher Education Act as amended by Pub. L. 96–374 (20 U.S.C. 1145). The Committee advises the Secretary of Education regarding his responsibility to publish a list of nationally recognized accrediting agencies and associations, State agencies recognized for the approval of public postsecondary vocational education, and State agencies recognized for the approval of nurse education.

The Committee also advises the Secretary of Education regarding policy affecting recognition of accrediting and State approval bodies and institutional eligibility for participation in Federal funding programs.

On November 15, 1987 from 7:00 p.m. until 10:00 p.m. and on November 16, from 7:00 p.m. until 10:00 p.m., the Committee will review proposed regulations concerning the criteria and procedures for the Secretary's publishing a list of nationally recognized accrediting bodies and other Committee business.

On November 16, from 8:30 a.m. until 5:30 p.m. and no November 17 from 8:30 a.m. until 4:00 the Advisory Commitee will review petitions and interim reports submited by the following accrediting bodies relative to initial or renewal of recognition by the Secretary of Education. The Committee will also hear presentations by representatives of these petitioning agencies and interested third parties. Agencies having petitions and interim reports pending before the Commitee are:

Petitions for Recognition as Nationally Recognized Accrediting Agencies and Associations

A. *Petition for Initial Recognition*
- American Council for Construction Education

B. *Petitions for Renewal of Recognition*
- American Academy of Microbiology
- American Assembly of Collegiate Schools of Business
- American Bar Association
- American Optometric Association
- American Psychological Association
- American Veterinary Medical Association, Committee on Animal Technician Activities and Training
- American Veterinary Medical Association, Council on Education
- Association of Theological Schools in the United States and Canada
- Commission on Opticianry Accreditation
- Middle States Association of Colleges and Schools, Commission on Secondary Schools
- North Central Association of Colleges and Schools, Commission on Institutions of Higher Education
- North Central Association of Colleges and Schools, Commission on Schools
- Wesatern Assocation of Schools and Colleges, Accrediting Commission for Community and Junior Colleges

C. *Interim Reports*
- American Association for Marriage and Family Therapy
- American College of Nurse-Midwives
- American Speech-Language-Hearing Association
- Liaison Commitee on Medical Education

National Association of Schools of Theatre
National Association of Trade and Technical Schools
National Home Study Council
National League for Nursing

D. *Request for Expansion of Scope of Recognition*
American Council on Pharmaceutical Education

Petitions for Recognition as State Agencies for the Apporval of Public Postsecondary Vocational Education

A. *Petitions for Renewal of Recognition*
Kansas State Board of Education
Puerto Rico State Agency for the Approval of Public Postsecondary Vocational Technical Education

Petition for Recognition as a State Agency for the Approval of Nurse Education

A. *Petition for Renewal of Recognition*
Montana State Board of Nursing

Requests for oral presentations before the Committee should be submitted in writing to H. Reed Saunders (address above). Requests should include the names of all persons seeking an appearance, the organization they represent and the purpose for which the presentation is requested.

Requests should be received on or before November 9, 1987. Time constraints may limit oral presentations. However, all written materials will be considered by the Advisory Committee.

A record will be made of the proceeedings of the meeting and will be available for public inspection at the Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW., (Room 3036, ROB-3) Washington, DC., from the hours of 8:00 a m. to 4:30 p.m., Monday through Friday.

Signed at Washington, DC, on October 27, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

Date: October 27, 1987.

[FR Doc. 87-25167 Filed 10-29-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Coal Policy Committee of The National Coal Council Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Coal Policy Committee of the National Coal Council.

Date and Time: Thursday, November 12, 1987, from 8:00 a.m. to 11:30 a.m.

Place: Westin-Canal Place, 100 Rue Iberville, New Orleans, Louisiana 70130.

Contact: Georgia A. Benjamin, U.S. Department of Energy, Office of Fossil Energy (FE-23), Washington, DC 20545, Telephone: 301-353-4718.

Purpose of The Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Purpose of The Meeting: For the Committee to discuss reports prepared by the National Coal Council with respect to requests from the Secretary of Energy for advice, information, and reommendations.

Tentative Agenda

—Call to Order by Irving Leibson, Chairman.
—Approval of draft reports to be presented to full Council for consideration.
—Discussion of topics for possible study by the Council.
—Discussion of any other business properly brought before the Committee.
—Public Comment—10 Minute Rule.
—Adjournment.

Public Participation

The meeting is open to the public. The Chairman of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Georgia A. Benjamin at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts

Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on October 27, 1987.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 87-25242 Filed 10-29-87; 8:45 am]

BILLING CODE 6450-01-M

National Coal Council; Notice of Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Coal Council.

Date and Time: Thursday, November 12, 1987, from 1:30 p.m. to 5:00 p.m.

Place: Westin-Canal Place, 100 Rue Iberville, New Orleans, Louisiana 70130.

Contact: Georgia A. Benjamin, U.S. Department of Energy, Office of Fossil Energy (FE-23), Washington, DC 20545, Telephone: 301-353-4718.

Purpose of the Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Tentative Agenda

—Call to Order by James G. Randolph, Chairman.
—Remarks by Chairman Randolph.
—Remarks by Department of Energy official.
—Report of the Coal Policy Committee.
  —Approval of the Report, "Imported Energy Study."
  —Approval of New National Coal Council Study Topics.
—Report of the Finance Committee.
—Presentation and Discussion—Historical Coal Trends in the U.S. and Some Projections.
—Presentation and Discussion—Power Plant Emissions and Controls.
—Discussion of any other business properly brought before the Council.
—Public Comment—10 Minute Rule.
—Adjournment.

Public Participation

The meeting is open to the public. The Chairman of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Georgia A. Benjamin at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts

Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and

4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on October 27, 1987.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 87-25243 Filed 10-29-87; 8:45 am]

BILLING CODE 6450-01-M

Committee on Establishing a Petroleum Research Institute; National Petroleum Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Committee on Establishing a Petroleum Research Institute of the National Petroleum Council.

Date and Time: Sunday, November 8, 1987, 1:30 p.m.

Place: Chicago Hilton Hotel, Joliet Room, 720 South Michigan Avenue, Chicago, Illinois.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-1), Washington, DC 20585, Telephone: 202/586-4695.

Purpose of the Parent Council: To provide advice, information and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the Meeting: To discuss the study's scope, organization, and timetable.

Tentative Agenda

—Discuss the study's scope, organization, and timetable in response to the July 2, 1987 request from the Secretary of Energy.

—Discuss future meetings of the Committee.

—Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

Public Participation

The meeting is open to the public. The Chairman of the Committee on Establishing a Petroleum Research Institute is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcript

Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on October 27, 1987.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 87-25246 Filed 10-29-87; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 87-54-NG]

St. Lawrence Gas Co. Inc.; Application To Amend Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Application to amend authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on October 7, 1987, of an application filed by St. Lawrence Gas Company, Inc. (St. Lawrence), to amend its existing import authorization in order to extend the term during which it can import natural gas from Canada at the current maximum daily volum of 50,000 Mcf through the contract year ending October 31, 1989. St. Lawrence is not seeking an increase in its authorized annual volumes and states that no new facilities would be required to perform the service contemplated by the application.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than November 30, 1987.

FOR FURTHER INFORMATION CONTACT:

Lot Cooke, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8116

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667

SUPPLEMENTARY INFORMATION: St. Lawrence is an intrastate gas distribution system serving residential, commercial, and industrial customers in St. Lawrence County, New York, near the Canadian border. It currently purchases and imports all of its natural gas from Niagara Gas Transmission Limited (Niagara), an affiliated Canadian corporation. Niagara purchases its gas from TransCanada PipeLines Limited. DOE/ERA Opinion and Order No. 33, issued June 22, 1981 (1 ERA ¶70,532), amended St. Lawrence's then existing import authority, granted by the Federal Power Commission on August 8, 1961 (26 FPC 265), increasing the daily volumes from 30,000 Mcf to 43,000 Mcf and increasing the total annual volume from 6.5 Bcf to 9.7 Bcf. On December 3, 1984, DOE/ERA Opinion and Order No. 64 (1 ERA ¶70,576) granted St. Lawrence authority to import an additional 7,000 Mcf per day, for a total of no more than 50,000 Mcf per day, during the contract year November 1, 1984 to October 31, 1985. On December 23, 1985, DOE/ERA Opinion and Order No. 97 (1 ERA ¶70,615) extended the 50,000 Mcf per day limit until October 31, 1987. In the current application, St. Lawrence is seeking to further extend its maximum 50,000 Mcf per day authorization until October 31, 1989. Under the provisions of St. Lawrence's agreement with Niagara the price of the additional volumes of gas will be $1.72 (U.S.) per MMBtu. St. Lawrence states that the 50,000 Mcf per day maximum is necessary in order for it to meet the peak service requirements of its customers.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person

wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.s.t., November 30, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of St. Lawrence's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 23, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–25146 Filed 10–29–87; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 87-44-NG]

Northridge Petroleum Marketing U.S., Inc.; Order Granting Blanket Authorization To Export Natural Gas To Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting blanket authorization to export natural gas to Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Northridge Petroleum Marketing U.S., Inc. (Northridge), authorization to export natural gas to Canada. The Order issued in ERA Docket No. 87-44-NG authorizes Northridge to export up to 300 Bcf over a two-year period for sales on a short-term or spot market basis.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 21, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-25026 Filed 10-29-87; 8:45 am]

BILLING CODE 6450-01-D

[ERA Docket No. 87-35-NG]

Valero Industrial Gas, L.P.; Order Granting Blanket Authorization To Export Natural Gas To Mexico

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting blanket authorization to export natural gas to Mexico.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Valero Industrial Gas, L.P. (Vigas) blanket authorization to export natural gas to Mexico. The order issued in ERA Docket No. 87-35-NG authorizes Vigas to export up to 4.38 Bcf over two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 21, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-25027 Filed 10-29-87; 8:45 am]

BILLING CODE 6450-01-D

[Docket No. ERA C&E 87-61; Certification Notice - 6]

Filing of Certification of Compliance; Coal Capability of New Electric Powerplants Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act; Consumer Power Co. et al.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a)). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d) to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. Four owners or operators of

proposed new electric base load powerplants have filed self certifications in accordance with section (d). Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION:

The following companies filed self certifications:

Name	Date Received	Type Facility	Megawatt Capacity	Location
Consumer Power Co., Jackson, MI	9-25-87	Combined Cycle	915.6	Midland, MI
Cogen Technologies, Houston, TX	9-23-87	Combined Cycle	58	Bayonne, NJ (Phase II)
Cogen Technologies, Houston, TX	9-23-87	Combined Cycle	105	Bayonne, NJ (Phase III)
Consolidated Power Co., Norwalk, CT	9-22-87	Combined Cycle	27	Milton, VT

Amendments to FUA on May 22, 1987 (Pub. L. 100-42) altered the general prohibitions to include only new electric baseload powerplants and to provide for the self certification procedure.

Issued in Washington, DC on October 21, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-25028 Filed 10-29-87; 8:45 am]

BILLING CODE 6450-01-D

[Docket Nos. CP87-544-000 et al.]

Arkla Energy Resources et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP87-544-000]

October 23, 1987.

Take notice that on September 17, 1987, Arkla Energy Resources, a division of Arkla, Inc. (AER), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP87-544-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of sales taps and related facilities for the delivery of natural gas to 14 right-of-way grantors and the continued operation in interstate commerce of facilities constructed pursuant to section 311 of the Natural Gas PolicyAct of 1978 (NGPA), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

AER states that in accordance with right-of-way agreements with certain landowners in Logan County, Arkansas, it seeks authority to construct and operate facilities and to deliver gas to Arkansas Louisiana Gas Company, a division of Arkla, Inc. (ALG), for the resale by ALG of natural gas to such landowners. AER states that the estimated cost of the proposed facilities is $22,000. AER further states that the proposed taps would be constructed at various points on AER's Line JM-39, a facility constructed under NGPA section 311 in order to provide transportation on behalf of ALG as agent for Tyson Foods, Inc. AER states that in order to provide the sales service to the various landowners, it must receive a certificate under NGA section 7(c) authorizing the continued operation of Line JM-39 in interstate commerce. AER asserts that approval of its application is warranted in light of the initiation of natural gas service to consumers that would otherwise use propane and the beneficial impact of the facilities and services involved on AER's ratepayers.

Comment Date: November 17, 1987, in accordance with Standard Paragraph F at the end of this notice.

2. K N Energy Inc.

[Docket No. CP88-25-000]

October 26, 1987.

Take notice that on October 15, 1987, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado, 80215, filed in Docket No. CP88-25-000 an application pursuant to section 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations thereunder for a certificate of public convenience and necessity authorizing K N to discount sales under its existing Interruptible Overrun Rate Schedules IOR-1 and IOR-2 to customers served under those rate schedules, all as more fully set forth in the Application on file with the Commission and open to public inspection.

K N states that no new facilities will be required to be constructed in order to implement the proposed discount sales rate authority.

Comment Date: November 18, 1987, in accordance with Standard Paragraph F at the end of this notice.

3. Florida Gas Transmission Company

[Docket No. CP88-18-000]

October 26, 1987.

Take notice that on October 9, 1987, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP88-18-000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to transport gas for Lognhorn Pipeline Company, (Longhorn), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

FGT states that Longhorn and FGT have entered into an Interruptible transportation agreement dated September 28, 1987, which provides for the redelivery of equivalent volumes for Longhorn's account, less Longhorn's pro rata share of any gas vented or lost for any reason from that portion of FGT's facilities being utilized for Longhorn at the time of such loss, utilized by FGT in rendering all transportation services. The gas, it is said, would be received at existing points of interconnection between FGT and ANR in St. Landry Parish, Louisiana.

FGT proposes to deliver the gas to or for the account of Longhorn, less Longhorn's pro rata share of compressor fuel and vented and lost gas, at the existing point of interconnection between FGT and Longhorn in Jefferson County, Texas.

FGT proposes to charge Longhorn the maximum rate applicable to this service. FGT states that the maximum rate consists of a facility charge of 7.3 cents per MMBtu delivered and a service charge of 3.9 cents per MMBtu per 100 miles of forward haul. These charges, it is said, are in addition to the currently effective Gas Research Institute surcharge of 1.48 cents per MMBtu and FGT's ACA surcharge of 0.21 cents per MMBtu which became effective on October 1, 1987.

FGT states that the term of the transportation agreement is for a primary term of fifteen years from the date of initial deliveries under the contract, and from year to year thereafter.

Additionally, FGT states that any upstream transportation by ANR will be provided pursuant to Section 311 of the Natural Gas Policy Act. FGT further states that Longhorn would receive the gas from FGT for delivery and sale to Brandywine Industrial Gas Inc. in Beaumont, Texas.

FGT states that since the transportation service is fully interruptible and is contingent upon the availability of capacity sufficient to provide the service without detriment or disadvantage to FGT's existing customers, the transportation service proposed herein would not have an adverse impact on FGT's existing customers.

Comment Date: November 18, 1987, in accordance with Standard Paragraph F at the end of this notice.

4. Transcontinental Gas Pipe Line Corporation

[Docket No. CP88-24-000]

October 26, 1987.

Take notice that on October 14, 1987, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP88-24-000 an application pursuant to section 7(b) of the Natural Gas Act for an order permitting and approving the abandonment of certain purchases of natural gas from Huffco Petroleum Corporation and Jerry Chambers Exploration Company (jointly referred to as Huffco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that Huffco (as successor in interest to Texaco, Inc.) is authorized to sell gas produced in High Island Area block 206 to Transco pursuant to a certificate issued January 25, 1977, in Docket No. CI76-460. Transco further states that the underlying gas purchase agreement expired by its own terms on October 15, 1987. It is explained that efforts to renegotiate the contract were unsuccessful and that Huffco has a substantial take-or-pay claim outstanding against Transco.

Since the gas purchase agreement has expired Transco requests authority to abandon its purchase of gas from Huffco. Transco further requests that the Commission condition any abandonment to require that (1) all gas taken by Transco from October 15, 1987, forward shall be deemed make-up volumes and shall be taken solely as credit for take-or-pay and minimum take amounts owing to Huffco until all amounts have been made up; (2) if all take-or-pay and minimum take amounts have not been fully offset or made up upon depletion of the reserves, any of such amounts owed by Transco shall be considered satisfied and extinguished or, to the extent such amounts have been paid to Huffco, they shall be refunded; and (3) if prior to depletion of the reserves Huffco desires to sell gas produced from this field to any other purchaser, any take-or-pay and minimum take amounts then owed by Transco shall be considered satisfied and extinguished or, to the extent such amounts have been paid to Huffco, they shall be refunded.

Transco indicates that if its proposed conditions are not implemented, it still requests that the Commission approve abandonment effective October 15, 1987. Transco asserts that it is unwilling to purchase gas from Huffco beyond October 15, 1987, at prices above market-clearing levels or with any continuing obligation to take or pay for a minimum quantity of gas. Transco notes that it has sufficient current gas supply to replace its purchases from Huffco, and believes that approval of the proposed abandonment would not result in the termination of service to any of Transco's customers.

Comment Date: November 18, 1987, in accordance with Standard Paragraph F at the end of this notice.

5. United Gas Pipe Line Company

[Docket Nos. CP79-22-004 and CP88-9-000]

October 26, 1987.

Take notice that on October 6, 1987, United Gas Pipe Line Company (United), 600 Travis Street, Houston, Texas 77002 filed in Docket No. CP79-22-004 a petition to amend the order issued July 23, 1979, in Docket No. CP79-22 pursuant to section 7(c) of the Natural Gas Act so as to authorize the elimination of destination or end-use restrictions, as well as seasonal restrictions under Midwestern Gas Transmission Company's (Midwestern) Rate Schedule T-5. United also filed in Docket No. CP88-9-000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to provide interruptible transportation service under an "open access" program consistent with the objectives and pursuant to the regulations of Order Nos. 436, 436-A and 500, all as more fully set forth in the application and petition to amend on file with the Commission and open to public inspection.

United requests that the certificate issued in Docket No. CP79-22 on July 23, 1979, 8 FERC ¶ 61,059 (1979), be amended to eliminate any implied destination of end-use restriction which may be deemed to attach to the transportation service certificated therein, and to permit Midwestern's T-5 capacity to be made available for the full calendar year. United also requests to make certain transportation capacity rights that have been committed by Midwestern on behalf of United under Midwestern's Rate Schedule T-5, available to others on a first-come, first-served basis. Finally, United requests authorization to establish a new rate schedule designated Rate Schedule IT-MW to implement "open access" to the third-party capacity dedicated to United by Midwestern under its Rate Schedule T-5.

Comment Date: November 18, 1987, in accordance with Standard Paragraph F at the end of this notice.

6. Williams Natural Gas Company

[Docket No. CP87-540-000]

October 27, 1987.

Take notice that on September 16, 1987, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP87-540-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon in place approximately 0.62 miles of 2-inch and 3-inch lateral pipeline and appurtenant facilities serving the Kansas State Prison located in Leavenworth County, Kansas under the authorization issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG states that the fence surrounding the prison is to be moved and proposes to abandon the pipeline within the compound in place. It is stated that new pipeline would be constructed pursuant to the automatic provisions of § 157.208. It is asserted that the total cost to reclaim the facilities is estimated to be $5,900 with a salvage value of $856.

Comment Date: December 11, 1987, in accordance with Standard Paragraph G at the end of this notice.

7. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP88-029-000]

October 27, 1987.

Take notice that on October 19, 1987, Tennessee Gas Pipeline Company, A Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-029-000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act for authorization to provide a transportation service for AlaTenn Energy Marketing Company (AlaTenn), marketer, under the certificate issued in Docket No. CP87-115-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request with the Commission and open to public inspection.

Tennessee states that it proposes to transport natural gas for AlaTenn from various receipt points located in Mississippi, to a delivery point located at Barton, Alabama, pursuant to a transportation agreement with AlaTenn dated August 18, 1987, as amended, effective September 28, 1987. Tennessee further states that the maximum daily and annual quantities that it would transport for AlaTenn pursuant to the referenced agreement would be 9,000 dekatherms and 3,285,000 dekatherms, respectively.

Tennessee indicates that in a filing made with the Commission on October 16, 1987, it reported that transportation service for AlaTenn commenced on September 1, 1987 under the 120-day automatic authorization provisions of § 284.233(a).

Comment Date: December 11, 1987, in accordance with Standard Paragraph G at the end of this notice.

8. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP88-30-000]

October 27, 1987.

Take notice that on October 19, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-30-000 a request pursuant to § 284.233 of the Commission's Regulations for authorization to provide transportation for Texas-Ohio Gas, Inc. (Texas-Ohio), under Tennessee's blanket certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement (Agreement) dated August 25, 1987, it would transport natural gas for Texas-Ohio, a producer-marketer, from various receipt points located in Louisiana, Alabama, and Pennsylvania to delivery points at Uniondale and Auburn, Pennsylvania, which points are interconnections with Pennsylvania Gas and Water Company. Tennessee states that the maximum daily and annual quantities transported would be 1,020 dekatherms and 36,500 dekatherms, respectively.

Tennessee further states that the term of the transportation service would be from the date of initial transportation and would remain in full force and effect for a term of one year and month-to-month thereafter until terminated by either party upon 30 days prior written notice. In addition, Tennessee states that any portions of the Agreement necessary to balance receipts and deliveries under the Agreement within 60 days of termination as required by the General Terms and Conditions of Tennessee's FERC Gas Tariff Volume No. 1, would survive the other parts of the Agreement until such time as such balancing has been accomplished.

Comment Date: December 11, 1987, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-25221 Filed 10-29-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-76-006]

Alabama-Tennessee Natural Gas Co.; Tariff Filing

October 27, 1987.

Take notice that on October 15, 1987, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama 35631, tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1.

Third Substitute First Revised Sheet No. 4, to reflect base tariff rates at October 31, 1984 and to remove the minimum bill charges.

Third Substitute First Revised No. 7, to reflect base tariff rates at October 31, 1984.

Substitute Original Sheet No. 8, to eliminate the 94% load factor billing determinant and define the limits of customer demand obligation.

Third Substitute First Revised Sheet No. 9, to reflect the previously existing notice requirements pertaining to a discontinuance or reduction in gas purchases and to eliminate the minimum bill.

Third Substitute First Revised Sheet No. 13, to reflect base tariff rates at October 31, 1984.

Third Substitute First Revised Sheet No. 17, to reflect transportation rates at October 31, 1984.

Third Substitute First Revised Sheet No. 21, to reflect base tariff rates at October 31, 1984.

Substitute Original Sheet No. 36, to eliminate the notice provisions.

Substitute Original Sheet No. 58 and No. 59, and Original Sheet No. 59-A, to eliminate the sole source provision and modify the notice provisions.

Alabama-Tennessee states that the purpose of the filing is to revise its sales and transportation rates to reflect the Commission's Orders in Opinion No. 268, issued March 13, 1987 and Opinion No. 268-A, issued September 16, 1987. Alabama-Tennessee further states that

the tariff changes also reflect the non-rate changes to its tariff required by Opinion Nos. 268 and 268–A.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its customers and affected State regulatory commissions

Any persons desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 3, 1987. 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. 87–25222 Filed 10–29–87; 8:45 am]

BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

[Docket No. TA87–14–20–002]

Algonquin Gas Transmission Company; Proposed Change in FERC Gas Tariff

October 27, 1987.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on October 16, 1987, tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, six (6) copies each of the following tariff sheets:

Second Substitute Alternate Twentieth Revised Sheet No. 203
Second Substitute Twenty-first Revised Sheet No. 203
Second Substitute Twenty-second Revised Sheet No. 203

Algonquin states that such tariff sheets are being filed to reflect in its Rate Schedule F–2 changes in the underlying rates of Consolidated Gas Transmission Corporation ("Consolidated"), as set forth in Consolidated's filing of September 29, 1987.

Algonquin proposes the effective date of Second Substitute Alternate Twentieth Revised Sheet No. 203 to be September 1, 1987, and the effective date of Second Substitute Twenty-first Revised Sheet No. 203 and Second Substitute Twenty-second Revised Sheet No. 203 to be October 1, 1987.

Algonquin notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, 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 November 3, 1987. 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. 87–25223 Filed 10–29–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI88–13–000]

Cities Service Oil and Gas Corp.; Application for Permanent Abandonment

October 26, 1987.

Take notice that on October 8, 1987, Cities Service Oil and Gas Corporation (Applicant), 110 West 7th Street, Tulsa, Oklahoma 74119, filed an application requesting authorization to permanently abandon sales for resale in interstate commerce of NGA gas dedicated to Sea Robin Pipeline Company (Sea Robin) under two rate schedules that were terminated effective July 1, 1987, pursuant to a settlement agreement entered into by Applicant and Sea Robin. Applicant states that sales to Sea Robin ceased July 1, 1987, and the gas has been sold since that date under existing LTA authority. Applicant states that the parties have agreed to terminate the contracts effective July 1, 1987, in exchange for settlement of all matters, claims and causes of action between Applicant and Sea Robin.

Applicant states that it proposes to abandon sales to Sea Robin from OCSG–2436, W. Cameron Block 586, Offshore Louisiana, which was certificated in Docket No. CI77–421 and covered under Applicant's FERC Gas Rate Schedule No. 444, and from OCSG–1525, Ship Shoal Block 222, Offshore Louisiana, which was certificated in Docket No. CI86–359–000 and covered under Applicant's FERC Gas Rate Schedule No. 524.

Applicant states that over the past several years Sea Robin substantially decreased its takes of natural gas from such sources due to a lack of demand for its system supply, ultimately taking only a small percentage of Applicant's share of deliverability from such sources under the applicable long-term sales contracts. Applicant states that in 1986 Sea Robin purchased 199,562 Mcf of gas or only 21% of total available deliverability of 947,347 Mcf. For the year 1987 through June, Applicant states that Sea Robin purchased 44,944 Mcf of gas or only 11% of total available deliverability of 403,405 Mcf prior to contract terminations on July 1, 1987. Applicant states that on July 1, 1987, Sea Robin ceased taking delivery of gas under these contracts and such gas has been sold at market-responsive prices pursuant to various LTA authorities. Applicant states that the approximate deliverability in 1986 was 2,595 Mcf/d. The gas is NGPA section 104 flowing (7%), Post-1974 (22%) and 102(d) (71%) gas.

Applicant requests a waiver of any and all otherwise applicable orders, rules, regulations and reporting requirements, now effective or hereafter promulgated or issued by the Commission, to the extent that such orders, rules, regulations and reporting requirements are or may be inconsistent with the authorizations requested by the application.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 12, 1987, file with the Federal Energy Regulation Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in a proceeding must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–25224 Filed 10–29–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-1-23-000]

Eastern Shore Natural Gas Co.; Tariff Filing

October 27, 1987.

Take notice that Eastern Shore Natural Gas Company (Eastern Shore) on October 16, 1987 tendered for filing the following proposed tariff sheets to be effective November 1, 1987, and tariff sheets to be cancelled effective November 1, 1987:

Proposed Tariff Sheets To Be Effective November 1, 1987

Thirty-Fifth Revised Sheet No. 5
Thirty-Fifth Revised Sheet No. 6
Thirty-Fifth Revised Sheet No. 10
Thirty-Fifth Revised Sheet No. 11
Thirty-Sixth Revised Sheet No. 12
Twelfth Revised Sheet No. 13
Sixth Revised Sheet No. 14
Third Revised Sheet No. 37
Second Revised Sheet No. 210
Original Sheet No. 259
Original Sheet No. 260
Original Sheet No. 261
Second Revised Sheet No. 291

Tariff Sheets To Be Cancelled Effective November 1, 1987

Sheet Nos. 143 through 146
Sheet Nos. 341 through 342

Eastern Shore states that the tariff sheets proposed to be effective November 1, 1987 reflect an increase of $.8492 in its CD-1, CD-E and G-1 demand rates and an increase of $.1595 per dt in the corresponding commodity rates to reflect changes in the projected cost of gas. These sheets also reflect a negative ($.8418) commodity surcharge and a $.1366 demand surcharge to amortize deferred amounts in the Unrecovered Purchased Gas Cost Account.

Eastern Shore states that Original Sheet No. 261 establishes, pursuant to Order No. 472, a new section 25 in the General Terms and Conditions of its FERC Gas Tariff, which section will provide for an Annual Charge Adjustment (ACA) Provision to permit Eastern Shore to recover under certain rate schedules a portion of the annual charges assessed against Eastern Shore by the Commission. The instant filing also establishes an initial ACA charge of $0.0020 per dt in the commodity portion of the applicable jurisdictional rates.

Eastern Shore states that also included is a Notice of Cancellation of its T-2 Rate Schedule (Sheet Nos. 143 through 146; 341-42). Eastern Shore states that the reason for the proposed cancellation is that effective November 1, 1987, it will no longer be authorized to provide interruptible service because the grandfathered agreement under which it was providing interruptible transportation service will be terminated effective October 31,1987. In order to render interruptible transportation service in the future, Eastern Shore would first have to request blanket certificate authority or specific authorization under section 7(c) of the Natural Gas Act.

Eastern Shore states that copies of the filing are being mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20406, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 3, 1987. 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. 87-25225 Filed 10-29-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RI83-8-000, et al.]

Mobil Oil Corp.; Effectiveness of Withdrawal

October 26, 1987.

On September 25, 1987, Mobil Oil Corporation filed a notice of withdrawal, amended September 28, 1987, of petitions and appeals filed by Mobil in Docket Nos. RI83-8-000 through RI83-8-011.

In accordance with Rule 216 of the Commission's Rules of Practice and Procedure (18 CFR 385.216), withdrawal of Mobil's petitions and appeals became effective on the dates indicated below, and these dockets are now closed.

Docket No.	Withdrawal effective
RI83-8-000	Oct. 10, 1987.
RI83-8-001	Oct. 10, 1987.
RI83-8-002	Oct. 10, 1987.
RI83-8-003	Oct. 10, 1987.
RI83-8-004	Oct. 10, 1987.
RI83-8-005	Oct. 10, 1987.
RI83-8-006	Oct. 10, 1987.
RI83-8-007	Oct. 10, 1987.
RI83-8-008	Oct. 13, 1987.
RI83-8-009	Oct. 13, 1987.
RI83-8-010	Oct. 13, 1987.
RI83-8-011	Oct. 13, 1987.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-25226 Filed 10-29-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-99-001]

Northern Natural Gas Co., Division of Enron Corp.; Change in Rates and Tariff Revisions

October 27, 1987.

Take notice that on October 13, 1987, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing with the Commission to be effective October 1, 1987 the following tariff sheets to be included in Northern's F.E.R.C. Gas Tariff:

Third Revised Volume No. 1

Substitute Second Revised Sheet No. 4g
Substitute Third Revised Sheet No. 4g.1
Substitute Second Revised Sheet No. 4g.2
Substitute Fourth Revised Sheet No. 72

Original Volume No. 2

Substitute Second Revised Sheet No. 1k

Northern states that the purpose of the revised tariff sheets is to comply with Order Nos. 472 and 472-B to reflect the annual charge adjustment (ACA) unit charge, as accepted, subject to conditions, by the Commission for the fiscal year beginning October 1, 1987. An ACA unit charge of $.0021 per Mcf will be added to each of Northern's rate schedules applicable to sales or transportation deliveries.

Copies of the filing were served on all of Northern's jurisdictional customers and state commissions.

Any person desiring to be heard or to protest said filing should filed a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC., 20426, in accordance with the Commission's Rules of Practice & Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 3, 1987. 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. 87-25227 Filed 10-29-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-110-001]

Northwest Pipeline Corp.; Change in ACA Clause

October 27, 1987

Take notice that on October 15, 1987, Northwest Pipeline Corporation ("Northwest") submitted for filing, to be a part of its FERC Gas Tariff, First Revised Volume No. 1, and Original Volume No. 1-A, the following tariff sheets:

First Revised Volume No. 1	Original Volume No. 1-A
First Revised Sheet No. 133-A.	Twelfth Revised Sheet No. 201 Second Revised Sheet No. 419

Northwest states that the tendered tariff sheets are filed to comply with the provisions of a Commission letter order dated September 30, 1987 in the above referenced docket.

Northwest requests waiver of the Commission's regulations to permit an effective date of October 1, 1987.

A copy of this filing has been served onNorthwest's jurisdictional customers and affected state regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 3, 1987. 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 Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-25228 Filed 10-29-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-114-001]

Ozark Gas Transmission System; Application

October 27, 1987.

Take notice that on October 13, 1987, Ozark Gas Transmission System filed in Docket No. RP87-114-001 a Substitute Third Revised Sheet No. 5 to its FERC Gas Tariff, Original Volume No. 1. Ozark states that such filing is made in compliance with Order No. 472-B and institutes an Annual Charge Adjustments to recover the Commission's annual assessments to Ozark, all as more fully set forth in the filing, which is on file with the Commission and open to public inspection.

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, N.E., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before November 3, 1987. 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. 87-25229 Filed 10-29-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI86-595-001 and CI86-597-001]

Sea Robin Pipeline Co.; Applications To Amend Existing Blanket Limited-Term Abandonment and Blanket Limited-Term Certificate With Pregranted Abandonment on Behalf of Producer-Suppliers

October 26, 1987.

Take notice that on September 11, 1987, Sea Robin Pipeline Company (Sea Robin), 600 Travis, P.O. Box 1478, Houston, Texas 77251-1478, filed applications pursuant to sections 7(b) and 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations seeking an extension of three years until December 31, 1990, of its limited-term abandonment program (LTA) approved by the Commission on June 17, 1987, which is currently due to expire on December 31, 1987.

Sea Robin states that the reasons justifying its original applications have not changed, and that the benefits resulting from the first months of operation of its program will continue during the term of the extension requested.

According to Sea Robin, it has two sales customers, United Gas Pipe Line Company and Southern Natural Gas Company. It is stated that Sea Robin's sales to these customers have declined drastically over the past several years, from 258 Bcf in 1981 to 58 Bcf in 1986. Sea Robin states that sales are expected to reach only 40 Bcf in 1987.

Sea Robin states that the loss of sales on its system has caused substantial cuts in its takes from its producers and has led to the accumulation of significant take-or-pay exposure. Sea Robin further states that these conditions have not changed since the time of the original applications in this proceeding and are not expected to change in the near future. Sea Robin asserts that its LTA program has helped alleviate its take-or-pay problems by increasing the volumes transported for its producers and credited against take-or-pay exposure. Sea Robin thus submits that its LTA program continues to be required by the public convenience and necessity and should be extended as requested.

Any person desiring to be heard or to make any protest with reference to said applications should on or before November 12, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure heein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-25230 Filed 10-29-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP85-178-022, RP81-54-035, and RP87-26-020]

Tennessee Gas Pipeline Co.; Filing of Revised Tariff Sheets

October 26, 1987.

Take notice that on October 14, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), tendered for filing the following revised tariff sheets to Second Revised Volume No. 1 and Original Volume No. 2 to be effective August 1, 1987:

Second Revised Volume No. 1

Substitute First Revised Sheet No. 1
Substitute Third Revised Sheet No. 20
Substitute Original Sheet No. 20A
Substitute Fourth Revised Sheet No. 21
Substitute Second Revised Sheet No. 22
Substitute Second Revised Sheet No. 23
Substitute Second Revised Sheet No. 24
Substitute Original Sheet No. 39
Substitute Original Sheet Nos. 40 through 45
Substitute First Revised Sheet No. 47
Substitute First Revised Sheet No. 48
Substitute First Revised Sheet No. 53
Substitute First Revised Sheet No. 57
Substitute First Revised Sheet No. 58
Substitute First Revised Sheet No. 59
Substitute First Revised Sheet No. 77
Substitute First Revised Sheet No. 78
Substitute First Revised Sheet No. 79
Substitute First Revised Sheet No. 80
Substitute First Revised Sheet No. 81
Second Substitute First Revised Sheet No. 110
Substitute Original Sheet No. 110A
Second Substitute First Revised Sheet No. 115
Second Substitute First Revised Sheet No. 116
Substitute First Revised Sheet No. 219
Substitute First Revised Sheet No. 220
Substitute First Revised Sheet No. 221
Substitute First Revised Sheet No. 222
Substitute First Revised Sheet No. 223
Substitute First Revised Sheet No. 224
Substitute First Revised Sheet No. 230
Substitute First Revised Sheet No. 242
Substitute First Revised Sheet No. 350
Substitute First Revised Sheet No. 351
Substitute First Revised Sheet No. 352
Substitute First Revised Sheet No. 353
Substitute First Revised Sheet No. 354
Substitute First Revised Sheet No. 355
Substitute First Revised Sheet No. 356
Substitute First Revised Sheet No. 357
Substitute First Revised Sheet No. 358
Substitute First Revised Sheet No. 359
Substitute Original Sheet No. 360
Substitute Original Sheet No. 361
Substitute Original Sheet No. 362
Substitute Original Sheet No. 363
Substitute Original Sheet No. 364
Substitute Original Sheet No. 365
Substitute Original Sheet No. 366
Substitute Original Sheet No. 367

Original Volume No. 2 [1]

Substitute First Revised Sheet No. 1
Second Substitute Fourth Revised Sheet No. 5
Second Substitute Third Revised Sheet No. 6
Second Substitute Second Revised Sheet No. 7
Second Substitute Third Revised Sheet No. 8
Second Substitute Third Revised Sheet No. 9
Second Substitute Original Sheet No. 10
Substitute First Revised Sheet No. 15
Substitute First Revised Sheet No. 16
Substitute First Revised Sheet No. 17
Substitute First Revised Sheet No. 50
Substitute First Revised Sheet No. 51
Substitute First Revised Sheet No. 60
Substitute First Revised Sheet No. 61
Substitute First Revised Sheet No. 78
Substitute First Revised Sheet No. 104
Substitute First Revised Sheet No. 105 through 118
Substitute First Revised Sheet No. 119
Substitute First Revised Sheet No. 120 through 133
Substitute First Revised Sheet No. 134
Substitute First Revised Sheet No. 135 through 148
Substitute First Revised Sheet No. 158
Substitute First Revised Sheet No. 181
Substitute First Revised Sheet No. 182
Substitute First Revised Sheet No. 196
Substitute First Revised Sheet No. 208
Substitute First Revised Sheet No. 244
Substitute First Revised Sheet No. 245
Substitute First Revised Sheet No. 261
Substitute First Revised Sheet No. 263
Substitute First Revised Sheet No. 264
Substitute First Revised Sheet No. 265
Substitute First Revised Sheet No. 316
Substitute First Revised Sheet No. 328
Substitute First Revised Sheet No. 341
Substitute First Revised Sheet No. 356
Substitute First Revised Sheet No. 357
Substitute First Revised Sheet No. 369
Substitute First Revised Sheet No. 424
Substitute First Revised Sheet No. 436
Substitute First Revised Sheet No. 453
Substitute First Revised Sheet No. 484
Substitute First Revised Sheet No. 503
Substitute First Revised Sheet No. 521
Substitute First Revised Sheet No. 537
Substitute First Revised Sheet No. 554
Substitute First Revised Sheet No. 570
Substitute First Revised Sheet No. 571
Substitute First Revised Sheet No. 572
Substitute First Revised Sheet No. 600
Substitute First Revised Sheet No. 633
Substitute First Revised Sheet No. 634
Substitute First Revised Sheet No. 635
Substitute First Revised Sheet No. 636
Substitute First Revised Sheet No. 653
Substitute First Revised Sheet No. 654
Substitute First Revised Sheet No. 672
Substitute First Revised Sheet No. 673
Substitute First Revised Sheet No. 674
Substitute First Revised Sheet No. 685
Substitute First Revised Sheet No. 686
Substitute First Revised Sheet No. 703
Substitute First Revised Sheet No. 704
Substitute First Revised Sheet No. 705
Substitute First Revised Sheet No. 706
Substitute First Revised Sheet No. 723
Substitute First Revised Sheet No. 724
Substitute First Revised Sheet No. 764
Substitute First Revised Sheet No. 765
Substitute First Revised Sheet No. 783
Substitute First Revised Sheet No. 800
Substitute First Revised Sheet No. 818
Substitute First Revised Sheet No. 819
Substitute First Revised Sheet No. 854
Substitute First Revised Sheet No. 855
Substitute First Revised Sheet No. 873
Substitute First Revised Sheet No. 874
Substitute First Revised Sheet No. 890
Substitute First Revised Sheet No. 909
Substitute First Revised Sheet No. 948
Substitute First Revised Sheet No. 967
Substitute First Revised Sheet No. 985
Substitute First Revised Sheet No. 998
Substitute First Revised Sheet No. 1017
Substitute First Revised Sheet No. 1038
Substitute First Revised Sheet No. 1039
Substitute First Revised Sheet No. 1051
Substitute First Revised Sheet No. 1063
Substitute First Revised Sheet No. 1092
Substitute First Revised Sheet No. 1106
Substitute First Revised Sheet No. 1117
Substitute First Revised Sheet No. 1130
Substitute First Revised Sheet No. 1141
Substitute First Revised Sheet No. 1151
Substitute First Revised Sheet No. 1175
Substitute First Revised Sheet No. 1191
Substitute First Revised Sheet No. 1206
Substitute First Revised Sheet No. 1222
Substitute First Revised Sheet No. 1237
Substitute First Revised Sheet No. 1251
Substitute First Revised Sheet No. 1267
Substitute First Revised Sheet No. 1278
Substitute First Revised Sheet No. 1287
Substitute First Revised Sheet No. 1288
Substitute First Revised Sheet No. 1302
Substitute First Revised Sheet No. 1317
Substitute First Revised Sheet No. 1318
Substitute First Revised Sheet No. 1332
Substitute First Revised Sheet No. 1345
Substitute First Revised Sheet No. 1359
Substitute First Revised Sheet No. 1373
Substitute First Revised Sheet No. 1389
Substitute First Revised Sheet No. 1405
Substitute First Revised Sheet No. 1418
Substitute First Revised Sheet No. 1435
Substitute First Revised Sheet No. 1450
Substitute First Revised Sheet No. 1467
Substitute First Revised Sheet No. 1481
Substitute First Revised Sheet No. 1497

[1] In addition to the tariff sheets listed below, this filing contains a notice to all customers that the effective dates on certain tariff sheets in Original Volume No. 2, not at issue here, were incorrect. This notice was required to be filed pursuant to a letter order issued December 8, 1986 in Docket No. RP80-97-058.

Substitute First Revised Sheet No. 1512
Substitute First Revised Sheet No. 1513
Substitute First Revised Sheet No. 1527
Substitute First Revised Sheet No. 1541
Substitute First Revised Sheet No. 1542
Substitute First Revised Sheet No. 1560
Substitute First Revised Sheet No. 1577
Substitute First Revised Sheet No. 1593
Substitute First Revised Sheet No. 1611
Substitute First Revised Sheet No. 1626
Substitute First Revised Sheet No. 1656
Substitute First Revised Sheet No. 1673
Substitute First Revised Sheet No. 1689
Substitute First Revised Sheet No. 1706

Tennessee states that on August 17, 1987, it filed revised tariff sheets pursuant to Opinion 249–A and the Order Approving Uncontested Offers of Settlement in Docket Nos. RP85–178, *et al.*, both issued July 31, 1987, to establish new base tariff rates to be effective August 1, 1987, and eliminating the minimum bill provision from its sales and transportation rate schedules. By letter order dated September 29, 1987, the Commission rejected these revised tariff sheets "without prejudice to Tennessee's filing revised tariff sheets which comply with the Commission's Opinions and Orders." The letter order identified several aspects of Tennessee's August 17th filing which required modification or clarification.

Tennessee states that it is filing the listed revised tariff sheets to be effective August 1, 1987, to reflect the modifications required by the September 29th letter order and address the other concerns expressed by the Commission in that order. Specifically, Tennessee states that the modifications and clarifications are as follows:

1. The demand portion of Account No. 858 has been allocated on the basis of three day peak deliveries.

2. Bear Creek storage costs are classified to the commodity component of Tennessee's sales rates.

3. Tennessee has designed its rates for services under Rate Schedule FT–A to incorporate a two part Reservation Rate (Reservation$_1$ and Reservation$_2$ Rates).

4. The provision of Rate Schedule T–46 establishing a minimum bill for services rendered by Tennessee has been deleted. This Rate Schedule provides for billing by Tennessee of Midwestern Gas Transmission Company's rates and charges for services rendered in the transaction by Midwestern. Rate Schedule T–46, therefore, includes the minimum bill charge which is still effective for the Midwestern services.

The continued effectiveness of Midwestern's rates and charges as reflected in Tennessee's Rate Schedules T–46 and T–90 is specifically provided for in Article I section 4(d) of the April 11th Stipulation and Agreement in Docket No. RP85–178.

5. Workpapers have been provided to the Commission Staff showing: (1) That the volumes used to design Tennessee's transportation rates are the same as those agreed upon in the RP85–178 settlement, and (2) that the annual quantity limitations used to develop D_2 factors for Tennessee's sales services are the same as those authorized by the Commission.

Tennessee states that in all other respects this filing remains unchanged from Tennessee's original filing made on August 17, 1987 in this proceeding. Tennessee further states that workpapers supporting the base tariff rates to be implemented by this filing, including workpapers respecting the changes required by the September 29th Order, are attached.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 2, 1987. 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. 87–25231 Filed 10–29–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP87–91–001]

Williams Natural Gas Co., Proposed Changes in FERC Gas Tariff

October 27, 1987.

Take notice that Williams Natural Gas Company (WNG) on October 8, 1987, tendered for filing Substitute Second Revised Sheet No. 6 and Revised Original Sheet No. 97 to its FERC Gas Tariff, Original Volume No. 1 and Substitute First Revised Sheet Nos. 5 and 17 and First Revised Sheet Nos. 57, 91, 133, 144, 150, 153, 192, 281 and 309 to its FERC Gas Tariff, Original Volume No. 2. These tariff sheets are being filed in compliance with the Commission's letter order in Docket No. RP87–91–000, dated September 22, 1987.

WNG states that it was required to file tariff sheets to include the ACA adjustments to all sales and transportation rate schedules that are affected by Order 472 and to file revised tariff sheets in compliance with Order 472–B.

WNG also states that it was required to file tariff sheets containing ACA amendments effective October 1, 1987 in the event the Commission allows WNG to change the effective date for filing PGA adjustments. WNG was allowed this change by Commission letter order dated September 28, 1987 in Docket No. RP87–118.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 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 November 3, 1987. 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. 87–25232 Filed 10–29–87; 8:45 am]

BILLING CODE 6717–01–M

Western Area Power Administration

Resource Coordination Program—Proposed Extension of Power Rate Schedule RCP–1 on an Interim Basis

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed extension of Rate Schedule RCP–1, Schedule of Rates for Sales from the Resource Coordination Program.

SUMMARY: Notice is given of the proposed extension on an interim basis of Rate Schedule RCP–1 for firm capacity marketed by the Western Area Power Administration (Western) and energy being supplied under contracts with various utilities, known as the Resource Coordination Program (RCP).

FOR FURTHER INFORMATION CONTACT: Mr. Mark N. Silverman, Area Manager, Western Area Power Administration, Loveland Area Office, P.O. Box 3700, Loveland, CO 80539, (303) 490–7201.

SUPPLEMENTARY INFORMATION: Pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7101, *et seq.*, the power marketing functions of the Secretary of the Interior under the Reclamation Act of 1902, 43 U.S.C. 372, *et seq.*, as amended and supplemented by subsequent enactments, particularly by section 9(c), of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), for the Bureau of Reclamation were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108 effective December 14, 1983 (48 FR 55664, December 14, 1983), and Amendment No. 1, effective May 30, 1986 (51 FR 19744, May 30, 1986), the Secretary of Energy delegated to Western's Administrator the authority to develop power and transmission rates; to the Under Secretary of the DOE (Under Secretary) the authority to confirm, approve, and place in effect such rates on an interim basis; and to the Federal Energy Regulatory Commission (FERC) the authority to confirm, approve, and place in effect on a final basis, to remand, or disapprove rates developed by the Administrator under the delegation. In accordance with the Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions (Procedures) at 10 CFR Part 903.23(a), the Under Secretary has authority to extend existing rates on an interim basis. This notice is issued pursuant to the Procedures.

Background

Pursuant to Delegation Order No. 0204–33, the FERC, in an order issued November 23, 1983, docket No. EF83–5131–000, confirmed and approved Rate Schedule RCP–1 for firm capacity marketed by Western and energy being supplied under contracts with various utilities, known as the Resource Coordination Program. The rate was approved for the period from November 30, 1982, and ending November 29, 1987. Western is now proposing to extend the rate. A copy of the rate schedule RCP–1 currently in effect is attached.

The RCP is an arrangement to combine Western's excess capacity with surplus nonfirm energy to produce firm capacity with energy.

The firm capacity with energy sold through RCP is sold at prices initially based on split-savings rates set halfway between each purchaser's avoided costs and the RCP's costs. In subsequent months, when the RCP costs of firm capacity with energy increase or decrease, the purchaser's base price will increase or decrease by an identical amount. Seasonal or monthly firm capacity with energy sold through the RCP is sold at prices based on split-savings rates developed pursuant to this rate schedule. The purchaser's avoided costs are the costs of the same category of firm capacity with energy or nonfirm energy that the purchaser would otherwise generate itself or purchase from another source. RCP costs associated with nonfirm energy are the thermal energy generation costs. The RCP costs associated with the firm capacity with energy include the Pick-Sloan Missouri Basin Program-Western Division capacity charge in Rate Schedule P–SWD–F2, or any superseding rate schedule as of its effective date.

Discussion

The purpose of the extension of the wholesale power rate is to retain the current rate in effect.

The power service for which the rate will be applicable is seasonal or monthly firm capacity with energy from the RCP.

Issued at Golden, Colorado, October 23, 1987.

William H. Clagett,

Administrator.

Rate Schedule RCP–1

Schedule or Rates for Sales From the Resouce Coordination Program—Loveland Area Office

Effective: November 30, 1982.

Available: Within and adjacent to the areas served by the Western Division of the Pick-Sloan Missouri Basin Program and the Fryingpan-Arkansas Project.

Applicable: To wholesale power customers purchasing such service.

Character and Conditions of Service: Electric service supplied hereunder will be three-phase, alternating current, at a nominal frequency of 60 hertz (cycles per second).

Monthly Rate:

Firm Capacity With Energy: Initially, a base price will be calculated at one-half the sum of the purchaser's avoided costs and the Resource Coordination Program (RCP) costs. The purchaser's costs are the costs for firm capacity with energy that the purchaser would, but for purchases from the RCP, generate itself or purchase from another source. The RCP costs are the sum of the Federal capacity costs set forth in applicable rate schedules and energy generation costs.

In subsequent months, when the RCP costs of firm capacity with energy increase or decrease, the purchaser's base price will increase or decrease by an identical amount.

[FR Doc. 87–21244 Filed 10–29–87; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–3284–7]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements Filed October 19, 1987 Through October 23, 1987 Pursuant to 40 CFR 1506.9

EIS No. 870368, Draft, FHW, NC, East Charlotte Outer Loop Construction, US 74/Independence Boulevard near NC–3180 to I–85 near the US 29 Connector, Funding, Mecklenburg County, NC, Due: December 15, 1987, Contact: Kenneth Bellamy (919) 856–4346.

EIS No. 870369, Final, FHW, TX, Beltway 8 Section VI Circumferential Freeway Construction, US 59 South to I–45 South, Funding, City of Houston, Harris County, TX, Due: November 30, 1987, Contact: John E. Inabinet (512) 465–6161.

EIS No. 870370, Draft, EPA, REG, Polymer Manufacturing Industry, VOC Emission Standards, Implementation, Due: December 14, 1987, Contact: James Berry (919) 541–5605.

EIS No. 870371, Final, CDB, CA, Adoption—Telegraph Canyon Creek Flood Control Project, Community Development Block Grant Funds, City of Chula Vista, San Diego County, CA, Due: November 30, 1987, Contact: James Lobue (619) 691–5047.

EIS No. 870372, Final, COE, OH, Ashtabula Harbor, Dredging and Confinement of Polluted Sediments, Implementation, Ashtabula County, OH, Due: November 30, 1987, Contact: William McDonald (716) 876–5454.

EIS No. 870373, FSuppl, COE, GA, Lake Alma Project, Reservoir Construction and Development, Outdoor Recreation Opportunities, 404 Permit, Bacon County, GA, Due: November 30, 1987, Contact: Charles Belin, Jr (912) 944–5838.

EIS No. 870374, Draft, FHW, CA, CA–238 Construction, near Industrial Parkway to CA–238/I–580 Interchange, Funding, and 404 Permit, City of Hayward, Alameda County, CA, Due: December 18, 1987, Contact: David Eyres (916) 551–1314.

EIS No. 870375, Final, SCS, OK, Waterfall-Gilford Creek Watershed Flood Control and Agricultural Drainage, Construction, 404 Permit and Funding, McCurtain County, OK, Due: November 30, 1987, Contact: Roland Willis (405) 624–4360.

EIS No. 870376, Draft, NPS, ID, MT, WY, Fishing Bridge Developed Area, Development Concept Plan, Implementation, Yellowstone National Park, Fremont County, ID, Park and Gallatin Counties, MT and Park and Teton Counties, WY, Due: December 16, 1987, Contact: O. Howie Thompson (303) 969–2310.

EIS No. 870377, Draft, GSA, CA, Oakland Federal Building Construction, Approval, Alameda County, CA, Due: December 14, 1987, Contact: Mary Brant (415) 974–7626.

EIS No. 870378, Final, FHW, AK, Eagle River Loop Road Connection to Hiland Drive/ Glenn Highway Interchange, Funding, 404 Permit, Anchorage, AK, Due: November 30, 1987, Contact: Tom Neunaber (907) 586–7428.

EIS No. 870379, Final, SFW, AK, Nowitna National Wildlife Refuge Comprehensive Conservation Plan, Wilderness Review and Wild River Plan, Implementation, Yukon River Valley, AK, Due: November 30, 1987, Contact: Wiliam Knauer (907) 786–3399.

EIS No. 870380, Final, SFW, AK, Koyukuk and the Northern Unit of Innoko National Wildlife Refuges, Comprehensive Conservation Plan, Wilderness Review and Wild River Plan, Implementation, Galena, McGrath, AK, Due: November 30, 1987, Contact: William Knauer (907) 786–3399.

EIS No. 870381, Final, SFW, MN, WI, IA, IL, Upper Mississippi River National Wildlife and Fish Refuge Master Plan, Implementation, MN, WI, IA, and IL, Due: November 30, 1987, Contact: Jim Lennartson (507) 452–4232.

Amended Notice

EIS No. 870349, Draft, FHW, KY, OH, US 27/ Central Bridge and Approach Roads Replacement, Newport, KY to Cincinnati, OH, Ohio River, Funding and 404 Permit, Campbell Co., KY and Hamilton Co. OH, Due: December 4, 1987, Review period extended, Contact: Robert Johnson (502) 227–7321.

Dated: October 28, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87–25267 Filed 10–29–87; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3284–6]

Science Advisory Board; Indoor Air Quality and Total Human Exposure Subcommittee; Open Meeting

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given of a public meeting of the Indoor Air Quality and Total Human Exposure Subcommittee of the Environmental Protection Agency's (EPA) Science Advisory Board. The meeting will be held November 19–20, 1987, from 9:30 a.m. to 4:00 p.m. on November 19th, and from 9:00 a.m. to 12:00 noon on November 20th. The meeting will be held in Conference Room 1112 (11th Floor), U.S. EPA, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, Virginia.

Background

Indoor Air Quality and Total Human Exposure Subcommittee was formed under the requirements of Title IV of the Superfund Amendments and Reauthorization Act of 1986. The charge to this Subcommittee includes the review of the EPA's Indoor Air Quality Implementation Plan, as submitted to the Congress, as well as a continuation of the review of the Agency's Total Human Exposure Research Plan. The Subcommittee is mandated by Title IV to report its findings regarding the Implementation Plan to the Congress. The Total Human Exposure Research Plan will be reviewed by the Subcommittee at a later date, with findings reported to the Administrator of EPA.

The purpose of this initial meeting of the Subcommittee is to provide a public forum for the Committee to obtain information and to discuss the ongoing and planned indoor air qauality research effort ot the EPA with Agency staff and members of the interested public. It is expected that the Subcommittee will meet again in early 1988 to continue the discussions and to prepare their report to the Congress.

FOR FURTHER INFORMATION CONTACT: Copies of the EPA Indoor Air Quality Implementation Plan and Appendices A–E may be obtained from the U.S. EPA, Office of Environmental Research Information (CERI), 21 West St. Clair Street, Cincinnati, Ohio, 45268 (413) 684–7562. Please ask for EPA documents 600/8–87/031, 600/8–87032, 600/8–87/033, 600/8–87/014, and 600/8–87/016, all dated June 1987. Copies are not available from the Science Advisory Board.

Any member of the public wishing further information concerning the meeting should contact Mr. Robert Flaak, Executive Secretary, Science Advisory Board (A–101–F), U.S. Environmental Protection Agency, Washington, DC 20460. Telephone (202) 382–2552; (FTS 383–2552). Persons wishing to make brief oral presentations at the meeting must contact Mr. Flaak no later than the close of business on November 16, 1987 in order to reserve space on the agenda. A draft agenda will be available a week prior to the meeting.

Dated: October 23, 1987.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 87–25202 Filed 10–29–87; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59837; FRL–3282–4]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066)(40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of three such PMNs and provides the summary.

DATES: Close of Review Period:
Y 88–14 and 88–15—November 2, 1987.
Y 88–16—November 3, 1987.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Room E–611, 401 M Street SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemptions received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 88-14

Manufacturer. Confidential.
Chemical. (G) Polymer of alkanediols and aromatic carboxylic acids.
Use/Production. (G) Intermediate for textile resin size. Prod. range: Confidential.

Y 88-15

Manufacturer. Confidential.
Chemical. (G) Polymer of aliphatic diols and aromatic carboxylic acids and an aromatic epoxy.
Use/Production. (G) Textile resin. Prod. range: Confidential.

Y 88-16

Importer. Confidential.
Chemical. (G) Substituted aryl dicarboxylic acid/diol copolymer.
Use/Import. (S) Industrial protective agent for textile sizing.
Import range: Confidential.
Toxicity Data. Acute oral: > 2,000 mg/kg; Irritation: Skin—Non-irritant.

Date: October 21, 1987.

Denise Devoe,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 87-24796 Filed 10-29-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51698; FRL-3282-5]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-four such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 88-62, 88-63, 88-64, and 88-65—January 6, 1988

P 88-66, 88-67, 88-68, 88-69, 88-70, 88-71, 88-72, and 88-73—January 10, 1988

P 88-74, 88-75, 88-76, 88-77, 88-78, 88-79, 88-80, 88-81, 88-82, 88-83, 88-84, and 88-85—January 11, 1988

P 88-86, 88-87, 88-88, 88-89, 88-90, 88-91, 88-92, 88-93, 88-94, and 88-95—January 12, 1988.

Written comments by:

P 88-62, 88-63, 88-64, and 88-65—December 7, 1987

P 88-66, 88-67, 88-68, 88-69, 88-70, 88-71, 88-72, and 88-73—December 11, 1987

P 88-74, 88-75, 88-76, 88-77, 88-78, 88-79, 88-80, 88-81, 88-82, 88-83, 88-84, and 88-85—December 12, 1987

P 88-86, 88-87, 88-88, 88-89, 88-90, 88-91, 88-92, 88-93, 88-94, and 88-95—December 13, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS-51698]" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Room L-100, 401 M Street SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the PMNs received by EPA. The complete non-confidential PMNs are available in the Public Reading room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 88-62

Manufacturer. Hercules Incorporated.
Chemical. (G) Dimer diisocyanate reaction polybutadiene.
Use/Production. (G) Islolated intermediate in a polymer formulation. Prod. range: Confidential.

P 88-63

Manufacturer. Confidential.
Chemical. (G) Substituted thioazino salt.
Use/Production. (G) Site-limited chemical intermediate. Prod. range: 1,600 to 12,000 kg/yr.

P 88-64

Manufacturer. General Electric Company.
Chemical. (G) Ester of substituted hydroxyphenyl benzotriazole carboxylic acid.
Use/Production. (S) UV light stabilizer composition. Prod. range: Confidential.

P 88-65

Manufacturer. Confidential.
Chemical. (G) Alkylbenzene sulfonic acid, magnesium salt, over based.
Use/Production. (G) Lube oil additive. Prod. range: Confidential.

P 88-66

Manufacturer. Confidential.
Chemical. (G) Alkyd resin.
Use/Production. (G) Non-drying alkyd. Prod. range: 2,951 to 8,853 kg/yr.

P 88-67

Importer. Confidential.
Chemical. (G) Substituted, substituted, substituted benzenesulfonic acid.
Use/Import. (S) Industrial dye intermediate. Import range: Confidential.

P 88-68

Importer. Confidential.
Chemical. (G) Substituted heteromonocyclic azo carbopolycyclic acid.
Use/Import. (S) Industrial paper dye. Import range: Confidential.
Toxicity Data. Acute oral: < 5,000 mg/kg; Ames test: Non-mutagenic.

P 88-69

Importer. Confidential.
Chemical. (G) Substituted, substituted naphthalene sulfonate.
Use/Import. (G) Industrial dye intermediate. Import range: Confidential.
Toxicity Data. Acute oral: 5.0 g/kg, Irritation: Skin—Non-irritant, Eye—Non-irritant.

P 88-70

Importer. Mitsubishi.
Chemical. (S) Methylmethacrylate, laurylmethacrylate and tridecylmethacrylate.
Use/Import. (S) Industrial and commercial resin for conductive coatings. Import range: 50,000 to 100,000 kg/yr.

P 88-71

Importer. Confidential.
Chemical. (G) Polymer of functional acrylates and methacrylates.
Use/Import. (G) Commercial resin for paint product. Import range: 40,000 to 80,000 kg/yr.

P 88-72

Importer. Confidential.

Chemical. (G) 1,1'-Methylene bis[4-phenylene azo—[substituted heterocycle]] acid salt.

Use/Import. (S) Industrial and commercial paper dye for use in fine and tissue paper. Import range: Confidential.

P 88–73

Manufacturer. Polymer Industries Incorporated.

Chemical. (S) Polyethylene terephthalate, diethylene glycol and tetrabutyl titanate.

Use/Production. (S) Commercial reactive polyol in urethane blends. Prod. range: 909,091 to 1,363,636 kg/yr.

P 88–74

Manufacturer. The Dow Chemical Company.

Chemical. (G) Styrene/butadiene/ polymer with alkanedioic acid and alkane ester.

Use/Production. (G) Industrial adhesive. Prod range: Confidential.

P 88–75

Manufacturer. The Dow Chemical Company.

Chemical. (G) Styrene/butadiene/ polymer with alkanoic acid and alkane ester.

Use/Production. (G) Industrial adhesive. Prod. range: Confidential.

P 88–76

Manufacturer. Confidential.

Chemical. (G) Isocyanate terminated urethane prepolymer.

Use/Production. (G) Hot melt (solvent-free) adhesive. Prod. range: Confidential.

P 88–77

Manufacturer. Confidential.

Chemical. (G) Alicyclic acid anhydride.

Use/Production. (G) Industrial chemical intermediate. Prod. range: Confidential.

P 88–78

Manufacturer. The Dow Chemical Company.

Chemical. (G) Styrene, butadiene, polymer with alkanedioic acid and alkane ester.

Use/Production. (G) Adhesive. Prod. range: Confidential.

P 88–79

Importer. Confidential.

Chemical. (G) Chromate (3-), bis 2-[[substituted-3-[(5-sulfo-1-naphthalenyl)azo]phenyl]azo]s ubstituted monocycle (3-)]-, trisodium.ge dp2:a30oc3.057

Use/Import. (S) Industrial leather dye for shoe upper leather, upholstery leather and garment leather. Import range: Confidential.

P 88–80

Importer. General Electric Company.

Chemical. (G) Substituted hydroxyphenyl benzotriazole carboxylic ester.

Use/Import. (S) Site-limited and industrial starting material for manufacture of UV light stabilizer composition. Import range: 200 to 300 kg/yr.

P 88–81

Manufacturer. Confidential.

Chemical. (G) Dialkylester of cycoalkyl spiropetal.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 88–82

Manufacturer. Confidential.

Chemical. (S) Substituted malonate.

Use/Production. (S) Site-limited chemical intermediate. Prod. range: Confidential.

P 88–83

Manufacturer. Confidential.

Chemical. (G) Bis(2,2,6,6-tetramethyl piperidnal ester of cycloalkyl spiro ketal.

Use/Production. (G) Light stabilizer. Prod. range: Confidential.

P 88–84

Manufacturer. The Dow Chemical Company.

Chemical. (G) Polyurethane thermoplastic resin.

Use/Production. (S) Industrial extrusion and injection molding of plastic articles for use in chemical processing and automotive industries. Prod. range: Confidential.

P 88–85

Manufacturer. The Dow Chemical Company.

Chemical. (G) Polyurethane thermoplastic resin.

Use/Production. (S) Industrial extrusion and injection molding of plastic articles for use in chemical processing and automotive industries. Prod. range: Confidential.

P 88–86

Importer. CIBA-GEIGY Corporation.

Chemical. (G) Alkylamine derivative.

Use/Import. (S) Industrial stabilizer for polymers. Import range: Confidential.

P 88–87

Manufacturer. Stepan Company.

Chemical. (G) Polyester polyol.

Use/Production. (G) Industrial and commercial to be used in production of polyurethane and urethane modified polyisocyanurate forms. Prod. range: Confidential.

P 88–88

Importer. Hoechst Celanese Corporation.

Chemical. (G) Aromatic substituted ethylene diamine.

Use/Import. (S) Site-limited intermediate. Import range: 6,000 to 18,000 kg/yr.

P 88–89

Manufacturer. Confidential.

Chemical. (G) Aliphatic aromatic sulfonium acetate.

Use/Production. (G) Industrially used coating with an open use. Prod. range: 200,000 to 3,000,000 kg/yr.

P 88–90

Importer. Confidential.

Chemical. (G) Dinaphthylmethane derivative.

Use/Import/ (G) Toning agent. Import range: Confidential.

Toxicity Data. Acute oral: 5 g/kg; Acute dermal: 5 g/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Non-mutagenic; Skin sensitization: Non-sensitizer.

P 88–91

Manufacturer. Confidential.

Chemical. (G) Heteromonocyclic methylene derivative of a heteropolycyclicindenone.

Use/Production. (G) Site-limited intermediate. Prod. range: Confidential.

P 88–92

Manufacturer. Confidential.

Chemical. (G) Polyampholyte.

Use/Production. (G) Coagulant and scale/corrosion inhibitor. Prod. range: Confidential.

Toxicity Data. Acute oral: 15.7 mg/kg; Acute dermal: 2 ml/kg; Irritation: Skin—Mild irritant, Eye—Mild irritant.

P 88–93

Manufacturer. Confidential.

Chemical. (G) Substituted cyclohexane.

Use/Production. (G) Polymer additive. Prod. range: Confidential.

P 88–94

Importer. Confidential.

Chemical. (G) Dialkylaminocarbomonocyclic substituted alkenoyl alkylheteromonocyclic chloride.

Use/Import. (S) Industrial dye. Import range: Confidential.

P 88–95

Importer. Confidential.

Chemical. (G) Dibasic acid/glycolester.

Use/Import. (S) Industrial plasticizer for PVC. Import range: Confidential.

Date: October 21, 1987.

Denise Devoe,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 87-24797 Filed 10-29-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing, Lafayette FM Group Ltd et. al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and state	File No.	MM docket No.
A. Lafayette FM Group Limited Partnership, d/b/a Lafayette Communications, Inc.; Lafayette, LA.	BPH-860407MP	87-449
B. 80-90 Limited; Lafayette, LA.	BPH-860502MD	
C. George Van Hook, Jr.; Lafayette, LA.	BPH-860506MP	
D. AC Broadcasting, Inc.; Lafayette, LA.	BPH-860506MQ	
E. Leam Broadcasting, Inc.; Lafayette, LA.	BPH-860507OB	
F. Phyllis Coleman Mouton/dba Phyla Broadcasting; Lafayette, LA.	BPH-860507OE	
G. FM Lafayette Limited Partnership; Lafayette, LA.	BPH-860507OF	
H. Julie N. Frew; Lafayette, LA.	BPH-860507OG	
I. KLUE Radio, Inc.; Lafayette, LA.	BPH-860507OH	
J. James M. Linzer & Margo A. Linzer d/b/a Linzer Enterprises; Lafayette, LA.	BPH-860507OI	
K. RVM, Inc.; Lafayette, LA.	BPH-860507OJ	
L. Royal Broadcasting Partnership; Lafayette, LA.	BPH-860507OK	
M. Kenneth E. Harris; Lafayette, LA.	BPH-860507OL	
N. Lafayette Broadcasting Foundation; Lafayette, LA.	BPH-860507OM	
O. Lafayette Communication, Inc.; Lafayette, LA.	BPH-860507ON	
P. Crisler Communications; Lafayette, LA.	BPH-860507OO	
Q. Rebecca Radio of Lafayette; Lafayette, LA.	BPH-860507OP	

2. Pursuant to 47 U.S.C. 309(e), the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19,347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Air Hazard, A,C,K,L,M,N,Q
2. Comparative, A-Q
3. Ultimate, A-Q

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87-25183 Filed 10-29-87; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Williamsport Television et al. and MMM & K, Inc.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant, city and State	File No.	MM Docket No.
A. Russell Kimble, et al, d/b/a Williamsport Television; Williamsport, PA.	BPCT-870327KL	87-450
B. MMM & K, Inc.; Williamsport, PA.	BPCT-870526KJ	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

Short-Spacing, B
Air Hazard, B
Comparative, A, B
Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 87-25184 Filed 10-29-87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreements Filed; Shippers Stevedoring Co.

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 and/or § 572.603 of Title 46 of the Code of Federal Regualtions. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any persons filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-200048.

Title: Port of Houston Authority Terminal Agreement.

Parties:

Port of Houston Authority
Shippers Stevedoring Co.

Synopsis: The proposed agreement, which is captioned Jacintoport Freight Handling Agreement, designates and assigns Shippers Stevedoring Co. as contractor on the Port's wharf located contiguous to the Jacintoport Slip in Jacintoport through February 28, 1988.

Filing Party: Brien E. Kehoe, Esq., Hill, Betts & Nash, 1818 N Street NW., Suite 700, Washington, DC 20036.

Agreement No.: 224–200050.
Title: Port of Houston Authority
Parties:
Port of Houston Authority
Shippers Stevedoring Co.

Synopsis: The proposed agreement, which is captioned Turning Basin Freight Handling Agreement, designates and assigns Shippers Stevedoring Co. as contractor on the Port's wharf located contiguous to the Jacintoport Slip in Jacintoport through December 31, 1989.

Filing Party: Brien E. Kehoe, Esq., Hill, Betts & Nash, 1818 N Street NW., Suite 700, Washington, DC 20036.

Agreement No.: 224–200049
Title: Port of Houston Occupancy Agreement
Parties:
Port of Houston Authority
Shippers Stevedoring Company (Tenant)

Synopsis: The proposed agreement provides for Tenant occupation and vacation of the premises depicted in Exhibit B of the agreement on or before 1–8–88. Tenant shall have the exclusive right to occupy only such portion of the premises specified in this agreement solely for the purpose of terminating Tenants' business operations at the premises.

Filing Party: Brien E. Kehoe, Esq., Hill, Betts & Nash, 1818 N Street, NW., Suite 700, Washington, DC 20036.

By Order of the Federal Maritime Commission.

Dated: October 27, 1987.

Joseph C. Polking,

Secretary.

[FR Doc. 87–25185 Filed 10–29–87; 8:45 am]

BILLING CODE 6730–01–M

Agreement Filed; Philadelphia Port Corp. et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interest parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224.200051
Title: Philadelphia Port Corporation Terminal Agreement
Parties:
Philadelphia Port Corporation (PPC)
Tioga Fruit Terminal, Inc. (TFT)

Synopsis: The proposed agreement provides for the sublease by PPC of certain port facilities within the Port of Philadelphia to TFT together with a nonexclusive right-of-way over the interior roadway connecting the two major sections of the terminal that are leased to TFT.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: October 27, 1987.

[FR Doc. 87–25186 Filed 10–29–87; 8:45 am]

BILLING CODE 7630–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; A.D. Duncklee

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 23, 1987.

A. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Mr. A.D. Duncklee,* Drayton, North Dakota; to acquire an additional 1.1 percent of the voting shares of Drayton Bancor, Inc.; and thereby indirectly acquire Drayton State Bank, Drayton, North Dakota.

2. *Mr. John W. Brown,* Drayton, North Dakota; to acquire an additional 1.1 percent of the voting shares of Drayton Bancor, Inc.; and thereby indirectly acquire Drayton State Bank, Drayton, North Dakota.

3. *Mr. Ardell Fortier,* Drayton, North Dakota; to acquire an additional 1.1 percent of the voting shares of Drayton Bancor, Inc.; and thereby indirectly acquire Drayton State Bank, Drayton, North Dakota.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Irwin Blitt,* Leawood, Kansas; to acquire 35.0 percent of the voting shares of Hillcrest Bancshares, Inc., Kansas City, Missouri; and thereby indirectly acquire Hillcrest Bank, Kansas City, Missouri.

Board of Governors of the Federal Reserve System, October 26, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–25118 Filed 10–29–87; 8:45 am]

BILLING CODE 6210–01–M

Merchants Bancorporation, et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party

commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 20, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Merchants Bancorporation,* Hanceville, Alabama; to engage *de novo* in mortgage loan servicing activities pursuant to § 225.25(b)(1) of the Board's Regulation Y; and in trust company activities pursuant to § 225.25(b)(3) of the Board's Regulation Y.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *R&J Financial Corporation,* Elma, Iowa; to engage *de novo* in general insurance activities in a town of less than 5,000 in population pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Security Pacific Corporation,* Los Angeles, California; to engage *de novo* through its subsidiary SP Services Corporation ("SPSC"), San Diego, California, in collecting, for affiliates and others, overdue accounts receivable, either retail or commercial, provided, however, that SPSC will not: (i) Obtain the names of customers of competing collection agencies from an affiliated depository institution that maintains trust accounts for those agencies; or (ii) provide preferential treatment to an affiliate or customer of such affiliate seeking collection of an outstanding debt. The activities will be conducted from an office of SPSC in San Diego, California, throughout the United States.

Board of Governors of the Federal Reserve System, October 26, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-25119 Filed 10-29-87; 8:45 am]

BILLING CODE 6210-01-M

Formation of, Acquisition by, or Merger of Bank Holding Companies and Acquisition of Nonbanking Company; National Westminster Bank, PLC; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 87-23276) published at page 37658 of the issue for Thursday, October 8, 1987.

Under the Federal Reserve Bank of New York, the entry for National Westminster Bank PLC is revised to read as follows:

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *National Westminster Bank PLC,* London, England, Natwest Holdings, Inc., New York, New York, and National Westminster Bancorp, Inc., Wilmington, Delaware; to acquire 100 percent of the voting shares of National Westminster Bank USA, New York, New York; First Jersey National Corporation, Jersey City, New Jersey, and thereby indirectly acquire The First Jersey and National Bank, Jersey City, New Jersey; The First Jersey National Bank/Central, Trenton, New Jersey; The First Jersey National Bank/South, Atlantic City, New Jersey; The First Jersey National Bank/West, Denville, New Jersey; and The First Jersey National Bank/Fort Lee, Fort Lee, New Jersey; and First Jersey Fort Lee Corporation, Jersey City, New Jersey. In connection with this application, National Westminster Bancorp, Inc., Wilmington, Delaware, has applied to become a bank holding company.

National Westminster Bank PLC, London, England, Natwest Holdings Inc., New York, New York, and National Westminster Bancorp, Inc., Wilmington, Delaware; also propose to acquire FJN Corporation, Jersey City, New Jersey, and thereby engage in leasing real property, and to acquire Tilden of Florida, Inc., Fort Lauderdale, Florida, and thereby engage in leasing personal property and in commercial lending activities pursuant to §§ 225.25(b)(5) and (b)(1) of the Board's Regulation Y.

Comments on this application must be received by November 13, 1987.

Board of Governors of the Federal Reserve System, October 26, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-25116 Filed 10-29-87; 8:45 am]

BILLING CODE 6210-01-M

Peoples Bancorporation et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 23, 1987.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Peoples Bancorporation,* Rocky Mount, North Carolina; to acquire 100 percent of the voting shares of Citizens National Bank, Winston-Salem, North Carolina.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Associated Acquisition Corporation,* Green Bay, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Valders Bancorporation, Valders, Wisconsin; and thereby indirectly acquire Valders State Bank, Valders, Wisconsin.

2. *F&M Financial Services Corporation,* Menomonee Falls, Wisconsin; to acquire 100 percent of the voting shares of Owen-Curtiss Financial Corporation, Owen, Wisconsin; and thereby indirectly acquire Owen-Curtiss State Bank, Owen, Wisconsin, Voyageur Development Corporation, Park Falls, Wisconsin, and Park Falls State Bank, Park Falls, Wisconsin.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Business Bancshares of Kansas City, Inc.,* Kansas City, Missouri; to become a bank holding company by acquiring 80 percent of the voting shares of First Business Bank of Kansas City, N.A., Kansas City, Missouri.

2. *First National Financial Corporation,* Albuquerque, New Mexico; to acquire through a nonoperating subsidiary FNFC Acquisition Corporation, Albuquerque, New Mexico, 100 percent of the voting shares of Las

Vegas Bancorporation, Las Vegas, New Mexico; and thereby indirectly acquire The Bank of Las Vegas, Las Vegas, New Mexico. In connection with this application, FNFC Acquisition Corporation has applied to become a bank holding company.

3. *Sheridan National Agency*, Sheridan, Wyoming; to become a bank holding company by acquiring 100 percent of the voting shares of Sheridan National Bank, Sheridan, Wyoming.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First McAllen International Bancshares, Inc.*, McAllen, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of International Bank of McAllen, McAllen, Texas.

Board of Governors of the Federal Reserve System, October 26, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-25120 Filed 10-29-87; 8:45 am]

BILLING CODE 6210-01-M

United Jersey Bank; Change in Bank Control Notices; Acquisitions of Shares of Banks; Bank Holding Companies; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 87-23787) published at page 38274 of the issue for Thursday, October 15, 1987.

Under the Federal Reserve Bank of New York, the entry for United Jersey Banks is revised to read as follows:

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *United Jersey Bank*, Princeton, New Jersey; to acquire through its subsidiary FV Inc., Bethlehem, Pennsylvania, 100 percent of the voting shares of First Valley Corporation, Bethlehem, Pennsylvania, and thereby indirectly acquire First Valley Bank, Bethlehem, Pennsylvania; and Hazleton National Bank, Hazleton, Pennsylvania; Hanover Bank of Pennsylvania, Wilkes-Barre, Pennsylvania; and West Side Bank, West Pittston, Pennsylvania. In addition, FV Inc. has applied to become a bank holding company.

Comments on this application must be received by November 5, 1987.

Board of Governors of the Federal Reserve System, October 26, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-25117 Filed 10-29-87; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of Waiting Period Under Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 10/06/87 AND 10/21/87

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
(1) Goldome, Norman Davison, Jr., Davidson P.W.P	87-2308	10/06/87
(2) Castle & Cooke, Inc., Apache Corporation, S&J Ranch, Inc. and Earliest Orange Assoc., Inc	87-2372	10/06/87
(3) McCown De Leeuw & Co., Van Doren Rubber Company, Inc., Van Doren Rubber Company, Inc	87-2441	10/06/87
(4) W.R. Grace & Co., The 1964 Simmons Trust, The 1964 Simmons Trust	87-2443	10/06/87
(5) Mr. George S. Mann, InterTAN, Inc., InterTAN, Inc	87-2450	10/06/87
(6) H Group Holding, Inc., Daniel K. Ludwig, Westlake Plaza Hotel	87-2407	10/07/87
(7) Roxboro Investments (1976) Ltd., Lomas & Nettleton Financial Corporation, Lomas & Nettleton Financial Corporation	87-2432	10/08/87
(8) Varlen Corporation, Nyloncraft, Inc., Nyloncraft, Inc	87-2494	10/08/87
(9) Robert Wood Johnson, IV, American Cablesystems Corporation, American Cablesystems Corporation	87-2513	10/08/87
(10) RREEF USA Fund-III, Wesley Bailey, Alamo Partnership	87-2305	10/09/87
(11) Allied-Lyons PLC, Exeter International Corp. Exeter Foods Inc	87-2323	10/09/87
(12) Leonard K. Mardian, Estate of James Campbell, Concord Hotel Associates	87-2349	10/09/87
(13) Randolph J. Agley, Merrill Lynch & Co., Inc., Supermarkets General Corporation	87-2467	10/09/87
(14) Mr. Mark Goodson, Morristown Daily Record, Inc., Morristown Daily Record, Inc	87-2474	10/09/87
(15) Trammell Crow Equity Partners, The Williams Companies, Inc., The Williams Companies, Inc	87-2480	10/09/87

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 10/06/87 AND 10/21/87—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
(16) Southmark Corporation, Thousand Trails, Inc., Thousand Trails, Inc	87-2502	10/09/87
(17) Petrofina S.A., The Exploration Company of Louisiana, Inc., The Exploration Company of Louisiana, Inc	87-2504	10/09/87
(18) San Diego Gas & Electric Company, Robert R. Wahler, Wahlco, Inc	87-2515	10/09/87
(19) Robert R. Wahler, c/o Wahlco, Inc., San Diego & Electric Company, San Diego Gas & Electric Company	87-2516	10/09/87
(20) Republic Gypsum Company, Tenneco Inc., Tenneco Inc	87-2527	10/09/87
(21) Koninklijke Nederlandsche Hoogovens en Staalfabrieken, Kaiser-Tech Limited, Kaiser Aluminum Europe Incorporated	87-2528	10/09/87
(22) RREEF USA Fund-III, E.J. McGah, Alamo Partnership	87-2534	10/09/87
(23) Cooper Industries, Inc., Joy Technologies, Inc., Joy Technologies, Inc	87-2473	10/13/87
(24) Dowty Group PLC, Datatel Inc., Datatel Inc	87-2512	10/13/87
(25) Citation Investment Trust, Tenneco Inc., Tenneco Oil Company	87-2237	10/14/87
(26) Lone Star Industries, Inc., Lehman-Roberts Company, Inc., Lehman-Roberts Company, Inc	87-2472	10/14/87
(27) Avon Products, Inc., New Hampton, Inc., New Hampton, Inc	87-2521	10/14/87
(28) David H. Murdock, Flexi-Van Corporation, Flexi-Van Corporation	87-2531	10/14/87
(29) Tele-Communications, Inc., Grace Broadcasting Limited Partnership, WOOD and WOOD-FM	87-2424	10/15/87
(30) Dover Corporation, Richard H. Ellingsworth, General Elevator Company, Incorporated	87-2434	10/15/87
(31) J Sainsbury plc, ISM Holdings, Inc. Iandoli's Super Markets, Inc	87-2454	10/15/87
(32) James Neill Holdings plc, Henry G. Libby, The Disston Company	87-2476	10/15/87
(33) R.E. Turner, Entertainment Acquisition Company, Inc., RKO Pictures, Inc	87-2499	10/15/87
(34) Dennis R. Washington, c/o Washington Corporations, Burlington Northern Inc., Burlington Northern Railroad Company	87-2505	10/15/87
(35) Catholic Healthcare West, St. Luke's Health System, St. Luke's Health System	87-2530	10/15/87
(36) A. Gary Klesch, British & Commonwealth Holdings PLC, W.M. Marshall & Co. Ltd. & Wm. Street Brokers, Inc	87-2249	10/16/87
(37) Bennett S. LeBow, Borden, Inc., Deran Confectionary Company	87-2264	10/16/87
(38) Silvercrest Industries, Inc., Silvercrest Industries, Inc., Silvercrest Industries, Inc	87-2324	10/16/87
(39) Kaufman and Broad, Inc., Silvercrest Industries, Inc., Silvercrest Industries, Inc	87-2325	10/16/87
(40) M.A. Hanna Company, William B. Bradbury, Jr., PMS Consolidated	87-2390	10/16/87
(41) M.A. Hanna Company, William R. Belton and Nancy B. Belton, PMS Consolidated	87-2425	10/16/87
(42) Paul F. Cornelsen, Fiedland PLC, Gang-Nail Systems, Inc	87-2435	10/16/87
(43) Bowater Industries, plc, Paul F. Cornelsen, Mitek Industries, Inc	87-2436	10/16/87
(44) American Financial Corporation, John R.E. Lee, John R.E. Lee	87-2503	10/16/87
(45) Ratners Group plc, The Westhall Co., The Westhall Co	87-2508	10/16/87
(46) Chicago Holdings, Inc., George A. Steiner Testamentary Trust, Steiner Financial Corporation	87-2510	10/16/87
(47) Ronald O. Perelman, Salomon Inc., Salomon Inc	87-2517	10/16/87

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 10/06/87 AND 10/21/87—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
(48) Insilco Corporation, DAC Software, Inc., DAC Software, Inc.	87-2519	10/16/87
(49) Apache Corporation, Apache Petroleum Company, L.P., Apache Petroleum Company, L.P.	87-2520	10/16/87
(50) Waste Management, Inc., Waste Systems, Inc., Waste Systems, Inc.	87-2446	10/19/87
(51) Cablevision Systems Corporation, Time Incorporated, GWC 42, Inc.	87-2482	10/19/87
(52) Cablevision Systems Corporation, Houston Industries Incorporated, GWC 42, Inc.	87-2483	10/19/87
(53) Donald J. Trump, Alexander's Inc., Alexander's Inc.	87-2532	10/19/87

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 87-25108 Filed 10-29-87; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on October 16 1987.

Social Security Administration

(Call Reports Clearance Officer on 301-594-5706 for copies of package)

1. Referral and Treatment Status of SSI Drug Addicts or Alcoholics—0960-0331—The information provided by this form is used by SSA to refer SSI recipients who are drug addicts or alcoholics to the appropriate State agency for treatment. The form is then completed by the State agency and returned to SSA. The affected public consists of cooperating State agencies. Respondents: State or local governments. Number of Respondents: 9,000; Frequency of Response: Occasionally; Estimated Annual Burden: 1,500 hours.

Desk Officer: Elana Norden

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-1238 for copies of package)

1. Blood Bank Inspection Checklist—0938-0170—Hospitals and clinical laboratories participating in Medicare must be in compliance with health and safety standards, these forms are used by State agency surveyors to comply with the standards. Respondents: State or local governments. Number of Respondents: 50; Frequency of Response: Annually; Estimated Annual Burden: 750 hours.

2. Chronic Renal Disease Medical Evidence Report—0938-0046—This data collection captures the specific medical information required to determine the Medicare eligibility of an end stage renal disease claimant. Respondents: Individuals or households, Businesses or other for-profit; Small businesses or organizations. Number of Respondents: 45,000; Frequency of Response: Annually; Estimated Annual Burden: 11,250 hours.

3. Preclearance: 1988 Physicians Practice Costs and Incomes Survey—NEW—This information collection will consist of a survey of randomly selected non-Federal physicians and will collect information on physicians practice costs, income and practice patterns. Respondents: Individuals or households. Number of Respondents: need number; Frequency of Response: need number; Estimated Annual Burden: 1 hour.

4. Statement of Deficiencies and Plan of Correction—0938-0391—This form provides information regarding deficiencies noted during periodic facility certification surveys. Respondents: State or local governments, Businesses or other for-profit. Number of Respondents: 50; Frequency of Response: Occasionally; Estimated Annual Burden: 30,000 hours.

5. Comprehensive Outpatient Rehabilitation Facities (CORF) Survey Forms and Information Collection Requirements—0938-0267—In order to participate in the Medicare, Medicaid Program as a CORF providers must meet Federal conditions of participation. These forms are used to record compliance with the conditions and report it to HCFA. Respondents: State or local governments. Number of Respondents: 54; Frequency of Response: Annually; Estimated Annual Burder: 77,540 hours.

OMB Desk Officer: Allison Herron

Family Support Administration

(Call Reports Clearance Officer on 202-245-0652 for copies of package)

1. Report of Claims of Good Cause for Refusing to Cooperate in Establishing Paternity and Security Child Support—0970-0073—This form is used to monitor the administration of good cause clause and evaluate extensiveness and reasons for usage. Utilized by Congressional committees, State welfare departments, Administration and public and private research groups and media. Respondents: State and local governments. Number of Respondents: 54; Frequency of Response: Monthly; Estimated Annual Burden: 2,527 hours.

OMB Desk Officer: Elana Nordan

Public Health Services

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

National Institutes of Health

1. Follow-up Study of Human Growth Hormone Recipients—NEW—This study will locate past pituitary-derived growth hormone recipients for an epidemiological investigation to determine the overall incidence of Creutzfeldt-Jacob Disease and other potentially infectious, long-incubation, neurological diseases. The study will also enable assessment of the possibility of other medical complications and long-term outcome of treatment. Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Non-profit institutions. Number of Respondents: 2,737; Frequency of Response: Single-time; Estimated Annual Burden: 2,643 hours.

Centers for Disease Control

1. Comparison of Hearing Thresholds From Impulse and Continuous Noise Exposed Populations—NEW—this research study will examine whether workers exposed to a particular level of continuous noise experience more or less hearing loss than a group of workers exposed to the equivalent level of impulsive noise. Respondent male workers will complete a noise and medical history questionnaire, air-conduction audiometric test and otoscopic examination. Respondents: Individuals or households, Businesses or other for-profit. Number of Respondents: 68; Frequency of Response: One-time; Estimated Annual Burden: 143 hours.

2. Human Health Consequences of polybrominated Biphenyls (PBB) Contamination in Farms in Michigan—0920-0030—This is a study of the health effects of PBB-exposed persons in

Michigan with particular emphasis on cancer. Objectives include assessment of long-term and intermediate health effects; studies of PBB metabolism, excretion and storage; and establishment of a data base for further studies of interaction of PBB with the human body. Respondents: Individuals or households. Number of Respondents: 4,315; Frequency of Response: Annually; Estimated Annual Burden: 348 hours.

OMB Desk Officer: Shanna Koss

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

SSA: 301–594–5706
HCFA: 301–594–1238
PHS: 202–245–2100
FSA: 202–245–0652

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503. Attn: (name of OMB Desk Officer).

Dated: October 27, 1987.

Raffie Shahrigian,

Acting Deputy Assistant Secretary, Administrative and Management Services.

[FR Doc. 87–25206 Filed 10–29–87; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

[Docket No. 87D–0329]

Parametric Release of Terminally Heat Sterilized Drug Products Based on Current Good Manufacturing Practice Regulations in the Manufacture of Drug Products; Availability of Compliance Policy Guide

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of Compliance Policy Guide 7132a.13 entitled "Parametric Release-Terminally Heat Sterilized Drug Products." The Guide provides that certain parenteral drug products that are terminally heat sterilized may be released for distribution without end product testing when all of the requirements stated in the Guide are met and documented. The Guide provides procedures that manufacturers may use in complying with the current good manufacturing practice regulations for finished pharmaceuticals (21 CFR Part 211). The Guide does not preempt the requirements of Section 505 of the Federal Food, Drug, and Cosmetic Act. Approved supplements providing for parametric release are required for holders of new drug applications (21 CFR 314.70(b)).

ADDRESS: Requests for single copies of FDA Compliance Policy Guide 7132a.13 may be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the Branch in processing your requests.)

FOR FURTHER INFORMATION CONTACT: Terry Munson, Center for Drug Evaluation and Research (HFN–323), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8098.

SUPPLEMENTARY INFORMATION: FDA has prepared Compliance Policy Guide 7132a.13 "Parametric Release-Terminally Heat Sterilized Drug Products," to provide for the release for distribution of certain parenteral drug products without end product testing when all of the parameters stated in the Guide are met and documented.

Compliance Policy Guide 7132a.13 is available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Requests for single copies of Compliance Policy Guide 7132a.13 should refer to the docket number found in brackets in the heading of this document and should be submitted to the Dockets Management Branch.

This notice is issued under 21 CFR 10.85.

Dated: October 21, 1987.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–25193 Filed 10–29–87; 8:45 am]

BILLING CODE 4160–01–M

Public Health Service

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 52 FR 31088–89, August 19, 1987) is amended to reflect the following changes within the International Health Program Office: (1) Revision of the mission statement to reflect the transfer of global EIS activities from the Office of the Director, CDC, to the International Health Program Office, (2) revision of the functional statement for the Office of the Director to reflect changes in responsibilities, and (3) reorganization at the division-level.

Section HC–B, Organization and Functions, is hereby amended as follows:

1. Under the heading *International Health Program Office (HCG),* insert the following as item (5): "(5) promotes the development of national field epidemiologic training programs;" and renumber items (5) through (8) as (6) through (9).

2. Under the heading *Office of the Director (HCG1),* delete the statement in its entirety and substitute the following: (1) Manages, directs, and coordinates the activities of the International Health Program Office (IHPO); (2) provides leadership in development of IHPO policy, program planning, implementation, and evaluation; (3) coordinates CDC support for child survival activities funded by the Agency for International Development, the World Health Organization, and the United Nations International Children's Emergency Fund; (4) implements technical cooperation agreements authorized by the Agency for Intenational Development; (5) identifies need and resources for new initiatives and assigns responsibilities for their development; (6) ensures scientific and technical quality of IHPO programs; (7) provides administrative, editorial, information, and computer support services to IHPO.

3. After the title and functional statements for the *Office of the Director (HCG1),* delete in their entirety the titles and functional statements for the *Division of Evaluation and Research (HCG3)* and the *Division of Program Services (HCG5),* and add the following:

Division of International Liaison (HCG2) (1) Provides staff support to the Director, IHPO, and through the Director, IHPO, to the Assistant Director for International Health in carrying out overall direction and coordination of international activities throughout the CDC; (2) maintains regular liaison with the PHS Office of International Health and with other organizations concerned with international health; (3) provides liaison and coordination of CDC involvement with national and international agencies in response to natural or manmade crisis situations outside the United States, e.g.,

earthquakes, outbreaks of disease, famine/drought, and social disruptions; (4) provides liaison and coordination of CDC involvement with national and international agencies in response to non-emergency requests for assistance outside the United States, e.g., training and evaluation, participation in workshops, development of guidelines, etc.; (5) coordinates inter-Centers' activities carried out under selected working agreements between CDC, the Office of International Health, and the Agency for International Development; (6) coordinates the inter-agency agreement between the U.S. Peace Corps and CDC to develop and implement a Peace Corps Volunteer disease and health condition surveillance system; (7) provides for the reception, orientation, and scheduling of international visitors to the CDC, and coordinates their short- and long-term training as appropriate; (8) coordinates the special foreign currency program (Public Law 480) activities overseas; (9) provides staff support for CDC involvement in bilateral health agreements.

Division of Global EIS (HCG4) (1) Oversees continuation of ongoing Field Epidemiology Training Programs; (2) fosters development of similar programs in other countries; (3) coordinates CDC epidemiological training abroad, including development and provision of training materials from CDC for international training in epidemiology; (4) serves as a WHO Collaborating Center for Epidemiology Training, and oversees provisions of consultation to international agencies and other countries regarding epidemiological services and training, as appropriate, and upon request.

Division of Field Services (HCG6) (1) Provides consultation to, and participates with, other nations in disease prevention and control; (2) implements Agency for International Development funded child survival technical assistance including immunization, diarrheal disease control, and malaria control to developing countries; (3) provides administrative direction and support to IHPO staff assigned overseas.

Division of Technical Support (HCG7) (1) Develops and tests surveillance methodologies to identify and quantitate health status and disease problems in developing countries; (2) provides technical guidance to child survival activities in anthropology, epidemiology, health education, health economics and training; (3) identifies technical problems in management, strategy, implementation, monitoring, and/or evaluation for which operational research is needed; (4) plans, implements, analyzes, and disseminates operational research to solve identified problems in disease epidemiology, disease prevention, and disease control; (5) conducts research in health education and training to develop more effective implementation strategies; (6) serves as a technical resource on disasters to Division of International Liaison; (7) coordinates technical inputs of other Centers/Institute/Officers, e.g., Immunization Division, Center for Prevention Services, and Malaria Branch, Division of Parastitic Diseases, Center for Infectious Diseases, in IHPO-managed Agency for International Development programs.

October 15, 1987.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 87-25207 Filed 10-29-87; 8:45 am]

BILLING CODE 4160-18-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-87-1752]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission; (8) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Submission of Proposed Information Collection to OMB

Proposal: Supplemental Assistance for Facilities to Assist the Homeless.

Office: Policy Development and Research.

Description of the Need for the Information and its Proposed Use: This program, created by the Stewart B. McKinney Homeless Assistance Act, provides grants and interest-free advances to stimulate community-wide innovative efforts to assist homeless families and individuals. Proposals by state or local governments, urban counties, and nonprofit organizations for participation in the Supplemental Assistance for Facilities to Assist the Homeless will be solicited.

Form Number: None.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Response: Single-Time.

Estimated Burden Hours: 25,200.

Status: New.

Contact: Sarajane R. Karadbil, HUD, (202) 755-5537; John Allison, OMB, (202) 395-6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 20, 1987.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Supportive Housing Demonstration Program: Notice of Proposed Rule FR-2385.

Office: Housing.

Description of the Need for the Information and its Proposed Use: This program is necessary to allow HUD to determine the eligibility of private nonprofit organizations or governmental entities to receive funding under the demonstration program. It is needed to assess the relative capability of these organizations to operate housing and supportive services for the homeless population to be served.

Form Number: None.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Response: On Occasion.

Estimated Burden Hours: 12,375.

Status: Revision.

Contact: Lawrence Goldberger, HUD, (202) 755-5720; John Allison, OMB, (202) 395-6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 20, 1987.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Mortgagee's Application for Partial Settlement (Multifamily Mortgage).

Office: Administration.

Description of the Need for the Information and its Proposed Use: The information is needed to supply information so that a partial cash settlement can be processed immediately. The purpose of the partial settlement is to place most of the cash settlement proceeds in the hands of the mortgagee immediately upon conveyance of title or assignment of the mortgage.

Form Number: HUD-2537.

Respondents: Businesses or Other For-Profit.

Frequency of Response: On Occasion.

Estimated Burden Hours: 50.

Status: Extension.

Contact: Terry L. Bowie, HUD, (202) 755-6448 John Allison, OMB, (202) 395-6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 27, 1987.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Request for Payment for Labels, Mobile Home Monthly Production Report, Refunds Due Manufacturer, and Adjustment Report.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The National Manufactured Home Construction and Safety Standards Act, 42 U.S.C. 5400 et. seq., authorizes HUD to promulgate and enforce reporting standards for the production of manufactured housing. HUD uses these forms to calculate and collect monitoring inspection fees for manufacturing housing units.

Form Number: Specification Forms 301 and 302.

Respondents: Businesses or Other For-Profit.

Frequency of Respondents: On Occasion.

Estimated Burden Hours: 8,899.

Status: Extension.

Contact: Stuart I. Margulies, HUD, (202) 755-6584 John Allison, OMB, (202) 395-6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Dated: October 27, 1987.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Request for Pre-Application Analysis Land Development Title X.

Office: Housing.

Description of the Need for the Information and its Proposed Use: The form requests a pre-application conference to discuss future application for mortgage insurance under Title X of the National Housing Act. It assists HUD in determining whether the proposed land development meets with HUD requirements.

Form Number: HUD-3550.

Respondents: Businesses or Other For-Profit.

Frequency of Response: On Occasion.

Estimated Burden Hours: 550.

Status: Extension.

Contact: Edwin W. Baker, HUD, (202) 755-6720 John Allison, OMB (202) 395-6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 27, 1987.

John T. Murphy,

Director, Information Policy and Management Division.

[FR Doc. 87-25271 Filed 10-29-87; 8:45 am]

BILLING CODE 4210-01-M

Office of the Secretary

[Docket No. D-87-854; FR-2373]

Delegation of Authority

AGENCY: Office of the Secretary, HUD.

ACTION: Delegation of authority to approve production or disclosure of HUD materials or information in 24 CFR Part 15, Subpart H.

SUMMARY: This delegation of authority designates the officials who may exercise the Secretary's authority to approve production of HUD materials in response to subpoenas and other demands under 24 CFR Part 15, Subpart H, which became effective on May 20, 1987, 52 FR 12159.

EFFECTIVE DATE: October 23, 1987.

FOR FURTHER INFORMATION CONTACT: Carolyn B. Lieberman, Deputy General Counsel (Operations), Room 10216, (202) 755-7250, Department of Housing and Urban Development, 451 7th Street, SW. Washington, DC 20410. (This is not a toll-free number.)

The Delegation of Authority published on July 24, 1987 at 52 FR 27859 is amended by inserting "1." before the last paragraph contained therein and adding the following:

2. In response to subpoenas or demands of courts or other authorities, pursuant to the regulation set forth in 24 CFR Part 15, Subpart H:

a. Each Associate General Counsel is authorized to approve the release of documents by HUD Headquarters employees for those programs for which the Associate provides legal advice.

b. Each Regional Counsel is authorized to approve the release of documents by HUD employees within the territorial jurisdiction of his region.

Authority: Sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Dated: October 23, 1987.

Samuel R. Pierce, Jr.

Secretary.

[FR Doc. 87-25247 Filed 10-29-87; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Proposed Transfer of Operation and Maintenance of Colorado-Big Thompson Project Facilities to the Northern Colorado Water Conservancy District

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to negotiate agreement for transfer of operation and maintenance of East Slope project facilities.

SUMMARY: In accordance with the procedures established by the Department of the Interior concerning public participation for contract negotiations, the Bureau of Reclamation (Bureau) announces its intent to initiate negotiations with the Northern Colorado Water Conservancy District (District) for transferring the operation and maintenance of Adams Tunnel and all East Slope facilities of the Colorado-Big Thompson (C–BT) Project from the Bureau to the District.

The C–BT Project, located in northern Colorado, diverts and stores water from the Colorado River and its tributaries in western Colorado and transfers this water by transmountain diversion to the Eastern Slope and the South Platte River basin in northeastern Colorado for irrigation and municipal and industrial use. Hydroelectic power production is also a feature of that project. The project was authorized by the Secretary of the Interior and approved by the President on December 23, 1937. The District is now operating and maintaining certain project facilities that were transferred to them under supplementary contracts dated September 10, 1956, and May 26, 1986.

Under the proposed transfer, the District would operate and maintain all facilities including the power facilities in a manner mutually acceptable to the Bureau of Reclamation and the District. The District and the Bureau will share equally in the operation, maintenance, and replacement (OM&R) costs for the transferred joint-use facilities. The United States will retain all power revenues and provide funds for all OM&R costs for the power facilities.

DATES: Meetings scheduled to discuss terms and conditions of the proposed agreement will be announced in advance and will be open to the public as observers.

FOR FURTHER INFORMATION CONTACT: Requests for information should be addressed to Mr. Raymond Willms, Project Manager, Bureau of Reclamation, Eastern Colorado Projects Office, P.O. Box 449, Loveland, Colorado 80539, telephone (303) 667–4410.

Date: October 26, 1987.

C. Dale Duvall,

Commissioner.

[FR Doc. 87–25115 Filed 10–29–87; 8:45 am]

BILLING CODE 4310–09–M

National Park Service

Acadia National Park, Bar Harbor, ME; Acadia National Park Advisory Commission; Meeting; Correction

On Friday, October 23, 1987, in Vol. 52, No. 205, on page 39713, first paragraph, lines six and seven that reads: "Commission will be held Friday, November 13, 1987.". Change line six and seven to read as follows: "Commission will be held Monday, November, 16, 1987.".

The second paragraph, first line which reads ". . . was reestablished" should be changed to read ". . . was established", second and third lines which reads ". . . Pub. L. 99–349, Amendment 24" should be changed to read ". . . Pub. L. 99–420 § 103".

Russell K. Olsen,

Federal Register Liaison Officer.

[FR Doc. 87–25122 Filed 10–29–87; 8:45 am]

BILLING CODE 4310–70–N

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Investment Opportunity

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan for the Government of Portugal as part of A.I.D.'s development assistance program. The proceeds of this loan will be used to finance shelter projects for low income families in Portugal. The Government of Portugal has authorized A.I.D. to request proposals from eligible investors. The name and address of representative of the Borrower to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

Government of Portugal

Project: 150–HG–004A–$12,500,000

Attention: Dr. J. Coutinho Pais, President, Instituto Nacional de Habitacao, Av. Columbano Bordalo Pinheiro, 5, 1093 Lisboa Codex, Portugal, *Telephone:* 726–2608 or 726–4944, *Telex:* 64641 INH P

Interested investors should telegram their bids to the Borrower's repesentative on November 12, 1987 but no later than 10:00 a.m. New York Time. Bids should remain open until 5:00 p.m. New York time on November 13, 1987. Copies of all bids should be simultaneously sent to the following addresses:

Mr. David Leibson, Housing Officer, Embaixada dos Estados Unidos, Av. das Forcas Armadas, 1507 Lisboa Codex, Telex: 12528 AMEMB P, Telephone: 726–6600 or 726–8880

Agency for International Development, Michael G. Kitay, Herbert T. McDevitt, GC/PRE, Room 3208 N.S., Washington, D.C. 20523, Telex No.: 892703 AID WSA, Telefax No. 202/647–1805 (preferred communication)

Each proposal should consider the following terms:

(a) *Amount:* U.S. $12.5 million.

(b) *Term:* Up to 30 years.

(c) *Grace Period on Principal:* 10 years with repayment amortizing gradually over the remaining life of the loan.

(d) *Interest Rate:* Proposals will be made on the basis of fixed or variable rate or variable rate with Borrowers option to convert to fixed rate.

(e) *Draw Down:* Net proceeds from borrowing should be disbursed to Borrower upon signing.

(f) *Prepayment:* Proposals should include the possibility of partial or total prepayment of the loan by Borrower, if pricing is not materially affected.

(g) *Fees:* Payable at closing from proceeds of loan.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. The lender and A.I.D. shall enter into a Contract of Guaranty, covering the loan. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreement between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in Section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose

share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate establishment from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from: Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, Room 6212 N.S., Washington, DC. 20523, Telephone: (202) 647–9082.

Mario Pita,

Deputy Director, Office of Housing and Urban Programs.

Date: October 27, 1987.

[FR Doc. 87–25245 Filed 10–29–87; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

[No. MC–F–18728]

Motor Carriers; Chromalloy American Corp.; Control; SCNO Barge Lines, Inc.

ACTION: Notice of water, motor property, and motor passenger carrier control application under 49 U.S.C. 11343.

SUMMARY: By application under 49 U.S.C. 11343, Chromalloy American Corporation (Chromalloy), a wholly owned non-carrier subsidiary of Sequa Corporation (Sequa), itself a publicly held non-carriers, seeks approval to acquire control of SCNO Barge Lines, Inc. (SCNO) (W–431 and MC–168908), a water and motor property carrier, through stock ownership of SCNO's non-carrier parent, S.C.N.O., Inc.

DATE: Comments are due November 19, 1987.

ADDRESSES: Send comments to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

and

2. Applicant's representatives: Richard H. Streeter, Barnes & Thornburg, 1815 H. Street NW., Suite 800, Washington, DC 20006

and

Keith G. O'Brien, Wheeler & Wheeler, 1729 H Street NW., Washington, DC 20006

Comments should refer to Docket No. MC–F–18728.

FOR FURTHER INFORMATION CONTACT: Ardith M. Horne (202) 275–1764, TDD Services for hearing impaired: (202) 275–1721.

SUPPLEMENTAL INFORMATION: Chromalloy, a subsidiary of Sequa [1], seeks approval to acquire control of SCNO. Chromalloy already controls through stock ownership water and motor property carrier Valley Transportation, Inc. (Valley) [2] (W–78, W–1371, and MC–172551), and motor passenger carriers Orange Coast Sightseeing Company (Orange Coast) (MC–167173) and American Transit Corp. dba Huskie Line (Huskie) (MC–168387).[3]

These common control relationships were previously approved by the Commission in No. MC–F–18012. Valley is a water common and contract carrier authorized to operate throughout the inland waterway system, and a motor contract carrier authorized to transport general commodities nationwide under contract with specific shippers. Orange Coast is a motor common carrier of passengers, in charter and special operations, beginning and ending at points in Los Angeles and Orange Counties, CA, and extending to points in the United States (except Hawaii). Huskie is a motor common carrier of passengers, in charter and special operations, beginning and ending at points in Illinois and extending to points in the Untied States (except Hawaii). SCNO is a water contract carrier authorized to operate throughout the inland waterway system. It also holds motor contract carrier authority to transport general commodities having a prior or subsequent movement by water, between points in the 48 continuous States.

Note: By decision of October 23, 1987, applicants have been granted a waiver from compliance with certain filing requirements at 49 CFR 1182.1(c)(2), 1181.12(i) through (m), 1181.12(p), 1181.13(a), and of Form OP–F–45, Items A–1 through A–8 of Appendix A. The requirement at 49 CFR 1181.15(b) was modified at applicant's request. In addition, for good cause shown, the comment period in this proceeeding was reduced form 45 to 20 days. However, if any interested person informs the Commission that it needs more time to protest the application, we will consider at that time extending the comment period.

Noreta R. McGee,

Secretary.

[FR Doc. 87–25250 Filed 10–29–87; 8:45 am]

BILLING CODE 7035–01–M

[1] Formerly known as Sun Chemical Corporation. Sequa has other non-carrier subsidiaries, including Casco Investors Corporation, Casco Products Corporation, Materiels Equipements Graphiques, Sun France, Inc., and Sun Drucksarden A.G.

[2] Formerly known as Cro-Marine Transport, Inc.

[3] Chromalloy also controls several unnamed carriers engaged in exempt and unregulated transportation on the inland waterway system; Sabine Towing & Transportation Co., Inc., an operator of U.S. flag tankers and oil barges between U.S. ports, in U.S. intracoastal waters and the Caribbean basin; American Transit Corp., a company that provides transit management services under contract with municipal and other local governmental bodies; and Hausman Bus Sales and Parts Company, which sells new and used buses to local governmental and other users.

Motor Carriers; Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Sealed Air Corporation, Park 80 Plaza East, Saddle Brook, New Jersey 07662.

2. Wholly-owned subsidiaries which will participate in the operations, and states or provinces of incorporation:

Sealed Air of Canada Limited, Ontario
Sealed Air Trucking, Inc., Delaware
Static Inc., Delaware
Jiffy Packaging Corp., Delaware.

Noreta R. McGee,

Secretary.

[FR Doc. 87–25163 Filed 10–29–87; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31125]

Railroad Operation; Delaware and Hudson Railway Co.; Lease Exemption; Springfield Terminal Railway Co.; Exemption

Delaware and Hudson Railway Company (D&H) and Springfield Terminal Railway Company (ST) filed a notice of exemption for D&H to lease to ST the following lines in New York and Pennsylvania:

(a) The Freight Main Line between milepost M10.35 (CPF10) and milepost A142.43 (CPBD) (including all tracks in Bevier Street Yard and Liberty Square Yard and including the shop facilities at Oneonta and Mechanicville), a distance of approximately 137.43 miles;

(b) The Washington Main Line between milepost A142.43 (CPBD) and milepost S0.00 (Kase) (including all tracks in East Binghamton Yard and including the shop facilities at East Binghamton), a distance of approximately 141.2 miles;

(c) The Canadian Connector between milepost M10.98 (CPF11) and milepost

S7.34 (CPC7), a distance of approximately 2.6 miles;

(d) The Canadian Main Line between milepost M13.26 (CPF13) and milepost A192.08 (Rouse Point Junction) (including all tracks in Fort Edward Yard and Saratoga Yard), a distance of approximately 169.1 miles;

(e) The Ausable Branch between a connection with the Canadian Main Line at milepost A162.92 (South Junction) and Ausable Forks, a distance of approximately 1.6 miles;

(f) The Freydenburg Falls Branch between Otis Junction and End of Track, a distance of approximately 2.23 miles;

(g) The former Rutland Branch between a connection with the Canadian Main Line at milepost A77.4 (Whitehall) and End of Track, a distance of approximately 0.24 miles;

(h) The Second Subdivision between CPF–26 (milepost A–26.3) and Albany (milepost 0.00);

(i) The Third Subdivision between Albany (milepost 0.00) and Mechanicville (milepost A–19.13), including the Waterford Branch, the Breaker Island Branch, and the Water Street Branch and including the shop facilities at Colonie;

(j) All main tracks owned by D&H in the territory between milepost A–19.13 and milepost 19.35 (CPF10);

(k) The Green Island Branch between COP–6 (milepost A–6) and End of Track, a distance of approximately 3.06 miles;

(l) The Adirondack Branch between a connection with the Canadian Main Line at milepost A–38.2 (CPC 38) and the end of D&H ownership at milepost A–94.96, a distance of approximately 56.76 miles;

(m) The Lake George Branch between a connection with the Canadian Main Line at milepost 55.87 (Fort Edward) and milepost A–62.91 (end of track), a distance of approximately 7.04; and

(n) The Coolidge Branch between a connection with the Lake George Branch at milepost 59.57 and milepost 61.86 (end of track), a distance of approximately 2.29 miles.

D&H and ST are wholly-owned subsidiaries of Guilford Transportation Industries, Inc. (GTI), which also owns the Boston and Maine Corporation (B&M) and the Maine Central Railroad Company (MEC). As a result of the proposed transaction, it is intended that ST will provide service as good as, or better than, service now provided.

Since D&H and ST are members of the same corporate family, the lease falls within the class of transactions that are exempt from the prior review requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(3). The carriers anticipate that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in competitive balance with carriers operating outside the corporate family.

Any employee affected by the lease transaction would normally be protected by the labor conditions set forth in *Mendocino Coast Ry., Inc.—Lease and Operate*, 354 I.C.C. 732 (1978), and 360 I.C.C. 653 (1980) (*Mendocino*). Any employees affected by the trackage rights transactions would normally be protected by the labor conditions set forth in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978) (*Norfolk and Western*), as modified in *Mendocino, supra*, 360 I.C.C. 653 (1980). These conditions satisfy the statutory requirements of 49 U.S.C. 10505(g)(2) for the respective transactions. However, in a decision in Finance Docket No. 30965, *Delaware and Hudson Railway Company—Lease and Trackage Rights Exemption—Springfield Terminal Railway Company* (not printed), served May 18, 1987, the Commission set for modified procedure a series of notices filed by the GTI carriers because labor interests raised issues related to the level of employee protection for the transactions. The Commission asked the parties to that proceeding to address several issues and present additional evidence, including similar existing and future notices and transactions, such as this one, involving the GTI carriers. Oral argument in that proceeding was set for October 21, 1987.

Since the May 18, 1987 decision, the Commission has published in the **Federal Register** several related notices of exemption (Finance Docket Nos. 31015, 31023, 31086, 31103 and 31115) by various GTI carriers and indicated that the underlying transactions will be considered in the Finance Docket No. 30965 proceeding. The Commission will issue a separate decision regarding the status of this notice in that proceeding.

If, prior to the Commission's determination of the appropriate level of labor protection for these GTI transactions, D&H consummates this transaction and provides employees with *Mendocino* protection, it does so at its own risk. Should the Commission subsequently determine that a higher level of protection is required, D&H will be required to provide employees with that greater protection.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of petitions to revoke will not stay the transaction.

Decided: October 14, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–24790 Filed 10–29–87; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30918]

Railroad Operations; KNRECO, Inc., d/b/a Keokuk Junction Railway, Acquisition of Incidental Trackage Rights Over The Atchison, Topeka & Santa Fe Railway Co.

In Finance Docket No. 30918, *KNRECO, Inc., d/b/a Keokuk Junction Railway Acquisition and Operation Exemption—The Atchison, Topeka and Santa Fe Railway Company* (not printed), served January 9, 1987 (*KNRECO Acquisition*), KNRECO, Inc., d/b/a Keokuk Junction Railway (KJ) filed a notice of exemption to acquire and operate The Atchison, Topeka and Santa Fe Railway Company (ATSF) line between La Harpe, IL (milepost 195.5) and Keokuk, IA (milepost 223.3). The notice of exemption was published in the **Federal Register** on January 9, 1987.[1] Subsequently, KJ and ATSF entered into a car haulage agreement allowing KJ to move traffic over a connecting ATSF line. In *KNRECO Acquisition, supra*, we considered the car haulage agreement to be a trackage rights agreement. However, we found that the trackage rights are incidental to KJ's acquisition of the ATSF line, and that the acquisition, by KJ, of incidental trackage rights falls under the class exemption of 49 CFR 1150.31(a)(4). This supplemental notice acknowledges the applicability of the § 1150.31(a)(4) class exemption.

Any comments must be filed with the Commission and served on John D. Heffner or Susan M. Milligan, Gerst & Heffner, 1133 15th Street NW., Suite 1100, Washington, DC 20005.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: October 22, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman

[1] The publication, at 52 FR 871, erroneously showed Keokuk at milepost 233.3 rather than milepost 223.3.

Lamboley dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 87-25164 Filed 10-29-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Termination of Final Judgment; Simplex Time Recorder Co.

Notice is hereby given that Simplex Time Recorder Co. (Simplex) has filed with the United States District Court for the District of Massachusetts a motion to terminate the Final Judgment in *United States* v. *Simplex Time Recorder Co.*, Civil No. 63-878-F; and the Department of Justice (Department), in a stipulation also filed with the Court, has consented to termination of the judgment, but has reserved the right to withdraw its consent pending receipt of public comments. The complaint in this case (filed on October 28, 1963) alleged that Simplex has attempted to monopolize the manufacture and sale of time equipment in the United States. The judgment (entered on November 29, 1963) enjoined Simplex from: (1) Acquiring any part of the stock or assets of or any financial interest in any person engaged in the time equipment business in the United States; (2) offering to sell time equipment at unreasonably low prices in an effort to eliminate competition; (3) approaching key personnel employed by any person engaged in the time equipment business for the purpose of hiring without first receiving a letter requesting employment; (4) issuing any statement that any person engaged in the sale of time equipment was going out of business unless such fact was known to the public; and (5) refusing to sell certain time equipment parts to others engaged in the time equipment business.

The Department has filed with the Court a memorandum setting forth the reasons why the Department believes that termination of the judgment would serve the public interest. Copies of the complaint and final judgment, Simplex'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 motion will be available for inspection at Room 3233, Antitrust Division, Department of Justice, 10th 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 Massachusetts, 1525 Post Office & Counthouse Building, Boston, Massachusetts 02109. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decree to the Department. Such comments must be received within the sixty (60) day period established by Court order, and will be filed with the Court.

Comments should be addressed to John J. Hughes, Chief, Middle Atlantic Office, Antitrust Division, Department of Justice, 11400 United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania 19106 (Telephone: (215) 597-7405).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 87-25160 Filed 10-29-87; 8:45 am]

BILLING CODE 4410-01-M

Pursuant to National Cooperative Research Act; Feasibility Study and Development of Reliability Based Wood Design Manual; American Institute of Timber Construction et al.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.*, written notice has been filed by the National Forest Products Association simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the indentities of the parties to the joint venture and (2) the nature and objectives of the 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 joint venture, and its general area of planned activities, are given below.

The parties to the venture are the American Institute of Timber Construction, American Plywood Association, Canadian Wood Council, Gang-Nail Systems, Inc., National Forest Products Association, Northeastern Lumber Manufacturers Association, Southern Forest Products Association, Timber Products Inspection, Inc., Truss Joist Corporation, Truss Plate Institute, Western Wood Products Association, and Weyerhaeuser Building Systems, Inc.

The purpose of the joint venture is to develop a plan to produce a reliability based design manual for wood incorporating load resistance factor design. It is anticipated that this plan, once established and approved by the participants, will be used in a future joint venture to actually prepare the new design manual. The objective of the overall effort is to provide engineers and architects with an alternative to the currently used allowable stress design method and to present the new design methodology in an easy to use published format.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 87-25161 Filed 10-29-87; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-18, 721]

Bender Bros. Sportswear, Inc., Bayonne, NJ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 27, 1987 applicable to all workers of Bender Bros. Sportswear, Incorporated, Bayonne, New Jersey. The Certification was published in the **Federal Register** on March 24, 1987 (52 FR 9364).

On the basis of additional information, the Office of Trade Adjustment Assistance reviewed the Certification. The additional information revealed that a few workers were laid off after the termination date of November 15, 1986 set in the Department's Certification. These workers were involved in selling the remaining inventory.

The intent of the certification is to cover all workers of Bender Bros. Sportswear, Incorporated who were affected by the closing of their Bayonne, New Jersey plant. The notice, therefore, is amended by providing a new termination date of December 15, 1986.

The amended notice applicable to TA-W-18, 721 is hereby issued as follows:

All workers of Bender Bros. Sportswear, Incorporated, Bayonne, New Jersey who became totally or partially separated from employment on or after November 20, 1985 and before December 15, 1986 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 19th day of October 1987.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 25220 Filed 10-29-87; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Kentucky:
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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about

January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 23rd day of October 1987.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 87-24928 Filed 10-29-87; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101(c) of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may modify the application of a mandatory safety standard to a mine if the Secretary determines either or both of the following: That an alternate method exists at the petitioner's mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard to the petitioner's mine will result in a diminution of safety to the affected miners.

Summaries of petitions received by the Secretary appear periodically in the **Federal Register.** Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons and a field investigation of the conditions at the petitioner's mine. The Secretary has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances the decisions are conditioned upon the petitioner's compliance with stipulations stated in the decision.

FOR FURTHER INFORMATION CONTACT: The petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations and Variances, MSHA, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Dated: October 23, 1987.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

AFFIRMATIVE DECISIONS ON PETITIONS FOR MODIFICATION

Docket No.	FR Notice	Petitioner	Reg affected	Summary of findings
M-84-263-C	51 FR 5452	Empire Energy Corporation	30 CFR 75.1002	Petitioner's proposal to use 4160 V.A.C. high-voltage cables to interconnect the transformer/controller with the shearer and each face conveyor motor with specific conditions in or inby the last open crosscut or within 150 feet of pillar workings considered acceptable alternate method. Granted with conditions.
M-85-119-C	51 FR 36491	R.S. and W. Coal Co	30 CFR 75.1714	Petitioner's proposal to use filtertype self-rescuers in lieu of self-contained self-rescuers considered acceptable alternate method. Granted with conditions.
M-85-202-C	51 FR 10697	River Processing, Inc	30 CFR 75.1710	Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted.
M-85-207-C	51 FR 10697	Peabody Coal Company	30 CFR 75.305	Petitioner's proposal to establish air measurement stations where air quality and quantity will be measured by a certified person considered acceptable alternate method. Granted with conditions.
M-86-9-C	51 FR 8377	International Anthracite Corporation	30 CFR 75.326	Petitioner's proposal to use the belt air to ventilate the working faces and to install a low-level carbon monoxide detection system with specific conditions, in all belt entires used as intake aircourses considered acceptable alternate method. Granted with conditions.
M-86-10-C	51 FR 8378	International Anthracite Corporation	30 CFR 75.1103-4(a)	Petitioner's proposal to install a continuous carbon monoxide (CO) detection system in all belt haulage entries used to ventilate the working places with specific conditions considered acceptable alternate method. Granted with conditions.
M-86-11-C	51 FR 8378	International Anthracite Corporation	30 CFR 75.1105	Petitioner's proposal to ventilate the working faces and section power center with belt haulage air and to install a continuous monitoring system for carbon monoxide and methane considered acceptable alternate method. Granted with conditions.
M-86-19-C	51 FR 12944	Drummond Company, Inc	30 CFR 75.1710	Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted in part.
M-86-26-C	51 FR 13115	U.S. Steel Mining Company Inc	30 CFR 75.326	Petitioner's proposal to use the air from the belt entires to ventilate the active working places and to install a low-level carbon monoxide (CO) detection system using a CO monitor with specific safeguards and conditions considered acceptable alternate method. Granted with conditions.
M-86-44-C	51 FR 18970	Pontiki Coal Corporation	30 CFR 75.1710	Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted in part.
M-86-50-C	51 FR 12944	Consolidated Coal Company	30 CFR 75.1105	Petitioner's proposal to enclose the electrical installation in a fireproof structure and to install an automatic dry chemical fire suppression device activated by heat sensors considered acceptable alternate method. Granted with conditions.
M-86-57-C	51 FR 24592	White County Coal Corporation	30 CFR 75.1700	Petitioner's proposal to plug and mine through abandoned wells penetrating the coal beds considered acceptable alternate method. Granted with conditions.
M-86-70-C	51 FR 21992	Old Ben Coal Company	30 CFR 75.1002	Petitioner's proposal to install a longwall mining unit with cables and equipment designed to conduct 2400 volts A.C. to be located and used inby the last open crosscut and within 150 feet of pillar workings, with specific equipment and conditions, considered acceptable alternate method. Granted with conditions.
M-86-74-C	51 FR 21992	U.S. Steel Mining Company, Inc	30 CFR 75.506	Use of a metal retainer in lieu of a padlock for the purpose of locking battery plugs to machine-mounted battery-powered machines considered acceptable alternate method. Granted with conditions.
M-86-75-C	51 FR 26956	H. & B. Coal Company Inc	30 CFR 75.1710	Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted in part.
M-86-83-C	51 FR 2309	Neumeister Coal Company	30 CFR 75.1405	Petitioner's proposal to couple the mine cars with a pin in the center of a male and female hitch which can be evenly reached from the side of the car considered acceptable alternate method. Granted.

AFFIRMATIVE DECISIONS ON PETITIONS FOR MODIFICATION—Continued

Docket No.	FR Notice	Petitioner	Reg affected	Summary of findings
M-86-96-C	51 FR 33310	Clinchfield Coal Company	30 CFR 75.326	Petitioner's proposal to use the belt entry as an intake airway and to install a low-level carbon monoxide (CO) detection system in all belt entries used to ventilate the working places with specific conditions, considered acceptable alternate method. Granted with conditions.
M-86-101-C	51 FR 26774	Gateway Coal Company	30 CFR 75.305	Petitioner's proposal to establish an air measuring station where a certified person would make weekly examinations of the ventilation and methane considered acceptable alternate method. Granted with conditions.
M-86-104-C	51 FR 36611	Hegins Mining Company	30 CFR 75.1714	Petitioner's proposal to use filtertype self-rescuers in lieu of self-contained self-rescuers considered acceptable alternate method. Granted with conditions.
M-86-106-C	51 FR 26957	12 Vein Coal Company	30 CFR 75.1400	Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.
M-86-108-C	51 FR 33310	Adkins Brothers Corporation	30 CFR 75.503	Use of a spring-loaded locking device in lieu of a padlock for the purpose of locking battery plugs to machine-mounted battery-powered machines considered acceptable alternate method. Granted with conditions.
M-86-111-C	51 FR 28906	Amherst Coal Company	30 CFR 75.1710	Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted.
M-86-117-C	51 FR 31988	Consolidation Coal Company	30 CFR 75.1105	Petitioner's proposal to house the rectifier in sealed fireproof enclosures with steel doors with a dry powder chemical fire extinguisher mounted through the top covers of the rectifier considered acceptable alternate method. Granted with conditions.
M-86-118-C	51 FR 33820	Navasota Mining Company Inc.	30 CFR 77.216.3(a)	The Gibbons Creek Lignite Mine ponds serve as diversion and sediment ponds for undisturbed, disturbed and reclaimed areas. Petitioner's proposal to inspect the ponds on a monthly basis in lieu of every seven days considered acceptable alternate method. Granted with conditions.
M-86-119-C	51 FR 30142	The NACCO Mining Comany	30 CFR 75.305	Petitioner's proposal to establish input and output air measurement stations where methane, air quality, and air quantity readings would be taken by a certified person considered acceptable alternate method. Granted with conditions.
M-86-120-C	51 FR 33821	Quarto Mining Company	30 CFR 75.1002	Petitioner's proposal to use high-voltage (4,160 volt) cables to supply power to permissible longwall face equipment in or inby the last open crosscut with specific equipment and conditions considered acceptable alternate method. Granted.
M-86-121-C	51 FR 40531	Olaf Coal Company	30 CFR 75.301	Proposed airflow reduction, which would maintain a safe and healthful atmosphere, considered acceptable alternate method. Granted with conditions.
M-86-122-C	51 FR 33818	A. & J. Coal Company	30 CFR 75.1405	The installation of automatic couplers on the track haulage cars would result in a diminution of safety to the miners affected due to the sharp radius curves in the track, the undulating pitch of the slopes, the different types of small lightweight cars, and the systems of haulage. Granted with conditions.
M-86-123-C	51 FR 40531	Canada Coal Company, Inc.	30 CFR 75.900	Petitioner's proposal to use a vacuum contactor of no less interrupting capacity than that provided by the circuit breaker to obtain undervoltage protection in lieu of circuit breaker considered acceptable alternate method. Granted with conditions.
M-86-124-C	51 FR 28906	Cimaron Minerals, Inc	30 CFR 75.1710	Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted with part.
M-86-125-C	51 FR 28907	Mine Hill Coal Company No. 50	30 CFR 75.301	Proposed airflow reduction, which would maintain a safe and healthful atmosphere, considered acceptable alternate method. Granted with conditions.
M-86-127-C	51 FR 33311	Jim Dandy Coals, Inc	30 CFR 75.503	Use of a spring-loaded locking device in lieu of a padlock for the purpose of locking battery plugs to machine-mounted battery-powered machines considered acceptable alternate method. Granted with conditions.
M-86-128-C	51 FR 33310	Black Thunder Coal Company	30 CFR 75.1400	Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.
M-86-131-C	51 FR 40532	Southern Ohio Coal Company	30 CFR 75.1002	Petitioner's proposal to locate trolley wires, tortley feeder wires, and high-voltage cables between 100 and 150 feet from longwall panels and to construct a row of permanent stoppings between longwall panels and any trolley wires, trolley feeder wires, and high-voltage cables located between 100 and 150 feet from longwall panels, with specific equipment and conditions, considered acceptable alternate method. Granted with conditions.
M-86-132-C	51 FR 40533	Southern Ohio Coal Company	30 CFR 75.1002-(1)(a)	Petitioner's proposal to locate nonpermissible electric equipment between 100 and 150 feet from longwall panels and to construct a row of permanent stoppings between longwall panels, and trolley wires, trolley feeder wires, and high-voltage cables located between 100 and 150 feet from longwall panels, with specific equipment and conditions, considered acceptable alternate method. Granted with conditions.
M-86-134-C	51 FR 35708	U.S. Steel Mining Co. Inc	30 CFR 75.1103-4 (a)	Petitioner's proposal to use a low-level carbon monoxide (CO) detection system installed and operated with specific safeguards and conditions considered acceptable alternate method. Granted with conditions.
M-86-135-C	51 FR 41683	Kerr-McGee Coal Corporation	30 CFR 75.901	Petitioner's proposal to use a grounded wye system in lieu of a single phase system with specific equipment and conditions considered acceptable alternate method. Granted with conditions.
M-86-139-C	51 FR 45405	Little Buck Coal Company	30 CFR 75.1400	Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device considered acceptable alternate method. Granted with conditions.
M-86-141-C	51 FR 41443	Snyder Coal Company	30 CFR 75.1400	Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device considered acceptable alternate method. Granted with conditions.
M-86-142-C	51 FR 41442	New Lincoln Coal Company, Inc	30 CFR 75.1400	Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device considered acceptable alternate method. Granted with conditions.

AFFIRMATIVE DECISIONS ON PETITIONS FOR MODIFICATION—Continued

Docket No.	FR Notice	Petitioner	Reg affected	Summary of findings
M-86-144-C	51 FR 43104	Clinchfield Coal Company	30 CFR 75.1710	Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted.
M-86-145-C	51 FR 43102	Renegade Coal Company, Inc	30 CFR 75.1400	Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device considered acceptable alternate method. Granted with conditions.
M-86-147-C	51 FR 43105	Craft Coal Company	30 CFR 75.503	Use of a spring-loaded locaking device in lieu of a padlock for the purpose of locking battery plugs to machine-mounted battery-powered machines considered acceptable alternate method. Granted with conditions.
M-86-149-C	51 FR 43104	Buck Mountain Coal Company	30 CFR 75.1400	Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device considered acceptable alternate method. Granted with conditions.
M-86-150-C	51 FR 43103	B. and B. Coal Company	30 CFR 75.1400	Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device considered acceptable alternate method. Granted with conditions.
M-86-151-C	51 FR 43103	T. & T. Fuels, Inc	30 CFR 75.503	Use of a spring-loaded device in lieu of a padlock for the purpose of locking battery plugs to machine-mounted battery-powered machines considered acceptable alternate method. Granted with conditions.
M-86-152-C	51 FR 43103	B. and B. Coal Company	30 CFR 75.301	Proposed airflow reduction, which would maintain a safe and healthful atmosphere, considered acceptable alternate method. Granted with conditions.
M-86-155-C	51 FR 43105	Dunkard Mining Company	30 CFR 75.1103-4	Petitioner's proposal to use an early warning fire detection system using a low-level carbon monoxide detection system installed and operated with specific conditions in all belt entries used as intake aircourses, considered acceptable alternate method. Granted with conditions.

AFFIRMATIVE DECISIONS ON PETITIONS FOR MODIFICATION

Docket No.	FR Notice	Petitioner	Reg affected	Summary of findings
M-86-156-C	51 FR 43105	Dunkard Mining Company	30 CFR 75.326	Petitioner's proposal to use the belt air to ventilate the working faces and to install a low-level carbon monoxide detection system with specific conditions in all belt entries use as intake aircourses considered acceptable alternate method. Granted with conditions.
M-86-157-C	51 FR 43101	Golden Oak Mining Company	30 CFR 75.1710	Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted.
M-86-158-C	51 FR 36877	Webster County Coal Corporation	30 CFR 75.507-1(a)	Petitioner's proposal to use a 5 h.p., 460 V Franklin motor on a nonpermissible Jabsco submergible pump, model 777-001, to drain water from the sump beneath the air shaft with specific conditions, considered acceptable alternate method. Granted with conditions.
M-86-159-C	51 FR 36877	Preece Energy, Inc	30 CFR 75.1710	Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted in part.
M-86-160-C	51 FR 45404	Baisden Coal Company, Inc	30 CFR 75.1710	Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted in part.
M-86-162-C	51 FR 44390	Southern Ohio Coal Company	30 CFR 75.1103-4	Petitioner's proposal to use an early warning fire detection system using a low-level carbon monoxide detection system in lieu of a heat detection system considered acceptable alternate method. Granted with conditions.
M-86-179-C	51 FR 45961	T. and T. Energy, Inc	30 CFR 75.503	Use of a spring-loaded locking device in lieu of a padlock for the purpose of locking battery plugs to machine-mounted battery-powered machines considered acceptable alternate method. Granted with conditions.
M-86-185-C	51 FR 45405	Mon River Mining Company, Inc	30 CFR 75.503	Use of a spring-loaded locking device in lieu of a padlock for the purpose of locking battery plugs to machine-mounted battery-powered machines considered acceptable alternate method. Granted with conditions.
M-86-199-C	51 FR 1399	Eastern Associated Coal Corporation	30 CFR 75.1701	Petitioner's proposal to drill one long rib hole, which will allow the completion of the entry development with no intermediate equipment moves as the entry is roof bolted off the mining machine, and to drill an additional hole in the rib to maintain the hole minimum of 14.2 feet inside the rib at all times considered acceptable alternate method. Granted.
M-86-208-C	51 FR 47321	Clinchfield Coal Company	30 CFR 75.1710	Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted.

[FR Doc. 87-25219 Filed 10-29-87; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-87-187-C]

Arch of Kentucky, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Arch of Kentucky, Inc., P.O. Box 787, Lynch, Kentucky 40855 has filed a petition to modify the application of 30 CFR 77.803 (fail safe ground check circuits on high-voltage resistance grounded systems) to its Owl No. 1 Mine (I.D. No. 15-16011), and its High Splint No. 2 Mine (I.D. No. 15-16084) both located in Harlan County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all high-voltage, resistance grounded systems include a fail safe ground check circuit or other no less effective device approved by the Secretary to monitor continuously the grounding circuit to assure continuity. The fail safe ground check circuit shall cause the circuit breaker to open when either the ground or ground check wire is broken.

2. As an alternate method, petitioner proposes that each transformer will be connected to the ground conductor by two separate grounds; the failure of either will have no effect on the continuity of the circuit. Each skid-mounted power center or circuit breaker will be connected to two visible grounds and one cabled ground; the failure of any two of which will have no effect on the continuity of the circuit.

3. Petitioner states that the proposed alternate method will provide the same

degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 30, 1987. Copies of the petition are available for inspection at that address.

Dated: October 20, 1987.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-25213 Filed 10-29-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-213-C]

B & S Enterprises; Petition for Modification of Application of Mandatory Safety Standard

B & S Enterprises, Box 536, Elkhorn City, Kentucky 41522 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 3 Mine (I.D. No. 15-16086) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The peitition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine is in the fireclay seam with ascending and descending grades, ranging from 44 to 50 inches in height.

3. Petitioner states that the use of cabs or canopies on the mine's electric face equipment would result in a diminution of safety to the miners affected because the cabs or canopies could strike and dislodge roof supports, would decrease the equipment operator's visibility and cause operator fatigue resulting from cramped sitting or operating positions.

4. For these reasons petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 30, 1987. Copies of the petition are available for inspection at that address.

Dated: October 19, 1987.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-25214 Filed 10-29-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-192-C]

Eagle Rock Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Eagle Rock Mining, Inc., P.O. Box 87, Iaeger, West Virginia 24844 has filed a petition to modify the application of 30 CFR 75.316 (ventilation system and methane and dust control plan) to its No. 2 Mine (I.D. No. 46-05629) located in McDowell County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the peititioner's statements follows:

1. The petition concerns the requirement that a ventilation system and methane and dust control plan and revisions thereof suitable to the conditions and the mining system of the coal mine be provided.

2. Petitioner seeks a modification of the application of that portion of the standard which requires a ventilation plan with bleeder entries in areas where pillars have been wholly or partially extracted.

3. As an alternate method, petitioner proposes to establish a mining system so that as each working section of the mine is abandoned, it can be isolated from the active workings of the mine with explosion proof seals or bulkheads. In support of this request, petitioner states that—

(a) Adequate face and escapeway ventilation will be maintained at all times to meet or exceed the minimum requirements;

(b) A minimum volume of 12,000 cubic feet per minute of air will be delivered to the intake end of the pillar line;

(c) Safe examination of the entire length of a bleeder system would expose the examiner to prolonged periods of duress while crawling;

(d) Maintaining the bleeder entries free of water, roof falls or other obstructions would subject miners to unwarranted hazards; and

(e) The establishment of a bleeder system would create an unnecessary loss of coal reserves at the mine.

4. Petitioner states the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 30, 1987. Copies of the petition are available for inspection at that address.

Dated: October 22, 1987.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-25215 Filed 10-29-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-215-C]

Quarto Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Quarto Mining Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Powhatan No. 4 Mine (I.D. No. 33-01157) located in Monroe County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns that portion of the standard which requires that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. Petitioner states that due to the ventilation scheme employed for the longwall panels at the mine, compliance with the standard is extremely difficult.

3. As an alternate method, petitioner states that—

(a) The electrical equipment will be housed in a fireproof structure, equipped with automatically closing fire doors activated by thermal devices with an activation temperature not greater than 165 degrees Fahrenheit. The fire doors will be designed to enclose all associated electrical components in a reasonably airtight enclosure in case of a fire or excessive temperature;

(b) A signal, activated by heat sensors, will be located so that it can be seen or heard by a responsible person;

(c) The electric equipment will be protected with thermal devices, or equivalent, designed and installed to interrupt all power circuits supplying electric equipment within the fireproof structure;

(d) An automatic fire suppression system will be installed and maintained in the structure;

(e) Flammable or combustible material will not be stored or allowed to accumulate in the structure;

(f) Firefighting equipment will be provided on the outside of the structure on the intake side;

(g) The electric equipment will be examined, tested, and maintained by a qualified person, and will not contain any flammable or combustible liquid, except that capacitors in electric equipment may contain up to a total of 3 gallons of combustible liquid;

(h) The area enclosing the structure will be examined daily for hazardous conditions. A record of the examinations will be kept in a book on the surface;

(i) Grounded-phase devices protecting three-phase circuits will be adjusted to remove incoming power at not more than 40 percent of the available ground fault current;

(j) All hydraulic oil will be approved as fire-resistant;

(k) Specific protective procedures, as outlined in the petition, will be provided for a rectifier used to supply a trolley system with parallel-connected rectifiers;

(l) An automatically reclosing circuit breaker installed in a rectifier that supplies a radial, stub-feed trolley system will be equipped with a load measuring device that prevents the circuit breaker from reclosing whenever the prospective load current exceeds 300 amperes;

(m) A battery charger supplied from a direct-current circuit will be provided with reverse-current protection; and

(n) A battery charger supplied from an alternating-current circuit will be provided with a device that will automatically disconnect the battery charger from the battery if the alternating-current supply is interrupted or if the charging current is terminated, unless the reverse direct-current is 0.2 percent or less of the starting rate of the battery charger.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 30, 1987. Copies of the petition are available for inspection at that address.

Dated: October 22, 1987.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-25216 Filed 10-29-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-196-C]

Southmountain Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Southmountain Coal Company, Inc., P.O. Box 950, Coeburn, Virginia 24230 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. 2 (I.D. No. 44-06335) located in Wise County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine ranges from 36 to 72 inches in height with extremely steep grades, rolling floor and roof. The floor and roof of the mine are sandstone, which will not allow cutting for more clearance.

3. Petitioner states that the use of cabs or canopies on the mine's electric face equipment would result in a diminution of safety to the miners affected because the equipment operator would have to lean out from under the cab or canopy, increasing the chances of an accident. The cabs or canopies would also obstruct the equipment operator's vision.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Person interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 30, 1987. Copies of the petition are available for inspection at that address.

Dated: October 19, 1987.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-25217 Filed 10-29-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-212-C]

Jim Walter Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Jim Walter Resources, Inc., P.O. Box C-79, Birmingham, Alabama 35283 has filed a petition to modify the application of 30 CFR 75.303 (preshift examination) to its Bessie Mine (I.D. No. 01-00328) located in Jefferson County, Alabama. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that within 3 hours immediately preceding the beginning of any shift, and before any miner in such shift enters the active workings of a coal mine, certified persons shall examine such workings and any other underground area of the mine. Each such examiner shall examine every working section in such workings and shall make tests in each such working section for accumulations of methane, and shall examine seals and doors to determine whether they are functining properly.

2. As an alternate method, petitioner proposes to install a monitoring station in a split of the ventilating air current to continuously monitor intake seals in lieu of examining them during preshift examination.

3. In support of this request, petitioner states that—

(a) A station capable of monitoring the methane and carbon monoxide level of the atmosphere will be located immediately down wind of the line of seals which are not to be examined;

(b) Readings of the ambient level of methane and carbon monoxide will be automtically transmitted to an attended surface location where there is two-way communication;

(c) An alarm will sound if either the methans level exceeds 0.25% or the carbon monoxide level exceeds 15 parts per million above the established ambient level for the mine. In the event the alarm signal is activated, a certified

person will inspect the affected area and appropriate action will be taken; and

(d) Seals will be examined for hazardous conditions on a weekly basis.

4. Seals are used to isolate areas that have been abandoned and/or pillared at various locations. Petitioner believes that constant monitoring of seals will insure that they remain intact.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 30, 1987. Copies of the petition are available for inspection at that address.

Date: October 22, 1987.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-25218 Filed 10-29-87; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Iowa State Standards, Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) by which the Regional Administrators for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On July 20, 1973, notice was published in the **Federal Register** (38 FR 19368) of the approval of the Iowa plan and the adoption of subpart J of Part 1952 containing the decision. Iowa was granted final approval under section 18(e) of the Occupational Safety and Health Act of 1970 on July 2, 1985.

The Iowa plan provides for the adoption of Federal standards (by reference after comments and public hearing). By letter dated August 13, 1987 from Walter H. Johnson, Deputy Labor Commissioner to Alonzo L. Griffin, Area Director, and incorporated as part of the plan, the State submitted State standards comparable to: Occupational Exposure to Ethylene Oxide; Labeling Requirements, 29 CFR 1910.1047 as published in the **Federal Register** (50 FR 41494 dated October 11, 1985) and Occupational Exposure to Cotton Dust; Final Rule, 29 CFR 1910.19, 1910.1000 and 1910.1043 as published in the **Federal Register** (50 FR 51173 dated December 13, 1985). These standards which are contained in Chapter 88 of the Code of Iowa (1983) were promulgated after public comment requested on March 26, 1986, hearing held on April 28, 1986 and resolution adopted by the Division of Labor Services on June 27, 1986 pursuant to Chapter 17a, Iowa Code. The standards were effective on August 20, 1986 and notice of their adoption was published by the State on July 16, 1986. The State also submitted State standards comparable to: Electrical Standards for Construction; Amendments, 29 CFR 1926.151, 1926.152, 1926.351, 1926.803, 1926.400, 1926.401, 1926.402, 1926.403, 1926.404, 1926.405, 1926.406, 1926.407, 1926.408, 1926.409–1926.415, 1926.416, 1926.417, 1926.431, 1926.432, 1926.433–1926.440, 1926.441, 1926.442–1926.448 and 1926.449 as published in the **Federal Register** (51 FR 25318 dated July 11, 1986). These standards which are contained in Chapter 88 of the Code of Iowa (1983) were promulgated after public comment requested on October 22, 1986, hearing held on November 13, 1986 and resolution adopted by the Division of Labor Services on April 17, 1987 pursuant to Chapter 17a, Iowa Code. The standards were effective on July 10, 1987 and notice of their adoption was published by the State on May 6, 1987. The State also submitted State standards comparable to: Occupational Exposure to Cotton Dust, Corrections and Information Collection Requirements Approval, 29 CFR 1910.1043 as published in the **Federal Register** (51 FR 24325 dated July 3, 1986); Occupational Exposure to Ethylene Oxide, Amendments, 29 CFR 1910.1047 as published in the **Federal Register** (51 FR 25053 dated July 10, 1986) and Commercial Diving Standard, Amendments, 29 CFR 1910.430 as published in the **Federal Register** (51 FR 33033 dated September 18, 1986). These standards which are contained in Chapter 88 of the Code of Iowa (1983) were promulgated after public comment requested on October 22, 1986, hearing held on November 12, 1986 and resolution adopted by the Division of Labor Services on May 12, 1987 pursuant to Chapter 17a, Iowa Code. The standards were effective on July 8, 1987 and notice of their adoption was published by the State June 3, 1987.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards it has been determined that the State standards are identical to the comparable Federal standards and should therefore be approved.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement along with the approved plan, may be inspected and copied during normal business hours at the following locations: Directorate of Federal/State Operations, Office of State Programs, Room N3700, 200 Constitution Avenue, NW., Washington, DC 20210; Office of the Regional Administrator, OSHA Room 406 Federal Office Building, 911 Walnut Street, Kansas City, Missouri 64106; and Division of Labor Services, 1000 E. Grand, Des Moines, Iowa 50319.

4. *Public participation.* Under 29 CFR 1953.2(c) of this Chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Iowa State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the comparable Federal standards and are therefore deemed to be at least as effective.

2. The standards were adopted in accordance with the procedural requirements of State law and further public participation and notice would be unnecessary.

This decision is effective this 30th day of October, 1987.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Kansas City, Missouri this 14th day of August 1987.

Roger A. Clark.

Regional Administrator.

[FR Doc. 87-25212 Filed 10-29-87; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 87-89]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on High Speed Transport.

DATE AND TIME: November 19, 1987, 9 a.m. to 5 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 647, Federal Office Building 10B, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Louis J. Williams, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2798.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. Special ad hoc review teams were formed to address specific topics. The Ad Hoc Review Team on High Speed Transport, chaired by Mr. Mark E. Kirchner, is comprised of 12 members. The meeting will be open to the public up to the seating capacity of the room (approximately 25 persons including the team members and other participants).

Type of Meeting: Open.

Agenda:

November 19, 1987

9 a.m.—Opening Remarks.
9:30 a.m.—Research Requirements.
10:30 a.m.—In-House Studies.
11:45 a.m.—Atmospheric Effects.
1:45 p.m.—Fuels.
3 p.m.—Review Team Executive Session.
5 p.m.—Adjourn.

Frank P. Sutherland, Jr.,

Director, Personnel Policy and Work Force Effectiveness Division.

October 26, 1987.

[FR Doc. 87-25104 Filed 10-29-87; 8:45 am]

BILLING CODE 7510-01-M

[Docket No. 87-88]

NASA Advisory Council (NAC), Space and Earth Science Advisory Committee (SESAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space and Earth Science Advisory Committee.

DATE AND TIME: November 18, 1987, 9:30 a.m.-5:30 p.m., November 19, 1987, 8:30 a.m.-5:30 p.m., November 20, 1987, 8:30 a.m.-12 Noon.

ADDRESS: NASA Headquarters, Room 226A, 600 Independence Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Alexander, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1656).

SUPPLEMENTARY INFORMATION: The NAC Space and Earth Science Advisory Committee will meet to review the Office of Space Science and Applications (OSSA) strategic planning: Objectives, guidelines, budgetary constraints, and Division Directors' goals and strategies. The group is chaired by Dr. Louis Lanzerotti and is composed of 32 members. The meeting will be open to the public up to the seating capacity of the room (approximately 60).

Type of Meeting: Open.

Agenda:

November 18, 1987

9:30 a.m.—Introductory Remarks.
9:45 a.m.—Status of OSSA Programs.
10:45 a.m.—OSSA Strategic Planning—Objectives, Guidelines, and the Role of SESAC.
1 p.m.—OSSA Strategic Planning—The Assumptions and the Process.
2 p.m.—OSSA Strategic Planning—Budgetary Constraints.
2:30 p.m.—OSSA Strategic Planning—Division Directors' Goals and Strategies: Earth Observations.
4 p.m.—OSSA Strategic Planning—Division Directors' Goals and Strategies: Space Physics.
5:30 p.m.—Adjourn.

November 19, 1987

8:30 a.m.—OSSA Strategic Planning—Division Directors' Goals and Strategies: Solar System Exploration.
9:45 a.m.—OSSA Strategic Planning—Division Directors' Goals and Strategies: Astrophysics.
11 a.m.—Space Station Update.
1:30 p.m.—NASA Advisory Council International Relations Study.
2:30 p.m.—Office of Aeronautics and Space Technology Program Update (Civil Space Technology Initiative and University Space Engineering Centers).
3:30 p.m.—Antarctic Ozone Program.
5:30 p.m.—Adjourn.

November 20, 1987

8:30 a.m.—Discussion of SESAC Statements and Recommendations.
10 a.m.—US/USSR Space Cooperation.
11 a.m.—1988 Planning and Wrap-up.
12 Noon—Adjourn.

October 22, 1987.

Frank P. Sutherland, Jr.,

Director, Personnel Policy and Work Force Effectiveness Division.

[FR Doc. 87-25105 Filed 10-29-87; 8:45 am]

BILLING CODE 7510-01-M

[Notice 87-90]

NASA Advisory Council (NAC), Space Applications Advisory Committee (SAAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Applications Advisory Committee, Informal Advisory Subcommittee on Information Systems.

DATE AND TIME: November 5, 1987, 8:30 a.m.-4:30 p.m.

ADDRESS: Capitol Gallery, Room 770, 600 Maryland Avenue SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Alexander, Code E, National Aeronautics and Space Administration, Washington, DC 20546, (202) 453-1410).

SUPPLEMENTARY INFORMATION: The Informal Advisory Subcommittee on Information Systems will meet to formulate the Subcommittee's plans and meeting schedule for 1988. The Subcommittee is chaired by Dr. George Ludwig and is composed of 3 members. The meeting will be closed from 3 p.m. to adjournment, to discuss and evaluate the qualifications of candidates being considered for membership on the subcommittee. Such discussions would invade the privacy of the individuals involved. Since this session will be concerned wtih matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting will be closed to the public

for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room (approximately 8 people). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Type of Meeting: Open—except for a closed session as noted in the agenda below.

Agenda:

November 5, 1987

8:30 a.m.—Plans and Expectations of the new Director of the Communications and Information Systems Division.

9:30 a.m.—Preparation of Information Systems Plan.

1:30 p.m.—Completion of the Information Systems Plan.

3 p.m.—Closed Session.

4:30 p.m.—Adjourn.

Frank P. Sutherland, Jr.,

Director, Personnel Policy and Work Force Effectiveness Division

October 26, 1987.

[FR Doc. 87-25106 Filed 10-29-87; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Design Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Individuals Section) to the National Council on the Arts will be held on November 17-18, 1987, from 9:00 a.m.-5:30 p.m. and on November 19, 1987, from 9:00 a.m.-3:30 p.m. in room M-14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on November 19, 1987 from 2:00 p.m.-3:30 p.m. The topics for discussion will be policy issues.

The remaining sessions of this meeting on November 17-18, 1987, from 9:00 a.m.-5:30 p.m. and on November 19, 1987, from 9:00 a.m.-2:00 p.m. are for the purpose of review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6), and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Yvonne M. Sabine,

Council and Panel Operations, National Endowment for the Arts.

October 26, 1987.

[FR Doc. 87-25133 Filed 10-29-87; 8:45 am]

BILLING CODE 7537-01-M

Media Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Radio Projects Section) to the National Council on the Arts will be held on November 17-18, 1987, from 9:00 a.m.-7:00 p.m. and November 19, 1987, from 9:00 a.m.-5:00 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6), and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

October 26, 1987.

[FR Doc. 87-25134 Filed 10-29-87; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Chamber/New Music Ensembles Section) to the National Council on the Arts will be held on November 16-20, 1987 from 9:00 a.m.-6:00 p.m. in room 316-2 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on November 19, 1987 from 1:30 p.m.-3:30 p.m. The topics for discussion are policy and guidelines.

The remaining sessions of this meeting on November 16-18, 1987 from 9:00 a.m. 6:00 p.m., on November 19, 1987, from 9:00 a.m.-1:30 p.m. and 3:30 p.m.-6:00 p.m. and on November 20, 1987, from 9:00 a.m.-6:00 p.m. are for the purpose of review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6), and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

October 26, 1987.

[FR Doc. 87-25135 Filed 10-29-87; 8:45 am]

BILLING CODE 7537-01-M

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Visual Artists Organizations Section) to the

National Council on the Arts will be held on November 16–19, 1987, from 9:00 a.m.–9:00 p.m. and November 20, 1987, from 9:00 a.m.–5:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6), and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

October 26, 1987.

[FR Doc. 87–25136 Filed 10–29–87; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–529, License No. NPF–51]

Arizona Public Service Co. et al.; Confirmatory Order Modifying License (Effective Immediately)

I

Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, El Paso Electrict Company, Southern California Edison Company, Public Service Company of New Mexico, Los Angeles Department of Water and Power, and Southern California Public Power Authority (collectively, the licensees) are the holders of Facility Operating License No. NPF–51 issued by the Nuclear Regulatory Commission (NRC/Commission) on April 24, 1986. The license authorizes the operation of the Palo Verde Nuclear Generating Station, Unit 2 in accordance with conditions specified therein. The facility is located on the Licensee' site in Maricopa County, Arizona.

II

By letter dated October 8, 1987, the licensees informed the Commission that European reactor coolant pumps similar to the Palo Verde pumps in design and manufacture had exhibited shaft cracking. These data show that 19 out of 24 pumps shafts inspected had cracks of 1.0 mm to 8.0 mm in depth and two shafts has failed. The actual failures occured after 47,000 and 37,000 hours of pump operation.

As a result, the licensees informed the Commission that they planned to inspect the shafts of the pumps at Palo Verde Unit 1 during the current refueling outage, October-December 1987. In the licensees' letter of October 21, 1987, they reported that the inspection began on October 14, 1987. Upon completion of an ultrasonic inspection of the shaft of the first two pumps, cracks of varying depths and lengths had been identified. Subsequently, cracks were detected in a third pump. No shaft failures have been experienced at Palo Verde.

The licensee met with the Commission staff on October 24, 1987 to review the history of pumps shaft cracking in Europe as well as the finding at Palo Verde Unit 1, and to discuss the available information to determine actions to be taken with respect to operation of Palo Verde, Units 1, 2 and 3. Although the pump shaft cracking phenomenon is also of concern with respect to Palo Verde, Units 2 and 3, the staff's immediate concerns are with the continued operation of Unit 2 which is currently operating at 100% power.

In Europe, the cracking and subsequent failure of the pump shafts were determined to be due to the shaft material exceeding fatigue limits. A number of possible causal factors have been identified (i.e. corrosion assisted fatigue, high thermal stressed associated with seal injection, and reduction in fatigue strength caused by chrome plating). The depth of the cracks indicated by the Palo Verde Unit 1 shaft Ultrasonic inspections exceeded those reported for the European plants for the shafts which have not failed. In addition, the operating hours for the European pumps exhibiting the maximum reported crack depth.

The Palo Verde plant design has been analyzed to address the possible failure of one ractor coolant pump shaft. However, since the root cause of the current cracking phenomenon has not yet been identified and corrected, the staff is concerned that the European data, as well as the information obtained from Palo Verde Unit 1, indicate an increased probability of a reactor coolant pump shaft failure, as well as a potential failure mode which could involve the failure of more than one reactor coolant pump. The failure of more than one pump is an unanalyzed condition and thus beyond the current license design basis. Although the existing reactor protection system would shut the reactor down upon a pump shaft failure, the significantly increased probability of a shaft failure at this time and the potential for a unanalyzed event involving multiple shaft failures, raise immediate concerns relative to the public health and safety.

III

In response to the staff's concerns on this matter, the licensees submitted a letter dated October 24, 1987 in which the committee to take the following actions with respect to Palo Verde Unit 2.[1] The licensees will implement an augmented vibration monitoring program for each of the four reactor coolant pumps that includes the following elements:

1. Every four hours, monitor and record the vibration data on each of the four reactor coolant pumps,

2. On a daily basis, perform an evaluation of the pump vibration data obtained in 1 above, by using an appropriately qualified engineering individual,

3. When any one vibration monitor on the reactor coolant pumps indicates a vibration level of 8 mils or greater, the Nuclear Regulatory Commission shall be notified within four hours via the Emergency Notification System, and

4. When any one vibration monitor on the reactor coolant pumps indicates a vibration level of 10 mils or greater, within one hour, initiate action to place the unit in at least HOT STANDBY within the next six hours, and at least COLD SHUTDOWN within the following 30 hours.

This program, which is based upon documented European experience, should provide evidence of impending pump shaft failure approximately two days prior to failure, which is sufficient time to place the unit in safe shutdown condition in an orderly manner. Thus, the program will provide protection of public health and safety consistent with the current licensing bases.

I find the licensees' commitments acceptable and conclude that the plant's safety is reasonably assured. In view of the foregoing, I have determined that

[1] Inasmuch as Palo Verde Unit 1 is persently shutdown until December 1987 and Palo Verde Unit 3 is a recently licensed facility which is limited to operation not to exceed 5% of full power, no action is necessary at this time for either Palo Verde Unit 1 or Palo Verde Unit 3.

public health and safety require that the licensees' commitments in the October 24, 1987 letter be confirmed by this Order. I have also determined that the public health and safety require that this Order be effective immediately.

IV

Accordingly, pursuant to sections 103, 161b and 161i of the Atomic Energy Act of 1954, as amended, and the Commission's regulation in 10 CFR 2.204 and 10 CFR Part 50, it is hereby ordered, effective immediately, that Facility Operating License No. NPF–51 is hereby modified as follows:

The licensees shall implement an augmented vibration monitoring program for each of the four reactor coolant pumps that includes the following elements;

1. Every four hours, monitor and record the vibration data on each of the four reactor coolant pumps,

2. On a daily basis, perform an evaluation of the pump vibration data obtained in 1 above, by using an appropriately qualified engineering individual,

3. When any one vibration monitor on the reactor coolant pumps indicates a vibration level of 8 mils or greater, the Nuclear Regulatory Commission shall be notified within four hours via the Emergency Notification System, and

4. When any one vibration monitor on the reactor coolant pumps indicates a vibration level of 10 mils or greater, within one hour, initiate action to place the unit in at least HOT STANDBY within the next six hours, and at least COLD SHUTDOWN within the following 30 hours.

The Regional Administrator, Region V may relax or rescind any of the above conditions upon a showing by the licensees of good cause.

V

The licensees or any person who has an interest adversely affected by this Order may request a hearing within 20 days of the date of this Order. A request for hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with copies to the Assistant General Counsel for Enforcement, at the same address, Regional Administrator, Region V at 1450 Maria Lane, Suite 210, Walnut Creek, CA 94956–5368, and the NRC Resident Inspector, Palo Verde Nuclear Generating Station. If a person other than the licensees requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and should address the criteria set forth in 10 CFR 2.714(d). A request for hearing shall not stay the immediate effectiveness of this Order.

If a hearing is to be held the Commission will issue an Order designating the time and place of any such hearing. If a hearing is held, the issue to be considered shall be whether this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Bethesda Maryland this 25th day of October 1987.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 87–25210 Filed 10–29–87; 8:45 am]

BILLING CODE 7590–01–M

Reactor Risk Reference Document (NUREG–1150); Peer Review Committee; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The draft Reactor Risk Reference Document (NUREG–1150) which characterizes the Commission's assessment of severe accident risk and potential improvements for a set of commerical nuclear power plants, is currently undergoing a detailed peer review by the fourteen member committee chaired by Dr. William E. Kastenberg of the University of California, Los Angeles. Administrative and technical support is being provided by the Lawrence Livermore National Laboratory (LLNL), funded by the Nuclear Regulatory Commission (NRC). The peer review committee met during June 24–25, 1987 at the LLNL, July 15–17, 1987 in Albuquerque, NM, and September 15–17, 1987 in Los Angeles, CA. The fourth and the fifth meetings are scheduled in this notice.

DATES AND TIMES: The fourth meeting will be held during November 9–11, 1987, from 8:30 am to 5:00 pm on November 9 and 10, and from 8:30 am to 12 noon on November 11.

The fifth meeting will be held during December 10–11, 1987 from 8:30 am to 5:00 pm.

ADDRESSES: The November meeting will be at the Faculty Center, University of California Los Angeles, 405 Hilgard Avenue, Los Angeles, CA 90024.

The December meeting will be at the Hyatt Regency in Bethesda, 7400 Wisconsin Avenue, Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: Dr. Pradyot K. Niyogi, Division of Reactor Accident Analysis, Office of Nuclear Regulatory Research, Washington, DC 20555, (301) 443–7611.

SUPPLEMENTARY INFORMATION: Active participation in the meeting will be limited to the members of the committee, but the meeting will be open to the public to attend as observers. Members of the public may submit written comments on topics related to the meeting discussion. Limited verbal comment by the public will be permitted during the meeting at specified times. Prospective attendees should notify Dr. Sergio Guarro (LLNL) at (415) 422–7503 of their intention to attend at least a week before the meeting dates to facilitate planning.

Minutes of the meeting will be prepared and placed in the NRC Public Document Room. At the end of the peer review process, individual members of the committee will submit their comments to the committee chairman.

The chairman will prepare his personal comments in the form of a report to the NRC, and will enclose all comments from the individual members. The review will be done in two phases. In the first phase, the review will be limited to the draft NUREG–1150, and will be completed in December 1987. The changes and improvements to the draft NUREG–1150 that are being performed currently will be reviewed in the second phase and are scheduled to be completed in July 1988.

Dated at Rockville, Maryland, this 23rd day of October, 1987.

For the Nuclear Regulatory Commission,

Lewis Hulman,

Acting Director, Division of Reactor Accident Analysis, Office of Nuclear Regulatory Research.

[FR Doc. 87–25209 Filed 10–29–87; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF STATE

[Docket No. 1034]

Public Information Collection Requirements Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

SUMMARY: The Retail Price Schedule is the source of information used in establishing and justifying temporary lodging, travel per diem, and post (cost of living) allowances for all Federal civilian employees, statutory salaried employees, and Uniformed Services

personnel assigned to foreign and non-foreign areas. The following summarizes the information collection proposal submitted to OMB:

Title of information collection—Retail Price Schedule.
Originating office—Bureau of Administration.
Form number—DSP-23.
Type of request—Extension.
Frequency—Quarterly and Annually.
Respondents—Merchants.
Estimated number of responses—650
Estimated number of hours needed to respond—4,981.

Section 3504(h) of Pub. L. 96-511 does not apply.

Additional Information or Comments: Copies of the proposed form and supporting documents may be obtained from Gail J. Cook, (202) 647-3538. Comments and questions should be directed to (OMB) Francine Picoult, (202) 395-7340.

Dated: October 15, 1987.

Richard C. Faulk,

Acting Assistant Secretary for Administration.

[FR Doc. 87-25159 Filed 10-29-87; 8:45 am]

BILLING CODE 4710-24-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 87-135]

Commercial Gauger Approval and Commercial Laboratory Accreditation

AGENCY: U.S. Customs Service, Treasury.

ACTION: Notice of Approval and Accreditation.

SUMMARY: Pursuant to § 151.13, Customs Regulations (19 CFR 151.13), King Laboratories, Inc., d/b/a King Inspection & Testing, Inc., 4814 West Ave., Suite 111, San Antonio, Texas 90731, applied to Customs for approval and accreditation to gauge and analyze imported petroleum and petroleum products. Customs has determined that King Laboratories meets all requirements for approval and accreditation.

Accordingly, King Laboratories, Inc., d/b/a King Inspection & Testing, Inc., is hereby approved and accredited to gauge and analyze imported petroleum and petroleum products in all Customs districts.

EFFECTIVE DATE: October 22, 1987.

FOR FURTHER INFORMATION CONTACT: Roger J. Crain, Office of Technical Services, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-2446).

Dated: October 23, 1987.

Roger J. Crain,

Chief, Technical Branch, Office of Technical Services.

[FR Doc. 87-25171 Filed 10-29-87; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 210
Friday, October 30, 1987

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).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on October 29, 1987, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, Mclean, Virginia 22102–5090 (703–883–4003).

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be closed to the public. The matter to be considered at the meeting is:

[1] 1. Examination and Enforcement Matters.

Dated: October 28, 1987.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 87–25297 Filed 10–28–87; 2:00 pm]

BILLING CODE 6705–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on November 3, 1987, from 10:00 a.m until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 (703–883–4003).

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

[1] Session closed to the public; exempt pursuant to 5 U.S.C.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

1. Final Regulations Covering Regulatory Accounting Practices, 12 CFR Part 624;
2. Nonequity Capitalization Policies for Banks for Cooperatives;
3. Certification Under § 4.28(J) of the Farm Credit Act of 1971, as amended; and
4. Examination and Enforcement Matters.[1]

Dated: October 28, 1987.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 87–25298 Filed 10–28–87; 2:00 pm]

BILLING CODE 6705–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, October 27, 1987, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appiontive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Recommendations regarding the Corporation's assistance agreement with an insured bank.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,116–SR

Central National Bank of New York, New York (Manhattan), New York

Application of the First National Bank of Maryland, Baltimore, Maryland, for consent to purchase certain assets of and assume the liability to pay certain deposits made in Arrow Savings and Loan Association, Baltimore, Maryland, a non-FDIC-insured institution.

Memorandum regarding the Corporation's corporate activities.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by the authority of subsections (c)(2), (c)(4), and (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: October 28, 1987.

Federal Deposit Insurance Corporation.

Margeret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 87–25296 Filed 10–28–87; 1:59 pm]

BILLING CODE 6714–01–M

[1] Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c) (4), (8) and (9).

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., November 4, 1987.

PLACE: Room 12126, 1100 L Street, NW., Washington, DC 20573.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Service Contracts filed by the Asia North America Eastbound Rate Agreement.
2. Investigation of Shipping Practices—Jorge Villena; Sea-Trade Shipping, Inc.; Star Bright Container Line, Inc.; and Caribbean Sun International, Inc.
3. Docket No. 86–28—Agreement No. 003–010965—Island Ocean Terminal Agreement—Consideration of the Record.
4. Docket No. 86–12—Distribution Services, Ltd. v. Trans-Pacific Freight Conference of Japan and Its Member Lines—Consideration of the Record.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 87–25304 Filed 10–28–87; 3:27 pm]

BILLING CODE 6730–01–M

Corrections

Federal Register
Vol. 52, No. 210
Friday, October 30, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

Correction

In notice document 87-24716 appearing on page 40019 in the issue of Monday, October 26, 1987, make the following correction:

In the third column, footnote 1 was omitted and should read as follows:

[1]Session closed to the public-exempt pursuant to 5 U.S.C. 552b(c)(4), (8) and (9).

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-183-82]

Basis Adjustment for Investment Tax Credits

Correction

In proposed rule document 87-21629 beginning on page 35438 in the issue of Monday, September 21, 1987, make the following corrections:

1. On page 35438, in the first column, in the heading, "[L-183-82]" should read "[LR-183-82]".

2. On the same page, in the second column, under **Background**, in the sixth line, "of 1983" should read "of 1984".

3. On the same page, in the same column, under **Explanation of Provisions**, in the fifth line, "10 percent" should read "100 percent".

§ 1.48-4 [Corrected]

4. On page 35439, in the third column, in § 1.48-4(n)(1), in the fifth line, "48(d)" should read "48(q)" and in the same paragraph, in the seventh line, the citation should read "paragraphs (b) and (m) thereof".

§ 1.48-7 [Corrected]

5. On page 35441, in the third column, in § 1.48-7(a)(3), Example (5), paragraph (ii), in the last line, insert a closing parenthesis before the period.

6. On page 35442, in the second column, in the same section, Example (7), paragraph (ii), in the first table, in the fourth column, "5,900" should read "5,910".

7. On the same page, in the third column, under Example (9), paragraph (i), in the table, the word "Proprietorship" should appear on a separate line above the words "No. 6".

8. On the same page, in the same column, in the same example, in paragraph (iii), in the second line, remove the parenthesis after "$63,500".

9. On page 35443, in the third column, under paragraph (f)(1), in the 10th line, "of the basis" should read "and the basis".

10. On page 35445, in paragraph (k)(4), Example (1), in the third column, in the 16th line, "48(g)(6)[7]" should read "48(q)(6)[7]".

BILLING CODE 1505-01-D

federal register

Friday
October 30, 1987

Part II

Department of Labor

Office of the Secretary

Joint Advisory Notice; Department of Labor/Department of Health and Human Services; HBV/HIV; Notice

DEPARTMENT OF LABOR

Office of the Secretary

Joint Advisory Notice; Department of Labor/Department of Health and Human Services; HBV/HIV

The Department of Labor hereby gives notice of a joint cover letter and Joint Advisory Notice, entitled "Protection Against Occupational Exposure to Hepatitis B Virus (HBV) and Human Immunodeficiency Virus (HIV)," which will be mailed on or about October 30, 1987 to health-care employers throughout the United States.

The letter and Notice are attached hereto and is being mailed to approximately 500,000 employers.

Signed at Washington, DC, this 21st day of October 1987.

Michael E. Baroody,

Assistant Secretary for Policy, U.S. Department of Labor.

U.S. Department of Labor

Secretary of Labor

Washington, DC

October 30, 1987.

Dear Health-Care Employer: We are writing to you about a serious health-care problem that faces all Americans but is particularly acute for health-care workers. That problem is potential exposure to hepatitis B virus (HBV), human immune deficiency virus (HIV) which causes acquired immunodificiency syndrome (AIDS), and other blood-borne diseases.

The Centers for Disease Control (CDC) which is part of the U.S. Department of Health and Human Services (HHS) believes that as many as 18,000 health-care workers per year may be infected by the HBV. Nearly ten percent of those who become infected become long-term carriers of the virus and may have to give up their profession. Several hundred health-care workers will become acutely ill or jaundiced from hepatitis B, and as many as 300 health-care workers may die annually as a result of hepatitis B infections or complications.

Infection with the HIV in the workplace represents a small but real hazard to health-care workers. Fewer than ten cases have been reported to date, but it is not clear that these include all such infections. The CDC expects that with 1.5 million persons now believed to be infected by HIV, the number of AIDS cases in the general population may grow to as many as 270,000 by 1991 from the 40,000 which had been reported by August, 1987. The increases in AIDS cases and in the number of individuals who are infected with the virus will mean an increased potential for exposure to health-care workers.

Fortunately there are reasonable precautions which can be taken by health-care workers to prevent exposure to HBV, HIV, and other blood-borne infectious diseases. Precautions for HBV and HIV have been published by the CDC on several occasions, most recently on June 19, 1987, and on August 21, 1987. The enclosed advisory notice, entitled "Protection Against Occupational Exposure to Hepatitis B Virus (HBV) and Human Immunodeficiency Virus (HIV)," reflects many of the precautions addressed in the CDC guidelines and includes other precautions which should be considered.

It is the legal responsibility of employers to provide appropriate safeguards for health-care workers who may be exposed to these dangerous viruses. For that reason, the Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor (DOL) is beginning a program of enforcement to insure that health-care employers are meeting those needs. OSHA will respond to employee complaints and conduct other inspections to assure that appropriate measures are being followed. OSHA is currently enforcing its existing regulations and statutory provisions relating to the duty of an employer to provide "safe and healthful working conditions." OSHA is also seeking input about what additional regulatory action may be needed in an Advance Notice of Proposed Rulemaking which will be published in the **Federal Register**.

States with approved plans to operate their own occupational safety and health program enforce standards comparable to the Federal standards and are encouraged to enforce State counterparts to the General Duty Clause. State plan standards, unlike Federal standards, apply to State, county, and municipal workers as well as to private employers.

DOL joins HHS in urging the widest possible adherence to the appropriate precautions as exemplified by the CDC guidelines and the joint advisory notice. All health-care workers who may be exposed to HBV or HIV should receive training and should utilize appropriate precautions.

If you have further questions, please contact your State public health department or OSHA office, or call the Public Health Service National AIDS Hotline, 1-800-342-AIDS. Every effort will be made to respond to your questions in a timely and informative manner. Your unions, and professional and trade associations are also available to answer your questions. We are making every effort to keep all interested parties informed.

The dangers of HBV and HIV are very real, but you can prevent or minimize those dangers for health-care workers through the utilization of the appropriate precautions recommended by the CDC.

Thank you for your time and consideration.

Very truly yours,

William E. Brock,

Secretary of Labor.

Otis R. Bowen, M.D.,

Secretary of Health and Human Services.

Enclosure.

Department of Labor/Department of Health and Human Services—Joint Advisory Notice: Protection Against Occupational Exposure to Hepatitis B Virus (HBV) and Human Immunodeficiency Virus (HIV)

October 19, 1987.

I. Background

Hepatitis B (previously called serum hepatitis) is the major infectious occupational health hazard in the health-care industry, and a model for the transmission of blood-borne pathogens. In 1985 the Centers for Disease Control (CDC) estimated [1] that there were over 200,000 cases of hepatitis B virus (HBV) infection in the U.S. each year, leading to 10,000 hospitalizations, 250 deaths due to fulminant hepatitis, 4,000 deaths due to hepatitis-related cirrhosis, and 800 deaths due to hepatitis-related primary liver cancer. More recently [2] the CDC estimated the total number of HBV infections to be 300,000 per year with corresponding increases in numbers of hepatitis-related hospitalizations and deaths. The incidence of reported clinical hepatitis B has been increasing in the United States, from 6.9/100,000 in 1978 to 9.2/100,000 in 1981 and 11.5/100,000 in 1985 [2]. The Hepatitis Branch, CDC, has estimated [unpublished] that 500–600 health-care workers whose job entails exposure to blood are hospitalized annually, with over 200 deaths (12–15 due to fulminant hepatitis, 170–200 from cirrhosis, and 40–50 from liver cancer). Studies indicate that 10% to 40% of health-care or dental workers may show serologic evidence of past or present HBV infection [3]. Health-care costs for hepatitis B and non-A, Non-B hepatitis in health-care workers were estimated to be $10–$12 million annually [4]. A safe, immunogenic, and effective vaccine to prevent hepatitis B has been available since 1982 and is recommended by the CDC for health-care workers exposed to blood and body fluids [1, 2, 5–7]. According to unpublished CDC estimates, approximately 30–40% of health-care workers in high-risk settings have been vaccinated to date.

According to the most recent data available from the CDC [8], acquired immunodeficiency syndrome (AIDS) was the 13th leading cause of years of potential life lost (82,882 years) in 1984, increasing to 11th place in 1985 (152,595 years). As of August 10, 1987, a cumulative total of 40,051 AIDS cases (of which 558 were pediatric) had been reported to the CDC, with 23,165 (57.8%) of these known to have died [9]. Although occupational HIV infection

has been documented [10], no AIDS case or AIDS-related death is believed to be occupationally related. Spending within the Public Health Service related to AIDS has also accelerated rapidly, from $5.6 million in 1982 to $494 million in 1987, with $791 million requested for 1988. Estimates of average lifetime costs for the care of an AIDS patient have varied considerably, but recent evidence suggests the amount is probably in the range of $50,000 to $75,000.

Infection with either HBV [1,2] or human immunodefiency virus (HIV, previously called human T-lymphotrophic virus type III/lymphadenopathy-associated virus (HTLV III/LAV) or AIDS-associated retrovirus (ARV)) [11, 12] can lead to a number of life-threatening conditions, including cancer. Therefore, exposure to HBV and HIV should be reduced to the maximum extent feasible by engineering controls, work practices, and protective equipment. (Engineering controls are those methods that prevent or limit the potential for exposure at or near as possible to the point of origin, for example by eliminating a hazard by substitution or by isolating the hazard from the work environment.)

II. Modes of Transmission

In the U.S, the major mode of HBV transmission is sexual, both homosexual and heterosexual. Also important is parenteral (entry into the body by a route other than the gastrointestinal tract) transmission by shared needles among intravenous drug abusers and to a lesser extent in needlestick injuries or other exposures of health-care workers to blood. HBV is not transmitted by casual contact, fecal-oral or airborne routes, or by contaminated food or drinking water [1, 2, 13]. Workers are at risk of HBV infection to the extent they are exposed to blood and other body fluids; employment without that exposure, even in a hospital, carries no greater risk than that for the general population [1]. Thus, the high incidence of HBV infection in some clinical settings is particularly unfortunate beause the modes of transmission are well known and readily interrupted by attention to work practices and protective equipment, and because transmission can be prevented by vaccination of those without serologic evidence of previous infection.

Identified risk factors for HIV transmission are essentially identical to those for HBV. Homosexual/bisexual males and male intravenous drug abusers account for 85.4% of all AIDS cases, female intravenous drug abusers for 3.4%, and heterosexual contact for 3.8% [9]. Blood transfusion and treatment of hemophilia-coagulation disorders account for 3.0% of cases, and 1.4% are pediatric cases. In only 3.0% of all AIDS cases has a risk factor not been identified [9]. Like HBV, there is no evidence that HIV is transmitted by casual contract, fecal-oral or airborne routes, or by contaminated food or drinking watert [12–14], and barriers to HBV are effective against HIV. Workers are at risk of HIV infection to the extent they are directly exposed to blood and body fluids. Even in groups that presumably have high potential exposure to HIV-contaminated fluids and tissues, e.g., health-care workers specializing in treatment of AIDS patients and the parents, spouse, children, or other persons living with AIDS patients, transmission is recognized as occurring only between sexual partners or as a consequence of mucous membrane or parenteral (including open wound) exposure to blood or other body fluids [10, 11, 13–16].

Despite the similarities in the modes of transmission, the risk of HBV infection in health-care settings far exceeds that for HIV infection [13, 14]. For example, it has been estimated [14, 17, 18] that the risk of acquiring HBV infection following puncture with a needle contaminated by an HBV carrier ranges from 6% to 30%—far in excess of the risk of HIV infection under similar circumstances, which the CDC and others estimated to be a less than 1% [10, 13, 16].

Health-care workers with documented percutaneous or mucous-membrane exposures to blood or body fluids of HIV-infected patients have been prospectively evaluated to determine the risk of infection after such exposures. As of June 30, 1987, 883 health-care workers have been tested for antibody to HIV in an ongoing surveillance project conducted by CDC [19]. Of these, 708 (80%) had percutaneous exposures to blood, and 175 (20%) had a mucous membrane or an open wound contaminated by blood or body fluid. Of 396 health-care workers, each of whom had only a convalescent-phase serum sample obtained and tested 90 days or more post-exposure, one—for whom heterosexual transmission could not be ruled out—was seropositive for HIV antibody. For 425 additional health-care workers, both acute- and convalescent-phase serum samples were obtained and tested; none of 74 health-care workers with nonpercutaneous exposures seroconverted, and three (0.9%) of 351 with percutaneous exposures seroconverted. None of these three health-care workers had other documented risk factors for infection.

Two other prospective studies to assess the risk of nosocomial acquisition of HIV infection for health-care workers are ongoing in the United States. As of April 30, 1987, 332 health-care workers with a total of 453 needlestick or mucous-membrane exposures to the blood or other body fluids of HIV-infected patients were tested for HIV antibody at the National Institutes of Health [20]. These exposed workers included 103 with needlestick injuries and 229 with mucous-membrane exposures; none had seroconverted. A similar study at the University of California of 129 health-care workers with documented needlestick injuries or mucous-membrane exposures to blood or other body fluids from patients with HIV infection has not identified any seroconversions [21]. Results of a prospective study in the United Kingdom identified no evidence of transmission among 150 health-care workers with parenteral or mucous-membrane exposure to blood or other body fluids, secretions, or excretions from patients with HIV Infection [22].

Following needlestick injuries, one health-care worker contracted HBV but not HIV, and in another instance a health-care worker contracted cryptococcus but not HIV from patients infected with both [14]. This risk of infection by HIV and other blood-borne pathogens for which immunization is not available extends to all health-care workers exposed to blood, even those who have been immunized against HBV infection. Effective protection against blood-borne disease requires universal observation of common barrier precautions by all workers with potential exposure to blood, body fluids, and tissues [10,13].

HIV has been isolated from blood, semen, saliva, tears, urine, vaginal secretions, cerebrospinal fluid, breast milk, and amniotic fluid [10,23], but only blood and blood products, semen, vaginal secretions, and possibly breast milk (this needs to be confirmed) have been directly linked to transmission of HIV [10,13]. Contact with fluids such as saliva and tears has not been shown to result in infection [13–15]. Although other fluids have not been shown to transmit infection, all body fluids and tissues should be regarded as potentially contaminated by HBV or HIV, and treated as if they were infectious. Both HBV and HIV appear to be incapable of penetrating intact skin, but infection may result from infectious fluids coming into contact with mucous membranes or open wounds (including inapparent lesions) on the skin [14,16]. If a procedure involves the potential for

skin contact with blood or mucous membranes, then appropriate barriers to skin contact should be worn, e.g., gloves. Investigations of HBV risks associated with dental and other procedures that might produce particulates in air, e.g., centrifuging and dialysis, indicated that the particulates generated were relatively large droplets (spatter), and not true aerosols of suspended particulates that would represent a risk of inhalation exposure [24–26]. Thus, if there is the potential for splashes or spatter of blood or fluids, face shields or protective eyewear and surgical masks should be worn. Detailed protective measures for health-care workers have been addressed by the CDC [10,13,23,27–33]. These can serve as general guides for the specific groups covered, and for the development of comparable procedures in other working environments.

HIV infection is known to have been transmitted by organ transplants [34] and blood transfusions [35] received from persons who were HIV seronegative at the time of donation. Falsely negative serology can be due to improperly performed tests or other laboratory error, or testing in that "window" of time during which a recently infected person is infective but has not yet converted from seronegative to seropositive. (Detectable levels of antibodies usually develop within 6 to 12 weeks of infection [36]. A recent report [37] suggesting that this "window" may extend to 14 months is not consistent with other data, and therefore requires confirmation.) If all body fluids and tissues are treated as infectious, no additional level of worker protection will be gained by identifying seropositive patients or workers. Conversely, if worker protection and work practices were upgraded only following the return of positive HBV or HIV serology, then workers would be inadequately protected during the time required for testing. By producing a false sense of safety with "silent" HBV- or HIV-positive patients, a seronegative test may significantly reduce the level of routine vigilance and result in virus exposure. Furthermore, developing, implementing, and administering a program of routine testing would shift resources and energy away from efforts to assure compliance with infection control procedures. Therefore, routine screening of workers or patients for HIV antibodies will not substantially increase the level of protection for workers above that achieved by adherence to strict infection control procedures.

On the other hand, workers who have had parenteral exposure to fluids or tissues may wish to know whether their own antibody status converts from negative to positive. Such a monitoring program can lead to prophylactic interventions in the case of HBV infection, and CDC has published guidelines on pre- and post-exposure prophylaxis of viral hepatitis [1,2]. Future developments may also allow effective intervention in the case of HIV infection. For the present, post-exposure monitoring for HIV at least can release the affected worker from unnecessary emotional stress if infection did not occur, or allow the affected worker to protect sexual partners in the event infection is detected [10,36].

III. Summary

The cumulative epidemiologic data indicate that transmission of HBV and HIV requires direct, intimate contact with or parenteral inoculation of blood and blood products, semen, or tissues [10,11,13,14,16,23]. The mere presence of, or casual contact with, an infected person cannot be construed as "exposure" to HBV or HIV. Although the theoretical possibility of rare or low-risk alternative modes of transmission cannot be totally excluded, the only documented occupational risks of HBV and HIV infection are associated with parenteral (including open wound) and mucous membrane exposure to blood and tissues [2,10,13,14,16]. Workers occupationally exposed to blood, body fluids, or tissues can be protected from the recognized risks of HBV and HIV infection by imposing barriers in the form of engineering controls, work practices, and protective equipment that are readily available, commonly used, and minimally intrusive.

IV. Recommendations

General

"Exposure" (or "potential exposure") to HBV and HIV should be defined in terms of actual (or potential) skin, mucous membrane, or parenteral contact with blood, body fluids, and tissues. "Tissues" and "fluids" or "body fluids" should be understood to designate not only those materials from humans, but also potentially infectious fluids and tissues associated with laboratory investigations of HBV or HIV, e.g., organs and excreta from experimental animals, embryonated eggs, tissue or cell cultures and culture media, etc.

As the first step in determining what actions are required to protect worker health, every employer should evaluate all working conditions and the specific tasks that workers are expected to encounter as a consequence of employment. That evaluation should lead to the classification of work-related tasks to one of three categories of potential exposure (Table 1). These categories represent those tasks that require protective equipment to be worn during the task (Category I); tasks that do not require any protective equipment (Category III); and an intermediate grouping of tasks (Category II) that also do not require protective equipment, but that inherently include the predictable job-related requirement to perform Category I tasks unexpectedly or on short notice, so that these persons should have immediate access to some minimal set of protective devices. For example, law enforcement personnel or firefighters may be called upon to perform or assist in first aid or to be potentially exposed in some other way. This exposure classification applies to tasks rather than to individuals, who in the course of their daily activities may move from one exposure category to another as they perform various tasks.

For individual Category I and II tasks, engineering controls, work practices, and protective equipment should be selected after careful consideration, for each specific situation, of the overall risk associated with the task. Factors that should be included in that evaluation of risk include:

1. Type of body fluid with which there will or may be contact (e.g., blood is of greater concern than urine),
2. Volume of blood or body fluid likely to be encountered (e.g., hip replacement surgery can be very bloody while corneal transplantation is almost bloodless),
3. Probability of an exposure taking place (e.g., drawing blood will more likely lead to exposure to blood than will performing a physicial examination),
4. Probable route of exposure (e.g., needlestick injuries are of greater concern than contract with soiled linens), and
5. Virus concentration in the fluid or tissue. The number of viruses per milliliter of fluid in research laboratory cultures may be orders of magnitude higher than in blood. Similarly, viruses have been less frequently found in fluids such as sweat, tears, urine, and saliva.

Engineering controls, work practices, and protective equipment appropriate to the task being performed are critical to minimize HBV and HIV exposure and to prevent infection. Adequate protection can be assured only if the appropriate controls and equipment are provided and all workers know the applicable

work practices and how to properly use the required controls or protective equipment. Therefore, employers should establish a detailed work practices program that includes standard operating procedures (SOPs) for all tasks or work areas having the potential for exposure to fluids or tissues, and a worker education program to assure familiarity with work practices and the ability to use properly the controls and equipment provided.

It is essential for both the patient and the health-care worker to be fully aware of the reasons for the preventive measures used. The health-care worker may incorrectly interpret the work practices and protective equipment as signifying that a task is unsafe. The patient may incorrectly interpret the work practices or protective garb as evidence that the health-care provider knows or believes the patient is infected with HBV or HIV. Therefore, worker education programs should strive to allow worker (and to the extent feasible, the clients or patients) to recognize the routine use of appropriate work practices and protective equipment as prudent steps that protect the health of all.

If the employer determines that Category I and II tasks do not exist in the workplace, then no specific personal hygiene or protective measures are required. However, these employers should ensure that workers are aware of the risk factors associated with transmission of HBV and HIV so that they can recognize situations which pose increased potential for exposure to HBV or HIV (Category I tasks) and know how to avoid or minimize personal risk. A comparable level of education is necessary for all citizens. Educational materials such as the Surgeon General's Report can provide much of the needed information [12,38].

If the employer determines that work-related Category I or II tasks exist, then the following procedures should be implemented.

Administrative

The employer should establish formal procedures to ensure that Category I and II tasks are properly identified, SOPs are developed, and employees who must preform these tasks are adequately trained and protected. If responsibility for implementation of these responsibilities is delegated to a committee, it should include both management and worker representatives. Administrative activities to enhance worker protection include:

1. Evaluating the workplace to:

a. Establish category of risk classifications for all routine and reasonably anticipated job-related tasks.

b. Identify all workers whose employment requires performance of Category I or II tasks.

c. Determine for identified Category I or II tasks those body fluids to which workers most probably will be exposed and the potential extent and route of exposure.

2. Developing, or supervising the development of, Standard Operating Procedures (SOPs) for each Category I and II task. These SOPs should include mandatory work practices and protective equipment for each Category I and II task.

3. Monitoring the effectivenes of work practices and protective equipment. This includes:

a. Surveillance of the workplace to ensure that required work practices are observed and that protective clothing and equipment are provided and properly used.

b. Investigation of known or suspected parenteral exposures to body fluids or tissues to establish the conditions surrounding the exposure and to improve training, work practices, or protective equipment to prevent a recurrence.

TABLE 1. EXPOSURE CATEGORIES

CATEGORY I. Tasks That Involve Exposure To Blood, Body Fluids, Or Tissues.

All procedures or other job-related tasks that involve an inherent potential for mucous membrane or skin contact with blood, body fluids, or tissues, or a potential for spills or splashes of them, are Category I tasks. Use of appropriate protective measures should be required for every employee engaged in Category I tasks.

CATEGORY II. Tasks That Involve No Exposure To Blood, Body Fluids, Or Tissues, But Employment May Require Performing Unplanned Category I Tasks.

The normal work routine involves no exposure to blood, body fluids, or tissues, but exposure or potential exposure may be required as a condition of employment. Appropriate protective measures should be readily available to every employee engaged in Category II tasks.

CATEGORY III. Tasks That Involve No Exposure To Blood, Body Fluids, Or Tissues, And Category I Tasks Are Not A Condition Of Employment.

The normal work routine involves no exposure to blood, body fluids, or tissues (although situations can be imagined or hypothesized under which anyone, anywhere, might encounter potential exposure to body fluids). Person who perform these duties are not called upon as part of their employment to perform or assist in emergency medical care or first aid or to be potentially exposed in some other way. Tasks that involve handling of implements or untensils, use of public or shared bathroom facilities or telephones, and personal contacts such as handshaking are Category III tasks.

Training and Education

The employer should establish an initial and periodic training program for all employees who perform Category I and II tasks. No worker should engage in any Category I or II task before receiving training pertaining to the SOPs, work practices, and protective equipment required for that task. The training program should ensure that all workers:

1. Understand the modes of transmission of HBV and HIV.

2. Can recognize and differentiate Category I and II tasks.

3. Know the types of protective clothing and equipment generally appropriate for Category I and II tasks, and understand the basis for selection of clothing and equipment.

4. Are familiar with appropriate actions to take and persons to contact if unplanned Category I tasks are encountered.

5. Are familiar with and understand all the requirements for work practices and protective equipment specified in SOPs covering the tasks they perform.

6. Know where protective clothing and equipment is kept, how to use it properly, and how to remove, handle, decontaminate, and dispose of contaminated clothing or equipment.

7. Know and understand the limitations of protective clothing and equipment. For example, ordinary gloves offer no protection against needlestick injuries. Employers and workers should be on guard against a sense of security not warranted by the protective equipment being used.

8. Know the corrective actions to take in the event of spills or personal exposure to fluids or tissues, the appropriate reporting procedures, and the medical monitoring recommended in cases of suspected parenteral exposure.

Engineering Controls

Whenever possible, engineering controls should be used as the primary method to reduce worker exposure to

harmful substances. The preferred approach in engineering controls is to use, to the fullest extent feasible, intrinsically safe substances, procedures, or devices. Substitution of a hazardous procedure or device with one that is less risky or harmful is an example of this approach, e.g., a laser scalpel reduces the risk of cuts and scrapes by eliminating the necessity to handle the conventional scalpel blade.

Isolation or containment of the hazard is an alternative engineering control technique. Disposable, puncture-resistant containers for used needles, blades, etc., isolate cut and needlestick injury hazards from the worker. Glove boxes, ventiliated cabinets, or other enclosures for tissue homogenizers, sonicators, vortex mixers, etc. serve not only to isolate the hazard, but also to contain spills or splashes and prevent spatter and mist from reaching the worker.

After the potential for exposure has been minimized by engineering controls, further reductions can be achieved by work practices and, finally, personal protective equipment.

Work Practices

For all identified Category I and II tasks, the employer should have written, detailed Standard Operating Procedures (SOPs). All employees who perform Category I or II tasks should have ready access to the SOPs pertaining to those tasks.

1. Work practices should be developed on the assumption that all body fluids and tissues are infectious. General procedures to protect healthcare workers against HBV or HIV transmission have been published elsewhere [1, 2, 23, 28–33]. Each employer with Category I and II tasks in the workplace should incorporate those general recommendations, as appropriate, or equivalent procedures into work practices and SOPs. The importance of handwashing should be emphasized.

2. Work practices should include provision for safe collection of fluids and tissues and for disposal in accordance with applicable local, state, and federal regulations. Provision must be made for safe removal, handling, and disposal or decontamination of protective clothing and equipment, soiled linens, etc.

3. Work practices and SOPs should provide guidance on procedures to follow in the event of spills or personal exposure to fluids or tissues. These procedures should include instructions for personal and area decontamination as well as appropriate management or supervisory personnel to whom the incident should be reported.

4. Work practices should provide specific and detailed procedures to be observed with sharp objects, e.g., needles, scalpel blades. Puncture-resistant receptacles must be readily accessible for depositing these materials after use. These receptacles must be clearly marked and specific work practices provided to protect personnel responsible for disposing of them or processing their contents for reuse.

Personal Protective Equipment

Based upon the fluid or tissue to which there is potential exposure, the likelihood of exposure occurring, the potential volume of material, the probable route of exposure, and overall working conditions and job requirements, the employer should provide and maintain personal protective equipment appropriate to the specific requirements of each task.

For workers performing Category I tasks, a required minimum array of protective clothing or equipment should be specified by pertinent SOPs. All Category I tasks do not involve the same type or degree of risk, and therefore all do not require the same kind or extent of protection. Specific combinations of clothing and equipment must be tailored to specific tasks. Minimum levels of protection or Category I tasks in most cases would include use of appropriate gloves. If there is the potential for splashes, protective eyewear or face shields should be worn. Paramedics responding to an auto accident might protect against cuts on metal and glass by wearing gloves or gauntlets that are both puncture-resistant and impervious to blood. If the conditions of exposure include the potential for clothing becoming soaked with blood, protective outer garments such as impervious coveralls should be worn.

For workers performing Category II tasks, there should be ready access to appropriate protective equipment, e.g., gloves, protective eyewear, or surgical masks, specified in pertinent SOPs. Workers performing Category II tasks need not be wearing protective equipment, but they should be prepared to put on appropriate protective garb on short notice.

Medical

In addition to any health-care or surveillance required by other rules, regulations, or labor-management agreement, the employer should make available at no cost to the worker:

1. Voluntary HBV immunization for all workers whose employment requires them to perform Category I tasks and who test negative for HBV antibodies. Detailed recommendations for protecting health-care workers from viral hepatitis have been published by the CDC [1]. These recommendations include procedures for both pre- and post-exposure prophylaxis, and should be the basis for the routine approach by management to the prevention of occupational hepatitis B.

2. Monitoring, at the request of the worker, for HBV and HIV antibodies following known or suspected parenteral exposure to blood, body fluids, or tissues. This monitoring program must include appropriate provisions to protect the confidentiality of test results for all workers who may elect to participate.

3. Medical counseling for all workers found, as a result of the monitoring described above, to be seropositive for HBV or HIV. Counseling guidelines have been published by the Public Health Service [1, 2, 36].

Recordkeeping

If any employee is required to perform Category I or II tasks, the employer should maintain records documenting:

1. The administrative procedures used to classify job tasks. Records should describe the factors considered and outline the rationale for classification.

2. Copies of all SOPs for Category I and II tasks, and documentation of the administrative review and approval process through which each SOP passed.

3. Training records, indicating the dates of training sessions, the content of those training sessions along with the names of all persons conducting the training, and the names of all those receiving training.

4. The conditions observed in routine surveillance of the workplace for compliance with work practices and use of protective clothing or equipment. If noncompliance is noted, the conditions should be documented along with corrective actions taken.

5. The conditions associated with each incident of mucous membrane or parenteral exposure to body fluids or tissue, an evaluation of those conditions, and a description of any corrective measures taken to prevent a recurrence or other similar exposure.

References

1. Centers for Disease Control: Recommendations for protection against viral hepatitis. Morbidity and Mortality Weekly Report 34:313–24, 329–35, 7 June 1985.

2. Centers for Disease Control: Update on Hepatitis B prevention. Morbidity

and Mortality Weekly Report 36:353–60, 19 June 1987.

3. Palmer D. L., Barash, M., King, R., and Neil, F.: Hepatitis among hospital employees. Western J Med 138:519–523, 1983.

4. Grady, G. F. and Kane, M. A.: Hepatitis B infections account for multi-million dollar loss. Hosp Infect Contr 8:60–62, 1981.

5. Centers for Disease Control: Hepatitis B virus vaccine Safety—Report of an inter-agency group. Morbidity and Mortality Weekly Report 31:465–67, 3 September 1982.

6. Centers for Disease Control: The safety of hepatitis B virus vaccine. Morbidity and Mortality Weekly Report 32:134–36, 18 March 1983.

7. Centers for Disease Control: Hepatitis B vaccine—Evidence confirming lack of AIDS transmission. Morbidity and Mortality Weekly Report 33:685–87, 14 December 1984.

8. Centers for Disease Control: Changes in premature mortality—United States, 1984–1985. Morbidity and Mortality Weekly Report 36:55–57, 6 February 1987.

9. Centers for Disease Control: Update—Acquired immunodeficiency syndrome—United States. Morbidity and Mortality Weekly Report Supplement, 36:522–526, 14 August 1987.

10. Centers for Disease Control: Recommendations for prevention of HIV transmission in health-care settings. Morbidity and Mortality Weekly Report Supplement, 36(2S): 1S–16S, 21 August 1987.

11. Centers for Disease Control: Update—Acquired immunodeficiency syndrome—United States. Morbidity and Mortality Weekly Report 35:757–66, 12 December 1986.

12. Koop, C. E.: Surgeon General's Report on Acquired Immune Deficiency Syndrome, US DHHS, October, 1986, 36 pp.

13. Centers for Disease Control: Recommendations for preventing transmission of infection with human T-lymphotrophic virus type III/lymphadenopathy-associated virus in the workplace. Morbidity and Mortality Weekly Report 34:681–86, 691–95, 15 November 1985.

14. Vlahov, D., Polk, B. F.: Transmission of human immunodeficiency virus within the health care setting. Occup Med State of the Art Reviews 2:429–450, 1987.

15. Gestal, J. J.: Occupational hazards in hospitals—Risk of infection. Br J Ind Med 44:435–442, 1987.

16. Centers for Disease Control: Update—Human immunodeficiency virus infections in health-care workers exposed to blood of infected patients. Morbidity and Mortality Weekly Report 36:285–89, 22 May 1987.

17. Grady, G. F., Lee V. A., Prince, A. m., et al.: Hepatitis B immune globulin for accidental exposures among medical personnel—Final report of a multicenter controlled trial. J. Infect Dis 138:625–638, 1978.

18. Seeff, L. B., Wright, E. C., Zimmerman, H. J., et al.: Type B hepatitis after needlestick exposure—Prevention with hepatitis B immune globulin. Ann Intern Med 88:285–293, 1987.

19. McCray, E.: The cooperative needlestick surveillance group. Occupational risk of the acquired immunodeficiency syndrome among health care workers. N Engl J Med 314:1127–1132, 1986.

20. Henderson, D. K., Saah, A. J., Zak, B. J., et al.: Risk of nosocomial infection with human T-cell lymphotrophic virus type III/lymphadenopathy-associated virus in a large cohort of intensively exposed health care workers. Ann Intern Med 104:644–647, 1986.

21. Gerberding J. L., Bryant-LeBlanc, C. E. Nelson, K., et al: Risk of transmitting the human immunodeficiency virus, cytomegalovirus, and hepatitis B virus to health care workers exposed to patients with AIDS and AIDS-related conditions. J Infect Dis 156:1–8, 1987.

22. McEvoy, M., Porter, K., Mortimer, P., Simmons, N., Shanson, D.: Prospective study of clinical, laboratory, and ancillary staff with accidental exposures to blood or other body fluids from patients infected with HIV. Br Med J 294: 1595-1597, 1987.

23. Centers for Disease Control: Human T-lymphotrophic virus, type III/lymphadenopathy-associated virus—Agent summary statement. Morbidity and Mortality Weekly Report 35:540–42, 547–49, 29 August 1986.

24. Petersen, N.J., Bond, W. W., Favero, M. S.: Air sampling for hepatitis B surface antigen in a dental operatory. J Am Dental Assoc 99: 465–467, 1979.

25. Scarlett, M.: Infection control practices in dentisty, in Proceedings of the National Conference on infection Control in Dentistry, Chicago, May 13–14, 1986, pp 41–51.

26. Bond, W. W.: Modes of transmission of infectious diseases, in Proceedings of the National Conference on Infection Control in Dentistry, Chicago, May 13–14, 1986, pp 29–35.

27. Centers for Disease Control: Recommendations for preventing transmission of infection with human T-lymphotrophic virus type III/lymphadenopathy-associated virus during invasive procedures. Morbidity and Mortality Weekly Report 35:221–23, 11 April 1986.

28. Centers for Disease Control: Acquired immune deficiency syndrome (AIDS)—Precautions for clinical and laboratory staff. Morbidity and Mortality Weekly Report 31:577–80, 5 November 1982.

29. Centers for Disease Control: Acquired immunodeficiency syndrome (AIDS)—Precautions for health-care workers and allied professionals. Morbidity and Mortality Weekly Report 32:450–452, 2 September 1983.

30. Centers for Disease Control: Recommendations for preventing possible transmission of human T-lymphotrophic virus type III/lymphadenopathy-associated virus from tears. Morbidity and Mortality Weekly Report 34:533-34, 30 August 1985.

31. Centers for Disease Control: Recommended infection-control practices for dentistry. Morbidity and Mortality Weekly Report 35:237–42, 18 April 1986.

32. Centers for Disease Control: Recommendations for providing dialysis treatment to patients infected with human T-lymphotrophic virus, type III/lymphadenopathy-associated virus. Morbidity and Mortality Weekly Report 35:376–76, 383, 13 June 1986.

33. Williams, W. W.: Guidelines for infection control in hospital personnel. Infect Control 4:326–349, 1983.

34. Centers for Disease Control: Human immunodeficiency virus infectons transmitted from an organ donor screened for HIV antibody—North Carolina. Morbidity and Mortality Weekly Report 36:306–8, 29 May 1987.

35. Centers for Disease Control: Transfusion-associated human T-lymphotrophic virus type III/lymphadenopathy-associated virus infection from a seronegative donor-Colorado. Morbidity and Mortality Weekly Report 35:389–91, 20 June 1986.

36. Centers for Disease Control: Public Health Service guidelines for counseling and antibody testing to prevent HIV infection and AIDS. Morbidity and Mortality Weekly Report, 36:509–515, 14 August 1987.

37. Ranki, S.-L., Krohn, M., Antonen, J., Allain, J.-P., Leuther, M., Franchini, G., and Krohn, K.: Long latency precedes overt seroconversion in sexually transmitted human-immunodeficiency-virus infection. Lancet 2(8559): 589–593, 1987.

38. Centers for Disease Control: Facts About AIDS. US DHHS, Spring 1987, 9 pp.

References Not Cited

Centers for Disease Control: Update on acquired immune deficiency syndrome (AIDS) United States. Morbidity and Mortality Weekly Report 31:507–14, 24 September 1982.

Centers for Disease Control: Prevention of acquired immune deficiency syndrome (AIDS)—Report of interagency recommendations. Morbidity and Mortality Weekly Report 32: 101–4, 4 March 1983.

Centers for Disease Control: Acquired immunodeficiency syndrome (AIDS) update—United States. Morbidity and Mortality Weekly Report 32:309–11, 24 June 1983.

Centers for Disease Control: An evaluation of the acquired immunodeficiency syndrome (AIDS) reported in health-care personnel—United States. Morbidity and Mortality Weekly Report 32:358–60, 15 July 1983.

Centers for Disease Control: Update—Acquired immunodeficiency syndrome (AIDS)—United States. Morbidity and Mortality Weekly Report 32:389–91, 5 August 1983.

Centers for Disease Control: Update—Acquired immunodeficiency syndrome (AIDS)—United States. Morbidity and Mortality Weekly Report 32:465–67, 9 September 1983.

Centers for Disease Control: Update—Acquired immunodeficiency syndrome (AIDS)—United States. Morbidity and Mortality Weekly Report 32:688–91, 6 January 1984.

Centers for Disease Control: Prospective evaluation of health-care workers exposed via parenteral or mucous-membrane routes to blood and body fluids of patients with acquired immunodeficiency syndrome. Morbidity and Mortality Weekly Report 33: 181–82, 6 April 1984.

Centers for Disease Control: Update—Acquired immunodeficiency syndrome (AIDS)— United States. Morbidity and Mortality Weekly Report 33:337–39, 22 June 1984.

Centers for Disease Control: Update—Acquired immunodeficiency syndrome (AIDS)— United States. Morbidity and Mortality Weekly Report 33:661–64, 30 November 1984.

Centers for Disease Control: Update—Prospective evaluation of health-care workers exposed via the parenteral or mucous-membrane route to blood and body fluids of patients with AIDS—United States. Morbidity and Mortality Weekly Report 34:101–3, 22 February 1985.

Centers for Disease Control: Update—Acquired immunodeficiency syndrome (AIDS)—United States. Morbidity and Mortality Weekly Report 34:245–48, 10 May 1985.

Centers for Disease Control: Education and foster care of children infected with human T-lymphotrophic virus type III/lymphadenopathy-associated virus. Morbidity and Mortality Weekly Report 34:517–21, 30 August 1985.

Centers for Disease Control: Update—Evaluation of human T-lumphotrophic virus type III/lymphadenopathy-associated virus infection in health-care personnel—United States. Morbidity and Mortality Weekly Report 34:575–78, 27 September 1985.

Centers for Disease Control: Update—Acquired immunodeficiency syndrome (AIDS)—United States. Morbidity and Mortality Weekly Report 35:17–21, 17 January 1986.

Centers for Disease Control: Apparent transmission of human T-lymphotrophic virus type III/lymphadenopathy-associated virus from a child to a mother prividing health care. Morbidity and Mortality Weekly Report 35: 76–79, 7 February 1986.

Centers for Disease Control: Safety of therapeutic immune globulin preparations with respect to transmission of human T-lymphotrophic virus type III/lympadenopathy-associated virus infection. Morbidity and Mortality Weekly Report 35:231–33, 11 April 1986.

Centers for Disease Control: Acquired immunodeficiency syndrome (AIDS) in Western Palm Beach County, Florida, Morbidity and Mortality Weekly Report 35:609–12, 3 October 1986.

Centers for Disease Control: Availability of informational materials on AIDS. Morbidity and Mortality Weekly Report 35:819–20, 9 January 1987.

Centers for Disease Control: Survey of non-U.S. hemophilia treatment centers for HIV seroconversions following therapy with heat-treated factor concentrates. Morbidity and Mortality Weekly Report 36:121–24, 13 March 1987.

Centers for Disease Control: Tuberculosis and AIDS—Connecticut. Morbidity and Mortality Weekly Report 36:133–35, 13 March 1987.

Centers for Disease Control: Human immunodeficiency virus infection in transfusion recipients and their family members. Morbidity and Mortality Weekly Report 36: 137–40 20 March 1987.

Centers for Disease Control: Antibody to human immunodeficiency virus in female prostitutes. Morbidity and Mortality Weekly Report 36: 157–61, 27 March 1987.

Centers for Disease Control: Self-reported changes in sexual behaviors among homosexual and bisexual men from the San Francisco City Clinic cohort. Morbidity and Mortality Weekly Report 36: 187–89, 3 April 1987.

Centers for Disease Control: Classification system for human immunodeficiency virus (HIV) infection in children under 13 years of age. Morbidity and Mortality Weekly Report 36: 225–30, 235–36, 24 April 1987.

Centers for Disease Control: Tuberculosis provisional data—United States, 1986. Morbidity and Mortality Weekly Report 36:254–55, 1 May 1987.

Centers for Disease Control: Trends in human immunodeficiency virus infection among civilian applicants for military service—United States, October 1985—December 1986. Morbidity and Mortality Weekly Report 36:273–76, 15 May 1987.

For further information call: National OSHA Information Office, (202) 523–8148.

[FR Doc. 87–24780 Filed 10–29–87; 8:45 am]

BILLING CODE 4510–23–M

federal register

Friday
October 30, 1987

Part III

Environmental Protection Agency

40 CFR Part 763

Asbestos-Containing Materials in Schools; Final Rule and Notice

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 763

[OPTS-62048E; FRL-3269-8]

Asbestos-Containing Materials in Schools

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a final rule under section 203 of Title II of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2643, to require all local education agencies (LEAs) to identify asbestos-containing materials (ACM) in their school buildings and take appropriate actions to control release of asbestos fibers. The LEAs are required to describe their activities in management plans, which must be made available to all concerned persons and submitted to State Governors. This final rule requires LEAs to use specially-trained persons to conduct inspections for asbestos, develop the management plans, and design or conduct major actions to control asbestos. Exclusions are provided for LEAs which have previously conducted inspections and for LEAs subject to any state requirement at least as stringent as the comparable requirement in this final rule.

DATES: In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. Eastern Standard Time on November 13, 1987. This rule shall be effective on December 14, 1987. The incorporation by reference in the rule is approved by the Director of the Federal Register as of December 14, 1987.

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, Telephone: (202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Background

A. Description of the Enabling Legislation

On October 22, 1986, President Reagan signed into law the Asbestos Hazard Emergency Response Act (AHERA) which enacted, among other provisions, Title II of the Toxic Substances Control Act (TSCA) 15 U.S.C. sections 2641 through 2654. Section 203 of Title II, 15 U.S.C. 2643, requires EPA to propose rules by April 20, 1987 (180 days after enactment), and to promulgate final rules by October 17, 1987 (360 days after enactment), regarding: (1) The inspection of all public and private school buildings for ACM; (2) the identification of circumstances requiring response actions; (3) description of the appropriate response actions; (4) the implementation of response actions; (5) the establishment of a reinspection and periodic surveillance program for ACM; (6) the establishment of an operations and maintenance program for friable ACM; (7) the preparation and implementation of asbestos management plans by LEAs and the submission of the management plans to State Governors, who may review the plans and approve or disapprove them; and (8) the transportation and disposal of waste ACM from schools. This final rule implements the Title II requirements to issue the section 203 rules (except for transportation and disposal, as discussed further below).

Section 206 of TSCA Title II, 15 U.S.C. 2646, also requires EPA to issue by April 20, 1987, a final model accreditation plan for persons who inspect for asbestos, develop management plans, and design or conduct response actions. States are required to adopt an accreditation program at least as stringent as the EPA model within 180 days after the beginning of their next legislative session. Accreditation of laboratories which analyze asbestos bulk samples and asbestos air samples is also required by TSCA Title II. The National Bureau of Standards (NBS), U.S. Department of Commerce, is required to establish the bulk sampling accreditation program by October 17, 1987, and the air sampling accreditation program by October 12, 1988.

States were required to notify LEAs by October 17, 1987, regarding where to submit management plans. LEAs must submit those plans to their State no later than October 12, 1988. The plans must include the results of school building inspections and a description of all response actions planned, completed, or in progress. After receiving a management plan, States are allowed 90 days to disapprove the plan. If the plan is disapproved, the State must provide a written explanation of the disapproval and the LEA must revise the plan within 30 days to conform with the State's suggested changes. The 30-day period can be extended to 90 days by the State. LEAs are required to begin implementation of their management plans by July 9, 1989, and to complete implementation in a timely fashion.

Transport and disposal rules under TSCA section 203(h) have not yet been proposed. In accordance with TSCA section 204(f), therefore, LEAs shall provide for transportation and disposal of asbestos in accordance with the most recent version of EPA's "Asbestos Waste Management Guidance." Applicable provisions of that document are included as Appendix D of this rule. Regulations governing transport of asbestos-containing waste, including school waste already regulated by the National Emission Standard for Hazardous Air Pollutants (NESHAP) (40 CFR Part 61, Subpart M) under the Clean Air Act (42 U.S.C. section 7401, et seq.), were promulgated by the Department of Transportation (DOT) (49 CFR Part, 173 Subpart J). The NESHAP and DOT rules must be followed, according to the "Asbestos Waste Management Guidance." These rules will be sufficient to ensure the proper loading and unloading of vehicles and to ensure the physical integrity of containers.

Section 203(1) requires Department of Defense schools to carry out asbestos identification, inspection and management activities in a manner comparable to the manner in which an LEA is required to carry out such activities. EPA interprets the language of this section which states that such activities shall be carried out "to the extent feasible and consistent with the national security" as recognition that existing agreements with foreign governments may make it difficult to carry out certain provisions of this regulation.

Since this rule has been signed by the EPA Administrator by October 17, 1987, the rule has been promulgated within the statutory time frame required by section 203 of TSCA Title II. In accordance with 40 CFR 23.5, however, solely for purposes of judicial review deadlines under section 19 of TSCA Title I, the rule is considered to be promulgated at 1 p.m. eastern time, 14 days after publication in the **Federal Register**. Thus, the period in which petitions for review of this rule may be filed under section 19 commences 14 days after publication.

B. Previous EPA Asbestos Activities

EPA has undertaken a variety of technical assistance and regulatory activities designed to control ACMs in buildings and minimize inhalation of asbestos fibers.

1. *Technical Assistance Program.* Since 1979, EPA staff have assisted schools and other building owners in identifying and controlling ACM in their buildings. Through a cooperative agreement with the American Association of Retired Persons (AARP), EPA has hired architects, engineers, and

other professionals to provide on-site assistance to school officials and other building owners. With AARP assistance, many school officials and building owners have effectively and safely dealt with ACM in ways that are appropriate for the particular situation in their building.

In addition, EPA has published state-of-the-art guidance to help identify and control asbestos in buildings. EPA's principal asbestos guidance document, "Guidance for Controlling Asbestos-Containing Materials in Buildings," (EPA 560/5–85–024, also known as the "Purple Book") was expanded and updated in June 1985, based on recommendations from recognized national experts. The document provides criteria for building owners to use in deciding which abatement method is most appropriate for each particular situation.

An important EPA goal has been to provide training for people involved in all aspects of the identification and control of asbestos. EPA has established five Asbestos Information and Training Centers to provide information concerning the identification and abatement of asbestos hazards and to train people in proper asbestos abatement techniques. The five centers are located at the Georgia Institute of Technology in Atlanta, the University of Kansas in Kansas City, Tufts University in Medford, Massachusetts, the University of Illinois in Chicago, and the University of California at Berkeley. Courses attended by more than 8,000 building owners and managers, maintenance personnel, school officials, architects, consultants, and abatement contractors have been taught at the centers since December 1984.

Finally, because of the large number of asbestos abatement projects and the short-term nature of many of them, EPA believes that contractors should be State-certified and that States should oversee projects to ensure that they are properly performed. EPA has provided models for State certification legislation and start-up funding for the initiation of 38 State oversight programs.

2. *EPA's regulatory program.* In the **Federal Register** of May 27, 1982 (47 FR 23360), EPA issued a school identification and notification rule (hereinafter called the 1982 Asbestos-in-Schools Rule). This rule required school officials by June 28, 1983, to inspect all school buildings for friable materials, take a minimum of three samples of each type of friable material found, analyze samples using polarized light microscopy (PLM) to determine if asbestos is present, and keep records of the findings. (40 CFR Part 763, Subpart F)

School district officials who found friable ACM were required to notify employees of the location of the materials, post a notification form in the primary administrative and custodial offices and faculty common rooms, provide maintenance and custodial employees with a guide for reducing asbestos exposure, and notify parent-teacher associations or parents directly of the inspection results.

EPA also issued a rule to protect public employees who perform asbestos abatement work in those States not covered by the current asbestos standard issued by the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor. This rule (40 CFR Part 763, Subpart G) complements the OSHA asbestos regulations that protect private sector workers, and public employees in States with OSHA-approved State plans, from exposure to asbestos in occupational settings. The rule requires specific work practices, personal protective equipment, environmental monitoring, medical exams, and other provisions. The EPA rule also includes a provision not in the OSHA rule, i.e., notification to EPA generally 10 days before an asbestos abatement project is begun when public employees are doing the work. OSHA issued revised regulations regarding occupational asbestos exposure published in the **Federal Register** of June 20, 1986 (51 FR 22612). EPA issued in the **Federal Register** of February 25, 1987 (52 FR 5618), a revision of its worker protection rule to make it consistent with the new OSHA regulations.

3. *Recent developments.* EPA issued an Advance Notice of Proposed Rulemaking (ANPR) on August 12, 1986 (51 FR 28914), entitled "Asbestos-Containing Materials in Schools: Inspection, Notification, Management Plans and Technical Assistance." The purpose of this ANPR was to solicit comments on the future direction of EPA's program to reduce risks from asbestos in schools and to solicit information about a variety of technical and policy issues.

Prior to enactment of TSCA Title II, EPA had also initiated development of two new guidance documents on asbestos control. One document was being developed to provide more detailed guidance about assessing ACM in buildings and selecting abatement actions. A second document was being developed to provide more detailed guidance about practices and procedures which should be included in an operations and maintenance program. Both documents had been developed with the assistance of panels of national experts who convened in Washington, DC to discuss technical and operational issues associated with these subjects. The work done in these two guidance documents has been valuable in developing provisions of this rule.

Also, in 1986, EPA, in cooperation with the National Institute for Occupational Safety and Health (NIOSH), U.S. Department of Health and Human Services, published "A Guide to Respiratory Protection for the Asbestos Abatement Industry" to provide practical guidance in the selection and use of respiratory protection to persons who work in asbestos abatement. The "Guide" also provides information relevant to other work activities, such as maintenance or repair, where the exposure to asbestos or the potential for exposure exists. The "Guide" was updated in September 1986 to include the text of the OSHA June 1986 revision of its asbestos standard.

C. Development of the Rule

The April 1987 proposed rule was developed through the process of regulatory negotiation, an alternative process for developing regulations in which individuals and groups with negotiable interests directly affected by the rulemaking work together with EPA in a cooperative venture to develop a proposed rule by committee agreement. The negotiation group was established as a Federal Advisory Committee and consisted of representatives of national educational organizations, labor unions, asbestos product manufacturers, the environmental community, asbestos abatement contractors, professional associations of architects, consulting engineers, industrial hygienists, States, and EPA.

After an organizational meeting in Washington, DC on January 23, 1987 (announced in the **Federal Register** of January 13, 1987, 52 FR 1377), the committee was established with 23 interests represented. Meetings were scheduled on February 5 and 6, February 17 and 18, March 9 and 10, March 26 and 27, and April 1 thru 3. During the March 10, 1987, meeting, the plenary session of the Committee accepted two more parties on the committee, one taking a seat representing State attorneys general, the other (representing big city schools) sharing a seat with a previously seated member representing big city schools.

Members of Negotiating Committee

The members of the negotiating committee and their interest represented are as follows:

1. Allen Abend, Council of Chief State School Officers.
2. Bill Borwegen, Service Employees International Union/Jordan Barab, American Federation ot State, County, and Municipal Employees (school service employees).
3. Dr. William Brown, Baltimore City Schools/Michael Young, New York City Law Department (big city schools).
4. Brian Christopher, Committee on Occupational Safety and Health.
5. Donald Elisburg, Laborers' International Union and Laborers-AGC Education and Training Fund.
6. Kellen Flannery, Council for American Private Education.
7. Steve Hays, asbestos abatement engineer.
8. Jesse Hill, manufacturers of asbestos pipe and block insulation products.
9. Edward Kealy, National School Boards Association.
10. Lloyd A. Kelley, Jr., Superintendent of Schools Rutland S.W. Vermont, Supervisory Union (rural schools).
11. William Lewis, Manufacturers of asbestos surfacing products.
12. Lynn MacDonald, Sheet Metal Workers International Association.
13. Claudia Mansfield, American Association of School Administrators.
14. Roger Morse, American Institute of Architects.
15. David Ouimette, Colorado Department of Health (States with developing asbestos programs).
16. Joel Packer, National Education Association.
17. Robert Percival, Environmental Defense Fund.
18. Miriam Rosenberg, National PTA.
19. Paul Schur, Connecticut Department of Health/Dr. Donald Anderson, Illinois Department of Public Health (States with implemented asbestos programs).
20. Robert Sheriff, American Industrial Hygienists Association.
21. David Spinazzolo, Association of Wall and Ceiling Industries (asbestos abatement contractors).
22. Susan Vogt, U.S. E.P.A.
23. John Welch, Safe Buildings Alliance (former manufacturers of asbestos products).
24. Margaret Zaleski, National Association of State Attorneys General.

Facilitation Team and Executive Secretary

Owen Olpin, Consultant to EPA
Eileen B. Hoffman, Federal Mediation & Conciliation Services
Kathy Tyson, U.S. E.P.A. (Executive Secretary)
Leah Haygood, The Conservation Foundation
Dan Dozier, Federal Mediation & Conciliation Services
John Wagner, Federal Mediation & Conciliation Services

The committee met in plenary sessions as well as in four work groups. Each work group focused on a cluster of related issues and reported to the plenary on options and recommendations. The plenary retained all decision-making power of the committee and often gave guidance to work groups. Generally, for each day of a plenary session, work groups convened the day before to prepare reports for the plenary. Neutral facilitators were present at all work group and plenary meetings to assist the negotiations in moving forward.

At the end of the 2-month negotiating process on April 3, 1987, and after extensive efforts, the committee was in general agreement on the vast majority of issues before it for the purposes of the proposal. Agreement to solicit further comment about alternatives was often important in developing provisions to be included as proposals. At the close of the negotiations, some items remained at issue and were not subject to universal agreement. These consisted of the following: definitions and response actions for damaged and significantly damaged thermal system insulation ACM (relates to being deemed nonfriable in the inspection section) and damaged and significantly damaged friable surfacing and miscellaneous ACM. Also, the definition of asbestos debris and the nature of cleaning practices (initial and routine) for friable ACBM or damaged or significantly damaged thermal insulation under the operations and maintenance section were still at issue. While extending negotiations beyond April 3, 1987, may well have enabled the committee to resolve these issues, the Congressional April 20, 1987, deadline for issuing a proposed rule precluded this possibility. Although **Federal Register** practices precluded the Agency from highlighting these issues in the text of the proposed rule, the public docket contains a copy of the proposed rule which clearly identifies the sections which contain these unresolved issues.

On April 3, 1987, the facilitators prepared, for members' signatures, statements supporting the use of the agreed-on portions of the regulatory language as a basis for a Notice of Proposed Rulemaking. Members representing 20 of the 24 interests seated on the committee signed these statements. Members representing 4 of the interests seated on the committee did not sign the statements, due to the status of the unresolved issues described above. Mr. Paul Schur, a corepresentative of states with an implemented asbestos program (an interest that did not sign), signed in an individual capacity. All committee members, signatories and non-signatories alike, retained for themselves and for their constituencies all rights which bear on the rulemaking, including the right to comment fully during the public comment period.

Notably, signatories supporting the agreed-on regulatory language as a basis for a Notice of Proposed Rulemaking did so in considering that language as a whole. The proposed rule's agreed-on language was not necessarily ideal from any one party's perspective.

On April 17, 1987, the EPA Administrator signed the proposed rule developed through the negotiated rulemaking process. The proposed rule and the final Model Accreditation Plan were published in the **Federal Register** of April 30, 1987. EPA's decision to use the results of the negotiated rulemaking process as a basis for a proposed rule was explained in the April 30 document (52 FR 15833).

The 60-day public comment period ended on June 29. During this time period, EPA staff conducted 10 Regional briefings on the proposed rule for State officials and a number of additional briefings for interested parties. These parties included school administrators, school board officials and building owners. At the conclusion of the public comment period, the Agency had received over 170 comments on the proposed rule.

Several comments received by EPA requested the Agency to hold a public hearing on the proposed rule. As a result of these comments, EPA conducted public hearings on August 25 and 26. Over 25 individuals representing a variety of groups testified before EPA. The testimony and transcript from the public hearing were included in the rulemaking's docket.

D. Basis for EPA's Decision

After consideration of the proposed rule and all the evidence in the rulemaking record, including public comments on the proposed rule, EPA has decided to promulgate a final rule which is like the proposal in most respects. A relatively small number of changes have been made from the proposal to reflect public comments. In a number of cases EPA decided not to

make changes suggested by public comments. The Agency discusses its response either in this preamble or elsewhere in the rulemaking docket.

EPA has determined that the regulations being announced in this edition of the **Federal Register** use the least burdensome methods which protect human health and the environment. This determination is supported by the discussion in this preamble and the entire rulemaking record. EPA adopts as the reasoning supporting its final rule the same basic reasoning in the preamble to the proposed rule (52 FR 15833). The provisions of this rule represent a reasonable way to carry out the statutory responsibilities of TSCA Title II.

EPA's analysis of risk placed in the rulemaking record when the proposed rule was issued shows that asbestos in schools could present a risk of concern and that the measures required by this rule are necessary to protect public health and the environment. EPA, as discussed later in this preamble, continues to rely on that risk analysis for support of the final rule. While there may be a wide divergence of opinion as to the actual health effects from asbestos exposure in schools, EPA believes there is little doubt that the decisionmaking process established by this rule needs to be implemented. This process is based on the responsibility of local officials, with input from the local community and with assistance from specially-trained experts, to develop management plans to implement appropriate measures that will abate the risk of asbestos in particular schools depending upon local circumstances.

This decisionmaking process ensures that the costs associated with this rule will be reasonable while protecting health and the environment. EPA has revised its costs somewhat from the analysis in its proposal, but has not changed its decision that these costs are reasonable. The detailed revisions to the Agency's costs analysis are discussed later in this preamble and in the rulemaking record. All public and private schools will experience the cost of a building walkthrough and visual inspecting, which EPA has determined will not exceed a few hundred dollars per school. Many schools, finding no asbestos, will experience no further costs. Most of the remaining schools that find ACM are expected to implement operations and maintenance programs along with training, periodic surveillance and reinspection. EPA has in fact revised downward the cost of the typical school asbestos program. It is expected that this cost will be about $5,530 per school year, a cost that is clearly minimal if there is a possibility that adverse health effects may be avoided. EPA also notes that some portion of the cost of the typical school program will not involve expenditures by the schools but are so-called "opportunity costs." These are costs assigned to the time spent by school employees in carrying out the activities required by the regulation. While these are real costs of the program, EPA expects that many schools will be able to conduct the typical school program through use of existing employees. Thus, the costs of the program will appear to the individual school officials and local communities to be somewhat less than EPA's economic analysis shows.

The decisionmaking process, summarized above and discussed in detail elsewhere in the preamble and rulemaking record, will ensure the reasonableness of other more extensive response actions for particular schools.

II. Provisions of the Final Rule

A. Introduction

This unit describes the various provisions of the final rule. The changes to the proposed rule made by the Agency based on comments received during the comment period are noted. Following a discussion of applicable regulatory definitions in Unit B and general responsibilities in Unit C., inspections and reinspections, sampling and analysis, and assessment of materials are discussed in Units D., E., and F., respectively. In Unit G., the major elements of the management plan, availability of the plan, and review of the plan by Governors are discussed.

Unit H. describes requirements for response actions to be taken by LEAs under circumstances described in that section. Unit I. explains requirements for training and periodic surveillance, and Unit J. explains air sampling requirements for determining when a response action has been completed.

Unit K. discusses requirements to use accredited persons to inspect buildings for asbestos, develop management plans, and design or conduct response actions. Requirements to protect abatement workers, custodial and maintenance staff, and building occupants are explained in Unit L.

Waivers for all or part of a State asbestos program are described in Unit M., including information required in the waiver request and the process for granting or denying such waivers. Requirements for recordkeeping and enforcement provisions are described in Units N. and O., respectively.

B. Definitions

Several important definitions (§ 763.83) are discussed below.

"Asbestos-containing building material (ACBM)" encompasses surfacing ACM, thermal system insulation ACM, and miscellaneous ACM in or on interior parts of the school building. These include specified exterior portions of school buildings that, for the purposes of this rule, may fairly be considered interior parts. EPA focused upon interior building materials because, in the Agency's experience, such materials represent a very large percentage of ACM in schools and appear to pose the greatest hazards to occupants.

The definition of "school building," in the rule however, makes it clear that exterior hallways connecting buildings, porticos, and mechanical system insulation are considered to be in a building and are subject to jurisdiction under TSCA Title II. The Agency believes that these exterior areas, by virtue of the accessibility of the ACM found there, warrant inclusion under the rule. Often, these exterior areas are connected to interior areas and could be considered to be a single homogeneous area in terms of a removal project design.

"Asbestos debris" is defined as pieces of ACBM that can be identified by color, texture, or composition. The definition also includes dust, if the dust is determined by the accredited inspector to be asbestos-containing. The Agency included dust in the definition based on public comments.

"Damaged or significantly damaged thermal system insulation ACM" is defined as ACM on pipes, boilers, and other similar components and equipment where the insulation has lost its structural integrity or its covering in whole or in part, is crushed, water-stained, gouged, punctured, missing or not intact such that it is not able to contain fibers. Damage may further be illustrated by occasional punctures, gouges, or other signs of physical injury to ACM; occasional water damage on the protective coverings/jackets; or exposed ACM ends or joints. Asbestos debris originating from adjacent ACBM may also indicate damage. This definition allows that, even though the insulation is marred, scratched or otherwise marked, it may not be, in the judgment of the accredited expert, damaged so as to release fibers. This definition varies from the proposed rule's language by providing more specific guidance on the physical characteristics that may constitute

damage. An accredited inspector shall classify this material based upon a determination of damage or significant damage (§§ 763.85 and 763.88) and an accredited management planner shall recommend in writing appropriate response actions (§ 763.93).

"Damaged friable surfacing ACM" is defined as ACM which has deteriorated or sustained physical injury such that the cohesion of the material or its adhesion to the substrate is inadequate, or which, for any other reason, lacks fiber cohesion or adhesion qualities. Such damage or deterioration may be illustrated by the separation of ACM into layers; separating of ACM from the substrate; flaking, blistering, or crumbling of the ACM surface; water damage; or significant or repeated water stains, scrapes, gouges, mars, or other signs of physical injury on the ACM. Asbestos debris originating from adjacent ACBM may also indicate damage. The definition allows that such surfacing material may show signs of water damage or physical injury without, in the judgment of the accredited expert, always demonstrating a lack of fiber cohesion or adhesion. This definition varies from the proposed rule's language by providing more specific guidance on the physical characteristics that may constitute damage. Accredited experts will classify material based upon a determination of damage and recommend appropriate response actions (§§ 763.85, 763.88, and 763.93).

"Miscellaneous ACM" includes a wide variety of materials in buildings, such as vinyl flooring, fire-resistant gaskets and seals, and asbestos cement. Damage to these materials is defined by the same cohesion and adhesion (if appropriate) properties as surfacing materials. The Agency believes this definition is sufficiently general to provide a reasonable approach to assessing damage to so wide a range of materials.

"Significantly damaged friable surfacing ACM" is defined as material in a functional space where the damage is extensive and severe. (The definition of significantly damaged friable miscellaneous ACM closely parallels the definition for significantly damaged surfacing ACM.) Again, this determination of significant damage will be made by accredited experts (§§ 763.85, 763.88, and 763.93).

This definition is a function of two major factors. The first factor deals with extent, or scope, of damage across a functional space. The Agency, in draft guidance, suggested that damage evenly distributed across one-tenth of a functional space or localized over one-quarter represented significant damage (See Seventh Draft Report, "Guidance for Assessing and Managing Exposure to Asbestos in Buildings," November 7, 1986, p. 9). This represents a level of damage which a panel of experts, convened by the Agency, believed was generally, although perhaps not always, unreasonable to repair or restore.

The second factor involves the degree or severity of the damage itself. A major delamination of asbestos material, for instance, constitutes damage which is more severe than slight marks or mars. ACM, in the accredited expert's judgment, may be so severely damaged that there is no feasible means of restoring it to an undamaged condition.

Material has potential for significant damage as opposed to only potential for damage if it is subject to major or continuing disturbance, due to factors such as accessibility (i.e., subject to disturbance by school building occupants or workers in the course of the normal activities), or, under certain circumstances, vibration or air erosion. For example, material within reach of students above an entrance is clearly accessible. Thermal system insulation running along the base of a wall in a boiler room is also accessible. Material on the ceiling of a school auditorium, beyond the reach of students, is not. ACM on a high school gymnasium ceiling, which might be reached with basketballs or other objects, is subject to either classification, although an LEA might be well advised in this instance to implement a preventive measure to avoid disturbance.

EPA believes a wide range of "preventive measures" exist. One example is the installation of a stop to prevent a door from striking (and damaging) thermal system insulation ACM behind it. Another might involve restricting access of a corridor with surfacing ACM on a low ceiling, where students continually marred and vandalized the material. The problem of high school students hitting the gym ceiling with basketballs may be eliminated by a policy prohibiting such activities, if it can be effectively implemented. LEAs, in consultation with maintenance staff and, if desired, accredited experts, will identify a variety of creative and effective means of eliminating potential damage or significant damage to ACM.

If, however, such preventive measures cannot be effectively implemented, other response actions, including removal, will be required. The Act is clear that EPA, as part of its rulemaking, direct LEAs to mitigate those circumstances which involve potential for significant damage.

Based on public comments, the Agency added the terms "air erosion" and "vibration" to increase the specificity of the "potential significant damage" definition in the rule.

The "enclosure" definition requiring an airtight, impermeable, permanent barrier around ACBM to prevent the release of asbestos fibers into the air does not contemplate a vacuum-sealed area which is impossible to access. Instead, this definition, based on the National Institute of Building Sciences' (NIBS') "Model Guide Specifications, Asbestos Abatement in Buildings," July 18, 1986, is associated with precise engineering specifications, found in section 09251 and elsewhere in the NIBS' Model Guide, to construct enclosures sufficient to prevent fiber release. Also, this term, from the standpoint of permanence, is not intended to apply to mini-enclosures described in the EPA worker protection rule or Appendix B of the regulation, as these enclosures are used temporarily for repair or abatement activities.

"Functional space" is a term of art used by the accredited expert to appropriately characterize an area as containing "significantly damaged friable surfacing ACM" or "significantly damaged friable miscellaneous ACM." The "functional space" may be a room, group of rooms, or a homogeneous area, as determined appropriate by the accredited expert. Note that the functional space includes the area above a dropped ceiling as well as crawl spaces.

C. LEA General Responsibilities

The final rule requires LEAs to designate a person to carry out certain duties and ensure that such person receives training adequate to perform the duties.

Section 763.84 requires LEAs to ensure that: (1) Inspections, reinspections, periodic surveillance and response action activities are carried out in accordance with the final rule; (2) custodial and maintenance employees are properly trained as required by this final rule; (3) workers and building occupants are informed annually about inspections, response actions, and post-response action activities including reinspections and periodic surveillance; (4) short-term workers (e.g., telephone repair workers) who may come in contact with asbestos in a school are provided information about locations of asbestos-containing building material (ACBM); (5) warning labels are posted as required by this final rule; and (6) management plans are available for review and that parent, teacher, and

employee organizations are notified of the availability of the plan.

Lastly, LEAs shall consider whether any conflict of interest may arise from the interrelationship among accredited personnel (e.g., the management planner and abatement contractor) used by the LEAs and whether that should influence the LEA's selection of accredited personnel. EPA added this provision after reviewing public comments.

D. Inspections and Reinspections

1. *Inspections.* Section 763.85 requires LEAs to have an accredited inspector visually inspect all areas of each school building to identify locations of all friable and nonfriable suspected ACBM, determine friability by touching, and either sample the suspected ACBM or assume that suspected materials contain asbestos. The inspector must then develop an inventory of areas where samples are taken or material is assumed to contain asbestos. Finally, the accredited inspector is required to assess the physical condition of friable known or assumed ACBM as required under § 763.88.

2. *Exclusions.* Section 763.99 defines conditions that would exclude an LEA from all or part of the initial inspection. The accredited inspector is a key element in the exclusion process. For all inspection exclusions, areas previously identified as having friable ACM or nonfriable ACM that has become friable have to be assessed as required under § 763.88. All information regarding inspection exclusions shall be placed in the management plan.

Five types of exclusions for LEAs are provided in the final rule. First, LEAs do not need to have an initial inspection conducted in specific areas of a school where ACBM has already been identified. Second, if previous sampling of a specific area of the school indicated that no ACM was present, and the sampling was done in substantial compliance with the final rule, the LEA does not have to perform an initial inspection of that area. Third, LEAs do not have to inspect specific areas of schools where records indicate that all ACM was removed. Fourth, LEAs can receive an inspection exclusion for schools built after October 12, 1988 (the date when management plans are to be submitted to Governors), if no ACBM was specified for use in the school. Fifth, States that receive a waiver from the inspection requirements of the rule can grant exclusions to schools that had performed inspections in substantial compliance with the rule.

3. *Reinspections.* Section 763.85(b) requires LEAs to have accredited inspectors conduct reinspections at least once every 3 years. The inspector must reinspect all known or assumed ACBM and shall determine by touching whether nonfriable material has become friable since the last inspection. The inspector may sample any newly friable materials or continue to assume the material to be ACM. The inspector shall record changes in the material's conditions, sample locations, and the inspection date for inclusion in the management plan. In addition, the inspector must assess newly friable known or assumed ACBM, reassess the condition of friable known or assumed ACBM, and include assessment and reassessment information in the management plan.

Section 763.85(c) states that thermal system insulation that has retained its structural integrity and that has an undamaged protective jacket or wrap is treated as nonfriable. Based on public comments, EPA changed the wording in this section from "deemed" nonfriable to "treated as" nonfriable.

E. Sampling and Analysis

1. *Sampling.* Section 763.86 permits the LEA to assume that suspected ACBM is ACM. If the LEA does not assume suspected ACBM to be ACM, the LEA shall use an accredited inspector to collect bulk samples for analysis.

EPA expects that a school is likely to sample only friable suspected ACBM. For nonfriable suspected ACBM, EPA anticipates most schools will assume this material contains asbestos. However, the final rule does not preclude a school from sampling all of its suspected ACBM, both friable and nonfriable. Sampling of friable surfacing materials should follow the guidance provided in the EPA publication "Simplified Sampling Scheme for Friable Surfacing Materials" (EPA 560/5–85–030a). To determine whether an area of surfacing material contains asbestos, sufficient samples shall be taken in a statistically random manner to provide data representative of each homogeneous area being sampled.

In most cases, sampling of thermal system insulation requires an accredited inspector to take at least three randomly distributed samples per homogeneous area. The final rule includes three exceptions to this requirement for sampling of thermal system insulation. First, an accredited inspector can determine through visual inspection that the material is non-ACM (e.g., fiberglass). Second, only one sample is required for patched homogeneous areas of thermal system insulation. Third, an accredited inspector needs to collect an appropriate number of samples to determine whether cement or plaster tees are ACM.

For friable miscellaneous material or nonfriable suspected ACBM, an accredited inspector must collect bulk samples in an appropriate manner.

2. *Analysis.* Section 763.87 requires analysis of bulk samples by laboratories accredited by NBS. In the period before NBS has developed its accreditation program, laboratories which have received interim accreditation from EPA may be used to analyze samples. The interim program is explained in a notice in the **Federal Register** (52 FR 33470, September 3, 1987). After receiving the sample results, the LEA must consider an area to contain asbestos if asbestos is present in any sample in a concentration greater than 1 percent. Compositing of samples (mixing several samples together) is prohibited.

The 1982 EPA rule "Asbestos in Schools: Identification and Notification", 40 CFR 763, Subpart F, required analysis of bulk asbestos samples by PLM and provides a protocol for analysis in its Appendix A to Subpart F. EPA requires use of the same PLM method for this final rule. As it develops the accreditation process for laboratories performing analysis of bulk samples, NBS will consider whether to change the PLM protocol. If NBS recommends changes, EPA will amend this rule accordingly.

F. Assessment

Section 763.88 outlines a general assessment procedure to be conducted by an accredited inspector during each inspection or reinspection. The accredited inspector is required to classify ACBM and suspected ACBM assumed to be ACM in the school building into broad categories appropriate for response actions. In addition, after reviewing public comments, the Agency decided to require the inspector to give reasons in the written assessment supporting his classification decisions. Assessment may include a variety of considerations, including the location and amount of material, its condition, accessibility, potential for disturbance, known or suspected causes of damage, or preventive measures which might eliminate the reasonable likelihood of damage. The LEA is directed to select an accredited management plan developer who, after a review of the results of the inspection and the assessment, shall recommend in writing appropriate response actions.

G. Management Plans

Section 763.93 requires LEAs to develop an asbestos management plan for each school under its administrative control or direction. The plan must be developed by an accredited asbestos management planner. Some of the major components required in the plan include: A description of inspections and response actions; an assurance that accredited persons were used to conduct inspections, develop management plans, and design or conduct response actions; and a plan for reinspection, periodic surveillance, and operations and maintenance.

Each LEA is required to maintain a copy of the management plan in its administrative office, and each school is required to maintain a copy of the school's management plan in the school's administrative office. These plans are to be made available for inspection by the public without cost or restriction. LEAs must notify in writing, parent, teacher, and employee organizations of the availability of management plans upon submission of the plan to the State and at least once each school year. The requirement for written notification was added after the Agency reviewed comments from the public. In addition, based on public comments received on the proposed rule, the Agency has included in the final rule a requirement that in the absence of any such organizations, the LEA shall provide written notice to that group (e.g., parents) of the availability of the management plan.

Section 763.93 requires LEAs to submit their management plans to their States on or before October 12, 1988. Each LEA must begin implementation of its management plan on or before July 9, 1989, and complete implementation of the plan in a timely fashion.

H. Response Actions

The final rule identifies five major response actions—in § 763.91 operations and maintenance (O&M) and in § 763.90, repair, encapsulation, enclosure and removal—and describes appropriate conditions under which they may be selected by the LEA. The final rule also identifies the steps which shall be taken to properly conduct and complete the response actions.

The LEA is required to select and implement in a timely manner the appropriate response action. The response action selected shall be sufficient to protect human health and the environment. From among the response actions that protect human health and the environment, the LEA may select the response action that is least burdensome.

LEAs are required to use accredited persons to design or conduct response actions. Section 763.90 specifically provides that nothing in the rule shall be construed to prohibit the removal of ACBM from a school building at any time, should removal be the preferred response action of the LEA.

Different response actions are required for each of the five major categories of damaged or potentially damaged ACBM. These categories are:

1. Damaged or significantly damaged thermal system insulation ACM.
2. Damaged friable surfacing or miscellaneous ACM.
3. Significantly damaged friable surfacing or miscellaneous ACM.
4. Friable surfacing or miscellaneous ACM, and thermal system insulation ACM which has potential for significant damage; and
5. Friable surfacing or miscellaneous ACM, thermal system insulation ACM which has potential for damage.

In each of the categories above, procedures for appropriately controlling or abating the hazards posed by the ACBM are set forth. For damaged or significantly damaged thermal system insulation, the LEA must at least repair the damaged area. If it is not feasible, due to technological factors, to repair the damaged material, it must be removed. Further, the LEA must maintain all thermal system insulation in an intact state and undamaged condition. If damaged friable surfacing or miscellaneous ACM is present, the LEA shall encapsulate, enclose, remove, or repair the damaged area. After selecting the appropriate response actions that protect human health and the environment, the LEA may consider local circumstances, including occupancy and use patterns within the school building, and economic concerns, such as short- and long-term costs. When friable surfacing or miscellaneous ACBM is significantly damaged, the LEA must immediately isolate the functional space and then must remove the material in the functional space, unless enclosure or encapsulation would be sufficient to contain fibers.

Response actions for ACBM with potential for damage and potential for significant damage emphasize O&M and preventive measures to eliminate the reasonable likelihood that damage will occur. When potential damage is possible, the LEA must at least implement an O&M program. If there is potential for significant damage and preventive measures cannot be effectively implemented, response actions other than O&M or area isolation may be required.

Section 763.91 requires the LEA to implement an operations, maintenance and repair (O&M) program for any school building in which friable ACBM is present or assumed to be present in the building. Any material identified as nonfriable ACBM or nonfriable assumed ACBM which is rendered or is about to be rendered friable as a result of activities performed in the school building shall be treated as friable. For example, if nonfriable ACBM wallboard was about to be sanded, operations and maintenance procedures would be required. The O&M program, which must be documented in the LEA management plan, consists of worker protection (summarized in Unit II.K.), cleaning, operations and maintenance activities (also in Unit II.K.), and fiber release episodes.

An initial cleaning is required, which employs wet methods and is conducted at least once after completion of the inspection and before the initiation of a response action other than an O&M activity. In addition, the rule also requires that an accredited management planner make a written recommendation to the LEA regarding whether additional cleaning is needed. The recommendation on additional cleaning was added to the rule based on public comments.

The final rule requires that O&M activities (other than small-scale, short-duration activities) which disturb asbestos shall be designed and conducted by persons accredited to do such work. (A discussion of what constitutes small-scale, short-duration projects is given in Appendix B to Subpart E.) Finally, procedures are provided for responding to fiber release episodes—the uncontrolled or unintentional disturbance of ACBM. For minor episodes (i.e., those involving 3 square or linear feet or less of ACBM), basic cleaning and containment practices for O&M staff are listed. For larger amounts, accredited personnel are required to respond.

I. Training and Periodic Surveillance

The LEA shall ensure that all members of its maintenance and custodial staff receive at least 2 hours of awareness training. The LEA must also ensure that staff who conduct any activities which will disturb ACBM receive an additional 14 hours of training. Specific topics to be covered in the 2-hour and 14-hour training courses are listed in § 763.92(a).

Section 763.92(b) requires periodic surveillance to be performed at least

once every 6 months. The LEA may use unaccredited personnel such as custodians or maintenance workers to conduct surveillance activities. Periodic surveillance requires checking known or assumed ACBM to determine if the ACBM's physical condition has changed since the last inspection or surveillance. The date of the surveillance and any changes in the condition of the ACBM must be added to the management plan.

J. Completion of Response Actions

After performing a thorough visual inspection, air testing is used to determine if a response action has been completed (§ 763.90(i)). Clearance air monitoring will not be required for small-scale, short-duration projects. Phase Contrast Microscopy (PCM) is allowed for response actions involving 260 linear or 160 square feet or less, the amounts used to trigger removal requirements under EPA's NESHAP (40 CFR Part 61, Subpart M).

Section 763.90 requires the use of transmission electron microscopy (TEM) for most removal, enclosure, and encapsulation response actions. Laboratories are to be accredited by the National Bureau of Standards (NBS). Until NBS develops its program, LEAs shall use laboratories that use the interim protocol described in Appendix A to this Subpart E. EPA continues to believe that TEM is the method of choice for air sample analysis because, unlike PCM, TEM analysis can distinguish asbestos from other fibers and detect the small thin fibers found at abatement sites. Therefore the use of TEM will significantly improve the adequacy of cleanup and is recommended over PCM when available. However, due to limited availability of microscopes for air sample analysis and the cost and time associated with TEM analysis, the final rule allows a phase-in period for the TEM requirement. For 2 years after the rule becomes effective, LEAs may choose to use PCM for response actions comprising 3,000 square or 1,000 linear feet or less. For 1 year after this, LEAs may use PCM for clearance of projects of 1,500 square or 500 linear feet or less. LEAs retain full discretion to require use of TEM at any time for any project.

The criterion for determining whether a response action is complete when using PCM will require multiple samples (minimum of five) with clearance allowed only if all of the individual samples are below the limit of reliable quantitation of the PCM method (0.01 fibers/cm^3). The rule requires persons to use the NIOSH 7400 method for PCM clearance.

The rule has a three-step process for using TEM to determine successful completion of a removal response action. The first step is a careful visual inspection, as mentioned above. The two steps that follow involve a sequential evaluation of the five samples taken inside the worksite and five samples taken outside the worksite. Both sets of samples must be taken at the same time to ensure that atmospheric conditions are the same and that the comparisons are valid. The inside samples are analyzed first. If the average concentration of the inside samples does not exceed the filter background contamination level (discussed in detail in Appendix A to Subpart E), then the removal is considered complete.

Step three is taken if the average concentration of the samples taken inside the worksite are greater than the filter background contamination level. In this case, an encapsulation, enclosure, or removal response action is considered complete when the average of five samples taken inside the worksite is not significantly larger than the average of five samples taken outside the worksite. A statistical comparison using the Z-Test must be used to determine whether the two averages are significantly different. (A discussion on how to compare measured levels of airborne asbestos with the Z-Test is given in Appendix A to Subpart E.) If the concentrations are not significantly different, then the response action is considered complete. If the inside average concentration is significantly higher, recleaning is required and new air samples must be collected and evaluated after the worksite has been cleaned and reinspected.

K. Use of Accredited Persons

Section 206 of Title II of TSCA requires accreditation of persons who:

1. Inspect for ACM in school buildings.
2. Prepare management plans for such schools.
3. Design or conduct response actions with respect to friable ACM in such schools (other than O&M activities).

Section 206 of Title II of TSCA required EPA to develop a Model Contractor Accreditation Plan by April 20, 1987. The Agency met this deadline and the model plan was published in the **Federal Register** of April 30, 1987 (52 FR 15875). The plan appears as Appendix C to Subpart E. A notice listing EPA approved courses appears elsewhere in this issue of the **Federal Register**.

Persons can receive accreditation from a State that has instituted an accreditation program at least as stringent as the requirements of the Model Plan. In addition, persons in States that have not yet developed programs at least as stringent as the Model Plan can receive accreditation by passing an EPA-approved training course and exam that are consistent with the Model Plan. The Model Plan requires persons seeking accreditation to take an initial course, pass an examination, and participate in continuing education.

L. Worker and Occupant Protection

Worker protection requirements for removal, encapsulation and/or enclosure response actions are already in effect under the EPA worker protection rule (40 CFR Part 763, Subpart G); and the OSHA construction standard (29 CFR 1926.58). EPA's NESHAP standard, although designed to protect outdoor air, also provides incidental protection to workers.

Essentially, under § 763.91, the regulation extends coverage of EPA's worker protection rule at 40 CFR 763.121 to maintenance and custodial personnel in schools who perform O&M activities but are not covered by OSHA's construction standard or an asbestos regulation under an OSHA approved State plan. The EPA worker protection rule itself extended the same protections as the OSHA construction standard to asbestos abatement workers who are employees of State and local governments and who are not otherwise covered by OSHA regulation or OSHA approved State plans. This final rule further extends these standards to O&M workers who are LEA employees. These regulations basically establish a Permissible Exposure Limit (PEL) of 0.2 fibers per cubic centimeter (f/cm^3) over an 8-hour period for abatement project workers exposed to airborne asbestos and an action level of 0.1 f/cm^3 which triggers a variety of worker protection practices. These practices include air monitoring, regulated work areas, engineering and work practice controls, respiratory protection and protective clothing, hygiene facilities and practices, worker training, medical surveillance, and recordkeeping requirements.

As an alternative, however, OSHA's standard allows employers to institute the provisions of its Appendix G in the case of small-scale, short-duration projects rather than comply with the full worker protection standard. Appendix B to Subpart E is an adaptation of OSHA's Appendix G and, thus, allows more flexibility in dealing with minor (small-scale, short-duration) projects.

None of the requirements of the OSHA standard or the EPA worker protection rule would apply if asbestos concentrations are below the action level (0.1 f/cm³). There are, however, fairly stringent requirements established by OSHA and adopted by EPA for purposes of this rule to show that levels are below this action level for any activity, including small-scale, short-duration projects. These requirements are discussed in the following paragraphs.

Employers who have a workplace or work operation covered by the EPA worker protection rule must perform initial monitoring to determine the airborne concentrations of asbestos to which employees may be exposed. If employers can demonstrate that employee exposures are below the action level (0.1 f/cm³) by means of objective data, then initial monitoring is not required. If initial monitoring indicates that employee exposures are below the PEL, then periodic monitoring is not required.

The exemption from monitoring in § 763.121(f)(2)(iii) of the worker protection rule for employers who have historical monitoring data is included in recognition of the fact that many employers have conducted or are currently conducting exposure monitoring. This exemption would prevent these employers from having to repeat monitoring activity for O&M activities that are substantially similar to previous jobs for which monitoring was conducted.

However, for purposes of this rule, EPA requires that such monitoring data must have been obtained from projects conducted by the employer that meet the following conditions:

1. The data upon which judgments are based are scientifically sound and collected using methods that are sufficiently accurate and precise.
2. The processes and work practices in use when the historical data were obtained are essentially the same as those to be used during the job for which initial monitoring will not be performed.
3. The characteristics of the ACM being handled when the historical data were obtained are the same as those on the job for which initial monitoring will not be performed.
4. Environmental conditions prevailing when the historical data were obtained are the same as for the job for which initial monitoring will not be performed.

When OSHA issued the final asbestos standard on June 20, 1986 (51 FR 22664), it published data from routine facility maintenance which "demonstrates a potential for exposure of maintenance personnel to concentrations exceeding 0.5 f/cm³ (fibers per cubic centimeter)." OSHA further stated:

> With the exception of wet handling, which is feasible in only very limited situations due to problems such as electrical wiring, and the use of HEPA vacuums for the clean-up of any debris generated during maintenance activities, OSHA believes that there do not appear to be any feasible engineering controls or work practices available to reduce these potential exposure to levels below the 0.2 f/cm³ PEL and that respirators will be required to comply with the 0.2 f/cm³ PEL.

LEAs are required, under the provisions of § 763.91 of this rule, to ascertain, through monitoring procedures or historic monitoring data, and to document that these levels have not been reached.

Under § 763.91, basic occupant protection requirements are established (regardless of air level) for any O&M activity in a school building which disturbs ACBM. Primarily, access must be restricted, signs posted, and air movement outside the area modified. Necessary work practices shall be implemented to contain fibers, the area shall be properly cleaned after the activity is completed, and asbestos debris must be disposed of in a proper manner.

Section 763.95 requires the LEA to attach warning labels immediately adjacent to any friable and nonfriable ACBM or suspected ACBM in routine maintenance areas, such as boiler rooms, until the material is removed. They shall read, in large size or bright colors, as follows: CAUTION: ASBESTOS. HAZARDOUS. DO NOT DISTURB WITHOUT PROPER TRAINING AND EQUIPMENT.

M. Waiver for State Programs

Section 763.98 provides a procedure to implement the statutory provision that a State can receive a waiver from some or all of the requirements of the final rule if the State has established and is implementing or intends to implement a program of asbestos inspection and management at least as stringent as the requirements of the final rule. The rule requests specific information to be included in the waiver request submitted to EPA, establishes a process for reviewing waiver requests, and sets forth procedures for oversight and rescission of waivers granted to States.

The final rule requires States seeking waivers to submit requests to the Regional Administrator for the EPA Region in which the State is located. Within 30 days of receiving a waiver request, EPA must determine whether the request is complete. Within 30 days after determining that a request is complete, EPA will issue in the **Federal Register** a notice that announces receipt of the request and solicit written comments from the public. Comments must be submitted within 60 days. If, during the comment period, EPA receives a written objection to the State's request or a written request for a public hearing, EPA will schedule a public hearing (as is required by TSCA Title II) to be held in the affected State after the close of the comment period. EPA will issue a notice in the **Federal Register** announcing its decision to grant or deny, in whole or in part, a request for waiver within 30 days after the close of the comment period or within 30 days following a public hearing.

N. Recordkeeping

Section 763.94 requires that LEAs collect and retain various records which are not part of the information submitted to the Governor in the management plan. Records required by the rule include those pertaining to certain events which occur after the submission of the management plan, including: Response actions and preventive measures; fiber release episodes; periodic surveillance; and various operations and maintenance activities. Records required must be maintained in a centralized location in the administrative office of the school and the local education agency.

For each homogeneous area where all ACBM has been removed, the LEA shall retain such records for 3 years after the next reinspection.

O. Enforcement

TSCA Title II, section 207(a) provides civil penalities of up to $5,000 per day for violations of Title II of TSCA when an LEA fails to conduct inspections in a manner consistent with the final rule, knowingly submits false information to the Governor, or fails to develop a management plan in a manner consistent with the final rule, knowingly submits false information to the Governor, or fails to develop a management plan in a manner consistent with this rule. TSCA Title II, section 16 provides civil penalties of up to $25,000 per day for violations of Title I of TSCA when a person other than an LEA violates the final rule. Criminal penalties may be assessed if any violation committed by any person (including a LEA) is knowing or willful.

The rule provides a process for filing complaints by citizens and requires that such complaints be investigated and responded to within a reasonable period

of time consistent with the nature of the violation alleged.

P. Transport and Disposal

Section 203(h) of TSCA Title II requires EPA to promulgate regulations which prescribe standards for transportation and disposal of asbestos-containing waste material. The final rule on transport and disposal was to be issued by October 17, 1987, as part of the final regulations under TSCA Title II. EPA had planned to use revised NESHAP regulations on disposal of asbestos waste to satisfy the requirements of section 203(h) of Title II. However, completion of the NESHAP revision has been delayed.

Accordingly, under section 204(a) of Title II, LEAs shall carry out the requirements described in section 204(f). Section 204(f) states that "the local education agency shall provide for the transportation and disposal of asbestos in accordance with the most recent version of the Environmental Protection Agency's "Asbestos Waste Management Guidance" (or any successor to such document)." Under TSCA Title I, section 15(1)(D), as amended by AHERA section 3, EPA may enforce the provisions of section 204(f). The chapters of the waste management guidance document which pertain to transport and disposal have been printed in this **Federal Register** notice as Appendix D to Subpart E.

EPA intends to issue the revised asbestos NESHAP as a proposed rule under section 203(h) of TSCA Title II to govern transport and disposal of asbestos waste from schools. Section 204(f) will be in effect until a final rule under section 203(h) is promulgated. Further, EPA also intends that the NESHAP waste disposal rules will ultimately regulate asbestos emissions from waste disposal when they are promulgated.

III. Response to Public Comments

This unit discusses EPA's responses to the most significant issues raised in the comments received from the public. A more comprehensive version of EPA's response to comments received has been placed in the public record.

Comments and responses are organized in this unit according to the relevant section of the regulation.

A. Scope and Purpose

Comments were received regarding three aspects of the Scope and Purpose section (§ 763.80). Comments from a group of technical practitioners, which included architects, engineers, and consultants involved in asbestos control, suggested that preschool nurseries, colleges, and universities should be included in the schools covered by the regulation. A second issue raised in the comments recommended that nonfriable materials not be subject to the inspection and management plan requirements of the regulation. Third, many commenters expressed concerns that the October 12, 1988, deadline for submitting management plans to States could not be met.

On all three of these issues, the statutory language of Title II is clear and the regulation reflects the statute. Title II only gives EPA authority to regulate "local education agencies." The definition of "local education agency" in section 202(7) refers only to public and private elementary and secondary schools. Section 203 of Title II requires inspection for "asbestos-containing materials" which includes both friable and nonfriable asbestos (see section 202). Management plan provisions of Title II also refer to "asbestos-containing material." Finally, section 205(a) of Title II specifies that "720 days after enactment" of this title (i.e., October 12, 1988) local education agencies must submit management plans to the Governors of their States. Based on the comments received, EPA is concerned about the ability of LEAs to complete and submit management plans by October 12, 1988. The deadline, however, is prescribed in the statute.

B. Definitions

1. *Asbestos containing building material.* In general, union groups and education groups urged the incorporation into the rule of all exterior ACM and other asbestos material such as asbestos gloves. Conversely, several school administration groups argued to limit the rule to interior areas only and not to include asbestos gloves and other such materials within the scope of the rule.

TSCA Title II was designed to provide school children and school employees with a safe environment while attending classes or working inside school buildings. The statute in several places specifically authorizes EPA to regulate asbestos "in" school buildings. Furthermore, an extension to all exterior areas would result in only small health benefits since most exterior ACM is enclosed in solid matrices such as cement, is nonfriable, and is not generally disturbed. Dealing with exterior materials would constitute an expensive undertaking for schools in terms of inspection and management plan development for such small health benefits. The Agency believes the proposed rule's coverage of all interior areas and a few specified exterior areas that function similar to interior areas protects the health of building occupants.

EPA also interprets TSCA Title II as not including nonbuilding asbestos products within the scope of the rule. The definition of friable ACM in the statute (section 202(6)) refers to ACM applied on ceilings, walls, structural members, piping, duct work, or any other part of a building. At no point does the statute cite as examples nonbuilding materials such as asbestos gloves. If certain schools such as vocational schools have other types of asbestos products in their buildings (e.g. automobile brake linings) they may want to voluntarily address these issues in a fashion similar to the AHERA requirements.

2. *Asbestos debris.* A number of commenters have sought to have dust included in the definition of asbestos debris. Some other commenters favor expanding the definition of asbestos debris to include dust in the immediate vicinity of friable ACM. Other commenters representing former asbestos manufacturers and schools argued that dust should not be included as part of the definitions of asbestos debris or as evidence of damage.

The Agency believes that an accredited expert be allowed to exercise judgment in determining whether asbestos fibers or dust constitute damage. EPA believes that accredited experts can determine whether dust has originated from adjacent ACBM. The Agency maintains, however, that not all dust in schools is ACM. An accredited person on-the-scene in a school building can make the determination of damage due to the presence of dust based on training and experience. As a result, EPA has included in the final rule's definitions of asbestos debris the flexibility for the accredited inspectors to determine dust to be asbestos containing.

3. *Significantly damaged friable surfacing and miscellaneous ACM.* Many commenters thought that significantly damaged asbestos should be defined to be damage that is either extensive "or" severe, rather than extensive "and" severe as in the proposal. These commenters included education groups and unions. They believe that either condition can pose a significant health threat.

The Agency disagrees with the comments. Significantly damaged friable surfacing and miscellaneous ACM must refer to the most severely damaged areas where the damage is also widespread. Damage that is widespread or only severe is of concern, but should not necessarily require a response

action of the same magnitude as those situations where both are present.

4. *Operations and maintenance.* Many commenters recommended that O&M apply to all ACBM, not just friable ACBM. Some of these commenters were primarily concerned with the need for periodic surveillance of all ACBM, not just friable ACBM as suggested by the proposed rule's definition.

The Agency disagrees with the recommendation to extend O&M to nonfriable ACBM. Section 203(f) states that O&M is for friable ACBM. Periodic surveillance (see section 203(g) and training requirements (see generally section 206), however, apply to all ACM. The final rule makes clear these statutory distinctions. Section 763.91 dealing with O&M refers to friable asbestos and § 763.92 dealing with periodic surveillance and training apply to all ACM (including friable and nonfriable materials).

5. *Potential damage and potential significant damage.* Many groups commented on these definitions. A group representing former asbestos manufacturers argue that the best indicator of potential damage is evidence of past damage. Some union groups and State attorneys general commented that in addition to accessibility, potential significant damage ought to include air erosion and vibration as disturbance factors.

The Agency believes adding the terms air erosion and vibration increases the specificity of the rule and clarifies the original intent of the proposed regulation. As a result, the Agency accepts the comments regarding air erosion and vibration and has added definitions for each of these terms. EPA believes that whether past damage is the best indicator of potential damage is irrelevant to defining potential damage. As asbestos material ages, it may become more susceptible to damage. The Agency, accordingly, believes that all circumstances must be considered in assessing potential damage.

6. *Repair and enclosure.* A sizable number of commenters suggested that EPA change the wording of both of these definitions to require the preventing of fiber release. In the proposed rule, repair "contained" fiber release and enclosure "controlled" fiber release. In addition, another commenter suggested adding the requirements of inaccessibility and permanence for enclosed ACM. One commenter wanted to expand the enclosure definition to account for spray applied enclosures.

EPA agrees with the recommendation regarding fiber release. Preventing fiber release clarifies the intent of the repair definition. An enclosure is an airtight, impermeable, permanent barrier and as such must by definition prevent the release of fibers.

7. *Vibration and air erosion.* Several commenters suggested these terms be defined in the rule.

EPA agrees with the commenters and has added definitions for both terms.

C. LEA Responsibilities

Several issues in this section were commented upon by LEAs, education associations, school administrators and school board groups and state government officials.

Comments were received on the requirement in the proposed rule for the LEA to designate a person to ensure that the requirements of this section are properly implemented. Some commenters felt that this requirement was unnecessary while other commenters felt that the requirement of the proposed rule was sufficiently flexible to allow for differences in size and capabilities of LEAs. Some commenters favored appointment of an asbestos program manager with more stringent training or qualification requirements for that person. EPA has retained for the final rule the requirement for a designee to ensure proper implementation of LEA responsibilities. This approach provides the benefits of having a single overseer for the asbestos program without the added burden of more stringent training or qualification requirements.

Many parties commented on the requirement that LEAs ensure that short-term workers (telephone repair workers, administrators, etc.) who may come in contact with asbestos are "instructed in safe work practices" regarding ACM. Commenters felt that this placed an undue burden on LEAs and that the responsibility for this kind of instruction for short-term workers rests with their employer. EPA agrees with these comments and has eliminated this requirement while retaining the provision that LEAs ensure that short-term workers are provided information about the locations of ACBM.

The potential for conflicts of interest between accredited inspectors, management planners, and persons who design or conduct abatement actions also was discussed by a variety of commenters. Some commenters suggested that EPA should require the accredited persons to sign a conflict of interest statement certifying no party has a financial relationship with other parties involved in the inspection, development of the management plan, or performance of the response action. The Agency recommends that LEAs consider requesting a full financial disclosure from all potential accredited professions. It may be more efficient for LEAs to use the same firm to conduct the inspections and develop the management plans to promote continuity in the process. However, LEAs should be wary of employing one firm to develop both the management plan and conduct response actions, since the management planner's recommendations about response actions could be influenced by the potential profitability of the recommendation. A similar conflict of interest problem could exist when an abatement firm and an air monitoring firm are directly or indirectly connected. The air monitoring firm could conceivably provide false results that indicate a building is safe for reoccupancy and the abatement contractor has successfully completed the job. EPA has modified the LEA responsibilities section of the rule to specifically state that LEAs must consider conflict of interest issues. However, any resolution of such issues is solely at the discretion of the LEA.

D. Inspections and Reinspections

Comments received on this section dealt with three subjects: the scope of the inspection; the standardization of the inspection; and the inspection process itself.

Regarding the scope of the inspection, comments were received on whether dormitories should be included in the inspection requirement. EPA concurs with the comments supporting the proposed rule's language including dormitories in the inspection. The Agency believes this is a reasonable extension of the definition of school building since the intent of AHERA is to protect children while attending school. Comments were also received regarding incorporation into the rule of all exterior ACM and other asbestos-containing products. As described in the "Definitions" part of this Unit, EPA believes these additions are unwarranted.

Comments were received regarding the use of a standardized inspection form, and commenters also urged EPA to issue a guidance document for inspectors and management planners. EPA disagrees with comments supporting a mandatory inspection form. The Agency believes LEAs, accredited inspectors, and States should be allowed the flexibility to develop inspection forms to suit their needs. However, EPA is developing a guidance document for LEAs which explains the requirements of this rule, and that document will contain, among other

things, a suggested format for inspection and management plans. In addition, EPA has developed a model course for accreditation of inspectors and management planners which will provide uniform guidance to inspectors and management planners regarding their responsibilities. Further, before any course is offered to accredit inspectors and management planners, it must be reviewed and approved by EPA in accordance with the provisions of the Model Accreditation Plan. This review process will help ensure that inspectors and management planners receive uniform guidance.

The Agency received comments about the requirement for reinspection every 3 years by an accredited inspector. Some commenters supported this requirement, others thought the reinspection should be more frequent, still others felt that the reinspection should be less frequent and that use of an accredited inspector was unnecessary. EPA believes a 3-year reinspection requirement to be conducted by an accredited inspector is necessary. The Agency is concerned that an annual reinspection as suggested by some commenters would prove unduly burdensome to LEAs while providing limited information. The rule provides for periodic surveillance activities at least twice a year to keep track of changes in the ACBM's condition. On the other hand, the Agency believes a reinspection every 5 years is too long a period of time for a school's ACBM not to be checked by an accredited inspector. ACBM could deteriorate substantially over a 5-year period of time. The Agency disagrees with comments suggesting that unaccredited persons should be permitted to perform reinspections. Accredited inspectors will have special training to determine changes in the physical condition of ACBM. The purpose of periodic surveillance, which may be conducted by unaccredited personnel, is to note observable changes in the condition of ACBM. For example, a periodic surveillance check would notice a water leak through an ACBM ceiling. The Agency believes the combination of the semiannual periodic surveillance check and the 3-year reinspection by an accredited inspector provides for adequate scrutiny of ACBM present in schools.

Industry commenters commended the proposed rule for allowing thermal system insulation "that has retained its structural integrity and that has an undamaged protective jacket or wrap that prevents fiber release" to be "deemed" nonfriable for the purposes of this regulation. Others commenters believed this is a misrepresentation of the true nature of the material, which is still friable under its covering.

The Agency agreed with comments that state friable thermal system insulation cannot properly be "deemed" nonfriable. This constitutes an inaccurate depiction of the true nature of this material. An undamaged jacket on thermal system insulation may be properly seen as an enclosure, which prevents fiber release and reduces hazard, but does not change the characteristics of material friability behind or under the enclosure.

However, while the Agency considers it inappropriate to "deem" or characterize friable thermal system insulation as nonfriable, it is appropriate to "treat" this material as nonfriable. EPA, in its guidance and technical assistance activities, has traditionally treated undamaged friable thermal system insulation as nonfriable, for the purposes of cleaning and other O&M activities.

Accordingly, the regulation at § 763.85(c) has been modified to state that thermal system insulation that has retained its structural integrity and that has an undamaged protective jacket or wrap that prevents fiber release shall be treated as nonfriable.

Ultimately, however, the change in wording does not change the intent of the regulation that thermal insulation that has both an intact protective jacket and has retained structural integrity should be subject to periodic surveillance and preventive measures, and that custodial and maintenance workers must be trained to deal with such material. Furthermore, if the thermal insulation is disturbed or is about to be disturbed such that it would be rendered friable, all applicable O&M and response action provisions will apply. EPA believes that this is consistent with NESHAP, which considers such material to be friable when disturbed or removed.

E. Bulk Asbestos Sample Measurement

Comments suggested that EPA allow use of electron microscopy and X-ray diffraction (XRD) for the analysis of bulk samples.

For purposes of this rule, PLM will be used for analyzing bulk samples for asbestos. The analytical method to be employed is the EPA "Interim Method for the Determination of Asbestos in Bulk Insulation Samples" (40 CFR 763, Appendix A to Subpart F). EPA feels that the existing EPA PLM protocol is technically sufficient for determining asbestos fiber identity and quantity. Currently, allowance is made in the EPA PLM protocol for additional determination of a fiber's quantity by XRD. Additionally, validated methods for the use of electron microscopy in bulk asbestos analysis do not exist at this time. New developments in electron microscopy or XRD technology may lead EPA to reconsider the use of these tools for primary analysis at a future time.

A number of comments sought clarification on the laboratory accreditation program. Two laboratory accreditation programs are currently being developed by the NBS for laboratories which analyze bulk and air samples for asbestos. The bulk accreditation program is expected to be operational in early FY89. The air accreditation program is expected to be complete in late FY89.

Until the NBS bulk accreditation program is complete, EPA will establish an interim accreditation program for laboratories which analyze bulk samples by PLM. EPA will provide interim accreditation to laboratories which correctly identify four samples as either asbestos-containing or nonasbestos-containing. EPA announced the availability of this program in the **Federal Register** of September 3, 1987 (52 FR 33470). The deadline for laboratory participation in the first round was September 30, 1987. A formal listing of the first round of accredited labs will be available in January 1988. Individual laboratories will be informed of their performance by letter in December 1987. Laboratories which did not participate in the first round of accreditation will be considered in the second round of accreditation, which is scheduled for April 1988.

F. Assessment

One comment regarding assessment of the physical condition of the material by accredited inspectors was that EPA should require accredited inspectors to give reasons for their assessment conclusions. EPA agrees with the comment. This requirement would provide reviewers of management plans at the State level with additional, useful information in judging whether the management plan accurately reflects the condition of the school building. The Agency believes the increase in the recordkeeping burden is small. As a result, § 763.88(b) has been changed to require the accredited inspector to give written reasons for the decision to classify ACBM.

Some commenters suggested that management planners should be required to use one assessment method in developing recommendations for LEAs about response actions. These commenters suggested a variety of

algorithms and "decision tree" methods for consideration. Other commenters supported the proposed rule's language to allow various assessment methods. The Agency believes it is not possible to point to one assessment method as most capable of producing an appropriate response action recommendation: there are a number of suitable assessment methods available for use by accredited management planners. EPA's management planner accreditation course will provide instruction about a variety of such methods.

G. Response Actions

1. *Protection of human health and the environment in response action selection.* Several commenters, particularly several State attorneys general and unions, expressed concern that the structure of the response action subsection allowed costs and other considerations to be granted equal consideration with protecting human health and the environment.

EPA has clarified language in the response action subsection (§ 763.90) to underscore its original intent in the proposed rule that protecting human health and the environment is the prime consideration in selecting an appropriate response action. Comments from the Service Employees International Union were particularly useful in this regard.

The Agency believes its response action approach is consistent with congressional direction to apply the prior and inviolable standard of protecting human health and the environment, and allows the consideration and selection of the least burdensome method only after the overriding health determination is made.

2. *Air monitoring for determining response actions.* Several commenters, primarily from industry, encouraged the establishment of air monitoring standards as the primary basis for hazard assessment. Most commenters, however, supported EPA's position in the proposed rule.

Traditionally, EPA has recommended assessment of asbestos in schools by visual evaluation of qualitative factors such as the material's condition, physical characteristics, and location. A careful examination of physical characteristics of the material, conducted by a trained expert, provides a direct method for determining both the relative degree of hazard and the likelihood of future fiber release.

EPA continues to discourage the use of air monitoring as the primary technique for assessing asbestos hazards, since that method only measures current conditions and provides no information about potential and future levels of fiber release. Further, when the costs and technical requirements necessary for acquiring truly meaningful air monitoring data are considered, the Agency maintains that assessment of qualitative factors continues to be the appropriate method for assessment of hazards and selection of response actions which protect human health and the environment. However, air monitoring may provide useful supplemental information, when conducted in conjunction with a comprehensive visual inspection.

Several industry commenters proposed that EPA adopt air monitoring standards for damaged and significantly damaged ACM. The levels most often proposed were 0.01 fibers per cubic centimeter (f/cm ^{3}) for damaged friable ACM; 0.1 f/cm ^{3} for significantly damaged friable ACM, with fibers longer than 5 um as measured by transmission electron microscopy (TEM) in each case. No commenters, however, provided any substantive rationale for choosing such levels. The Agency believes that such standards used for purposes of assessing asbestos hazards could not ensure protection of human health and the environment as intended by TSCA Title II. As factors to be used in determining whether response actions are necessary, these numerical values provide a false sense of precision regarding the presence and severity of asbestos hazards and the appropriateness of a given response action. For the same reasons cited in the above discussion of the use of air monitoring, the Agency disagrees with the suggestion that a numerical standard is appropriate as the primary criterion for selection of response actions.

3. *Specificity in definitions related to response actions.* Many commenters felt that more objective and definite response action descriptions should be provided by EPA with regard to damage-related definitions and response actions. Some believed that too much discretion was vested in accredited experts, who would be making technical judgments to advise LEA decisions. One comment cited EPA's economic impact analysis of the rule as an illustration of the lack of objectivity of the response action descriptions. In this analysis, EPA's own regional asbestos coordinators varied greatly in their estimates of what percentages of materials in schools in their regions fell into the various damage conditions described in TSCA Title II.

In response to comments, the Agency has added much more illustrative detail to three important definitions—damaged and significantly damaged friable thermal system insulation ACM; damaged friable miscellaneous ACM; and damaged friable surfacing ACM—which will help accredited experts better identify asbestos hazards in schools. EPA agrees that this language, taken from the preamble of the proposed rule, adds necessary clarification to conditions which may constitute ACM damage and warrant appropriate response actions. These descriptions were not available to Agency regional asbestos coordinators when they gave their estimates of damage in schools. In addition, the extensive training program developed in the rule should achieve much greater consistency in evaluating and assessing asbestos in schools, although perfect consistency will never be achieved.

However, a rigid response action decision structure is not appropriate for this rule, primarily because many asbestos hazard situations are too circumstantial and appropriate response actions are too "hazard specific" to fit neatly into a discrete set of prescriptive categories.

There appears, then, no substitute for the judgment of the accredited management planner, who must recommend appropriate response actions within the general requirements established in § 763.90. That section provides a process by which a range of available choices may be considered by the accredited expert and selected by the LEA to best protect human health and the environment from each particular asbestos hazard in the school.

Under the provisions of the regulation, LEAs may take into account a variety of particular considerations, such as local circumstances, technological feasibility of appropriate response actions, economic considerations, and other relevant factors in selecting the least burdensome method. Such factors, however, may be considered only after the response action has been determined to protect human health and the environment.

Finally, accreditation alone does not imply "expertness." It only assures a suitable and common level of competence and awareness which is necessary for inspection, assessment and response action recommendation. School officials are well-advised to consider a variety of factors, including quality of training, experience, and prior performance of accredited personnel in selecting inspectors, management plan developers, abatement project designers, and contractors for school asbestos projects.

4. *Removal as the "only" appropriate response action for significantly*

damaged ACM. Several State attorneys general, among several other commenters, contended that "[I]n cases of significant damage, the only appropriate response is to remove the material, as this is the only action which adequately protects human health and the environment."

EPA disagrees that removal is the only appropriate response in all cases of significantly damaged ACM, particularly thermal system insulation. There may indeed be particular circumstances of significant damage in which removal is both inappropriate and undesirable.

EPA agrees that, particularly with regard to significantly damaged friable miscellaneous and surfacing ACM, isolation of the functional space and removal is often the most appropriate (and possibly, only acceptable) response. Encapsulation, for example, would be an acceptable response action for friable surfacing ACM only under very limited circumstances, given current technology. However, the Agency will not categorically preclude response actions of repair, encapsulation, or enclosure which, under certain circumstances, may also protect human health and the environment.

5. *Implementation of response actions in a timely fashion.* Several commenters asked the Agency to clarify the requirement that appropriate response actions be selected and implemented by LEAs "in a timely fashion," perhaps by establishing time limits for particular actions.

Many of the response action provisions themselves imply timeliness in response. Damaged or significantly damaged thermal system insulation ACM or its covering, for example, must be constantly maintained in an intact state and undamaged condition. In addition, the rule specifies, in the case of significantly damaged friable surfacing or miscellaneous ACM, that LEAs must *immediately* isolate the functional space and restrict access, unless isolation is not necessary to protect human health and the environment.

The Agency does not believe it is able to define "timely fashion" or specify time limits or deadlines in applying such requirements in all cases any better than it is able to prescribe a single response action for every particular damage category. LEAs, in the context of particular asbestos hazards, in consultation with accredited experts and in full view of school-community groups, are responsible for determining appropriate schedules for their asbestos response actions.

However, LEAs should be advised that in providing "a schedule for beginning and completing each preventive measure and response action" as required in § 763.93(e)(6), the LEA is specifying what constitutes implementation of preventive measures and response actions in a timely fashion for that LEA. EPA and State enforcement officials will be monitoring LEA adherence to these schedules to determine whether enforcement actions are warranted against those schools which fail to meet their own deadlines for completing preventive measures and response actions.

6. *Repair for significantly damaged friable thermal system insulation ACM.* Several commenters, State attorneys general and the unions in particular, questioned the efficacy of repair for significantly damaged friable thermal system insulation ACM.

Repair is often successful in preventing fiber release from damaged thermal system insulation and, after assurance that it will protect human health and the environment, an LEA may find repair the least burdensome method of response. Techniques for thermal system insulation ACM repair are well-developed and easily accomplished. Furthermore, the nature of the material makes it especially susceptible to quick remediation with simple techniques.

EPA recognizes that severely damaged friable thermal system ACM may warrant removal to protect human health and the environment, but this is not always the case. If feasible, as determined by the accredited expert, and protective of human health and the environment, repair may be an appropriate response action for this level of damage under particular circumstances. Further, new and emerging repair technologies may offer LEAs new ways to prevent fiber release, protect human health and the environment, and postpone the major disruption often associated with asbestos removal projects until a more appropriate time.

Finally, "feasibility" does *not* imply, as one commenter feared, "repair first, and only if repair is impossible, then remove." There is no predisposition toward repair, but rather a prior consideration of repair feasibility as a check to avoid a major disruption to the material, through removal, if it is not necessary or desirable.

7. *Airborne asbestos fiber measurement for clearance of abatement sites.* EPA has received comments on the use of transmission electron microscopy (TEM), scanning electron microscopy, and phase contrast microscopy for the analysis of air samples taken for clearance air monitoring. Comments dealt with issues that included the possible uses of each of these analytical methods for clearance air monitoring, as well as issues specific to the use of TEM.

The final rule sets forth TEM as the analytical method to be used for analysis of samples taken for clearance air monitoring although the TEM requirement will be phased-in gradually. EPA convened a committee of leading microscopists from private and Federal laboratories to produce an analytical protocol specific for post-abatement clearance monitoring. Each microscopist had extensive experience in TEM, scanning electron microscopy (SEM), and airborne asbestos analysis. The unanimous conclusion of the microscopists was that, for purposes of clearance air monitoring, TEM was the technique of choice. Consequently, an interim TEM protocol has been formulated for clearance air monitoring of asbestos abatement sites in schools.

EPA chose to require analysis by TEM for four reasons: (1) TEM is capable of measuring the smallest diameter fibers; (2) based on existing, validated methods, a formal protocol has been developed; (3) TEM has been validated by intra- and inter-laboratory comparisons conducted by NBS; and (4) a formal laboratory accreditation program for TEM laboratories is currently under development by the NBS.

Phase Contrast Microscopy (PCM) will be allowed for clearance of small projects (removal of less than 160 ft^2 or 260 linear feet of asbestos) and during a phase-in of the TEM requirement, for clearance of some larger projects. This phase-in period will give laboratories a period of time to acquire and install TEM instruments, and will permit economical clearance of small projects where clearance analysis costs are a significant portion of total abatement costs.

PCM analysis must be made using the latest version of the NIOSH 7400 method. Two other methods of PCM analysis were considered: the OSHA/EPA Reference Method (ORM) and P&CAM 239. The ORM cannot be used for area clearance because it is intended for personal sampling of abatement workers during abatement work clearance following an abatement action. P&CAM 239 will not be allowed since both NIOSH and OSHA have determined that the NIOSH 7400 method is more accurate and reliable.

The PCM method is nonspecific for asbestos and it cannot detect the small

thin fibers found at abatement sites. EPA research data has shown that PCM is often inadequate for post-abatement monitoring of airborne asbestos. These data indicate that sites which were shown to be clean with PCM data were found by TEM data to be still contaminated. Therefore, reoccupancy of sites initially cleared by PCM, and thus, assumed to have been adequately cleaned, may in fact result in exposures to asbestos.

SEM, for purposes of this rulemaking, was determined to be inadequate for building clearance for the following reasons: (1) Currently available methodologies are not validated for the analysis of asbestos fibers; (2) SEM is limited in its ability to identify the crystalline structure of a particular fiber. (SEM analysis is therefore confined to identification of structures by elemental composition and morphology); (3) recent studies conducted by NBS have evaluated several types of scanning electron microscopes and the variability between these instruments. (NBS has found the image contrast of the microscopes is difficult to standardize between individual scanning electron microscopes); and (4) currently no laboratory accreditation program exists for accrediting SEM laboratories. EPA is aware of two methodologies for SEM: a draft method currently in its initial review by the American Society for Testing and Materials (ASTM) and an Asbestos International Association (AIA) protocol. Neither method has been validated. Additionally, NBS has determined that the AIA method has inherent difficulty when examining certain types of asbestos.

Currently, a laboratory accreditation program is in development for TEM by NBS. Additionally, the AIHA PAT Program evaluates laboratories conducting PCM analyses. The NBS has unconditionally stated that it will not formulate a laboratory accreditation program for SEM based on existing methodologies. Until suitable methodologies are developed, EPA will continue to monitor and investigate the progress of SEM methodologies and research for asbestos analysis. New developments in SEM technology may allow SEM to be considered as an acceptable asbestos measurement tool in the future.

Regarding the use of TEM, several commenters suggested that the aspect ratio (length to width) should be extended to 10:1. For the purpose of TEM measurement by the methods in Appendix A, any elongated particle having a minimum length of 0.5 μm, parallel sides, and an aspect ratio (length to width) of 5:1 or larger is defined as a fiber. This represents a change in the previous EPA proposed TEM methodologies which examine fibers with aspect ratios of 3:1 and above; it follows the direction set by NIOSH in proposing modified counting rules in the 7400 method. It is consistent with the panel of microscopists' observations that asbestos structures have aspect ratios equal to and greater than 5:1 whereas the majority of nonasbestos structures, minerals and particles, for example, gypsum, have aspect ratios of less than 5:1. Analysis of these nonasbestos structures tends to comprise a large portion of the time required for sample analysis. EPA believes that further research is needed to justify the extension of aspect ratio to 10:1. Consequently, for the purpose of TEM building clearance, fibers must have an aspect ratio of at least 5:1.

8. *Phase-in period for TEM.* Several commenters asked that the phase-in period for requiring TEM analysis be lengthened, abbreviated, or eliminated altogether. EPA believes the 3-year phase-in period for requiring TEM for all but the smallest abatement jobs allows commercial laboratories the necessary time to purchase and set up additional TEM instruments. In December 1987, estimates developed by EPA's Office of Research and Development (ORD) indicated that there were approximately 62 commercial laboratories in the country which advertised the ability to perform TEM analysis on airborne asbestos samples. Testimony received during the August 25 and 26 public hearings for this rulemaking as well as information gathered by EPA staff, indicate that many laboratories intended to purchase additional TEM equipment. In addition, several laboratories own more than one transmission electron microscope.

EPA believes that an increased demand for TEM instruments will drive the supply of instruments, and has stipulated the 3-year phase-in to allow commercial laboratories time to react to the increased demand. The Agency believes a shorter phase-in period, or requiring the immediate use of TEM for all jobs would create a substantial burden on schools and laboratories. The delay to clear abatement jobs and the high cost associated with TEM analysis for relatively small jobs would be burdensome. EPA has consequently decided to retain the length and type of phase-in described in the proposed rule.

H. Operations and Maintenance and Worker Protection

1. *Worker protection and "small-scale-short-duration" activities.* Several commenters, particularly union groups, advised the Agency to increase worker protection standards and alter the definition and requirements for small-scale, short-duration projects (as defined by Appendix B to Subpart E) prescribed by the Occupational Safety and Health Administration's (OSHA's) and EPA's relevant worker protection regulations. In particular, comments focused on permissible exposure limits (PEL), the allowance of historical air monitoring data, respiratory protection, and the practice of glove bag removal. Other commenters recommended no change, citing OSHA's primacy in this area.

This final regulation, through the provisions of the EPA worker protection rule, extends coverage already in place for O&M workers in private schools under the OSHA construction standard to public sector O&M workers now unprotected in schools. This OSHA standard also includes Appendix B of this rule. LEAs may implement the provisions of Appendix B of the rule instead of the full scope of the EPA/OSHA worker protection regulation when they conduct small-scale, short-duration activities (all of which are presumed to exceed the action level of 0.1 f/cm ^{3}).

The Agency maintains that OSHA is the most appropriate Federal agency for determining worker protection policy. As noted in the preamble to the proposed rule, EPA believes that OSHA's recently completed worker protection rulemaking, a lengthy and detailed process focused specifically on such issues, is as appropriate to school O&M workers via the EPA worker protection rule as it is to other private sector O&M workers. EPA continues in this belief and no commenters have indicated substantive reasons why the OSHA protections should not be followed.

Therefore, the Agency does not intend to reassess the OSHA determination with respect to issues such as PEL, the use of historical air monitoring data, respiratory protection, and the allowance of glove bag removal. EPA will, however, change the provisions of its worker protection rule (and hence, this regulation) to conform with any modifications subsequently adopted by OSHA.

Finally, with regard to the definition of "small-scale, short-duration" activities, the Agency provides further clarification of the OSHA definition in Appendix B to Subpart E by adding five additional points which may be used to define such projects. EPA believes these additional considerations are instructive

and useful, but will not require their consideration in defining "small-scale, short-duration" activities.

2. *Respiratory protection.* Many organizations, in their comments, advocated the mandatory use of respiratory protection for all operations and maintenance O&M work which might affect asbestos-containing materials ACM.

Once again, the Agency maintains that OSHA is the most appropriate Federal agency for determining worker protection regulations policy, including appropriate respiratory protection, and EPA finds that OSHA's respiratory protection regulations which govern O&M workers in the private sector are equally relevant in schools. EPA does not intend to reassess the OSHA determination in this regard.

However, the regulation does require specific respiratory protection training for all O&M workers who conduct any activities which will result in the disturbance of ACM. Such training must include: (1) Notification of information on the use of respiratory protection as contained in the EPA/National Institute for Occupational Safety and Health (NIOSH) "Guide to Respiratory Protection for the Asbestos Abatement Industry," September 1986 (EPA–560/OPTS–86–001); and (2) hands-on training in the use of respiratory protection.

EPA believes the effect of these training requirements will be to ensure that LEAs determine the appropriate level of protection for its O&M workers and that workers are adequately informed of protection levels and properly trained in respiratory protection practices.

Comments expressed concern that O&M workers could be at risk in situations where peak exposures occur and, thus, may need additional respiratory protection. The comments claim these exposures may exceed OSHA standards and are unpredictable. EPA, however, believes its regulations cover these situations since the regulations provide that respirators shall be supplied in areas where airborne concentrations "can reasonably be expected to exceed permissible limits" 40 CFR 763.121(e) (1) and (4). Since this regulation requires warning labels for asbestos materials (§ 763.95), workers and LEAs should be aware of situations in which asbestos materials will be disturbed to such an extent that respirators may be appropriate.

3. *Right to refuse work.* Several unions provided comments which advanced a proposal to include a right to refuse unsafe or illegal work in the regulation.

EPA believes that the issue of right to refuse work, which is protected under other labor legislation and worker protection regulations, is more properly addressed by the Department of Labor. This is a general worker protection issue, outside the scope of EPA's expertise. Comments noted that OSHA has promulgated a general regulation affecting an employee's right to refuse work (29 CFR 1977.12(b)(2)) and argue that EPA should extend this safeguard to school workers in the same way the Agency extended other OSHA safeguards to school workers. This point, however, is misplaced. EPA does not believe it should extend general OSHA safeguards to school workers. EPA is not charged with general worker protection, although it is appropriate to extend specific asbestos related standards to school workers.

AHERA section 211(a) does prohibit State or LEA discrimination in any way against someone because that person has provided information relating to a potention violation of the Act or regulation, including a school directive that workers perform unsafe or illegal activities. The Act allows for any employee or representative of employees who believes they have been fired or otherwise discriminated against to apply for review at the Department of Labor under section 11(c) of the Occupational Safety and Health Act.

4. *Routine cleaning.* Several commenters, particularly the State attorneys general and the unions, recommended that the Agency require routine or periodic cleaning in areas with friable ACM, as outlined in the EPA Purple Book.

The Agency has traditionally recommended, as a prudent measure, routine cleaning by wet methods in school areas with asbestos-containing materials, particularly when they are friable. Monthly wet cleaning has been recommended in previous EPA guidance for areas where friable surfacing ACM is present and semiannual wet cleaning is suggested in areas with damaged thermal system insulation ACM.

Other commenters stated the belief that improper cleaning on a regular basis might disturb the material and could actually increase fiber levels in the air. Further, periodic cleaning in limited-access areas, such as pipe tunnels, would not appreciably reduce exposure to school occupants and might actually increase hazard to custodial workers who conduct the cleaning.

EPA is persuaded by the comments that a decision on routine cleaning by the accredited management planner in the context of the particular asbestos hazard is appropriate. The final rule now requires that the accredited management planner shall make a written recommendation to the LEA regarding the appropriateness and frequency of additional cleaning, which must be included in the management plan.

I. Management Plans

The contents of the management plan were the subject of numerous comments from various parties. In general, commenters urged that the contents of the plan not exceed the items required in the statutory language of Title II. EPA believes that the language of Title II regarding management plans was made very prescriptive to enhance accountability, aid review by States, and improve enforcement of the regulation. The Agency has determined that the additional requirements in the regulation are consistent with the intent of the Act and that the additional information will be useful to parents, employees, accredited persons, State reviewers, and EPA enforcement officials.

The manner in which parents and employees should receive notification about the availability of asbestos management plans was the subject of many comments. In general, LEAs and school administrative groups favored the flexibility provided under the proposed rule, which allowed LEAs to notify parent and employee organizations without specifying the exact form of notification. Other commenters such as educational associations and environmental groups preferred written notification to individual parents and employees as a way of ensuring full awareness of the availability of the plan. EPA has modified this provision of the final rule to require written notification to parent and employee organizations, or, in the absence of such organizations, written public notice regarding plan availability. (Notification in the absence of the organizations could be in the form of a newspaper ad, an article in an LEA newsletter or various other forms.) The change provides a means of notification that should increase awareness of the plan, retain flexibility of LEAs regarding the exact form of the notification, and aid efforts to enforce the notification provisions.

Some commenters suggested that there is no need to notify parents of the availability of the plan. Title II, section 203(i)(5), states that the LEA "shall notify parent, teacher, and employee organizations of the availability of such plan."

Comments were also received regarding the need for an annual notification requirement even though the

plan has not changed since the previous notification. The purpose for the annual notification is to ensure that parents and employees new to the LEA each year have an opportunity to be informed about the availability of the plan. Other commenters suggested that annual notification about the plan should include any asbestos abatement planned for that year, and that the notification requirement be expanded to inform parents whenever actions are taken under the management plans. EPA believes that these ends are achieved in a less burdensome fashion through § 763.84(c), which requires that the LEA inform workers and building occupants, or their legal guardians, at least once each school year about inspections, response actions, and post-response action activities, including periodic surveillance activities that are planned or in progress.

Regarding access to the plan, commenters suggested the plan required to be maintained at the individual school should not be the plan for the entire LEA, but only the plan for that school. The final rule has been clarified to specify that a school needs to have available only that part of the LEA's plan which pertains to that school. Another comment regarding access to the plan came from private school groups interested in limiting access to parents, students, and employees, thereby excluding the general public. EPA believes that this is contrary to Title II, section 203(i)(5), which states that the plan shall be available "for inspection by the public, including teachers, or other school personnel, and parents." Since persons involved with the school are only among those "included" in the public, EPA interprets the statute to preclude limiting access to all other members of the public.

J. State Waivers

Commenters suggested that the opportunity for a public hearing regarding a State's request for waiver should be granted upon request, rather than in response to a written request which details specific objections, as required in the proposal. EPA believes that by requiring a written statement, it is ensuring that hearings have been requested for a valid reason, thereby discouraging individuals from arbitrarily or capriciously requesting a hearing.

Comments were also received which suggested that documents submitted by States seeking waivers should be made public. State waiver requests will be made available as part of the public record required when EPA issues a notice in the **Federal Register** announcing receipt of the request and opportunity for public comment.

Commenters suggested that waiver requests from local governments should be permitted. Section 203(m) of Title II is clear in limiting waiver requests to States which have established and are implementing a program of asbestos inspection and management.

Commenters suggested that waivers should be granted to programs which are "substantially equivalent" to the regulation, rather than "at least as stringent." Section 203(m) of Title II clearly states that waivers are to be granted to programs "at least as stringent."

Commenters suggested that States with programs requiring only inspection of friable materials be allowed to seek waivers. The Agency believes that section 203(m) of Title II, which states that EPA "may waive some or all" of the regulatory requirements of Title II allows States which require inspection of friable materials in a manner at least as stringent as section 203 of Title II to be granted a waiver. The LEAs of that State would still be required to comply with the Title II requirements for inspection of nonfriable materials as well as all other Title II requirements for which the State did not have a program at least as stringent.

Other comments on the State waiver provisions will be considered as they are raised in proceedings affecting individual States.

K. Exclusions

Comments on the proposed exclusion criteria ranged from general support to opposing any exclusions. Some commenters indicated EPA's 1982 rule was frequently not complied with, dealt only with friable ACM, and the inspectors were not required to have accreditation. As a result, these commenters believe few if any exclusions could be granted based on the 1982 rule. Several commenters believe the term "substantial compliance" is vague and unenforceable. In addition, other commenters agreed that the requirement in the proposed rule to assess friable ACM would require inspectors to visually inspect all areas anyway. Lastly, some commenters suggested that requiring an accredited inspector to determine whether the LEA qualifies for an exclusion is too stringent and thus, unreasonable.

TCSA Title II directs the Agency to promulgate regulations which will provide for the exclusion of any area of a school building from the inspection requirements. If LEAs were required to repeat actions conducted properly in the past, the Agency would place an unnecessary burden on those LEAs and penalize LEAs which made a good faith effort to address asbestos hazards in their building. EPA believes a number of States and localities have developed inspection programs in recent years that are similar to Title II. In addition, LEAs that complied with EPA's 1982 rule could receive an exclusion from part of the final rule's requirements. For example, friable material sampled and found to contain asbestos on the ceiling of the cafeteria would not have to be re-sampled. Although friable ACBM must be assessed even if previously identified, the above example illustrates a savings to the LEA.

"Substantial compliance" allows previous sampling that was done in a random manner with sufficient samples to be adequate to determine no ACBM is present. EPA believes previous adequate inspection and sampling efforts conducted by LEAs should not prove worthless. For example, if a LEA had records that it took three random samples in a 1,500 square foot classroom to comply with EPA's 1982 rule or a State law, and all samples were analyzed negative for asbestos, an accredited inspector may determine that this is sufficient to indicate no asbestos is present even though the current rule would require five samples for the same classroom.

EPA believes only an accredited inspector has the training necessary to determine whether previous inspections and sampling were adequate. EPA has evidence to suggest that many inspections performed under the 1982 rule were conducted by persons with little or no inspection training. If these same individuals were responsible for determining the validity of previous inspections, large areas of schools may not be examined by accredited inspectors. In many respects, this would defeat the purpose of TSCA Title II.

L. Enforcement

Some commenters stated that the "Compliance and Enforcement" section of the proposed rule (§ 763.97) incorrectly describes the provisions of TSCA Title II and that the final rule should explicitly state the following points. First, LEAs that violate the regulations under Title II are not liable under any enforcement provision of Title I. Second, Title II does not allow EPA to assess penalties against individuals. Third, criminal penalties are not permitted for violation of Title II.

EPA disagrees. The provisions of the "Compliance and Enforcement" section

are in accordance with applicable law, as discussed below.

Section 3 of AHERA, "Technical and Conforming Amendments," amends section 15(1) of TSCA Title I to provide that it is unlawful for any person to fail or refuse to comply with any requirement of TSCA Title II or any rule promulgated or order issued under Title II. Therefore, violations of Title II regulations, published in this document are generally subject to the civil and criminal penalties under section 16 of Title I and to civil injunctive actions under section 17 of Title I. This liability is qualified, however, by section 207 of Title II which describes LEA civil liabilities for violation of regulations and provides that LEAs are not liable for any civil penalty under Title I. Section 207, however, does not alter the criminal liabilities of Title I or the injunctive provisions of section 17 of Title I. Nor does section 207 provide any exemption from Title I provisions for inspectors, management planners or any other person other than an LEA that has responsibilities under TSCA Title II. Finally, regardless of the provisions of TSCA, applicable case law provides that liability for actions of organizations may extend to responsible officials.

Thus the three points noted in the comments are wrong. First, LEAs that violate Title II rules are liable for criminal penalties under section 16 of Title I and are subject to injunctive relief in Federal District Courts under section 17 of Title I. Second, individuals may be liable for violating TSCA Title II regulations. Individuals other than LEAs that violate Title II regulations are subject to any of the penalties under Title I, and responsible LEA officials may be liable for any LEA violation of Title II. Third, the effect of the conforming amendments to TSCA Title I is that criminal penalties may be assessed for violation or Title II.

M. Other Issues

1. *Cost estimates for inspection.* Several commenters, ranging from school districts to independent consultants, expressed concern that the economic impact analysis of the proposed rule underestimated the cost of inspecting for ACM. Comments claimed that labor rates and time required to conduct inspections were too low.

EPA agreed with these comments. As a result the Agency's estimates for the final rule increased due to an update of unit labor costs and a small increase in the time estimated to perform several inspection activities. As a result the estimated total cost for all inspection activities increased from the proposal to the final rule from approximately $58.2 million to approximately $78.5 million. The cost for the building walkthrough and visual inspection, assessment, and mapping and reporting activities increased, while the cost estimates for bulk sampling and analysis remained the same. The total inspection costs are now estimated to be $1,144 for public primary schools, $1,627 for public secondary schools and $1,587 for private schools.

2. *Cost estimates for management plans.* A number of commenters expressed concern that the proposed rule underestimated the cost of developing management plans due to low assumptions for labor rates and time needed to prepare the plan. EPA also received comments that training and recordkeeping costs were too low. These costs are considered by EPA as part of the cost of the management plan implementation. Several commenters also expressed concern that EPA underestimated the burden associated with the state review of management plans.

EPA agrees that labor costs and time needed to prepare plans were too low in the proposal and has increased these estimates. EPA has also increased the cost for training by raising labor rate estimates and including travel expenses in the cost of training. As a result, the average costs for first year development and implementation of a management plan for a typical school is estimated to be $3,270 for a public primary school, $4,521 for a public secondary school and $4,460 for a private school. The total cost for development and implementation of management plans increased from $970.8 million in the proposed rule to $1,272 million in the final rule.

With respect to the cost to States of reviewing management plans, EPA has not substantially changed its estimates. While the proposed rule stated a range of $63 to $95 for a State to review a plan, the final rule estimates this cost at approximately $77. The plan review burden will vary with the different number of schools found in each State. For example, California, with an estimated 10,932 schools, would incur a review cost of roughly $842,000. Delaware, with an estimated 288 schools, would incur a cost of about $23,000. States will incur this burden within the 90-day review period specified in the law. The burden for each State, if it must review many plans, may be substantial. However, this burden is imposed by statute.

3. *Costs for operations and maintenance (O&M) programs.* EPA received a comment that it should not have included a cost for levels of overhead and contingency costs for school O&M programs because schools are not run like a business and would not charge themselves overhead. In addition, the comment argued that EPA's assumed rate of three minor fiber release episodes per school per year was too high. It was also argued that EPA should not have included an opportunity cost associated with O&M work, since schools would not actually spend money on many O&M activities but would redirect their employees' activities. Finally, the commenter identified a mistake in the calculations of the cost of consumable supplies used in O&M programs.

EPA agrees that schools would not incur overhead and contingency costs for O&M work. EPA used these indirect costs to calculate the expenses associated with the incremental utility, payroll, and other expenses attributable to an O&M program. EPA believes that these estimates of indirect rates are reasonable.

EPA slightly modified its assumptions with respect to fiber release episodes. However, this change did not have a significant impact on the total cost of O&M programs.

With respect to using an opportunity cost approach in the calculation of O&M costs, EPA believes that these costs are, indeed, a real cost of conducting O&M. However, the Agency acknowledges that some portion of the O&M cost may not result in actual expenditures by a school if the school chooses to give up some other activity to absorb the additional O&M activity. Regardless of how the school chooses to react, these are costs imposed by the rule. Accordingly, the Agency has included the opportunity costs analysis in the final rule estimates.

EPA acknowledges its mistake in the cost of consumables and has adjusted the O&M costs accordingly. This yields a fairly substantial drop in per school annual expenses for O&M programs. The reason for the decrease in O&M costs noted below is almost entirely due to this decrease in cost of consumables.

The final rule's costs of O&M programs per school on a yearly basis (excluding the cost of special equipment acquisition) are now estimated to be $3,800 for a public primary school, $5,100 for a public secondary school and $3,800 for a private school. The total O&M costs have decreased from $525.4 million in the proposal to $292.7 million for the final rule.

4. *Costs for removal, enclosure and encapsulation projects.* Commenters argued that cost estimates in the

proposal for removal projects were incorrect because they assumed replacement costs and post-abatement air monitoring for asbestos materials removed during building demolition. These errors have been corrected in the final cost estimates.

In addition, EPA assumed in the proposal that all post-response action air samples would be analyzed using TEM. Since the rule allows limited PCM, the costs of response actions have decreased accordingly. This cost decrease is approximately $4,000 in direct expenses per project for those projects using PCM.

Total costs for removal, enclosure and encapsulation projects have decreased from $1,587.8 million in the proposal to $1,431 million in the final rule.

5. *Risk related to asbestos in buildings.* Comments argued that EPA did not adequately assess the evidence relating to the harm caused by asbestos in schools. Specifically, they claim that EPA's assessment of risk for this rule (1) did not consider estimates of the toxicological potency of asbestos developed by a number of scientists who disagree with the potency estimates accepted by the Agency; (2) ignored studies showing that prevailing exposure to asbestos in schools has often been measured at levels far below those assumed by the Agency in its assessment (70 to 500 ng/m ^{3}); and (3) did not consider documentation that asbestos exposures after major abatement, especially removal, may not be reduced at all and may even by elevated. Had such evidence been considered, according to one of these comments (Safe Buildings Alliance), EPA would have come to the conclusion that operations and maintenance programs are, in almost all schools, the appropriate response action to protect health and the environment. This evidence is cited to support the position that protection of health and the environment requires specification of an airborne exposure level of protection.

EPA disagrees that the evidence cited in these comments supports the need for an airborne asbestos standard in buildings. Rather, EPA believes that the data cited by these comments, even if assumed to be correctly interpreted by the commenters, supports the rule as promulgated.

The Agency has noted elsewhere in this preamble the problems with air monitoring as the primary assessment tool for asbestos in schools. Furthermore, no comments have provided any substantive health based justification for choosing any airborne level as an appropriate level to protect public health from asbestos in schools.

Nevertheless, EPA believes that the rule accomplishes the goals of these commenters to ensure that unnecessary removal activities do not occur. Indeed, one of these commenters (Safe Buildings Alliance) specifically stated that it believes removals could typically be the response action if the rules were *incorrectly* applied. The rules, however, are not designated to prefer one response action over another, but to allow schools the flexibility to deal with their particular situations. Certainly, asbestos in many schools may not present significant risks in its current condition, but could cause considerable harm if not dealt with properly. Also, there are plainly schools in which serious measures would be needed immediately. In this context the evidence cited by the comments is supportive of EPA's rule, as discussed below.

With respect to the potency of asbestos, EPA has decided that for purposes of this rule there is no need to resolve the divergence of opinion. See preamble to Proposed Rule, 52 FR 15833. In any event, EPA has considered differing views on asbestos health effects in other proceedings (see, e.g., 51 FR 3728 *et seq.*, January 29, 1986) and commenters have not presented new evidence. The important point for purposes of this rule, is that varying local circumstances will drive the decision on the appropriate response action.

With respect to asbestos exposure, EPA acknowledges that many building air measurements show low prevailing levels. However, peak levels during serious disturbances can be extremely high and may cause very serious risks to individuals involved. Regardless of the actual average measurements in all schools, regardless of whether one accepts the levels used by EPA in its assessment or the levels presented by the commenters, the basic structure of the rule should not be changed. Assessment of all the evidence leads to the conclusion that local educational agencies should at least adopt operations and maintenance programs and institute more serious response actions if local conditions warrant. The levels EPA used in its risk assessment are actual measurements (*see, e.g.* "Measuring Airborne Asbestos Levels in Buildings," EPA 560/13–80–026; "Airborne Asbestos Levels in Schools," EPA 560/5–83–003) and are reasonable for purposes of decisionmaking in the context of this rule. In any event, the lower airborne asbestos levels cited by the commenters do not make the case for an airborne regulatory level.

Finally, EPA interprets data on airborne levels of asbestos before and after removal actions differently from the commenters. The information available on airborne concentrations before and after asbestos removal is actually limited, dealing with a very small number of abatement actions. Nevertheless, EPA believes that this information indicates that, in the past, some abatement actions were not done properly and led to increased airborne levels. The rule, therefore, was designed to prevent shoddy abatement work. A draft report prepared by Batelle (March 1987) shows significant reduction in airborne asbestos concentrations in the enclosed abatement area in schools immediately after removal operations. Airborne levels measured in the Batelle study did increase back to approximately the same as pre-removal levels after school resumed (based on a statistical analysis of pre- and post-removal levels). However, these levels could only have been the result of reentrainment of asbestos from outside the immediate removal area. Removals, thus, were successful at the removal site but could not guarantee no fiber release from asbestos-containing materials remaining in the building. The Batelle draft, therefore, does not show an increase in exposure from the removal activities as suggested by the comments. At the very least, removal reduced some danger of peak exposures. The data in the Batelle draft may indicate a need for continuing O&M programs following abatement, particularly where all asbestos is not removed.

6. *Model accreditation plan.* EPA received comments about the provisions of the Model Accreditation Plan required under section 206 of TSCA Title II. Under Title II, the Agency was required to submit a final Model Accreditation Plan by April 20, 1987. The final plan was issued by EPA in accordance with that deadline. The final plan appeared in the **Federal Register** of April 30, 1987, entitled "Asbestos-Containing Material in Schools; Model Accreditation Plan."

IV. Economic Impact

The economic impact analysis estimates the incremental costs attributable to the proposed regulation, including costs of inspection, sampling, development, and implementation of management plans, training of school employees, periodic surveillance, and the implementation of abatement actions. Estimates of the number of schools affected and square footage of asbestos were developed based on the 1984 EPA survey of asbestos in schools

and data compiled from the Asbestos School Hazard Abatement Act (ASHAA) loan and grant program. Estimates of the percentage of asbestos which falls into each of the hazard categories were based on the results of a survey of the EPA's Regional Asbestos Coordinators (RACs).

Using a model school/model project approach, costs of inspection, sampling, and appropriate response actions were developed for schools with ACM in each of the different hazard categories. For schools with only nonfriable ACM, the only costs estimated were for management plan implementation, nominal plan implementation activities, training of the asbestos program manager, custodial training for proper repair and maintenance of ACM, and the periodic surveillance and reinspection of ACM. For purposes of the economic analysis, EPA assumed that all schools with only nonfriable ACM would choose to forego sampling and instead just treat suspect material as asbestos-containing.

Asbestos abatement-related costs expected to be incurred regardless of the existence of these regulations were subtracted from the total costs to calculate only the incremental cost of the final regulations. For example, data from the ASHAA loan and grant application data base were used to project an average annual rate of removal of asbestos that is assumed would have occurred even if TSCA Title II legislation and these regulations were not promulgated. That average annual rate was estimated to be approximately 3.4 percent for primary schools, 3.3 percent for secondary schools, and 1.8 percent for private schools. The costs associated with this underlying rate of removal were subtracted from the total costs. Also, the costs of removal of friable ACM prior to demolition that is required by the NESHAPs regulations were also netted out of the total costs.

The estimated present value of the costs of these final regulations is approximately $3,145 million (using a 10 percent discount rate) over 30 years. This includes the cost of initial inspection and sampling—$78.5 million; development and implementation of management plans—$1,272 million; periodic surveillance—$47.7 million; reinspection—$23.2 million; special operations and maintenance programs—$292.7 million; and abatement response actions—$1,431 million.

The total number of primary and secondary schools potentially affected by these regulations is estimated to be 106,983. Approximately 44,600 are estimated to have about 213 million square feet of surfacing or thermal systems insulation ACM. Of these, an estimated 10,700 have surfacing ACM only. It is likely that every school contains some amount of nonfriable ACM such as floor tile, transite board, and fire doors.

The cost of an asbestos inspection is estimated to range from $1,144 to $1,627 per school for schools with both surfacing and thermal systems insulation ACM. This cost varies depending upon the size of the school, the amount and type of ACM contained in the school, and the type of professional doing the work. The costs of sampling and analysis if friable materials are found will depend upon the number of samples taken and analyzed. Costs of analysis are estimated to range from $25 to $47 per sample. Assuming the average school has to analyze 20 samples, the cost of analysis will be $500 to $940 per school. The cost of mapping ACM is estimated to range from $110 to over $270 per school.

The cost of developing a management plan if asbestos-containing surfacing ACM or thermal systems insulation ACM is present is estimated to range from $1,025 for an average-size public primary school to $1,420 for an average-size public secondary school. These estimates are weighted averages of the costs of plans developed by trained school personnel and by outside consultants. A less extensive management plan would be required for schools containing only nonfriable materials. The average development cost for a management plan where only nonfriable materials are present is estimated to be about $500 for both public primary and private schools, and about $715 for public secondary schools.

The cost of training for school employees involves a variety of factors ranging from course and accreditation exam fees to the possible expenses for any out of town travel required for the training. The estimated course fee for a 2-hour awareness session required of all school maintenance employees in schools with ACM is approximately $50 per person. The additional 14 hours of training for school maintenance workers who may come in contact with asbestos in doing minor repair and maintenance work that disturbs asbestos is estimated to cost $250. A fee of $420 is estimated for the 24 hours of training required for the certification of asbestos abatement workers doing more than just minor repair and small glove-bag removal jobs. The fee for the 40-hour training course and certification required for asbestos abatement contractors is estimated to be $640.

Response action costs depend primarily on the condition of the asbestos in a school and to a lesser extent on many other factors. In general, for surfacing ACM in all but the significantly damaged category, it is likely that the primary response action undertaken by a school will be special O&M activities. Use of O&M activities would likely continue until or unless the ACBM deteriorates to a "significantly damaged" condition. The annual cost of a special O&M program (excluding acquisition of special equipment) is estimated to range from $3,800 for a typical public primary school to $5,100 for a typical public secondary school. Initial cleaning costs are expected to range from $950 to $1,400.

The cost of removal depends upon many factors including size of the project. The estimated cost of removal for a 4,000 ft^2 project in which surfacing material is removed would be approximately $51,300. The cost of removal for a 900 ft^2 boiler wrap project is estimated to be approximately $30,900. The total discounted costs of response actions were estimated assuming schools undertake a combination of response actions that depend on the condition of the ACM.

V. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–62048E). The record is available in the Office of Toxic Substances Public Information Office, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The Public Information Office is located in Rm. NE–G004, 401 M St., SW., Washington, DC.

The record includes information considered by EPA in developing the proposed and final rules. The record now includes the following categories of information:

1. **Federal Register** notices.
2. Support documents.
3. Reports.
4. Memoranda and letters.
5. Records of the negotiating committee.
6. Public comments received on the proposed rule.
7. Response to comments document.
8. Transcript of the August 25 and 26 Public Meeting.

EPA requests that any person who commented on this rule submit to the Agency in writing any information which such person believes shows there are errors or omissions in the record. EPA will evaluate such submissions and supplement the record as appropriate.

VI. References

1. USEPA. "Guidance for Controlling Asbestos-Containing Materials in Buildings," EPA 560/5–85–024, June 1985.

2. USEPA. "A Guide to Respiratory Protection for the Asbestos Abatement Industry." EPA 560/OPTS–86–001, September 1986.

3. USEPA. "Asbestos in Buildings: Simplified Sampling Scheme for Friable Surfacing Materials," EPA 560/5–85–030a. October 1985.

4. USEPA. Friable Asbestos-Containing Materials in Schools, 40 CFR Part 763, Subpart F.

5. USEPA. National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61, Subpart M.

6. USDOL. OSHA. Occupational Exposure to Asbestos, 29 CFR 1926.58.

7. USEPA. Toxic Substances; Asbestos Abatement Projects, 40 CFR Part 763, Subpart G.

VII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA has determined that this rule is a "major" rule and has developed a Regulatory Impact Analysis. EPA has prepared an economic impact analysis of the TSCA Title II regulations.

B. Regulatory Flexibility Act

EPA has analyzed the economic impact of this rule on small businesses. EPA's analysis of the economic consequences of this rule appears in Unit IV.

C. Paperwork Reduction Act

The reporting and recordkeeping provisions in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, and has been assigned OMB control number 2070–0091.

List of Subjects in 40 CFR Part 763

Asbestos, Environmental protection, Hazardous substances, Incorporation by reference, Occupational health and safety, Recordkeeping, Schools.

Dated: October 17, 1987.

Lee M. Thomas,

Administrator.

Therefore, 40 CFR Part 763 is amended as follows:

PART 763—[AMENDED]

1. The authority citation for Part 763 continues to read as follows:

Authority: 15 U.S.C. 2605 and 2607(c). Subpart E also issued under 15 U.S.C. 2641, 2643, 2646, and 2647.

2. By adding §§ 763.80 through 763.99 and Appendices A, B, and D to Subpart E to read as follows:

Subpart E—Asbestos-Containing Materials in Schools

Sec.

§ 763.80 Scope and purpose.

(a) This rule requires local education agencies to identify friable and nonfriable asbestos-containing material (ACM) in public and private elementary and secondary schools by visually inspecting school buildings for such materials, sampling such materials if they are not assumed to be ACM, and having samples analyzed by appropriate techniques referred to in this rule. The rule requires local education agencies to submit management plans to the Governor of their State by October 12, 1988, begin to implement the plans by July 9, 1989, and complete implementation of the plans in a timely fashion. In addition, local education agencies are required to use persons who have been accredited to conduct inspections, reinspections, develop management plans, or perform response actions. The rule also includes recordkeeping requirements. Local education agencies may contractually delegate their duties under this rule, but they remain responsible for the proper performance of those duties. Local education agencies are encouraged to consult with EPA Regional Asbestos Coordinators, or if applicable, a State's lead agency designated by the State Governor, for assistance in complying with this rule.

(b) Local education agencies must provide for the transportation and disposal of asbestos in accordance with EPA's "Asbestos Waste Management Guidance." For convenience, applicable sections of this guidance are reprinted as Appendix D of this subpart. There are regulations in place, however, that affect transportation and disposal of asbestos waste generated by this rule. The transportation of asbestos waste is covered by the Department of Transportation (49 CFR Part 173, Subpart J) and disposal is covered by the National Emissions Standards for Hazardous Air Pollutants (NESHAP) (40 CFR Part 61, Subpart M).

§ 763.83 Definitions.

For purposes of this subpart:

"Act" means the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601, *et seq.*

"Accessible" when referring to ACM means that the material is subject to disturbance by school building occupants or custodial or maintenance personnel in the course of their normal activities.

"Accredited" or "accreditation" when referring to a person or laboratory means that such person or laboratory is accredited in accordance with section 206 of Title II of the Act.

"Air erosion" means the passage of air over friable ACBM which may result in the release of asbestos fibers.

"Asbestos" means the asbestiform varieties of: Chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonitegrunerite); anthophyllite; tremolite; and actinolite.

"Asbestos-containing material" (ACM) when referring to school buildings means any material or product which contains more than 1 percent asbestos.

"Asbestos-containing building material" (ACBM) means surfacing ACM, thermal system insulation ACM, or miscellaneous ACM that is found in or on interior structural members or other parts of a school building.

"Asbestos debris" means pieces of ACBM that can be identified by color, texture, or composition, or means dust, if the dust is determined by an accredited inspector to be ACM.

"Damaged friable miscellaneous ACM" means friable miscellaneous ACM which has deteriorated or sustained physical injury such that the internal structure (cohesion) of the material is inadequate or, if applicable, which has delaminated such that its bond to the substrate (adhesion) is

inadequate or which for any other reason lacks fiber cohesion or adhesion qualities. Such damage or deterioration may be illustrated by the separation of ACM into layers; separation of ACM from the substrate; flaking, blistering, or crumbling of the ACM surface; water damage; significant or repeated water stains, scrapes, gouges, mars or other signs of physical injury on the ACM. Asbestos debris originating from the ACBM in question may also indicate damage.

"Damaged friable surfacing ACM" means friable surfacing ACM which has deteriorated or sustained physical injury such that the internal structure (cohesion) of the material is inadequate or which has delaminated such that its bond to the substrate (adhesion) is inadequate, or which, for any other reason, lacks fiber cohesion or adhesion qualities. Such damage or deterioration may be illustrated by the separation of ACM into layers; separation of ACM from the substrate; flaking, blistering, or crumbling of the ACM surface; water damage; significant or repeated water stains, scrapes, gouges, mars or other signs of physical injury on the ACM. Asbestos debris originating from the ACBM in question may also indicate damage.

"Damaged or significantly damaged thermal system insulation ACM" means thermal system insulation ACM on pipes, boilers, tanks, ducts, and other thermal system insulation equipment where the insulation has lost its structural integrity, or its covering, in whole or in part, is crushed, water-stained, gouged, punctured, missing, or not intact such that it is not able to contain fibers. Damage may be further illustrated by occasional punctures, gouges or other signs of physical injury to ACM; occasional water damage on the protective coverings/jackets; or exposed ACM ends or joints. Asbestos debris originating from the ACBM in question may also indicate damage.

"Encapsulation" means the treatment of ACBM with a material that surrounds or embeds asbestos fibers in an adhesive matrix to prevent the release of fibers, as the encapsulant creates a membrane over the surface (bridging encapsulant) or penetrates the material and binds its components together (penetrating encapsulant).

"Enclosure" means an airtight, impermeable, permanent barrier around ACBM to prevent the release of asbestos fibers into the air.

"Fiber release episode" means any uncontrolled or unintentional disturbance of ACBM resulting in visible emission.

"Friable" when referring to material in a school building means that the material, when dry, may be crumbled, pulverized, or reduced to powder by hand pressure, and includes previously nonfriable material after such previously nonfriable material becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure.

"Functional space" means a room, group of rooms, or homogeneous area (including crawl spaces or the space between a dropped ceiling and the floor or roof deck above), such as classroom(s), a cafeteria, gymnasium, hallway(s), designated by a person accredited to prepare management plans, design abatement projects, or conduct response actions.

"High-efficiency particulate air" (HEPA) refers to a filtering system capable of trapping and retaining at least 99.97 percent of all monodispersed particles 0.3 μm in diameter or larger.

"Homogeneous area" means an area of surfacing material, thermal system insulation material, or miscellaneous material that is uniform in color and texture.

"Local education agency" means:

(1) Any local educational agency as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3381).

(2) The owner of any nonpublic, nonprofit elementary, or secondary school building.

(3) The governing authority of any school operated under the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 U.S.C. 921, et seq.).

"Miscellaneous ACM" means miscellaneous material that is ACM in a school building.

"Miscellaneous material" means interior building material on structural components, structural members or fixtures, such as floor and ceiling tiles, and does not include surfacing material or thermal system insulation.

"Nonfriable" means material in a school building which when dry may not be crumbled, pulverized, or reduced to powder by hand pressure.

"Operations and maintenance program" means a program of work practices to maintain friable ACBM in good condition, ensure clean up of asbestos fibers previously released, and prevent further release by minimizing and controlling friable ACBM disturbance or damage.

"Potential damage" means circumstances in which:

(1) Friable ACBM is in an area regularly used by building occupants, including maintenance personnel, in the course of their normal activities.

(2) There are indications that there is a reasonable likelihood that the material or its covering will become damaged, deteriorated, or delaminated due to factors such as changes in building use, changes in operations and maintenance practices, changes in occupancy, or recurrent damage.

"Potential significant damage" means circumstances in which:

(1) Friable ACBM is in an area regularly used by building occupants, including maintenance personnel, in the course of their normal activities.

(2) There are indications that there is a reasonable likelihood that the material or its covering will become significantly damaged, deteriorated, or delaminated due to factors such as changes in building use, changes in operations and maintenance practices, changes in occupancy, or recurrent damage.

(3) The material is subject to major or continuing disturbance, due to factors including, but not limited to, accessibility or, under certain circumstances, vibration or air erosion.

"Preventive measures" means actions taken to reduce disturbance of ACBM or otherwise eliminate the reasonable likelihood of the material's becoming damaged or significantly damaged.

"Removal" means the taking out or the stripping of substantially all ACBM from a damaged area, a functional space, or a homogeneous area in a school building.

"Repair" means returning damaged ACBM to an undamaged condition or to an intact state so as to prevent fiber release.

"Response action" means a method, including removal, encapsulation, enclosure, repair, operations and maintenance, that protects human health and the environment from friable ACBM.

"Routine maintenance area" means an area, such as a boiler room or mechanical room, that is not normally frequented by students and in which maintenance employees or contract workers regularly conduct maintenance activities.

"School" means any elementary or secondary school as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2854).

"School building" means:

(1) Any structure suitable for use as a classroom, including a school facility such as a laboratory, library, school eating facility, or facility used for the preparation of food.

(2) Any gymnasium or other facility which is specially designed for athletic

or recreational activities for an academic course in physical education.

(3) Any other facility used for the instruction or housing of students or for the administration of educational or research programs.

(4) Any maintenance, storage, or utility facility, including any hallway, essential to the operation of any facility described in this definition of "school building" under paragraphs (1), (2), or (3).

(5) Any portico or covered exterior hallway or walkway.

(6) Any exterior portion of a mechanical system used to condition interior space.

"Significantly damaged friable miscellaneous ACM" means damaged friable miscellaneous ACM where the damage is extensive and severe.

"Significantly damaged friable surfacing ACM" means damaged friable surfacing ACM in a functional space where the damage is extensive and severe.

"State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Marianas, the Trust Territory of the Pacific Islands, and the Virgin Islands.

"Surfacing ACM" means surfacing material that is ACM.

"Surfacing material" means material in a school building that is sprayed-on, troweled-on, or otherwise applied to surfaces, such as acoustical plaster on ceilings and fireproofing materials on structural members, or other materials on surfaces for acoustical, fireproofing, or other purposes.

"Thermal system insulation" means material in a school building applied to pipes, fittings, boilers, breeching, tanks, ducts, or other interior structural components to prevent heat loss or gain, or water condensation, or for other purposes.

"Thermal system insulation ACM" means thermal system insulation that is ACM.

"Vibration" means the periodic motion of friable ACBM which may result in the release of asbestos fibers.

§ 763.84 General local education agency responsibilities.

Each local education agency shall:

(a) Ensure that the activities of any persons who perform inspections, reinspections, and periodic surveillance, develop and update management plans, and develop and implement response actions, including operations and maintenance, are carried out in accordance with Subpart E of this part.

(b) Ensure that all custodial and maintenance employees are properly trained as required by this Subpart E and other applicable Federal and/or State regulations (e.g., the Occupational Safety and Health Administration asbestos standard for construction, the EPA worker protection rule, or applicable State regulations).

(c) Ensure that workers and building occupants, or their legal guardians, are informed at least once each school year about inspections, response actions, and post-response action activities, including periodic reinspection and surveillance activities that are planned or in progress.

(d) Ensure that short-term workers (e.g., telephone repair workers, utility workers, or exterminators) who may come in contact with asbestos in a school are provided information regarding the locations of ACBM and suspected ACBM assumed to be ACM.

(e) Ensure that warning labels are posted in accordance with § 763.95.

(f) Ensure that management plans are available for inspection and notification of such availability has been provided as specified in the management plan under § 763.93(g).

(g)(1) Designate a person to ensure that requirements under this section are properly implemented.

(2) Ensure that the designated person receives adequate training to perform duties assigned under this section. Such training shall provide, as necessary, basic knowledge of:

(i) Health effects of asbestos.

(ii) Detection, identification, and assessment of ACM.

(iii) Options for controlling ACBM.

(iv) Asbestos management programs.

(v) Relevant Federal and State regulations concerning asbestos, including those in this Subpart E and those of the Occupational Safety and Health Administration, U.S. Department of Labor, the U.S. Department of Transportation and the U.S. Environmental Protection Agency.

(h) Consider whether any conflict of interest may arise from the interrelationship among accredited personnel and whether that should influence the selection of accredited personnel to perform activities under this subpart.

§ 763.85 Inspection and reinspections.

(a) *Inspection.* (1) Except as provided in paragraph (a)(2) of this section, before October 12, 1988, local education agencies shall inspect each school building that they lease, own, or otherwise use as a school building to identify all locations of friable and nonfriable ACBM.

(2) Any building leased or acquired on or after October 12, 1988, that is to be used as a school building shall be inspected as described under paragraphs (a) (3) and (4) of this section prior to use as a school building. In the event that emergency use of an uninspected building as a school building is necessitated, such buildings shall be inspected within 30 days after commencement of such use.

(3) Each inspection shall be made by an accredited inspector.

(4) For each area of a school building, except as excluded under § 763.99, each person performing an inspection shall:

(i) Visually inspect the area to identify the locations of all suspected ACBM.

(ii) Touch all suspected ACBM to determine whether they are friable.

(iii) Identify all homogeneous areas of friable suspected ACBM and all homogeneous areas of nonfriable suspected ACBM.

(iv) Assume that some or all of the homogeneous areas are ACM, and, for each homogeneous area that is not assumed to be ACM, collect and submit for analysis bulk samples under §§ 763.86 and 763.87.

(v) Assess, under § 763.88, friable material in areas where samples are collected, friable material in areas that are assumed to be ACBM, and friable ACBM identified during a previous inspection.

(vi) Record the following and submit to the person designated under § 763.84 a copy of such record for inclusion in the management plan within 30 days of the inspection:

(A) An inspection report with the date of the inspection signed by each accredited person making the inspection, State of accreditation, and if applicable, his or her accreditation number.

(B) An inventory of the locations of the homogeneous areas where samples are collected, exact location where each bulk sample is collected, dates that samples are collected, homogeneous areas where friable suspected ACBM is assumed to be ACM, and homogeneous areas where nonfriable suspected ACBM is assumed to be ACM.

(C) A description of the manner used to determine sampling locations, the name and signature of each accredited inspector who collected the samples, State of accreditation, and, if applicable, his or her accreditation number.

(D) A list of whether the homogeneous areas identified under paragraph (a)(4)(vi)(B) of this section are surfacing material, thermal system insulation, or miscellaneous material.

(E) Assessments made of friable material, the name and signature of each accredited inspector making the

assessment, State of accreditation, and if applicable, his or her accreditation number.

(b) *Reinspection.* (1) At least once every 3 years after a management plan is in effect, each local education agency shall conduct a reinspection of all friable and nonfriable known or assumed ACBM in each school building that they lease, own, or otherwise use as a school building.

(2) Each inspection shall be made by an accredited inspector.

(3) For each area of a school building, each person performing a reinspection shall:

(i) Visually reinspect, and reassess, under § 763.88, the condition of all friable known or assumed ACBM.

(ii) Visually inspect material that was previously considered nonfriable ACBM and touch the material to determine whether it has become friable since the last inspection or reinspection.

(iii) Identify any homogeneous areas with material that has become friable since the last inspection or reinspection.

(iv) For each homogeneous area of newly friable material that is already assumed to be ACBM, bulk samples may be collected and submitted for analysis in accordance with §§ 763.86 and 763.87.

(v) Assess, under § 763.88, the condition of the newly friable material in areas where samples are collected, and newly friable materials in areas that are assumed to be ACBM.

(vi) Reassess, under § 763.88, the condition of friable known or assumed ACBM previously identified.

(vii) Record the following and submit to the person designated under § 763.84 a copy of such record for inclusion in the management plan within 30 days of the reinspection:

(A) The date of the reinspection, the name and signature of the person making the reinspection, State of accreditation, and if applicable, his or her accreditation number, and any changes in the condition of known or assumed ACBM.

(B) The exact locations where samples are collected during the reinspection, a description of the manner used to determine sampling locations, the name and signature of each accredited inspector who collected the samples, State of accreditation, and, if applicable, his or her accreditation number.

(C) Any assessments or reassessments made of friable material, the name and signature of the accredited inspector making the assessments, State of accreditation, and if applicable, his or her accreditation number.

(c) *General.* Thermal system insulation that has retained its structural integrity and that has an undamaged protective jacket or wrap that prevents fiber release shall be treated as nonfriable and therefore is subject only to periodic surveillance and preventive measures as necessary.

§ 763.86 Sampling.

(a) *Surfacing material.* An accredited inspector shall collect, in a statistically random manner that is representative of the homogeneous area, bulk samples from each homogeneous area of friable surfacing material that is not assumed to be ACM, and shall collect the samples as follows:

(1) At least three bulk samples shall be collected from each homogeneous area that is 1,000 ft^2 or less, except as provided in § 763.87(c)(2).

(2) At least five bulk samples shall be collected from each homogeneous area that is greater than 1,000 ft^2 but less than or equal to 5,000 ft^2, except as provided in § 763.87(c)(2).

(3) At least seven bulk samples shall be collected from each homogeneous area that is greater than 5,000 ft^2, except as provided in § 763.87(c)(2).

(b) *Thermal system insulation.* (1) Except as provided in paragraphs (b) (2) through (4) of this section and § 763.87(c), an accredited inspector shall collect, in a randomly distributed manner, at least three bulk samples from each homogeneous area of thermal system insulation that is not assumed to be ACM.

(2) Collect at least one bulk sample from each homogeneous area of patched thermal system insulation that is not assumed to be ACM if the patched section is less than 6 linear or square feet.

(3) In a manner sufficient to determine whether the material is ACM or not ACM, collect bulk samples from each insulated mechanical system that is not assumed to be ACM where cement or plaster is used on fittings such as tees, elbows, or valves, except as provided under § 763.87(c)(2).

(4) Bulk samples are not required to be collected from any homogeneous area where the accredited inspector has determined that the thermal system insulation is fiberglass, foam glass, rubber, or other non-ACBM.

(c) *Miscellaneous material.* In a manner sufficient to determine whether material is ACM or not ACM, an accredited inspector shall collect bulk samples from each homogeneous area of friable miscellaneous material that is not assumed to be ACM.

(d) *Nonfriable suspected ACBM.* If any homogeneous area of nonfriable suspected ACBM is not assumed to be ACM, then an accredited inspector shall collect, in a manner sufficient to determine whether the material is ACM or not ACM, bulk samples from the homogeneous area of nonfriable suspected ACBM that is not assumed to be ACM.

§ 763.87 Analysis.

(a) Local education agencies shall have bulk samples, collected under § 763.86 and submitted for analysis, analyzed for asbestos using laboratories accredited by the National Bureau of Standards (NBS). Local education agencies shall use laboratories which have received interim accreditation for polarized light microscopy (PLM) analysis under the EPA Interim Asbestos Bulk Sample Analysis Quality Assurance Program until the NBS PLM laboratory accreditation program for PLM is operational.

(b) Bulk samples shall not be composited for analysis and shall be analyzed for asbestos content by PLM, using the "Interim Method for the Determination of Asbestos in Bulk Insulation Samples" found at Appendix A to Subpart F in 40 CFR Part 763.

(c)(1) A homogeneous area is considered not to contain ACM only if the results of all samples required to be collected from the area show asbestos in amounts of 1 percent or less.

(2) A homogeneous area shall be determined to contain ACM based on a finding that the results of at least one sample collected from that area shows that asbestos is present in an amount greater than 1 percent.

(d) The name and address of each laboratory performing an analysis, the date of analysis, and the name and signature of the person performing the analysis shall be submitted to the person designated under § 763.84 for inclusion into the management plan within 30 days of the analysis.

§ 763.88 Assessment.

(a)(1) For each inspection and reinspection conducted under § 763.85 (a) and (c) and previous inspections specified under § 763.99, the local education agency shall have an accredited inspector provide a written assessment of all friable known or assumed ACBM in the school building.

(2) Each accredited inspector providing a written assessment shall sign and date the assessment, provide his or her State of accreditation, and if applicable, accreditation number, and submit a copy of the assessment to the person designated under § 763.84 for inclusion in the management plan within 30 days of the assessment.

(b) The inspector shall classify and give reasons in the written assessment for classifying the ACBM and suspected ACBM assumed to be ACM in the school building into one of the following categories:

(1) Damaged or significantly damaged thermal system insulation ACM.

(2) Damaged friable surfacing ACM.

(3) Significantly damaged friable surfacing ACM.

(4) Damaged or significantly damaged friable miscellaneous ACM.

(5) ACBM with potential for damage.

(6) ACBM with potential for significant damage.

(7) Any remaining friable ACBM or friable suspected ACBM.

(c) Assessment may include the following considerations:

(1) Location and the amount of the material, both in total quantity and as a percentage of the functional space.

(2) Condition of the material, specifying:

(i) Type of damage or significant damage (e.g., flaking, blistering, water damage, or other signs of physical damage).

(ii) Severity of damage (e.g., major flaking, severely torn jackets, as opposed to occasional flaking, minor tears to jackets).

(iii) Extent or spread of damage over large areas or large percentages of the homogeneous area.

(3) Whether the material is accessible.

(4) The material's potential for disturbance.

(5) Known or suspected causes of damage or significant damage (e.g., air erosion, vandalism, vibration, water).

(6) Preventive measures which might eliminate the reasonable likelihood of undamaged ACM from becoming significantly damaged.

(d) The local education agency shall select a person accredited to develop management plans to review the results of each inspection, reinspection, and assessment for the school building and to conduct any other necessary activities in order to recommend in writing to the local education agency appropriate response actions. The accredited person shall sign and date the recommendation, provide his or her State of accreditation, and, if applicable, provide his or her accreditation number, and submit a copy of the recommendation to the person designated under § 763.84 for inclusion in the management plan.

§ 763.90 Response actions.

(a) The local education agency shall select and implement in a timely manner the appropriate response actions in this section consistent with the assessment conducted in § 763.88. The response actions selected shall be sufficient to protect human health and the environment. The local education agency may then select, from the response actions which protect human health and the environment, that action which is the least burdensome method. Nothing in this section shall be construed to prohibit removal of ACBM from a school building at any time, should removal be the preferred response action of the local education agency.

(b) If damaged or significantly damaged thermal system insulation ACM is present in a building, the local education agency shall:

(1) At least repair the damaged area.

(2) Remove the damaged material if it is not feasible, due to technological factors, to repair the damage.

(3) Maintain all thermal system insulation ACM and its covering in an intact state and undamaged condition.

(c)(1) If damaged friable surfacing ACM or damaged friable miscellaneous ACM is present in a building, the local education agency shall select from among the following response actions: encapsulation, enclosure, removal, or repair of the damaged material.

(2) In selecting the response action from among those which meet the definitional standards in § 763.83, the local education agency shall determine which of these response actions protects human health and the environment. For purposes of determining which of these response actions are the least burdensome, the local education agency may then consider local circumstances, including occupancy and use patterns within the school building, and its economic concerns, including short- and long-term costs.

(d) If significantly damaged friable surfacing ACM or significantly damaged friable miscellaneous ACM is present in a building the local education agency shall:

(1) Immediately isolate the functional space and restrict access, unless isolation is not necessary to protect human health and the environment.

(2) Remove the material in the functional space or, depending upon whether enclosure or encapsulation would be sufficient to protect human health and the environment, enclose or encapsulate.

(e) If any friable surfacing ACM, thermal system insulation ACM, or friable miscellaneous ACM that has potential for damage is present in a building, the local education agency shall at least implement an operations and maintenance (O&M) program, as described under § 763.91.

(f) If any friable surfacing ACM, thermal system insulation ACM, or friable miscellaneous ACM that has potential for significant damage is present in a building, the local education agency shall:

(1) Implement an O&M program, as described under § 763.91.

(2) Institute preventive measures appropriate to eliminate the reasonable likelihood that the ACM or its covering will become significantly damaged, deteriorated, or delaminated.

(3) Remove the material as soon as possible if appropriate preventive measures cannot be effectively implemented, or unless other response actions are determined to protect human health and the environment. Immediately isolate the area and restrict access if necessary to avoid an imminent and substantial endangerment to human health or the environment.

(g) Response actions including removal, encapsulation, enclosure, or repair, other than small-scale, short-duration repairs, shall be designed and conducted by persons accredited to design and conduct response actions.

(h) The requirements of this Subpart E in no way supersede the worker protection and work practice requirements under 29 CFR 1926.58 (Occupational Safety and Health Administration (OSHA) asbestos worker protection standards for construction), 40 CFR Part 763, Subpart G (EPA asbestos worker protection standards for public employees), and 40 CFR Part 61, Subpart M (National Emission Standards for Hazardous Air Pollutants—Asbestos).

(i) Completion of response actions. (1) At the conclusion of any action to remove, encapsulate, or enclose ACBM or material assumed to be ACBM, a person designated by the local education agency shall visually inspect each functional space where such action was conducted to determine whether the action has been properly completed.

(2)(i) A person designated by the local education agency shall collect air samples using aggressive sampling as described in Appendix A to this Subpart E to monitor air for clearance after each removal, encapsulation, and enclosure project involving ACBM, except for projects that are of small-scale, short-duration.

(ii) Local education agencies shall have air samples collected under this section analyzed for asbestos using laboratories accredited by the National Bureau of Standards to conduct such analysis using transmission electron microscopy (TEM) or, under circumstances permitted in this section,

laboratories enrolled in the American Industrial Hygiene Association Proficiency Analytical Testing Program for phase contrast microscopy (PCM).

(iii) Until the National Bureau of Standards TEM laboratory accreditation program is operational, local educational agencies shall use laboratories that use the protocol described in Appendix A to Subpart E of this part.

(3) Except as provided in paragraphs (i) (4), (5), (6), or (7) of this section, an action to remove, encapsulate, or enclose ACBM shall be considered complete when the average concentration of asbestos of five air samples cbllected within the affected functional space and analyzed by the TEM method in Appendix A of this Subpart E, is not statistically significantly different, as determined by the Z-test calculation found in Appendix A of this Subpart E, from the average asbestos concentration of five air samples collected at the same time outside the affected functional space and analyzed in the same manner, and the average asbestos concentration of the three field blanks described in Appendix A of this Subpart E is below the filter background level, as defined in Appendix A of this Subpart E, of 70 structures per square millimeter (70 s/mm ^{2}).

(4) An action may also be considered complete if the volume of air drawn for each of the five samples collected within the affected functional space is equal to or greater than 1,199 L of air for a 25 mm filter or equal to or greater than 2,799 L of air for a 37 mm filter, and the average concentration of asbestos as analyzed by the TEM method in Appendix A of this Subpart E, for the five air samples does not exceed the filter background level, as defined in Appendix A, of 70 structures per square millimeter (70 s/mm ^{2}). If the average concentration of asbestos of the five air samples within the affected functional space exceeds 70 s/mm ^{2}, or if the volume of air in each of the samples is less than 1,199 L of air for a 25 mm filter or less than 2,799 L of air for a 37 mm filter, the action shall be considered complete only when the requirements of paragraph (i) (3), (5), (6), or (7) of this section are met.

(5) At any time, a local education agency may analyze air monitoring samples collected for clearance purposes by phase contrast microscopy (PCM) to confirm completion of removal, encapsulation, or enclosure of ACBM that is greater than small-scale, short-duration and less than or equal to 160 square feet or 260 linear feet. The action shall be considered complete when the results of samples collected in the affected functional space and analyzed by phase contrast microscopy using the National Institute for Occupational Safety and Health (NIOSH) Method 7400 entitled "Fibers" published in the NIOSH Manual of Analytical Methods, 3rd Edition, Second Supplement, August 1987, show that the concentration of fibers for each of the five samples is less than or equal to a limit of quantitation for PCM (0.01 fibers per cubic centimeter (0.01 f/cm ^{3}) of air). The method is available at the Office of the Federal Register Information Center, 11th and L St., NW., Room 8401, Washington, DC, 20408, and the EPA OPTS Reading Room, Rm. G004 Northeast Mall, 401 M St., SW., Washington, DC 20460. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. The method is incorporated as it exists on the effective date of this rule, and a notice of any change to the method will be published in the **Federal Register.**

(6) Until October 7, 1989, a local education agency may analyze air monitoring samples collected for clearance purposes by PCM to confirm completion of removal, encapsulation, or enclosure of ACBM that is less than or equal to 3,000 square feet or 1,000 linear feet. The action shall be considered complete when the results of samples collected in the affected functional space and analyzed by PCM using the NIOSH Method 7400 entitled "Fibers" published in the NIOSH Manual of Analytical Methods, 3rd Edition, Second Supplement, August 1987, show that the concentration of fibers for each of the five samples is less than or equal to a limit quantitation for PCM (0.01 fibers per cubic centimeter, 0.01 f/cm ^{3}). The method is available at the Office of the Federal Register, 11th and L St., NW., Room 8301, Washington, DC, 20408, and in the EPA OPTS Reading Room, Rm. G004 Northeast Mall, 401 M St., SW., Washington, DC 20460. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. The method is incorporated as it exists on the effective date of this rule and a notice of any change to the method will be published in the **Federal Register.**

(7) From October 8, 1989, to October 7, 1990, a local education agency may analyze air monitoring samples collected for clearance purposes by PCM to confirm completion of removal, encapsulation, or enclosure of ACBM that is less than or equal to 1,500 square feet or 500 linear feet. The action shall be considered complete when the results of samples collected in the affected functional space and analyzed by PCM using the NIOSH Method 7400 entitled "Fibers" published in the NIOSH Manual of Analytical Methods, 3rd Edition, Second Supplement, August 1987, show that the concentration of fibers for each of the five samples is less than or equal to a limit of quantitation for PCM (0.01 fibers per cubic centimeter, 0.01 f/cm ^{3}). The method is available at the Office of the Federal Register, 11th and L St., NW., Room 8301, Washington, DC, 20408, and in the EPA OPTS Reading Room, Rm. G004 Northeast Mall, 401 M St., SW., Washington, DC 20460. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. The method is incorporated as it exists on the effective date of this rule and a notice of any change to the method will be published in the **Federal Register.**

(8) To determine the amount of ACBM affected under paragraphs (i) (5), (6), and (7) of this section, the local education agency shall add the total square or linear footage of ACBM within the containment barriers used to isolate the functional space for the action to remove, encapsulate, or enclose the ACBM. Contiguous portions of material subject to such action conducted concurrently or at approximately the same time within the same school building shall not be separated to qualify under paragraphs (i) (5), (6), or (7) of this section.

§ 763.91 Operations and maintenance.

(a) *Applicability.* The local education agency shall implement an operations, maintenance, and repair (O&M) program under this section whenever any friable ACBM is present or assumed to be present in a building that it leases, owns, or otherwise uses as a school building. Any material identified as nonfriable ACBM or nonfriable assumed ACBM must be treated as friable ACBM for purposes of this section when the material is about to become friable as a result of activities performed in the school building.

(b) *Worker protection.* The protection provided by EPA at 40 CFR 763.121 for worker protection during asbestos abatement projects is extended to employees of local education agencies who perform operations, maintenance, and repair (O&M) activities involving ACM and who are not covered by the OSHA asbestos construction standard at 29 CFR 1926.58 or an asbestos worker approved by OSHA under section 19 of the Occupational Safety and Health Act. Local education agencies may consult

Appendix B of this Subpart if their employees are performing operations, maintenance, and repair activities that are of small-scale, short-duration.

(c) *Cleaning*—(1) *Initial cleaning.* Unless the building has been cleaned using equivalent methods within the previous 6 months, all areas of a school building where friable ACBM, damaged or significantly damaged thermal system insulation ACM, or friable suspected ACBM assumed to be ACM are present shall be cleaned at least once after the completion of the inspection required by § 763.85(a) and before the initiation of any response action, other than O&M activities or repair, according to the following procedures:

(i) HEPA-vacuum or steam-clean all carpets.

(ii) HEPA-vacuum or wet-clean all other floors and all other horizontal surfaces.

(iii) Dispose of all debris, filters, mopheads, and cloths in sealed, leak-tight containers.

(2) *Additional cleaning.* The accredited management planner shall make a written recommendation to the local education agency whether additional cleaning is needed, and if so, the methods and frequency of such cleaning.

(d) *Operations and maintenance activities.* The local education agency shall ensure that the procedures described below to protect building occupants shall be followed for any operations and maintenance activities disturbing friable ACBM:

(1) Restrict entry into the area by persons other than those necessary to perform the maintenance project, either by physically isolating the area or by scheduling.

(2) Post signs to prevent entry by unauthorized persons.

(3) Shut off or temporarily modify the air-handling system and restrict other sources of air movement.

(4) Use work practices or other controls, such as, wet methods, protective clothing, HEPA-vacuums, mini-enclosures, glove bags, as necessary to inhibit the spread of any released fibers.

(5) Clean all fixtures or other components in the immediate work area.

(6) Place the asbestos debris and other cleaning materials in a sealed, leak-tight container.

(e) *Maintenance activities other than small-scale, short-duration.* The response action for any maintenance activities disturbing friable ACBM, other than small-scale, short-duration maintenance activities, shall be designed by persons accredited to design response actions and conducted by persons accredited to conduct response actions.

(f) *Fiber release episodes*—(1) *Minor fiber release episode.* The local education agency shall ensure that the procedures described below are followed in the event of a minor fiber release episode (i.e., the falling or dislodging of 3 square or linear feet or less of friable ACBM):

(i) Thoroughly saturate the debris using wet methods.

(ii) Clean the area, as described in paragraph (e) of this section.

(iii) Place the asbestos debris in a sealed, leak-tight container.

(iv) Repair the area of damaged ACM with materials such as asbestos-free spackling, plaster, cement, or insulation, or seal with latex paint or an encapsulant, or immediately have the appropriate response action implemented as required by § 763.90.

(2) *Major fiber release episode.* The local education agency shall ensure that the procedures described below are followed in the event of a major fiber release episode (i.e., the falling or dislodging of more than 3 square or linear feet of friable ACBM):

(i) Restrict entry into the area and post signs to prevent entry into the area by persons other than those necessary to perform the response action.

(ii) Shut off or temporarily modify the air-handling system to prevent the distribution of fibers to other areas in the building.

(iii) The response action for any major fiber release episode must be designed by persons accredited to design response actions and conducted by persons accredited to conduct response actions.

§ 763.92 Training and periodic surveillance.

(a) *Training.* (1) The local education agency shall ensure, prior to the implementation of the O&M provisions of the management plan, that all members of its maintenance and custodial staff (custodians, electricians, heating/air conditioning engineers, plumbers, etc.) who may work in a building that contains ACBM receive awareness training of at least 2 hours, whether or not they are required to work with ACBM. New custodial and maintenance employees shall be trained within 60 days after commencement of employment. Training shall include, but not be limited to:

(i) Information regarding asbestos and its various uses and forms.

(ii) Information on the health effects associated with asbestos exposure.

(iii) Locations of ACBM identified throughout each school building in which they work.

(iv) Recognition of damage, deterioration, and delamination of ACBM.

(v) Name and telephone number of the person designated to carry out general local education agency responsibilities under § 763.84 and the availability and location of the management plan.

(2) The local education agency shall ensure that all members of its maintenance and custodial staff who conduct any activities that will result in the disturbance of ACBM shall receive training described in paragraph (a)(1) of this section and 14 hours of additional training. Additional training shall include, but not be limited to:

(i) Descriptions of the proper methods of handling ACBM.

(ii) Information on the use of respiratory protection as contained in the EPA/NIOSH *Guide to Respiratory Protection for the Asbestos Abatement Industry*, September 1986 (EPA 560/OPTS–86–001), available from TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St. SW., Washington, DC 20460, and other personal protection measures.

(iii) The provisions of this section and § 763.91, Appendices A, B, C, D of this Subpart E of this part, EPA regulations contained in 40 CFR Part 763, Subpart G, and in 40 CFR Part 61, Subpart M, and OSHA regulations contained in 29 CFR 1926.58.

(iv) Hands-on training in the use of respiratory protection, other personal protection measures, and good work practices.

(3) Local education agency maintenance and custodial staff who have attended EPA-approved asbestos training or received equivalent training for O&M and periodic surveillance activities involving asbestos shall be considered trained for the purposes of this section.

(b) *Periodic surveillance.* (1) At least once every 6 months after a management plan is in effect, each local education agency shall conduct periodic surveillance in each building that it leases, owns, or otherwise uses as a school building that contains ACBM or is assumed to contain ACBM.

(2) Each person performing periodic surveillance shall:

(i) Visually inspect all areas that are identified in the management plan as ACBM or assumed ACBM.

(ii) Record the date of the surveillance, his or her name, and any

changes in the condition of the materials.

(iii) Submit to the person designated to carry out general local education agency responsibilities under § 763.84 a copy of such record for inclusion in the management plan.

§ 763.93 Management plans.

(a)(1) On or before October 12, 1988, each local education agency shall develop an asbestos management plan for each school, including all buildings that they lease, own, or otherwise use as school buildings, and submit the plan to an Agency designated by the Governor of the State in which the local education agency is located. The plan may be submitted in stages that cover a portion of the school buildings under the authority of the local education agency.

(2) If a building to be used as part of a school is leased or otherwise acquired after October 12, 1988, the local education agency shall include the new building in the management plan for the school prior to its use as a school building. The revised portions of the management plan shall be submitted to the Agency designated by the Governor.

(3) If a local education agency begins to use a building as a school after October 12, 1988, the local education agency shall submit a management plan for the school to the Agency designated by the Governor prior to its use as a school.

(b) On or before October 17, 1987, the Governor of each State shall notify local education agencies in the State regarding where to submit their management plans. States may establish administrative procedures for reviewing management plans. If the Governor does not disapprove a management plan within 90 days after receipt of the plan, the local education agency shall implement the plan.

(c) Each local education agency must begin implementation of its management plan on or before July 9, 1989, and complete implementation in a timely fashion.

(d) Each local education agency shall maintain and update its management plan to keep it current with ongoing operations and maintenance, periodic surveillance, inspection, reinspection, and response action activities. All provisions required to be included in the management plan under this section shall be retained as part of the management plan, as well as any information that has been revised to bring the plan up-to-date.

(e) The management plan shall be developed by an accredited management planner and shall include:

(1) A list of the name and address of each school building and whether the school building contains friable ACBM, nonfriable ACBM, and friable and nonfriable suspected ACBM assumed to be ACM.

(2) For each inspection conducted before the December 14, 1987:

(i) The date of the inspection.

(ii) A blueprint, diagram, or written description of each school building that identifies clearly each location and approximate square or linear footage of any homogeneous or sampling area where material was sampled for ACM, and, if possible, the exact locations where bulk samples were collected, and the dates of collection.

(iii) A copy of the analyses of any bulk samples, dates of analyses, and a copy of any other laboratory reports pertaining to the analyses.

(iv) A description of any response actions or preventive measures taken to reduce asbestos exposure, including if possible, the names and addresses of all contractors involved, start and completion dates of the work, and results of any air samples analyzed during and upon completion of the work.

(v) A description of assessments, required to be made under § 763.88, of material that was identified before December 14, 1987, as friable ACBM or friable suspected ACBM assumed to be ACM, and the name and signature, State of accreditation, and if applicable, accreditation number of each accredited person making the assessments.

(3) For each inspection and reinspection conducted under § 763.85:

(i) The date of the inspection or reinspection and the name and signature, State of accreditation and, if applicable, the accreditation number of each accredited inspector performing the inspection or reinspection.

(ii) A blueprint, diagram, or written description of each school building that identifies clearly each location and approximate square or linear footage of homogeneous areas where material was sampled for ACM, the exact location where each bulk sample was collected, date of collection, homogeneous areas where friable suspected ACBM is assumed to be ACM, and where nonfriable suspected ACBM is assumed to be ACM.

(iii) A description of the manner used to determine sampling locations, and the name and signature of each accredited inspector collecting samples, the State of accreditation, and if applicable, his or her accreditation number.

(iv) A copy of the analyses of any bulk samples collected and analyzed, the name and address of any laboratory that analyzed bulk samples, a statement that the laboratory meets the applicable requirements of § 763.87(a) the date of analysis, and the name and signature of the person performing the analysis.

(v) A description of assessments, required to be made under § 763.88, of all ACBM and suspected ACBM assumed to be ACM, and the name, signature, State of accreditation, and if applicable, accreditation number of each accredited person making the assessments.

(4) The name, address, and telephone number of the person designated under § 763.84 to ensure that the duties of the local education agency are carried out, and the course name, and dates and hours of training taken by that person to carry out the duties.

(5) The recommendations made to the local education agency regarding response actions, under § 763.88(d), the name, signature, State of accreditation of each person making the recommendations, and if applicable, his or her accreditation number.

(6) A detailed description of preventive measures and response actions to be taken, including methods to be used, for any friable ACBM, the locations where such measures and action will be taken, reasons for selecting the response action or preventive measure, and a schedule for beginning and completing each preventive measure and response action.

(7) With respect to the person or persons who inspected for ACBM and who will design or carry out response actions, except for operations and maintenance, with respect to the ACBM, one of the following statements:

(i) If the State has adopted a contractor accreditation program under section 206(b) of Title II of the Act, a statement that the person(s) is accredited under such plan.

(ii) A statement that the local education agency used (or will use) persons who have been accredited by another State which has adopted a contractor accreditation plan under section 206(b) of Title II of the Act or is accredited by an EPA-approved course under section 206(c) of Title II of the Act.

(8) A detailed description in the form of a blueprint, diagram, or in writing of any ACBM or suspected ACBM assumed to be ACM which remains in the school once response actions are undertaken pursuant to § 763.90. This description shall be updated as response actions are completed.

(9) A plan for reinspection under § 763.85, a plan for operations and maintenance activities under § 763.91,

and a plan for periodic surveillance under § 763.92, a description of the recommendation made by the management planner regarding additional cleaning under § 763.91(c)(2) as part of an operations and maintenance program, and the response of the local education agency to that recommendation.

(10) A description of steps taken to inform workers and building occupants, or their legal guardians, about inspections, reinspections, response actions, and post-response action activities, including periodic reinspection and surveillance activities that are planned or in progress.

(11) An evaluation of the resources needed to complete response actions successfully and carry out reinspection, operations and maintenance activities, periodic surveillance and training.

(12) With respect to each consultant who contributed to the management plan, the name of the consultant and one of the following statements:

(i) If the State has adopted a contractor accreditation plan under section 206(b) of Title II of the Act, a statement that the consultant is accredited under such plan.

(ii) A statement that the contractor is accredited by another State which has adopted a contractor accreditation plan under section 206(b) of Title II of the Act, or is accredited by an EPA-approved course developed under section 206(c) of Title II of the Act.

(f) A local education agency may require each management plan to contain a statement signed by an accredited management plan developer that such person has prepared or assisted in the preparation of such plan or has reviewed such plan, and that such plan is in compliance with this Subpart E. Such statement may not be signed by a person who, in addition to preparing or assisting in preparing the management plan, also implements (or will implement) the management plan.

(g)(1) Upon submission of a management plan to the Governor for review, a local education agency shall keep a copy of the plan in its administrative office. The management plans shall be available, without cost or restriction, for inspection by representatives of EPA and the State, the public, including teachers, other school personnel and their representatives, and parents. The local education agency may charge a reasonable cost to make copies of management plans.

(2) Each local education agency shall maintain in its administrative office a complete, updated copy of a management plan for each school under its administrative control or direction. The management plans shall be available, during normal business hours, without cost or restriction, for inspection by representatives of EPA and the State, the public, including teachers, other school personnel and their representatives, and parents. The local education agency may charge a reasonable cost to make copies of management plans.

(3) Each school shall maintain in its administrative office a complete, updated copy of the management plan for that school. Management plans shall be available for inspection, without cost or restriction, to workers before work begins in any area of a school building. The school shall make management plans available for inspection to representatives of EPA and the State, the public, including parents, teachers, and other school personnel and their representatives within 5 working days after receiving a request for inspection. The school may charge a reasonable cost to make copies of the management plan.

(4) Upon submission of its management plan to the Governor and at least once each school year, the local education agency shall notify in writing parent, teacher, and employee organizations of the availability of management plans and shall include in the management plan a description of the steps taken to notify such organizations, and a dated copy of the notification. In the absence of any such organizations for parents, teachers, or employees, the local education agency shall provide written notice to that relevant group of the availability of management plans and shall include in the management plan a description of the steps taken to notify such groups, and a dated copy of the notification.

(h) Records required under § 763.94 shall be made by local education agencies and maintained as part of the management plan.

(i) Each management plan must contain a true and correct statement, signed by the individual designated by the local education agency under § 763.84, which certifies that the general, local education agency responsibilities, as stipulated by § 763.84, have been met or will be met.

§ 763.94 Recordkeeping.

(a) Records required under this section shall be maintained in a centralized location in the administrative office of both the school and the local education agency as part of the management plan. For each homogeneous area where all ACBM has been removed, the local education agency shall ensure that such records are retained for 3 years after the next reinspection required under § 763.85(b)(1), or for an equivalent period.

(b) For each preventive measure and response action taken for friable and nonfriable ACBM and friable and nonfriable suspected ACBM assumed to be ACM, the local education agency shall provide:

(1) A detailed written description of the measure or action, including methods used, the location where the measure or action was taken, reasons for selecting the measure or action, start and completion dates of the work, names and addresses of all contractors involved, and if applicable, their State of accreditation, and accreditation numbers, and if ACBM is removed, the name and location of storage or disposal site of the ACM.

(2) The name and signature of any person collecting any air sample required to be collected at the completion of certain response actions specified by § 763.90(i), the locations where samples were collected, date of collection, the name and address of the laboratory analyzing the samples, the date of analysis, the results of the analysis, the method of analysis, the name and signature of the person performing the analysis, and a statement that the laboratory meets the applicable requirements of § 763.90(i)(2)(ii).

(c) For each person required to be trained under § 763.92(a) (1) and (2), the local education agency shall provide the person's name and job title, the date that training was completed by that person, the location of the training, and the number of hours completed in such training.

(d) For each time that periodic surveillance under § 763.92(b) is performed, the local education agency shall record the name of each person performing the surveillance, the date of the surveillance, and any changes in the conditions of the materials.

(e) For each time that cleaning under § 763.91(c) is performed, the local education agency shall record the name of each person performing the cleaning, the date of such cleaning, the locations cleaned, and the methods used to perform such cleaning.

(f) For each time that operations and maintenance activities under § 763.91(d) are performed, the local education agency shall record the name of each person performing the activity, the start and completion dates of the activity, the locations where such activity occurred, a description of the activity including preventive measures used, and if ACBM

is removed, the name and location of storage or disposal site of the ACM.

(g) For each time that major asbestos activity under § 763.91(e) is performed, the local education agency shall provide the name and signature, State of accreditation, and if applicable, the accreditation number of each person performing the activity, the start and completion dates of the activity, the locations where such activity occurred, a description of the activity including preventive measures used, and if ACBM is removed, the name and location of storage or disposal site of the ACM.

(h) For each fiber release episode under § 763.91(f), the local education agency shall provide the date and location of the episode, the method of repair, preventive measures or response action taken, the name of each person performing the work, and if ACBM is removed, the name and location of storage or disposal site of the ACM.

(Approved by the Office of Management and Budget under control number 2070–0091)

§ 763.95 Warning labels.

(a) The local education agency shall attach a warning label immediately adjacent to any friable and nonfriable ACBM and suspected ACBM assumed to be ACM located in routine maintenance areas (such as boiler rooms) at each school building. This shall include:

(1) Friable ACBM that was responded to by a means other than removal.

(2) ACBM for which no response action was carried out.

(b) All labels shall be prominently displayed in readily visible locations and shall remain posted until the ACBM that is labeled is removed.

(c) The warning label shall read, in print which is readily visible because of large size or bright color, as follows: CAUTION: ASBESTOS. HAZARDOUS. DO NOT DISTURB WITHOUT PROPER TRAINING AND EQUIPMENT.

§ 763.97 Compliance and enforcement.

(a) *Compliance with Title II of the Act.* (1) Section 207(a) of Title II of the Act (15 U.S.C. 2647) makes it unlawful for any local education agency to:

(i) Fail to conduct inspections pursuant to section 203(b) of Title II of the Act, including failure to follow procedures and failure to use accredited personnel and laboratories.

(ii) Knowingly submit false information to the Governor regarding any inspection pursuant to regulations under section 203(i) of Title II of the Act.

(iii) Fail to develop a management plan pursuant to regulations under section 203(i) of Title II of the Act.

(2) Section 207(a) of Title II of the Act (15 U.S.C. 2647) also provides that any local education agency which violates any provision of section 207 shall be liable for a civil penalty of not more than $5,000 for each day during which the violation continues. For the purposes of this subpart, a "violation" means a failure to comply with respect to a single school building.

(b) *Compliance with Title I of the Act.* (1) Section 15(1)(D) of Title I of the Act (15 U.S.C. 2614) makes it unlawful for any person to fail or refuse to comply with any requirement of Title II or any rule promulgated or order issued under Title II. Therefore, any person who violates any requirement of this Subpart is in violation of section 15 of Title I of the Act.

(2) Section 15(3) of Title I of the Act (15 U.S.C. 2614) makes it unlawful for any person to fail or refuse to establish or maintain records, submit reports, notices or other information, or permit access to or copying of records, as required by this Act or a rule thereunder.

(3) Section 15(4) (15 U.S.C. 2614) of Title I of the Act makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11 of Title I of the Act.

(4) Section 16(a) of Title I of the Act (15 U.S.C. 2615) provides that any person who violates any provision of section 15 of Title I of the Act shall be liable to the United States for a civil penalty in an amount not to exceed $25,000 for each such violation. Each day such a violation continues shall, for purposes of this paragraph, constitute a separate violation of section 15. A local education agency is not liable for any civil penalty under Title I of the Act for failing or refusing to comply with any rule promulgated or order issued under Title II of the Act.

(c) *Criminal penalties.* If any violation committed by any person (including a local education agency) is knowing or willful, criminal penalties may be assessed under section 16(b) of Title I of the Act.

(d) *Injunctive relief.* The Agency may obtain injunctive relief under section 208(b) of Title II of the Act to respond to a hazard which poses an imminent and substantial endangerment to human health or the environment or section 17 (15 U.S.C. 2616) of Title I of the Act to restrain any violation of section 15 of Title I of the Act or to compel the taking of any action required by or under Title I of the Act.

(e) *Citizen complaints.* Any citizen who wishes to file a complaint pursuant to section 207(d) of Title II of the Act should direct the complaint to the Governor of the State or the EPA Asbestos Ombudsman, 401 M Street, SW., Washington, DC 20460. The citizen complaint should be in writing and identified as a citizen complaint pursuant to section 207(d) of Title II of TSCA. The EPA Asbestos Ombudsman or the Governor shall investigate and respond to the complaint within a reasonable period of time if the allegations provide a reasonable basis to believe that a violation of the Act has occurred.

(f) *Inspections.* EPA may conduct inspections and review management plans under section 11 of Title I of the Act (15 U.S.C. 2610) to ensure compliance.

§ 763.98 Waiver; delegation to State.

(a) *General.* (1) Upon request from a State Governor and after notice and comment and an opportunity for a public hearing in accordance with paragraphs (b) and (c) of this section, EPA may waive some or all of the requirements of this Subpart E if the State has established and is implementing or intends to implement a program of asbestos inspection and management that contains requirements that are at least as stringent as the requirements of this Subpart E.

(2) A waiver from any requirement of this Subpart E shall apply only to the specific provision for which a waiver has been granted under this section. All requirements of this Subpart E shall apply until a waiver is granted under this section.

(b) *Request.* Each request by a Governor to waive any requirement of this Subpart E shall be sent with three complete copies of the request to the Regional Administrator for the EPA Region in which the State is located and shall include:

(1) A copy of the State provisions or proposed provisions relating to its program of asbestos inspection and management in schools for which the request is made.

(2)(i) The name of the State agency that is or will be responsible for administering and enforcing the requirements for which a waiver is requested, the names and job titles of responsible officials in that agency, and phone numbers where the officials can be contacted.

(ii) In the event that more than one agency is or will be responsible for administering and enforcing the requirements for which a waiver is requested, a description of the functions to be performed by each agency, how the program will be coordinated by the lead agency to ensure consistency and

effective administration in the asbestos inspection and management program within the State, the names and job titles of responsible officials in the agencies, and phone numbers where the officials can be contacted. The lead agency will serve as the central contact point for the EPA.

(3) Detailed reasons, supporting papers, and the rationale for concluding that the State's asbestos inspection and management program provisions for which the request is made are at least as stringent as the requirements of this Subpart E.

(4) A discussion of any special situations, problems, and needs pertaining to the waiver request accompanied by an explanation of how the State intends to handle them.

(5) A statement of the resources that the State intends to devote to the administration and enforcement of the provisions relating to the waiver request.

(6) Copies of any specific or enabling State laws (enacted and pending enactment) and regulations (promulgated and pending promulgation) relating to the request, including provisions for assessing criminal and/or civil penalties.

(7) Assurance from the Governor, the Attorney General, or the legal counsel of the lead agency that the lead agency or other cooperating agencies have the legal authority necessary to carry out the requirements relating to the request.

(c) *General notice—hearing.* (1) Within 30 days after receipt of a request for a waiver, EPA will determine the completeness of the request. If EPA does not request further information within the 30-day period, the request will be deemed complete.

(2) Within 30 days after EPA determines that a request is complete, EPA will issue for publication in the **Federal Register** a notice that announces receipt of the request, describes the information submitted under paragraph (b) of this section, and solicits written comment from interested members of the public. Comments must be submitted within 60 days.

(3) If, during the comment period, EPA receives a written objection to a Governor's request and a request for a public hearing detailing specific objections to the granting of a waiver, EPA will schedule a public hearing to be held in the affected State after the close of the comment period and will announce the public hearing date in the **Federal Register** before the date of the hearing. Each comment shall include the name and address of the person submitting the comment.

(d) *Criteria.* EPA may waive some or all of the requirements of Subpart E of this part if:

(1) The State's lead agency and other cooperating agencies have the legal authority necessary to carry out the provisions of asbestos inspection and management in schools relating to the waiver request.

(2) The State's program of asbestos inspection and management in schools relating to the waiver request and implementation of the program are or will be at least as stringent as the requirements of this Subpart E.

(3) The State has an enforcement mechanism to allow it to implement the program described in the waiver request.

(4) The lead agency and any cooperating agencies have or will have qualified personnel to carry out the provisions relating to the waiver request.

(5) The State will devote adequate resources to the administration and enforcement of the asbestos inspection and management provisions relating to the waiver request.

(6) When specified by EPA, the State gives satisfactory assurances that necessary steps, including specific actions it proposes to take and a time schedule for their accomplishment, will be taken within a reasonable time to conform with applicable criteria under paragraph (d) (2) through (4) of this section.

(e) *Decision.* EPA will issue for publication in the **Federal Register** a notice announcing its decision to grant or deny, in whole or in part, a Governor's request for a waiver from some or all of the requirements of this Subpart E within 30 days after the close of the comment period or within 30 days following a public hearing, whichever is applicable. The notice will include the Agency's reasons and rationale for granting or denying the Governor's request. The 30-day period may be extended if mutually agreed upon by EPA and the State.

(f) *Modifications.* When any substantial change is made in the administration or enforcement of a State program for which a waiver was granted under this section, a responsible official in the lead agency shall submit such changes to EPA.

(g) *Reports.* The lead agency in each State that has been granted a waiver by EPA from any requirement of Subpart E of this part shall submit a report to the Regional Administrator for the Region in which the State is located at least once every 12 months to include the following information:

(1) A summary of the State's implementation and enforcement activities during the last reporting period relating to provisions waived under this section, including enforcement actions taken.

(2) Any changes in the administration or enforcement of the State program implemented during the last reporting period.

(3) Other reports as may be required by EPA to carry out effective oversight of any requirement of this Subpart E that was waived under this section.

(h) *Oversight.* EPA may periodically evaluate the adequacy of a State's implementation and enforcement of and resources devoted to carrying out requirements relating to the waiver. This evaluation may include, but is not limited to, site visits to local education agencies without prior notice to the State.

(i) *Informal conference.* (1) EPA may request that an informal conference be held between appropriate State and EPA officials when EPA has reason to believe that a State has failed to:

(i) Substantially comply with the terms of any provision that was waived under this section.

(ii) Meet the criteria under paragraph (d) of this section, including the failure to carry out enforcement activities or act on violations of the State program.

(2) EPA will:

(i) Specify to the State those aspects of the State's program believed to be inadequate.

(ii) Specify to the State the facts that underlie the belief of inadequacy.

(3) If EPA finds, on the basis of information submitted by the State at the conference, that deficiencies did not exist or were corrected by the State, no further action is required.

(4) Where EPA finds that deficiencies in the State program exist, a plan to correct the deficiencies shall be negotiated between the State and EPA. The plan shall detail the deficiencies found in the State program, specify the steps the State has taken or will take to remedy the deficiencies, and establish a schedule for each remedial action to be initiated.

(j) *Rescission.* (1) If the State fails to meet with EPA or fails to correct deficiencies raised at the informal conference, EPA will deliver to the Governor of the State and a responsible official in the lead agency a written notice of its intent to rescind, in whole or part, the waiver.

(2) EPA will issue for publication in the **Federal Register** a notice that announces the rescission of the waiver, describes those aspects of the State's

program determined to be inadequate, and specifies the facts that underlie the findings of inadequacy.

§ 763.99 Exclusions.

(a) A local education agency shall not be required to perform an inspection under § 763.85(a) in any sampling area as defined in 40 CFR 763.103 or homogeneous area of a school building where:

(1) An accredited inspector has determined that, based on sampling records, friable ACBM was identified in that homogeneous or sampling area during an inspection conducted before December 14, 1987. The inspector shall sign and date a statement to that effect with his or her State of accreditation and if applicable, accreditation number and, within 30 days after such determination, submit a copy of the statement to the person designated under § 763.84 for inclusion in the management plan. However, an accredited inspector shall assess the friable ACBM under § 763.88.

(2) An accredited inspector has determined that, based on sampling records, nonfriable ACBM was identified in that homogeneous or sampling area during an inspection conducted before December 14, 1987. The inspector shall sign and date a statement to that effect with his or her State of accreditation and if applicable, accreditation number and, within 30 days after such determination, submit a copy of the statement to the person designated under § 763.84 for inclusion in the management plan. However, an accredited inspector shall identify whether material that was nonfriable has become friable since that previous inspection and shall assess the newly-friable ACBM under § 763.88.

(3) Based on sampling records and inspection records, an accredited inspector has determined that no ACBM is present in the homogeneous or sampling area and the records show that the area was sampled, before December 14, 1987 in substantial compliance with § 763.85(a), which for purposes of this section means in a random manner and with a sufficient number of samples to reasonably ensure that the area is not ACBM.

(i) The accredited inspector shall sign and date a statement, with his or her State of accreditation and if applicable, accreditation number that the homogeneous or sampling area determined not to be ACBM was sampled in substantial compliance with § 763.85(a).

(ii) Within 30 days after the inspector's determination, the local education agency shall submit a copy of the inspector's statement to the EPA Regional Office and shall include the statement in the management plan for that school.

(4) The lead agency responsible for asbestos inspection in a State that has been granted a waiver from § 763.85(a) has determined that, based on sampling records and inspection records, no ACBM is present in the homogeneous or sampling area and the records show that the area was sampled before December 14, 1987, in substantial compliance with § 763.85(a). Such determination shall be included in the management plan for that school.

(5) An accredited inspector has determined that, based on records of an inspection conducted before December 14, 1987, suspected ACBM identified in that homogeneous or sampling area is assumed to be ACM. The inspector shall sign and date a statement to that effect, with his or her State of accreditation and if applicable, accreditation number and, within 30 days of such determination, submit a copy of the statement to the person designated under § 763.84 for inclusion in the management plan. However, an accredited inspector shall identify whether material that was nonfriable suspected ACBM assumed to be ACM has become friable since the previous inspection and shall assess the newly friable material and previously identified friable suspected ACBM assumed to be ACM under § 763.88.

(6) Based on inspection records and contractor and clearance records, an accredited inspector has determined that no ACBM is present in the homogeneous or sampling area where asbestos removal operations have been conducted before December 14, 1987, and shall sign and date a statement to that effect and include his or her State of accreditation and, if applicable, accreditation number. The local education agency shall submit a copy of the statement to the EPA Regional Office and shall include the statement in the management plan for that school.

(7) An architect or project engineer responsible for the construction of a new school building built after October 12, 1988, or an accredited inspector signs a statement that no ACBM was specified as a building material in any construction document for the building, or, to the best of his or her knowledge, no ACBM was used as a building material in the building. The local education agency shall submit a copy of the signed statement of the architect, project engineer, or accredited inspector to the EPA Regional Office and shall include the statement in the management plan for that school.

(b) The exclusion, under paragraph (a)(1) through (4) of this section, from conducting the inspection under § 763.85(a) shall apply only to homogeneous or sampling areas of a school building that were inspected and sampled before October 17, 1987. The local education agency shall conduct an inspection under § 763.85(a) of all areas inspected before October 17, 1987, that were not sampled or were not assumed to be ACM.

(c) If ACBM is subsequently found in a homogeneous or sampling area of a local education agency that had been identified as receiving an exclusion by an accredited inspector under paragraphs (a) (3), (4), (5) of this section, or an architect, project engineer or accredited inspector under paragraph (a)(7) of this section, the local education agency shall have 180 days following the date of identification of ACBM to comply with this Subpart E.

Appendix A to Subpart E—Interim Transmission Electron Microscopy Analytical Methods—Mandatory and Nonmandatory—and Mandatory Section to Determine Completion of Response Actions

I. Introduction

The following appendix contains three units. The first unit is the mandatory transmission electron microscopy (TEM) method which all laboratories must follow; it is the minimum requirement for analysis of air samples for asbestos by TEM. The mandatory method contains the essential elements of the TEM method. The second unit contains the complete non-mandatory method. The non-mandatory method supplements the mandatory method by including additional steps to improve the analysis. EPA recommends that the non-mandatory method be employed for analyzing air filters; however, the laboratory may choose to employ the mandatory method. The non-mandatory method contains the same minimum requirements as are outlined in the mandatory method. Hence, laboratories may choose either of the two methods for analyzing air samples by TEM.

The final unit of this Appendix A to Subpart E defines the steps which must be taken to determine completion of response actions. This unit is mandatory.

II. Mandatory Transmission Electron Microscopy Method

A. Definitions of Terms

1. "Analytical sensitivity"—Airborne asbestos concentration represented by each fiber counted under the electron

microscope. It is determined by the air volume collected and the proportion of the filter examined. This method requires that the analytical sensitivity be no greater than 0.005 structures/cm^3.

2. "Asbestiform"—A specific type of mineral fibrosity in which the fibers and fibrils possess high tensile strength and flexibility.

3. "Aspect ratio"—A ratio of the length to the width of a particle. Minimum aspect ratio as defined by this method is equal to or greater than 5:1.

4. "Bundle"—A structure composed of three or more fibers in a parallel arrangement with each fiber closer than one fiber diameter.

5. "Clean area"—A controlled environment which is maintained and monitored to assure a low probability of asbestos contamination to materials in that space. Clean areas used in this method have HEPA filtered air under positive pressure and are capable of sustained operation with an open laboratory blank which on subsequent analysis has an average of less than 18 structures/mm^2 in an area of 0.057 mm^2 (nominally 10 200-mesh grid openings) and a maximum of 53 structures/mm^2 for any single preparation for that same area.

6. "Cluster"—A structure with fibers in a random arrangement such that all fibers are intermixed and no single fiber is isolated from the group. Groupings must have more than two intersections.

7. "ED"—Electron diffraction.

8. "EDXA"—Energy dispersive X-ray analysis.

9. "Fiber"—A structure greater than or equal to 0.5 μm in length with an aspect ratio (length to width) of 5:1 or greater and having substantially parallel sides.

10. "Grid"—An open structure for mounting on the sample to aid in its examination in the TEM. The term is used here to denote a 200-mesh copper lattice approximately 3 mm in diameter.

11. "Intersection"—Nonparallel touching or crossing of fibers, with the projection having an aspect ratio of 5:1 or greater.

12. "Laboratory sample coordinator"—That person responsible for the conduct of sample handling and the certification of the testing procedures.

13. "Filter background level"—The concentration of structures per square millimeter of filter that is considered indistinguishable from the concentration measured on a blank (filters through which no air has been drawn). For this method the filter background level is defined as 70 structures/mm^2.

14. "Matrix"—Fiber or fibers with one end free and the other end embedded in or hidden by a particulate. The exposed fiber must meet the fiber definition.

15. "NSD"—No structure detected.

16. "Operator"—A person responsible for the TEM instrumental analysis of the sample.

17. "PCM"—Phase contrast microscopy.

18. "SAED"—Selected area electron diffraction.

19. "SEM"—Scanning electron microscope.

20. "STEM"—Scanning transmission electron microscope.

21. "Structure"—a microscopic bundle, cluster, fiber, or matrix which may contain asbestos.

22. "S/cm^3"—Structures per cubic centimeter.

23. "S/mm^2"—Structures per square millimeter.

24. "TEM"—Transmission electron microscope.

B. Sampling

1. The sampling agency must have written quality control procedures and documents which verify compliance.

2. Sampling operations must be performed by qualified individuals completely independent of the abatement contractor to avoid possible conflict of interest (References 1, 2, 3, and 5 of Unit II.J.).

3. Sampling for airborne asbestos following an abatement action must use commercially available cassettes.

4. Prescreen the loaded cassette collection filters to assure that they do not contain concentrations of asbestos which may interfere with the analysis of the sample. A filter blank average of less than 18 s/mm^2 in an area of 0.057 mm^2 (nominally 10 200-mesh grid openings) and a single preparation with a maximum of 53 s/mm^2 for that same area is acceptable for this method.

5. Use sample collection filters which are either polycarbonate having a pore size less than or equal to 0.4 μm or mixed cellulose ester having a pore size less than or equal to 0.45 μm.

6. Place these filters in series with a 5.0 μm backup filter (to serve as a diffuser) and a support pad. See the following Figure 1:

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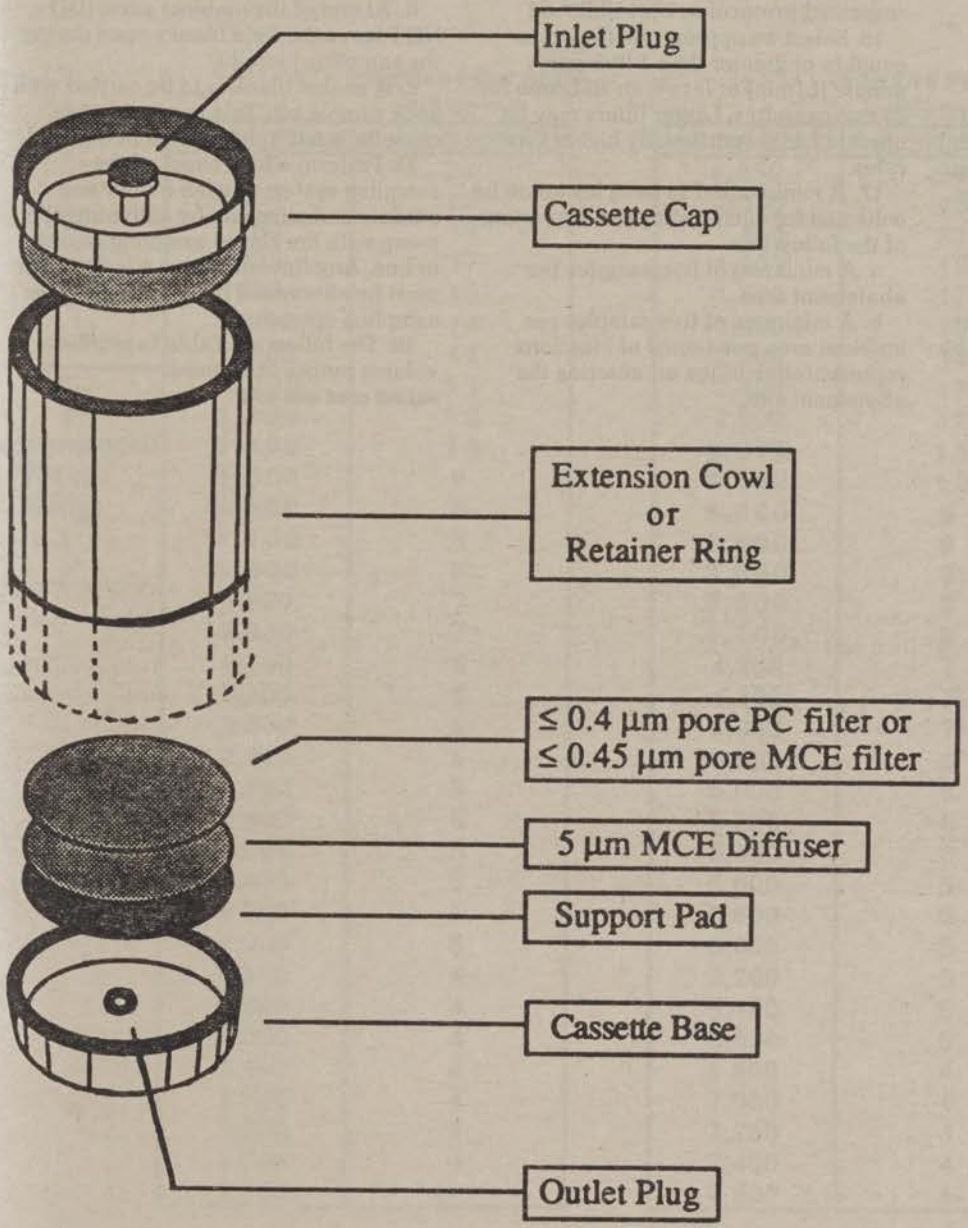
FIGURE I--SAMPLING CASSETTE CONFIGURATION



BILLING CODE 6560-50-C

7. Reloading of used cassettes is not permitted.

8. Orient the cassette downward at approximately 45 degrees from the horizontal.

9. Maintain a log of all pertinent sampling information.

10. Calibrate sampling pumps and their flow indicators over the range of their intended use with a recognized standard. Assemble the sampling system with a representative filter (not the filter which will be used in sampling) before and after the sampling operation.

11. Record all calibration information.

12. Ensure that the mechanical vibrations from the pump will be minimized to prevent transferral of vibration to the cassette.

13. Ensure that a continuous smooth flow of negative pressure is delivered by the pump by damping out any pump action fluctuations if necessary.

14. The final plastic barrier around the abatement area remains in place for the sampling period.

15. After the area has passed a thorough visual inspection, use aggressive sampling conditions to dislodge any remaining dust. (See suggested protocol in Unit III.B.7.d.)

16. Select an appropriate flow rate equal to or greater than 1 liter per minute (L/min) or less than 10 L/min for 25 mm cassettes. Larger filters may be operated at proportionally higher flow rates.

17. A minimum of 13 samples are to be collected for each testing site consisting of the following:

a. A minimum of five samples per abatement area.

b. A minimum of five samples per ambient area positioned at locations representative of the air entering the abatement site.

c. Two field blanks are to be taken by removing the cap for not more than 30 seconds and replacing it at the time of sampling before sampling is initiated at the following places:

i. Near the entrance to each abatement area.

ii. At one of the ambient sites. (DO NOT leave the field blanks open during the sampling period.)

d. A sealed blank is to be carried with each sample set. This representative cassette is not to be opened in the field.

18. Perform a leak check of the sampling system at each indoor and outdoor sampling site by activating the pump with the closed sampling cassette in line. Any flow indicates a leak which must be eliminated before initiating the sampling operation.

19. The following Table I specifies volume ranges to be used:

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TABLE 1--NUMBER OF 200 MESH EM GRID OPENINGS ($0.0057\ MM^2$) THAT NEED TO BE ANALYZED TO MAINTAIN SENSITIVITY OF 0.005 STRUCTURES/CC BASED ON VOLUME AND EFFECTIVE FILTER AREA

	Effective Filter Area 385 sq mm	
	Volume (liters)	# of grid openings
	560	*24*
	600	23
	700	19
	800	17
	900	15
	1,000	14
	1,100	12
Recommended Volume Range	**1,200**	**11**
	1,300	**10**
	1,400	**10**
	1,500	**9**
	1,600	**8**
	1,700	**8**
	1,800	**8**
	1,900	7
	2,000	7
	2,100	6
	2,200	6
	2,300	6
	2,400	6
	2,500	5
	2,600	5
	2,700	5
	2,800	5
	2,900	5
	3,000	5
	3,100	4
	3,200	4
	3,300	4
	3,400	4
	3,500	4
	3,600	4
	3,700	4
	3,800	4

	Effective Filter Area 855 sq mm	
	Volume (liters)	# of grid openings
	1,250	*24*
	1,300	23
	1,400	21
	1,600	19
	1,800	17
	2,000	15
	2,200	14
	2,400	13
	2,600	12
	2,800	**11**
	3,000	**10**
	3,200	**9**
Recommended Volume Range	**3,400**	**9**
	3,600	**8**
	3,800	**8**
	4,000	**8**
	4,200	7
	4,400	7
	4,600	7
	4,800	6
	5,000	6
	5,200	6
	5,400	6
	5,600	5
	5,800	5
	6,000	5
	6,200	5
	6,400	5
	6,600	5
	6,800	4
	7,000	4
	7,200	4
	7,400	4
	7,600	4

Note minimum volumes required:
25 mm : 560 liters
37 mm : 1250 liters

Filter diameter of 25 mm = effective area of 385 sq mm
Filter diameter of 37 mm = effective area of 855 sq mm

BILLING CODE 6560-50-C

20. Ensure that the sampler is turned upright before interrupting the pump flow.

21. Check that all samples are clearly labeled and that all pertinent information has been enclosed before transfer of the samples to the laboratory.

22. Ensure that the samples are stored in a secure and representative location.

23. Do not change containers if portions of these filters are taken for other purposes.

24. A summary of Sample Data Quality Objectives is shown in the following Table II:

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TABLE II--SUMMARY OF SAMPLING AGENCY DATA QUALITY OBJECTIVES

This table summarizes the data quality objectives from the performance of this method in terms of precision, accuracy, completeness, representativeness, and comparability. These objectives are assured by the periodic control checks and reference checks listed here and described in the text of the method.

Unit Operation	QC Check	Frequency	Conformance Expectation
Sampling materials	Sealed blank	1 per I/O site	95%
Sample procedures	Field blanks	2 per I/O site	95%
	Pump calibration	Before and after each field series	90%
Sample custody	Review of chain-of-custody record	Each sample	95% complete
Sample shipment	Review of sending report	Each sample	95% complete

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C. Sample Shipment

Ship bulk samples to the analytical laboratory in a separate container from air samples.

D. Sample Receiving

1. Designate one individual as sample coordinator at the laboratory. While that individual will normally be available to receive samples, the coordinator may train and supervise others in receiving procedures for those times when he/she is not available.

2. Bulk samples and air samples delivered to the analytical laboratory in the same container shall be rejected.

E. Sample Preparation

1. All sample preparation and analysis shall be performed by a laboratory independent of the abatement contractor.

2. Wet-wipe the exterior of the cassettes to minimize contamination possibilities before taking them into the clean room facility.

3. Perform sample preparation in a well-equipped clean facility.

Note: The clean area is required to have the following minimum characteristics. The area or hood must be capable of maintaining a positive pressure with make-up air being HEPA-filtered. The cumulative analytical blank concentration must average less than 18 s/mm² in an area of 0.057 mm² (nominally 10 200-mesh grid openings) and a single preparation with a maximum of 53 s/mm² for that same area.

4. Preparation areas for air samples must not only be separated from preparation areas for bulk samples, but they must be prepared in separate rooms.

5. Direct preparation techniques are required. The object is to produce an intact film containing the particulates of the filter surface which is sufficiently clear for TEM analysis.

a. TEM Grid Opening Area measurement must be done as follows:

i. The filter portion being used for sample preparation must have the surface collapsed using an acetone vapor technique.

ii. Measure 20 grid openings on each of 20 random 200-mesh copper grids by placing a grid on a glass and examining it under the PCM. Use a calibrated graticule to measure the average field diameters. From the data, calculate the field area for an average grid opening.

iii. Measurements can also be made on the TEM at a properly calibrated low magnification or on an optical microscope at a magnification of approximately 400X by using an eyepiece fitted with a scale that has been calibrated against a stage micrometer. Optical microscopy utilizing manual or automated procedures may be used providing instrument calibration can be verified.

b. TEM specimen preparation from polycarbonate (PC) filters. Procedures as described in Unit III.G. or other equivalent methods may be used.

c. TEM specimen preparation from mixed cellulose ester (MCE) filters.

i. Filter portion being used for sample preparation must have the surface collapsed using an acetone vapor technique or the Burdette procedure (Ref. 7 of Unit II.J.)

ii. Plasma etching of the collapsed filter is required. The microscope slide to which the collapsed filter pieces are attached is placed in a plasma asher. Because plasma ashers vary greatly in their performance, both from unit to unit and between different positions in the asher chamber, it is difficult to specify the conditions that should be used. Insufficient etching will result in a failure to expose embedded filters, and too much etching may result in loss of particulate from the surface. As an interim measure, it is recommended that the time for ashing of a known weight of a collapsed filter be established and that the etching rate be calculated in terms of micrometers per second. The actual etching time used for the particulate asher and operating conditions will then be set such that a 1–2 μm (10 percent) layer of collapsed surface will be removed.

iii. Procedures as described in Unit III. or other equivalent methods may be used to prepare samples.

F. TEM Method

1. An 80–120 kV TEM capable of performing electron diffraction with a fluorescent screen inscribed with calibrated gradations is required. If the TEM is equipped with EDXA it must either have a STEM attachment or be capable of producing a spot less than 250 nm in diameter at crossover. The microscope shall be calibrated routinely for magnification and camera constant.

2. Determination of Camera Constant and ED Pattern Analysis. The camera length of the TEM in ED operating mode must be calibrated before ED patterns on unknown samples are observed. This can be achieved by using a carbon-coated grid on which a thin film of gold has been sputtered or evaporated. A thin film of gold is evaporated on the specimen TEM grid to obtain zone-axis ED patterns superimposed with a ring pattern from the polycrystalline gold film. In practice, it is desirable to optimize the thickness of the gold film so that only one or two sharp rings are obtained on the superimposed ED pattern. Thicker gold film would normally give multiple gold rings, but it will tend to mask weaker diffraction spots from the unknown fibrous particulate. Since the unknown d-spacings of most interest in asbestos analysis are those which lie closest to the transmitted beam, multiple gold rings are unnecessary on zone-axis ED patterns. An average camera constant using multiple gold rings can be determined. The camera constant is one-half the diameter of the rings times the interplanar spacing of the ring being measured.

3. Magnification Calibration. The magnification calibration must be done at the fluorescent screen. The TEM must be calibrated at the grid opening magnification (if used) and also at the magnification used for fiber counting. This is performed with a cross grating replica (e.g., one containing 2,160 lines/mm). Define a field of view on the fluorescent screen either by markings or physical boundaries. The field of view must be measurable or previously inscribed with a scale or concentric circles (all scales should be metric). A logbook must be maintained, and the dates of calibration and the values obtained must be recorded. The frequency of calibration depends on the past history of the particular microscope. After any maintenance of the microscope that involved adjustment of the power supplied to the lenses or the high-voltage system or the mechanical disassembly of the electron optical column apart from filament exchange, the magnification must be recalibrated. Before the TEM calibration is performed, the analyst must ensure that the cross grating replica is placed at the same distance from the objective lens as the specimens are. For instruments that incorporate an eucentric tilting specimen stage, all specimens and the cross grating replica must be placed at the eucentric position.

4. While not required on every microscope in the laboratory, the laboratory must have either one microscope equipped with energy dispersive X-ray analysis or access to an equivalent system on a TEM in another laboratory.

5. Microscope settings: 80–120 kV, grid assessment 250–1,000X, then 15,000–20,000X screen magnification for analysis.

6. Approximately one-half (0.5) of the predetermined sample area to be analyzed shall be performed on one sample grid preparation and the remaining half on a second sample grid preparation.

7. Individual grid openings with greater than 5 percent openings (holes)

or covered with greater than 25 percent particulate matter or obviously having nonuniform loading must not be analyzed.

8. Reject the grid if:

a. Less than 50 percent of the grid openings covered by the replica are intact.

b. The replica is doubled or folded.

c. The replica is too dark because of incomplete dissolution of the filter.

9. Recording Rules.

a. Any continuous grouping of particles in which an asbestos fiber with an aspect ratio greater than or equal to 5:1 and a length greater than or equal to 0.5 μm is detected shall be recorded on the count sheet. These will be designated asbestos structures and will be classified as fibers, bundles, clusters, or matrices. Record as individual fibers any contiguous grouping having 0, 1, or 2 definable intersections. Groupings having more than 2 intersections are to be described as cluster or matrix. An intersection is a nonparallel touching or crossing of fibers, with the projection having an aspect ratio of 5:1 or greater. See the following Figure 2:

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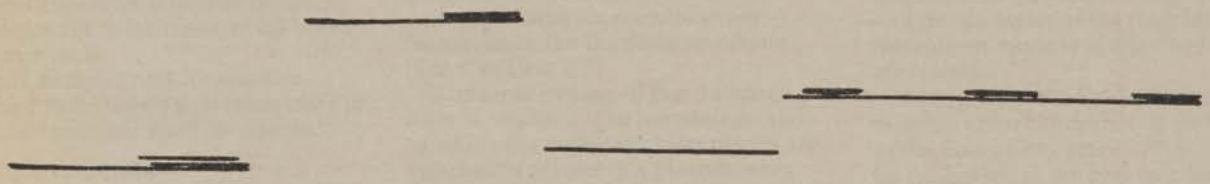
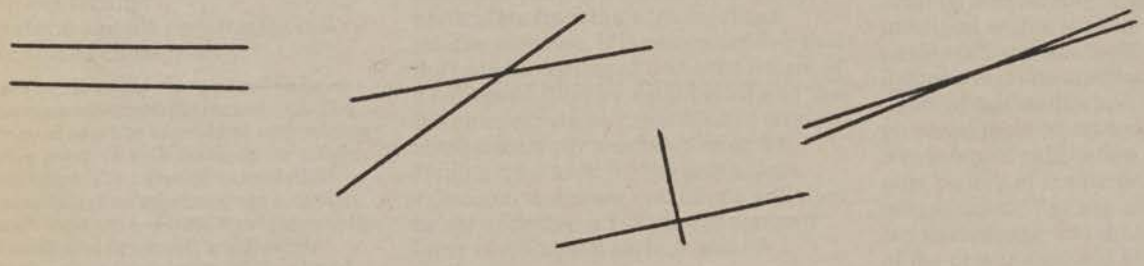
FIGURE 2--COUNTING GUIDELINES USED IN DETERMINING ASBESTOS STRUCTURES

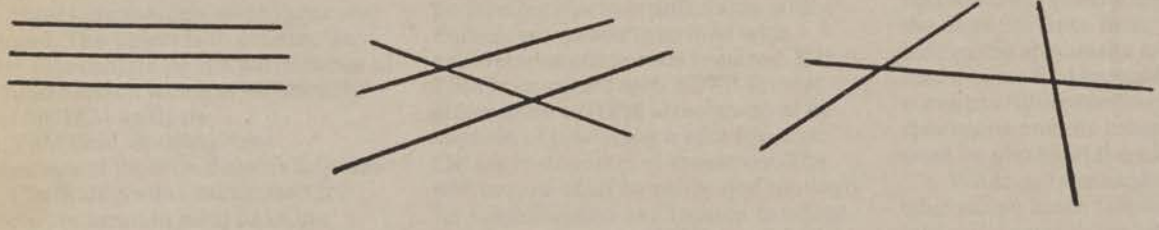
Count as 1 fiber; 1 Structure; no intersections.



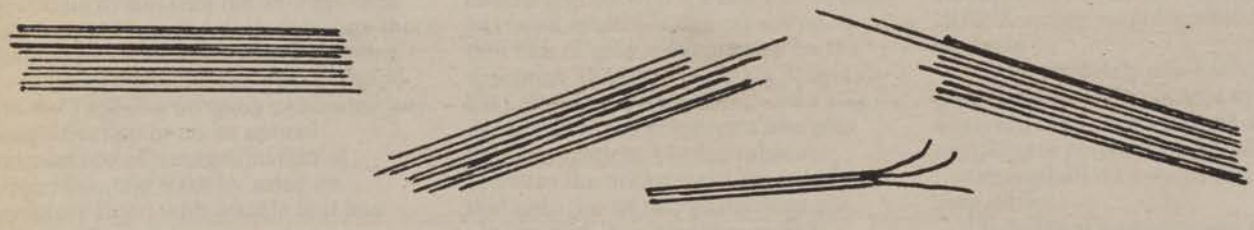
Count as 2 fibers if space between fibers is greater than width of 1 fiber diameter or number of intersections is equal to or less than 1.



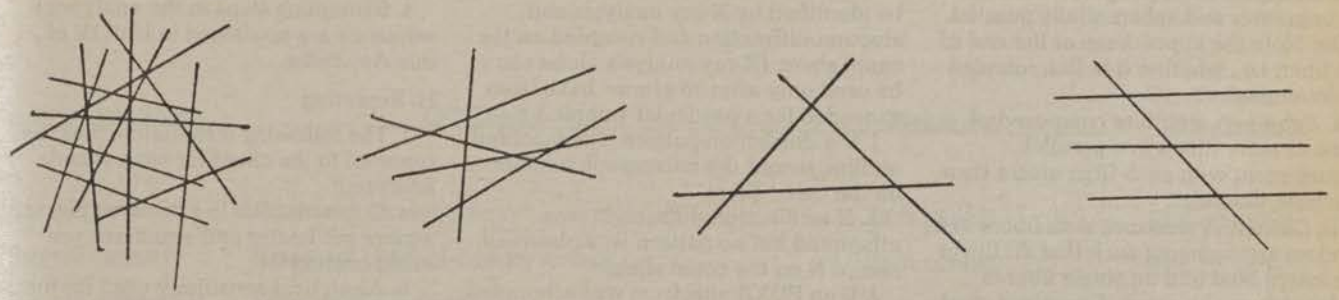
Count as 3 structures if space between fibers is greater than width of 1 fiber diameter or if the number of intersections is equal to or less than 2.



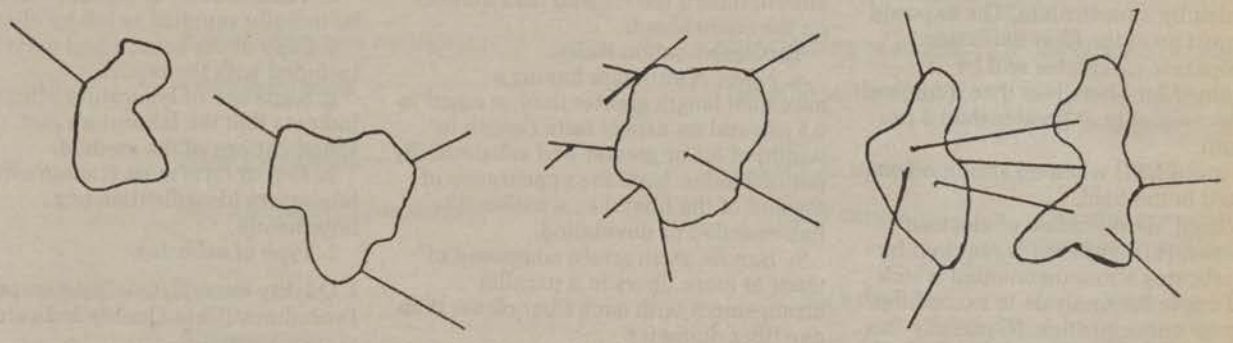
Count bundles as 1 structure; 3 or more parallel fibrils less than 1 fiber diameter separation.



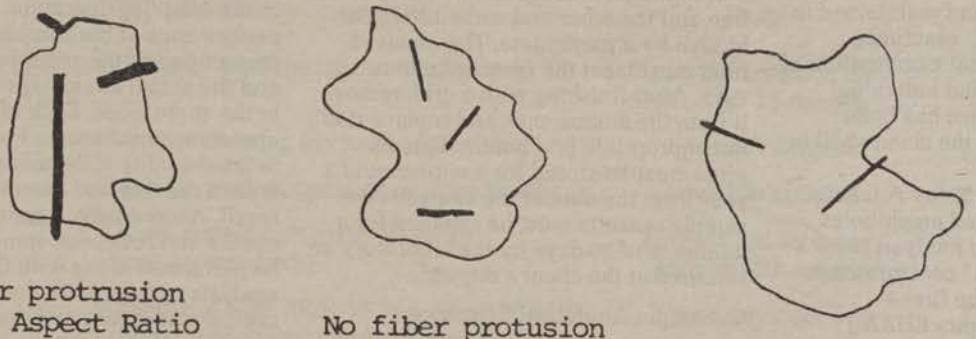
Count clusters as 1 structure; fibers having greater than or equal to 3 intersections.



Count matrix as 1 structure.



DO NOT COUNT AS STRUCTURES:



Fiber protrusion <5:1 Aspect Ratio

No fiber protusion

Fiber protrusion <0.5 micrometer

—— <0.5 micrometer in length

▬ <5:1 Aspect Ratio

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i. *Fiber.* A structure having a minimum length greater than or equal to 0.5 μm and an aspect ratio (length to width) of 5:1 or greater and substantially parallel sides. Note the appearance of the end of the fiber, i.e., whether it is flat, rounded or dovetailed.

ii. *Bundle.* A structure composed of three or more fibers in a parallel arrangement with each fiber closer than one fiber diameter.

iii. *Cluster.* A structure with fibers in a random arrangement such that all fibers are intermixed and no single fiber is isolated from the group. Groupings must have more than two intersections.

iv. *Matrix.* Fiber or fibers with one end free and the other end embedded in or hidden by a particulate. The exposed fiber must meet the fiber definition.

b. Separate categories will be maintained for fibers less than 5 μm and for fibers equal to or greater than 5 μm in length.

c. Record NSD when no structures are detected in the field.

d. Visual identification of electron diffraction (ED) patterns is required for each asbestos structure counted which would cause the analysis to exceed the 70 s/mm² concentration. (Generally this means the first four fibers identified as asbestos must exhibit an identifiable diffraction pattern for chrysotile or amphibole.)

e. The micrograph number of the recorded diffraction patterns must be reported to the client and maintained in the laboratory's quality assurance records. In the event that examination of the pattern by a qualified individual indicates that the pattern has been misidentified visually, the client shall be contacted.

f. Energy Dispersive X-ray Analysis (EDXA) is required of all amphiboles which would cause the analysis results to exceed the 70 s/mm² concentration. (Generally speaking, the first 4 amphiboles would require EDXA.)

g. If the number of fibers in the nonasbestos class would cause the analysis to exceed the 70 s/mm² concentration, the fact that they are not asbestos must be confirmed by EDXA or measurement of a zone axis diffraction pattern.

h. Fibers classified as chrysotile must be identified by diffraction or X-ray analysis and recorded on a count sheet. X-ray analysis alone can be used only after 70 s/mm² have been exceeded for a particular sample.

i. Fibers classified as amphiboles must be identified by X-ray analysis and electron diffraction and recorded on the count sheet. (X-ray analysis alone can be used only after 70 s/mm² have been exceeded for a particular sample.)

j. If a diffraction pattern was recorded on film, record the micrograph number on the count sheet.

k. If an electron diffraction was attempted but no pattern was observed, record N on the count sheet.

l. If an EDXA spectrum was attempted but not observed, record N on the count sheet.

m. If an X-ray analysis spectrum is stored, record the file and disk number on the count sheet.

10. Classification Rules.

a. *Fiber.* A structure having a minimum length greater than or equal to 0.5 μm and an aspect ratio (length to width) of 5:1 or greater and substantially parallel sides. Note the appearance of the end of the fiber, i.e., whether it is flat, rounded or dovetailed.

b. *Bundle.* A structure composed of three or more fibers in a parallel arrangement with each fiber closer than one fiber diameter.

c. *Cluster.* A structure with fibers in a random arrangement such that all fibers are intermixed and no single fiber is isolated from the group. Groupings must have more than two intersections.

d. *Matrix.* Fiber or fibers with one end free and the other end embedded in or hidden by a particulate. The exposed fiber must meet the fiber definition.

11. After finishing with a grid, remove it from the microscope, and replace it in the appropriate grid holder. Sample grids must be stored for a minimum of 1 year from the date of the analysis; the sample cassette must be retained for a minimum of 30 days by the laboratory or returned at the client's request.

G. Sample Analytical Sequence

1. Under the present sampling requirements a minimum of 13 samples is to be collected for the clearance testing of an abatement site. These include five abatement area samples, five ambient samples, two field blanks, and one sealed blank.

2. Carry out visual inspection of work site prior to air monitoring.

3. Collect a minimum of 5 air samples inside the work site and 5 samples outside the work site. The indoor and outdoor samples shall be taken during the same time period.

4. Remaining steps in the analytical sequence are contained in Unit IV of this Appendix.

H. Reporting

1. The following information must be reported to the client for each sample analyzed:

a. Concentration in structures per square millimeter and structures per cubic centimeter.

b. Analytical sensitivity used for the analysis.

c. Number of asbestos structures.

d. Area analyzed.

e. Volume of air sampled (which must be initially supplied to lab by client).

f. Copy of the count sheet must be included with the report.

g. Signature of laboratory official to indicate that the laboratory met specifications of the method.

h. Report form must contain official laboratory identification (e.g., letterhead).

i. Type of asbestos.

I. Quality Control/Quality Assurance Procedures (Data Quality Indicators)

Monitoring the environment for airborne asbestos requires the use of sensitive sampling and analysis procedures. Because the test is sensitive, it may be influenced by a variety of factors. These include the supplies used in the sampling operation, the performance of the sampling, the preparation of the grid from the filter and the actual examination of this grid in the microscope. Each of these unit operations must produce a product of defined quality if the analytical result is to be a reliable and meaningful test result. Accordingly, a series of control checks and reference standards are to be performed along with the sample analysis as indicators that the materials used are adequate and the operations are within acceptable limits. In this way, the quality of the data is defined and the results are of known value. These checks and tests also provide timely and specific warning of any problems which might develop within the sampling and analysis operations. A description of these quality control/quality assurance procedures is summarized in the following Table III:

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TABLE III--SUMMARY OF LABORATORY DATA QUALITY OBJECTIVES

Unit Operation	QC Check	Frequency	Conformance Expectation
Sample receiving	Review of receiving report	Each sample	95% complete
Sample custody	Review of chain-of-custody record	Each sample	95% complete
Sample preparation	Supplies and reagents	On receipt	Meet specs. or reject
	Grid opening size	20 openings/20 grids/lot of 1000 or 1 opening/sample	100%
	Special clean area monitoring	After cleaning or service	Meet specs or reclean
	Laboratory blank	1 per prep series or 10%	Meet specs. or reanalyze series
	Plasma etch blank	1 per 20 samples	75%
	Multiple preps (3 per sample)	Each sample	One with cover of 15 complete grid sqs.
Sample analysis	System check	Each day	Each day
	Alignment check	Each day	Each day
	Magnification calibration with low and high standards	Each month or after service	95%
	ED calibration by gold standard	Weekly	95%
	EDS calibration by copper line	Daily	95%
Performance check	Laboratory blank (measure of cleanliness)	Prep 1 per series or 10% read 1 per 25 samples	Meet specs or reanalyze series
	Replicate counting (measure of precision)	1 per 100 samples	1.5 x Poisson Std. Dev.
	Duplicate analysis (measure of reproducibility)	1 per 100 samples	2 x Poisson Std. Dev.
	Known samples of typical materials (working standards)	Training and for comparison with unknowns	100%
	Analysis of NBS SRM 1876 and/or RM 8410 (measure of accuracy and comparability)	1 per analyst per year	1.5 x Poisson Std. Dev.
	Data entry review (data validation and measure of completeness)	Each sample	95%
	Record and verify ID electron diffraction pattern of structure	1 per 5 samples	80% accuracy
Calculations and data reduction	Hand calculation of automated data reduction procedure or independent recalculation of hand-calculated data	1 per 100 samples	85%

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1. When the samples arrive at the laboratory, check the samples and documentation for completeness and requirements before initiating the analysis.

2. Check all laboratory reagents and supplies for acceptable asbestos background levels.

3. Conduct all sample preparation in a clean room environment monitored by laboratory blanks. Testing with blanks must also be done after cleaning or servicing the room.

4. Prepare multiple grids of each sample.

5. Provide laboratory blanks with each sample batch. Maintain a cumulative average of these results. If there are more than 53 fibers/mm ^{2} per 10 200-mesh grid openings, the system must be checked for possible sources of contamination.

6. Perform a system check on the transmission electron microscope daily.

7. Make periodic performance checks of magnification, electron diffraction and energy dispersive X-ray systems as set forth in Table III under Unit II.I.

8. Ensure qualified operator performance by evaluation of replicate analysis and standard sample comparisons as set forth in Table III under Unit II.I.

9. Validate all data entries.

10. Recalculate a percentage of all computations and automatic data reduction steps as specified in Table III under Unit II.I.

11. Record an electron diffraction pattern of one asbestos structure from every five samples that contain asbestos. Verify the identification of the pattern by measurement or comparison of the pattern with patterns collected from standards under the same conditions. The records must also demonstrate that the identification of the pattern has been verified by a qualified individual and that the operator who made the identification is maintaining at least an 80 percent correct visual identification based on his measured patterns.

12. Appropriate logs or records must be maintained by the analytical laboratory verifying that it is in compliance with the mandatory quality assurance procedures.

J. References

For additional background information on this method, the following references should be consulted.

1. "Guidance for Controlling Asbestos-Containing Materials in Buildings," EPA 560/5–85–024, June 1985.

2. "Measuring Airborne Asbestos Following an Abatement Action," USEPA, Office of Toxic Substances, EPA 600/4–85–049, 1985.

3. Small, John and E. Steel. Asbestos Standards: Materials and Analytical Methods. N.B.S. Special Publication 619, 1982.

4. Campbell, W.J., R.L. Blake, L.L. Brown, E.E. Cather, and J.J. Sjoberg. Selected Silicate Minerals and Their Asbestiform Varieties. Information Circular 8751, U.S. Bureau of Mines, 1977.

5. Quality Assurance Handbook for Air Pollution Measurement System. Ambient Air Methods, EPA 600/4–77–027a, USEPA, Office of Research and Development, 1977.

6. Method 2A: Direct Measurement of Gas Volume through Pipes and Small Ducts. 40 CFR Part 60 Appendix A.

7. Burdette, G.J., Health & Safety Exec. Research & Lab. Services Div., London, "Proposed Analytical Method for Determination of Asbestos in Air."

8. Chatfield, E.J., Chatfield Tech. Cons., Ltd., Clark, T., PEI Assoc., "Standard Operating Procedure for Determination of Airborne Asbestos Fibers by Transmission Electron Microscopy Using Polycarbonate Membrane Filters," WERL SOP 87–1, March 5, 1987.

9. NIOSH Method 7402 for Asbestos Fibers, 12–11–86 Draft.

10. Yamate, G., Agarwall, S.C., Gibbons, R.D., IIT Research Institute, "Methodology for the Measurement of Airborne Asbestos by Electron Microscopy," Draft report, USEPA Contract 68–02–3266, July 1984.

11. "Guidance to the Preparation of Quality Assurance Project Plans," USEPA, Office of Toxic Substances, 1984.

III. Nonmandatory Transmission Electron Microscopy Method

A. Definitions of Terms

1. "Analytical sensitivity"—Airborne asbestos concentration represented by each fiber counted under the electron microscope. It is determined by the air volume collected and the proportion of the filter examined. This method requires that the analytical sensitivity be no greater than 0.005 s/cm^3.

2. "Asbestiform"—A specific type of mineral fibrosity in which the fibers and fibrils possess high tensile strength and flexibility.

3. "Aspect ratio"—A ratio of the length to the width of a particle. Minimum aspect ratio as defined by this method is equal to or greater than 5:1.

4. "Bundle"—A structure composed of three or more fibers in a parallel arrangement with each fiber closer than one fiber diameter.

5. "Clean area"—A controlled environment which is maintained and monitored to assure a low probability of asbestos contamination to materials in that space. Clean areas used in this method have HEPA filtered air under positive pressure and are capable of sustained operation with an open laboratory blank which on subsequent analysis has an average of less than 18 structures/mm^2 in an area of 0.057 mm^2 (nominally 10 200 mesh grid openings) and a maximum of 53 structures/mm^2 for no more than one single preparation for that same area.

6. "Cluster"—A structure with fibers in a random arrangement such that all fibers are intermixed and no single fiber is isolated from the group. Groupings must have more than two intersections.

7. "ED"—Electron diffraction.

8. "EDXA"—Energy dispersive X-ray analysis.

9. "Fiber"—A structure greater than or equal to 0.5 μm in length with an aspect ratio (length to width) of 5:1 or greater and having substantially parallel sides.

10. "Grid"—An open structure for mounting on the sample to aid in its examination in the TEM. The term is used here to denote a 200-mesh copper lattice approximately 3 mm in diameter.

11. "Intersection"—Nonparallel touching or crossing of fibers, with the projection having an aspect ratio of 5:1 or greater.

12. "Laboratory sample coordinator"—That person responsible for the conduct of sample handling and the certification of the testing procedures.

13. "Filter background level"—The concentration of structures per square millimeter of filter that is considered indistinguishable from the concentration measured on blanks (filters through which no air has been drawn). For this method the filter background level is defined as 70 structures/mm^2.

14. "Matrix"—Fiber or fibers with one end free and the other end embedded in or hidden by a particulate. The exposed fiber must meet the fiber definition.

15. "NSD"—No structure detected.

16. "Operator"—A person responsible for the TEM instrumental analysis of the sample.

17. "PCM"—Phase contrast microscopy.

18. "SAED"—Selected area electron diffraction.

19. "SEM"—Scanning electron microscope.

20. "STEM"—Scanning transmission electron microscope.

21. "Structure"—a microscopic bundle, cluster, fiber, or matrix which may contain asbestos.

22. "S/cm^3"—Structures per cubic centimeter.

23. "S/mm^2"—Structures per square millimeter.

24. "TEM"—Transmission electron microscope.

B. Sampling

1. Sampling operations must be performed by qualified individuals completely independent of the abatement contractor to avoid possible conflict of interest (See References 1, 2, and 5 of Unit III.L.) Special precautions should be taken to avoid contamination of the sample. For example, materials that have not been prescreened for their asbestos background content should not be used; also, sample handling procedures which do not take cross contamination possibilities into account should not be used.

2. Material and supply checks for asbestos contamination should be made on all critical supplies, reagents, and procedures before their use in a monitoring study.

3. Quality control and quality assurance steps are needed to identify problem areas and isolate the cause of the contamination (see Reference 5 of Unit III.L.). Control checks shall be permanently recorded to document the quality of the information produced. The sampling firm must have written quality control procedures and documents which verify compliance. Independent audits by a qualified consultant or firm should be performed once a year. All documentation of compliance should be retained indefinitely to provide a guarantee of quality. A summary of Sample Data Quality Objectives is shown in Table II of Unit II.B.

4. Sampling materials.

a. Sample for airborne asbestos following an abatement action using commercially available cassettes.

b. Use either a cowling or a filter-retaining middle piece. Conductive material may reduce the potential for particulates to adhere to the walls of the cowl.

c. Cassettes must be verified as "clean" prior to use in the field. If packaged filters are used for loading or preloaded cassettes are purchased from the manufacturer or a distributor, the manufacturer's name and lot number should be entered on all field data sheets provided to the laboratory, and are required to be listed on all reports from the laboratory.

d. Assemble the cassettes in a clean facility (See definition of clean area under Unit III.A.).

e. Reloading of used cassettes is not permitted.

f. Use sample collection filters which are either polycarbonate having a pore size of less than or equal to 0.4 μm or mixed cellulose ester having a pore size of less than or equal to 0.45 μm.

g. Place these filters in series with a backup filter with a pore size of 5.0 μm (to serve as a diffuser) and a support pad. See the following Figure 1:

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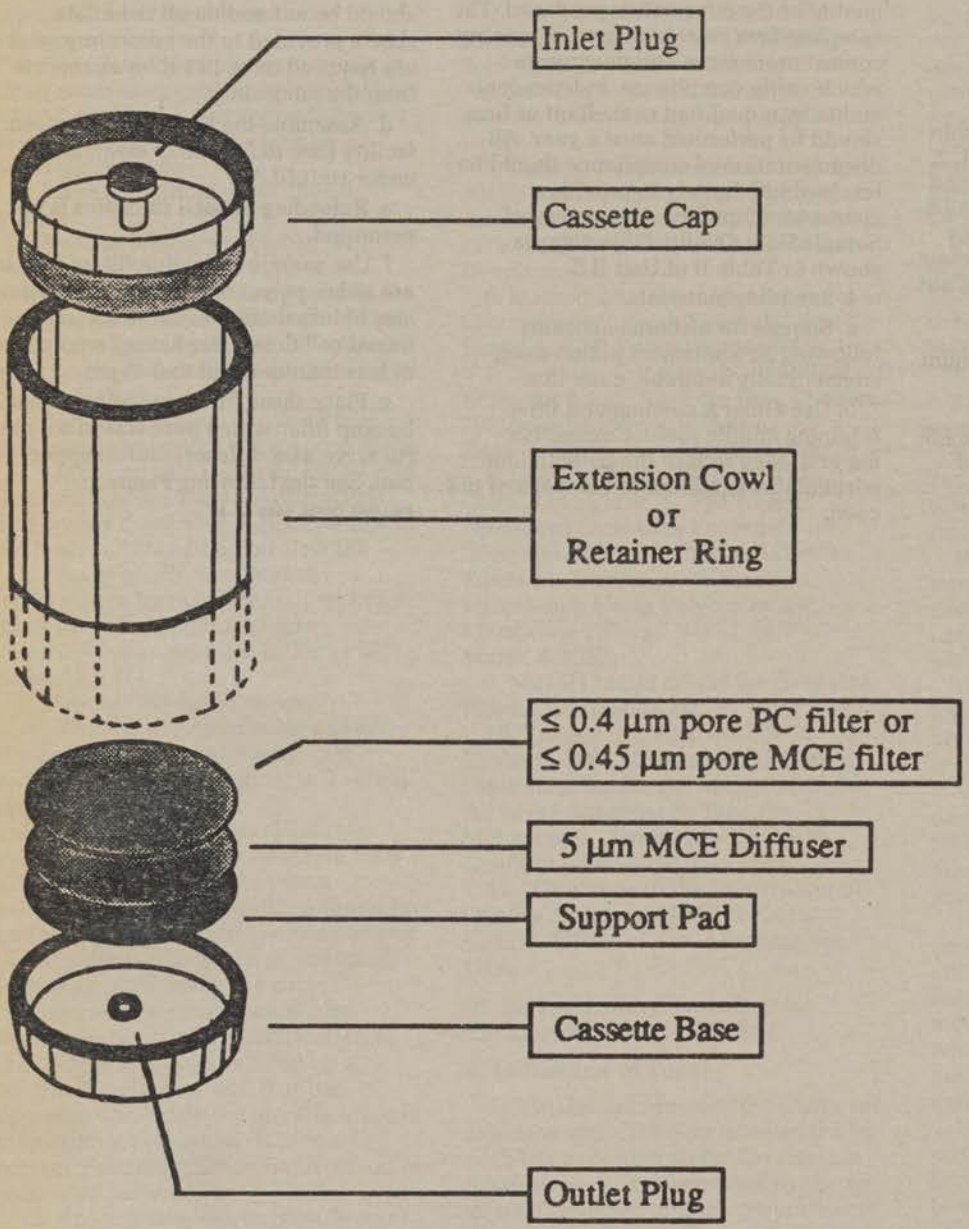
FIGURE I--SAMPLING CASSETTE CONFIGURATION



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h. When polycarbonate filters are used, position the highly reflective face such that the incoming particulate is received on this surface.

i. Seal the cassettes to prevent leakage around the filter edges or between cassette part joints. A mechanical press may be useful to achieve a reproducible leak-free seal. Shrink fit gel-bands may be used for this purpose and are available from filter manufacturers and their authorized distributors.

j. Use wrinkle-free loaded cassettes in the sampling operation.

5. Pump setup.

a. Calibrate the sampling pump over the range of flow rates and loads anticipated for the monitoring period with this flow measuring device in series. Perform this calibration using guidance from EPA Method 2A each time the unit is sent to the field (See Reference 6 of Unit III.L.).

b. Configure the sampling system to preclude pump vibrations from being transmitted to the cassette by using a sampling stand separate from the pump station and making connections with flexible tubing.

c. Maintain continuous smooth flow conditions by damping out any pump action fluctuations if necessary.

d. Check the sampling system for leaks with the end cap still in place and the pump operating before initiating sample collection. Trace and stop the source of any flow indicated by the flowmeter under these conditions.

e. Select an appropriate flow rate equal to or greater than 1 L/min or less than 10 L/min for 25 mm cassettes. Larger filters may be operated at proportionally higher flow rates.

f. Orient the cassette downward at approximately 45 degrees from the horizontal.

g. Maintain a log of all pertinent sampling information, such as pump identification number, calibration data, sample location, date, sample identification number, flow rates at the beginning, middle, and end, start and stop times, and other useful information or comments. Use of a sampling log form is recommended. See the following Figure 2:

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FIGURE 2--SAMPLING LOG FORM

Sample Number	Location of Sample	Pump I.D.	Start Time	Middle Time	End Time	Flow Rate

Inspector: _____ Date: _____

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h. Initiate a chain of custody procedure at the start of each sampling, if this is requested by the client.

i. Maintain a close check of all aspects of the sampling operation on a regular basis.

j. Continue sampling until at least the minimum volume is collected, as specified in the following Table I:

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TABLE 1--NUMBER OF 200 MESH EM GRID OPENINGS (0.0057 MM^2) THAT NEED TO BE ANALYZED TO MAINTAIN SENSITIVITY OF 0.005 STRUCTURES/CC BASED ON VOLUME AND EFFECTIVE FILTER AREA

Effective Filter Area 385 sq mm	
Volume (liters)	# of grid openings
560	*24*
600	23
700	19
800	17
900	15
1,000	14
1,100	12
1,200	**11**
1,300	**10**
1,400	**10**
1,500	**9**
1,600	**8**
1,700	**8**
1,800	**8**
1,900	7
2,000	7
2,100	6
2,200	6
2,300	6
2,400	6
2,500	5
2,600	5
2,700	5
2,800	5
2,900	5
3,000	5
3,100	4
3,200	4
3,300	4
3,400	4
3,500	4
3,600	4
3,700	4
3,800	4

Recommended Volume Range

Effective Filter Area 855 sq mm	
Volume (liters)	# of grid openings
1,250	*24*
1,300	23
1,400	21
1,600	19
1,800	17
2,000	15
2,200	14
2,400	13
2,600	12
2,800	**11**
3,000	**10**
3,200	**9**
3,400	**9**
3,600	**8**
3,800	**8**
4,000	**8**
4,200	7
4,400	7
4,600	7
4,800	6
5,000	6
5,200	6
5,400	6
5,600	5
5,800	5
6,000	5
6,200	5
6,400	5
6,600	5
6,800	4
7,000	4
7,200	4
7,400	4
7,600	4

Recommended Volume Range

Note minimum volumes required:
25 mm : 560 liters
37 mm : 1250 liters

Filter diameter of 25 mm = effective area of 385 sq mm
Filter diameter of 37 mm = effective area of 855 sq mm

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k. At the conclusion of sampling, turn the cassette upward before stopping the flow to minimize possible particle loss. If the sampling is resumed, restart the flow before reorienting the cassette downward. Note the condition of the filter at the conclusion of sampling.

l. Double check to see that all information has been recorded on the data collection forms and that the cassette is securely closed and appropriately identified using a waterproof label. Protect cassettes in individual clean resealed polyethylene bags. Bags are to be used for storing cassette caps when they are removed for sampling purposes. Caps and plugs should only be removed or replaced using clean hands or clean disposable plastic gloves.

m. Do not change containers if portions of these filters are taken for other purposes.

6. Minimum sample number per site. A minimum of 13 samples are to be collected for each testing consisting of the following:

a. A minimum of five samples per abatement area.

b. A minimum of five samples per ambient area positioned at locations representative of the air entering the abatement site.

c. Two field blanks are to be taken by removing the cap for not more than 30 sec and replacing it at the time of sampling before sampling is initiated at the following places:

i. Near the entrance to each ambient area.

ii. At one of the ambient sites.

(Note: Do not leave the blank open during the sampling period.)

d. A sealed blank is to be carried with each sample set. This representative cassette is not to be opened in the field.

7. Abatement area sampling.

a. Conduct final clearance sampling only after the primary containment barriers have been removed; the abatement area has been thoroughly dried; and, it has passed visual inspection tests by qualified personnel. (See Reference 1 of Unit III.L.)

b. Containment barriers over windows, doors, and air passageways must remain in place until the TEM clearance sampling and analysis is completed and results meet clearance test criteria. The final plastic barrier remains in place for the sampling period.

c. Select sampling sites in the abatement area on a random basis to provide unbiased and representative samples.

d. After the area has passed a thorough visual inspection, use aggressive sampling conditions to dislodge any remaining dust.

i. Equipment used in aggressive sampling such as a leaf blower and/or fan should be properly cleaned and decontaminated before use.

ii. Air filtration units shall remain on during the air monitoring period.

iii. Prior to air monitoring, floors, ceiling and walls shall be swept with the exhaust of a minimum one (1) horsepower leaf blower.

iv. Stationary fans are placed in locations which will not interfere with air monitoring equipment. Fan air is directed toward the ceiling. One fan shall be used for each 10,000 ft ^{3} of worksite.

v. Monitoring of an abatement work area with high-volume pumps and the use of circulating fans will require electrical power. Electrical outlets in the abatement area may be used if available. If no such outlets are available, the equipment must be supplied with electricity by the use of extension cords and strip plug units. All electrical power supply equipment of this type must be approved Underwriter Laboratory equipment that has not been modified. All wiring must be grounded. Ground fault interrupters should be used. Extreme care must be taken to clean up any residual water and ensure that electrical equipment does not become wet while operational.

vi. Low volume pumps may be carefully wrapped in 6-mil polyethylene to insulate the pump from the air. High volume pumps cannot be sealed in this manner since the heat of the motor may melt the plastic. The pump exhausts should be kept free.

vii. If recleaning is necessary, removal of this equipment from the work area must be handled with care. It is not possible to completely decontaminate the pump motor and parts since these areas cannot be wetted. To minimize any problems in this area, all equipment such as fans and pumps should be carefully wet wiped prior to removal from the abatement area. Wrapping and sealing low volume pumps in 6-mil polyethylene will provide easier decontamination of this equipment. Use of clean water and disposable wipes should be available for this purpose.

e. Pump flow rate equal to or greater than 1 L/min or less than 10 L/min may be used for 25 mm cassettes. The larger cassette diameters may have comparably increased flow.

f. Sample a volume of air sufficient to ensure the minimum quantitation limits. (See Table I of Unit III.B.5.j.)

8. Ambient sampling.

a. Position ambient samplers at locations representative of the air entering the abatement site. If makeup air entering the abatement site is drawn from another area of the building which is outside of the abatement area, place the pumps in the building, pumps should be placed out of doors located near the building and away from any obstructions that may influence wind patterns. If construction is in progress immediately outside the enclosure, it may be necessary to select another ambient site. Samples should be representative of any air entering the work site.

b. Locate the ambient samplers at least 3 ft apart and protect them from adverse weather conditions.

c. Sample same volume of air as samples taken inside the abatement site.

C. Sample Shipment

1. Ship bulk samples in a separate container from air samples. Bulk samples and air samples delivered to the analytical laboratory in the same container shall be rejected.

2. Select a rigid shipping container and pack the cassettes upright in a noncontaminating nonfibrous medium such as a bubble pack. The use of resealable polyethylene bags may help to prevent jostling of individual cassettes.

3. Avoid using expanded polystyrene because of its static charge potential. Also avoid using particle-based packaging materials because of possible contamination.

4. Include a shipping bill and a detailed listing of samples shipped, their descriptions and all identifying numbers or marks, sampling data, shipper's name, and contact information. For each sample set, designate which are the ambient samples, which are the abatement area samples, which are the field blanks, and which is the sealed blank if sequential analysis is to be performed.

5. Hand-carry samples to the laboratory in an upright position if possible; otherwise choose that mode of transportation least likely to jar the samples in transit.

6. Address the package to the laboratory sample coordinator by name when known and alert him or her of the package description, shipment mode, and anticipated arrival as part of the chain of custody and sample tracking procedures. This will also help the laboratory schedule timely analysis for the samples when they are received.

D. Quality Control/Quality Assurance Procedures (Data Quality Indicators)

Monitoring the environment for airborne asbestos requires the use of

sensitive sampling and analysis procedures. Because the test is sensitive, it may be influenced by a variety of factors. These include the supplies used in the sampling operation, the performance of the sampling, the preparation of the grid from the filter and the actual examination of this grid in the microscope. Each of these unit operations must produce a product of defined quality if the analytical result is to be a reliable and meaningful test result. Accordingly, a series of control checks and reference standards is performed along with the sample analysis as indicators that the materials used are adequate and the operations are within acceptable limits. In this way, the quality of the data is defined, and the results are of known value. These checks and tests also provide timely and specific warning of any problems which might develop within the sampling and analysis operations. A description of these quality control/quality assurance procedures is summarized in the text below.

1. Prescreen the loaded cassette collection filters to assure that they do not contain concentrations of asbestos which may interfere with the analysis of the sample. A filter blank average of less than 18 s/mm^2 in an area of 0.057 mm^2 (nominally 10 200-mesh grid openings) and a maximum of 53 s/mm^2 for that same area for any single preparation is acceptable for this method.

2. Calibrate sampling pumps and their flow indicators over the range of their intended use with a recognized standard. Assemble the sampling system with a representative filter—not the filter which will be used in sampling—before and after the sampling operation.

3. Record all calibration information with the data to be used on a standard sampling form.

4. Ensure that the samples are stored in a secure and representative location.

5. Ensure that mechanical calibrations from the pump will be minimized to prevent transferral of vibration to the cassette.

6. Ensure that a continuous smooth flow of negative pressure is delivered by the pump by installing a damping chamber if necessary.

7. Open a loaded cassette momentarily at one of the indoor sampling sites when sampling is initiated. This sample will serve as an indoor field blank.

8. Open a loaded cassette momentarily at one of the outdoor sampling sites when sampling is initiated. This sample will serve as an outdoor field blank.

9. Carry a sealed blank into the field with each sample series. Do not open this cassette in the field.

10. Perform a leak check of the sampling system at each indoor and outdoor sampling site by activating the pump with the closed sampling cassette in line. Any flow indicates a leak which must be eliminated before initiating the sampling operation.

11. Ensure that the sampler is turned upright before interrupting the pump flow.

12. Check that all samples are clearly labeled and that all pertinent information has been enclosed before transfer of the samples to the laboratory.

E. Sample Receiving

1. Designate one individual as sample coordinator at the laboratory. While that individual will normally be available to receive samples, the coordinator may train and supervise others in receiving procedures for those times when he/she is not available.

2. Adhere to the following procedures to ensure both the continued chain-of-custody and the accountability of all samples passing through the laboratory:

a. Note the condition of the shipping package and data written on it upon receipt.

b. Retain all bills of lading or shipping slips to document the shipper and delivery time.

c. Examine the chain-of-custody seal, if any, and the package for its integrity.

d. If there has been a break in the seal or substantive damage to the package, the sample coordinator shall immediately notify the shipper and a responsible laboratory manager before any action is taken to unpack the shipment.

e. Packages with significant damage shall be accepted only by the responsible laboratory manager after discussions with the client.

3. Unwrap the shipment in a clean, uncluttered facility. The sample coordinator or his or her designee will record the contents, including a description of each item and all identifying numbers or marks. A Sample Receiving Form to document this information is attached for use when necessary. (See the following Figure 3.)

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FIGURE 3--SAMPLE RECEIVING FORM

Date of package delivery _____ Package shipped from _____

Carrier _____ Shipping bill retained _____

*Condition of package on receipt _____

*Condition of custody seal _____

Number of samples received _____ Shipping manifest attached _____

Purchase Order No. _____ Project I.D. _____

Comments _____

No.	Description	Sampling Medium PC	Sampling Medium MCE	Sampled Volume Liters	Receiving ID #	Assigned #
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						

(Use as many additional sheets as needed.)

Comments _____

Date of acceptance into sample bank _____

Signature of chain-of-custody recipient _____

Disposition of samples _____

*Note: If the package has sustained substantial damage or the custody seal is broken, stop and contact the project manager and the shipper.

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Note.—The person breaking the chain-of-custody seal and itemizing the contents assumes responsibility for the shipment and signs documents accordingly.

4. Assign a laboratory number and schedule an analysis sequence.

5. Manage all chain-of-custody samples within the laboratory such that their integrity can be ensured and documented.

F. Sample Preparation

1. Personnel not affiliated with the Abatement Contractor shall be used to prepare samples and conduct TEM analysis. Wet-wipe the exterior of the cassettes to minimize contamination possibilities before taking them to the clean sample preparation facility.

2. Perform sample preparation in a well-equipped clean facility.

Note.—The clean area is required to have the following minimum characteristics. The area or hood must be capable of maintaining a positive pressure with make-up air being HEPA filtered. The cumulative analytical blank concentration must average less than 18 s/mm² in an area of 0.057 s/mm² (nominally 10 200-mesh grid openings) with no more than one single preparation to exceed 53 s/mm² for that same area.

3. Preparation areas for air samples must be separated from preparation areas for bulk samples. Personnel must not prepare air samples if they have previously been preparing bulk samples without performing appropriate personal hygiene procedures, i.e., clothing change, showering, etc.

4. Preparation. Direct preparation techniques are required. The objective is to produce an intact carbon film containing the particulates from the filter surface which is sufficiently clear for TEM analysis. Currently recommended direct preparation procedures for polycarbonate (PC) and mixed cellulose ester (MCE) filters are described in Unit III.F.7. and 8. Sample preparation is a subject requiring additional research. Variation on those steps which do not substantively change the procedure, which improve filter clearing or which reduce contamination problems in a laboratory are permitted.

a. Use only TEM grids that have had grid opening areas measured according to directions in Unit III.J.

b. Remove the inlet and outlet plugs prior to opening the cassette to minimize any pressure differential that may be present.

c. Examples of techniques used to prepare polycarbonate filters are described in Unit III.F.7.

d. Examples of techniques used to prepare mixed cellulose ester filters are described in Unit III.F.8.

e. Prepare multiple grids for each sample.

f. Store the three grids to be measured in appropriately labeled grid holders or polyethylene capsules.

5. Equipment.

a. Clean area.

b. Tweezers. Fine-point tweezers for handling of filters and TEM grids.

c. Scalpel Holder and Curved No. 10 Surgical Blades.

d. Microscope slides.

e. Double-coated adhesive tape.

f. Gummed page reinforcements.

g. Micro-pipet with disposal tips 10 to 100 μL variable volume.

h. Vacuum coating unit with facilities for evaporation of carbon. Use of a liquid nitrogen cold trap above the diffusion pump will minimize the possibility of contamination of the filter surface by oil from the pumping system. The vacuum-coating unit can also be used for deposition of a thin film of gold.

i. Carbon rod electrodes. Spectrochemically pure carbon rods are required for use in the vacuum evaporator for carbon coating of filters.

j. Carbon rod sharpener. This is used to sharpen carbon rods to a neck. The use of necked carbon rods (or equivalent) allows the carbon to be applied to the filters with a minimum of heating.

k. Low-temperature plasma asher. This is used to etch the surface of collapsed mixed cellulose ester (MCE) filters. The asher should be supplied with oxygen, and should be modified as necessary to provide a throttle or bleed valve to control the speed of the vacuum to minimize disturbance of the filter. Some early models of ashers admit air too rapidly, which may disturb particulates on the surface of the filter during the etching step.

l. Glass petri dishes, 10 cm in diameter, 1 cm high. For prevention of excessive evaporation of solvent when these are in use, a good seal must be provided between the base and the lid. The seal can be improved by grinding the base and lid together with an abrasive grinding material.

m. Stainless steel mesh.

n. Lens tissue.

o. Copper 200-mesh TEM grids, 3 mm in diameter, or equivalent.

p. Gold 200-mesh TEM grids, 3 mm in diameter, or equivalent.

q. Condensation washer.

r. Carbon-coated, 200-mesh TEM grids, or equivalent.

s. Analytical balance, 0.1 mg sensitivity.

t. Filter paper, 9 cm in diameter.

u. Oven or slide warmer. Must be capable of maintaining a temperature of 65–70 °C.

v. Polyurethane foam, 6 mm thickness.

w. Gold wire for evaporation.

6. Reagents.

a. General. A supply of ultra-clean, fiber-free water must be available for washing of all components used in the analysis. Water that has been distilled in glass or filtered or deionized water is satisfactory for this purpose. Reagents must be fiber-free.

b. Polycarbonate preparation method—chloroform.

c. Mixed Cellulose Ester (MCE) preparation method—acetone or the Burdette procedure (Ref. 7 of Unit III.L.).

7. TEM specimen preparation from polycarbonate filters.

a. Specimen preparation laboratory. It is most important to ensure that contamination of TEM specimens by extraneous asbestos fibers is minimized during preparation.

b. Cleaning of sample cassettes. Upon receipt at the analytical laboratory and before they are taken into the clean facility or laminar flow hood, the sample cassettes must be cleaned of any contamination adhering to the outside surfaces.

c. Preparation of the carbon evaporator. If the polycarbonate filter has already been carbon-coated prior to receipt, the carbon coating step will be omitted, unless the analyst believes the carbon film is too thin. If there is a need to apply more carbon, the filter will be treated in the same way as an uncoated filter. Carbon coating must be performed with a high-vacuum coating unit. Units that are based on evaporation of carbon filaments in a vacuum generated only by an oil rotary pump have not been evaluated for this application, and must not be used. The carbon rods should be sharpened by a carbon rod sharpener to necks of about 4 mm long and 1 mm in diameter. The rods are installed in the evaporator in such a manner that the points are approximately 10 to 12 cm from the surface of a microscope slide held in the rotating and tilting device.

d. Selection of filter area for carbon coating. Before preparation of the filters, a 75 mm x 50 mm microscope slide is washed and dried. This slide is used to support strips of filter during the carbon evaporation. Two parallel strips of double-sided adhesive tape are applied along the length of the slide. Polycarbonate filters are easily stretched during handling, and cutting of areas for further preparation must be performed with great care. The filter and the MCE backing filter are removed together from the cassette and placed on a cleaned glass microscope slide. The filter can be cut with a curved scalpel blade by rocking the blade from the

point placed in contact with the filter. The process can be repeated to cut a strip approximately 3 mm wide across the diameter of the filter. The strip of polycarbonate filter is separated from the corresponding strip of backing filter and carefully placed so that it bridges the gap between the adhesive tape strips on the microscope slide. The filter strip can be held with fine-point tweezers and supported underneath by the scalpel blade during placement on the microscope slide. The analyst can place several such strips on the same microscope slide, taking care to rinse and wet-wipe the scalpel blade and tweezers before handling a new sample. The filter strips should be identified by etching the glass slide or marking the slide using a marker insoluble in water and solvents. After the filter strip has been cut from each filter, the residual parts of the filter must be returned to the cassette and held in position by reassembly of the cassette. The cassette will then be archived for a period of 30 days or returned to the client upon request.

e. Carbon coating of filter strips. The glass slide holding the filter strips is placed on the rotation-tilting device, and the evaporator chamber is evacuated. The evaporation must be performed in very short bursts, separated by some seconds to allow the electrodes to cool. If evaporation is too rapid, the strips of polycarbonate filter will begin to curl, which will lead to cross-linking of the surface material and make it relatively insoluble in chloroform. An experienced analyst can judge the thickness of carbon film to be applied, and some test should be made first on unused filters. If the film is too thin, large particles will be lost from the TEM specimen, and there will be few complete and undamaged grid openings on the specimen. If the coating is too thick, the filter will tend to curl when exposed to chloroform vapor and the carbon film may not adhere to the support mesh. Too thick a carbon film will also lead to a TEM image that is lacking in contrast, and the ability to obtain ED patterns will be compromised. The carbon film should be as thin as possible and remain intact on most of the grid openings of the TEM specimen intact.

f. Preparation of the Jaffe washer. The precise design of the Jaffe washer is not considered important, so any one of the published designs may be used. A washer consisting of a simple stainless steel bridge is recommended. Several pieces of lens tissue approximately 1.0 cm x 0.5 cm are placed on the stainless steel bridge, and the washer is filled with chloroform to a level where the meniscus contacts the underside of the mesh, which results in saturation of the lens tissue. See References 8 and 10 of Unit III.L.

g. Placing of specimens into the Jaffe washer. The TEM grids are first placed on a piece of lens tissue so that individual grids can be picked up with tweezers. Using a curved scalpel blade, the analyst excises three 3 mm square pieces of the carbon-coated polycarbonate filter from the filter strip. The three squares are selected from the center of the strip and from two points between the outer periphery of the active surface and the center. The piece of filter is placed on a TEM specimen grid with the shiny side of the TEM grid facing upwards, and the whole assembly is placed boldly onto the saturated lens tissue in the Jaffe washer. If carbon-coated grids are used, the filter should be placed carbon-coated side down. The three excised squares of filters are placed on the same piece of lens tissue. Any number of separate pieces of lens tissue may be placed in the same Jaffe washer. The lid is then placed on the Jaffe washer, and the system is allowed to stand for several hours, preferably overnight.

h. Condensation washing. It has been found that many polycarbonate filters will not dissolve completely in the Jaffe washer, even after being exposed to chloroform for as long as 3 days. This problem becomes more serious if the surface of the filter was overheated during the carbon evaporation. The presence of undissolved filter medium on the TEM preparation leads to partial or complete obscuration of areas of the sample, and fibers that may be present in these areas of the specimen will be overlooked; this will lead to a low result. Undissolved filter medium also compromises the ability to obtain ED patterns. Before they are counted, TEM grids must be examined critically to determine whether they are adequately cleared of residual filter medium. It has been found that condensation washing of the grids after the initial Jaffe washer treatment, with chloroform as the solvent, clears all residual filter medium in a period of approximately 1 hour. In practice, the piece of lens tissue supporting the specimen grids is transferred to the cold finger of the condensation washer, and the washer is operated for about 1 hour. If the specimens are cleared satisfactorily by the Jaffe washer alone, the condensation washer step may be unnecessary.

8. TEM specimen preparation from MCE filters.

a. This method of preparing TEM specimens from MCE filters is similar to that specified in NIOSH Method 7402. See References 7, 8, and 9 of Unit III.L.

b. Upon receipt at the analytical laboratory, the sample cassettes must be cleaned of any contamination adhering to the outside surfaces before entering the clean sample preparation area.

c. Remove a section from any quadrant of the sample and blank filters.

d. Place the section on a clean microscope slide. Affix the filter section to the slide with a gummed paged reinforcement or other suitable means. Label the slide with a water and solvent-proof marking pen.

e. Place the slide in a petri dish which contains several paper filters soaked with 2 to 3 mL acetone. Cover the dish. Wait 2 to 4 minutes for the sample filter to fuse and clear.

f. Plasma etching of the collapsed filter is required.

i. The microscope slide to which the collapsed filter pieces are attached is placed in a plasma asher. Because plasma ashers vary greatly in their performance, both from unit to unit and between different positions in the asher chamber, it is difficult to specify the conditions that should be used. This is one area of the method that requires further evaluation. Insufficient etching will result in a failure to expose embedded filters, and too much etching may result in loss of particulate from the surface. As an interim measure, it is recommended that the time for ashing of a known weight of a collapsed filter be established and that the etching rate be calculated in terms of micrometers per second. The actual etching time used for a particular asher and operating conditions will then be set such that a 1–2 μm (10 percent) layer of collapsed surface will be removed.

ii. Place the slide containing the collapsed filters into a low-temperature plasma asher, and etch the filter.

g. Transfer the slide to a rotating stage inside the bell jar of a vacuum evaporator. Evaporate a 1 mm x 5 mm section of graphite rod onto the cleared filter. Remove the slide to a clean, dry, covered petri dish.

h. Prepare a second petri dish as a Jaffe washer with the wicking substrate prepared from filter or lens paper placed on top of a 6 mm thick disk of clean spongy polyurethane foam. Cut a V-notch on the edge of the foam and filter paper. Use the V-notch as a reservoir for adding solvent. The wicking substrate should be thin enough to fit into the petri dish without touching the lid.

i. Place carbon-coated TEM grids face up on the filter or lens paper. Label the grids by marking with a pencil on the filter paper or by putting registration

marks on the petri dish lid and marking with a waterproof marker on the dish lid. In a fume hood, fill the dish with acetone until the wicking substrate is saturated. The level of acetone should be just high enough to saturate the filter paper without creating puddles.

j. Remove about a quarter section of the carbon-coated filter samples from the glass slides using a surgical knife and tweezers. Carefully place the section of the filter, carbon side down, on the appropriately labeled grid in the acetone-saturated petri dish. When all filter sections have been transferred, slowly add more solvent to the wedge-shaped trough to bring the acetone level up to the highest possible level without disturbing the sample preparations. Cover the petri dish. Elevate one side of the petri dish by placing a slide under it. This allows drops of condensed solvent vapors to form near the edge rather than in the center where they would drip onto the grid preparation.

G. TEM Method

1. Instrumentation.

a. Use an 80–120 kV TEM capable of performing electron diffraction with a fluorescent screen inscribed with calibrated gradations. If the TEM is equipped with EDXA it must either have a STEM attachment or be capable of producing a spot less than 250 nm in diameter at crossover. The microscope shall be calibrated routinely (see Unit III.J.) for magnification and camera constant.

b. While not required on every microscope in the laboratory, the laboratory must have either one microscope equipped with energy dispersive X-ray analysis or access to an equivalent system on a TEM in another laboratory. This must be an Energy Dispersive X-ray Detector mounted on TEM column and associated hardware/software to collect, save, and read out spectral information. Calibration of Multi-Channel Analyzer shall be checked regularly for A1 at 1.48 KeV and Cu at 8.04 KeV, as well as the manufacturer's procedures.

i. Standard replica grating may be used to determine magnification (e.g., 2160 lines/mm).

ii. Gold standard may be used to determine camera constant.

c. Use a specimen holder with single tilt and/or double tilt capabilities.

2. Procedure.

a. Start a new Count Sheet for each sample to be analyzed. Record on count sheet: analyst's initials and date; lab sample number; client sample number microscope identification; magnification for analysis; number of predetermined grid openings to be analyzed; and grid identification. See the following Figure 4:

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FIGURE 4--COUNT SHEET

Lab Sample No. _____ Filter Type _____ Operator _____
Client Sample No. _____ Filter Area _____ Date _____
Instrument I.D. _____ Grid I.D. _____ Comments _____
Magnification _____ Grid Opening (GO) Area _____
Acc. Voltage _____ No. GO to be Analyzed _____

GO	Structure No.	Structure Type*	Length		ED Observation				EDAX
			< 5μm	≥ 5 μm	Chrys.	Amph.	Nonasb.	Neg. ID	

GO	Structure No.	Structure Type*	Length		ED Observation				EDAX
			< 5μm	≥ 5 μm	Chrys.	Amph.	Nonasb.	Neg. ID	

*B = Bundle
C = Cluster
F = Fiber
M = Matrix

NFD = No fibers detected
N = No diffraction obtained

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b. Check that the microscope is properly aligned and calibrated according to the manufacturer'b specifications and instructions.

c. Microscope settings: 80–120 kV, grid assessment 250–1000X, then 15,000–20,000X screen magnification for analysis.

d. Approximately one-half (0.5) of the predetermined sample area to be analyzed shall be performed on one sample grid preparation and the remaining half on a second sample grid preparation.

e. Determine the suitability of the grid.

i. Individual grid openings with greater than 5 percent openings (holes) or covered with greater than 25 percent particulate matter or obviously having nonuniform loading shall not be analyzed.

ii. Examine the grid at low magnification (<1000X) to determine its suitability for detailed study at higher magnifications.

iii. Reject the grid if:

(1) Less than 50 percent of the grid openings covered by the replica are intact.

(2) It is doubled or folded.

(3) It is too dark because of incomplete dissolution of the filter.

iv. If the grid is rejected, load the next sample grid.

v. If the grid is acceptable, continue on to Step 6 if mapping is to be used; otherwise proceed to Step 7.

f. Grid Map (Optional).

i. Set the TEM to the low magnification mode.

ii. Use flat edge or finder grids for mapping.

iii. Index the grid openings (fields) to be counted by marking the acceptable fields for one-half (0.5) of the area needed for analysis on each of the two grids to be analyzed. These may be marked just before examining each grid opening (field), if desired.

iv. Draw in any details which will allow the grid to be properly oriented if it is reloaded into the microscope and a particular field is to be reliably identified.

g. Scan the grid.

i. Select a field to start the examination.

ii. Choose the appropriate magnification (15,000 to 20,000X screen magnification).

iii. Scan the grid as follows.

(1) At the selected magnification, make a series of parallel traverses across the field. On reaching the end of one traverse, move the image one window and reverse the traverse.

Note.—A slight overlap should be used so as not to miss any part of the grid opening (field).

(2) Make parallel traverses until the entire grid opening (field) has been scanned.

h. Identify each structure for appearance and size.

i. Appearance and size: Any continuous grouping of particles in which an asbestos fiber within aspect ratio greater than or equal to 5:1 and a length greater than or equal to 0.5 μm is detected shall be recorded on the count sheet. These will be designated asbestos structures and will be classified as fibers, bundles, clusters, or matrices. Record as individual fibers any contiguous grouping having 0, 1, or 2 definable intersections. Groupings having more than 2 intersections are to be described as cluster or matrix. See the following Figure 5:

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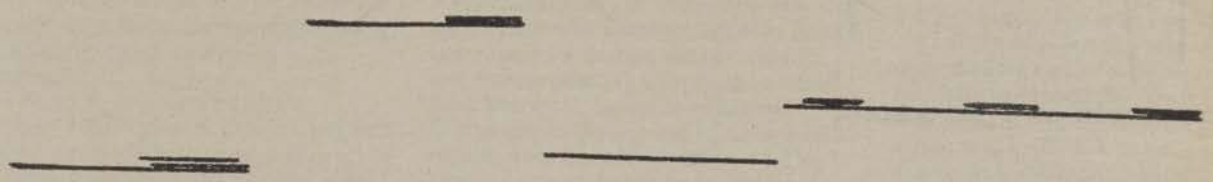
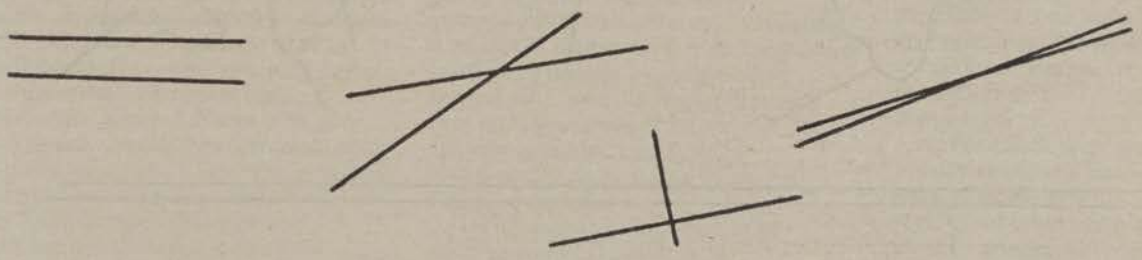
FIGURE 5--COUNTING GUIDELINES USED IN DETERMINING ASBESTOS STRUCTURES

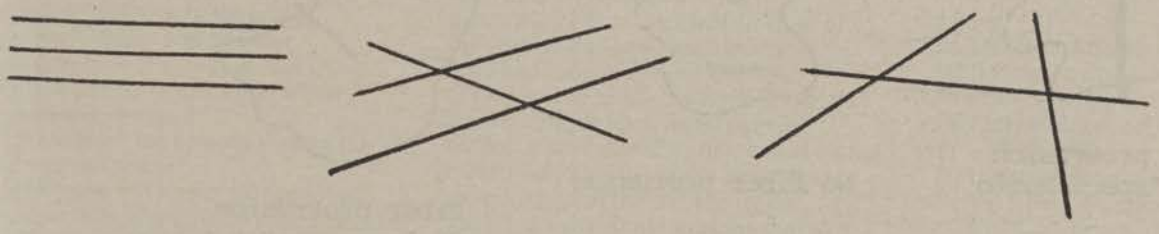
Count as 1 fiber; 1 Structure; no intersections.



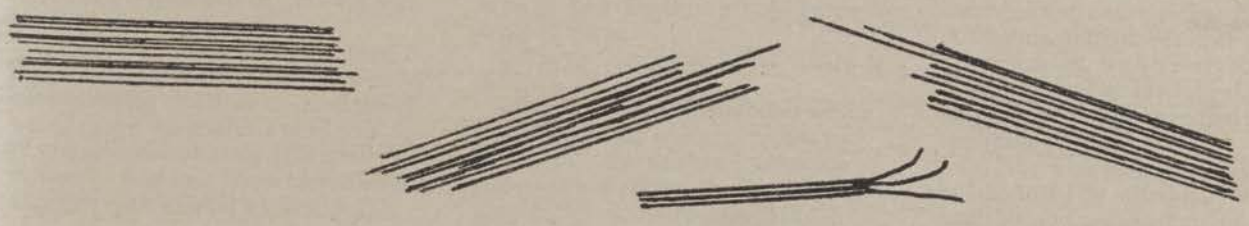
Count as 2 fibers if space between fibers is greater than width of 1 fiber diameter or number of intersections is equal to or less than 1.



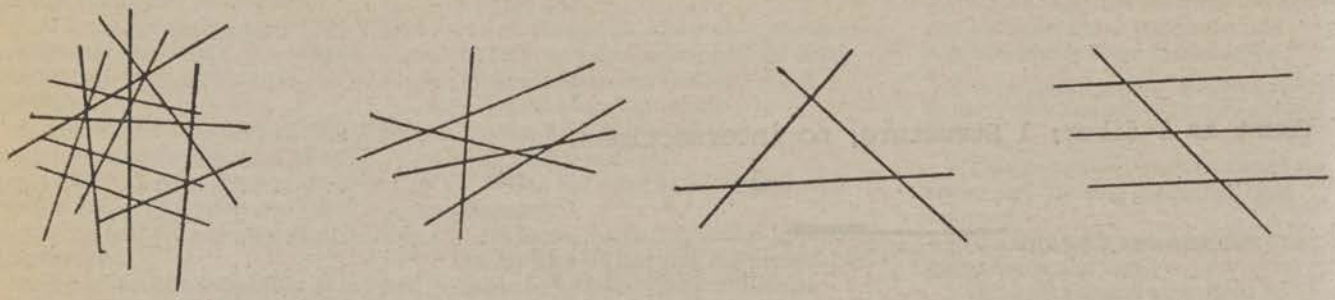
Count as 3 structures if space between fibers is greater than width of 1 fiber diameter or if the number of intersections is equal to or less than 2.



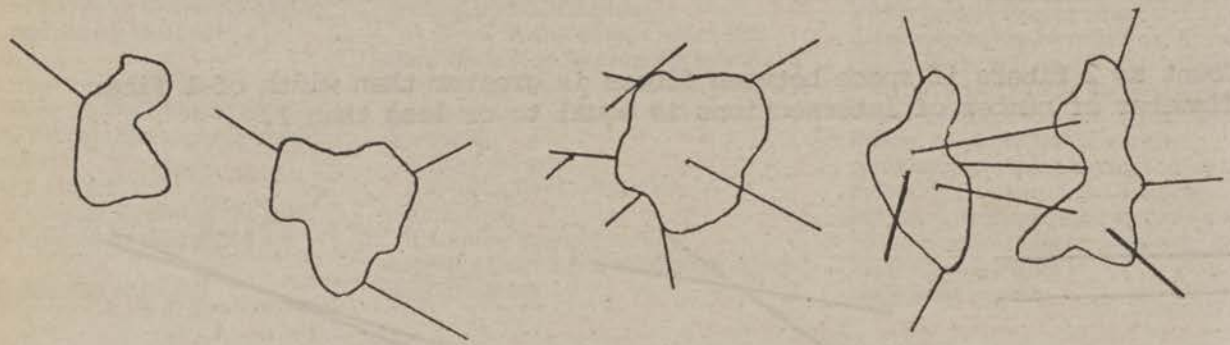
Count bundles as 1 structure; 3 or more parallel fibrils less than 1 fiber diameter separation.



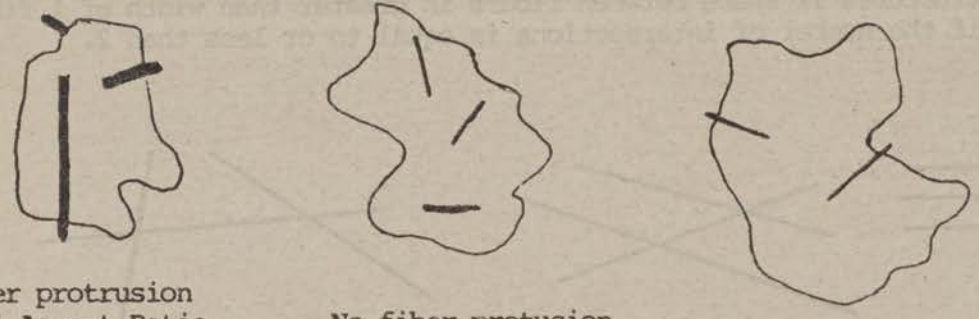
Count clusters as 1 structure; fibers having greater than or equal to 3 intersections.



Count matrix as 1 structure.



DO NOT COUNT AS STRUCTURES:



Fiber protrusion <5:1 Aspect Ratio

No fiber protusion

Fiber protrusion <0.5 micrometer

—— <0.5 micrometer in length
— <5:1 Aspect Ratio

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An intersection is a non-parallel touching or crossing of fibers, with the projection having an aspect ratio of 5:1 or greater. Combinations such as a matrix and cluster, matrix and bundle, or bundle and cluster are categorized by the dominant fiber quality—cluster, bundle, and matrix, respectively. Separate categories will be maintained for fibers less than 5 μm and for fibers greater than or equal to 5 μm in length. Not required, but useful, may be to record the fiber length in 1 μm intervals. (Identify each structure morphologically and analyze it as it enters the "window".)

(1) *Fiber.* A structure having a minimum length greater than 0.5 μm and an aspect ratio (length to width) of 5:1 or greater and substantially parallel sides. Note the appearance of the end of the fiber, i.e., whether it is flat, rounded or dovetailed, no intersections.

(2) *Bundle.* A structure composed of 3 or more fibers in a parallel arrangement with each fiber closer than one fiber diameter.

(3) *Cluster.* A structure with fibers in a random arrangement such that all fibers are intermixed and no single fiber is isolated from the group; groupings must have more than 2 intersections.

(4) *Matrix.* Fiber or fibers with one end free and the other end embedded in or hidden by a particulate. The exposed fiber must meet the fiber definition.

(5) *NSD.* Record NSD when no structures are detected in the field.

(6) *Intersection.* Non-parallel touching or crossing of fibers, with the projection having an aspect ratio 5:1 or greater.

ii. Structure Measurement.

(1) Recognize the structure that is to be sized.

(2) Memorize its location in the "window" relative to the sides, inscribed square and to other particulates in the field so this exact location can be found again when scanning is resumed.

(3) Measure the structure using the scale on the screen.

(4) Record the length category and structure type classification on the count sheet after the field number and fiber number.

(5) Return the fiber to its original location in the window and scan the rest of the field for other fibers; if the direction of travel is not remembered, return to the right side of the field and begin the traverse again.

i. Visual identification of Electron Diffraction (ED) patterns is required for each asbestos structure counted which would cause the analysis to exceed the 70 s/mm² concentration. (Generally this means the first four fibers identified as asbestos must exhibit an identifiable diffraction pattern for chrysotile or amphibole.)

i. Center the structure, focus, and obtain an ED pattern. (See Microscope Instruction Manual for more detailed instructions.)

ii. From a visual examination of the ED pattern, obtained with a short camera length, classify the observed structure as belonging to one of the following classifications: chrysotile, amphibole, or nonasbestos.

(1) Chrysotile: The chrysotile asbestos pattern has characteristic streaks on the layer lines other than the central line and some streaking also on the central line. There will be spots of normal sharpness on the central layer line and on alternate lines (2nd, 4th, etc.). The repeat distance between layer lines is 0.53 nm and the center doublet is at 0.73 nm. The pattern should display (002), (110), (130) diffraction maxima; distances and geometry should match a chrysotile pattern and be measured semiquantitatively.

(2) Amphibole Group [includes grunerite (amosite), crocidolite, anthophyllite, tremolite, and actinolite]: Amphibole asbestos fiber patterns show layer lines formed by very closely spaced dots, and the repeat distance between layer lines is also about 0.53 nm. Streaking in layer lines is occasionally present due to crystal structure defects.

(3) Nonasbestos: Incomplete or unobtainable ED patterns, a nonasbestos EDXA, or a nonasbestos morphology.

iii. The micrograph number of the recorded diffraction patterns must be reported to the client and maintained in the laboratory's quality assurance records. The records must also demonstrate that the identification of the pattern has been verified by a qualified individual and that the operator who made the identification is maintaining at least an 80 percent correct visual identification based on his measured patterns. In the event that examination of the pattern by the qualified individual indicates that the pattern had been misidentified visually, the client shall be contacted. If the pattern is a suspected chrysotile, take a photograph of the diffraction pattern at 0 degrees tilt. If the structure is suspected to be amphibole, the sample may have to be tilted to obtain a simple geometric array of spots.

j. Energy Dispersive X-Ray Analysis (EDXA).

i. Required of all amphiboles which would cause the analysis results to exceed the 70 s/mm² concentration. (Generally speaking, the first 4 amphiboles would require EDXA.)

ii. Can be used alone to confirm chrysotile after the 70 s/mm² concentration has been exceeded.

iii. Can be used alone to confirm all nonasbestos.

iv. Compare spectrum profiles with profiles obtained from asbestos standards. The closest match identifies and categorizes the structure.

v. If the EDXA is used for confirmation, record the properly labeled spectrum on a computer disk, or if a hard copy, file with analysis data.

vi. If the number of fibers in the nonasbestos class would cause the analysis to exceed the 70 s/mm² concentration, their identities must be confirmed by EDXA or measurement of a zone axis diffraction pattern to establish that the particles are nonasbestos.

k. Stopping Rules.

i. If more than 50 asbestiform structures are counted in a particular grid opening, the analysis may be terminated.

ii. After having counted 50 asbestiform structures in a minimum of 4 grid openings, the analysis may be terminated. The grid opening in which the 50th fiber was counted must be completed.

iii. For blank samples, the analysis is always continued until 10 grid openings have been analyzed.

iv. In all other samples the analysis shall be continued until an analytical sensitivity of 0.005 s/cm³ is reached.

l. Recording Rules. The count sheet should contain the following information:

i. Field (grid opening): List field number.

ii. Record "NSD" if no structures are detected.

iii. Structure information.

(1) If fibers, bundles, clusters, and/or matrices are found, list them in consecutive numerical order, starting over with each field.

(2) Length. Record length category of asbestos fibers examined. Indicate if less than 5 μm or greater than or equal to 5 μm.

(3) Structure Type. Positive identification of asbestos fibers is required by the method. At least one diffraction pattern of each fiber type from every five samples must be recorded and compared with a standard diffraction pattern. For each asbestos fiber reported, both a morphological descriptor and an identification descriptor shall be specified on the count sheet.

(4) Fibers classified as chrysotile must be identified by diffraction and/or X-ray analysis and recorded on the count

sheet. X-ray analysis alone can be used as sole identification only after 70s/mm² have been exceeded for a particular sample.

(5) Fibers classified as amphiboles must be identified by X-ray analysis and electron diffraction and recorded on the count sheet. (X-ray analysis alone can be used as sole identification only after 70s/mm² have been exceeded for a particular sample.)

(6) If a diffraction pattern was recorded on film, the micrograph number must be indicated on the count sheet.

(7) If an electron diffraction was attempted and an appropriate spectra is not observed, N should be recorded on the count sheet.

(8) If an X-ray analysis is attempted but not observed, N should be recorded on the count sheet.

(9) If an X-ray analysis spectrum is stored, the file and disk number must be recorded on the count sheet.

m. Classification Rules.

i. *Fiber.* A structure having a minimum length greater than or equal to 0.5 μm and an aspect ratio (length to width) of 5:1 or greater and substantially parallel sides. Note the appearance of the end of the fiber, i.e., whether it is flat, rounded or dovetailed.

ii. *Bundle.* A structure composed of three or more fibers in a parallel arrangement with each fiber closer than one fiber diameter.

iii. *Cluster.* A structure with fibers in a random arrangement such that all fibers are intermixed and no single fiber is isolated from the group. Groupings must have more than two intersections.

iv. *Matrix.* Fiber or fibers with one end free and the other end embedded in or hidden by a particulate. The exposed fiber must meet the fiber definition.

v. *NSD.* Record NSD when no structures are detected in the field.

n. After all necessary analyses of a particle structure have been completed, return the goniometer stage to 0 degrees, and return the structure to its original location by recall of the original location.

o. Continue scanning until all the structures are identified, classified and sized in the field.

p. Select additional fields (grid openings) at low magnification; scan at a chosen magnification (15,000 to 20,000X screen magnification); and analyze until the stopping rule becomes applicable.

q. Carefully record all data as they are being collected, and check for accuracy.

r. After finishing with a grid, remove it from the microscope, and replace it in the appropriate grid hold. Sample grids must be stored for a minimum of 1 year from the date of the analysis; the sample cassette must be retained for a minimum of 30 days by the laboratory or returned at the client's request.

H. Sample Analytical Sequence

1. Carry out visual inspection of work site prior to air monitoring.

2. Collect a minimum of five air samples inside the work site and five samples outside the work site. The indoor and outdoor samples shall be taken during the same time period.

3. Analyze the abatement area samples according to this protocol. The analysis must meet the 0.005 s/cm³ analytical sensitivity.

4. Remaining steps in the analytical sequence are contained in Unit IV. of this Appendix.

I. Reporting

The following information must be reported to the client. See the following Table II:

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TABLE II--EXAMPLE LABORATORY LETTERHEAD

Laboratory I.D.	Client I.D.	FILTER MEDIA DATA				Analyzed Area, mm^2	Sample Volume, cc
		Type	Diameter, mm	Effective Area, mm^2	Pore Size, µm		

INDIVIDUAL ANALYTICAL RESULTS

Laboratory I.D.	Client I.D.	# Asbestos Structures	Analytical Sensitivity, s/cc	CONCENTRATION	
				Structures/mm^2	Structures/cc

The analysis was carried out to the approved TEM method. This laboratory is in compliance with the quality specified by the method.

_____

Authorized Signature

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1. Concentration in structures per square millimeter and structures per cubic centimeter.
2. Analytical sensitivity used for the analysis.
3. Number of asbestos structures.
4. Area analyzed.
5. Volume of air samples (which was initially provided by client).
6. Average grid size opening.
7. Number of grids analyzed.
8. Copy of the count sheet must be included with the report.
9. Signature of laboratory official to indicate that the laboratory met specifications of the AHERA method.
10. Report form must contain official laboratory identification (e.g., letterhead).
11. Type of asbestos.

J. Calibration Methodology

Note: Appropriate implementation of the method requires a person knowledgeable in electron diffraction and mineral identification by ED and EDXA. Those inexperienced laboratories wishing to develop capabilities may acquire necessary knowledge through analysis of appropriate standards and by following detailed methods as described in References 8 and 10 of Unit III.L.

1. Equipment Calibration. In this method, calibration is required for the air-sampling equipment and the transmission electron microscope (TEM).

a. TEM Magnification. The magnification at the fluorescent screen of the TEM must be calibrated at the grid opening magnification (if used) and also at the magnification used for fiber counting. This is performed with a cross grating replica. A logbook must be maintained, and the dates of calibration depend on the past history of the particular microscope; no frequency is specified. After any maintenance of the microscope that involved adjustment of the power supplied to the lenses or the high-voltage system or the mechanical disassembly of the electron optical column apart from filament exchange, the magnification must be recalibrated. Before the TEM calibration is performed, the analyst must ensure that the cross grating replica is placed at the same distance from the objective lens as the specimens are. For instruments that incorporate an eucentric tilting specimen stage, all speciments and the cross grating replica must be placed at the eucentric position.

b. Determination of the TEM magnification on the fluorescent screen.

i. Define a field of view on the fluorescent screen either by markings or physical boundaries. The field of view must be measurable or previously inscribed with a scale or concentric circles (all scales should be metric).

ii. Insert a diffraction grating replica (for example a grating containing 2,160 lines/mm) into the specimen holder and place into the microscope. Orient the replica so that the grating lines fall perpendicular to the scale on the TEM fluorescent screen. Ensure that the goniometer stage tilt is 0 degrees.

iii. Adjust microscope magnification to 10,000X or 20,000X. Measure the distance (mm) between two widely separated lines on the grating replica. Note the number of spaces between the lines. Take care to measure between the same relative positions on the lines (e.g., between left edges of lines).

Note.—The more spaces included in the measurement, the more accurate the final calculation. On most microscopes, however, the magnification is substantially constant only within the central 8–10 cm diameter region of the fluorescent screen.

iv. Calculate the true magnification (M) on the fluorescent screen:

$$M = XG/Y$$

where:

X = total distance (mm) between the designated grating lines;
G = calibration constant of the grating replica (lines/mm):
Y = number of grating replica spaces counted along X.

c. Calibration of the EDXA System. Initially, the EDXA system must be calibrated by using two reference elements to calibrate the energy scale of the instrument. When this has been completed in accordance with the manufacturer's instructions, calibration in terms of the different types of asbestos can proceed. The EDXA detectors vary in both solid angle of detection and in window thickness. Therefore, at a particular accelerating voltage in use on the TEM, the count rate obtained from specific dimensions of fiber will vary both in absolute X-ray count rate and in the relative X-ray peak heights for different elements. Only a few minerals are relevant for asbestos abatement work, and in this procedure the calibration is specified in terms of a "fingerprint" technique. The EDXA spectra must be recorded from individual fibers of the relevant minerals, and identifications are made on the basis of semiquantitative comparisons with these reference spectra.

d. Calibration of Grid Openings.

i. Measure 20 grid openings on each of 20 random 200-mesh copper grids by placing a grid on a glass slide and examining it under the PCM. Use a calibrated graticule to measure the average field diameter and use this number to calculate the field area for an average grid opening. Grids are to be randomly selected from batches up to 1,000.

Note.—A grid opening is considered as one field.

ii. The mean grid opening area must be measured for the type of specimen grids in use. This can be accomplished on the TEM at a properly calibrated low magnification or on an optical microscope at a magnification of approximately 400X by using an eyepiece fitted with a scale that has been calibrated against a stage micrometer. Optical microscopy utilizing manual or automated procedures may be used providing instrument calibration can be verified.

e. Determination of Camera Constant and ED Pattern Analysis.

i. The camera length of the TEM in ED operating mode must be calibrated before ED patterns on unknown samples are observed. This can be achieved by using a carbon-coated grid on which a thin film of gold has been sputtered or evaporated. A thin film of gold is evaporated on the specimen TEM grid to obtain zone-axis ED patterns superimposed with a ring pattern from the polycrystalline gold film.

ii. In practice, it is desirable to optimize the thickness of the gold film so that only one or two sharp rings are obtained on the superimposed ED pattern. Thicker gold film would normally give multiple gold rings, but it will tend to mask weaker diffraction spots from the unknown fibrous particulates. Since the unknown d-spacings of most interest in asbestos analysis are those which lie closest to the transmitted beam, mulitiple gold rings are unnecessary on zone-axis ED patterns. An average camera constant using multiple gold rings can be determined. The camera constant is one-half the diameter, D, of the rings times the interplanar spacing, d, of the ring being measured.

K. Quality Control/Quality Assurance Procedures (Data Quality Indicators)

Monitoring the environment for airborne asbestos requires the use of sensitive sampling and analysis procedures. Because the test is sensitive, it may be influenced by a variety of factors. These include the supplies used in the sampling operation, the performance of the sampling, the preparation of the grid from the filter and the actual examination of this grid in the microscope. Each of these unit operations must produce a product of

defined quality if the analytical result is to be a reliable and meaningful test result. Accordingly, a series of control checks and reference standards is performed along with the sample analysis as indicators that the materials used are adequate and the operations are within acceptable limits. In this way, the quality of the data is defined and the results are of known value. These checks and tests also provide timely and specific warning of any problems which might develop within the sampling and analysis operations. A description of these quality control/quality assurance procedures is summarized in the following Table III:

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TABLE III--SUMMARY OF LABORATORY DATA QUALITY OBJECTIVES

Unit Operation	QC Check	Frequency	Conformance Expectation
Sample receiving	Review of receiving report	Each sample	95% complete
Sample custody	Review of chain-of-custody record	Each sample	95% complete
Sample preparation	Supplies and reagents	On receipt	Meet specs. or reject
	Grid opening size	20 openings/20 grids/lot of 1000 or 1 opening/sample	100%
	Special clean area monitoring	After cleaning or service	Meet specs or reclean
	Laboratory blank	1 per prep series or 10%	Meet specs. or reanalyze series
	Plasma etch blank	1 per 20 samples	75%
	Multiple preps (3 per sample)	Each sample	One with cover of 15 complete grid sqs.
Sample analysis	System check	Each day	Each day
	Alignment check	Each day	Each day
	Magnification calibration with low and high standards	Each month or after service	95%
	ED calibration by gold standard	Weekly	95%
	EDS calibration by copper line	Daily	95%
Performance check	Laboratory blank (measure of cleanliness)	Prep 1 per series or 10% read 1 per 25 samples	Meet specs or reanalyze series
	Replicate counting (measure of precision)	1 per 100 samples	1.5 x Poisson Std. Dev.
	Duplicate analysis (measure of reproducibility)	1 per 100 samples	2 x Poisson Std. Dev.
	Known samples of typical materials (working standards)	Training and for comparison with unknowns	100%
	Analysis of NBS SRM 1876 and/or RM 8410 (measure of accuracy and comparability)	1 per analyst per year	1.5 x Poisson Std. Dev.
	Data entry review (data validation and measure of completeness)	Each sample	95%
	Record and verify ID electron diffraction pattern of structure	1 per 5 samples	80% accuracy
Calculations and data reduction	Hand calculation of automated data reduction procedure or independent recalculation of hand-calculated data	1 per 100 samples	85%

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1. When the samples arrive at the laboratory, check the samples and documentation for completeness and requirements before initiating the analysis.

2. Check all laboratory reagents and supplies for acceptable asbestos background levels.

3. Conduct all sample preparation in a clean room environment monitored by laboratory blanks and special testing after cleaning or servicing the room.

4. Prepare multiple grids of each sample.

5. Provide laboratory blanks with each sample batch. Maintain a cumulative average of these results. If this average is greater than 53 f/mm ^{2} per 10 200-mesh grid openings, check the system for possible sources of contamination.

6. Check for recovery of asbestos from cellulose ester filters submitted to plasma asher.

7. Check for asbestos carryover in the plasma asher by including a blank alongside the positive control sample.

8. Perform a systems check on the transmission electron microscope daily.

9. Make periodic performance checks of magnification, electron diffraction and energy dispersive X-ray systems as set forth in Table III of Unit III.K.

10. Ensure qualified operator performance by evaluation of replicate counting, duplicate analysis, and standard sample comparisons as set forth in Table III of Unit III.K.

11. Validate all data entries.

12. Recalculate a percentage of all computations and automatic data reduction steps as specified in Table III.

13. Record an electron diffraction pattern of one asbestos structure from every five samples that contain asbestos. Verify the identification of the pattern by measurement or comparison of the pattern with patterns collected from standards under the same conditions.

The outline of quality control procedures presented above is viewed as the minimum required to assure that quality data is produced for clearance testing of an asbestos abated area. Additional information may be gained by other control tests. Specifics on those control procedures and options available for environmental testing can be obtained by consulting References 6, 7, and 11 of Unit III.L.

L. References

For additional background information on this method the following references should be consulted.

1. "Guidelines for Controlling Asbestos-Containing Materials in Buildings," EPA 560/5–85–024, June 1985.

2. "Measuring Airborne Asbestos Following an Abatement Action," USEPA/ Office of Toxic Substances, EPA 600/4–85–049, 1985.

3. Small, John and E. Steel. Asbestos Standards: Materials and Analytical Methods. N.B.S. Special Publication 619, 1982.

4. Campbell, W.J., R.L. Blake, L.L. Brown, E.E. Cather, and J.J. Sjoberg. Selected Silicate Minerals and Their Asbestiform Varieties. Information Circular 8751, U.S. Bureau of Mines, 1977.

5. Quality Assurance Handbook for Air Pollution Measurement System. Ambient Air Methods, EPA 600/4–77–027a, USEPA, Office of Research and Development, 1977.

6. Method 2A: Direct Measurement of Gas Volume Through Pipes and Small Ducts. 40 CFR Part 60 Appendix A.

7. Burdette, G.J. Health & Safety Exec., Research & Lab. Services Div., London, "Proposed Analytical Method for Determination of Asbestos in Air."

8. Chatfield, E.J., Chatfield Tech. Cons., Ltd., Clark, T., PEI Assoc. "Standard Operating Procedure for Determination of Airborne Asbestos Fibers by Transmission Electron Microscopy Using Polycarbonate Membrane Filters." WERL SOP 87–1, March 5, 1987.

9. NIOSH. Method 7402 for Asbestos Fibers, December 11, 1986 Draft.

10. Yamate, G., S.C. Agarwall, R.D. Gibbons, IIT Research Institute, "Methodology for the Measurement of Airborne Asbestos by Electron Microscopy." Draft report, USEPA Contract 68–02–3266, July 1984.

11. Guidance to the Preparation of Quality Assurance Project Plans. USEPA, Office of Toxic Substances, 1984.

IV. Mandatory Interpretation of Transmission Electron Microscopy Results to Determine Completion of Response Actions

A. Introduction

A response action is determined to be completed by TEM when the abatement area has been cleaned and the airborne asbestos concentration inside the abatement area is no higher than concentrations at locations outside the abatement area. "Outside" means outside the abatement area, but not necessarily outside the building. EPA reasons that an asbestos removal contractor cannot be expected to clean an abatement area to an airborne asbestos concentration that is lower than the concentration of air entering the abatement area from outdoors or from other parts of the building. After the abatement area has passed a thorough visual inspection, and before the outer containment barrier is removed, a minimum of five air samples inside the abatement area and a minimum of five air samples outside the abatement area must be collected. Hence, the response action is determined to be completed when the average airborne asbestos concentration measured inside the abatement area is not statistically different from the average airborne asbestos concentration measured outside the abatement area.

The inside and outside concentrations are compared by the Z-test, a statistical test that takes into account the variability in the measurement process. A minimum of five samples inside the abatement area and five samples outside the abatement area are required to control the false negative error rate, i.e., the probability of declaring the removal complete when, in fact, the air concentration inside the abatement area is significantly higher than outside the abatement area. Additional quality control is provided by requiring three blanks (filters through which no air has been drawn) to be analyzed to check for unusually high filter contamination that would distort the test results.

When volumes greater than or equal to 1,199 L for a 25 mm filter and 2,799 L for a 37 mm filter have been collected and the average number of asbestos structures on samples inside the abatement area is no greater than 70 s/mm ^{2} of filter, the response action may be considered complete without comparing the inside samples to the outside samples. EPA is permitting this initial screening test to save analysis costs in situations where the airborne asbestos concentration is sufficiently low so that it cannot be distinguished from the filter contamination/ background level (fibers deposited on the filter that are unrelated to the air being sampled). The screening test cannot be used when volumes of less than 1,199 L for 25 mm filter or 2,799 L for a 37 mm filter are collected because the ability to distinguish levels significantly different from filter background is reduced at low volumes.

The initial screening test is expressed in structures per square millimeter of filter because filter background levels come from sources other than the air being sampled and cannot be meaningfully expressed as a concentration per cubic centimeter of air. The value of 70 s/mm^2 is based on the experience of the panel of microscopists who consider one structure in 10 grid openings (each grid opening with an area of 0.0057 mm^2) to

be comparable with contamination/background levels of blank filters. The decision is based, in part, on Poisson statistics which indicate that four structures must be counted on a filter before the fiber count is statistically distinguishable from the count for one structure. As more information on the performance of the method is collected, this criterion may be modified. Since different combinations of the number and size of grid openings are permitted under the TEM protocol, the criterion is expressed in structures per square millimeter of filter to be consistent across all combinations. Four structures per 10 grid openings corresponds to approximately 70 s/mm².

B. Sample Collection and Analysis

1. A minimum of 13 samples is required: five samples collected inside the abatement area, five samples collected outside the abatement area, two field blanks, and one sealed blank.

2. Sampling and TEM analysis must be done according to either the mandatory or nonmandatory protocols in Appendix A. At least 0.057 mm² of filter must be examined on blank filters.

C. Interpretation of Results

1. The response action shall be considered complete if either:

a. Each sample collected inside the abatement area consists of at least 1,199 L of air for a 25 mm filter, or 2,799 L of air for a 37 mm filter, and the arithmetic mean of their asbestos structure concentrations per square millimeter of filter is less than or equal to 70 s/mm²; or

b. The three blank samples have an arithmetic mean of the asbestos structure concentration on the blank filters that is less than or equal to 70 s/mm² and the average airborne asbestos concentration measured inside the abatement area is not statistically higher than the average airborne asbestos concentration measured outside the abatement area as determined by the Z-test. The Z-test is carried out by calculating

$$Z = \frac{\bar{Y}_I - \bar{Y}_O}{0.8\left(1/n_I + 1/n_O\right)^{1/2}}$$

where $\bar{Y}_I$ is the average of the natural logarithms of the inside samples and $\bar{Y}_O$ is the average of the natural logarithms of the outside samples, n_I is the number of inside samples and n_O is the number of outside samples. The response action is considered complete if Z is less than or equal to 1.65.

(Note.—When no fibers are counted, the calculated detection limit for that analysis is inserted for the concentration.)

2. If the abatement site does not satisfy either (1) or (2) above, the site must be recleaned and a new set of samples collected.

D. Sequence for Analyzing Samples

It is possible to determine completion of the response action without analyzing all samples. Also, at any point in the process, a decision may be made to terminate the analysis of existing samples, reclean the abatement site, and collect a new set of samples. The following sequence is outlined to minimize the number of analyses needed to reach a decision.

1. Analyze the inside samples.

2. If at least 1,199 L of air for a 25 mm filter or 2,799 L of air for a 37 mm filter is collected for each inside sample and the arithmetic mean concentration of structures per square millimeter of filter is less than or equal to 70 s/mm², the response action is complete and no further analysis is needed.

3. If less than 1,199 L of air for a 25 mm filter or 2,799 L of air for a 37 mm filter is collected for any of the inside samples, or the arithmetic mean concentration of structures per square millimeter of filter is greater than 70 s/mm², analyze the three blanks.

4. If the arithmetic mean concentration of structures per square millimeter on the blank filters is greater than 70 s/mm², terminate the analysis, identify and correct the source of blank contamination, and collect a new set of samples.

5. If the arithmetic mean concentration of structures per square millimeter on the blank filters is less than or equal to 70 s/mm², analyze the outside samples and perform the Z-test.

6. If the Z-statistic is less than or equal to 1.65, the response action is complete. If the Z-statistic is greater than 1.65, reclean the abatement site and collect a new set of samples.

Appendix B to Subpart E—Work Practices and Engineering Controls for Small-Scale, Short-Duration Operations Maintenance and Repair (O&M) Activities Involving ACM

This appendix is not mandatory, in that LEAs may choose to comply with all the requirements of 40 CFR 763.121. Section 763.91(b) extends the protection provided by EPA in its 40 CFR 763.121 for worker protection during asbestos abatement projects to employees of local education agencies who perform small-scale, short-duration operations, maintenance and repair (O&M) activities involving asbestos-containing materials and are not covered by the OSHA asbestos construction standard at 29 CFR 1926.58 or an asbestos worker protection standard adopted by a State as part of a State plan approved by OSHA under section 18 of the Occupational Safety and Health Act. Employers wishing to be exempt from the requirements of § 763.121 (e)(6) and (f)(2)(i) may instead comply with the provisions of this appendix when performing small-scale, short-duration O&M activities.

Definition of Small-Scale, Short-Duration Activities

For the purposes of this appendix, small-scale, short-duration maintenance activities are tasks such as, but not limited to:

1. Removal of asbestos-containing insulation on pipes.

2. Removal of small quantities of asbestos-containing insulation on beams or above ceilings.

3. Replacement of an asbestos-containing gasket on a valve.

4. Installation or removal of a small section of drywall.

5. Installation of electrical conduits through or proximate to asbestos-containing materials.

Small-scale, short-duration maintenance activities can be further defined, for the purposes of this subpart, by the following considerations:

1. Removal of small quantities of asbestos-containing materials (ACM) only if required in the performance of another maintenance activity not intended as asbestos abatement.

2. Removal of asbestos-containing thermal system insulation not to exceed amounts greater than those which can be contained in a single glove bag.

3. Minor repairs to damaged thermal system insulation which do not require removal.

4. Repairs to a piece of asbestos-containing wallboard.

5. Repairs, involving encapsulation, enclosure or removal, to small amounts of friable asbestos-containing material only if required in the performance of emergency or routine maintenance activity and not intended solely as asbestos abatement. Such work may not exceed amounts greater than those which can be contained in a single prefabricated minienclosure. Such an enclosure shall conform spatially and geometrically to the localized work area, in order to perform its intended containment function.

OSHA concluded that the use of certain engineering and work practice controls is capable of reducing employee exposures to asbestos to levels below the final standard's action level (0.1 f/cm³). (See 51 FR 22714, June 20, 1986.) Several controls and work practices, used either singly or in combination, can be employed effectively to reduce asbestos exposures during small maintenance and renovation operations. These include:

1. Wet methods.
2. Removal methods.
   i. Use of glove bags.
   ii. Removal of entire asbestos insulated pipes or structures.
   iii. Use of minienclosures.
3. Enclosure of asbestos materials.
4. Maintenance programs.

This appendix describes these controls and work practices in detail.

Preparation of the Area Before Renovation or Maintenance Activities

The first step in preparing to perform a small-scale, short-duration asbestos renovation or maintenance task, regardless of the abatement method that will be used, is the removal from the work area of all objects that are movable to protect them from asbestos contamination. Objects that cannot be removed must be covered completely with 6-mil-thick polyethylene plastic sheeting before the task begins. If objects have already been contaminated, they should be thoroughly cleaned with a High Efficiency Particulate Air (HEPA) filtered vacuum or be wet-wiped before they are removed from the work area or completely encased in the plastic.

Wet methods. Whenever feasible, and regardless of the abatement method to be used (e.g., removal, enclosure, use of glove bags), wet methods must be used during small-scale, short-duration maintenance and renovation activities that involve disturbing asbestos-containing materials. Handling asbestos materials wet is one of the most reliable methods of ensuring that asbestos fibers do not become airborne, and this practice should therefore be used whenever feasible. Wet methods can be used in the great majority of workplace situations. Only in cases where asbestos work must be performed on live electrical equipment, on live steam lines, or in other areas where water will seriously damage materials or equipment may dry removal be performed. Amended water or another wetting agent should be applied by means of an airless sprayer to minimize the extent to which the asbestos-containing material is disturbed.

Asbestos-containing material should be wetted from the initiation of the maintenance or renovation operation and wetting agents should be used continually throughout the work period to ensure that any dry asbestos-containing material exposed in the course of the work is wet and remains wet until final disposal.

Removal of small amount of asbestos-containing materials. Several methods can be used to remove small amounts of asbestos-containing materials during small-scale, short-duration renovation or maintenance tasks. These include the use of glove bags, the removal of an entire asbestos-covered pipe or structure, and the construction of minienclosures. The procedures that employers must use for each of these operations if they wish to avail themselves of the rule's exemptions are described in the following sections.

Glove bags. OSHA found that the use of glove bags to enclose the work area during small-scale, short-duration maintenance or renovation activities will result in employee exposure to asbestos that are below the rule's action level of 0.1 f/cm ³. This appendix provides requirements for glove-bag procedures to be followed by employers wishing to avail themselves of the rule's exemption for each activity. OSHA has determined that the use of these procedures will reduce the 8-hour time weighted average (TWA) exposure of employees involved in these work operations to levels below the action level and will thus provide a degree of employee protection equivalent to that provided by compliance with all provisions of the rule.

Glove bag installation. Glove bags are approximately 40-inch-wide times 64-inch-long bags fitted with arms through which the work can be performed. When properly installed and used, they permit workers to remain completely isolated from the asbestos material removed or replaced inside the bag. Glove bags can thus provide a flexible, easily installed, and quickly dismantled temporary small work area enclosure that is ideal for small-scale asbestos renovation or maintenance jobs. These bags are single-use control devices that are disposed of at the end of each job. The bags are made of transparent 6-mil-thick polyethylene plastic with areas of Tyvek [1] material (the same material used to make the disposal protective suits used in major asbestos removal, renovation, and demolition operations and in protective gloves). Glove bags are readily available from safety supply stores or specialty asbestos removal supply houses. Glove bags come pre-labelled with the asbestos warning label prescribed by OSHA and EPA for bags used to dispose of asbestos waste.

Glove bag equipment and supplies. Supplies and materials that are necessary to use glove bags effectively include:

1. Tape to seal glove bag to the area from which asbestos is to be removed.
2. Amended water or other wetting agents.
3. An airless sprayer for the application of the wetting agent.
4. Bridging encapsulant (a paste-like substance for coating asbestos) to seal the rough edges of any asbestos-containing materials that remain within the glove bag at the points of attachment after the rest of the asbestos has been removed.
5. Tools such as razor knives, nips, and wire brushes (or other tools suitable for cutting wires, etc.).
6. A HEPA filter-equipped vacuum for evacuating the glove bag (to minimize the release of asbestos fibers) during removal of the bag from the work area and for cleaning any material that may have escaped during the installation of the glove bag.
7. HEPA-equipped dual-cartridge or more protective respirators for use by the employees involved in the removal of asbestos with the glove bag.

Glove bag work practices. The proper use of glove bags requires the following steps:

1. Glove bags must be installed so that they completely cover the pipe or other structure where asbestos work is to be done. Glove bags are installed by cutting the sides of the glove bag to fit the size of the pipe from which asbestos is to be removed. The glove bag is attached to the pipe by folding the open edges together and securely sealing them with tape. All openings in the glove bag must be sealed with duct tape or equivalent material. The bottom seam of the glove bag must also be sealed with duct tape or equivalent to prevent any leakage from the bag that may result from a defect in the bottom seam.
2. The employee who is performing the asbestos removal with the glove bag must don at least a half mask dual-cartridge HEPA-equipped respirator; respirators should be worn by employees who are in close contact with the glove bag and who may thus be exposed as a result of small gaps in the

[1] Mention of trade names or commercial products does not constitute endorsement or recommendation for use.

seams of the bag or holes punched through the bag by a razor knife or a piece of wire mesh.

3. The removed asbestos material from the pipe or other surface that has fallen into the enclosed bag must be thoroughly wetted with a wetting agent (applied with an airless sprayer through the precut port provided in most gloves bags or applied through a small hole in the bag).

4. Once the asbestos material has been thoroughly wetted, it can be removed from the pipe, beam, or other surface. The choice of tool to use to remove the asbestos-containing material depends on the type of material to be removed. Asbestos-containing materials are generally covered with painted canvas and/or wire mesh. Painted canvas can be cut with a razor knife and peeled away from the asbestos-containing material underneath. Once the canvas has been peeled away, the asbestos-containing material underneath may be dry, in which case it should be resprayed with a wetting agent to ensure that it generates as little dust as possible when removed. If the asbestos-containing material is covered with wire mesh, the mesh should be cut with nips, tin snips, or other appropriate tool and removed.

A wetting agent must then be used to spray any layer of dry material that is exposed beneath the mesh, the surface of the stripped underlying structure, and the inside of the glove bag.

5. After removal of the layer of asbestos-containing material, the pipe or surface from which asbestos has been removed must be thoroughly cleaned with a wire brush and wet-wiped with a wetting agent until no traces of the asbestos-containing material can be seen.

6. Any asbestos-containing insulation edges that have been exposed as a result of the removal or maintenance activity must be encapsulated with bridging encapsulant to ensure that the edges do not release asbestos fibers to the atmosphere after the glove bag has been removed.

7. When the asbestos removal and encapsulation have been completed, a vacuum hose from a HEPA filtered vacuum must be inserted into the glove bag through the port to remove any air in the bag that may contain asbestos fibers. When the air has been removed from the bag, the bag should be squeezed tightly (as close to the top as possible), twisted, and sealed with tape, to keep the asbestos materials safely in the bottom of the bag. The HEPA vacuum can then be removed from the bag and the glove bag itself can be removed from the work area to be disposed of properly.

Minienclosures. In some instances, such as removal of asbestos from a small ventilation system or from a short length of duct, a glove bag may not be either large enough or of the proper shape to enclose the work area. In such cases, a minienclosure can be built around the area where small-scale, short-duration asbestos maintenance or renovation work is to be performed. Such enclosures should be constructed of 6-mil-thick polyethylene plastic sheeting and can be small enough to restrict entry to the asbestos work area to one worker.

For example, a minienclosure can be built in a small utility closet when asbestos-containing duct covering is to be removed. The enclosure is constructed by:

1. Affixing plastic sheeting to the walls with spray adhesive and tape.

2. Covering the floor with plastic and sealing the plastic covering the floor to the plastic on the walls.

3. Sealing any penetrations such as pipes or electrical conducts with tape.

4. Constructing a small change room (approximately 3 feet square) made of 6-mil-thick polyethylene plastic supported by 2-inch by 4-inch lumber (the plastic should be attached to the lumber supports with staples or spray adhesive and tape).

The change room should be contiguous to the minienclosure, and is necessary to allow the worker to vacuum off his protective coveralls and remove them before leaving the work area. While inside minienclosure, the worker should wear Tyvek [1] disposable coveralls and use the appropriate HEPA-filtered dual-cartridge or more protective respiratory protection.

The advantages of minienclosures are that they limit the spread of asbestos contamination, reduce the potential exposure of bystanders and other workers who may be working in adjacent areas, and are quick and easy to install. The disadvantage of minienclosures is that they may be too small to contain the equipment necessary to create a negative pressure within the enclosure; however the double layer of plastic sheeting will serve to restrict the release of asbestos fibers to the area outside the enclosure.

Removal of entire structures. When pipes are insulated with asbestos-containing materials, removal of the entire pipe may be more protective, easier, and more cost-effective than stripping the asbestos insulation from the pipe. Before such a pipe is cut, the asbestos-containing insulation must be wrapped with 6-mil polyethylene plastic and securely sealed with duct tape or equivalent. This plastic covering will prevent asbestos fibers from becoming airborne as a result of the vibration created by the power saws used to cut the pipe. If possible, the pipes should be cut at locations that are not insulated to avoid disturbing the asbestos. If a pipe is completely insulated with asbestos-containing materials, small sections should be stripped using the glove-bag method described above before the pipe is cut at the stripped sections.

Enclosure. The decision to enclose rather than remove asbestos-containing material from an area depends on the building owner's preference, i.e., for removal or containment. Owners consider such factors as cost effectiveness, the physical configuration of the work area, and the amount of traffic in the area when determining which abatement method to use.

If the owner chooses to enclose the structure rather than to remove the asbestos-containing material insulating it, a solid structure (airtight walls and ceilings) must be built around the asbestos covered pipe or structure to prevent the release of asbestos-containing materials into the area beyond the enclosure and to prevent disturbing these materials by casual contact during future maintenance operations.

Such a permanent (i.e., for the life of the building) enclosure should be built of new construction materials and should be impact resistant and airtight. Enclosure walls should be made of tongue-and-groove boards, boards with spine joints, or gypsum boards having taped seams. The underlying structure must be able to support the weight of the enclosure. (Suspended ceilings with laid-in panels do not provide airtight enclosures and should not be used to enclose structures covered with asbestos-containing materials.) All joints between the walls and ceiling of the enclosure should be caulked to prevent the escape of asbestos fibers. During the installation of enclosures, tools that are used (such as drills or rivet tools) should be equipped with HEPA-filtered vacuums. Before constructing the enclosure, all electrical conduits, telephone lines, recessed lights, and pipes in the area to be enclosed should be moved to ensure that the enclosure will not have to be re-opened later for routine or emergency maintenance. If such lights or other equipment cannot be moved to a new location for logistic reasons, or if moving them will disturb the asbestos-containing materials, removal rather than enclosure of the asbestos-

containing materials is the appropriate control method to use.

Maintenance program. An asbestos maintenance program must be initiated in all facilities that have friable asbestos-containing materials. Such a program should include:

1. Development of an inventory of all asbestos-containing materials in the facility.
2. Periodic examination of all asbestos-containing materials to detect deterioration.
3. Written procedures for handling asbestos materials during the performance of small-scale, short-duration maintenance and renovation activities.
4. Written procedures for asbestos disposal.
5. Written procedures for dealing with asbestos-related emergencies.

Members of the building's maintenance engineering staff (electricians, heating/air conditioning engineers, plumbers, etc.) who may be required to handle asbestos-containing materials should be trained in safe procedures. Such training should include at a minimum:

1. Information regarding types of ACM and its various uses and forms.
2. Information on the health effects associated with asbestos exposure.
3. Descriptions of the proper methods of handling asbestos-containing materials.
4. Information on the use of HEPA-equipped dual-cartridge respirators and other personal protection during maintenance activities.

Prohibited activities. The training program for the maintenance engineering staff should describe methods of handling asbestos-containing materials as well as routine maintenance activities that are prohibited when asbestos-containing materials are involved. For example, maintenance staff employees should be instructed:

1. *Not* to drill holes in asbestos-containing materials.
2. *Not* to hang plants or pictures on structures covered with asbestos-containing materials.
3. *Not* to sand asbestos-containing floor tile.
4. *Not* to damage asbestos-containing materials while moving furniture or other objects.
5. *Not* to install curtains, drapes, or dividers in such a way that they damage asbestos-containing materials.
6. *Not* to dust floors, ceilings, moldings or other surfaces in asbestos-contaminated environments with a dry brush or sweep with a dry broom.
7. *Not* to use an ordinary vacuum to clean up asbestos-containing debris.
8. *Not* to remove ceiling tiles below asbestos-containing materials without wearing the proper respiratory protection, clearing the area of other people, and observing asbestos removal waste disposal procedures.
9. *Not* to remove ventilation system filters dry.
10. *Not* to shake ventilation system filters.

Appendix D to Subpart E—Transport and Disposal of Asbestos Waste

For the purposes of this appendix, transport is defined as all activities from receipt of the containerized asbestos waste at the generation site until it has been unloaded at the disposal site. Current EPA regulations state that there must be no visible emissions to the outside air during waste transport. However, recognizing the potential hazards and subsequent liabilities associated with exposure, the following additional precautions are recommended.

Recordkeeping. Before accepting wastes, a transporter should determine if the waste is properly wetted and containerized. The transporter should then require a chain-of-custody form signed by the generator. A chain-of-custody form may include the name and address of the generator, the name and address of the pickup site, the estimated quantity of asbestos waste, types of containers used, and the destination of the waste. The chain-of-custody form should then be signed over to a disposal site operator to transfer responsibility for the asbestos waste. A copy of the form signed by the disposal site operator should be maintained by the transporter as evidence of receipt at the disposal site.

Waste handling. A transporter should ensure that the asbestos waste is properly contained in leak-tight containers with appropriate labels, and that the outside surfaces of the containers are not contaminated with asbestos debris adhering to the containers. If there is reason to believe that the condition of the asbestos waste may allow significant fiber release, the transporter should not accept the waste. Improper containerization of wastes is a violation of the NESHAPs regulation and should be reported to the appropriate EPA Regional Asbestos NESHAPs contact below:

Region I

Asbestos NESHAPs Contact, Air Management Division, USEPA, Region I, JFK Federal Building, Boston, MA 02203, (617) 223–3266.

Region II

Asbestos NESHAPs Contact, Air & Waste Management Division, USEPA, Region II, 26 Federal Plaza, New York, NY 10007, (212) 264–6770.

Region III

Asbestos NESHAPs Contact, Air Management Division, USEPA, Region III, 841 Chestnut Street, Philadelphia, PA 19107, (215) 597–9325.

Region IV

Asbestos NESHAPs Contact, Air, Pesticide & Toxic Management, USEPA, Region IV, 345 Courtland Street, NE., Atlanta, GA 30365, (404) 347–4298.

Region V

Asbestos NESHAPs Contact, Air Management Division, USEPA, Region V, 230 S. Dearborn Street, Chicago, IL 60604, (312) 353–6793.

Region VI

Asbestos NESHAPs Contact, Air & Waste Management Division, USEPA, Region VI, 1445 Ross Avenue, Dallas, TX 75202, (214) 655–7229.

Region VII

Asbestos NESHAPs Contact, Air & Waste Management Division, USEPA, Region VII, 726 Minnesota Avenue, Kansas City, KS 66101, (913) 236–2896.

Region VIII

Asbestos NESHAPs Contact, Air & Waste Management Division, USEPA, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202, (303) 293–1814.

Region IX

Asbestos NESHAPs Contact, Air Management Division, USEPA, Region IX, 215 Fremont Street, San Francisco, CA 94105, (415) 974–7633.

Region X

Asbestos NESHAPs Contact, Air & Toxics Management Division, USEPA, Region X, 1200 Sixth Avenue, Seattle, WA 98101, (206) 442–2724.

Once the transporter is satisfied with the condition of the asbestos waste and agrees to handle it, the containers should be loaded into the transport vehicle in a careful manner to prevent breaking of the containers. Similarly, at the disposal site, the asbestos waste containers should be transferred carefully to avoid fiber release.

Waste transport. Although there are no regulatory specifications regarding the transport vehicle, it is recommended that vehicles used for transport of containerized asbestos waste have an enclosed carrying compartment or

utilize a canvas covering sufficient to contain the transported waste, prevent damage to containers, and prevent fiber release. Transport of large quantities of asbestos waste is commonly conducted in a 20-cubic-yard "roll off" box, which should also be covered. Vehicles that use compactors to reduce waste volume should not be used because these will cause the waste containers to rupture. Vacuum trucks used to transport waste slurry must be inspected to ensure that water is not leaking from the truck.

Disposal involves the isolation of asbestos waste material in order to prevent fiber release to air or water. Landfilling is recommended as an environmentally sound isolation method because asbestos fibers are virtually immobile in soil. Other disposal techniques such as incineration or chemical treatment are not feasible due to the unique properties of asbestos. EPA has established asbestos disposal requirements for active and inactive disposal sites under NESHAPs (40 CFR Part 61, Subpart M) and specifies general requirements for solid waste disposal under RCRA (40 CFR Part 257). Advance EPA notification of the intended disposal site is required by NESHAPs.

Selecting a disposal facility. An acceptable disposal facility for asbestos wastes must adhere to EPA's requirements of no visible emissions to the air during disposal, or minimizing emissions by covering the waste within 24 hours. The minimum required cover is 6 inches of nonasbestos material, normally soil, or a dust-suppressing chemical. In addition to these federal requirements, many state or local government agencies require more stringent handling procedures. These agencies usually supply a list of "approved" or licensed asbestos disposal sites upon request. Solid waste control agencies are listed in local telephone directories under state, county, or city headings. A list of state solid waste agencies may be obtained by calling the RCRA hotline: 1–800–424–9346 (382–3000 in Washington, DC). Some landfill owners or operators place special requirements on asbestos waste, such as placing all bagged waste into 55-gallon metal drums. Therefore, asbestos removal contractors should contact the intended landfill before arriving with the waste.

Receiving asbestos waste. A landfill approved for receipt of asbestos waste should require notification by the waste hauler that the load contains asbestos. The landfill operator should inspect the loads to verify that asbestos waste is properly contained in leak-tight containers and labeled appropriately. The appropriate EPA Regional Asbestos NESHAPs Contact should be notified if the landfill operator believes that the asbestos waste is in a condition that may cause significant fiber release during disposal. In situations when the wastes are not properly containerized, the landfill operator should thoroughly soak the asbestos with a water spray prior to unloading, rinse out the truck, and immediately cover the wastes with nonasbestos material prior to compacting the waste in the landfill.

Waste deposition and covering. Recognizing the health dangers associated with asbestos exposure, the following procedures are recommended to augment current federal requirements:

- Designate a separate area for asbestos waste disposal. Provide a record for future landowners that asbestos waste has been buried there and that it would be hazardous to attempt to excavate that area. (Future regulations may require property deeds to identify the location of any asbestos wastes and warn against excavation.)
- Prepare a separate trench to receive asbestos wastes. The size of the trench will depend upon the quantity and frequency of asbestos waste delivered to the disposal site. The trenching technique allows application of soil cover without disturbing the asbestos waste containers. The trench should be ramped to allow the transport vehicle to back into it, and the trench should be as narrow as possible to reduce the amount of cover required. If possible, the trench should be aligned perpendicular to prevailing winds.
- Place the asbestos waste containers into the trench carefully to avoid breaking them. Be particularly careful with plastic bags because when they break under pressure asbestos particles can be emitted.
- Completely cover the containerized waste within 24 hours with a minimum of 6 inches of nonasbestos material. Improperly containerized waste is a violation of the NESHAPs and EPA should be notified.

However, if improperly containerized waste is received at the disposal site, it should be covered immediately after unloading. Only after the wastes, including properly containerized wastes, are completely covered, can the wastes be compacted or other heavy equipment run over it. During compacting, avoid exposing wastes to the air or tracking asbestos material away from the trench.

- For final closure of an area containing asbestos waste, cover with at least an additional 30 inches of compacted nonasbestos material to provide a 36-inch final cover. To control erosion of the final cover, it should be properly graded and vegetated. In areas of the United States where excessive soil erosion may occur or the frost line exceeds 3 feet, additional final cover is recommended. In desert areas where vegetation would be difficult to maintain, 3–6 inches of well graded crushed rock is recommended for placement on top of the final cover.

Controlling public access. Under the current NESHAPs regulation, EPA does not require that a landfill used for asbestos disposal use warning signs or fencing if it meets the requirement to cover asbestos wastes. However, under RCRA, EPA requires that access be controlled to prevent exposure of the public to potential health and safety hazards at the disposal site. Therefore, for liability protection of operators of landfills that handle asbestos, fencing and warning signs are recommended to control public access when natural barriers do not exist. Access to a landfill should be limited to one or two entrances with gates that can be locked when left unattended. Fencing should be installed around the perimeter of the disposal site in a manner adequate to deter access by the general public. Chain-link fencing, 6-ft high and topped with a barbed wire guard, should be used. More specific fencing requirements may be specified by local regulations. Warning signs should be displayed at all entrances and at intervals of 330 feet or less along the property line of the landfill or perimeter of the sections where asbestos waste is deposited. The sign should read as follows:

ASBESTOS WASTE DISPOSAL SITE

BREATHING ASBESTOS DUST MAY CAUSE LUNG DISEASE AND CANCER

Recordkeeping. For protection from liability, and considering possible future requirements for notification on disposal site deeds, a landfill owner should maintain documentation of the specific location and quantity of the buried asbestos wastes. In addition, the estimated depth of the waste below the surface should be recorded whenever a landfill section is closed. As mentioned previously, such information should be recorded in the land deed or other record along with a notice warning against excavation of the area.

[FR Doc. 87–24938 Filed 10–29–87; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-62055; FRL-3269-8]

Asbestos-Containing Materials in Schools; EPA Approved Courses Under the Asbestos Hazard Emergency Response Act (AHERA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In section 206(c)(3) of Title II, the Administrator, in consultation with affected organizations, was directed to publish (and revise as necessary) a list of asbestos courses and tests in effect before the date of enactment of this title which qualify for equivalency treatment for interim accreditation purposes and a list of asbestos courses and tests which the Administrator determines are consistent with the Model Plan and which will qualify a contractor for accreditation. This **Federal Register** notice includes the initial list of course approvals. In addition, the list includes State accreditation programs that EPA has approved as meeting the requirements of the Model Plan.

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, Telephone: (202) 554-1404.

SUPPLEMENTARY INFORMATION: Section 206 of Title II of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2646, required EPA to develop by April 20, 1987 a Model Contractor Accreditation Plan. The Plan was issued on April 20, and was published in the **Federal Register** of April 30, 1987, as Appendix C to Subpart E, 40 CFR Part 763.

To conduct asbestos-related work in schools, persons must receive accreditation in order to inspect school buildings for asbestos, develop management plans, and design or conduct response actions. Such persons can be accredited by States, which are required to adopt contractor accreditation plans at least as stringent as the EPA Model Plan, or by completing an EPA-approved training course and passing an examination for such course. The EPA Model Contractor Accreditation Plan establishes those areas of knowledge of asbestos inspection, management plan development, and response action technology that persons seeking accreditation must demonstrate and States must include in their accreditation programs.

Elsewhere in this issue of the **Federal Register** EPA is promulgating a final "Asbestos-Containing Materials In Schools" rule (40 CFR Part 763, Subpart E) which requires all local education agencies (LEAs) to identify asbestos-containing materials (ACM) in their school buildings and take appropriate actions to control the release of asbestos fibers. The LEAs are also required to describe their activities in management plans, which must be made available to the public and submitted to State governors. Under Title II, LEAs are required to use specially-trained persons to conduct inspections for asbestos, develop the management plans, and design or conduct major actions to control asbestos.

The length of initial training courses for accreditation under the Model Plan varies by discipline. Briefly, inspectors must take a 3-day training course; management planners must take the inspection course plus an additional 2 days devoted to management planning; and abatement project designers are required to have at least 3 days of training. In addition, asbestos abatement contractors and supervisors must take a 4-day training course and asbestos abatement workers are required to take a 3-day training course. For all disciplines, persons seeking accreditation must also pass an examination and participate in annual re-training courses. A complete description of accreditation requirements can be found in the Model Accreditation Plan at 40 CFR Part 763, Subpart E, Appendix C.I.1.A. through E.

In section 206(c)(3) of Title II, the Administrator, in consultation with affected organizations, was directed to publish (and revise as necessary) a list of asbestos courses and tests in effect before the date of enactment of this title which qualify for equivalency treatment for interim accreditation purposes and a list of asbestos courses and tests which the Administrator determines are consistent with the Model Plan and which will qualify a contractor for accreditation. This **Federal Register** notice includes the initial list of course approvals. In addition, the list includes State accreditation programs that EPA has approved as meeting the requirements of the Model Plan.

Three types of EPA approvals are included in this **Federal Register** notice. Unit I discusses EPA approval of State accreditation programs. Unit II covers EPA approval of training courses. Unit III discusses EPA aporoval of training courses for interim accreditation. Lastly, Unit IV provides the list of State accreditation programs and training courses approved by EPA as of October 1987. Subsequent **Federal Register** notices will add other State programs and training courses to this initial list.

I. EPA Approval of State Accreditation Programs

As discussed in the Model Plan, EPA will approve State accreditation programs that the Agency determines are at least as stringent as the Model Plan. In addition, the Agency is able to approve individual disciplines within a State's accreditation program. For example, a State that currently only has an accreditation requirement for inspectors can receive EPA approval for that discipline immediately rather than waiting to develop accreditation requirements for all disciplines in the Model Plan before seeking EPA approval.

As listed in Unit IV, New Jersey has received EPA approval for two accreditation disciplines. Any training courses in these two disciplines approved by New Jersey are EPA-approved courses for purposes of accreditation. These training courses are EPA-approved courses for purposes of TSCA Title II in New Jersey and in all States without an EPA-approved accreditation program for that discipline. For a current list of courses approved by New Jersey, interested parties should contact the State agency listed under Unit IV. EPA plans to include the training courses approved by New Jersey in the next **Federal Register** notice listing EPA-approved courses.

The State of Kansas currently has a training program for asbestos abatement contractors and supervisors that does not meet all of the Model Plan's requirements for this discipline. However, the Kansas program's training course requirements do meet the requirements for EPA approval of training courses for interim accreditation (see Unit III). As a result, persons who have met the training and exam requirements of the Kansas abatement contractor and supervisor program are accredited as listed under Unit IV on an interim basis. The Kansas contractor and supervisor accreditation program still must be upgraded within the time period specified in TSCA Title II to be at least as stringent as the Model Plan.

II. EPA Approval of Training Courses

Training courses approved by EPA are listed under Unit IV. The examinations for these approved courses under Unit IV have also been approved by EPA. EPA has three categories of course approval: full, contingent, and approved for interim accreditation. Courses

approved for interim accreditation will be discussed in Unit III.

Full approval means EPA has reviewed and found acceptable the course's written submission seeking EPA approval and has conducted an on-site audit and determined that the training course meets or exceeds the Model Plan's training requirements for the relevant discipine.

Contingent approval means the Agency has reviewed the course's written submission seeking EPA approval and found the materials to be acceptable (i.e. the written course materials meet the Model Plan's training course requirements). However, EPA has not yet conducted an on-site audit.

Successful completion of either a fully approved course or a contingently approved course provides full accreditation for course attendees. If EPA subsequently audits a contingently approved course and withdraws approval due to deficiencies discovered during the audit, future course offerings would no longer have EPA approval. However, withdrawal of EPA approval would not effect the accreditation of persons who took previously offered training courses including the course audited by EPA.

EPA-approved training courses listed under Unit IV are approved on a national basis. EPA has organized Unit IV by EPA Region to assist the public in locating those training courses that are offered nearby.

EPA-approved State accreditation programs have the authority to have more stringent accreditation requirements than the Model Plan. As a result, some EPA-approved training courses listed under Unit IV may not meet the requirements of a particular State's accreditation program. Sponsors of training courses and persons who have received accreditation or are seeking accreditation should contact individual States to check on accreditation requirements.

A number of training courses offered by several universities before EPA issued the Model Plan equaled or exceeded the subsequently issued Model Plan's training course requirements. These courses are listed under Unit IV as being fully approved. It should be noted that persons who successfully completed these courses are fully accredited; they are not limited only to being interimly accredited.

III. EPA Approval of Training Courses for Interim Accreditation

TSCA Title II enables EPA to permit persons to be accredited on an interim basis if they have attended previous EPA-approved asbestos training and have passed (or pass) an asbestos exam. As a result, the Agency is approving training courses offered previously for purposes of accrediting persons on an interim basis. Only those persons who have taken training courses since January 1, 1985 will be considered under these interim accreditation provisions. In addition, EPA will not grant interim accreditation to any person who takes an equivalent training course after the date the asbestos-in-schools rule takes effect. This accreditation is interim since the person shall be considered accredited for only 1 year after the date on which the State where the person is employed establishes an accreditation program at least as stringent as the EPA Model Plan. If the State does not adopt an accreditation program within the time period required by Title II, persons with interim accreditation must become fully accredited within 1 year after the date the State was required to have established a program.

For purposes of the Model Plan, an equivalent training course is one that is essentially similar in length and content to the curriculum found in the Model Plan. In addition, an equivalent examination must be essentially similar to the examination requirements found in the Model Plan.

Persons who have taken equivalent courses in their discipline for purposes of interim accreditation, and can produce evidence that they have successfully completed the course by passing an examination, are accredited on an interim basis under TSCA Title II. Evidence of successful completion of a course would include a certificate or photo identification card that showed the person completed the training course on a certain date and passed the examination.

For persons who took one of the EPA-approved courses for interim accreditation listed under Unit IV, but did not take the course's examination, these persons may become interimly accredited by passing an examination at an EPA-funded training center. These EPA funded training centers are listed under Unit IV. Before taking the exam, persons must provide evidence to the EPA-funded center that they previously had taken one of the training courses listed under Unit IV that is approved by EPA for interim accreditation.

Courses approved by EPA as of October 17 for interim accreditation are listed under Unit IV. Examinations offered by these courses also are approved for purposes of interim accreditation. EPA expects to approve additional courses for interim accreditation purposes, and will list these courses in subsequent **Federal Register** notices. Training course vendors that believe their courses offered since January 1, 1985 are suitable sources for interim accreditation should contact their EPA Regional asbestos coordinator (See addresses in Unit IV).

IV. List of EPA-Approved State Accreditation Programs and Training Courses

Below is the first listing of EPA-approved State accreditation programs and training courses. As discussed above, periodic notifications of EPA approval of State accreditations programs and EPA approval of training courses will be published in subsequent **Federal Register** notices. The closing date for the acceptance of submissions to EPA for inclusion in this first notice was early October. Omission from this list does not imply disapproval by EPA, nor does the order of the courses reflect priority or quality. The format of the notification lists first the State accreditation programs approved by EPA, followed by EPA-approved training courses listed by Region. The name, address, phone number, and contact person is provided for each training provider followed by the courses and type of course approval (i.e. full, contingent, or for interim purposes). Unless otherwise specified by an alternative date, interim approvals are issued from January 1, 1985.

All five of the EPA-funded asbestos information centers and the three EPA-funded satellite training centers will use the EPA model inspector and management planner course recently developed with EPA funds. As a result, EPA anticipates that all of the EPA-funded training facilities will receive approvals for inspection and management planning courses offered beginning in October. Currently, the EPA-funded centers at the Georgia Institute of Technology and the University of Illinois at Chicago have inspection and management planning courses that EPA has fully approved. The five centers are: The Georgia Institute of Technology in Atlanta, Georgia; the University of Kansas in Overland Park, Kansas; Tufts University in Medford, Massachusetts; the University of Illinois at Chicago, and the University of California, Berkeley. The three satellite centers are: The University of Texas at Arlington; the Robert Wood Johnson Medical School in Piscataway, New Jersey, and Temple University in Philadelphia, Pennsylvania. The University of Texas at Arlington has received contingent

approval of its inspector and management planner course.

The recently developed EPA-funded model course for inspectors and management planners, and an earlier course developed with EPA funding for asbestos abatement contractors and supervisors are available for interested parties that plan to offer training courses. Interested parties should contact the following firm to receive copies of the training courses: Sterling Federal Systems, Incorporated, Suite 600, 6011 Executive Blvd., Rockville, MD 20852.

A fee for each course will be charged to cover the reproduction costs for the written and visual aid materials.

The following is the initial list of EPA-approved State accreditation programs and training courses:

Approved State Accreditation Programs

(1)(a) *State: Kansas*— State Agency: Kansas Department of Health and Environment, Forbes Field, Topeka, KS 66620. Attn: John C. Irwin (913) 296–1500.

(b) *Approved Accreditation Program Discipline*—Contractor/Supervisor (training and exam requirements (approved for interim accreditation).

Abatement worker [1] approved for interim accreditation).

Effective date of regulation: 1/6/1986.

(2)(a) *State: New Jersey*—State Agency: New Jersey Department of Health, CN 360, Trenton, New Jersey 08625–0360. Attn: James Brownlee (609) 984–2193.

(b) *Approved Accreditation Program Discipline*—Contractor/Supervisor. Abatement worker. Effective date of regulation: June 18, 1985.

EPA-Approved Training Courses

Region I—Boston, MA

Regional asbestos coordinator. Alison Roberts, EPA, Region I, Air and Management Division (APT–231), JFK Federal Building, Boston, MA 02203. (617) 565–3273 (FTS) 835–3275.

List of approved courses. The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Courses are listed in alphabetical order and do not reflect a prioritization. Approvals for Region I training courses and contact points for each, are as follows:

(1)(a) *Training provider.* Abatement Technology Corp., One Boston Place, Suite 1025, Boston, MA 02108. Attn: Scott Keyes (617) 723–3100.

(b) *Approved courses.* Contractor/Supervisor (contingent).

(2)(a) *Training provider.* Con-Test, P.O. Box 591, East Longmeadow, MA 01028. Attn: Brenda Bolduc (413) 525–1198.

(b) *Approved courses.* Contractor/Supervisor (contingent). Abatement Worker (contingent). Inspector/Management Planner (contingent). Refresher course (for each of the above disciplines) (contingent).

(3)(a) *Training provider.* Hygientics, Inc., 150 Causeway St., Boston, MA 02114. Attn: John W. Cowdery (617) 723–4664.

(b) *Approved courses.* Inspector (contingent).

(4)(a) *Training provider.* Institute for Environmental Education, 208 West Cummings Park, Woburn, MA 01801. Attn: Janet Oppenheim-McMullen (617) 935–7370.

(b) *Approved courses.* Contractor/Supervisor (full from 9/18/87). Inspector/Management planner (contingent).

(5)(a) *Training provider.* Maine Labor Group on Health Inc., P.O. Box 5, Augusta, Maine 04330. Attn: Dianna White (207) 289–2770.

(b) *Approved courses.* Contractor/Supervisor (contingent). Abatement Worker (contingent).

(6)(a) *Training provider.* New England Laborers' Training Trust Fund, 37 East Street, Hopkinton, MA 01748. Attn: Jim Merloni, Jr. (617) 435–6316.

(b) *Approved courses.* Abatement Workers (contingent).

(7)(a) *Training provider.* Tufts University, 474 Boston Ave., Medford, MA 02155. Attn: Brenda Cole (617) 381–3531.

(b) *Approved courses.* Contractor/Supervisor Course (Interim from 9/85–5/31/87). Contractor/Supervisor Course (Full from 6/22/87).

Region II—Edison, NJ

Regional asbestos coordinator. Arnold Freiberger, EPA, Region II, Woodbridge Ave., Raritan Depot, Bldg. 10, Edison, NJ 08837. (201) 321–6668, (FTS) 340–6671.

List of approved courses. The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Courses are listed in alphabetical order and do not reflect a prioritization. Approvals for Region II training courses and contact points for each, are as follows:

(1)(a) *Training provider.* UMDNJ Robert Wood Johnson Medical School, 675 Hoes Lane, Piscataway, NJ 08854–5635. Attn: Lee Laustsen (201) 463–4500.

(b) *Approved courses.* Abatement Worker (full from beginning). Contractor/Supervisor (full from beginning).

Region III—Philadelphia, PA

Regional asbestos coordinator. Pauline Levin, EPA, Region III (3HW–40), 841 Chestnut Bldg., Philadelphia, PA 19107. (215) 597–9859, (FTS) 597–9859.

List of approved courses. The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Courses are listed in alphabetical order and do not reflect a prioritization. Approvals for Region III training courses and contact points for each, are as follows:

(1)(a) *Training provider.* Alice Hamilton Center for Occupational Health, 410 7th Street SE., Second Floor, Washington, DC 20003. Attn: Brian Christopher (202) 543–0005.

(b) *Approved courses.* Abatement Workers (contingent).

(2)(a) *Training provider.* The Association of Wall and Ceiling Industries, 24 K Street, NE., Suite 300, Washington, DC 20002. Attn: Chris Hullinger (202) 783–2924.

(b) *Approved courses.* Abatement Worker (full 5/19/87). Contractor/Supervisor (full 5/19/87).

(3)(a) *Training provider.* Biospherics, Inc., 12051 Indian Creek Court, Beltsville, MD 20705. Attn: Marian F. Meiselman (301) 369–3900.

(b) *Approved courses.* Contractor/Supervisor (full from 10/1/87). Abatement worker (full from 10/1/87).

(4)(a) *Training provider.* Drexel University, Environmental Studies Institute, Building 29, 32nd and Chestnut Streets, #216, Philadelphia, PA 19104. Attn: Robert Ross (215) 895–2269.

(b) *Approved courses.* Contractor/Supervisor (full from beginning). Abatement Worker (full from beginning).

(5)(a) *Training provider.* South East Michigan Committee on Occupational Safety and Health (SEMCOSH), 1550 Howard Street, Detroit, MI 48216. Attn: Barbara Boylan (313) 961–3345.

(b) *Approved courses.* Abatement Worker (contingent).

(6)(a) *Training provider.* The National Training Fund for the Sheet Metal and Air Conditioning Industry (in conjunction with the Workers' Institute for Safety and Health), 1126 Sixteenth Street NW., Washington, DC 20036. Attn: Scott Schneider (202) 887–1980.

(b) *Approved courses.* Abatement Worker (contingent).

[1] Applies only to workers who have taken the Kansas' Contractor/ Supervisor course and passed the State's worker exam.

(7)(a) *Training provider.* Temple University, College of Engineering, 12th and Norris Streets, Philadelphia, PA 19122. Attn: Lester Levin (215) 787–6479.

(b) *Approved courses.* Contractor/Supervisor (full from beginning). Workers (full from beginning).

(8)(a) *Training provider.* Medical College of Virginia, Virginia Commonwealth University, Department of Preventive Medicine, P.O. Box 212, Richmond, VA 23298. Attn: Leonard Vance (804) 786–9785.

(b) *Approved courses.* Contractor/Supervisor (contingent).

(9)(a) *Training provider.* WACO, Inc., P.O. Box 836, 5450 Lewis Road, Sandston, VA 23150. Attn: William Belanich (804) 222–8440.

(b) *Approved courses.* Contractor/Supervisor (contingent). Abatement Workers (contingent).

Region IV—Atlanta, GA

Regional asbestos coordinator. Jim Littell, EPA Region IV, 345 Courtland St. NE., Atlanta, GA 30365. (404) 347–3864, (FTS) 257–3864.

List of approved courses. The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Courses are listed in alphabetical order and do not reflect a prioritization. Approvals for Region IV training courses and contact points for each, are as follows:

(1)(a) *Training provider.* University of Florida, TREEO Center, 3900 SW 63rd Blvd., Gainesville, FL 32608. Attn: Sandra Scaggs (904) 392–9570.

(b) *Approved courses.* Contractor/Supervisor (full from 5/87).

(2)(a) *Training provider.* Georgia Tech Research Institute, Environmental Health and Safety Division, Room 029, O'Keefe Building, Atlanta, GA 30332. Attn: William Ewing (404) 894–3806.

(b) *Approved courses.* Contractor/Supervisor (full from 5/11/87). Contractor/Supervisor (Interim from 6/85—5/10/87). Refresher Course for Contractor/Supervisor (contingent). Inspector/Management Planner (full from 10/87).

(3)(a) *Training provider.* National Asbestos Council, Training Department, 2786 North Decatur Road, Decatur, GA 30033. Attn: Eva Clay (404) 292–0629.

(b) *Approved courses.* Abatement Workers (2 day) (interim from beginning). Abatement Workers (3 day) (full from 7/87).

Region V—Chicago, IL

Regional asbestos coordinator. Anthony Restaino, EPA Region V, 536 S. Clark St., Chicago, IL 60604. (312) 886–6879, (FTS) 886–6879.

List of approved courses. The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Courses are listed in alphabetical order and do not reflect a prioritization. Approvals for Region V training courses and contact points for each, are as follows:

(1)(a) *Training provider.* AHP Research, Inc., 1501 Johnsons Ferry Rd., Suite 230, P.O. Box 71926, Marietta, GA 30007. Attn: Dwight Brown (404) 565–0061.

(b) *Approved courses.* Inspector/Management Planner (interim from beginning).

(2)(a) *Training provider.* BDN Industrial Hygiene Consultants, 8105 Valleywood Lane, Portage, MI 49002. Attn: Keith Nichols (616) 329–1237.

(b) *Approved courses.* Contractor/Supervisor (contingent).

(3)(a) *Training provider.* DeLisle Consulting and Laboratories, Inc., 2401 East Milham Ave., Kalamazoo, MI 49002. Attn: Mark DeLisle (616) 343–9698.

(b) *Approved courses.* Contractor/Supervisor (contingent).

(4)(a) *Training provider.* Heat & Frost Insulators Local 17, Apprentice Training Center, 3850 South Racine Ave., Chicago, IL 60609. Attn: John P. Shine (312) 247–1007

(b) *Approved courses.* Abatement Workers (contingent).

(5)(a) *Training provider.* I.P.C. Chicago, 4309 West Henderson, Chicago, IL 60641. Attn: Robert G. Cooley (312) 975–3495.

(b) *Approved courses.* Abatement Workers (contingent).

(6)(a) *Training provider.* University of Illinois at Chicago, Midwest Asbestos Information Center, 2035 Taylor, School of Public Health, Chicago, IL 60612. Attn: Tony Billotti (312) 996–5762.

(b) *Approved courses.* Contractor/Supervisor (full from beginning). Inspector/Management Planner (full). Abatement Worker (2 day) (interim from beginning to 10/1/87). Abatement Worker (3 day) (contingent).

Region VI—Dallas, TX

Regional asbestos coordinator. John West, 6t-Pt, EPA, Region VI, 1445 Ross Avenue, Dallas, TX 75202–2733. (214) 655–7244, (FTS) 255–7235.

List of approved courses. The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Courses are listed in alphabetical order and do not reflect a prioritization. Approvals for Region VI training courses and contact points for each, are as follows:

(1)(a) *Training provider.* GEBCO Associates, Inc., 805–A, Elizabeth Drive, Bedford, TX 76022. Attn: Ed Kirch (817) 268–4006.

(b) *Approved courses.* Asbestos Workers (full from 8/20/87). Asbestos Workers (interim prior to 8/19/87).

(2)(a) *Training provider.* The International Association of Heat and Frost Insulators and Asbestos Workers Union, Local 22, 3219 Pasadena Blvd., Pasadena, TX 77503. Attn: Owen Tilley (713) 473–0888.

(b) *Approved courses.* Asbestos Worker (3 day course) (contingent). Asbestos Worker (2 day course) (interim prior to 10/87). Worker refresher course (contingent).

(3)(a) *Training provider.* Louisiana State University and Agricultural and Mechanical College, Baton Rouge, LA 70803–1520. Attn: George Smith (504) 388–6621.

(b) *Approved courses.* Contractor/Supervisor (contingent).

(4)(a) *Training provider.* The Texas A&M University System, The Texas Engineering Extension Service, Building Codes Inspection Training Division, College Station, TX 77843–8000. Attn: Charles Flanders (409) 845–6682.

(b) *Approved courses.* Contractor/Supervisor (full from 9/14/87). Contractor/Supervisor (interim prior to 9/14/87). Abatement Worker (contingent). Inspector/Management Planner (contingent).

(5)(a) *Training provider.* The University of Texas at Arlington Satellite Center, Bureau of Engineering Research, P.O. Box 19020, Arlington, TX 76019. Attn: Ernest Crosby (817) 273–2557.

(b) *Approved courses.* Contractor/Supervisor (full from beginning). Inspector/Management Planner (contingent).

(6)(a) *Training provider.* Tulane University, School of Public Health and Tropical Medicine, Department of Environmental Health Sciences, 1430 Tulane Avenue, New Orleans, LA 70112. Attn: Shau-Wong Chang (504) 588–5374.

(b) *Approved courses.* Contractor/Supervisor (full from 9/15/87). Contractor/Supervisor (interim prior 9/14/87).

Region VII—Kansas City, KS

Regional asbestos coordinator. Wolfgang Brandner, EPA Region VII, 726 Minnesota Ave., Kansas City, KS 66101. (913) 236–2834, (FTS) 757–2834.

List of approved courses. The following training courses have been

approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Courses are listed in alphabetical order and do not reflect a prioritization. Approvals for Region VII training courses and contact points for each, are as follows:

(1)(a) *Training provider.* Hall-Kimbrell Environmental Services, 4840 West 15th St., Lawrence, KS 66046. Attn: Alice Hart (913) 749–2381.

(b) *Approved courses.* Contractor/Supervisor (full from 8/17/87). Abatement Worker (full from 8/17/87). Project Designer (full from 8/17/87). Inspector/Management Planner (full from 8/17/87).

(2)(a) *Training provider.* Mahew Environmental Training Assoc., Inc. (META), P.O. Box 1961, Lawrence, KS 66044. Attn: Brad Mayhew (913) 842–6382.

(b) *Approved courses.* Contractor/Supervisor (contingent). Abatement Worker (contingent).

(3)(a) *Training provider.* The University of Kansas National Asbestos Training Center, 6600 College Blvd., Suite 315, Overland Park, KS 66211. Attn: Lani Himegarner (913) 491–0181.

(b) *Approved courses.* Contractor/Supervisor (contingent). Contractor/Supervisor (interim from 6/85–9/9/87). Abatement Worker (contingent).

Region VIII—Denver, CO

Regional asbestos coordinator. David Combs, [8AT–TS], EPA, Region VIII, 1 Denver Place, 999–18th St., Suite 1300, Denver, CO 80202–2413. (303) 564–1730, (FTS) 564–1742.

List of approved courses. The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Courses are listed in alphabetical order and do not reflect a prioritization. Approvals for Region VIII training courses and contact points for each, are as follows:

(1)(a) *Training provider.* Northern Engineering and Testing, Inc. 600 South 25th Street, P.O. Box 30615, Billings, MT 59107. Attn: Kathleen Smit (406) 248–9161.

(b) *Approved courses.* Asbestos worker (contingent).

(2)(a) *Training provider.* Rocky Mountain Center for Occupational and Environmental Health, Building 512, University of Utah, Salt Lake City, UT 84112. Attn: Jeffery Lee (801) 581–5710.

(b) *Approved courses.* Contractor/Supervisor (contingent).

Region IX—San Francisco, CA

Regional asbestos coordinator. Joanne Semones, [T–52], EPA, Region IX, 215 Fremont St., San Francisco, CA 94105. (415) 974–7290, (FTS) 454–7290.

List of approved courses. The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Courses are listed in alphabetical order and do not reflect a prioritization. Approvals for Region IX training courses and contact points for each, are as follows:

(1)(a) *Training provider.* Environmental Sciences, 375 S. Meyer, Tucson, AZ 85701. Attn: Dale Keyes (602) 577–1764.

(b) *Approved courses.* Inspector/Management Planner (full).

(2)(a) *Training provider.* University of California at Berkeley Pacific Asbestos Information Center, U.C. Extension, 2223 Fulton St., Berkeley, CA 94720. Attn: Debra Dobin (415) 643–7143.

(b) *Approved courses.* Contractor/Supervisor (full from beginning).

Region X—Seattle, WA

Regional asbestos coordinator. Walter Jasper, EPA, Region X, 1200 Sixth Ave., Seattle, WA 98101. (206) 442–2870, (FTS) 399–2870.

List of approved courses. The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Courses are listed in alphabetical order and do not reflect a prioritization. Approvals for Region X training courses and contact points for each, are as follows:

No approvals for Region X.

Dated: October 17, 1987.

Lee M. Thomas,

Administrator.

[FR Doc. 87–24939 Filed 10–29–87; 8:45 am]

BILLING CODE 6560–50–M

federal register

Friday
October 30, 1987

Part IV

Department of the Interior

Minerals Management Service

30 CFR Parts 208 and 209
Sale of Federal Royalty Oil; Final Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 208 and 209

Sale of Federal Royalty Oil

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is issuing this final rulemaking to consolidate and revise regulations governing the sale of onshore and offshore Federal royalty oil. This final rule will establish uniformity within the regulatory text, provide industry with a more efficient and responsive Royalty-in-Kind (RIK) Program, and improve the Federal Government's administration of the RIK Program. The prior regulations, which are being replaced by this rulemaking, were developed from different statutory bases and consequently contained conflicting and overlapping requirements. This final rule, in combination with selective administrative changes, will ease the burden on all participants and improve the Federal Government's administration of the RIK Program.

EFFECTIVE DATE: December 1, 1987.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch at (303) 231–3432, or James A. McNamee, Chief, Royalty-in-Kind Section at (303) 231–3605 in Lakewood, Colorado.

SUPPLEMENTARY INFORMATION: The principal authors of this final rule are James H. Mikelson, John W. Vidrik, and James A. McNamee of the Minerals Management Service, Lakewood, Colorado.

I. Background

Section 36 of the Mineral Lands Leasing Act of 1920 (common reference for the Act of February 25, 1920), as amended (30 U.S.C. 192), and sections 5 and 27 of the Outer Continental Shelf Lands Act (OCSLA) of August 7, 1953, as amended (43 U.S.C. 1334, 1353), authorize the Secretary of the Interior (Secretary) to sell royalty oil accruing to the United States from oil and gas leases issued pursuant to those Acts.

The MMS was established by Secretarial Order No. 3071 on January 19, 1982. Under that order and its subsequent amendments on May 10 and May 26, 1982, MMS was assigned responsibility for the RIK Program.

The MMS has completed a detailed review of the RIK Program. The review highlighted areas where changes should be considered and improvements could be made. One area identified as in need of revision was the regulations governing the sale of royalty oil in 30 CFR Parts 225, 225a, and 262 (subsequently recodified as 30 CFR Parts 208 and 209; see below).

In developing new RIK regulations, the principal objective was to establish one set of regulations for all royalty oil offered for sale under the RIK Program. The prior RIK regulations consisted of one set of regulations governing the sale of onshore royalty oil at 30 CFR Part 208 (formerly 30 CFR Part 225, which was recodified on August 5, 1983 (48 FR 35639)), issued pursuant to the authority in the Act of February 25, 1920, and a second set of regulations governing the sale of offshore royalty oil. The offshore regulations originally were issued by the Department of the Interior (DOI) at 30 CFR Part 225a, pursuant to the authority of the OCSLA. However, section 302(b) of the Department of Energy Organization Act, 42 U.S.C. 7152(b), transferred certain regulatory authorities over the sale of royalty oil to the Department of Energy (DOE), which issued regulations at 10 CFR Part 391.

Congressional repeal of section 302(b) of the DOE Organization Act in Pub. L. 97–100 and in Pub. L. 97–257 transferred the regulatory authority back to DOI from DOE. The DOE's 10 CFR Part 391 regulations were redesignated as DOI's 30 CFR Part 262 (48 FR 1181, January 11, 1983) and then redesignated as 30 CFR Part 209 (48 FR 35639, August 5, 1983).

The evolution of the prior regulations from different statutory bases, and from the different RIK Program objectives of two Federal agencies, adversely affected the wording of the text and the application of the regulations. Those inconsistencies, if left to continue, would have eventually led to further confusion and disruption in MMS's management of, and industry's participation in, the RIK Program.

In addition to the regulatory revisions, there were a number of administrative procedures reviewed by MMS. Improvements have been made to these procedures in order to streamline and simplify administrative functions within the RIK Program and make them more manageable for the Federal Government and less burdensome for industry. Regulatory and administrative changes are discussed below.

Notice of MMS's intent to revise the RIK regulations and make administrative improvements was first published in the **Federal Register** on November 10, 1982 (47 FR 50924), and comments were invited for a 60-day period ending January 10, 1983. Thirty-three responses were received by MMS from producers, refiners, and others interested in the RIK Program. The responses covered many topics, but the majority of the comments dealt with either (1) refiner eligibility requirements, (2) transportation or delivery issues, or (3) administrative fees.

On January 14, 1983, MMS also announced in the **Federal Register** (48 FR 1833) its intent to change the time periods for the sales of royalty oil. Some comments were also received from industry on this topic, although MMS had not solicited any at the time.

II. Summary of Rule Adopted

This final rule being adopted is substantially the same as the proposed rule. Therefore, discussion in the preamble to the proposed rule applies to the final rule. Based on comments received from the public to the proposed rule, certain changes were made. These changes are discussed below in sections III and IV, Comments Received on Proposed Rule—General and Specific by Section.

The final rule removes regulations at 30 CFR Parts 208 and 209 and consolidates and revises those regulations with a unified set of rules in 30 CFR Part 208 governing the sale of Federal royalty oil. This one set of regulations applies to sales of both onshore royalty oil and Outer Continental Shelf (OCS) royalty oil. The new regulations include regulatory changes to clarify definitions and administrative changes to improve the operational efficiency of the RIK Program.

III. Comments Received on Proposed Rule—General

The proposed rulemaking published January 20, 1987 (52 FR 2202), provided for a 30-day public comment period which ended February 19, 1987. General comments received during that time period are addressed in this section. Specific comments by section of the proposed rule are discussed below in section IV. The text of the adopted regulation has been changed to reflect comments, as appropriate.

Two commenters stated that the RIK Program is unnecessary because most areas have adequate supplies of crude oil at equitable prices available to small/independent refiners. One of these commenters stated that the Secretary must make a determination that small refiners lack access to equitably priced crude oil as a condition precedent to the implementation of the RIK Program. The commenters also stated that the methodology for, and subsequent findings of, the

determination should be published for comment.

This rule is a codification of the statutes and policies pertaining to the taking of oil royalties in kind for sale to eligible refiners. It is neither an election nor notice of intent to take Federal royalties in kind. Such elections to take royalties in kind will be made on a regional basis following individual determinations by the Secretary that eligible refiners in that region do not have access to adequate supplies of crude oil at equitable prices. The determinations will be published in the **Federal Register** concurrent with, or included in, the "Notice of Availability of Royalty Oil", as provided in § 208.4(a). There is no requirement that MMS undergo a formal process for such determinations, and MMS does not plan to institute one.

One commenter was concerned that the rule will have a significant negative economic impact on the Nation's small refiners and that MMS would, therefore, be required to perform a regulatory analysis with published conclusions under the Regulatory Flexibility Act. Specific reasons for this comment were not given, although the commenter expressed concern about surety and administrative fee requirements in its other comments.

The MMS disagrees. The MMS believes, and several commenters concur, that the rule is an improvement over the current rules, especially as it concerns surety requirements. These and administrative fee requirements are discussed in more detail in section IV.

There were several administrative comments, one of which stated, in essence, that not all interested parties were familiar with the Auditing and Financial System (AFS) and that they would appreciate a description of its operation.

The AFS and its requirements are discussed in detail in MMS's "AFS Oil and Gas Payor Handbook." In addition, MMS conducts payor training classes at various times and locations. Payors interested in further information should contact their MMS Lessee Contact Branch representative. Refiners interested in further information should contact the MMS RIK Section Chief at (303) 231-3605.

One commenter stated that offshore royalty oil not purchased in a sale by offshore eligible refiners should be made available to onshore eligible refiners.

Generally, most of the offshore oil offered in a sale is taken. If it were not, the OCSLA at 43 U.S.C. 1353(b) would allow MMS to sell any excess by competitive bid. However, at this time, MMS has elected not to use the competitive bid procedures. Therefore, unless a refiner meets the OCSLA eligibility criteria, it will not be eligible to purchase offshore royalty oil.

One commenter called for 3-year contracts and suggested sanctions for early terminations.

The MMS plans to have 3-year terms for most contracts in the future, but does not support the idea of sanctions for early terminations because the conditions under which refiners operate are too variable. It should be noted that the administrative fees are nonrefundable and, therefore, the refiners have an investment in the form of the initial contract fee, which should serve as an incentive to maintain their contracts.

One commenter was concerned that the States' shares of the initial estimated billings for a month's supply of royalty oil would not be distributed to the States in accordance with 30 U.S.C. 191. The same commenter was concerned that there is no "date certain" for payments in the rule and that there is a 45-day delay in billings.

The MMS distributes the revenue from the estimated billings to the States in the same manner and within the same amount of time as it distributes revenue from the actual billings. One of the reasons for the initial estimated billing is to negate the effect of the 45-day delay in billing by effectively making revenues available at the same time whether royalties are paid in value or in kind. The 45-day delay cannot be shortened because of current AFS reporting and report processing requirements. The "date certain" for payments fluctuates depending on the nature of the bill and, therefore, cannot be specified in the rule. Normally, payments from the purchasers for the monthly billings are due at MMS on the last day of the month billed.

Finally, one commenter suggested that MMS add a provision to specifically provide for collections from a lessee for undervaluation of royalty oil taken in kind when such undervaluation is a result of a reporting error and the correct amount cannot be recouped from the purchaser. Alternatively, the commenter stated that MMS should be liable for the States' shares of undervalued royalty oil.

The MMS does not believe that such provisions are necessary because there are sufficient protections already in place in existing rules and regulations.

IV. Comments Received on Proposed Rule—Specific by Section

Section 208.2 Definitions

Five commenters responded to the specific request for comments as to whether or not onshore eligibility requirements should be modified to limit the class of eligible refiners to "small refiners" as that term was defined in section 3(4) of the Emergency Petroleum Allocation Act (EPAA) of 1973. All five stated that size criteria should be added to the independence criteria for onshore eligibility. There were no negative responses to this proposal, although one refiner commented that both onshore and offshore eligibility should be tied to the Small Business Administration (SBA) definition.

The MMS agrees that revising the onshore eligibility criteria to include the size determination contained in the EPAA would be beneficial in that it would limit the eligible class to those refiners that have the most need for the RIK Program. The necessary revisions have been made to subparagraph 208.2. The MMS was precluded from limiting the size for onshore eligibility to the SBA criteria by the *Plateu* decision (*Plateau, Inc.* v. *DOI*, 603 F.2d 161 (10th Cir. 1979)), but the EPAA limitation is considerably less restrictive than the SBA limitation. The SBA limit currently refers to refiners with no more than 45,000 barrels per day capacity, whereas the EPAA limit is 175,000 barrels per day. Therefore, more refiners would be eligible for royalty oil.

In the *Plateau* decision, the Court of Appeals held that, for sales of onshore royalty oil pursuant to the Act of February 25, 1920, DOI could not limit eligible refiners to those that meet the SBA criteria. The Court of Appeals, in reviewing the legislative history of 30 U.S.C. 192, indicated what the proper scope of the limitation should be:

> In explaining the purpose of the bill, the Senator (O'Mahoney) identified "small refiners" as those "who do not own and operate their own producing leases." (91 Cong. Rec. 1760 (1945)) . . . . The Secretary of the Interior, in expressing his views on the bill to the committee, had objected to the word "smaller" as being too indefinite . . . . The basic distinction drawn by the Secretary echoed the one recognized by Senator O'Mahoney: The Secretary differentiated between "integrated companies" and refiners "not having their own source of supply for oil . . . ." The version of the bill ultimately enacted defined the targeted refineries as those "not having their own source of supply for crude oil." (603 F.2d at 163.)

The MMS believes that the revised definition at § 208.2 for onshore

eligiblity is consistent with the intent of the statute and the *Plateau* decision.

One commenter recommended the addition of a definition for "preference eligible" refiner and another proposed that the definition of "independent refiner" be clarified. The latter commenter also recommended that "refinery capacity" be more clearly defined.

The MMS agrees with the first two comments, and has incorporated these suggestions within § 208.2. The MMS will, however, defer the question of refinery capacity. Because there are currently no capacity certification procedures in place, there is no certain method for determining capacity. The MMS does not wish to establish an arbitrary method, and will, therefore, continue to accept the capacity data submitted by refiners, subject to review, until further notice.

One commenter requested clarification of the definition of "oil" as it pertains to condensate; specifically, whether or not liquids derived from a processing facility would be exempt from the RIK Program.

The MMS does not intend to include in the RIK Program liquids that are recovered by means of a manufacturing process. The liquids intended to be excluded from the RIK Program are those that would meet the definition of natural gas liquids (those liquefiable hydrorcarbons that are recovered through the processing of natural gas). Any liquid hydrocarbons which meet the definition of oil, and thus are to be treated as oil under the applicable statutes, may be included regardless of whether they are recovered at the lease or at a point remote from the lease (such as reseparation facility at the inlet of a gas plant).

One commenter stated without elaboration that the definition of lessee could result in undue burdens on an operator, particularly in OCS operations. The same commenter stated that it must be made clear in the definition that "royalty oil" does not include "working interest" oil (commenter's term) as described under section 8(b)(7) of the OCSLA. This commenter also stated that oil taken in kind should be prorated among the various working interests if only a portion of the available royalty oil is taken in kind from a large jointly owned property.

The definition of lessee contained in this rule is consistent with that in the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701, and is used for that reason. The definition of royalty oil is not meant to encompass oil set aside for small refiners under section 8(b)(7) of the OCSLA. Section 8(b)(7) oil, commonly referred to as "20 percent set-aside" oil, is not royalty oil and has no bearing on this rule. If the Federal Government's royalty oil is taken in kind, that does not relieve the lessee of its obligation also to make oil available in accordance with section 8(b)(7). Likewise, if a lessee is selling production in accordance with section 8(b)(7), that does not limit the Secretary's discretion also to take royalty oil in kind. Finally, any requirement that all working interest owners have a pro rata share of royalty oil provided under this rule is an administrative matter among the owners and should be a function of the applicable agreement(s) among them.

Section 208.4 Royalty Oil Sales to Eligible Refiners

One of the commenters stated that the proposal is premature and should be withdrawn pending completion of the 30 CFR Part 206 rulemaking, and another stated that it was inappropriate to refer to 30 CFR Part 206 when it is being revised and is open for public comment. In related comments, several commenters proposed various methods of valuation for royalty oil taken in kind, ranging from using the same methods currently in 30 CFR Part 208 and 30 CFR Part 209 to using competitive bidding. The options included using the highest posted price, using an average of posted prices, and using averages of values reported by the operators. One commenter specifically recommended that MMS retain the definitions of "market value" and "fair market value" because of statutory restraints. This commenter states that the value of royalty oil taken in kind could not be tied directly to the value of royalties paid in value.

The MMS agrees that the method for determining the value of offshore royalty oil taken in kind is limited by the provisions of the OCSLA. Therefore, MMS has added the definition of fair market value at § 208.2 and provided for its use in the valuation of offshore royalties taken in kind in § 208.4(b)(2). The only restriction in the statutes for onshore RIK valuation, however, is that the royalties be sold at not less than "market value," a term which is not defined in the statutes. The MMS is of the opinion that it will be operating within the intent of the pertinent legislation if onshore royalties taken in kind are valued the same as royalties paid in value and, therefore, MMS will value it in accordance with the provisions of 30 CFR Part 206. This practice should not affect, or be affected by, the rulemaking procedure for 30 CFR Part 206. It is important to note that the value for onshore royalty oil will be the same whether royalties are taken in kind or paid in value and, therefore, the refiners will not be able to negotiate their own prices with the lessees for the royalty oil, which was a concern of some of the commenters.

One commenter stated that lessees have no obligation or right to value royalties taken in kind and that it is the responsibility of MMS to determine value.

The MMS agees that it has the responsibility to make final determinations of value, but this is also true when royalties are paid in value. The lessees or payors will have no more value-reporting responsibilities placed on them as a result of this rule than they would have if they reported in value. The lessees or payors will report the same values for royalty oil taken in kind that they would report if they were paying the royalties in value.

The MMS specifically requested comments on whether the use of an auction technique for the disposal of royalty oil would be desirable. One commenter supported auctions with established floor prices and another stated that it would be an effective means of determining true market value. Eight commenters opposed auctions, however, with most voicing strong oppostion. The consensus was that auctions would be counter to the underlying purpose of the RIK Program because the resultant prices received for the royalty oil would not be equitable.

The MMS agrees with the opposition comments at this time. Therefore, MMS does not anticipate conducting auctions in the foreseeable future.

Several commenters addressed the issue of administrative fees, but none voiced outright opposition. Two stated that the fees should be determined on the basis of volume rather than number of leases, one stated that they should be the same for all refiners, and one stated that the initial contract fees should be enough to cover 50 percent of the costs of the RIK Program. In a related comment, one commenter pointed out that the administrative fee will result in an increase in the price charged for the RIK oil. This comment was made as a statement of fact and not a protest.

The proposed methodology for the recoupment of RIK Program administration costs is intended to reflect MMS's actual administrative efforts. Although certain costs are incurred in fairly equal amounts for all contracts, contracts that involve a greater number of leases entail greater administrative effort. The costs are not

related to volume, nor are the efforts for all contracts the same. The initial contract fee is the same for all contracts because of the similarity of certain administrative costs, but the variable fees cannot be equal because of the reasons mentioned above. Finally, the fees are not additional royalties or bonuses and are not accounted for as such. They are necessary to recover the administrative costs of the RIK Program. Such fees are not shareable with the States pursuant to 30 U.S.C. 191.

One commenter stated that interim sale decisions should be made on a case-by-case basis and that the documentation required by interested refiners should not be more extensive than that required for normal secretarial determinations of need.

The MMS is not precluding interim sales altogether and will consider each case separately. However, such sales would only be held in the event substantial amounts of royalty oil become available between sales. This would not include oil previously offered and not taken in a sale or taken and then turned back after a sale. The documentation requirements would not be excessive, but the refiners would have to convince MMS that there is an immediate need.

Section 208.5 Notice of Royalty Oil Sale

One commenter stated that participation in reallocations of oil should be voluntary. The MMS concurs and has clarified this requirement in the adopted rule.

The MMS asked for comments as to whether or not geographic preferences should be granted in sales of offshore royalty oil as well as sales of onshore royalty oil. Six commenters specifically favored the proposal, and one did not. One other commenter stated that any refiner that qualified under the SBA size-determination criteria should be allowed to participate in sales involving Gulf of Mexico OCS leases regardless of location.

The MMS believes that geographic preference for both onshore and offshore sales is desirable and has changed the rule where applicable. The determination as to which applicants for a given sale will be considered for preference eligibility will be made prior to, and published in, the applicable "Notice of Availability of Royalty Oil." The specific criteria for preference eligibility may not be the same for each sale, but MMS anticipates that eligible applicants directly and substantially involved in the crude oil market for the given area will generally be included in the class.

Section 208.7 Determination of Eligibility

One commenter recommended a change in the lottery procedures used during royalty oil sales and proposed a new section giving such procedures for inclusion in the rule. Other commenters also mentioned that the current lottery procedure results in inequitable allocations, the effects of which are compounded by the procedure used for determining administrative fee distribution.

The MMS is exploring ways to improve the sale procedures. However, MMS believes that it should maintain flexibility in this regard and, therefore, not address specifics in the rule. The MMS will publish specific procedures for each sale in the applicable "Notice of Availability of Royalty Oil." The MMS will also attempt to provide more information concerning leases offered in sales, as requested by one commenter.

Three commenters mentioned that MMS should retain flexibility concerning contract suspensions and exclusions of nonoperating refineries from sales because of the possibility of "force majeure" occurrences.

Contract suspensions and exceptions to the policy of excluding nonoperating refineries pursuant to the provisions of paragraph 208.7(g) are administratively burdensome to MMS, operators, and payors. Contract suspensions will not be allowed except as provided in § 208.17.

One commenter recommended that MMS add a section specifically excluding refiners that owe under previous contracts.

The MMS concurs and has added § 208.7(h) to the final rule. The restriction has been expanded to encompass all delinquent balances by affiliated entities. However, if a purchaser or affiliated entity has appealed a billing and posted a surety in accordance with the contract terms and applicable MMS regulations and orders, the balance will not be considered delinquent.

One commenter stated that the total capacities of all affiliated refineries should be used in determining eligibility. This is MMS policy.

Section 208.8 Transportation and Delivery

Six commenters voiced serious concern over the provisions of proposed § 208.8(e). Most were concerned that MMS could establish inaccessible delivery points and then require the operators to designate alternate delivery points at operator or lessee expense. One of the commenters stated that MMS should bear the cost of transportation if the delivery point is not on or adjacent to the lease and another stated that operators are not legally obligated to incur any delivery costs for RIK oil.

The concern created by the proposed rule is apparently the result of unclear provisions, and MMS has rewritten § 208.8 in an attempt to clarify this and other matters discussed below. Onshore leases typically contain the provision that royalty oil taken in kind must be delivered by the lessee on or adjacent to the lease at no cost to the lessor in tanks provided by the lessee. If this can be accomplished, there should be no problem providing the royalty oil to the purchaser. However, in instances where onshore oil flows directly from the wellhead into a closed pipeline system or is otherwise inaccessible on or adjacent to the lease, the operator must designate an alternate delivery point and deliver the royalty oil to that point at the operator's or lessee's own expense. This provision merely implements onshore lease provisions.

The offshore leases which allow MMS to designate onshore delivery points also provide for payment of certain transportation costs to such points, and this is provided for in § 208.8(b). The MMS designated onshore delivery point will generally be the first onshore point at which the price of the royalty oil, including transportation costs, may be established and at which the purchaser will be able to exchange or take delivery of the oil. An onshore delivery point for offshore royalty oil will not necessarily be a location where there is physical access to the oil. This has been clarified in the definition at § 208.2. The costs of transportation occurring prior to the designated delivery point will be included in the price of the royalty oil billed to the purchaser. The MMS will reimburse the lessee for the reasonable costs of transportation to the designated delivery point in an amount not to exceed the transportation allowance determined pursuant to 30 CFR Part 206. Beyond the designated delivery point, transportation costs or exchanges of oil and related transportation costs will be the sole responsibility of the purchaser.

In related comments, five commenters stated that the provisions of 30 CFR Part 206 do not require MMS approval of transportation costs and that operators should be reimbursed for 100 percent of the costs associated with transporting the royalty oil to the designated delivery point. One commenter objected to referring to 30 CFR Part 206 while it is in the rulemaking process. Three commenters stated that the method and timing of transportation reimbursements should be addressed in this rule.

The use of the phrase "approved by MMS" in the proposed § 208.8(c) was inappropriate and it has been changed to "determined pursuant to 30 CFR Part 206" in the final rule at § 208.8(b). The question of whether or not 100 percent of the costs should be reimbursed is outside of the context of this rule and should be addressed in the rulemaking process for 30 CFR Part 206. Likewise, discussions of the method and timing of transportation reimbursements are beyond the scope of this rulemaking. These procedures are addressed in proposed 30 CFR Part 206 and the "AFS Oil and Gas Payor Handbook." The MMS does not consider it inappropriate to refer to 30 CFR Part 206 in this rule because references pertain to whatever version of that rule is in effect. In addition, nothing contained in this rule should prejudice the rulemaking process for 30 CFR Part 206.

One commenter stated that refunds of transportation costs for OCS RIK are outside the purview of sections 10(a) and 10(b) of the OCSLA. The same commenter stated that refunds stemming from adjustments for OCS RIK should not trigger OCSLA restraints.

The MMS is planning to propose regulations in the near future relating to a variety of section 10 issues, including those identified by the commenter.

Section 208.9 Agreements

Two commenters stated that purchasers should not have to pay bonuses other than quality differentials for oil exchanged for royalty oil in closed delivery systems. Another commenter suggested that it is unfair for MMS to pass the risk and responsibility for quality differentials to the lessee and that MMS should bill on the basis of quality delivered and then settle with the lessee on any difference. Another stated that MMS should require that quality differential agreements be in place prior to deliveries.

If a determination is made by the Secretary to take royalties in kind, with delivery of royalty oil to participating RIK refiners, affected lessees are required to provide the same quality of royalty oil to the purchasers that was produced from the leases. If a lessee is unable to provide the royalty portion of actual production from the lease, the lessee must provide crude oil to the purchaser which is equivalent in volume or value to the royalty oil to which the purchaser is entitled. This situation may arise, for example, on offshore royalties when the lease is the royalty measurement point but MMS has designated an onshore delivery point. In instances where a quality differential exists between the royalty oil to which a purchaser is entitled (and for which it is billed) and the oil which actually is delivered, the difference must be resolved between the purchaser and the operator. Historically, lessees and RIK purchasers have been able to resolve any quality differential issues between themselves. The MMS policy is to not be involved in third-party agreements unless requested or in cases where they conflict with terms of royalty oil contracts or regulations governing the RIK Program. Section 208.9(a) provides for the submittal of agreements to MMS relating to the method and costs of delivery of royalty oil, or oil exchanged for it, to the refinery. This requirement pertains to quality differential agreements as well, and the paragraph has been changed accordingly.

Two commenters offered definitions of what constitutes "processing" of crude oil. One was a variation of the "Mandatory Oil Import" definition previously codified at 10 CFR 213.27. The other recommended that MMS state in § 208.9(c) that oil must be processed "into refined petroleum products" and that MMS use the definition of that term which is at section 3(5) of the Emergency Petroleum Allocation Act. The MMS has adopted this latter suggestion and has made the revision in § 208.9(c) and added a modified definition in 208.2.

Section 208.10 Notices

One commenter stated that the notification of termination in § 208.10(c) should be required in all cases. Two others requested 60-day and 45-day notices of termination, respectively.

The MMS policy is to give notices of termination as far in advance as possible, preferably at least 30 days. To require a 30-day notice in all cases would unduly restrict MMS's flexibility in those rare instances where immediate termination is required for unforeseen reasons. Future contracts will contain provisions requiring the refiner to provide 45-day notices of termination in most cases. The MMS will notify operators as soon as possible upon such notice, thereby giving notice more than 30 days prior to the effective termination date.

One commenter stated that the notice required at § 208.10(a) should be in writing and should specify delivery points. Another stated that there should be a prohibition in regard to changing delivery points.

It is MMS's policy to give all notices concerning the election to take or terminate royalty oil in kind both by telephone and in writing. It is also MMS's policy to specify delivery points for offshore oil in the letters notifying operators of elections to take royalty oil in kind. The rule has been clarified to reflect this policy. The MMS does not generally change delivery points without the concurrence of the operator, but it must maintain the ability to do so in cases where the lease provisions allow MMS to designate a delivery point.

One commenter recommended that the word "lessee" in the first sentence of § 208.10(d) be changed to "operator."

The MMS concurs and has changed "lessee" to "operator" wherever it appeared in § 208.10.

Section 208.11 Surety Requirements

Three commenters stated that the surety costs are excessive and that the letter of credit term should be reduced. Three others stated that the requirements are a real improvement but hoped that the requirements could be reduced even further by streamlining the reporting and billing process.

The MMS has studied the surety requirements extensively and believes that the proposed requirements are as low as they can be and still provide the necessary protection. There was some confusion as to how long a letter of credit must be in effect following contract termination. The MMS has therefore added a sentence to § 208.11(b) allowing a clause in each letter of credit specifically limiting such time period to 6 months. The requirements cannot be reduced further unless the reporting and billing period is reduced, which is not possible within the framework of AFS unless MMS increases the amount of the initial estimated payment. This would be counter-productive.

Section 208.13 Reporting requirements

One commenter requested a provision that would require purchasers to provide sureties to operators because the operators are responsible for overdeliveries. In related comments, four commenters stated that the liabilities, including interest, that may be incurred by the payors for underbillings as a result of reporting errors are unfair and punitive. Generally, these commenters feel that the operator's only obligation is to transfer royalty oil taken in kind to the purchaser and that the operator has no duty to be a guarantor of the value or receipt of such royalty oil.

The MMS cannot agree that purchasers should be made to provide sureties to cover the possibilities of overdeliveries. It also does not consider holding the payors responsible for their reporting errors to be unfair or punitive. The payors are responsible for correct reporting of royalties whether taken in

kind or paid in value. It follows that they should also be responsible to ensure that deliveries of RIK oil are correct. It is interesting that most of these same commenters oppose the requirement in § 208.13(a) for reporting royalty oil entitlements and deliveries on Form MMS–4071. This requirement was added to protect the operators and payors as well as the purchasers and MMS. The MMS's experience in reconciliations of royalty oil contracts over the past 3 years has shown that payor reporting on Form MMS–2014 often has not matched entitlements and/or deliveries. The requirement is an attempt to provide a means to catch these errors, as much as is possible without a full audit, before the payors become liable for the resultant losses of revenue. In summary, MMS believes that the provisions for reporting and for liability in cases of reporting or delivery errors are necessary to protect all parties whenever possible, and they will be retained in the final rule.

Three commenters stated that purchasers should be paid interest by MMS when overbilled. Another comment on interest was that working interest owners should be paid interest on "underpayments from eligible refiners for late payments on any excess oil delivered."

The MMS currently does not have legal authority to pay interest on overbillings. However, this issue is being reviewed outside of the context of this rule. If there is a change in MMS's interest payment authority, it will be implemented in the RIK Program to the extent it is applicable. Regarding the latter comment, it is the working interest owner's responsibility to ensure that the correct volumes of royalty oil are made available to the purchaser, and any problems related to overdeliveries are matters to be handled between the owner and the purchaser.

Operators and other interested parties should note that § 208.8(c) of the final rule provides for deliveries to be made not later than the last day of the calendar month immediately following the month in which the oil was produced. This provision should provide time to review production and other records sufficiently to allow for the determination of proper deliveries in a timely manner.

One commenter stated that the provisions of §§ 208.12(b) and 208.13(b) appear to allow MMS to charge double interest.

These paragraphs address separate issues. Section 208.12(b)(i) of the final rule provides for interest payments by RIK purchasers for late payments of invoices. Subparagraph (ii) of this paragraph provides for interest payments by RIK payors for underreported royalty oil. These latter charges may be assessed as a result of late or underreporting, or after an adjustment to a previously reported line is reported by the payor and billed or is billed by MMS as a result of reconciliation, audit, or other procedures. For example, if an operator underreports RIK delivered volumes to MMS, and as a result MMS does not bill the RIK purchaser for the underreported volume, then MMS will bill the RIK purchaser for the value of the underreported volumes, but will bill the operator for interest. The interest will be calculated on the net adjustment from the time the original amount would normally have been due to the time the adjusted amount was paid. Section 208.13(b) interest assessments are related to the amounts which are unrecoverable from a purchaser or surety due to payor error and are, therefore, the responsibility of the payor. Interest will be assessed from the time payment originally would have been due from the purchaser to the time the debt is satisfied by the payor.

Section 208.14 Civil Criminal Penalties

One commenter stated in regard to § 208.14 that civil penalties must be in respect to the source of the oil involved and to the proper statute. The MMS agrees.

Section 208.17 Suspensions for National Emergencies

One commenter stated that operators should receive 60-day notices in suspensions.

Any suspension under this section would be made in the event of a national emergency and would probably be made without any prior notice.

V. Procedural Matters

Executive Order 12291 and Regulatory Flexibility Act

The impact of the final rule is primarily limited to a small portion of the oil industry. In addition, the final rule primarily consolidates and clarifies existing regulations. Although some changes were adopted, they have a minor economic effect. Therefore, the Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Paperwork Reduction Act of 1980

The information collection requirements contained in 30 CFR 208.3 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and have been assigned clearance number 1010–0042.

National Environmental Policy Act of 1969

The Department of the Interior has determined that this final rule is categorically excluded from the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The exclusion is found in the Department's Manual at 516 DM6, Appendix 2, Part 2.4B(1) (a), (b), and (k).

List of Subjects

30 CFR Part 208

Government contracts, Mineral royalties, Petroleum, Public lands-mineral resources, Small businesses.

30 CFR Part 209

Continental shelf, Government contracts, Mineral royalties, Petroleum allocation, Public lands—mineral resources, Small businesses.

Date: October 2, 1987.

J. Steven Griles,

Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, Title 30, Subchapter A of the Code of Federal Regulations is amended as set forth below.

Subchapter A—Royalty Management

30 CFR Part 208 is revised to read as follows:

PART 208—SALE OF FEDERAL ROYALTY OIL

Subpart A—General Provisons

Sec.

Authority: 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1701 *et seq.*; 43 U.S.C.

1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; 43 U.S.C. 1801 *et seq.*; and 31 U.S.C. 9701.

§ 208.1 General

The regulations in this part govern the sale of royalty oil by the United States to eligible refiners. The regulations apply to royalty oil from leases on Federal lands onshore and on the Outer Continental Shelf (OCS).

§ 208.2 Definitions.

"Allotment" means the quantity of royalty oil that DOI determines is available to each eligible refiner that has applied for a portion of the total volume of royalty oil offered in a given royalty oil sale.

"Application" means the formal written request to DOI on Form MMS–4070 by an eligible refiner interested in purchasing a quantity of royalty oil from the approximate volume announced by DOI in a given "Notice of Availability of Royalty Oil."

"Area" or "Region" means the geographic territory having Federal oil and gas leases over which MMS has jurisdiction, unless the context in which those words are used indicates that a different meaning is intended.

"Delivery point" means the point where the lessor, in accordance with lease terms, directs the lessee to deliver royalty oil to a purchaser. Title to the royalty oil, or to the quantity thereof in a commingled stream, passes from the Federal Government to the purchaser at this designated point, which is specified in the royalty oil contract. For onshore leases, the delivery point will be on or adjacent to the lease, except as provided in § 208.8(a) of this part. In instances where an onshore delivery point is designated for offshore royalty oil, such point generally will be the first onshore point where the price of the oil, including transportation costs, can be determined and where the purchaser can either exchange or take delivery of the oil. The Government does not guarantee physical access to the oil at such point.

"Director" means the Director of MMS, who is responsible for its overall direction, or his or her delegate(s).

"DOI" means the Department of the Interior, including the Secretary or his or her delegate(s).

"Eligible refiner" means a refiner of crude oil that meets the following criteria for eligibility to purchase royalty oil:

(1) For the purchase of royalty oil from onshore leases, it means a refiner that qualifies as a small and independent refiner as those terms are defined in sections 3(3) and 3(4) of the Emergency Petroleum Allocation Act, 15 U.S.C. 751 et seq., except that the time period for determination contained in section 3(3)(A) would be the calendar quarter immediately preceding the date of the applicable "Notice of Availability of Royalty Oil." A refiner that, together with all persons controlled by, in control of, under common control with, or otherwise affiliated with the refiner, inputs a volume of domestic crude oil from its own production exceeding 30 percent of its total refinery input of crude oil is eligible to participate in royalty oil sales under this Part. Crude oil received in exchange for such refiner's own production is considered to be that refiner's own production for purposes of this section.

(2) For the purchase of royalty oil from leases on the OCS, it means a refiner that qualifies as a small business enterprise under the rules of the Small Business Administration (13 CFR 121.3–9(a)(1)).

"Entitlement" means the volume of royalty oil from the Federal Government's share of production from a Federal lease which a purchaser is entitled to receive under a royalty oil contract.

"Exchange agreement" means a written agreement between the purchaser and another person for the exchange of royalty oil purchased under this Part for other oil on a volume or equivalent value basis.

"Fair market value" means the value of oil—(1) Computed at a unit price equivalent to the average unit price at which oil 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 oil was sold pursuant to other leases in the same region of the OCS during such period, or

(3) If there were no sales of oil 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, at an appropriate price determined by the Secretary.

"Federal lease" means a contractual agreement with the Federal Government which authorizes the exploration, development, and production of oil and gas on Federal lands onshore or on the OCS.

"Interim sale" means a sale conducted as a result of substantial additional royalty oil becoming available in a specific area prior to the scheduled expiration date of royalty oil contracts in effect for that area.

"Lessee" means any person to whom the United States issues a lease, or any person who has been assigned an obligation to make royalty or other payments required by the lease.

"MMS" means the Minerals Management Service of the Department of the Interior.

"Notice of Availability of Royalty Oil" means a notice published by DOI in the **Federal Register** (and in other printed media when appropriate, such as a newspaper or magazine of general or specialized circulation) to advise interested parties of the availability of royalty oil for purchase by eligible refiners and the approximate volume of royalty oil available to the applicants.

"OCS" means the Outer Continental Shelf, as defined in 43 U.S.C. 1331(a).

"OCSLA" means the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq., as amended by 43 U.S.C. 1801 et seq.).

"Oil" means a mixture of hydrocarbons that existed in the liquid phase in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities and is marketed or used as such. Condensate recovered in lease separators or field facilities is considered to be oil.

"Operator" means any person, including a lessee, who has control of or who manages operations on an oil and gas lease site on Federal onshore lands or on the OCS.

"Payor" means any person responsible for reporting royalties from a Federal lease or leases on Form MMS–2014.

"Person" means any individual, firm, corporation, association, partnership, consortium, or joint venture.

"Preference eligible refiner" means an eligible refiner with at least one operating refinery which is located within the area designated as the preference eligible area in the "Notice of Availability of Royalty Oil." A refiner may be deemed to be a preference eligible refiner if it owns a refinery located in the preference eligible area which is not operational if the refiner meets the requirements of § 208.7(g) of this part.

"Purchaser" means anyone who acquires royalty oil sold by DOI under the Federal Government's Royalty-in-Kind (RIK) Program and who has a contractual obligation under an agreement to purchase royalty oil.

"Reallocation" means an offering of royalty oil previously allocated in a specific sale but subsequently turned

back to MMS. A reallocation would only be made if substantial amounts of royalty oil are turned back.

"Refined petroleum product" means gasoline, kerosene, distillates (including Number 2 fuel oil), refined lubricating oils, or diesel fuel.

"Royalty oil" means that amount of oil that DOI takes in kind in partial or full satisfaction of a lessee's royalty or net profit share obligations as determined by whatever lease interest the lessee holds under an applicable mineral leasing law.

"Secretary" means the Secretary of the Department of the Interior or his/her delegate(s).

"Section 6 lease" means an oil and gas lease originally issued by any State and currently maintained in effect pursuant to section 6 of the OCSLA.

"Section 8 lease" means an oil and gas lease originally issued by the United States pursuant to section 8 of the OCSLA.

§ 208.3 Information collection.

The information collection requirements contained in this Part have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3504(h). The forms and approved OMB clearance numbers are as follows:

Form No.	Name and filing date	OMB No.
MMS-4070	Application for the Purchase of Royalty Oil (due prior to the date of sale in accordance with the instructions in the "Notice of Availability of Royalty Oil").	1010-0042
MMS-4071	Semiannual Report of Royalty-in-Kind Oil Entitlements and Deliveries (due from the lease operator 7 months after the first month of sale and semiannually thereafter).	1010-0042

The information is being collected by MMS to meet congressionally mandated accounting and auditing responsibilities relating to Federal mineral royalty management. The information will be used to determine a refiner's eligibility to purchase royalty oil and to timely and accurately account for such purchases. Form MMS-4070 is required to obtain a benefit and Form MMS-4071 is mandatory.

§ 208.4 Royalty oil sales to eligible refiners.

(a) *Determination to take royalty oil in kind.* The Secretary may evaluate crude oil market conditions from time to time. The evaluation will include, among other things, the availability of crude oil and the crude oil requirements of the Federal Government, primarily those requirements concerning matters of national interest and defense. The Secretary will review these items and will determine whether eligible refiners have access to adequate supplies of crude oil and whether such oil is available to eligible refiners at equitable prices. Such determinations may be made on a regional basis. The determination by the Secretary shall be published in the **Federal Register** concurrent with or included in the "Notice of Availability of Royalty Oil" required by 30 CFR 208.5.

(b) *Sale to eligible refiners.* (1) Upon a determination by the Secretary under paragraph (a) of this section that eligible refiners do not have access to adequate supplies of crude oil at equitable prices, the Secretary, at his or her discretion, may elect to take in kind some or all of the royalty oil accruing to the United States from oil and gas leases on Federal lands onshore and on the OCS. The Secretary may authorize MMS to offer royalty oil for sale to eligible refiners only for use in their refineries and not for resale (other than under an exchange agreement).

(2) All sales of royalty oil from onshore leases will be priced at the royalty value that would have been determined for that oil pursuant to 30 CFR Part 206 had the royalties been paid in value rather than taken in kind. All sales of royalty oil from OCS leases will be priced at the fair market value of the oil including associated transportation costs to the designated delivery point, if applicable.

(3) An eligible refiner must have a representative at a sale in order to participate. The Secretary may, at his or her discretion, establish purchase limitations and withhold any royalty oil from any offering.

(4) The MMS will recover the administrative costs of the RIK Program through the collection of administrative fees. The fees will consist of an initial nonrefundable contract fee for each executed contract and a monthly variable charge applied to each lease under contract. The amount of the initial contract fee shall be determined prior to a sale and published in the "Notice of Availability of Royalty Oil." The initial contract fee will be payable in equal installments due at the end of the first and second months of the contract. These contract fees will be applied against the RIK Program's administrative costs, and the remainder of the administrative costs will be recovered through the monthly variable charges per lease, which will be billed and payable concurrently with the monthly actual billings for royalty oil. The rate per lease will be determined by dividing the remaining recoverable administrative costs by the total number of leases under contract. The rate may change depending upon whether total administrative costs change and/or whether the number of leases taken in kind changes from one month to another. In instances where production from a lease is sold on a percentage basis to two or more purchasers, each percentage portion of the lease will be considered a separate lease for purposes of administrative fee determination.

(c) Upon a determination by the Secretary under paragraph (a) of this section that eligible refiners do have access to adequate supplies of crude oil at equitable prices, MMS will not take royalties in kind from oil and gas leases for exclusive sale to such refiners. Such determinations may be made on a regional basis.

(d) *Interim sales.* The MMS generally will not conduct interim sales. However, interim sales may be held at the discretion of the Secretary if substantial addition royalty oil becomes available. The potentially eligible refiners, individually or collectively, must submit documentation demonstrating that adequate supplies of crude oil at equitable prices are not available for purchase. Although sufficient documentation must be submitted, it is not mandatory for each potentially eligible refiner to participate in a submission of such documentation to be determined eligible. The documentation must be submitted to MMS for a determination as to whether an interim sale is needed.

§ 208.5 Notice of royalty oil sale.

If the Secretary decides to take royalty oil in kind for sale to eligible refiners, MMS will issue a "Notice of Availability of Royalty Oil" specifying the manner in which the sale is to be effected, the approximate quantity of royalty oil to be offered, information required in applications, the closing date for the receipt of applications for royalty oil, and other general administrative details concerning the application, allocation, and contract award process for the royalty oil. The Notice will describe generally the terms under which the royalty oil contracts will be awarded and will specify which applicants will be deemed preference eligible refiners in the sale proceedings. The Notice will also contain guidelines for reallocation procedures in the event substantial quantities of royalty oil sold in that specific sale are subsequently turned back to MMS. Only those purchasers that hold ongoing contracts from that specific sale will be allowed to participate in any reallocation, which

would be voluntary, and then only if they continue to meet eligibility requirements as set forth in 30 CFR 208.2 and 208.7. If a reallocation is held prior to the effective date of the contracts as specified in the "Notice of Availability of Royalty Oil", all eligible refiners that selected a lease or leases in that specific sale would be allowed to participate, pursuant to the procedures in the Notice.

§ 208.6 General application procedures.

(a) To apply for the purchase of royalty oil, an applicant must file a Form MMS–4070 with MMS in accordance with the instructions in the "Notice of Availability of Royalty Oil" and in accordance with any instructions issued by MMS for the completion of Form MMS–4070. The applicant will be required to submit a letter of intent from a qualified financial institution stating that it would be granted surety coverage for the royalty oil for which it is applying. The letter of intent must be submitted with Form MMS–4070.

(b) In addition to any other application requirements specified in the Notice, the following information is required on Form MMS–4070 at the time of application:

(1) Name and address of the applicant, the location of the applicant's refinery or refineries, and disclosure of the applicant's affiliation with any other persons.

(2) The capacity of the applicant's refineries in barrels of crude oil throughput per calendar day and a tabulation for the past 12 months of oil processed for each refinery, identified as to source (from own production or from other sources).

(3) Identification of any Government royalty oil contracts under which the applicant is currently receiving royalty oil.

(4) Identification of the locations (area/region and State) where the applicant proposes to purchase royalty oil, the volume of oil requested, and the specific refineries in which the oil will be refined.

(5) A certification from the applicant that it is an eligible refiner for the purchase of Government royalty oil, as defined in § 208.2 of this Part.

§ 208.7 Determination of eligibility.

(a) The MMS will examine each application and may request additional information if the information in the application is inadequate. An application received after the close of the application period will be rejected. If additional information is requested by MMS, it must be received by the time specified or the application will be rejected.

(b) After the close of the application period and the receipt of any additional requested information, MMS will determine which applicants may participate in the royalty oil sale and the quantity of royalty oil which each applicant is authorized to purchase.

(c) When applications are filed by two or more eligible refiners for the same royalty oil, the oil will be allocated among such applicants on an equitable basis as determined by MMS. Preference eligible refiners will be given priority in the allocation procedures in sales and subsequent reallocations of royalty oil.

(d) No eligible refiner shall be awarded contracts for volumes of royalty oil that, when added to volumes of other Federal royalty oil being received, are in excess of 60 percent of the combined refinery capacity of that refiner.

(e) The MMS may exclude any section 6 lease from a royalty oil sale.

(f) If two or more eligible refiners are related through common ownership or control or otherwise affiliated, only one of them shall be entitled to an allotment of royalty oil from a specific sale.

(g) Any applicant whose refinery is not in operation during the 60-day period prior to the date of the royalty oil sale shall not be entitled to participate in the sale unless such applicant self-certifies and demonstrates to the satisfaction of MMS that it will begin operations by the first month in which oil becomes available under a royalty oil contract. If operations do not begin by that month, MMS will terminate the contract.

(h) Applicants or purchasers that have delinquent balances with MMS as of the date of a royalty oil sale or subsequent reallocation will not be allowed to participate in that sale or reallocation. If a person which is controlled by, in control of, under common control with, or otherwise affiliated with an applicant or purchaser has such delinquent balances, the applicant or purchaser will not be allowed to participate in a royalty oil sale or reallocation. To the extent a purchaser or affiliated person has appealed a billing and posted a surety in accordance with the contract terms and applicable MMS regulations or other law, the balance shall not be considered delinquent.

(i) A purchaser must meet the eligibility criteria on the date of contract issuance. However, a change in a purchaser's eligibility status during the term of the contract will not affect the purchaser's right to continue that contract until its term expires, including any extensions thereof.

§ 208.8 Transportation and delivery.

(a) The lessee shall deliver royalty oil from onshore leases to the purchaser at a point on or adjacent to the lease pursuant to the terms of the lease. If the purchaser does not have access to its onshore royalty oil entitlement at facilities on or adjacent to the lease, the operator of the lease must designate an alternate delivery point at no additional cost to the purchaser or the Government. The purchaser must have physical access to the oil at the alternate delivery point and such point must be approved by MMS.

(b) The lessee shall deliver royalty oil from section 8 offshore leases issued after September 1969 at a delivery point to be designated by MMS. The lessee shall deliver royalty oil from section 8 offshore leases issued before October 1969 or from section 6 leases at a delivery point to be designated by the lessee. If the delivery point is on or immediately adjacent to the lease, the royalty oil will be delivered without cost to the Federal Government as an undivided portion of production in marketable condition at pipeline connections or other facilities provided by the lessee, unless other arrangements are approved by MMS. If the delivery point is not on or immediately adjacent to the lease, MMS will reimburse the lessee for the reasonable cost of transportation to such point in an amount not to exceed the transportation allowance determined pursuant to 30 CFR Part 206. The MMS will include such transportation costs in the price charged for the oil taken in kind to reflect the value of the oil at the delivery point. Arrangements for delivery of the royalty oil from, or exchange of the oil at, the delivery point, and related transportation costs, are the responsibility of the purchaser of the royalty oil. In addition, quality differentials between the royalty oil to which a purchaser is entitled and the oil which is made available at the delivery point are matters to be resolved between the purchaser and the operator.

(c) When the purchaser has physical access to the royalty oil at the delivery point, the lessee shall deliver such oil in marketable condition at pipeline connections or other facilities designated by MMS. If the lessee is unable to provide the royalty portion of actual production from the lease, the lessee must provide crude oil to the purchaser which is equivalent in volume or value to the royalty oil to which the purchaser is entitled. The lessee will deliver the royalty oil to the purchaser during normal operating hours and in reasonable quantities and intervals. The

lessee will make available and the purchaser will accept delivery of the royalty oil entitlement no later than the last day of the calendar month immediately following the calendar month in which the oil was produced. Failure to accept deliveries shall constitute grounds for the termination of the contract.

(d) Upon termination of deliveries under a royalty oil contract, the transportation allowance and delivery point designation authorized by this section no longer will remain in effect.

§ 208.9 Agreements.

(a) A purchaser must submit to MMS two copies of any written third-party agreements, or two copies of a full written explanation of any oral third-party agreements, relating to the method and costs of delivery of royalty oil, or crude oil exchanged for the royalty oil, from the point of delivery under the contract to the purchaser's refinery. In addition, the purchaser must submit copies of agreements pertaining to quality differentials which may occur between leases and delivery points.

(b) A purchaser may not sell royalty oil which it purchases pursuant to this Part except for purposes of an exchange for other crude oil on a volume or equivalent value basis.

(c) Royalty oil purchased under this part, or crude oil received in exchange for such royalty oil, must be processed into refined petroleum products in the purchaser's refinery.

§ 208.10 Notices.

(a) The MMS shall notify each operator, by certified mail, of the Secretary's decision to take royalty oil in kind. This notice shall be mailed at least 45 days in advance of the effective date of delivery and will specify delivery points for offshore oil for OCS leases issued after September 1969.

(b) Deliveries of royalty oil may be partially terminated only with the written approval of the Director, MMS.

(c) Before terminating the delivery of royalty oil taken in kind, MMS, if possible, will notify each operator by certified mail of the change in requirements at least 30 days in advance of the effective date.

(d) After MMS notification that royalty oil will be taken in kind, the operator shall be responsible for notifying each working interest on the Federal lease. As soon as practicable after the date of each royalty oil sale, MMS will publish in the Federal Register a notice of the leases from which royalty oil will be taken, the purchasers of the royalty oil, and the leases from which royalty oil deliveries will be discontinued on terminated contracts.

(e) A purchaser cannot transfer, assign, or sell its rights or interest in a royalty oil contract without written approval of the Director, MMS. If the purchaser changes ownership or its assets are sold or liquidated for any reason, it cannot transfer, assign, or sell its rights or interest in the royalty oil contract without written approval of the Director, MMS. Without express written consent from MMS for a change in ownership, the royalty oil contract shall be terminated. The successor company must meet the definition of an eligible refiner in § 208.2 of this part for MMS to consider assignment of the royalty oil contract.

§ 208.11 Surety requirements.

(a) The eligible purchaser, prior to execution of the contract, shall furnish MMS a surety, acceptable to MMS, in an amount equal to the estimated value of royalty oil which could be taken by the purchaser in a 99-day period, plus related administrative charges. The MMS may increase the amount of the surety when necessary to protect the Government's interest or may decrease the amount of the surety where necessary or appropriate to further the purposes of the RIK Program.

(b) If a letter of credit is furnished as surety, it must be effective for a 9-month period beginning the first day the royalty oil contract is effective, with a clause providing for automatic renewal monthly for a new 9-month period. The purchaser or its surety company may elect not to renew the letter of credit at any monthly anniversary date, but must notify MMS of its intent not to renew at least 30 days prior to the anniversary date. The MMS may grant the purchaser 45 days to obtain a new surety. If no replacement surety is provided, MMS will terminate the contract effective at least 6 months prior to the expiration date of the letter of credit. Notwithstanding the above provisions, the letter of credit also may contain a clause providing for automatic termination 6 months after the royalty oil contract terminates.

(c) All sureties must be in a form acceptable to MMS and must include such other specific requirements as MMS may require to adequately protect the Government's interests.

(d) Sureties under this section must be either surety bonds or irrevocable letters of credit from financial institutions acceptable to MMS.

§ 208.12 Payment requirements.

(a) All payments to MMS by a purchaser of royalty oil will be due on the date and at the location specified in the contract, or, if there is no contractual provision, as specified by MMS. The purchaser shall tender all payments to MMS in accordance with 30 CFR 218.51. Payments made by a payor pursuant to the requirements of paragraph (b) of this section and § 208.13(b) also shall be tendered in accordance with 30 CFR 218.51.

(b)(1) Payments from a purchaser of royalty oil not received by MMS when due, or that portion of the payment less than the full amount due, will be subject to a late payment charge equivalent to an interest assessment on the amount past due for the number of days that the payment is late at the underpayment rate applicable under section 6621 of the Internal Revenue Code of 1954.

(2) The MMS may assess interest to a payor for any underpayments which are the result of the payor's late or underreporting, or for adjustments reported by the payor, or made as a result of audit, reconciliation, or other procedures. The interest for late payment and underpayment will be assessed pursuant to 30 CFR 218.54.

(c) If payment for royalty oil is not received by the due date specified in the contract, a notice of nonreceipt will be sent to the purchaser by certified mail. If payment is not received by MMS within 15 days from the date of such notice, MMS may cancel the contract and collect under the surety.

(d) If the purchaser disagrees with the amount of payment due, it must pay the amount due as computed by MMS, unless the purchaser appeals the amount and posts acceptable surety pursuant to the provisions of 30 CFR Part 243. The MMS may, at its discretion, waive the appeal surety requirements if it determines that the contract surety is sufficient protection for an amount under appeal.

§ 208.13 Reporting requirements.

(a) In addition to any other applicable royalty reporting requirements, the lessee/operator shall provide to MMS a semiannual report, by lease, of the monthly entitlements and actual deliveries of royalty oil to purchasers on Form MMS–4071, "Semiannual Report of RIK Oil Entitlements and Deliveries."

(b) If MMS underbills a purchaser under a royalty oil contract because of a payor's underreporting or failure to report on Forms MMS–2014 pursuant to 30 CFR 210.52, the payor will be liable for payment of such underbilled amounts, plus interest, if they are unrecoverable from the purchaser or the surety related to the contract.

§ 208.14 Civil and criminal penalties.

Failure to abide by the regulations in this part may result in civil and criminal penalties being levied on that person as specified in sections 109 and 110 of the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1719–20, and regulations at 30 CFR Part 241. Civil penalties applicable under the OCSLA and the Mineral Leasing Act of 1920 may also be imposed.

§ 208.15 Audits.

Audits of the accounts and books of lessees, operators, payors, and/or purchasers of royalty oil taken in kind may be made annually or at such other times as may be directed by MMS. Such audits will be for the purpose of determining compliance with applicable statutes, regulations, and royalty oil contracts.

§ 208.16 Appeals.

Except as provided in § 208.12(d) of this part, orders or decisions issued under the regulations in this part may be appealed as provided in 30 CFR Parts 243 and 290.

§ 208.17 Suspensions for national emergencies.

The Secretary of the Department of the Interior, upon a recommendation by the Secretary of Defense or the Secretary of Energy and with the approval of the President, may suspend operations under these regulations and suspend royalty oil contracts during a national emergency declared by the Congress or the President.

PART 209—[REMOVED]

30 CFR Part 209 is removed.

[FR Doc. 87–25103 Filed 10–29–87; 8:45 am]
BILLING CODE 4310-MR-M

federal register

Friday
October 30, 1987

Part V

Equal Employment Opportunity Commission

29 CFR Part 1613

Equal Employment Opportunity in the Federal Government; Complaints of Discrimination; Final Rule

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1613

Equal Employment Opportunity in the Federal Government; Complaints of Discrimination

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission proposed to revise its regulations on equal employment opportunity in the federal government. 51 FR 29482 (August 18, 1986). The amendments included numerous changes in the investigative, hearing and agency decisionmaking process, and changes in the appellate process. This rule adopts in regulatory form the Commission's Policy Statement on Remedies and Relief for Individual Cases of Unlawful Discrimination. In addition, this rule adopts comprehensive changes to the existing federal sector discrimination complaint process as set out below.

EFFECTIVE DATE: November 30, 1987. The provisions of §§ 1613.215(a)(3), 1613.283, 1613.513, 1613.604(i) and 1613.643 shall apply where the civil action was filed after the effective date of these regulations.

FOR FURTHER INFORMATION CONTACT: Nicholas M. Inzeo, Assistant Legal Counsel, at 634–6592.

SUPPLEMENTARY INFORMATION: The Equal Employment Opportunity Commission issued a Notice of Proposed Rulemaking, 51 FR 29482 (August 18, 1986), proposing, *inter alia*, comprehensive changes in the investigation of discrimination complaints in the federal sector and in the appellate and enforcement procedures used by the Commission. In addition, the Commission proposed to incorporate the Policy Statement on Remedies and Relief for Individual Cases of Discrimination into its regulations on equal employment opportunity in the federal sector. The proposal to incorporate the Policy Statement generated a good deal of comment. After a careful review of the comments, the Commission has decided to incorporate the Policy Statement into its regulations. At this time the Commission is issuing comprehensive final regulations and is adopting the Policy Statement as Appendix A to the regulations. A summary of the comments received and changes made to the regulations is set out below.

The proposed amendment to § 1613.212 would permit employees and applicants to bring a complaint against any agency they believe engaged in discriminatory conduct. There were no comments criticizing this approach, but a number of commenters suggested clarification of the regulation to make it clear that the complaint must be filed with the agency alleged to have committed the discrimination. The words "by that agency" have been added to make this clarification.

A new § 1613.213(b) is added to require notice to aggrieved persons of the election of remedies required by 5 U.S.C. 7121(d) so that they can make informed choices.

A number of issues were addressed by the commenters in relation to § 1613.214. There was general agreement about the provisions concerning time limits for filing complaints. A number of commenters sought more detail in the provision concerning official time. The Commission has supplied more detail on this issue in a management directive. The standard for official time, reasonableness, remains the same. In response to comments, the regulation now provides for official time to "prepare" complaints, rather than the prior language of "present" complaints.

The provision dealing with disqualification if there is conflict of interest has been revised in response to comments. Commenters sought more guidance on the meaning of conflict of interest and wanted to include "conflict of position" in the regulation. The regulation now permits disqualification when representation would conflict with the representative's duties. As an example, a counselor could not serve as a representative for either party.

One commenter raised the question of rights of the alleged discriminating officials in relation to this section. Comments were raised elsewhere suggesting that the alleged discriminating official be given more rights in this process. The Commission does not agree with those comments. The central purpose of the complaint processing system is to determine when discriminatory conduct has occurred, not to provide rights to those who took the actions. The discrimination complaint process does not determine the rights of those who have taken the actions, and therefore, the Commission believes it is unnecessary and wasteful to build in regulatory rights in that process for those individuals. All references to the concept of an "alleged discriminating official" have been eliminated from the regulations.

Section 1613.215 was proposed to state new grounds for rejection or cancellation of complaints including cancellation for failure to accept full relief. A number of commenters suggested expanding and clarifying the reason for rejection of complaints. The Commission agrees and has redrafted subsection (a) to require rejection or cancellation in seven instances. Claims currently pending before an agency or that have been decided by the agency or the court are added as bases for rejection. A non-mixed case complaint that alleges that an agency is proposing to take action that may be discriminatory is to be rejected under § 1613.215(a)(2). Section 1613.215 does not apply to mixed cases, however; mixed case complaints on proposals are governed by § 1613.406. The Commission rejects the comment that "frivolous" complaints be rejected. The term is too vague to permit wholesale cancellation of complaints. Cancellation of a complaint where a civil action is filed was supported by the comments, but some commenters wanted the complaint processing resumed if the court rejected the complaint or if the court allegations did not contain all the allegations of the administrative complaint. The Commission is not adopting those comments because they are contrary to the purpose of the regulatory provision, i.e., they would permit administrative and judicial processing to occur together. The provision adopted by the Commission is closely analogous to its private sector complaint processing regulation. See 29 CFR 1601.28(a)(3). Subsection 1613.215(a)(4) has been amended to refer specifically to 29 CFR 1613.214. Subsection 1613.215(a)(6) permits agencies to issue final agency decisions along with a dismissal for failure to prosecute. If, on appeal , the reasons for failure to prosecute are not upheld and the complainant had requested a hearing, then the complaint will be remanded to the agency for a hearing.

A number of comments were raised about the dismissal for failure to accept complete relief. The final regulation adopts a comment from a number of agencies, i.e., that the certification of full relief be made by the Director of EEO rather than by the General Counsel. No requirement is placed on the agency to admit discrimination in its settlement offer. The provision is intended to apply to the full panoply of employment decisions, not just nonselection. The provision on complete relief has been modified to make explicit reference to § 1613.271 where the regulations include the Commission's Policy Statement. The new provision also adopts language similar to that in § 1613.221(c) that the

agency decision whether to discipline need not be included in a settlement offer of full relief. The approach of § 1613.221(c) has worked well in the federal sector and the Commission has decided to retain that approach.

One agency questioned whether § 1613.216 should require that comparative information be maintained in the complaint file by name. The Commission believes that comparative evidence, whether it be of an individual or a group, is of such importance that a complete identification should be made in the complaint file. A complete identification will ensure that the information is accurate.

The settlement provisions of § 1613.217 raised a number of comments. Some commenters wanted the regulations to permit the complainant to accept an offer of settlement and unilaterally sever the issue of attorney's fees, or require agencies to always offer backpay and attorney's fees in a settlement. The Commission believes that the settlement process is a voluntary one. The decision of whether an agency will settle, and on what terms, is left to the discretion of the agency.

A number of commenters suggested that the regulation identify an individual to receive allegations of noncompliance with a settlement and time limits for filing allegations and appeals. The Commission agrees and has added those provisions to subsection (b). Some commenters questioned why reinstatement of a complaint can be a resolution for an alleged breach of a settlement. If the facts demonstrate that the parties reasonably did not have the same understanding of the agreement, then reinstatement of the complaint could be the most appropriate result.

In response to the comments on § 1613.218, the Commission made a number of clarifying revisions. Three significant changes were made. First, the authority of Administrative Judges, in response to a party's request, to order production of evidence or witnesses was clarified. Second, the regulation provides parties an opportunity to explain nonproduction before an unfavorable order is issued. If a party's explanation demonstrates that it has not acted in bad faith, an adverse inference would not be drawn. Third, the regulation provides the parties an opportunity to present arguments why a hearing should be conducted on a complaint. Most commenters agreed that hearings should be closed since it is part of the investigation of the complaint.

Section 1613.219 is added to address the election between the negotiated grievance process and this process, and § 1613.231 continues to indicate that a person may appeal to EEOC from a decision of an agency head or designee on a negotiated grievance.

In response to comments from agencies about the time limit in § 1613.220(d) to issue decisions, the Commission is extending the time to 60 days. Additional requirements are placed on the agency in § 1613.221. This time starts upon "receipt" of the file, rather than upon "submission" as the proposed regulation provided.

The proposed changes to § 1613.221 received very little comment. Clarifying changes were made to subsections (b)(2) and (b)(3). The preponderance of evidence standard is the one used by the courts and is appropriate for the administrative process. Requiring agencies to explain why a recommended decision has been rejected or modified will permit the Commission's Office of Review and Appeals (ORA) to more expeditiously review agency decisions.

Some commenters questioned the Commission's authority in § 1613.235 to reopen an appellate decision at any time. Such authority would be exercised only in an extreme situation to avoid injustice. Some commenters suggested that the grounds for reopening be clarified. The Commission retains these standards because experience has shown that the grounds have not been too broadly or too narrowly interpreted.

Upon coordination of proposed § 1613.239, the Commission has made two changes. The wording of subsection (b) was changed. The Commission intends to work closely with the Office of Special Counsel to obtain enforcement of Commission orders. Subsection (c) was eliminated at the suggestion of the General Accounting Office. A suggestion to move § 1613.240 to follow § 1613.233 was not adopted to avoid the perception that § 1613.240 only applied to § 1613.233.

A number of questions, comments and objections concerning the remedial provisions of the Commission's Policy Statement were raised in the context of § 1613.271 and Appendix A. We address the concerns raised about each remedial provision. It should be noted that the Policy Statement applies to private sector and federal sector charges, but contains the admonition that the remedies are to be applied "in appropriate circumstances." Where caselaw dictates that certain remedies not be available, then the Policy Statement should not be read to require those remedies. Prejudgment interest is not available, unless a statute has waived sovereign immunity. *Nagy* v. *Postal Service*, 773 F.2d 1190 (11th Cir. 1985).

The posting requirement is not redundant of notices already required in the federal workplace. It is a general notice of law enforcement activity, like that required by the National Labor Relations Board or the Federal Labor Relations Authority, that dispels the chilling effect that discrimination has on the exercise of employee's rights, assures employees that the status quo has changed, reminds employees of their right to seek relief under the statutes enforced and bolsters the entitlement of complainants to the relief obtained. Notices of a general nature need not name complainants or otherwise impinge on their privacy interests. With the consent of the complainant, the notice can include the name of the complainant.

The requirement of corrective, curative or preventive action will permit the Commission to recommend that discipline be considered by the agency. The Commission will not discipline, or order discipline of, employees directly, but will work closely with the Office of Special Counsel of the Merit Systems Protection Board, which is the established mechanism for taking disciplinary action against employees who engage in a prohibited personnel practice. When an agency does not adequately explain its reason for not taking discipline the Commission will refer the matter to the Special Counsel.

Many commenters objected to the requirement of nondiscriminatory placement. For all the reasons explained below, the Commission believes that nondiscriminatory placement, as a presumptive remedy, unless extraordinary circumstances exist, is the appropriate standard. The remedial provisions of the National Labor Relations Act, after which the remedial provisions of section 717 of Title VII and section 15 of the ADEA are patterned, have long been interpreted to require nondiscriminatory placement, even in those instances where it causes the displacement of an incumbent employee. The nondiscriminatory placement remedy, as enunciated in the Commission's Policy Statement, applies only to individual cases of discrimination and is available only to victims of discrimination.

A presumptive entitlement to nondiscriminatory placement is consistent with the Supreme Court's decisions that backpay and retroactive seniority are presumptive remedies that can be denied only for reasons that would not frustrate the goals of eradicating discrimination and providing make-whole relief. It would not be consistent with the goals of eradicating

discrimination to routinely deny nondiscriminatory placement merely because the employer had filled the position. In the Commission's view, the balance of equities is with the victim of discrimination who would have had the position but for the discrimination, rather than the employee who obtained the position as a result of the employer's discrimination, although the primary burden of the remedy must be borne in all instances by the employing agency, rather than innocent third parties.

The presumption of nondiscriminatory placement is supported by the current regulations, by caselaw and by the practice of other federal sector enforcement agencies. Section 1613.271(a)(1) has, without qualification, required reinstatement of victims of discrimination. In *Parks* v. *Dunlop*, 517 F.2d 785 (5th Cir. 1975), the Department of Justice, representing the government in defense of an employment discrimination suit, conceded that nondiscriminatory placement was an appropriate remedy. The court in *Griffiths* v. *Hampton*, 12 Empl. Prac. Dec. (CCH) ¶ 11,038 (D.D.C. 1976), found that denial of the presumptive nondiscriminatory placement remedy would be inconsistent with the purposes of the statute. The practice of the Merit Systems Protection Board and the Federal Labor Relations Authority has also been to use a presumptive placement remedy. As Appendix A demonstrates, the agency's obligation to provide nondiscriminatory placement is satisfied by an offer of the position denied or by the offer of a substantially equivalent position.

It is assumed that agencies will, when possible, prefer to offer a substantially equivalent position rather than displacing an incumbent to make way for a victim of discrimination, since such displacement would require a new placement of two persons, the victim and the person displaced. Such a preference is consistent with the Remedies Policy, which seeks to ensure that the victim is made whole, but does not forbid agencies from accomplishing that objective in the least disruptive manner possible.

Clarifying changes have been made to § 1613.271 and Appendix A. Remedies available to an applicant for employment are clarified in subsection (b), and subsection (a) has been amended to make clear that Appendix A is designed to provide a fuller explanation of the remedial provisions. The attorney's fee provision is changed to clearly permit calculation of fees by first arriving at a lodestar figure and to explicitly apply to Rehabilitation Act claims. The parenthetical in subsection (1)(b) of the appendix was changed to reflect the absence of an upper age limit.

In response to comments, the Commission has changed §§ 1613.283 and 1613.513 to require termination of a complaint if a civil action is filed involving that complaint. The provision continues to be mandatory to assure that dual administrative and judicial processing not occur.

A number of changes were made to the subpart on class complaints to conform their requirement to the individual complaint regulations. Section 1613.609(d), providing for a fairness hearing for settlement of class complaints, received only a few comments. Clarifying changes were made to subsection (d) to specify who receives a petition and to specify that the Administrative Judge will make a recommendation on the petition.

There are a number of matters of uncertainty concerning the relationships among federal agencies, the Equal Employment Opportunity Commission, the Merit Systems Protection Board, and the Special Counsel, as they relate to the section 1613 regulations. These matters will be addressed separately in the near future.

List of Subjects in 29 CFR Part 1613

Equal employment opportunity, Government employees.

For the Commission.

Clarence Thomas,

Chairman.

Accordingly, 29 CFR Part 1613 is amended as follows:

PART 1613—[AMENDED]

1. The authority citation for Part 1613 is revised to read as follows:

Authority: 42 U.S.C. 2000e–16; 29 U.S.C. 633a; 29 U.S.C. 791 and 794a; 29 U.S.C. 206(d); E.O. 10577, 3 CFR 218 (1954–1958 Comp.); E.O. 11222, 3 CFR 306 (1964–1965 Comp.); E.O. 11478, 3 CFR 133 (1969 Comp.); E.O. 12106, 44 FR 1053 (1978); Reorg. Plan No. 1 of 1978, 43 FR 19807 (1978) unless otherwise noted. The authority citations for all subparts of Part 1613 are deleted and the textual authority citations, except in subpart D, are deleted.

2. Section 1613.211 is revised to read as follows:

§ 1613.211 General.

An agency shall insure that its regulations governing the processing of complaints of discrimination on grounds of race, color, religion, sex, national origin, age or handicapping condition comply with the principles and requirements in §§ 1613.212 through 1613.222, except where excluded in § 1613.514.

3. Section 1613.212(a) is revised to read as follows:

§ 1613.212 [Amended]

(a) The agency shall provide in its regulations for the acceptance of a complaint from any aggrieved employee or applicant for employment who believes that he or she has been discriminated against by that agency because of race, color, religion, sex, national origin, age or handicapping condition. A complaint may also be filed by an organization for the aggrieved person with that person's consent.

* * * * *

4. Section 1613.213 is amended by revising the first sentence of paragraph (a), by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), and by adding new paragraph (b) as follows:

§ 1613.213 [Amended]

(a) The agency shall require that an aggrieved person who believes that he or she was discriminated against because of race, color, religion, sex, national origin, age or handicapping condition consult with an Equal Employment Opportunity Counselor to try to resolve the matter. * * *

(b) Upon initial contact or as soon thereafter as possible, the Equal Employment Opportunity Counselor shall inform each aggrieved person of the possible applicability of 5 U.S.C. 7121(d) to the alleged discriminatory action. The Equal Employment Opportunity Counselor shall communicate the substance of § 1613.219 concerning the election of remedies to each aggrieved person.

* * * * *

5. Section 1613.214 is revised to read as follows:

§ 1613.214 Filing and processing of complaint.

(a) *Time limits.* (1) An agency shall require that a complaint be submitted in writing by the complainant or representative and be signed by the complainant. The complaint may be delivered in person or submitted by mail. The agency may accept the complaint for processing in accordance with this subpart only if:

(i) The complainant brought to the attention of the Equal Employment Opportunity Counselor the matter causing him/her to believe he/she had been discriminated against within 30 calendar days of the date of the alleged discriminatory event, the effective date of an alleged discriminatory personnel action, or the date that the aggrieved person knew or reasonably should have

known of the discriminatory event or personnel action; and

(ii) The complainant or representative submitted the written complaint to an appropriate official within 15 calendar days after the date of receipt of the notice of the right to file a complaint.

(2) The appropriate officials to receive complaints are the head of the agency, the agency's Director of Equal Employment Opportunity, the head of a field installation, and such other officials as the agency may designate for that purpose. Upon receipt of the complaint, the agency official shall transmit it to the Director of Equal Employment Opportunity or appropriate Equal Employment Opportunity Officer who shall acknowledge its receipt in accordance with paragraph (a)(3) of this section.

(3) A complaint shall be deemed filed on the date it is received, if delivered to an appropriate official, or on the date postmarked if addressed to an appropriate official designated to receive complaints. The agency shall acknowledge, in writing, to the complainant or representative receipt of the complaint and advise the complainant in writing of all administrative rights and of the right to file a civil action as set forth in § 1613.281, including the time limits imposed on the exercise of these rights.

(4) The agency shall extend the time limits in this section when the complainant shows that he/she was not notified of the time limits and was not otherwise aware of them, was prevented by circumstances beyond the complainant's control from submitting the matter within the time limits; or for other reasons considered sufficient by the agency.

(b) *Representation and official time.* (1) At the stage in the processing of a complaint, including the counseling stage under § 1613.213, the complainant shall have the right to be accompanied, represented, and advised by a representative of complainant's choice.

(2) If the complainant is an employee of the agency, he/she shall have a reasonable amount of official time to prepare the complaint if otherwise on duty. If the complainant is an employee of the agency and he designates another employee of the agency as his/her representative, the representative shall have a reasonable amount of official time, if otherwise on duty, to prepare the complaint. The agency is not obligated to change work schedules, incur overtime wages, or pay travel expenses to facilitate the choice of a specific representative or to allow the complainant and representative to confer. However, the complainant and representative, if employed by the agency and otherwise in a pay status, shall be on official time, regardless of their tour of duty, when their presence is authorized or required by the agency or the Commission during the investigation, informal adjustment, or hearing on the complaint.

(3) In cases where the representation of a complainant or agency would conflict with the official or collateral duties of the representative, the Commission (or the agency prior to a hearing on the complaint) may, after giving the representative an opportunity to respond, disqualify the representative.

4. Section 1613.215 is revised to read as follows:

§ 1613.215 Rejection or cancellation of complaint.

(a) The agency head or designee shall reject or cancel a complaint:

(1) That fails to state a claim under § 1613.212 or that states the same claim that is pending before or has been decided previously by the agency;

(2) That alleges that an agency is proposing to take action that may be discriminatory;

(3) That is the basis of a pending civil action in a United States District Court in which the complainant is a party;

(4) That is filed untimely, unless the agency extended the time limits in accordance with § 1613.214(a)(4);

(5) That the complainant elected to pursue under a negotiated grievance procedure as identified in § 1613.219;

(6) That the complainant has failed to prosecute. The agency may cancel an allegation or a complaint for failure to prosecute only after it has provided the complainant with a written request, that includes a notice of the proposed cancellation, to provide certain information or otherwise proceed with the complaint, and the complainant has failed to satisfy the request within 15 calendar days of its receipt. However, instead of canceling for failure to prosecute, the complaint may be adjudicated if sufficient information for that purpose is available; or

(7) If the complainant refuses within 15 calendar days of receipt of an offer of settlement to accept an agency offer of full relief in adjustment of the complaint, provided that the agency's Director of Equal Employment Opportunity, or a designee reporting directly to the Director, has certified in writing that the agency's written offer of relief constitutes full relief. An offer of full relief under this subsection is the appropriate relief in § 1613.271. The offer need not contain the decision whether disciplinary action is necessary, but the basis for the decision shall be recorded separately from the complaint file.

(b) The agency head or designee shall transmit the decision to reject or cancel a complaint by letter to the complainant and the complainant's representative. The decision letter shall inform the complainant of the right to appeal the decision to the Commission, the time limit for filing an appeal with the Commission, and the complainant's right to file a civil action as described in § 1613.281.

5. Section 1613.216 is revised to read as follows:

§ 1613.216 Investigation.

(a) The Equal Employment Opportunity Officer shall advise the Director of Equal Employment Opportunity of the acceptance of a complaint. The Director of Equal Employment Opportunity shall provide for the prompt investigation of the complaint. The person assigned to investigate the complaint shall not occupy a position in the agency that is directly or indirectly under the jurisdiction of the head of that part of the agency in which the complaint arose. The agency shall authorize the investigator to administer oaths and require that statements of witnesses shall be under oath or affirmation, without a pledge of confidence. The investigation shall include a thorough review of the circumstances under which the alleged discrimination occurred, the treatment of members of the complainant's group identified by his complaint as compared with the treatment of other employees in the organizational segment in which the alleged discrimination occurred, and any policies and practices related to the work situation which may constitute, or appear to constitute, discrimination even though they have not been expressly cited by the complainant. Information needed for an appraisal of the utilization of members of the complainant's group as compared to the utilization of persons outside the complainant's group shall be recorded in statistical form in the investigative file, but specific information as to a person's membership or nonmembership in the complainant's group needed to facilitate an adjustment of the complaint or to make an informed decision on the complaint shall, if available, be recorded by name in the investigative file. (As used in this subpart, the term "investigative file" shall mean the various documents and information acquired during the investigation under this section—including affidavits of the

complainant and witnesses, and copies of, or extracts from records, policy statements, or regulations of the agency—organized to show their relevance to the complaint or the general environment out of which the complaint arose.) If necessary, the investigator may obtain information regarding the membership or nonmembership of a person in the complainant's group by asking each person concerned to provide the information voluntarily; he shall not require or coerce an employee to provide this information.

(b) The Director of Equal Employment Opportunity shall arrange to furnish to the person conducting the investigation a written authorization:

(1) To investigate all aspects of complaints of discrimination,

(2) To require all employees of the agency to cooperate with him in the conduct of the investigation, and

(3) To require employees of the agency having any knowledge of the matter complained of to furnish testimony under oath or affirmation without a pledge of confidence.

(c) The Commission may assume responsibility for the investigation of any portion or all of an agency's complaints upon the execution of a memorandum of understanding to this effect with the agency. The agency shall reimburse the Commission for all expenses incurred in connection with the investigation. The Commission shall forward to the agency upon completion of the investigation the investigative file and the recommended proposed disposition. The agency shall adopt as its proposed disposition of the complaint the Commission's recommended disposition unless within 30 days after the agency receives the investigative file and recommended disposition the complaint has been informally adjusted in accordance with § 1613.217(a), or the agency has notified the complainant of its own proposed disposition in accordance with § 1613.217(c).

6. Section 1613.217 is revised to read as follows:

§ 1613.217 Adjustment of complaint and offer of hearing.

(a) The agency shall provide an opportunity for adjustment of the complaint on an informal basis after the complainant has reviewed the investigative file. For this purpose, the agency shall furnish the complainant, or the complainant's representative if there is one, a copy of the investigative file promptly after receiving if from the investigator, and provide opportunity for the complainant to discuss the investigative file with appropriate officials. If an adjustment of the complaint is arrived at, the terms of the adjustment shall be reduced to writing and made part of the complaint file, with a copy of the terms of the adjustment provided the complainant. An informal adjustment of a complaint may include an award of back pay, attorney's fees or other appropriate relief. Where the parties agree on an adjustment of the complaint, but cannot agree on whether attorney's fees or costs should be awarded or on the amount of attorney's fees or costs, the issue of the award of attorney's fees or costs or the amount which should be awarded may be severed and shall be the subject of a final decision under § 1613.221(d). The decision of whether to award attorney's fees or costs or of the amount to be awarded may be the subject of an appeal to the Commission under the provisions of §§ 1613.231 through 1613.240.

(b) Any settlement agreement knowingly and voluntarily agreed to by the parties, reached at any stage of the complaint process, shall be binding on both parties. If the complainant believes that the agency has failed to comply with the terms of a settlement agreement, the complainant shall notify the Director of Equal Employment Opportunity, in writing, of the alleged noncompliance with the settlement agreement, within 30 days of when the complainant knew or should have known of the alleged noncompliance. The complainant may request that the terms of the settlement agreement be specifically implemented or, alternatively, that the complaint be reinstated for further processing from the point processing ceased under the terms of the settlement agreement. Upon receipt of the complainant's written allegation of noncompliance with the settlement agreement, the agency shall have thirty (30) calendar days in which to resolve the matter and to respond to the complainant, in writing, concerning the matter. If, after thirty (30) calendar days from the date of the agency's receipt of the complainant's written allegations of noncompliance with the settlement agreement, the agency has not responded to the complainant, in writing, or if the complainant is not satisfied with the agency's attempt to resolve the matter, the complainant may appeal to the Commission for a determination as to whether the agency has complied with the terms of the settlement agreement. The complainant may file such an appeal 35 days after service of the allegations of noncompliance, but must file an appeal within 20 days of receipt of an agency's determination. Prior to rendering its determination, the Commission may request that the parties submit whatever additional information or documentation it may deem necessary or it may direct that an investigation or hearing on the matter be conducted, as may be appropriate. If the Commission determines that agreement has not been complied with and the noncompliance is not attributable to acts or conduct of the complainant, it may order such compliance or it may order that the complaint be reinstated for further processing from the point processing ceased under the terms of the settlement agreement. Complaints that alleged reprisal or further discrimination violate a settlement agreement shall be processed as individual complaints under § 1613.214 rather than under this section.

(c) If an adjustment of the complaint is not arrived at, the complainant shall be notified in writing:

(1) Of the proposed disposition of the complaint,

(2) Of the right to a hearing, unless a recommended decision is issued under § 1613.218(g), and decision by the agency head or designee if he/she notifies the agency in writing within 15 calendar days of the receipt of the notice that he/she desires a hearing, and

(3) Of the right to a decision by the head of the agency or designee without a hearing.

(d) If the complainant fails to notify the agency of his/her wishes within the 15-day period prescribed in paragraph (c) of this section, the appropriate Equal Employment Opportunity Officer may adopt the disposition of the complaint proposed in the notice sent to the complainant under paragraph (c) of this section as the decision of the agency on the complaint when delegated the authority to make a decision for the head of the agency under those circumstances. When this is done, the Equal Employment Opportunity Officer shall transmit the decision by letter to the complainant and the representative which shall inform the complainant of the right of appeal to the Commission and the time limit applicable to such an appeal and of the right to file a civil action as described in § 1613.281. If the Equal Employment Opportunity Officer does not issue a decision under this paragraph, the complaint, together with the complaint file, shall be forwarded to the head of the agency or designee for decision under § 1613.221.

7. Section 1613.218 is revised to read as follows:

§ 1613.218 Hearing.

(a) Administrative Judge. The hearing shall be conducted by a Commission Administrative Judge with an appropriate security clearance, except in instances where the Commission finds it is practical to delegate this responsibility to a complaints examiner or Administrative Judge from another agency who shall not be an employee of the agency in which the complaint arose. (For purposes of this paragraph, the Department of Defense is considered to be a single agency.) When the Commission does not provide the Administrative Judge, it will supply the agency with the name of an Administrative Judge from another agency with an appropriate security clearance who has been certified by the Commission as qualified to conduct a hearing under this section.

(b) Arrangement for hearing. The agency in which the complaint arose shall transmit the complaint file containing all the documents described in § 1613.222 which have been acquired up to that point in the processing of the complaint, including the original copy of the investigative file (which shall be considered by the Administrative Judge in making a recommended decision on the complaint), to the Administrative Judge who shall review the complaint file to determine whether further investigation is needed before scheduling the hearing. When the Administrative Judge determines that further investigation is needed, the Administrative Judge shall remand the complaint to the Director of Equal Employment Opportunity for further investigation or arrange for the appearance of witnesses necessary to supply the needed information at the hearing. The requirements of § 1613.216 apply to any further investigation by the agency on the complaint. The Administrative Judge shall schedule the hearing for a convenient time and place.

(c) Conduct of hearing. (1) Attendance at the hearing is limited to persons determined by the Administrative Judge to have a direct connection with the complaint. Hearings are part of the investigative process and are thus closed to the public.

(2) The Administrative Judge shall conduct the hearing so as to bring out pertinent facts, including the production of pertinent documents. Rules of evidence shall not be applied strictly, but the Administrative Judge shall exclude irrelevant or unduly repetitious evidence. Information having a bearing on the complaint or employment policies or practices relevant to the complaint shall be received in evidence. The complainant and the agency, or the representative of either shall be given the opportunity at the hearing to cross-examine witnesses who appear and testify. Testimony shall be under oath or affirmation.

(d) Powers of Administrative Judge. In addition to the other powers vested in the Administrative Judge in accordance with this subpart, the Administrative Judge is authorized to:

(1) Administer oaths or affirmations;

(2) Regulate the course of the hearing;

(3) Rule on offers of proof and receive relevant evidence;

(4) Order the production of documents, records, comparative data, statistics, affidavits or the attendance of witnesses;

(5) Limit the number of witnesses whose testimony would be unduly repetitious; and

(6) Exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing. In cases of repeated or flagrant contumacious conduct or misbehavior by a representative, the Administrative Judge may refer the matter to the Commission, and the Commission may, after giving the representative an opportunity to respond to the allegations of misconduct, suspend or disqualify the representative from further representational activity and report the misconduct to other appropriate authorities.

(e) If the complainant or agency in bad faith refuses or fails without adequate explanation to respond fully and in timely fashion to requests made or approved by the Administrative Judge for documents, records, comparative data, statistics, affidavits, or the attendance of witnesses, and the information is solely in the control of one party, such failure may, in appropriate circumstances, cause the Administrative Judge:

(1) To draw an adverse inference that the requested information would have reflected unfavorably on the party refusing to provide the requested information;

(2) To consider the matters to which the requested information pertains to be established in favor of the opposing party;

(3) To exclude other evidence offered by the party failing to produce the requested information;

(4) To take such other actions as deemed appropriate.

(f) Witnesses at hearing. The Administrative Judge shall request any agency subject to this subpart to make available as a witness at the hearing an employee requested by the complainant when the Administrative Judge determines that the appearance of an employee is necessary. The Administrative Judge may also request the appearance of an employee of any federal agency whose testimony he determines is necessary to furnish information pertinent to the complaint under consideration. The Administrative Judge shall give the complainant his reasons for the denial of a request for the appearance of employees as witnesses and shall insert those reasons in the record of the hearing. An agency to whom a request is made shall make its employees available as witnesses at a hearing on a complaint when requested to do so by the Administrative Judge and it is not administratively impracticable to comply with the request. When it is administratively impracticable to comply with the request for a witness, the agency to whom request is made shall provide an explanation to the Administrative Judge. If the explanation is inadequate, the Administrative Judge shall so advise the agency and it shall make the employee available as a witness at the hearing. If the explanation is adequate, the Administrative Judge shall insert it in the record of the hearing, provide a copy to the complainant, and make arrangements to secure testimony from the employee at another time or through written interrogatory. An employee of an agency shall be in a duty status during the time he/she is made available as a witness.

(g) If the Administrative Judge determines that there are no issues of material fact, the Administrative Judge may, after giving notice to the parties and providing them an opportunity to respond in writing within 15 calendar days, issue a recommended decision without holding a hearing. The recommended decision will conform to § 1613.218(i) in all other aspects.

(h) Record of hearing. The hearing shall be recorded and transcribed verbatim. All documents submitted to, and accepted by, the Administrative Judge at the hearing shall be made part of the record of the hearing. If the agency submits a document that is accepted, it shall furnish a copy of the document to the complainant. If the complainant submits a document that is accepted, the Administrative Judge shall make the document available to the agency representative for reproduction.

(i) Findings, analysis, and recommendations. The Administrative Judge shall transmit to the head of the agency or designee:

(1) The complaint file (including the record of the hearing),

(2) The findings and analysis of the Administrative Judge with regard to the matter which gave rise to the complaint and the general environment out of which the complaint arose, and

(3) The recommended decision of the Administrative Judge on the merits of the complaint, including recommended remedial action, where appropriate, with regard to the matter which gave rise to the complaint and the general environment out of which the complaint arose.

The Administrative Judge shall notify the complainant of the date on which this was done. In addition, the Administrative Judge shall transmit, by separate letter to the Director of Equal Employment Opportunity, whatever findings and recommendations he considers appropriate with respect to conditions in the agency which do not bear directly on the matter which gave rise to the complaint or which bear on the general environment out of which the complaint arose.

8. Section 1613.219 is revised to read as follows:

§ 1613.219 Relationship to grievance procedures.

(a) Allegations of discrimination on grounds of race, color, religion, sex, national origin, age or handicapping condition may be raised under a grievance procedure by employees in agencies that are subject to the provisions of 5 U.S.C. 7121(d) and who are covered by a collective bargaining agreement that provides for allegations of discrimination to be raised in the negotiated grievance procedure. Allegations of discrimination by employees not covered by such a negotiated grievance procedure or by employees of agencies not subject to 5 U.S.C. 7121(d) shall be processed as complaints under § 1613.214 *et seq.*

(b) In cases where a person is covered by a negotiated grievance procedure permitting allegations of discrimination, a person wishing to file a complaint or a grievance on a matter of alleged employment discrimination must elect the forum in which to pursue the matter: either the process described in this part or a negotiated grievance procedure. An aggrieved employee who files a grievance in writing with an agency whose negotiated agreement with an employee organization permits the acceptance of grievance which allege discrimination prohibited by this subpart, may not thereafter file a complaint on the same matter under the provisions of this subpart irrespective of whether the grievance has raised an allegation of discrimination within the negotiated grievance procedure. Any such complaints filed after a grievance has been filed on the same matter shall be rejected without prejudice to the complainant's rights to proceed through the negotiated grievance process, including the complainant's right to request the Commission to review a final decision as provided in 5 U.S.C. 7121(d) and at § 1613.231(b). The agency decision letter rejecting such a complaint shall advise the complainant of the right to appeal the agency decision to the Commission. An election, pursuant to this paragraph, to proceed under this Part is indicated only by the filing of a formal complaint, in writing. Use of the pre-complaint process as described in § 1613.213 does not constitute an election for the purposes of this section.

9. Section 1613.220 is amended by removing the word "monthly" in the first sentence of paragraph (c) and by revising paragraphs (b) and (d) to read as follows:

§ 1613.220 Avoidance of delay.

* * * * *

(b) The head of the agency or designee shall cancel a complaint if the complainant fails to prosecute the complaint without undue delay by following the procedures for cancelling a complaint under § 1613.215.

* * * * *

(d) When the Administrative Judge has submitted a recommended decision it shall become a final decision binding on the agency 60 calendar days after the receipt of the complete complaint file and the recommended decision by the agency unless the agency has already issued a final decision. In such event, the agency shall so notify the complainant of the decision and furnish to him a copy of the findings, analysis, and recommended decision of the Administrative Judge under § 1613.218(i) and a copy of the hearing record and also shall notify him in writing of the right to appeal to the Commission and the time limits applicable to such an appeal and of the right to file a civil action as described in § 1613.281. The agency shall provide the Administrative Judge with a copy of its final decision on each complaint on which a recommended decision has been issued.

10. Section 1613.221 is revised to read as follows:

§ 1613.221 Decision by head of agency or designee.

(a) The head of the agency or designee shall make the decision of the agency on a complaint based on the preponderance of evidence in the complaint file. A person designated to make the decision for the head of the agency shall be one who is fair, impartial, and objective.

(b)(1) The decision of the agency shall be in writing, shall reflect the date of its issuance, and shall be transmitted to the complainant and his or her representative either by certified mail, return receipt requested, or by any other method which enables the agency to show the date of receipt.

(2) When the Administrative Judge has issued a recommended decision on the complaint under § 1613.218(g) or (i)(3), the decision letter shall transmit a copy of such recommended decision and a copy of the hearing record if a hearing was held. The decision of the agency shall adopt, reject, or modify the decision recommended by the Administrative Judge. If the decision is to reject or modify the recommended decision, the decision letter shall set forth the specific reasons in detail for rejecting or modifying the findings of fact or conclusions of law made by the Administrative Judge.

(3) When there has been no hearing and no recommended decision under § 1613.218(g), the decision letter shall set forth the findings, analysis, and decision of the head of the agency or his designee.

(c) The decision of the agency shall require any remedial action authorized by law determined to be necessary or desirable to resolve the issue of discrimination and to promote the policy of equal opportunity, whether or not there is a finding of discrimination. When discrimination is found, the agency shall:

(1) Advise the complainant and his or her representative that any request for attorney's fees or costs must be documented and submitted within 20 calendar days of receipt,

(2) Require remedial action to be taken in accordance with § 1613.271,

(3) Review the matter giving rise to the complaint to determine whether disciplinary action is appropriate and

(4) Record the basis for its decision to take, or not to take, disciplinary action but this decision shall not be recorded in the complaint file.

(d) When the final agency decision provides for an award of attorney's fees or costs, the amount of these awards shall be determined under § 1613.271(c). In the unusual situation in which the agency determines not to award attorney's fees or costs to a prevailing complainant, the agency shall set forth in its decision the specific reasons for denying the award.

(e) The decision letter shall inform the complainant of his or her right to appeal the decision of the agency to the Commission, and shall include the text of § 1613.233 (a) or (b), as appropriate. The decision letter shall also inform the complainant of his or her right to file a civil action in accordance with § 1613.281, and of the time limits applicable to such an appeal.

11. Section 1613.222 is revised to read as follows:

§ 1613.222 Complaint file.

The agency shall establish a complaint file. Except as provided in § 1613.221(c), this file shall contain all documents pertinent to the complaint.

(a) The complaint file shall include copies of:

(1) The notice of the Equal Employment Opportunity Counselor to the aggrieved person under § 1613.213(a);

(2) The written report of the Equal Employment Opportunity Counselor on whatever precomplaint counseling efforts were made with regard to the complainant's case;

(3) The complaint;

(4) The investigative file,

(5) If the complaint is withdrawn by the complainant, a written statement of the complainant or representative to that effect;

(6) If adjustment of the complaint is arrived at under § 1613.217, the written record of the terms of adjustment;

(7) If no adjustment of the complaint is arrived at under § 1613.217, a copy of the letter notifying the complainant of the proposed disposition of the complaint and of the right to a hearing and documentation of the attempt to adjust the complaint;

(8) If decision is made under § 1613.217(d), a copy of the letter to the complainant transmitting that decision,

(9) If a hearing was held, the record of the hearing, together with the Administrative Judge's findings, analysis and recommendations, if any, made to the head of the agency or designee,

(10) If the Director of Equal Employment Opportunity is not the designee, the recommendations, if any, made by the Director to the head of the agency or designee,

(11) If decision is made under § 1613.221, a copy of the letter transmitting the decision of the head of the agency or designee, and

(12) Proof of the date of receipt of final agency decision, as required under § 1613.221(b)(1).

(b) The complaint file shall not contain any document that has not been made available to the complainant or the complainant's designated physician under 5 CFR 294.401.

12. Section 1613.231 is revised to read as follows:

§ 1613.231 Right to appeal to the Commission.

(a) A complainant may appeal to the Commission the decision of the head of the agency or designee:

(1) To reject or cancel the complaint or any portion for reasons covered by § 1613.215; or

(2) Under the circumstances set forth in § 1613.217(b); or

(3) On the merits of the complaint, under §§ 1613.217(d), 1613.220(d) or 1613.221, or on the award of attorney's fees or costs.

(b) A complainant may appeal to the Commission on issues of employment discrimination raised in a negotiated grievance procedure covered by § 1613.219(a), where the agency's negotiated labor-management agreement permits such issues to be raised. A complainant may appeal the decision:

(1) Of the agency head or designee on the grievance;

(2) Of the arbitrator on the grievance; or

(3) Of the Federal Labor Relations Authority (FLRA) on exceptions to the arbitrator's award.

A complainant may not appeal under this subsection, however, when the matter initially raised in the negotiated grievance procedure is still ongoing in that process, is in arbitration or is before the FLRA. Any appeal prematurely filed in such circumstances shall be dismissed without prejudice.

13. Section 1613.234 is revised to read as follows:

§ 1613.234 Appellate procedures and finality.

(a) *Procedures.* On behalf of the Commission, the Office of Review and Appeals shall review the complaint file and all relevant written representations submitted by either party. The Office may remand a complaint to the agency for further investigation or a rehearing if it considers that action necessary or have additional investigation conducted by Commission personnel. There is no right to a hearing before the Office or the Commission upon appeal. The Office or the Commission shall issue a written decision setting forth its reasons for the decision and shall send copies to the complainant, the complainant's designated representative, and the agency. When corrective action is ordered, the agency shall report within the time specified to the Office that the corrective action has been taken.

(b) *Finality.* A decision issued under this section is final within the meaning of §§ 1613.281 and 1613.641 unless:

(1) Within 30 days of receipt a decision issued under paragraph (a) of this section, either party files a timely request to reopen pursuant to § 1613.235, or

(2) The Commission on its own motion reopens the case.

14. Section 1613.235 is revised to read as follows:

§ 1613.235 Reopening and reconsideration.

(a) The Commission may, in its discretion, reopen and reconsider any decision of the Commission notwithstanding any other provisions of this part.

(b) Parties may request reopening or reconsideration provided that such request is made within 30 days of receipt of a decision issued pursuant to § 1613.234 or within 20 days of receipt of another party's timely request to reopen. Such requests shall be submitted to the Office of Review and Appeals. The request shall contain arguments or evidence which tend to establish that:

(1) New and material evidence is available that was not readily available when the previous decision was issued; or

(2) The previous decision involved an erroneous interpretation of law or regulation or misapplication of established policy; or

(3) The decision is of such exceptional nature as to have effects beyond the actual case at hand.

(c)(1) The party requesting reopening or reconsideration shall submit copies of the request and supporting documents to all other parties and their representatives at the time of the request along with proof of such submission.

(2) Any argument in opposition to the request to reopen or cross request to reopen shall be submitted to the Office of Review and Appeals and to the requesting party within 20 days of receipt of the request to reopen along with proof of such submission.

(d) A decision on a request to reopen by either party is final and there is no further right by either party to request reopening.

§ 1613.236 [Removed].

15. Section 1613.236 is removed.

16. A new § 1613.237 is added to Part 1613 to read as follows:

§ 1613.237 Corrective action.

(a) Corrective action ordered by the Office of Review and Appeals or the Commission is mandatory and binding on the agency except as provided in § 1613.234(b). Failure to implement ordered relief shall be subject to judicial enforcement as specified in § 1613.239(c).

(b) When the agency requests reopening and when the case involves removal, separation, or suspension continuing beyond the date of the request to reopen, and when the decision recommends retroactive restoration, the agency shall comply with the decision only to the extent of the temporary or conditional restoration of the employee to duty status in the position recommended by the Commission, pending the outcome of the agency request for reopening.

(1) Service under the temporary or conditional restoration provisions of this paragraph shall be credited toward the completion of a probationary or trial period, eligibility for a within-grade increase, or the completion of the service requirement for career tenure, provided the Commission—

(i) Upholds its decision after reopening the case, or

(ii) Refuses to reopen.

(2) The agency shall notify the Commission and the employee in writing, at the same time it requests reopening, that the remedial action it takes is temporary or conditional.

(c) When no request for reopening is filed within 30 days of receipt of the decision, or when a request to reopen is denied, the agency shall execute the action ordered and there is no further right to delay implementation of the ordered relief. The corrective action shall be completed not later than sixty (60) days after the decision becomes final.

17. A new § 1613.238 is added to Part 1613 to read as follows:

§ 1613.238 Enforcement of final decisions.

(a) *Petition for enforcement.* A complainant may petition the Commission for enforcement of a decision issued under the Commission's appellate jurisdiction. The petition shall be submitted to the Office of Review and Appeals. The petition shall specifically set forth the reasons that lead the complainant to believe that the agency is not complying with the decision.

(b) *Compliance.* On behalf of the Commission, the Office of Review and Appeals shall take all necessary action to ascertain whether the agency is implementing the decision of the Commission. If the agency is found not to be in compliance with the decision, efforts shall be undertaken to obtain compliance.

(c) *Clarification.* On behalf of the Commission, the Office of Review and Appeals may, on its own motion or in response to a petition for enforcement or in connection with a timely request to reopen, issue a clarification of a prior decision. A clarification cannot change the result of a prior decision or enlarge or diminish the relief ordered but may further explain the meaning or intent of the prior decision.

(d) *Referral to the Commission.* Where the Director, Office of Review and Appeals, is unable to obtain satisfactory compliance with the final decision, the Director shall submit appropriate findings and recommendations for enforcement to the Commission, or, as directed by the Commission, refer the matter to another appropriate agency.

18. A new § 1613.239 is added to Part 1613 to read as follows:

§ 1613.239 Enforcement action by the Commission.

(a) *Notice to show cause.* The Commission may issue a notice to the Head of any federal agency that has failed to comply with a decision to show cause why there is noncompliance. Such notice may request the Head of the agency or representative to appear before the Commission or to respond to the notice in writing with adequate evidence of compliance or with compelling reasons why compliance has not been effectuated.

(b) *Certification to the Office of Special Counsel.* Where appropriate and pursuant to the terms of a memorandum of agreement, the Commission may refer the matter to the Office of Special Counsel for enforcement action.

(c) *Notification to complainant of completion of administrative efforts.* Where the Commission has determined that an agency is not complying with a prior decision, or where an agency has failed or refused to submit its report of corrective action, the Commission shall notify the complainant of the right to file a civil action for enforcement of the decision pursuant to section 717 of Title VII, section 15 of the Age Discrimination in Employment Act, or section 505 of the Rehabilitation Act, and to seek judicial review of the agency's refusal to implement corrective action pursuant to the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*, and the Mandamus Statute, 28 U.S.C. 1361, or commence de novo proceedings pursuant to the appropriate statutes.

19. A new § 1613.240 is added to Part 1613 to read as follows:

§ 1613.240 Computation of time.

With respect to time periods specified in this subpart:

(a) The first day counted shall be the day after the event from which the time period begins to run and the last day of the period shall be included, unless it falls on a Saturday, Sunday, or Federal holiday, in which case the period shall be extended to include the next business day; and

(b) A document shall be deemed timely if it is delivered in person or postmarked before the expiration of the applicable filing period, or if, in the absence of a legible postmark, it is received by mail within five days from the expiration of the applicable filing period.

20. Section 1613.261 is revised to read as follows:

§ 1613.261 Freedom from restraint, interference, coercion and reprisal.

It is unlawful to restrain, interfere, coerce or discriminate against complainants, their representatives, witnesses, Directors of Equal Employment Opportunity, Equal Employment Opportunity Officers, Investigators, Counselors and other agency officials with responsibility for processing discrimination complaints because of involvement with a discrimination charge during any stage in the presentation and processing of a complaint, including the counseling stage under § 1613.213, or because an individual filed a charge of discrimination, testified, assisted or participated in any manner with an investigation, proceeding or hearing or because of any opposition to an unlawful employment practice under this part.

21. Section 1613.262 is revised to read as follows:

§ 1613.262 Review of allegations of reprisal.

(a) An individual who alleges a violation of § 1613.261 may have the allegation reviewed as an individual complaint of discrimination under §§ 1613.211 through 1613.283.

(b) When a complainant alleges a violation of § 1613.261 in connection with the filing of a prior discrimination complaint and the prior complaint is in process at the agency when the allegation is made, the complainant may request the agency to consolidate the reprisal allegation with the prior complaint. If the prior complaint is at the hearing stage of the complaint

process under § 1613.218, the complainant may request the Administrative Judge to consolidate the allegation with the complaint at the hearing. The agency or Administrative Judge may grant the request. *Provided*, that the request is made within 30 calendar days of:

(1) The act that forms the basis of the allegation,

(2) The effective date of the alleged discriminatory personnel action, or

(3) The date the complainant knew or should reasonably have known that § 1613.261 has been violated.

The agency or the Administrative Judge may exercise discretion and deny the request and require the allegation to be processed under § 1613.262(a).

22. Section 1613.271 is revised to read as follows:

§ 1613.271 Remedial actions.

(a) When an agency, or the Commission, finds that an applicant or an employee has been discriminated against, the agency shall provide full relief, as explained in Appendix A of this part, which shall include the following elements in appropriate circumstances:

(1) Notification to all employees of the agency in the affected facility of their right to be free of unlawful discrimination and be assured that the particular types of discrimination found will not recur;

(2) Commitment that corrective, curative or preventive action will be taken, or measures adopted, to ensure that similar found violations of the law will not recur;

(3) An unconditional offer to each identified victim of discrimination of placement in the position the person would have occupied but for the discrimination suffered by that person, or a substantially equivalent position;

(4) Payment to each identified victim of discrimination on a make whole basis for any loss of earnings the person may have suffered as a result of the discrimination; and

(5) Commitment that the agency shall cease from engaging in the specific unlawful employment practice found in the case.

(b) Remedial action involving an applicant. (1) When an agency, or the Commission, finds that an applicant for employment has been discriminated against, the agency shall offer the applicant the position the applicant would have occupied absent discrimination or, if justified by the circumstances, a substantially equivalent position. The offer shall be made in writing. The individual shall have 15 calendar days from receipt of the offer within which to accept or decline the offer. Failure to notify the agency of his decision within the 15-day period will be considered a declination of the offer, unless the individual can show that circumstances beyond his control prevented him from responding within the time limit. If the offer is accepted, appointment shall be retroactive to the date the applicant would have been hired. Backpay, computed in the same manner prescribed by 5 CFR 550.805, shall be awarded from the date the individual would have entered on duty until the date the individual actually enters on duty. The individual shall be deemed to have performed service for the agency during this period of retroactivity for all purposes except for meeting service requirements for completion of a probationary or trial period that is required. If the offer of employment is declined, the agency shall award the individual a sum equal to the backpay he would have received, computed in the same manner prescribed by 5 CFR 550.805, from the date he would have been appointed until the date the offer was made, subject to the limitation of paragraph (b)(4) of this section. The agency shall inform the applicant, in its offer of employment, of his right to this award in the event the offer is declined.

(2) When an agency, or the Commission, finds that discrimination existed at the time the applicant was considered for employment but also finds clear and convincing evidence that the applicant would not have been hired even absent discrimination, the agency nevertheless shall take all steps necessary to eliminate the discriminatory practice and ensure it does not recur.

(3) This paragraph shall be cited as the authority under which the above-described appointments or awards of backpay shall be made.

(4) Backpay under this paragraph for complaints under Title VII or the Rehabilitation Act may not extend from a date earlier than 2 years prior to the date on which the complaint was initially filed by the applicant.

(c) Remedial action involving an employee. When an agency, or the Commission, finds that an employee of the agency was discriminated against, the agency shall take remedial actions which shall include one or more of the following, but need not be limited to these actions:

(1) Retroactive promotion, with backpay computed in the same manner prescribed by 5 CFR 550.805, unless the record contains clear and convincing evidence that the employee would not have been promoted or employed at a higher grade, even absent discrimination. The backpay liability under Title VII or the Rehabilitation Act may not accrue from a date earlier than 2 years prior to the date the discrimination complaint was filed, but, in any event, not to exceed the date the employee would have been promoted.

(2) If the record contains clear and convincing evidence that, although discrimination existed at the time selection for promotion was made, the employee would not have been promoted even absent discrimination, the agency shall eliminate any discriminatory practice and ensure it does not recur.

(3) Cancellation of an unwarranted personnel action and restoration of the employee.

(4) Expunction from the agency's records of any reference to or any record of an unwarranted disciplinary action that is not a personnel action.

(5) Full opportunity to participate in the employee benefit denied (e.g., training, preferential work assignments, overtime scheduling).

(d) Attorney's fees or costs—(1) Awards of attorney's fees or costs. The provisions of this subpart relating to the award of attorney's fees or costs shall apply to allegations of discrimination or retaliation prohibited by section 717 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–16, and sections 501 and 505 of the Rehabilitation Act, 29 U.S.C. 791 and 794a. In a decision by an agency, under §§ 1613.217, 1613.220(d), 1613.221 or 1613.612 or by the Commission, under §§ 1613.234, 1613.235, 1613.262, 1613.631 or 1613.632, the agency or Commission may award the applicant or employee reasonable attorney's fees or costs incurred in the processing of the complaint or charge.

(i) A finding of discrimination raises a presumption of entitlement to an award of attorney's fees.

(ii) Any award of attorney's fees or costs shall be paid by the agency.

(iii) Attorney's fees are allowable only for the services of members of the Bar and law clerks, paralegals or law students under the supervision of members of the Bar, except that no award is allowable for the services of any employee of the Federal Government.

(iv) Attorney's fees shall be paid only for services performed after the filing of the complaint required in § 1613.214 and after the complainant has notified the agency that he/she is represented by an attorney, except that fees are allowable for a reasonable period of time prior to

the notification of representation for any services performed in reaching a determination to represent the complainant. Written submissions to the agency which are signed by the representative shall be deemed to constitute notice of representation.

(2) Amount of awards. When a decision of the agency, under §§ 1613.217(c), 1613.220(d), 1613.221 or 1613.612 or of the Commission, under §§ 1613.234, 1613.235, 1613.262, 1613.631 or 1613.632 provides for an award of attorney's fees or costs, the complainant's attorney shall submit a verified statement of costs and attorney's fees, as appropriate, to the agency within 20 days of receipt of the decision. A statement of attorney's fees shall be accompanied by an affidavit executed by the attorney of record itemizing the attorney's charges for legal services and both the verified statement and the accompanying affidavit shall be made a part of the complaint file. The amount of attorney's fees or costs to be awarded the complainant shall be determined by agreement between the complainant, the complainant's representative and the agency. Such agreement shall immediately be reduced to writing. If the complainant, the representative and the agency cannot reach an agreement on the amount of attorney's fees or costs within 20 calendar days of receipt of the verified statement and accompanying affidavit, the agency shall issue a decision determining the amount of attorney's fees or costs within 30 calendar days of receipt of the statement and affidavit. Such decision shall include the specific reasons for determining the amount of the award.

(i) The amount of attorney's fees shall be calculated in accordance with the existing caselaw using following standards:

(A) The starting point shall be the number of hours reasonably expended multiplied by a reasonable hourly rate.

(B) This amount may be reduced or increased in considering the following factors, although ordinarily many of these factors are subsumed within the calculation set forth above: The time and labor required, the novelty and difficulty of the questions, the skill requisite to perform the legal service properly, the preclusion of other employment by the attorney due to acceptance of the case, the customary fee, whether the fee is fixed or contingent, time limitations imposed by the client or the circumstances, the amount involved and the results obtained, the experience, reputation, and ability of the attorney, the undesirability of the case, the nature and length of the professional relationship with the client, and the awards in similar cases. Only in some cases of exceptional success shall any of these factors be used to enhance an award computed by the formula set forth in paragraph (d)(2)(i)(A).

(ii) The costs which may be awarded are those authorized by 28 U.S.C. 1920 to include—

(A) Fees of the reporter for all or any of the stenographic transcript necessarily obtained for use in the case;

(B) Fees and disbursements for printing and witnesses; and

(C) Fees for exemplification and copies of papers necessarily obtained for use in the case.

Witness fees shall be awarded in accordance with the provisions of 28 U.S.C. 1821, except that no award shall be made for a federal employee who is in a duty status when made available as a witness.

23. Section 1613.283 is revised to read as follows:

§ 1613.283 Effect on administrative processing.

The filing of a civil action by an employee or applicant involving a complaint filed under this subpart terminates processing of that complaint.

24. Section 1613.513 is revised to read as follows:

§ 1613.513 Effects on administrative processing.

The filing of a civil action by an employee or applicant involving a complaint filed under this subpart terminates processing of that complaint.

25. Section 1613.521 is revised to read as follows:

§ 1613.521 Appeal to the Commission.

Except for the requirements in § 1613.234 that the decision of the Office of Review and Appeals contain a notice of the right to file a civil action in accordance with § 1613.282, §§ 1613.231 through 1613.240 of this part shall apply to this subpart.

26. Section 1613.601(a) is revised to read as follows:

§ 1613.601 Definitions.

(a) A "class" is a group of employees, former employees, or applicants for employment who, it is alleged, have been, are being, or may be, adversely affected by an agency personnel management policy or practice which discriminates against the group on the basis of their common race, color, religion, sex, national origin, age or handicapping condition.

* * * * *

27. Section 1613.602(a) is revised to read as follows:

§ 1613.602 [Revised]

* * * * *

(a) An employee or applicant who wishes to be an agent and who believes he/she has been discriminated against shall consult with an Equal Employment Opportunity Counselor within 30 calendar days of the matter giving rise to the allegation of individual discrimination, the effective date of a personnel action, or the date the aggrieved person knew or reasonably should have known of the discriminatory event or personnel action.

* * * * *

28. Section 1613.603(b)(1) is amended by deleting the word "agency" and by revising § 1613.603 (c) and (g) to read as follows:

§ 1613.603 Filing and processing of a class complaint.

* * * * *

(c) The complaint must be filed not later than 15 calendar days after the agent's receipt of the notice of the right to file a complaint.

* * * * *

(g) If the agent is an employee in pay status, the agent shall have a reasonable amount of official time to prepare the complaint. If the agent is an employee of the agency and designates another employee of the agency as the agent's representative, the representative shall have a reasonable amount of official time, if otherwise on duty, to prepare the complaint. The agency is not obligated to change work schedules, incur overtime wages, or pay travel expenses to facilitate the choice of a specific representative or to allow the agent and representative to confer. However, the complainant and representative, if employed by the agency and otherwise in a pay status, shall be on official time, regardless of their tour of duty, when their presence is authorized or required by the agency or the Commission during the investigation, informal adjustment, or hearing on the complaint.

29. Section 1613.604 is revised to read as follows:

§ 1613.604 Acceptance, rejection or cancellation.

(a) Within 10 calendar days of an agency's receipt of a complaint, the agency shall forward the complaint, along with a copy of the Counselor's report and any other information pertaining to timeliness or other relevant circumstances related to the complaint, to the Commission. The Commission

shall assign the complaint to a Commission Administrative Judge except in instances where the Commission finds it more practical to delegate this responsibility to an Administrative Judge from another agency who is not an employee of the agency in which the complaint arose.

(b) The Administrative Judge may recommend that the agency reject the complaint, or a portion thereof, for any of the following reasons:

(1) It was not timely filed;

(2) It consists of an allegation identical to an allegation contained in a previous complaint filed on behalf of the same class which is pending in the agency or which has been resolved or decided by the agency;

(3) Failure to state a claim under this subpart;

(4) The agent failed to consult a Counselor in a timely manner;

(5) It lacks specificity and detail;

(6) It was not submitted in writing or was not signed by the agent;

(7) It does not meet the prerequisites of a class complaint under § 1613.601(b).

(c) If an allegation is not included in the Counselor's report, the Administrative Judge shall afford the agent 15 calendar days to explain whether the matter was discussed and if not, why he/she did not discuss the allegation with the Counselor. If the explanation is not satisfactory, the Administrative Judge may recommend that the agency reject the allegation. If the explanation is satisfactory, the Administrative Judge may refer the allegation to the agency for further counseling of the agent.

(d) If an allegation lacks specificity and detail, the Administrative Judge shall afford the agent 15 calendar days to provide specific and detailed information. The Administrative Judge may recommend that the agency reject the complaint if the agent fails to provide such information within the specified time period. If the information provided contains new allegations outside the scope of the complaint, the Administrative Judge must advise the agent how to proceed on an individual or class basis concerning these allegations.

(e) The Administrative Judge may recommend that the agency extend the time limits for filing a complaint and for consulting with a Counselor when the agent, or his/her representative, shows that he/she was not notified of the prescribed time limits and was not otherwise aware of them or that he/she was prevented by circumstances beyond his/her control from acting within the time limit.

(f) When appropriate the Administrative Judge may recommend that a class be divided into subclasses and that each subclass be treated as a class, and the provisions of this section then shall be construed and applied accordingly.

(g) The Administrative Judge may recommend that the agency cancel a complaint after it has been accepted because of failure of the agent to prosecute the complaint. This action may be taken only after the Administrative Judge has provided the agent a written request, including notice of proposed cancellation, that he/she provide certain information or otherwise proceed with the complaint, and the agent has failed to satisfy this request within 15 calendar days of receipt of the request.

(h) An agent must be informed by the Administrative Judge in a request under paragraph (c) or (d) of this section that his/her complaint may be rejected if the information is not provided.

(i) The head of the agency or designee shall terminate processing a class complaint of discrimination when the agent files a civil action in U.S. district court based on the same allegation of discrimination.

(j) The Administrative Judge's recommendation to the agency on whether to accept, reject, or cancel a complaint shall be transmitted in writing to the agency, the agent, and the agent's representative. The Administrative Judge's recommendation to accept, reject or cancel shall become the agency decision unless the agency rejects or modifies the decision within 30 calendar days of the receipt of the decision and complete complaint file. The agency shall notify the agent, the agent's representative, and the Administrative Judge of its decision to accept, reject, modify or cancel a complaint. Notice of a decision to reject or cancel shall inform the agent of the right to proceed with an individual complaint of discrimination, and to appeal the final agency decision on the matter to the Office of Review and Appeals and of his/her right to file a civil action.

30. Section 1613.606 is revised to read as follows:

§ 1613.606 Avoidance of delay.

The complaint shall be processed promptly after it has been accepted. To this end, the parties shall proceed with the complaint so that the complaint is processed without undue delay.

31. Section 1613.607(a) is revised to read as follows:

§ 1613.607 Freedom from restraint, interference, coercion and reprisal.

(a) It is unlawful to restrain, interfere, coerce or discriminate against agents, complainants, their representatives, witnesses, Directors of Equal Employment Opportunity, Equal Employment Opportunity Officers, Investigators, Counselors and other agency officials with responsibility for processing discrimination complaints because of involvement with a discrimination charge during any stage in the presentation and processing of a complaint, including the counseling stage under § 1613.602, or because an individual testifed, assisted or participated in any manner with an investigation, proceeding or hearing or because the individual opposed an unlawful employment practice under this Part.

* * * * *

32. Section 1613.608 is amended by deleting "an alleged discriminating official or" in paragraph (a) and by revising paragraph (b)(2) to read as follows:

§ 1613.608 [Amended]

* * * * *

(b) * * *

(2) If mutual cooperation fails, either party may request the Administrative Judge to rule on a request to develop evidence. If the agent or agency in bad faith refuses or fails without adequate explanation to respond fully and in timely fashion to a request made or approved by the Administrative Judge for documents, records, comparative data, statistics, affidavits, or the attendance of witnesses, and the information is solely in the control of one party, such failure may, in appropriate circumstances, cause the Administrative Judge:

(i) To draw an adverse inference that the requested information would have reflected unfavorably on the party refusing to provide the requested information;

(ii) To consider the matters to which the requested information pertains to be established in favor of the opposing party;

(iii) To exclude other evidence offered by the party failing to produce the requested information;

(iv) To take such other actions as the Administrative Judge deems appropriate.

* * * * *

33. Section 1613.609 is revised to read as follows:

§ 1613.609 Opportunities for resolution of the complaint.

(a) The Administrative Judge shall furnish the agent or his/her representative and the representative of the agency a copy of all materials obtained concerning the complaint and provide opportunity for the agent to discuss materials with the agency representative and attempt resolution of the complaint.

(b) At any time after acceptance of a complaint, the complaint may be resolved by agreement of the agency and the agent as long as the agreement is fair and reasonable.

(c) If resolution of the complaint is arrived at, the terms of the resolution shall be reduced to writing, and signed by the agent and the agency head or designee. A resolution may include a finding on the issue of discrimination, an award of attorney's fees or costs, and must include any corrective action agreed upon. Corrective action in the resolution must be consistent with law, Executive order, and Civil Service regulations, rules, and instructions. A copy of the resolution shall be provided to the agent.

(d) Notice of the resolution shall be given to all class members in the same manner as notification of the acceptance of the class complaint and shall state the terms of corrective action, if any, to be granted by the agency. A resolution shall bind all members of the class except in cases where the resolution benefits only the class agent or is otherwise alleged to be unfair or unreasonable, in which case any member of the class may petition the Director of Equal Employment Opportunity within 30 calendar days of the date of the notice of resolution to replace the class agent. Such a petition will be processed according to § 1613.604, and if it is found that the resolution did not comply with § 1613.609(b) and that the petitioner satisfied the requirements of § 1613.601(b), the Administrative Judge will recommend that the petitioner will replace the original class agent and act for the class during processing of the class complaint. Acceptance of a petition under this subsection vacates any agreement between the former class agent and the agency. An agency decision on such a petition shall inform the agent and the petitioner of the right to appeal the decision to the Office of Review and Appeals.

(e) Any settlement agreement reached at any stage of the complaint process shall be binding on both parties. If the agent believes that the agency has failed to comply with the terms of a settlement agreement for reasons not attributable to acts or conduct of the agent, his/her representative or class members, the agent shall notify the Director of Equal Employment Opportunity, in writing, within 30 days of when the agent knew or should have known of the alleged noncompliance, or the alleged noncompliance with the settlement agreement. The agent may request that the terms of the settlement agreement be specifically implemented or, alternatively, that the complaint be reinstated for further processing from the point processing ceased under the terms of the settlement agreement. Upon receipt of the agent's written allegation of noncompliance with the settlement agreement, the agency shall have thirty (30) calendar days in which to resolve the matter and to respond to the agent, in writing, concerning the matter. If, after thirty (30) calendar days from the date of the agency's receipt of the agent's written allegations of noncompliance with the settlement agreement, the agency has not responded to the agent, in writing, or if the agent is not satisfied with the agency's attempt to resolve the matter, the agent may petition the Commission's Office of Review and Appeals for a determination as to whether the agency has complied with the terms of the settlement agreement. The agent may file such an appeal 35 days after service of the allegations of noncompliance, but must file an appeal within 20 days of receipt of an agency's determination. Prior to rendering its determination, the Commission may request that the parties submit whatever additional information or documentation it may deem necessary and may direct that an investigation or hearing on the matter be conducted, as may be appropriate. If the Commission determines that the agreement has not been complied with, it may order such compliance or it may order that the complaint be reinstated for further processing from the point processing ceased under the terms of the settlement agreement.

34. Section 1613.610 is revised to read as follows:

§ 1613.610 Hearing.

On the expiration of the period allowed for preparation of the case, the Administrative Judge shall set a date for a hearing. The hearing shall be conducted in accordance with § 1613.218.

35. Section 1613.612(a)(1) is amended by removing the phrase "30 calendar days" and inserting "60 calendar days" in its place.

§ 1613.614 [Amended]

36. Section 1613.614(e) is amended by removing the phrase "5 CFR 772.307(c)" and inserting "§ 1613.218" in its place.

37. Section 1613.631 is revised to read as follows:

§ 1613.631 Appeal to the Office of Review and Appeals.

(a) An agent may appeal to the Office of Review and Appeals the decision of the head of the agency or designee:

(1) To reject or cancel a complaint, or a portion thereof, for reasons covered by § 1613.604;

(2) Under the circumstances set forth in § 1613.609 (d) or (e);

(3) On the merits of the complaint;

(4) On the issue of attorney's fees and costs and corrective action; or

(5) The failure of an agency to implement its final agency decision.

(b) A claimant may appeal to the Office of Review and Appeals from a decision of the head of the agency or designee:

(1) To cancel or reject a claim for individual relief in accordance with § 1613.614 (f) and (g); and

(2) On the merits of the claim for individual relief including attorney's fees or costs.

(c) An appeal may be filed at any time after receipt of the agency's final decision, but not later than 20 calendar days after receipt of that decision except when the appellant shows that neither the appellant nor the appellant's representative was notified of the prescribed time limit and was not otherwise aware of it, or that the appellant or the appellant's representative was prevented by circumstances beyond the appellant's or representative's control from appealing within the prescribed time limit.

(d) An appeal shall be deemed timely if it is delivered in person or post-marked before the expiration of the filing period, or if, in the absence of a legible postmark, it is received by the Commission by mail within five days of the expiration of the filing period. The Office of Review and Appeal's review will be made upon the existing record to determine if the agency decision is in accord with applicable law, Executive order, or Civil Service regulations, rules, and instructions and is supported by substantial evidence.

38. Section 1613.632 is revised to read as follows:

§ 1613.632 Reopening and reconsideration by the Commissioners.

The Commissioners may reopen and reconsider any previous decision of a Commission office on their own motion

or at the request of either party in accordance with provisions of § 1613.235.

39. Section 1613.643 is revised to read as follows:

§ 1613.643 Effect on administrative processing.

The filing of a civil action by an agent involving a complaint filed under this subpart terminates processing of that complaint. The filing of a civil action by a claimant involving a claim filed under this subpart, terminates processing of that claim.

Appendix A to Part 1613 is added to read as follows:

Appendix A to Part 1613—Policy Statement on Remedies and Relief for Individual Cases of Unlawful Discrimination

On September 11, 1984, the Equal Employment Opportunity Commission announced its intent to achieve certainty and predictability of enforcement in those situations where the agency has reason to believe that a law it enforces has been violated. In keeping with this goal, the Commission recognizes that the basic effectiveness of the agency's law enforcement program is dependent upon securing prompt, comprehensive and complete relief for all individuals directly affected by violations of the statutes which the agency enforces. The Commission also recognizes that, in appropriate circumstances, remedial measures need to be designed to prevent the recurrence of similar unlawful employment practices. Predictable enforcement and full, corrective, remedial and preventive relief are the principal components of the method with which the Commission intends to pursue this agency's mission of eradicating discrimination in the workplace. Henceforth, in negotiating settlements, in drafting prayers for relief in litigation, pleadings or in issuing Commission Decisions or Orders, obtaining full remedial, corrective and preventive relief is the standard by which the agency is to be guided.

The Commission believes that a full remedy must be sought in each case where a District Director concludes the case has merit and has, or is prepared to, issue a letter of violation or a letter finding reasonable cause to believe that one of the statutes the agency enforces has been violated. The remedy must be fashioned from the wide range of remedial measures available to this law enforcement agency which has broad authority under the statutes it enforces to seek appropriate forms of legal and equitable relief. The remedy must also be tailored, where possible, to cure the specific situation which gave rise to the violation of the statute involved.

Accordingly, all remedies and relief sought in court, agreed upon in conciliation, or ordered in Federal sector decisions should contain the following elements in appropriate circumstances:

(1) A requirement that all employees of respondent in the affected facility be notified of their right to be free of unlawful discrimination and be assured that the particular type of discrimination found or conciliated will not recur;

(2) A requirement that corrective, curative or preventive action be taken, or measures adopted, to ensure that similar found or conciliated violations of the law will not recur;

(3) A requirement that each identified victim of discrimination be unconditionally offered placement in the position the person would have occupied but for the discrimination suffered by that person;

(4) A requirement that each identified victim of discrimination be made whole for any loss of earnings the person may have suffered as a result of the discrimination; and

(5) A requirement that the respondent cease from engaging in the specific unlawful employment practice found or conciliated in the case.

The components of these remedial elements are as follows:

(1) *Notice Requirement.*

All respondents should be required to sign and conspicuously post, for a period of time, a notice to all employees in the affected facility (or to union members if respondent is a labor organization), prepared by the agency on E.E.O.C. forms, specifically advising respondent's employees or members of the following:

(a) That the notice is being posted as part of the remedy agreed to pursuant to a conciliation agreement with the agency or pursuant to an order of a particular Federal court or pursuant to a decision and order in a Federal sector case.

(b) That Federal law requires that there be no discrimination against any employee or applicant for employment because of the employee's race, color, religion, sex, national origin or age (between 40 and 70) with respect to hiring, firing, compensation, or other terms, conditions or privileges of employment (Federal sector notices will include handicap as an unlawful basis of discrimination).

(c) That respondent supports and will comply with such Federal law in all respects and will not take any action against employees because they have exercised their rights under the law.

(d) That respondent will not engage in the specific unlawful conduct which the District Director believes has occurred or is conciliating, or which the Commission or a court has found to have occurred.[1]

(e) That respondent will, or has, taken the remedial action required by the conciliation agreement or the order of the Commission or Court.[2]

(2) *Corrective, Curative or Preventive Provisions.*

In appropriate circumstances, a remedy must provide that the respondent take corrective, curative or preventive action designed to ensure that similar violations of the law will not recur. Similarly, corrective, curative or preventive measures may also be adopted in those situations where those measures are likely to prevent future similar violations.

Thus, where a policy or practice is discriminatory, the policy or practice must be changed. Similarly, if a particular supervisor or other agent of the respondent is identified as knowingly or intentionally being responsible for the discrimination that occurred, the respondent must be required to take corrective action so that the discriminatee or similarly situated employees not be subjected to similar discriminatory conduct. This corrective action may be accomplished, for example, by insulating employees from that individual for a period of time, or by requiring the respondent to discipline or remove the offending individual from personnel authority, or by requiring the respondent to educate the offender and other supervisors so that they may overcome their unlawful prejudices.

These and any other appropriate meausres, or any combination thereof, designed to meet this goal should be considered when negotiating settlements or drafting prayers for relief. This type of relief is not to be designed for punitive purposes. Rather, this relief is to be tailored to cure or correct the particular source of the identified discrimination and to minimize the chance of its recurrence.

In addition, the respondent must be required to take all other appropriate steps to eradicate the discrimination and its effects, such as the expunging of adverse materials relating to the unlawful employment practice from the discriminatee's personnel files.

(3) *Nondiscrimatory Placement.*

Each identified victim of discrimination is entitled to an immediate and unconditional offer of placement in the respondent's workforce, to the position the discriminatee would have occupied absent discrimination, or to a substantially equivalent position, even if the placement of the discriminatee results in the displacement of another of respondent's employees ("Nondiscriminatory Placement"). The Nondiscriminatory Placement may take place by initial employment, reinstatement, promotion, transfer or reassignment and must occur without any prejudice to, or loss of, any employment—related rights or privileges the discriminatee would have otherwise acquired had the discrimination not occurred.

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[1] For example, the following types of assurances could be required of a respondent which committed several types of unlawful employment practices in a particular case:

"XYZ, Inc. will not refuse to hire employees on the basis of their sex;

"XYZ, Inc. will not refuse to promote employees on the basis of their sex or their race; and

"XYZ, Inc. will not threaten to fire employees because they have filed charges with the Equal Employment opportunity Commission."

[2] For example, employees could be notified of the relief obtained in the following way:

XYZ, Inc. will promote and make whole the employees affected by our conduct for any losses they suffered as a result of the discrimination against them. Specifically, Mary Jones and Susan Smith will be promoted to the position of shift supervisor and will be made whole for any loss in pay or benefits they may have suffered since the time that we failed to promote them to that position.

"XYZ, Inc. has adopted an equal employment opporunity policy and will ensure that all supervisors in making selections for promotions abide by the requirements of that policy that employees not be discriminated against on the basis of their sex or race."

If a Nondiscriminatory Placement position that the discriminatee should occupy no longer exists, then employment for which the discriminatee is qualified must be offered to the discriminatee in other areas of the respondent's operation. Finally, if none of the foregoing positions exist in which the discriminatee may be placed, then the respondent must make whole the discriminatee until a Nondiscriminatory Placement can be accomplished.

It is essential that victims of discrimination not suffer further and that respondents not gain by their misconduct. Accordingly, the contention by a respondent that a discriminatee is no longer suitable for Nondiscriminatory Placement due to a loss of skills, a change in job content or some other reason is not an acceptable excuse for a respondent's failure to accomplish a Nondiscriminatory Placement of a discriminatee. The burden is upon the respondent to demonstrate that the inability of the discriminatee to accept Nondiscriminatory Placement is unrelated to the respondent's discrimination such that the victim, rather than the respondent, should bear the loss. Similiary, the burden is also on the respondent to demonstrate a contention that postdiscrimination conduct by a discriminatee renders the discriminatee unworthy of Nondiscriminatory Placement.

In certain circumstances, the Nondiscriminatory Placement of a victim of discrimination may require the job placement of another of the respondent's employees. If displacement of an incumbent employee in order to accomplish Nondiscriminatory Placement on behalf of a discriminatee is clearly inappropriate in a particular setting or is unavailable as a remedy in a particular jurisdiction, then the respondent must make whole the discriminatee until a Nondiscriminatory Placement can be accomplished.

(4) *Backpay.*

Each identified victim of discrimination is entitled to be made whole for any loss of earnings the discriminatee may have suffered by reason of the discrimination. Each individual discriminatee must receive a sum of money equal to what would have been earned by the discriminatee in the employment lost through discrimination ("Gross Backpay") less what was actually earned from other employment during the period, after normal expenses incurred in seeking and holding the interim employment have been deducted ("Net Interim Earnings"). The difference between Gross Backpay and Net Interim Earnings is Net Backpay Due. Interest should be computed on all Net Backpay Due. Net Backpay accrues from the date of discrimination, except where the statutes limit the recovery, until the discrimination against the individual has been remedied.

Gross Backpay includes all forms of compensation such as wages, bonuses, vacation pay, and all other elements of reimbursement and fringe benefits such as pension and health insurance. Gross Backpay must also reflect fluctuations in working time, overtime rates, changing rates of pay, transfers, promotions, and other perquisites of employment that the discriminatee would have enjoyed but for the discrimination. In appropriate circumstances under the Equal Pay Act and the Age Discrimination in Employment Act liquidated damages based on backpay will also be available.

(5) *Cessation Provisions.*

All respondents must agree or be ordered to cease from engaging in the specific unlawful employment practices involved in the case. For example, a respondent should agree to cease discriminating on the unlawful basis and in the specific manner alleged or a respondent might be required to cease giving effect to certain specific discriminatory policies, practices or rules. In circumstances where a particular respondent has committed or has conciliated several unlawful employment practices, consideration must be given to including broad cessation language in an agreement or order which is designed to order the cessation of any further unlawful employment practices.

The Commission does not believe that the statutory requirement of conciliation requires the agency to abdicate its principal law enforcement responsibility. Thus, conciliation should not result in inadequate remedies. The possibility of pre-litigation conciliation does not constitute cause for unwarranted or undeserved concessions by a law enforcement agency when one of the laws it enforces has been violated. Rather, the concept of settlement constitutes recognition of the fact that there may be reasonable differences as to a suitable remedy between the maximum which may be reasonably demanded by the agency and the minimum which in good faith may be fairly argued for the respondent. Within this scope, conciliation must be actively pursued by the agency. In this regard, in all cases in which the District Director believes that one of the statutes the agency enforces has been violated or in which litigation has been authorized, full remedies containing the appropriate elements as set forth in this memorandum should be sought. In conciliation efforts, reasonable compromises or counterproposals to the full range of remedies described in this policy may be considered if those compromises or counterproposals address fully the remedial concepts described in this policy. Conciliation should be pursued with the goal of obtaining substantially complete relief through the conciliation process. Any divergence from this goal must be justified by the relevant facts and the law.

[FR Doc. 87-25059 Filed 10-29-87; 8:45 am]
BILLING CODE 6570-06-M

federal register

Friday
October 30, 1987

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 39

Airworthiness Directives; Teledyne Continental Motors (TCM) IO-520 and TSIO-520 Series Engines; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-ANE-7; Amendment 39-5735]

Airworthiness Directives; Teledyne Continental Motors (TCM) IO-520 and TSIO-520 Series Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires ultrasonic inspection of airmelt and vacuum arc remelt steel alloy crankshafts and marking of the propeller mounting flange to indicate the heat codes and type of steel whenever the crankshaft is removed from the engine case or replaced on certain TCM IO-520 and TSIO-520 series engines. This AD is needed to prevent the installation of crankshafts with subsurface fatigue cracks which could result in crankshaft failure with resultant loss of engine power.

DATES: Effective Date: November 30, 1987.

Incorporation by reference of certain publications listed in this regulation is approved by the Director of the Federal Register November 30, 1987.

Compliance Schedule: As prescribed in the body of the AD.

ADDRESSES: The applicable service bulletin may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, Alabama 36601, or may be examined at the Regional Rules Docket, Room 311, Federal Aviation Administration, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Jerry C. Robinette, Aerospace engineer, Propulsion Branch, ACE-140A, Atlanta Aircraft Certification Office, Central Region, Federal Aviation Administration, 1669 Phoenix Parkway, Suite 210, Atlanta Georgia 30349; telephone (404) 991-3810.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring ultrasonic inspection of crankshafts and marking of the propeller mounting flange whenever the crankshaft is removed from the engine case or replaced on certain TCM IO-520 and TSIO-520 series engines was published in the Federal Register on April 17, 1987, (51 FR 12544).

The FAA has determined that subsurface fatigue cracks may be present in crankshafts used in TCM IO-520 and TSIO-520 series engines. There have been approximately 108 service difficulty reports between 1980 and 1986, concerning crankshaft failures. It has not been possible to assign a specific failure mode to these reports. They occur randomly and are not directly linked to specific forgings, heat codes, material processing, or design.

Ultrasonic inspection techniques have been developed by the manufacturer to test for subsurface defects on both new and used crankshafts. The ultrasonic inspection, if performed correctly, could preclude the installation of crankshafts with subsurface defects. Since these defects could exist or develop on other engines of the same type design, the proposed AD would require ultrasonic inspection of the airmelt and vacuum arc remelt steel alloy crankshafts whenever the crankshafts are removed from the engine case or replaced on TCM IO-520 and TSIO-520 series engines.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Only one comment was received and it supported adoption as written; accordingly, the proposal is adopted without change.

The FAA has determined that this regulation involves 35,000 engines, and the approximate cost per engine, per inspection would be $150. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

2. By adding the following new airworthiness directive (AD):

Teledyne Continental Motors (TCM): Applies to TCM IO-520 and TSIO-520 series engines.

Compliance is required as indicated, unless already accomplished.

To prevent the installation of crankshafts with existing subsurface fatigue cracks, which could result in crankshaft failure with resultant loss of engine power; at the next and every subsequent crankshaft removal from the engine case or installation of a replacement crankshaft, accomplish the following:

(a) Prior to installation in the engine, conduct an ultrasonic inspection in accordance with TCM Service Bulletin, M87-5, Revision 1, dated May 25, 1987, and Crankshaft Ultrasonic Inspection Procedure, Form X30554, dated February 1981.

(b) If any cracks are found, replace crankshaft with serviceable crankshaft in accordance with TCM Service Bulletin M87-5, Revision 1, dated May 25, 1987.

(c) If no cracks are found, mark the propeller mounting flange in accordance with TCM Service Bulletin M87-5, Revision 1, dated May 25, 1987.

Note.—Accomplishment of the ultrasonic inspection does not set aside any requirements for magnaflux or other inspections specified in TCM overhaul manuals.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Atlanta Aircraft Certification Office, Federal Aviation Administration, Central Region, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia 30349.

TCM Service Bulletin, M87-5, Revision 1, dated May 25, 1987, including crankshaft ultrasonic inspection procedure form X30554 dtd 2/81, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). Copies may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, Alabama 36601. Copies may be examined in the Regional Rules Docket, Office of the Regional Counsel, Room 311, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803 or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

This amendment becomes effective November 30, 1987.

Issued in Burlington, Massachusetts, on September 16, 1987.

Jack A. Sain,

Acting Director, New England Region.

[FR Doc. 87-25260 Filed 10-28-87; 11:00 am]

BILLING CODE 4910-13-M

federal register

Friday
October 30, 1987

Part VII

The President

Executive Order 12613—Prohibiting Imports From Iran

Presidential Documents

Executive Order 12613 of October 29, 1987

Prohibiting Imports From Iran

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 505 of the International Security and Development Cooperation Act of 1985 (22 U.S.C. 2349aa–9), and section 301 of Title 3 of the United States Code,

I, RONALD REAGAN, President of the United States of America, find that the Government of Iran is actively supporting terrorism as an instrument of state policy. In addition, Iran has conducted aggressive and unlawful military action against U.S.-flag vessels and merchant vessels of other non-belligerent nations engaged in lawful and peaceful commerce in international waters of the Persian Gulf and territorial waters of non-belligerent nations of that region. To ensure that United States imports of Iranian goods and services will not contribute financial support to terrorism or to further aggressive actions against non-belligerent shipping, I hereby order that:

Section 1. Except as otherwise provided in regulations issued pursuant to this Order, no goods or services of Iranian origin may be imported into the United States, including its territories and possessions, after the effective date of this Order.

Sec. 2. The prohibition contained in Section 1 shall not apply to:

(a) Iranian-origin publications and materials imported for news publications or news broadcast dissemination;

(b) petroleum products refined from Iranian crude oil in a third country;

(c) articles imported directly from Iran into the United States that were exported from Iran prior to the effective date of this Order.

Sec. 3. This Order shall take effect at 12:01 p.m. Eastern Standard Time on October 29, 1987, except as otherwise provided in regulations issued pursuant to this Order.

Sec. 4. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out the purposes of this Order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the Federal Government. All agencies of the United States Government are directed to take all appropriate measures within their authority to carry out the provisions of this Order, including the suspension or termination of licenses or other authorizations in effect as of the date of this Order.

Sec. 5. The measures taken pursuant to this Order are in response to the actions of the Government of Iran referred to above, occurring after the conclusion of the 1981 Algiers Accords, and are intended solely as a response to those actions.

This Order shall be transmitted to the Congress and published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
October 29, 1987.

[FR Doc. 87-25380
Filed 10-29-87; 12:16 pm]
Billing code 3195-01-M

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H.R. 1666/Pub. L. 100-140

To amend title 5, United States Code, to provide for the extension of physicians comparability allowances and to amend title 37, United States Code, to provide for special pay for psychologists in the commissioned corps of the Public Health Service. (Oct. 26, 1987; 101 Stat. 830; 2 pages) Price: $1.00