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Presidential Documents

Title 3—

The President

Proclamation 5830 of June 14, 1988

National Recycling Month, 1988

By the President of the United States of America

A Proclamation

Americans have become increasingly aware of health and environmental problems associated with the careless or improper management of municipal solid waste. In many densely populated regions, increasing waste volumes, shrinking landfill capacity, and rising costs of disposal have added to our concerns about the need for proper waste management.

Recycling is becoming increasingly important in municipal solid waste management. Many communities have recognized the value of recycling in waste management for some time. Volunteer programs exist in many towns and counties, and some States have recently enacted mandatory recycling laws. In addition, the recycling of scrap metals, paper, and glass has become a well-developed industry. Despite these efforts, however, only 10 percent of our Nation's municipal solid waste is recycled; nearly 80 percent of municipal solid waste is disposed of in landfills and the remaining 10 percent is incinerated.

The benefits of recycling waste materials are substantial. Recycling saves energy and thus preserves important fuel resources. It also avoids the pollution created in extracting resources from their natural environment. Through recycling, wastes are diverted from landfills and our limited landfill space is preserved. Communities can use recycling to generate revenues from the materials recovered from the waste stream. Finally, recycling can save us money by avoiding the high costs of landfills or incineration.

These benefits can only be realized through more recycling. The Environmental Protection Agency considers feasible a recycling level of 25 percent nationally by the early 1990's through the efforts of States and municipalities and the cooperation of individual households and businesses in separating recyclable materials from their waste and in not generating unnecessary waste.

The Congress, by House Joint Resolution 469, has designated June 1988 as "National Recycling Month" and has authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim June 1988 as National Recycling Month. I urge the people of the United States to observe this month with appropriate programs, ceremonies, and activities.

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

Ronald Reagan

[FR Doc. 88-13796
Filed 6-15-88; 10:51 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5831 of June 14, 1988

Baltic Freedom Day, 1988

By the President of the United States of America

A Proclamation

In June 1940, acting under the color of a secret protocol to the infamous Ribbentrop-Molotov Non-Aggression Pact signed the previous year, Soviet forces occupied the independent Baltic States of Estonia, Latvia, and Lithuania. These small, democratic republics were crushed by the armies of their expansionist neighbor and illegally incorporated into the Soviet empire. In the aftermath of the Soviet takeover, tens of thousands of Balts were imprisoned, deported, or killed. Their religious and cultural heritage was denigrated and repressed. An alien political system, inimical to the ideals of individual liberty and self-determination, was imposed upon them.

The end of World War II saw the defeat of ambitious empire-builders in Germany and Japan, but foreign domination of the Baltic States that resulted from the collusion of Hitler and Stalin remained in place. For nearly five decades, the Soviet Union has tried in vain to convince the Baltic peoples to accept its hegemony, but its efforts are doomed to failure.

The situation has improved for some Soviet human rights activists in recent months, but Baltic men and women still suffer imprisonment, banishment, and persecution for daring to protest the continuing suppression of their national independence and cultures. Yet, despite the risks, they continue to speak out, to plead, and to claim their rights to religious, cultural, and political freedom.

Our government has never recognized the forcible incorporation of the Baltic States into the Soviet Union, and we never will. The American people, citizens of a land conceived in liberty and dedicated to equality under God for all, support the aspirations of the Baltic people to regain the freedom that was theirs and to chart their own course. To this goal we pledge anew our unswerving commitment.

By Senate Joint Resolution 249, the Congress of the United States has authorized and requested the President to designate June 14, 1988, as "Baltic Freedom Day."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby designate June 14, 1988, as Baltic Freedom Day. I call upon the people of the United States to observe this day with appropriate remembrances and ceremonies and to reaffirm their commitment to principles of liberty and freedom for all oppressed people.

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

Ronald Reagan

[FR Doc. 88-13797
Filed 6-15-88; 10:52 am]
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Rules and Regulations

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

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1200

Board Organization

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board is republishing its organization and functions statements to reflect the current titles of the principal organizational units of the Board and the primary functions assigned to those units. The Board last updated and published its organization and functions statements on January 27, 1986 (51 FR 3321). Since that time there have been certain title changes and other organizational realignments. In Subpart A, editorial changes were made although no actual changes occurred in the organization of the offices of the three Board members. The authority cite in the previous publication of this part was incorrectly stated as "5 U.S.C. 1101 et seq." and has been revised accordingly to read "5 U.S.C. 1201 et seq." In addition, Subpart B, § 1200.11, The Special Counsel, was removed since a full discussion of the functions and duties of that office is found at 5 CFR Part 1250.

EFFECTIVE DATE: June 16, 1988.

FOR FURTHER INFORMATION CONTACT: Bentley Roberts, (202) 653–8900.

List of Subjects in 5 CFR Part 1200

Organization and functions (government agencies).

Therefore, Part 1200 is revised to read as set forth below:

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

PART 1200—BOARD ORGANIZATION

Subpart A—General

Sec.
1200.1 What is the Merit Systems Protection Board?
1200.2 Who is on the Board?

Subpart B—Offices of the Board

1200.10 Who assists the Board?

Subpart A—General

Authority: 5 U.S.C. 1201 et seq.

§ 1200.1 What is the Merit Systems Protection Board?

The U.S. Merit Systems Protection Board (The Board) is an independent government agency that operates like a court. The Board was created to ensure that all Federal Government agencies follow Federal merit systems practices, and to allow appellants to appeal certain personnel actions by Federal agencies.

§ 1200.2 Who is on the Board?

(a) The Board has three members whom the President appoints and the Senate confirms. Members of the Board serve seven-year terms.

(b) The President appoints, with the Senate's consent, one member of the Board to serve as Chairman and chief executive officer of the Board. The President also appoints one member of the Board to serve as Vice Chairman. If the Office of the Chairman is vacant or the Chairman cannot perform his or her duties, then the Vice Chairman performs the Chairman's duties. If both the Chairman and the Vice Chairman cannot perform their duties, then the remaining Board Member performs the Chairman's duties.

Subpart B—Offices of the Board

Authority: 5 U.S.C. 1205 (g) and (i).

§ 1200.10 Who assists the Board?

(a) A staff helps the Board carry out its work. The following offices make up the staff:

(1) Office of the Executive Director and Deputy Executive Director for Regional Operations.

(2) Office of the Assistant to the Executive Director for Management.

(3) Office of the Inspector General.

(4) Office of Administration.

(5) Office of the Administrative Law Judge.

(6) Office of Appeals Counsel.

(7) Office of the Clerk of the Board.

(8) Office of the General Counsel.

(9) Office of the Legislative Counsel.

(10) Office of Policy and Evaluation.

(11) Regional Offices.

(b) *Office of the Executive Director.* The Executive Director manages the operations and programs of the Board's headquarters and regional offices. The Executive Director reports directly to the Chairman. The Deputy Executive Director for Regional Operations manages the appellate functions of the 11 MSPB regional offices and also assists the Executive Director with general management responsibilities.

(c) *Office of the Assistant to the Executive Director for Management.* The Assistant to the Executive Director for Management develops and coordinates internal management programs and projects for the Executive Director and also produces an annual report on the Board's appeals workload.

(d) *Office of the Inspector General.* The Inspector General is the Board's internal auditor. The Inspector General plans and directs audits, investigations, and internal control evaluations.

(e) *Office of Administration.* The Director, Office of Administration, manages the Board's administrative programs. This office has four divisions: The Comptroller; Equal Employment; Information Resources Management; and Personnel.

(f) *Office of the Administrative Law Judge.* The Administrative Law Judge hears Administrative Procedures Act cases and other cases that the Board assigns. The Administrative Law Judge also rules on discovery motions and subpoena requests.

(g) *Office of Appeals Counsel.* The Director, Office of Appeals Counsel, prepares proposed decisions that recommend appropriate action the Board in petition for review cases and other cases assigned by the Board.

(h) *Office of the Clerk of the Board.* The Clerk of the Board enters petitions for review and original jurisdiction cases onto the Board's docket and monitors their processing. The Clerk of the Board also does the following:

(1) Gives information on the status of cases;

(2) Manages the Board's records, reports, and correspondence style and control programs; and

(3) Answers requests under the Freedom of Information and Privacy Act at the Board's headquarters.

(i) *Office of the General Counsel.* The General Counsel represents the Board in certain court proceedings and also gives legal advice to the Board and its headquarters and regional offices.

(j) *Office of the Legislative Counsel.* The Legislative Counsel manages legislative policy, congressional relations, and public affairs functions for the Board. These responsibilities include drafting and coordinating prepared testimony, responding to media and congressional inquiries, and analyzing proposed legislation.

(k) *Office of Policy and Evaluation.* The Director, Policy and Evaluation, conducts special reviews and studies of Federal merit systems, including actions of OPM under 5 U.S.C. 1209(b).

(l) *Regional Offices.* The Board has 11 regional offices located throughout the country. (Appendix II of 5 CFR Part 1201 contains a list of the regional offices.) The regional offices enter initial appeals onto their docket and make decisions on initial appeals according to Board regulations under 5 CFR Part 1201 and 5 CFR 1201.111.

Robert E. Taylor,

Clerk of the Board.

Date: June 13, 1988.

[FR Doc. 88-13611 Filed 6-15-88; 8:45 am]

BILLING CODE 7400-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document amends the delegations of authority from the Secretary of Agriculture and the general officers of the Department to reflect oversight responsibility for implementation of the Privacy Act, and clarifies the nature of the oversight responsibility for implementation of the Freedom of Information Act.

EFFECTIVE DATE: June 16, 1988.

FOR FURTHER INFORMATION CONTACT: Milton E. Sloane, Privacy Act Coordinator, Office of Governmental and Public Affairs, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-8164.

SUPPLEMENTARY INFORMATION: The delegations of authority of the Department of Agriculture are amended to reflect the designation of the Assistant Secretary for Governmental and Public Affairs as the official responsible for oversight of Privacy Act implementation, and to clarify the nature of the Assistant Secretary's function with respect to administrative oversight of Departmental implementation of both the Freedom of Information Act and the Privacy Act. This action formalizes oversight responsibility for the administrative implementation of the Privacy Act, which is currently performed by the Assistant Secretary for Governmental and Public Affairs.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register.**

Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by Pub. L. 97-354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government Agencies).

Accordingly, Part 2, Title 7, Code of Federal Regulations is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

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

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.29 is amended by revising paragraph (c)(8) to read as follows:

§ 2.29 Delegations of Authority to the Assistant Secretary for Governmental and Public Affairs.

* * * * *

(c) * * *

(8) Oversee general officers and agency heads in the development and implementation of information policies issued pursuant to the provisions of the "Freedom of Information Act" (5 U.S.C. 552) and the "Privacy Act" (5 U.S.C. 552a), and provide consultation regarding those policies.

* * * * *

Dated: June 10, 1988.

Peter C. Myers,

Acting Secretary of Agriculture.

[FR Doc. 88-13650 Filed 6-15-88; 8:45 am]

BILLING CODE 3410-01-M

Food and Nutrition Service

7 CFR Part 250

Donation of Foods for Use in the United States, its Territories and Possessions and Areas Under its Jurisdiction

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim Rule with request for comments.

SUMMARY: This interim rule amends the Food Distribution Program Regulations (7 CFR Part 250). This amendment will implement those provisions of Pub. L. 100-237 that relate to the replacement of commodities and commodity delivery schedules. Those provisions that relate to dissemination of summaries of product specifications to recipient agencies, semiannual collection of commodity acceptability information from recipient agencies, testing and monitoring of processed commodities, purchase of domestically-produced products, and commodity value per meal are addressed in a separate interim rule which is forthcoming.

EFFECTIVE DATE: This rule is effective on April 8, 1988. Comments must be received on or before September 14, 1988.

ADDRESS: Comments should be sent to: Susan Proden, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302. Comments in response to these rules may be inspected at 3101 Park Center Drive, Room 506, Alexandria, Virginia, during normal business hours (8:30 a.m. to 5:00 p.m., Mondays through Fridays).

FOR FURTHER INFORMATION CONTACT: Susan Proden, Chief, Program Administration Branch, at (703) 756-3660.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has not been classified major because it does not meet any of the three criteria identified under the Executive Order. Compliance with the provisions in this rule will not have an annual effect on the economy of more than $100 million or more nor will it cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule implements two provisions of Pub. L. 100–237: procedures for the replacement of commodities and regulations for delivery schedules. The implementation dates for both these provisions are set by law: Section 3(b)(5) of Pub. L. 100–237 requires that procedures for the replacement of commodities be established within 90 days of the date of enactment of the law and section 3(e)(2)(A) requires that regulations for delivery schedules be promulgated within 90 days of the Act's date of enactment. It would not be possible to take public comment prior to publishing this rule within these statutory implementation deadlines. Therefore, Anna Kondratas, Administrator of the Food and Nutrition Service, has determined, in accordance with 5 U.S.C. 553(b), that it is impracticable and contrary to the public interest to take prior public comment and good cause exists for publishing this rule without prior public notice and comment. For the same reasons, and in accordance with 5 U.S.C. 553(d), the Administrator has determined that good cause exists for making this rule effective without a 30 day post-publication waiting period. However, since the Department believes that an opportunity for public comment could result in improved and simplified administration of the rule, it is being published as an interim rule with a 90-day comment period.

This action has been reviewed with regard to the Regulatory Flexibility Act (5 U.S.C. 601–612). Anna Kondratas, Administrator of FNS, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This rule does not contain any new recordkeeping and reporting requirements which are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). Current reporting and recordkeeping requirements for Part 250 were approved by OMB under Control Number 0584–0007.

This program is listed in the Catalog of Federal Domestic Assistance under 10.550 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V and the final rule related notice published at 48 FR 2914, June 24, 1983).

Background

The regulations governing the Food Distribution Program (7 CFR Part 250) outline the responsibilities of FNS and distributing agencies with regard to the distribution and use of federally-donated foods. The current regulations provide for the distribution of donated foods to a variety of domestic outlets, including entities participating in the Child Nutrition Programs, Nutrition Programs for the Elderly, Charitable Institutions, and disaster organizations. The Department wishes to point out that on June 3, 1988 (53 FR 20416), comprehensive revisions to 7 CFR Part 250 were published. The amendments in this interim rule are to this newly revised Part 250.

On January 8, 1988, President Reagan signed the Commodity Distribution Reform Act and WIC Amendments of 1987 (Pub. L. 100–237). The purpose of the law is to improve the manner in which agricultural commodities are distributed to recipient agencies, to improve the quality of the commodities that are distributed and to increase the degree to which such distribution responds to the needs of recipient agencies. This rule contains the amendments necessary to implement two of the provisions in Pub. L. 100–237: Procedures for the replacement of commodities received by recipient agencies that are stale, spoiled, out of condition, or not in compliance with specifications and regulations for delivery schedules for the distribution of commodities and products that are consistent with the needs of eligible recipient agencies. Pub. L. 100–237 requires both these provisions to be implemented within 90 days of enactment of the law. Therefore, these provisions are being published as an interim rule. Those provisions of Pub. L. 100–237 associated with dissemination of summaries of product specifications to recipient agencies, semiannual collection of commodity acceptability information from recipient agencies, testing and monitoring of processed commodities, purchase of domestically-produced products, and commodity value per meal are addressed in a separate interim rule which is forthcoming. For further information concerning the Department's action to date in implementation of Pub. L. 100–237, see the **Federal Register** "Notice of Implementation of Pub. L. 100–237" which was published on April 19, 1988 (53 FR 12794).

Delivery Schedules

Section 3(e)(1)(D) of the law requires the Secretary to provide by regulation for delivery schedules for the distribution of commodities that are consistent with the needs of recipient agencies, taking into account the duty of the Secretary to remove surplus agricultural commodities and to make direct purchases under certain nutrition legislation. While the Department will make commodities available in accordance with the needs of recipient agencies to the fullest extent possible, there will be instances in which this will not be possible. As recognized throughout the legislation, the Department must continue to consider agricultural marketing conditions as well as the costs associated with the purchase and distribution of all commodities.

This interim rule revises § 250.13(a)(2) to require the Department and the distributing agency to consider the needs of recipient agencies prior to ordering and delivering donated foods. In an effort to avoid untimely deliveries, the Department will, to the extent practicable, arrange deliveries based on information obtained from distributing agencies. To avoid untimely deliveries to recipient agencies, this rule requires distributing agencies to notify recipient agencies of: (1) Anticipated Department purchases and estimated shipping periods as such information becomes available; (2) anticipated State delivery schedules at least quarterly; and (3) changes in delivery schedules as they become known. In addition, distributing agencies are required to maintain distribution schedules from State facilities which are equitable and reliable, to recognize hours of operation, holidays and vacations and other special needs of recipient agencies, and to make donated foods available at least monthly.

The Department believes that implementation of these procedures will, in accordance with the legislation, ensure that delivery schedules established by the distributing agency

are consistent with the needs of recipient agencies.

Replacement of Commodities

Section 3(b)(5) of the law requires the Secretary to establish procedures for the replacement of commodities received by recipient agencies that are stale, spoiled, out of condition, or not in compliance with specifications.

The Department currently replaces donated foods in instances when: (1) Replacement can be made under the vendor's warranty; or (2) the product was damaged while in transit. Replacement is accomplished by donating the same or similar food, by crediting a State's entitlement or cap thereby enabling the ordering of additional commodities as replacement, or, in rare instances, with cash payments to be used to purchase replacement commodities. The problems associated with the replacement of donated foods have, in the past, been mainly attributable to the difficulty in determining at what point in time the product was damaged or went out of condition.

This interim rule redesignates § 250.13 (g) and (h) as (h) and (j) respectively and adds a new paragraph (g) to § 250.13 which identifies instances in which the Department will replace out-of-condition donated foods and the procedures which must be used by distributing agencies and recipient agencies in pursuing replacement.

The Department will replace donated foods received by distributing or recipient agencies that are stale, spoiled, out of condition, or not in compliance with specifications under the following conditions: (1) The donated foods have been provided as part of the State's authorized level of assistance (entitlement) as established by law or when the donated foods have been provided in addition to the State's entitlement but the total amount which the State can order has been capped by the Department; (2) it is determined that the donated foods were not fit for use in the Food Distribution Program at the time they were delivered by the Department; (3) the loss is reported to the FNSRO within three months of the date the donated foods were received in the State; (4) a signed consignee receipt or acceptable written documentation of delivery is submitted to the FNSRO; and (5) at the request of the Department, the donated foods have been reinspected and determined to be unfit for use in the Food Distribution Program.

In instances in which the recipient agency seeks replacement of donated foods, the recipient agency must submit the required information to its distributing agency. The distributing agency must promptly submit the information to FNSRO.

The establishment of procedures for the replacement of donated foods which can be ordered on a use without waste basis (unlimited bonus) is not necessary since States can order additional amounts of these donated foods to make up for the loss.

It is expected that the distributing agency or recipient agency examines the donated foods to determine if they are fit for use in the Food Distribution Program prior to accepting delivery. However, the Department realizes that there are instances in which there may be hidden damage which is not visable upon receipt. Thus, a three-month period is being provided for requesting replacement of donated foods which were not fit for use in the Food Distribution Program at the time they were delivered by the Department. The Department is aware that the regulations permit distributing and recipient agencies to maintain a six-month inventory level. However, it is assumed, in accordance with good warehousing practices, that donated foods are used on a first-in first-out basis. Thus, donated foods should not be held in storage but rotated according to the age of the product. Given this practice and the usual timing of commodity deliveries, it is unlikely that even a six-month inventory would include commodities which were received more than two or three months before they were used. In addition, vendor warranties on some products are limited to four months. In instances in which the vendor is at fault, the three month limitation for seeking replacement is necessary to allow sufficient time for the Department to pursue replacement by the vendor.

The submission of a signed consignee receipt or acceptable written documentation of delivery is being required so that the Department can verify information relative to the delivery and receipt of the product.

The Department will, at a minimum, require that the donated foods be reinspected in instances when the loss is significant based on the value of the food or when it is determined that a potential health hazard exists. The purpose of the reinspection is to ensure that the donated foods are unfit for use in the Food Distribution Program and to assist in establishing at what point in time the loss occurred. In instances in which it is determined that the donated foods were in good condition at the time they were delivered by the Department, the cost of the reinspection will be borne by the distributing agency.

New § 250.13(g) of this interim rule also requires that in instances in which the vendor is responsible for replacing the donated foods, replacement will be made with either the same or similar foods, at the Department's option. Physical replacement will be on a per pound or per case basis.

In rare instances, and only with the Department's approval, vendor replacement will be made with a cash payment to the recipient or distributing agency. This rule requires any such cash payments to be used to purchase replacement commodities which are the same or similar to the original commodities. Cash payments will be made on the dollar value of the donated foods at the time the donated food was delivered or the current cost to the Department for replacement, whichever is higher.

In instances in which the Department is responsible for replacing the donated foods, replacement will be made with either the same or similar food or by crediting the State's entitlement or cap. Physical replacement will be made on a per pound or per case basis. Entitlement and cap crediting will be equal to the dollar value or number of pounds which was deducted from the State's entitlement or cap for that shipment. Separate shipments of replacement commodities will be made only if the amount of the replacement justifies a shipment. That is, shipment of the product will be arranged once the quantities to be delivered are sufficient to make it cost effective. Shipment will not be arranged for just a few cases unless they can be combined with another order.

Once replacement of the donated foods has been made by the Department, the distributing agency must promptly make provisions for providing replacement donated foods to the recipient agency which incurred the loss.

In instances when it is determined that the donated foods were in good condition at the time the Department made delivery, the distributing agency must follow the claims procedures contained in § 250.15(c) of this Part and FNS Instruction 410–1, Non-Audit Claims—Food Distribution Program. Use of these procedures will provide the Department with ample time and information to recoup losses from vendors.

List of Subjects in 7 CFR Part 250

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs—social

programs, Infants and children, Price support programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

Accordingly, 7 CFR Part 250 is amended to read as follows:

PART 250—DONATIONS OF FOOD FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

1. The authority citation for Part 250 is revised to read as follows:

Authority: Sec 32, Pub. L. 74–320, 49 Stat. 744 (7 U.S.C. 612c); Pub. L. 75–165, 50 Stat. 323 (15 U.S.C. 713c); secs. 6, 9, 60 Stat. 231, 233, Pub. L. 79–396 (42 U.S.C. 1755, 1758); sec. 416, Pub. L. 81–439, 63 Stat. 1058 (7 U.S.C. 1431); sec. 402, Pub. L. 91–665, 68 Stat. 843 (22 U.S.C. 1922); sec. 210, Pub. L. 84–540, 70 Stat. 202 (7 U.S.C. 1859); sec. 9, Pub. L. 985–931, 72 Stat. 1792 (7 U.S.C. 1431b); Pub. L. 85–756, 74 Stat. 899 (7 U.S.C. 1431 nt); sec. 709, Pub. L. 89–231, 79 Stat. 1212 (7 U.S.C. 1446a–1); sec. 3, Pub. L. 90–302, 82 Stat. 117 (42 U.S.C. 1761); secs. 409, 410, Pub. L. 93–288, 88 Stat. 157 (42 U.S.C. 5179, 5180); sec. 2, Pub. L. 93–326, 88 Stat. 286 (42 U.S.C. 1762a); sec. 16 Pub. L. 94–105, 89 Stat. 522 (42 U.S.C. 1766) sec. 1304a, Pub. L. 95–113, 91 Stat. 980 (7 U.S.C. 612c nt); sec. 311, Pub. L. 95–478, 92 Stat. 1533 (42 U.S.C. 3030a); sec. 10, Pub. L. 95–627, 92 Stat. 1533 (42 U.S.C. 1760); sec. 1561, Pub. L. 99–198, 99 Stat. 1589 (7 U.S.C. 612c); 5, U.S.C. 301, unless otherwise noted; Pub. L. 100–237, 101 Stat. 1733 (7 U.S.C. 612 note).

2. In § 250.13, Paragraph (a)(2) is revised and paragraphs (g) and (h) are redesignated as paragraphs (h) and (i) respectively and new paragraph (g), is added to read as follows:

§ 250.13 Distribution and control of donated foods.

(a) *Availability and use of donated foods.* * * *

(2) *Allocation and delivery.* As commodities become available for donation, FNS shall notify distributing agencies of the availability of the donated foods, the class or classes of recipient agencies or recipients eligible to receive them, and any special terms and conditions of donation and distribution which attach to a particular donated food in addition to the general terms and conditions set forth herein. The Department shall, to the extent practicable, make every effort to arrange deliveries based on information obtained from distributing agencies. However, the Department shall not be held fiscally responsible for any delay in delivering or for nondelivery of donated foods due to any cause. To avoid untimely deliveries to recipient agencies, distributing agencies shall notify recipient agencies of:

(i) Anticipated Department purchases and estimated shipping periods as such information becomes available;

(ii) Anticipated State delivery schedules at least quarterly; and

(iii) Changes in delivery schedules as they become known.

In addition, distributing agencies shall maintain distribution schedules which are equitable and reliable, recognize hours of operation, holidays and vacations, and other special needs of recipient agencies, and make donated foods available at least monthly.

* * * * *

(g) *Replacement.* The Department shall replace donated foods received by distributing or recipient agencies that are stale, spoiled, out of condition, or not in compliance with specifications when:

(1) The donated foods have been provided as part of the State's authorized level of assistance (entitlement) as established by law or when the donated foods have been provided in addition to the State's entitlement but the total amount of the donated food which the distributing agency can order has been capped by the Department;

(2) It is clearly determined that the donated foods were not fit for use in the Food Distribution Program at the time they were delivered by the Department;

(3) The loss is reported to the FNSRO within three months of the date the donated foods were received in the State;

(4) A signed consignee receipt or acceptable written documentation of delivery is submitted to the FNSRO; and

(5) At the request of the Department, the product has been reinspected and has been determined to be unfit for use in the Food Distribution Program.

In instances in which the recipient agency seeks replacement of donated foods, the recipient agency shall submit the information required by this paragraph to its distributing agency. The distributing agency shall promptly submit the information to the FNSRO. Vendor replacement shall be made with either the same or similar food, at the Department's option. In rare instances, and only with the Department's approval, vendor replacement will be made with a cash payment to the recipient or distributing agency. Any such cash payments shall be used to purchase replacement commodities which are the same or similar to the original commodities. Physical replacement shall be on a per pound or per case basis. Cash payments shall be made on the basis of the dollar value of the donated food at the time the product was delivered or the cost to the Department for replacement, whichever is higher. Replacement by the Department shall be with either the same or similar food or by crediting the State's entitlement or cap. Physical replacement shall be on a per pound or per case basis. Entitlement or cap crediting shall be equal to the dollar value or number of pounds which was deducted from the State's entitlement or cap for that shipment. The Department shall arrange for delivery of the replacement donated foods once the quantities to be delivered are sufficient to make it cost effective. Once the Department has replaced the out-of-condition donated foods, the distributing agency shall make arrangements for providing replacement donated foods to the recipient agency which incurred the loss. In instances in which it is determined that the donated foods were in good condition at the time they were delivered by the Department, the cost of the reinspection shall be borne by the distributing agency and the distributing agency shall follow the procedures contained in § 250.15(c) of this part and FNS Instruction 410–1, Non-Audit Claims—FNS Distribution Program.

* * * * *

Date: June 10, 1988.

Anna Kondratas,

Administrator

[FR Doc. 88–13548 Filed 6–15–88; 8:45 am]

BILLING CODE 3410–30–M

Agricultural Marketing Service

7 CFR Part 948

Irish Potatoes Grown in Colorado; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule authorizes expenses and establishes an assessment rate under Marketing Order No. 948 for the 1988–89 fiscal period. Authorization of this budget will allow the Colorado Potato Administration Committee Area III to incur expenses reasonable and necessary to administer the program. Funds to cover these expenses will be derived from assessments on handlers.

EFFECTIVE DATE: July 1, 1988 through June 30, 1989.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–2431.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 948 (7 CFR Part 948) regulating the handling of potatoes grown in Colorado. This 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 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 this final rule on small entities.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the **Federal Register** (53 FR 18096, May 20, 1988). That document contained a proposal to add § 948.201 to establish expenses and an assessment rate for the Colorado Potato Administrative Committee Area III. That rule provided that interested persons could file comments through May 31, 1988. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, the Secretary also finds 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).

List of Subjects in 7 CFR Part 948

Marketing agreements and order, Potatoes (Colorado).

For the reasons set forth in the preamble, 7 CFR Part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR Part 948 continues to read as follows:

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

2. Section 948.201 is amended to read as follows.

Note: This section prescribes the annual assessment rate and will not be published in the Code of Federal Regulations.

§ 948.201 Expenses and assessment rate.

Expenses of $3,537 by the Colorado Potato Administrative Committee Area III are authorized, and an assessment rate of $0.002 per hundredweight of potatoes is established for the fiscal year ending June 30, 1989. Unexpected funds may be carried over as a reserve.

Dated: June 13, 1988.

William J. Doyle,

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

[FR Doc. 88–13645 Filed 6–15–88; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 998

Marketing Agreement 146 Regulating the Quality of Domestically Produced Peanuts; Expenses, Assessment Rate, and Indemnification Reserve for the Peanut Administrative Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures for administration and indemnification, establishes an assessment rate, and authorizes monetary additions to the indemnification reserve under Marketing Agreement 146 for the 1988–89 crop year. These actions are needed for the committee to incur expenses and collect funds to pay its expenses during the 1988–89 crop year, which will facilitate program operations. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: July 1, 1988, through June 30, 1989 [§ 998.401].

FOR FURTHER INFORMATION CONTACT: G.J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2530–S, Washington, DC 20090–6456, telephone 202–475–3919.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement 146 (7 CFR Part 998; 53 FR 20291, June 3, 1988) regulating the quality of domestically produced peanuts. This agreement 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 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 this final rule on small entities.

Under the marketing agreement the assessment rate for a particular crop year applies to all assessable tonnage handled from the beginning of such year (i.e., July 1). An annual budget of expenses is prepared by the Peanut Administrative Committee and submitted to the Department of Agriculture for approval. The members of the administrative committee are handlers and producers of peanuts. They are familiar with the committee's needs and with the costs for goods, services, and personnel for program operations and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed at industry-wide public meetings. Thus, all directly affected persons have an opportunity to participate and provide input. The handlers of peanuts who will be directly affected have signed the marketing agreement authorizing approval of expenses that may be incurred and the imposition of assessments.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected receipts and acquisitions of farmers' stock peanuts. It automatically applies to all assessable peanuts from July 1. Because that rate is applied to actual receipts and acquisitions, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. The recommended budget, rate of assessment, and the continuation of an indemnification reserve were acted upon by the committee on April 14 and 15, 1988, and expenses are incurred on a continuous basis. Therefore, this budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses starting on July 1, 1988.

The Peanut Administrative Committee unanimously recommended a 1988–89 budget of administrative expenses of $816,000, or $34,000 more than budgeted last year. The increase from last year is necessary to cover increases in the salary and benefits of the committee's

staff, hire another field man, cover additional staff travel expected during the 1988–89 crop year, and to cover increases in office rent and parking.

The recommended assessment rate for the 1988–89 crop year is $2.48 per ton, of which $0.48 is for administrative expenses and $2.00 is for indemnification expenses. Last year $0.46 was fixed for administrative expenses and $3.00 was fixed for indemnification expenses. The 1988–89 assessable tonnage was estimated at 1.7 million tons, the same as last year. Application of the recommended assessment rate to this estimate will result in $816,000 for administration and $3.4 million for indemnification.

An estimated $4.9 million of 1987–88 indemnification funds will be carried forward into the 1988–89 crop year as a reserve under the agreement to meet 1988–89 indemnification expenses. The reserve is within the limits authorized by the agreement. Funding for the indemnification account also will be generated from interest on time deposits.

A proposed rule regarding this action was issued on May 23, 1988, and published in the **Federal Register** (53 FR 19001, May 26, 1988). That document provided that interested persons could file comments through June 6, 1988. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers signatory to the agreement. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing agreement. Therefore, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found that the specified expenses are reasonable and likely to be incurred, and that such expenses, assessment rate, and indemnification reserve will tend to effectuate the declared policy of the Act.

Approval of the expenses and assessment rate and the authorization to carry an indemnification reserve should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. In addition, handlers are aware of this action which was recommended by the committee at public meetings. Therefore, the Secretary also finds 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).

List of Subjects in 7 CFR Part 998

Marketing agreement, Peanuts.

For the reasons set forth in the preamble, § 998.401 is added to title 7 of the Code of Federal Regulations as follows:

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR Part 998 (53 FR 20291, June 3, 1988) continues to read as follows:

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

2. New § 998.401 is added to read as follows:

Note: This section will not be published in the Code of Federal Regulations.

§ 998.401 Expenses, assessment rate, and indemnification reserve.

(a) *Administrative expenses.* The budget of expenses for the Peanut Administrative Committee for the crop year beginning July 1, 1988, shall be in the amount of $816,000, such amount being reasonable and likely to be incurred for the maintenance and functioning of the committee and for such purposes as the Secretary may, pursuant to the provisions of the marketing agreement, determine to be appropriate.

(b) *Indemnification expenses.* Expenses of the committee for indemnification payments, pursuant to the terms and conditions of indemnification applicable to the 1988 crop, effective July 1, 1988, are expected to be about $5.1 million, such amount being reasonable and likely to be incurred.

(c) *Rate of assessment.* Each handler shall pay to the committee, in accordance with § 998.48 of the marketing agreement, an assessment rate of $2.48 per net ton of farmers' stock peanuts received or acquired other than from those described in § 998.31 (c) and (d). A total of $0.48 shall be for administrative expenses and a total of $2.00 shall be for indemnification expenses.

(d) *Indemnification reserve.* Monetary additions to the indemnification reserve, established in the 1965 crop year pursuant to § 988.48 of the agreement, shall continue. That portion of the total assessment funds accrued from the $2.00 rate and not expended in providing indemnification on the 1988 crop peanuts shall be kept in such reserve and shall be available to pay indemnification expenses on subsequent crops.

Dated: June 13, 1988.

William J. Doyle,

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

[FR Doc. 88–13646 Filed 6–15–88; 8:45 am]

BILLING CODE 3410–02–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 725

Central Liquidity Facility

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: Section 725.5(c) of the NCUA Rules and Regulations requires that the part of a member credit union's stock subscription in the National Credit Union Administration Central Liquidity Facility which is not paid-in shall be invested in liquid assets as defined in § 742.2(a). Part 742, however, was deleted in its entirety from the NCUA Rules on August 25, 1982. This amendment adds the definition of "liquid assets" to Part 725 to correct the unintended omission of the definition by the deletion of Part 742. This amendment does not add to or otherwise change the requirements of Part 725.

EFFECTIVE DATE: June 16, 1988.

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

FOR FURTHER INFORMATION CONTACT: Floyd Lancaster, Acting President, Central Liquidity Facility, or James J. Engel, Deputy General Counsel, at the above address or telephone: (202) 357–1140 (Mr. Lancaster) or (202) 357–1030 (Mr. Engel).

SUPPLEMENTARY INFORMATION: Part 725 of NCUA Rules and Regulations (12 CFR Part 725) contains the regulations implementing the National Credit Union Central Liquidity Facility Act. The NCUA Central Liquidity Facility (CLF) is a mixed-ownership Government corporation established to improve the general financial stability of credit unions by meeting their liquidity needs. Section 725.5(c) provides that the portion of a CLF member's stock subscription that is not paid in to the CLF must be invested in liquid assets "as defined in § 742.2(a) * * *." However, Part 742—Liquidity Reserves—was deleted in its entirety. Therefore, there is no longer a definition

of "liquid assets" for purposes of § 725.5(c). In order to correct this unintended omission, it is necessary to add a definition of "liquid assets" to Part 725. The definition contained in this final rule is the same as that which previously appeared in § 742.2(a).

The NCUA Board has determined that public comment on this final rule is unnecessary. It is technical in nature and does not affect the operations of or change the requirements for CLF members.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board hereby certifies that the final rule will not have a significant impact on a substantial number of small credit unions (primarily those under $1 million in assets). Further, this rule is technical in nature, providing a definition inadvertently deleted in a previous deregulation action, and makes no changes in the method of credit union operations. Accordingly, the Board has determined that a regulatory flexibility analysis is not required.

Paperwork Reduction Act

This final rule does not contain a paperwork requirement; that is, it does not require any information collection or reporting.

Executive Order 12612

The final rule does not affect state regulation of credit unions.

List of Subjects in 12 CFR Part 725

Credit Unions, Central liquidity facility, Liquid assets.

By the National Credit Union Administration Board on May 26, 1988.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends it regulations as follows:

§ 725.2 [Amended]

1. Section 725.2 is amended by redesignating paragraphs (h) through (p) as paragraphs (i) through (q), and by adding a new paragraph (h) to read as follows:

* * * * *

(h) "Liquid assets" means the following unpledged assets:

(1) Cash on hand;

(2) Share or deposit accounts with remaining maturities of one year or less maintained in central credit unions or institutions insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation;

(3) Investments in obligations of the United States or any agency thereof, or securities fully guaranteed as to principal and interest thereby, which are authorized under 12 U.S.C. 1757(7) and which have a remaining maturity of one year or less;

(4) Common trust investments and similar investments in funds or securities authorized for Federal credit unions, the objectives of which are to provide daily liquidity for participating credit unions;

(5) Shares in the National Credit Union Administration Central Liquidity Facility or in special share accounts authorized by § 725.7 of this part;

(6) In the case of a federally-insured state-chartered credit union, any asset held in satisfaction of liquidity requirements imposed by applicable state law or regulation; and

(7) Balances maintained by federally-insured credit unions in a Federal Reserve bank, or in a pass-through account to a Federal Reserve bank, pursuant to the requirements of Section 19(b) of the Federal Reserve Act (12 U.S.C. 461(b)).

§ 725.5 [Amended]

2. Paragraph (c) of § 725.5 is amended by removing the language "as defined in § 742.2(a) of this chapter."

[FR Doc. 88-13444 Filed 6-15-88; 8:45 am]

BILLING CODE 7535-01-M

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12 CFR Part 745

Examples of Insurance Coverage Afforded Accounts in Credit Unions Insured by the National Credit Union Share Insurance Fund

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board is clarifying explanatory language and revising examples of account insurance coverage contained in the Appendix to Part 745 of NCUA's Rules and Regulations entitled Clarification and Definition of Account Insurance Coverage. This action is necessary to conform the Appendix to the substantive provisions of the regulation.

EFFECTIVE DATE: June 16, 1988.

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

FOR FURTHER INFORMATION CONTACT: James J. Engel, Deputy General Counsel, at the above address or telephone: (202) 357-1030.

SUPPLEMENTARY INFORMATION: On October 23, 1986, the NCUA Board issued final amendments to Part 745 of its Rules and Regulations—Clarification and Definition of Account Insurance Coverage. (See 51 FR 37549.) One of the amendments was the addition of an Appendix that sets forth examples of share insurance coverage on various types of accounts in federally-insured credit unions. Three of the examples and a portion of explanatory language contained in the Appendix do not reflect revisions made to the final rule itself and therefore are incorrect. The purpose of this action is to correct these inadvertent errors and to provide additional guidance by the addition of two new examples.

Single Ownership Accounts

Section 745.3(b) now provides that funds "held by a guardian, custodian, or conservator for the benefit of a ward or for the benefit of a minor under a Uniform Gifts to Minors Act and deposited in one or more accounts in the name of the guardian, custodian, or conservator are insured up to $100,000 in the aggregate, separately from any other accounts of the guardian, custodian, conservator, ward, or minor." In the Appendix to Part 745, under the heading "A. SINGLE OWNERSHIP ACCOUNTS", the introductory language incorrectly states that funds held for the benefit of a member in the name of a guardian, conservator, or custodian would be added to the member's individual accounts for purposes of determining insurance coverage. That was the rule prior to the October 23, 1986, amendments. Examples 5 and 6 also incorrectly illustrate that the minor's or ward's individual and custodial accounts are added together and insured to $100,000 in the aggregate.

Under the current rule, it is only a member's individual accounts, accounts held by the member's agents or nominees, and custodial loan accounts held for the member as a borrower that are added together as individual accounts and insured up to the $100,000 maximum. (Section's 745.3(a) (1), (2) and (3).) Funds held for the benefit of a ward or minor in one or more accounts are added together and insured up to $100,000, but such coverage is separate from the coverage available on any other accounts of the guardian, custodian, conservator, ward, or minor. (Section 745.3(b).)

Joint Accounts

As a result of the 1986 amendments, § 745.8(c) now provides that a joint account with a minor will not fail to qualify as a joint account if state law limits or restricts the minor's withdrawal rights. Previously, all joint

owners had to have equal withdrawal rights; otherwise, the ownership interest of each joint owner would be treated as an individual account and added to any other individual accounts of that owner. If the minor's withdrawal rights are restricted by contract or agreement, rather than by state law, the account will not be treated as a joint account for insurance purposes. Example 5, now redesignated as 5(a), has been revised and a new example 5(b) has been added to clarify this area.

Trust Accounts and Retirement Accounts

With respect to employee retirement plan funds, there has been some confusion over determining insurance coverage available to a member when only a portion of a plan's funds are invested in a credit union. For insurance purposes, the member's interest in the plan account will be in proportion to the member's interest in the total plan. If 25% of the plan funds are invested in a credit union account, then only 25% of the member's interest in the plan are deemed to be in the account.

In the past, some plan trustees have incorrectly thought that as long as each plan participant who was a member of the credit union did not have more than $100,000 in the plan, then the plan's account would be fully insured for $100,000 per member even though only a portion of the total plan funds were in the credit union account. For example, an employer a member of a credit union, has a retirement plan fund of $10,000,000 for 100 employees, each employee having a determinable interest of $100,000. Only half the employees are members of the credit union. Ten percent of those funds, $1,000,000, is placed in a trust account in the credit union. Mistakenly, some trustees assumed that the account would be fully insured to $1,000,000 since 50 employees were credit union members and none of them had more than the $100,000 maximum. However, each employee has only a 1% interest in the total plan fund. Therefore, each employee is presumed to have only a 1% interest ($10,000) in the funds in the account. The 50 employees who are credit union members would each be fully covered for a total of $500,000. The remaining $500,000, representing the interests of the 50 nonmembers, would only be insured for $100,000 on behalf of the employer.

This present action conforms the Appendix to the substantive provisions of the regulation. These changes will be made to NCUA's brochure "Your Insured Funds."

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board has determined that a regulatory flexibility analysis is not required because this action does not constitute a regulatory change and does not have any effect on credit unions.

Paperwork Reduction Act

This change does not require any information collection or reporting.

Executive Order 12612

This action does not affect state regulation of credit unions.

List of Subjects

12 CFR Part 745

Credit unions, Account insurance coverage.

By the National Credit Union Administration Board on May 26, 1988.

Becky Baker,

Secretary of the Board.

According, NCUA amends, the Appendix to Part 745 as follows:

Appendix to Part 745—[Amended]

Appendix—Examples of Insurance Coverage Afforded Accounts in Credit Unions Insured by the National Credit Union Share Insurance Fund is amended:

1. By revising the first paragraph in Part A and Examples 5 and 6, to read as follows:

A. Single Ownership Accounts

All funds owned by an individual member (or, in a community property state, by the husband-wife community of which the individual is a member) and invested in one or more individual accounts are added together and insured to the $100,000 maximum. This is true whether the accounts are maintained in the name of the individual member owning the funds, in the name of the member's agent or nominee, or in a custodial loan account on behalf of the member as a borrower. (§745.3(a) (1), (2) and (3).) All such accounts are added together and insured as one individual account. Funds held in one or more accounts in the name of a guardian, custodian, or conservator for the benefit of a ward or minor are added together and insured up to $100,000. However, such an account or accounts will not be added to any other individual accounts of the guardian, custodian, conservator, ward, or minor for purposes of determining insurance coverage. (§ 745.3(b).)

* * * * *

Example 5

Question: Member C, a minor, maintains an individual account of $750. C's grandfather makes a gift to him of $100,000, which is invested in another account by C's father, designated on the credit union's records as custodian under a Uniform Gift to Minors Act. C's father, also a member, maintains an individual account of $100,000. What is the insurance coverage?

Answer: C's individual account and the custodian account held for him by his father are each separately insured: the $100,000 maximum on the custodian account, and $750 on his individual account. The individual account held by C's father is also separately insured to the $100,000 maximum. (§§ 745.3 (a)(1) and (b).)

Example 6

Question: Member G, a court-appointed guardian, invests in a properly designated account $100,000 of funds in his custody which belong to member W, his ward. W and G each maintain $25,000 individual accounts. What is the insurance coverage?

Answer: W's individual account and the guardianship account in G's name are each insured to $100,000 providing W with $125,000 in insured funds. G's individual account is also separately insured. (§§ 745.3 (a)(1) and (b).)

2. By revising the third paragraph in Part F and Example 5 to read as follows:

F. Joint Accounts

* * * * *

Any individual, including a minor, may be a co-owner of a joint account. Although, generally, each co-owner must have signed an account signature card and must have the same rights of withdrawal as other co-owners in order for the account to qualify for separate joint account insurance, there is an exception. If state law limits or restricts a minor's withdrawal rights—for example, a minimum age requirement to make a withdrawal—the account will still be insured as a joint account.

* * * * *

Example 5(a)

Question: A, B and C hold accounts as set forth in Example 4. Members A and B are husband and wife; C, their minor child, has failed to sign the signature card for Account No. 7. In Account No. 5, according to the terms of the account, C cannot make a withdrawal without A's written consent. (This is not a limitation imposed under state law.) In Account No. 6, the signatures of both B and C are required for withdrawal. A has provided all of the funds for Accounts numbered 5 and 7 and under state law has the entire actual ownership interest in these two accounts. What is the insurance coverage?

Answer: If any of the co-owners of a joint account have failed to meet any of the joint account requirements, the account is not insured as a joint account. Instead, the account is insured as if it consisted of commingled individual accounts of each of the co-owners in accordance with his actual ownership interest in the funds, as determined under applicable state law. (§ 745.8(c).)

Account No. 5 is not insured as a joint account because C does not have equal withdrawal rights with A. Based on the terms of the account, C can only make a withdrawal if he has A's written consent.

Account No. 7 is not insured as a joint account because C did not personally sign the signature card. Therefore, all of the funds in Accounts 5 and 7 are treated as individually owned by A and added to A's individual account, Account No. 1. For insurance purposes then, A has $280,000 in one individual account that is insured for $100,000, leaving $180,000 uninsured.

Account 6 does qualify as a joint account for insurance purposes since each co-owner has the right to withdraw funds on the same basis. Account 4, the remaining joint account, and Account 6 are each insured to the $100,000 limit since they are owned by different combinations of individuals and no co-owner has an aggregate interest in the two accounts in excess of $100,000.

Example 5(b)

Question: Assume the same accounts as Example 5(a) except that, on Account No. 5, C's right to make a withdrawal is limited by state law which precludes a minor from making a withdrawal without the co-owner's written consent. What is the insurance coverage?

Answer: In this situation, Accounts 4, 5, and 6 all qualify as joint accounts and would be fully insured since no co-owner has an aggregate interest in the accounts of more than $100,000. A, B, and C will each have $90,000 of insured funds based on: A's interest in Account 4 ($45,000) and 5 ($45,000), B's interest in Accounts 4 ($45,000) and 6 ($45,000), and C's interest in Accounts 5 ($45,000) and 6 ($45,000). As in Example 5(a), Account No. 7 does not qualify as a joint account and would be added to A's individual account for insurance purposes.

3. By adding a new paragraph to Part G preceding Example 1, designating Example 3 as Example 3(a), and by adding Example 3(b) to read as follows:

G. Trust Accounts and Retirement Accounts

* * * * *

In the case of an employee retirement fund where only a portion of the fund is placed in a credit union account, the amount of insurance available to an individual member/beneficiary on his interest in the account will be in proportion to his interest in the entire employee retirement fund. If, for example, the member's interest represents 10% of the entire plan funds, then he is presumed to have only a 10% interest in the plan account. Said another way, if a member has a vested interest of $10,000 in a municipal employees retirement plan and the trustee invests 25% of the total plan funds in a credit union, the member would be insured for only $2,500 on that credit union account. There is an exception, however. The member would be insured for $10,000 if the trustee can document, through records maintained in the ordinary course of business, that individual beneficiary's interests are segregated and the total vested interest of the member was, in fact, invested in that account.

* * * * *

Example 3(b)

Question: Member S is trustee for the ABC Employees Retirement Fund containing $1,000,000. Member A has a determinable interest of $90,000 in the Fund (9% of the total). S invests $500,000 of the Fund in trust in an insured credit union and the remaining $500,000 elsewhere. Some of the beneficiaries of the Fund are members of the credit union and some are not. S does not segregate each employee's interest in the Fund. What is the insurance coverage?

Answer: The account is insured as to determinable interest of each member beneficiary, adjusted in proportion to the Fund's investment in the credit union. A's insured interest in the account is $45,000, or 9% of $500,000. This reflects the fact that only 50% of the Fund is in the account and A's interest in the account is in the same proportion as his interest in the overall plan. Each beneficiary who is a member would be similarly insured. Members' interests not capable of evaluation and nonmembers' interests are added together and insured to a maximum of $100,000 in the aggregate. (§ 745.9–1.)

[FR Doc. 88–13445 Filed 6–15–88; 8:45 am]
BILLING CODE 7535–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 372 and 386

[Docket No. 80474–8074]

Removal of Requirement that Export Licenses Be Returned to the Office of Export Licensing

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: Bureau of Export Administration is removing the requirement that exporters return used or expired licenses to the Office of Export Licensing (OEL). However, this rule does not affect the recordkeeping requirements set forth in § 386.2(d), nor does this rule affect licenses that are suspended or revoked by OEL. Licensees are still required to return licenses to OEL immediately upon notification of their suspension or revocation.

EFFECTIVE DATE: This rule is effective June 16, 1988.

ADDRESS: Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Export Administration, Department of Commerce, P.O. Box 273, Washington DC 20044.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Regulations Branch, Export Administration, Telephone: (202) 377–2440.

SUPPLEMENTARY INFORMATION:

1. Because this rule concerns a military and foreign affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule mentions and reduces a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0625–0051.

3. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a military and foreign affairs function of the United States. Because this rule does not impose a new control, it is not subject to section 13(b) of the Export Administration Act. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

List of Subjects in 15 CFR Parts 372 and 386

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

PARTS 372 AND 386—[AMENDED]

1. The authority citation for 15 CFR parts 372 and 386 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

2. Section 372.9 is amended by revising paragraph (f) and adding a new paragraph (g) to read as follows:

§ 372.9 Issuance of validated licenses.

* * * * *

(f) *Return of revoked or suspended licenses.* If the Office of Export Licensing revokes or suspends a license, the licensee shall return the license immediately to the Office of Export Licensing in accordance with the instructions in § 386.2(d).

(g) *Records.* Any person to whom a validated license has been issued shall retain the license and maintain complete records in accordance with § 386.2(d), including any export licenses (whether used or unused, valid or expired) and all supporting documents and shipping records.

3. Section 386.2 is amended by revising the last sentence of (d)(2), by adding paragraph (d)(3), and by revising paragraph (d)(4), and removing paragraph (d)(5), to read as follows:

§ 386.2 Use of validated license.

* * * * *

(d) *Records of validated license shipments.* * * *

(2) * * * Continuation sheets become part of the license and shall be retained with the license.

(3) *Retention of licenses.* Licenses issued by OEL shall be retained by the applicant, along with all applicable supporting documents and records of shipments, except as provided below.

(4) *Return of revoked or suspended licenses.* If the Office of Export Licensing revokes or suspends the license, the licensee shall return it immediately upon notification that the license has been revoked or suspended. The licensee shall complete the certification on the reverse of the license document and attach copies of any license amendments to the license, and return it to: Office of Export Licensing, P.O. Box 273, Washington, DC 20044. If the licensee fails to return a revoked or suspended license immediately upon notification, the Office of Export Enforcement may impose sanctions provided for in § 387.1 of the Export Administration Regulations.

Dated: June 10, 1988.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 88–13467 Filed 6–15–88; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Approval of Amendments to the Missouri Permanent Regulatory Program; Missouri

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

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of program amendments submitted by Missouri as modifications to the State's permanent regulatory program (hereinafter referred to as the Missouri program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments were submitted to OSMRE on June 22, 1987. The amendments pertain to: Backfilling and grading, revegetation, use of explosives, signs and markers, permit application requirements, penalty assessment, and liens for reclamation on abandoned mined lands.

EFFECTIVE DATE: June 16, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106; Telephone: (816) 374–5527.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Missouri program on November 21, 1980 (45 FR 77017). Information pertinent to the general background and revisions to the permanent program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Missouri program can be found in the November 21, 1980 **Federal Register** (45 FR 77017). Subsequent actions concerning proposed amendments and the conditions of approval are codified at 30 CFR 925.15, 925.16, and 925.20.

II. Submission of Amendments

In accordance with the provisions of 30 CFR 732.17(f)(1), on June 11, 1986, the Director notified Missouri (Administrative Record No. MO–295) of the changes necessary to ensure that the approved regulatory program was in accordance with SMCRA and no less effective than its implementing regulations.

To comply with this letter, the Missouri Land Reclamation Program (LRP) submitted program amendments to OSMRE on June 22, 1987 (Administrative Record No. MO–326). These program amendments constitute the first of four phases of regulatory reform under the June 11, 1986 letter. The proposed amendments are to the Missouri Code of State Regulations Division 40, and include amendments to Chapters 3, 6, 8, and 9.

The Director announced receipt of the proposed amendments in the August 10, 1987 **Federal Register** (52 FR 29546) and, in the same notice, opened the public comment period and provided an opportunity for a public hearing on their substantive adequacy. No public comments were received by September 9, 1987, the close of the comment period. The public hearing, scheduled for September 4, 1987, was not held because no one requested to testify.

Following a thorough review of the Missouri amendments, OSMRE notified the State by letter dated December 4, 1987 (Administrative Record No. MO–369) of its concerns regarding several amendments in the areas of blaster certification, backfilling and grading, and use of explosives. These concerns identified changes that appeared to be not as effective as the Federal rules.

By letter dated January 7, 1988 (Administrative Record No. MO–366), Missouri informed OSMRE that the LRP concurs with OSMRE's concerns as identified in the above letter. The State plans to address OSMRE's concerns during future rule promulgation.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the Missouri program amendments submitted by Missouri on June 22, 1987, meet the requirements of SMCRA and 30 CFR Chapter VII, except as discussed below. Only those provisions of particular interest are discussed below. Any provisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal rules, although the Director may require further changes in the future as a result of Federal regulatory revisions, court decisions and his ongoing oversight of the Missouri program. Provisions that are not discussed either contain

language similar to the corresponding Federal rules or previously approved State alternatives, or involve provisions that add specificity, or lack a Federal counterpart and that do not adversely affect other aspects of the program.

Backfilling and Grading Requirements

1. The amendment to 10 CSR 40–3.110(6) requires that when rills and gullies deeper than 9 inches, or those less than 9 inches that interfere with the postmining land use, form in areas that have been regraded and topsoiled, they shall be stabilized within a specific timeframe. The replacement of topsoil in stabilization of these rills and gullies as required by the Federal provisions at 30 CFR Part 816.95(b) is omitted. The discussion of this regulation in the final rule of the **Federal Register** published January 10, 1983 (48 FR 1160), specifically requires that operators replace lost topsoil during stabilization of rills and gullies.

The Director has advised Missouri of this deficiency in a letter from OSMRE dated December 4, 1987 (Administrative Record No. MO–369). The State, in a letter to OSMRE dated January 7, 1988 (Administrative Record No. MO–366) recognized this deficiency and plans on incorporating this change in a future regulation promulgation. The Director finds that the above portion of the Missouri amendment is less effective than the Federal provisions. Therefore, the Director is requiring that Missouri amend its regulations at 10 CSR 40–3.110(6) to require that topsoil shall be replaced when stabilizing rills or gullies in topsoiled areas.

Reclamation Schedule

2. The Federal regulations at 30 CFR 816.100 provide that the State regulatory authority may establish schedules that define contemporaneous reclamation including but not limited to backfilling, grading, topsoil replacement, and revegetation. Missouri has amended its regulations at 10 CSR 40–3.120(8) (A) and (D) to define contemporaneous reclamation for topsoil replacement, establishment of a vegetative cover, and conditions and requirements for Phase II liability release.

The proposed amendment at 10 CSR 40–3.120(8)(A) (1)–(3) provides the operator with the option of replacing topsoil as contemporaneously as possible as defined in the approved permit, or following the existing requirements of replacing topsoil within 270 days of completing rough backfilling and grading; and states that a permanent vegetative cover sufficient to control erosion shall be in place within 2 years of the completion of initial seeding; that the reclaimed land shall qualify for a Phase II liability release within 4 years of the completion of initial seeding; and that the permittee shall submit a request for release of Phase II liability within 4 years of the completion of initial seeding. It is OSMRE's interpretation that these performance standards establish timeframes within which operators must complete these phases of reclamation and submit requests for Phase II bond release; these performance standards do not require Missouri to release the bond within the stated timeframe. In addition, Missouri has deleted the requirement that a request for a variance from the reclamation schedule shall be considered the equivalent of an application for a permit revision that proposes significant alterations to the original permit.

The Federal regulations at 30 CFR 816.100 and 817.100 require that all reclamation efforts must proceed in an environmentally sound manner and as contemporaneously as practicable with the mining operations. The preamble to the final rule published in the **Federal Register** June 1, 1983 (48 FR 24638), on contemporaneous reclamation makes it clear that the State regulatory authority is allowed to establish timing and distance schedules that define contemporaneous reclamation.

The proposed amendment defines contemporaneous reclamation for the State of Missouri in a way that requires that all reclamation efforts must proceed in an environmentally sound manner and as contemporaneously as practicable with the mining operation. Therefore, the Director finds the amendment to 10 CSR 40–3.120(8) (A) and (D) to be in accordance with SMCRA and not inconsistent with the Federal regulations.

Use of Explosives

The permanent program performance standards for the use of explosives at 10 CSR 40–3.050 and 10 CSR 40–3.210 are completely revised so that they closely parallel the Federal regulations at 30 CFR 816.61 through 816.68 and 30 CFR 817.61 through 817.68. Some differences still exist between the two programs as indicated by the following:

3. There is no provision in 10 CSR 40–3.050(1)(C) or 10 CSR 40–3.210(1)(C) that requires certificates of blaster certification to be carried by blasters or that they be on file at the permit area during blasting operations as required in 30 CFR 816.61(c)(2) and 30 CFR 817.61(c)(2). The Director advised Missouri of this deficiency in a letter from OSMRE dated December 4, 1987 (Administrative Record No. MO–369). The State, in a letter to OSMRE dated January 7, 1988 (Administrative Record No. MO–366), recognized this deficiency and plans to amend these regulations when Missouri adopts a blaster certification program. The Director finds that this Missouri rule is less effective than the Federal provisions. Therefore, the Director is requiring that Missouri amend its regulations at 10 CSR 40–3.050(1)(C) and 10 CSR 40–3.210(1)(C) to be no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 816.61(c)(2) and 817.61(c)(2) concerning certificates for blaster certification.

4. In Missouri's amendment on blast design at 10 CSR 40–3.050(1)(D)1.A. and 10 CSR 40–3.210(1)(D)1.A., the State has added the phrase "or structure, listed at 10 CSR 40–3.050(5)(D)1." to the language proposed pursuant to 30 CFR 816.61(d)(1)(i) that requires an anticipated blast design to be submitted if blasting operations will be conducted within 1,000 feet of any building used as a dwelling, public building, school, church, or community or institutional building outside the permit area. The inclusion of the phrase confuses the intention of these regulations.

The Director advised Missouri, in a letter dated December 4, 1987 (Administrative Record No. MO–369), of the necessary clarification required. The State, in a letter to OSMRE dated January 7, 1988 (Administrative Record No. MO–366), recognized the need for revision and plans on incorporating this change in a future regulation promulgation.

Therefore, the Director is approving this portion of the amendment while requiring that Missouri amend its regulation at 10 CSR 40–3.050(1)(D)1.A. and 10 CSR 40–3.210(1)(D)1.A. to clarify its requirement for submitting a blasting plan when structures listed at 10 CSR 40–3.050(5)(D)1. are within 1,000 feet of the blasting operations.

5. Missouri's proposed amendment requires that the operator notify all residents and owners located within ½ mile of the permit area how to request a preblast survey at least 40 days before initiation of blasting in 10 CSR 40–3.050(2)(A) and 10 CSR 40–3.210(2)(A). The Federal regulations at 30 CFR 816.62(a) and 817.62(a) require at least 30 days notice before initiation of blasting. The additional 10 days notice required by Missouri provides additional time for the request of surveys by residents and owners and is no less effective than the notice required by the Federal provisions. The Director finds that this provision is no less

stringent than SMCRA and no less effective than the Federal regulations.

6. Missouri's proposed amendment at 10 CSR 40–3.050(2)(D) and 10 CSR 40–3.210(2)(D) states that a person who disagrees with a preblast survey may file a description of the disagreement within 45 days of receipt of the survey. While Federal regulations, at 30 CFR 816.62(d) and 817.62(d), allow a person to disagree with a survey report, they do not specify a response limit. A 45 day response period, however, is reasonable and will not prevent anyone from filing a description of disagreement. The Director finds that this provision is no less stringent than SMCRA and no less effective than the Federal regulations.

7. Missouri requires that an operator provide the LRP a list of those persons notified for pre-blast surveys. Proposed regulations at 10 CSR 40–3.050(2)(F) and 10 CSR 40–3.210(2)(F) state that the list shall show who has agreed to a survey and who has refused, and that the list must be provided to the LRP 30 days prior to initiation of blasting. Although this requirement is not found in the Federal regulations, the Director finds that this provision is in accordance with the requirements of SMCRA and is not inconsistent with the Federal regulations.

8. Missouri's proposed amendment defines periodic monitoring of airblast at 10 CSR 40–3.050(5)(B)2.A. and 10 CSR 40–3.210(5)(B)2.A. as monitoring one blast at the nearest uncontrolled structure every 3 months (the first quarter to commence the first day of the month in which blasting is initiated). The record of the monitored event is to be submitted to the LRP 15 days subsequent to the end of the quarter. The Federal regulations at 30 CFR 816.67(b)(2) and 817.67(b)(2) require the operator to conduct periodic monitoring and allow the State regulatory authority to require airblast measurements and specify the locations at which such measurements are taken. Missouri's definition of periodic monitoring and requirements for reporting this monitoring to the LRP are a reasonable interpretation of the Federal provisions. The Director finds that these provisions are in accordance with SMCRA and are not inconsistent with the Federal regulations.

9. Missouri's proposed amendment at 10 CSR 40–3.050(6)(C) and 10 CSR 40–3.210(6)(C) does not contain any provisions for recording the blaster certification number in the blasting record as required at 30 CFR 816.68(c) and 817.68(c). OSMRE has advised Missouri of this deficiency in a letter dated December 4, 1987 (Administrative Record No. MO–369). The State, in a letter to OSMRE dated January 7, 1988 (Administrative Record No. MO–366) recognized this deficiency and plans to amend these regulations when Missouri adopts a blaster certification program. The Director finds that this Missouri rule is less effective than the Federal regulations. Therefore, Missouri must amend its regulations at 10 CSR 40–3.050(6)(C) and 10 CSR 40–3.210(6)(C) to require the recording of the blaster certification number in the blasting record so as to be no less effective than the Federal regulations at 30 CFR 816.68(c) and 817.68(c).

Signs and Markers

10. Missouri amends 10 CSR 40–3.010(6) and 10 CSR 40–3.170(6) to delete the specifications for blasting signs that are also required at 10 CSR 40–3.050(4)(A) and 10 CSR 40–3.210(4)(A). The Federal provisions for blasting signs are found at 30 CFR 816.66(a) and 817.66(a) and include the same provisions that remain in the Missouri amendment. The Director finds these provisions to be no less stringent than SMCRA and no less effective than the Federal regulations.

Abandoned Mine Reclamation and Restoration

11. Missouri amends 10 CSR 40–9.060 (2), (3) and (4) to revise its regulations on appraisals, liens and satisfaction of liens where reclamation is performed on private lands. Missouri's revisions to its regulations have adopted similar language as that found in the Federal regulations at 30 CFR 882.12, 882.13 and 882.14. The Director finds these regulations to be no less stringent than SMCRA and no less effective than the Federal regulations.

IV. Public Comments

As discussed above, the Director solicited public comment and provided opportunity for a public hearing on the proposed amendments. No public comments were received, and since no one requested an opportunity to testify at a public hearing, no hearing was held.

Pursuant to section 503(b) of SMCRA, 30 CFR 732.17(h)(11)(i), 884.14(a)(2) and 884.15, comments were also solicited from various Federal agencies with an actual or potential interest in the Missouri program. The SCS concurred in the amendments. The U.S. Environmental Protection Agency (EPA) concurred in the amendments, and, in addition, offered the following comment:

The EPA submitted a comment concerning 10 CSR 40–6.070(C)(3), confidentiality of permit information. This section protects the location of archaeological sites, presumably to prevent unauthorized exploitation. EPA believes a similar case can be made for the protection of State and Federally listed, rare, threatened and endangered species. Like archaeological and historical artifacts, rare animals and, especially plants, are exposed to exploitation when their location becomes public knowledge. EPA recommends that a section be added that restricts access to the location of populations of any protected species of plant or animal.

The EPA comment is outside the scope of this current rulemaking. OSMRE has investigated EPA's concern and determined that the agencies involved with the protection of threatened and endangered species for Missouri are satisfied with the present permitting requirements and do not feel that additional measures are needed. The results of this investigation have been communicated to EPA to their satisfaction. Additionally, OSMRE has notified the State of Missouri of EPA's recommendations.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendments submitted by Missouri on June 22, 1987, with the exception of those provisions determined to be less stringent than SMCRA, or less effective than the Federal regulations.

The Federal rules at 30 CFR Part 925 codifying decisions concerning the Missouri program are amended to implement this decision. The final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA establishes that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly the Secretary's regulations at 30 CFR 732.17(a) require that any alteration of an approved State program must be submitted to OSMRE as a program amendment. Thus, any changes to the program are not enforceable by the State until approved by the Director. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Missouri program, the Director will recognize only statutes, regulations and other materials approved by him, together with any consistent

implementing policies, directives and other materials, and will require the enforcement by Missouri of only such provisions.

VI. Additional Determinations

1. *The National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for action directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSMRE is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 925

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

Date: June 8, 1988.

Robert E. Boldt,

Deputy Director.

For the reasons set out in the preamble, Title 30, chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below.

PART 925—MISSOURI

1. The authority citation of Part 925 continues to read as follows:

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

2. Section 925.15 is amended by adding paragraph (f) to read as follows:

§ 925.15 Approval of regulatory program amendments.

* * * * *

(f) The following amendments submitted to OSMRE on June 22, 1987 are approved effective June 16, 1988:

Missouri's rules at 10 CSR 40–3.110(6) concerning stabilization of rills and gullies; Missouri's rules at 10 CSR 40–3.120(8) (A) and (D) concerning reclamation schedules; Missouri's rules at 10 CSR 40–3.010(6) and 10 CSR 40–3.170 concerning topsoil markers; Missouri's rules at 10 CSR 40–6.010 (3)(C) and (5)(C) concerning general requirements for permits; Missouri's rules at 10 CSR 40–6.030(2)(C) and 10 CSR 40–6.100(2)(C) concerning compliance information for permit applications; Missouri's rules at 10 CSR 40–3.050 and 10 CSR 40–3.210 concerning the use of explosives; Missouri's rules at 10 CSR 40–6.050(4) concerning the blasting plan for the permit application; Missouri's rules at 10 CSR 40–6.070 (2)(C), (6), (7) and (8) concerning permit review and approval; Missouri's rules at 10 CSR 40–6.090 (4), (6), (9), (10) and (11) concerning permit revisions, renewals, and transfers; and Missouri's rules at 10 CSR 40–8.040(3) concerning the point system for penalty assessment.

3. Section 925.16 is amended by adding paragraph (l) to read as follows:

§ 925.16 Required program amendments.

* * * * *

(l) By October 31, 1988, amend its program:

(1) at 10 CSR 40–3.110(6), to replace lost topsoil during the stabilization of rills or gullies in order to be no less effective than 30 CFR 816.95(b)(2), and

(2) to clarify its use of the term "or structure including those listed in 10 CSR 40–3.050(5)(D)1.," and

(3) at 10 CSR 40–3.050(1)((C) and 10 CSR 40–3.210(1)(C), that certificates of blaster certification shall be carried by blasters or shall be on file at the permit area during blasting operations to be no less effective than 30 CFR 816.61(c)(2) and 817.61(c)(2), and

(4) at 10 CSR 40–3.050(6)(C) and 10 CSR 40–3.210(6)(C), that the blasting record shall contain the certification number of the blaster conducting the blast to be no less effective than 30 CFR 816.68(c) and 817.68(c).

4. Part 925 is amended by adding section 925.25 to read as follows:

§ 925.25 Approval of AML plan amendments.

(a) The following amendments submitted to OSMRE on June 22, 1987 are approved effective June 16, 1988.

Missouri's rules at 10 CSR 40–9.060 (2), (3) and (4) concerning appraisals, liens and satisfaction of liens on private lands under the abandoned mined land program.

(b) [Reserved]

[FR Doc. 88–13591 Filed 6–15–88; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 934

Approval of the North Dakota Abandoned Mine Land Reclamation Plan Amendment

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

ACTION: Final rule.

SUMMARY: On September 15, 1987, the State of North Dakota submitted to OSMRE a proposed amendment to its Abandoned Mine Land Reclamation (AMLR) plan. The amendment revises and clarifies the administrative and management structure of the plan. After opportunity for public comment and review of the amendment, OSMRE has determined that the North Dakota amendment meets the requirements of the Surface Mining Control and Reclamation Act (SMCRA) and the Secretary's regulations at 30 CFR Part 884. Accordingly, OSMRE is approving the North Dakota AMLR plan amendment.

EFFECTIVE DATE: The rule is effective July 18, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry R. Ennis, Director, Office of Surface Mining Reclamation and Enforcement, Casper Field Office, Federal Building, 100 East "B" Street, Room 2128, Casper, Wyoming 82601–1918; Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background

Title IV of SMCRA, Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, establishes an AMLR program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and waters eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State/Tribe or Federal law. Title IV of SMCRA establishes the conditions under which States/Tribes may obtain primary authority to implement this reclamation program.

The North Dakota AMLR plan was approved on December 23, 1981 (46 FR 62253). On September 15, 1987, North

Dakota submitted a proposed amendment to the plan. An approved State/Tribe AMLR plan can be amended under the provisions of 30 CFR 884.15. Under these provisions, if the amendment or revision changes the objectives, scope, or major policies followed by the State/Tribe in the conduct of its reclamation program, OSMRE must follow the procedures set out in 30 CFR 884.14 in approving or disapproving the amendment or revision of a State/Tribe reclamation plan. OSMRE has followed these procedures and effective July 18, 1988, has approved the North Dakota AMLR plan amendment.

The North Dakota AMLR plan amendment revises and clarifies the administrative and management structure of the approved North Dakota plan as provided under 30 CFR 884.13(d). None of the amendment revisions change the objectives, scope or major policies followed by North Dakota in the conduct of its reclamation program. All changes were proposed for purposes of clarity and administrative ease.

OSMRE published a notice of proposed rulemaking on the North Dakota amendment and requested public comment March 18, 1988 (53 FR 8933). The notice addressed in detail the proposed amendment. No substantive comments were received. Since no public hearings were requested by the public, none were held.

II. Director's Findings

In accordance with section 405 of SMCRA, OSMRE finds that North Dakota has submitted an amendment to its Abandoned Mine Land Reclamation plan and has determined, pursuant to 30 CFR 884.15 that:

1. The State provided adequate notice and opportunity for public comment in the development of the amendment and that the record does not reflect major unresolved controversies.

2. Views of other Federal agencies having an interest in the plan have been solicited and considered.

3. The State has the legal authority, policies and administrative structure necessary to implement the amendment.

4. The plan amendment meets all requirements of the OSMRE, AMLR program provisions.

5. The State has an approved Surface Mining Regulatory Program.

6. The proposed amendment is in compliance with all applicable State and Federal laws and regulations.

Under SMCRA, OSMRE codifies the approved requirements of individual States/Tribes, including decisions on State/Tribe reclamation plans and amendments, under 30 CFR Parts 900 to 950. Provisions relating to North Dakota are found in 30 CFR Part 934. Based on the findings above, the Director is amending 30 CFR Part 934.20 to codify his approval of the North Dakota amendment of September 15, 1987.

III. Additional Findings

1. *Federal 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 *et seq.*

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On November 23, 1987, 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 disapproval of State/Tribe reclamation plans or amendments. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule 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.*). No burden will be imposed upon entities operating in compliance with the Act.

3. *National Environmental Policy Act:* Approval of State/Tribe AMLR plans and amendments is categorically excluded from compliance with the National Environmental Policy Act by the Department of the Interior's Manual, 516 DM 6, Appendix 8, paragraph 8.4B(30).

List of Subjects in 30 CFR Part 934

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

Accordingly, 30 CFR Part 934 is amended as set forth herein.

Date: June 8, 1988.

Robert E. Boldt,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

PART 934—NORTH DAKOTA

1. The authority citation for Part 934 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 934.20, is revised to read as follows:

§ 934.20 Approval of North Dakota abandoned mine plan.

The North Dakota Abandoned Mine Plan as submitted on July 28, 1981, is approved. Copies of the approved program are available at:

Office of Surface Mining Reclamation and Enforcement, Administrative Record, 1100 L Street NW., Room 5131, Washington, DC 20240, Telephone: (202) 343–5492.

Office of Surface Mining Reclamation and Enforcement, 100 East "B" Street, Room 2128, Casper, Wyoming 82601–1918, Telephone: (307) 261–5776.

North Dakota Public Service Commission, Reclamation Division, Telephone: (701) 224–4096.

3. A new § 934.25 is added to read as follows:

The North Dakota Abandoned Mine Plan amendment submitted on March 4, 1983, is approved. The amendment to the plan submitted September 15, 1987, that clarifies the administrative and management structure to be used in the State reclamation plan, is also approved effective July 18, 1988. Copies of the approved amendment are available at:

Office of Surface Mining Reclamation and Enforcement, Administrative Record, 1100 L Street NW., Room 5131, Washington, DC 20240, Telephone: (202) 343–5492.

Office of Surface Mining Reclamation and Enforcement, 100 East "B" Street, Room 2128, Casper, Wyoming 82601–1918, Telephone: (307) 261–5776.

North Dakota Public Service Commission, Reclamation Division, Capitol Building, Bismarck, North Dakota 58505, Telephone: (701) 224–4096.

[FR Doc. 88–13593 Filed 6–15–88; 8:45 am]
BILLING CODE 4310–05–M

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30 CFR Part 946

Approval of Amendment to Virginia Permanent Regulatory Program; Virginia

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

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of 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 will allow Virginia's Division of Mined Land Reclamation (DMLR) to approve alternate effluent limitations for the remining of previously mined areas with pollutional discharges. The amendment also establishes special requirements for permit applications, special performance standards, and bond release criteria and

procedures where such alternate effluent limits apply.

EFFECTIVE DATE: June 16, 1988.

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, 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 Amendment

By letter dated January 16, 1987 (Administrative Record Number VA–591), Virginia submitted several proposed amendments to the Virginia Coal Surface Mining Reclamation Regulations. These amendments included:

(1) Revisions to section 480–03–19.700.5 and the addition of sections 480–03–19.785.19, 480–03–19.825.11, 480–03–19.825.12, 480–03–19.825.13, and 480–03–19.825.14 to allow alternate National Pollutant Discharge Elimination System (NPDES) effluent limitations to be set for operations proposing to remine previously mined areas with existing pollutional discharges. These sections contain special permitting requirements and performance standards for such operations and establish additional criteria for the release of bond on these affected areas;

(2) Revisions to section 480–03–19.801.13 to limit the information required of applicants proposing self-bonds under the Coal Surface Mining Reclamation Fund to only that information authorized by section 45.1–270.3(e) of the Code of Virginia; and

3. Revisions to section 480–03–19.801.17(a) to allow requests for partial bond release for operations participating in the Coal Surface Mining Reclamation Fund to be considered after a minimum of one growing season following reclamation instead of the two growing seasons previously required.

OSMRE published notice in the March 27, 1987 **Federal Register** (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. No comments were received.

The amendments described in (2) and (3) above were approved by the Director on August 17, 1987. A discussion of the Director's approval of these rules can be found in the **Federal Register** dated August 17, 1987 (52 FR 30668–30670).

The Director deferred action on the amendment described at (1) above until concerns expressed by the U.S. Environmental Protection Agency (EPA) could be addressed and unconditional EPA concurrence obtained. Section 503(b)(2) of SMCRA requires the concurrence of the EPA Administrator in the approval of any State program amendment relating to air or water quality standards promulgated under authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*), and the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*).

By letter dated September 10, 1987 (Administrative Record Number VA–647), Virginia responded to EPA's concerns by submitting a revised version of the regulations in question together with an expanded explanation of their intent.

OSMRE announced receipt of the resubmitted amendment in the October 30, 1987 **Federal Register** (52 FR 41739–41741) and, in the same notice, reopened and extended the public comment period and provided an opportunity for a public hearing. No comments or requests for a public hearing were received by November 16, 1987, the closing date of the comment period. Since no one requested an opportunity to testify at a public hearing, the scheduled hearing was canceled.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendments to the Virginia program.

1. Permitting Requirements and Performance Standards

The addition of section 408–03–19.785.19 to the Virginia regulations would establish certain requirements to be met by persons seeking approval of alternate effluent limitations. As specified in paragraph (a)(2) of this section, these requirements are in addition to, not in place of, the permitting requirements applicable to all proposed surface coal mining operations under Chapter 19. The applicant must delineate the pollution abatement area within the permit area, prepare an abatement plan for preexisting discharges from this area, and submit monitoring data to document the baseline pollutional flow under variations of season and precipitation.

To approve an application for alternate effluent limitations, the Division must find, based on an affirmative demonstration by the applicant, that the proposed abatement plan represents best technology (defined as measures and practices designed to abate or ameliorate possible pollutional discharges to the maximum extent possible), that the operation will not cause additional surface or groundwater pollution or degradation, and that the remining operation has the potential to improve water quality. This section also limits its applicability to surface coal mining operations proposing to remine previously mined areas (defined as lands affected by coal mining operations not subject to SMCRA) which contain pollutional discharges at the time of application. In addition, the section bars the Division from approving any such application if the applicant has caused or contributed to the pollutional discharge or has disturbed the proposed pollution abatement area.

Proposed new sections 480–03–19.825.11 and 480–03–19.825.13 establish additional performance standards to be met by operations with approved alternate effluent limitations. These standards are in addition to, not in place of, the performance standards applicable to any surface coal mining operation under Chapter 19.

Section 480–03–19.825.11 requires the permittee to implement the abatement and monitoring plans approved under section 480–03–19.785.19. This section also requires that the permittee notify the Division immediately prior to the completion of each step of the abatement plan and provide progress reports to the Division within 30 days after completion of each step of the abatement program.

Section 480–03–19.825.12 establishes requirements for the treatment of preexisting discharges and for monitoring those discharges in accordance with the approved abatement plan. This section specifies that all effluent limitations must be established in accordance with best professional judgment and that all discharges from or affected by the remining operation shall be in accordance with all applicable State water quality standards. It also establishes procedures and conditions under which the Division may approve

discontinuance of treatment when the untreated discharge is meeting the alternate effluent limitations approved under section 480–03–19.785.19.

Section 980–03–19.700.5 also has been amended to define the terms "abatement plan," "actual improvement," "baseline pollution load," "best professional judgment," "best technology," and "pollution abatement area" as used in these amendments.

SMCRA and its implementing Federal regulations do not differentiate between remining operations and other surface mining operations with respect to effluent limitations; therefore, they contain no special permitting requirements, performance standards or definitions corresponding to those proposed by Virginia. The Federal performance standards at 30 CFR 816.42 and 817.42 do require that discharges of water from areas disturbed by surface mining activities be made in compliance with all applicable State and Federal water quality laws and regulations and with the NPDES effluent limitations for coal mining as promulgated by EPA at 40 CFR Part 434. The EPA rules also contain no distinction between mining and remining.

However, as enacted on February 4, 1987, Pub. L. 100–4 amended section 301 of the Federal Water Pollution Control Act (FWPCA) to authorize the issuance of NPDES permits with modified effluent limitations for pH, iron and manganese on previously mined sites with preexisting discharges, defined as those discharges in existence at the time of permit application. The applicant must demonstrate that the remining operation has the potential of improving the quality of the preexisting discharges. Any modified effluent limitations would apply only to discharges from remined areas, defined as those portions of a remining operation on which coal mining was conducted before the effective date of SMCRA. No NPDES permit may allow discharges of pollutants in excess of those being discharged prior to the remining operation. In addition, no discharge from or affected by the the remined area may exceed State water quality standards.

As described and discussed above, the Virginia amendment as modified on September 10, 1987, incorporates the provisions and restrictions of Pub. L. 100–4. Although there is no language in the State rules explicitly limiting effluent limitation modifications to pH, iron and manganese, section 480–03–19.825.12(b) requires that all alternate effluent limitations be established by test professional judgment. As defined in section 480–03–19.700.5, "best professional judgment" means, among other things, that treatment levels shall be established in accordance with sections 301 and 402 of the FWPCA. Since the Federal remining provisions are located in section 301(p) of the FWPCA, State modifications of effluent limitations are effectively limited to the three parameters authorized therein.

By letter dated November 2, 1987, EPA concurred with the revised Virginia amendments. Therefore, for the reasons discussed above, and since EPA is primarily responsible for establishing effluent limitations, the Director finds Virginia's proposed revisions and additions to its regulations at sections 480–03–19.700.5, 480–03–19.785.19, 480–03–19.825.11 and 480–03–19.825.12 to be no less effective than the Federal regulations concerning effluent limitations for coal mining at 30 CFR 816.42 and 817.42.

2. Bond Release Requirements

Proposed new sections 480–03–19.825.13 and 480–03–19.825.14 establish criteria and schedules for the release of performance bonds on areas subject to the alternate effluent limitations authorized in accordance with sections 480–03–19.785.19 and 480–03–19.825.12. New section 480–03–19.825.13 requires compliance with all criteria and schedules applicable to any surface coal mining operation, as contained in sections 480–03–19.800.40, 480–03–19.801.17 and 480–03–19.801.18 of the Virginia regulations, as well as the additional requirements of new section 480–03–19.825.14.

To achieve Phase I bond release, the operator must have properly implemented each step of the pollution abatement plan and must demonstrate that the operation has not caused degradation of the baseline pollution load or additional surface water pollution for at least six months preceding the date of the bond release application. To achieve Phase II bond release, the operator must demonstrate actual improvement in the baseline pollution load as described in the abatement plan. If the operation has improved the environment or eliminated public health or safety problems, the permittee may substitute a demonstration that no degradation of the baseline pollution load has occurred following discontinuation of treatment for at least 12 months. To achieve final bond release, the permittee must demonstrate successful completion of all approved abatement and reclamation plans. In addition, there must have been no degradation of the baseline pollution load since the Phase II release.

Since SMCRA and its implementing regulations do not differentiate between remining operations and other surface coal mining operations with respect to effluent limitations, the Federal regulations concerning bond release contain no requirements comparable to those proposed by Virginia. However, since proposed sections 480–03–19.825.13 and 480–03–19.825.14 would impose requirements in addition to, rather than in place of, the bond release requirements applicable to any surface coal mining operation under Chapter 19, the Director finds that the Virginia amendment is not inconsistent with the Federal bond release requirements at 30 CFR 800.40.

IV. EPA Concurrence

Section 503(b)(2) of SMCRA and 30 CFR 732.17(h)(11)(ii) require that the Administrator of the EPA concur with all State program provisions relating to air or water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*). Since the proposed amendment would alter effluent limitations established pursuant to the Clean Water Act (also known as the Federal Water Pollution Control Act) and its implementing regulations, EPA's concurrence is required before the Director may approve this amendment.

The Director solicited EPA's concurrence with the proposed amendments by letter dated January 27, 1987. By letter dated March 31, 1987 (Administrative Record Number VA–603), EPA provided conditional concurrence with the proposed regulatory changes and explained the reasons for its inability to grant complete concurrence. A discussion of EPA's concerns and the Director's responses can be found in the section of this notice entitled "Public and Agency Comments". On August 17, 1987 (Administrative Record Number VA–641), OSMRE transmitted the EPA concerns to Virginia. By letter dated September 10, 1987 (Administrative Record Number VA–647), Virginia responded with revised language and further explanations. EPA concurred with the revised regulations on November 2, 1987 (Administrative Record No. VA–659), stating that the proposed amendments demonstrate Virginia's legal authority, administrative capability, and technical conformity to OSMRE regulations necessary to maintain water quality standards promulgated under the authority of the Clean Water Act, as amended.

V. Public and Agency Comments

Public Comments

OSMRE received no public comments on either the amendments as originally submitted on January 16, 1987, or as revised on September 10, 1987. Since no one requested an opportunity to testify at a public hearing, the scheduled hearing was canceled.

Agency Comments

Pursuant to section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(11)(i), the Director also provided various Federal agencies the opportunity to comment on the proposed amendment. The Army Corps of Engineers and the Soil Conservation Service submitted acknowledgements with no comments. A summary of comments received from EPA, the National Park Service and the U.S. Forest Service, and the Director's responses to them, appears below:

1. By letter dated March 14, 1987 (Administrative Record Number VA–596), EPA submitted a number of comments on the amendments originally proposed by Virginia on January 16, 1987. Where appropriate, the Director subsequently requested that Virginia revise or clarify its amendments in accordance with the EPA comments. Virginia did so on September 10, 1987. EPA's comments and their disposition are as follows:

a. The preamble to the amendment, as originally proposed, indicated that the State was applying for the authority to set alternate water quality standards. EPA commented that the rule did not reference requirements for establishing alternative water quality standards for streams, lakes, or other bodies of water and provided an extensive disscussion of measures Virginia would have to undertake to establish new water quality standards in accordance with 40 CFR Part 131.

The Director finds that EPA was correct in its comment that the preamble submitted by Virginia indicated the proposal was intended to allow the establishment of new water quality standards. However, a review of the proposed amendment clearly indicated that Virginia did not wish to modify water quality standards for lakes, streams, or other bodies of water established in accordance with 40 CFR Part 131, but was, instead, seeking authority under section 301(p) of the Federal Water Pollution Control Act (FWPCA) as enacted February 4, 1987, to issue NPDES permits establishing effluent limitations other than the technology-based limitations required pursuant to the State counterpart to 40 CFR Part 434.

To avoid further confusion, Virginia revised its preamble to clarify that the intent of the rule is to allow the approval of alternate effluent limitations rather than to set alternate water quality standards.

b. EPA suggested that remining operations could qualify for alternate effluent limitations under the provisions of Subpart D of 40 CFR Part 125.

In response, the Director notes that the regulations at Subpart D of 40 CFR Part 125 allow the EPA to grant a variance for a particular discharge on a case-by-case basis if the discharger can demonstrate the presence of unique site-specific factors which are fundamentally different from the factors considered by the EPA in the development of the national technology-based effluent limitations for the relevant discharge category. The preamble to the revised national effluent limitations for coal mining operations at 40 CFR Part 434 indicates that seperate effluent limitations for remining operations were not considered in that rulemaking (50 FR 41298–41299, October 9, 1985); hence such an approach may be feasible. However, since 40 CFR 125.31(e)(4) provided that no variance request may be granted on the basis of the discharge's impact on local receiving water quality, it appears unlikely that any such request would be approved. In addition, the EPA would be required to evaluate each request individually rather than approve a State program provision in which such decision making authority would be delegated to the State.

The 1987 FWPCA amendments clearly establish an independent, less complicated basis for the development of alternate effluent limitations for remining operations. Since section 301(p) of the amended FWPCA provided that any State with an approved NPDES program shall have the authority to issue modified permits establishing alternate effluent limitations, OSMRE believes that the argument as to whether remining operations would qualify for a "fundamentally different factors" variance is irrelevant to Virginia's proposed amendment.

c. EPA commented that daylighting should be excluded from the proposed definition of "abatement plan" at section 480–03–19.700.5 since it is actually an extraction technique requiring an abatement plan of its own.

OSMRE believes that daylighting is an appropriate method of abating pollutional discharges under certain conditions. Nothing within the proposed amendment would exempt the remining operation, or any portion thereof, from the requirement of section 480–03–19.773.11(a) that any person engaging in surface coal mining and reclamation operations first obtain a mining permit. In fact, the proposed definition of "pollution abatement area" at section 480–03–19.700.5 states that it is a subset of the permit area and that it shall include all areas that must be affected to improve the baseline pollution load. Hence, the additional abatement plan for daylighting requested by the EPA would already be present in the form of the operation and reclamation plans contained within the mining permit.

d. EPA suggested that proposed section 480–03–19.785.19(c)(1)(ii)(B) be revised to include settleable and nonsettleable solids in the water monitoring program required to establish baseline pollutional loads.

OSMRE does not believe these parameters need be addressed as part of a monitoring program designed to determine the baseline pollution load for establishment of alternate effluent limitations. As enacted on February 4, 1987, section 301(p) of the FWPCA does not authorize the establishment of relaxed effluent limitations for these parameters. Section 301(p)(4) further states that nothing in paragraph (p) shall affect the application of SMCRA to any coal operation, including the application to suspended solids.

The requirements for a Virginia mining permit at sections 480–03–19.780.21 and 480–03–19.784.14 do not set out settleable and nonsettable solids as required elements to be included in baseline hydrologic information or water monitoring programs. Instead these rules require measurements of two similar but analytically more useful parameters, total suspended solids and total dissolved solids. Also, under SMCRA, bond release is dependent, in part, upon the level of total suspended solids, not settleable or nonsettleable solids. OSMRE believes the proposed rule's requirement for monitoring total suspended solids is appropriate.

e. As originally proposed, section 480–03–19.825.12(b) stated that the effluent limitations established by best professional judgment may not be less than the baseline pollution load. The EPA recommended that the word "less" in the January 16, 1987 submittal be replaced with the word "more" to prohibit pollutant discharges in excess of the baseline load.

In its September 10, 1987 resubmittal, Virginia rephrased this sentence to prohibit the establishment of effluent limitations which would allow the amount of pollutants in any discharge to exceed the baseline pollution load.

f. EPA suggested that proposed section 480–03–19.825 be revised to specify when monitoring would be initiated and how long it would continue, because this Part seemed to enable applicants or operators to monitor water in a manner which would not provide an adequate representation of compliance.

OSMRE finds this suggested revision to be unnecessary since section 480–03–19.785.19(c)(2) requires that the water monitoring program used to establish baseline conditions continue until a decision is rendered on the applicant's request for a modified NPDES permit, and since section 480–03–19.825.11 requires that any person who receives a modified NPDES permit continue the approved water monitoring program until the requirements of section 480–03–19.825.14 for bond release are met.

g. EPA was of the opinion that the proposed bond release criteria of section 480–03–19.825 did not conform to the appropriate requirements of SMCRA or the FWPCA.

In response, the Director notes that section 480–03–19.825.13 states that all bond release requirements of Virginia's approved permanent regulatory program, as set forth at sections 480–03–19.800.40, 480–03–9.801.17 and 480–03–19.801.18, shall apply to the release of bonds for pollution abatement areas, except as modified by section 480–03–19.825. The bond release criteria of new section 480–03–19.825.14 are in addition to, not in place of, the bond release criteria contained in sections 480–03–19.800 and 480–03–19.801; therefore, the bond release requirements of section 480–03–19.825 are in accordance with SMCRA. Since the FWPCA contains no bond or bond release requirements, OSMRE believes the portion of the comment requiring conformance to the FWPCA is inappropriate.

A copy of OSMRE's findings on the above comments was forwarded to EPA by letter dated August 17, 1987 (Administrative Record Number VA–642). By letter dated November 2, 1987, EPA concurred with the revised amendments, stating that following a review of both OSMRE's comments of August 17, 1987, and Virginia's resubmittal of September 10, 1987, it no longer had any objections.

2. In response to the original submittal of January 16, 1987, the National Park Service (NPS) commented that it assumed that Virginia would diligently monitor any activities approved in relation to allowing alternate effluent limits on remining operations. The NPS was concerned that revegetation, backfilling and regrading requirements might be compromised to obtain marginally improved water quality.

The Director finds that nothing in these amendments exempts the permittee from compliance with any program requirement other than, for preexisting pollutional discharges, the standard NPDES effluent limitations. Section 480–03–19.785.19(a)(2) specifically requires each application to meet all applicable requirements of Subchapter VG (permitting requirements), and section 480–03–19.825.11 specifically states that a permittee who receives authorization to mine areas with preexisting pollutional discharges under section 480–03–19.785.19 shall comply with all applicable requirements of Subchapter VK (performance standards).

3. The U.S. Forest Service (USFS) supported the September 10, 1987 proposal, but expressed its concern for validating the monitoring results reported by the permittee, suggesting that spot checks and unscheduled monitoring be performed by Virginia or by OSMRE, especially when the permittee applies for bond release.

The Director agrees that compliance checks and spot monitoring of discharges are essential to determine compliance with any abatement plan approved under these amendments; however, he believes Virginia's program requirements and implementation policies are adequate to address these concerns. Section 480–03–19.840.11 of the Virginia regulations requires that all mines receive at least one complete inspection per calendar quarter. Each complete inspection must include checking compliance with all performance standards and permit conditions, including abatement plans and alternate effluent limitations approved under section 480–03–19.785.19. In addition, all discharges are spot checked as part of any bond release inspection.

VI. Director's Decision

The Director is approving the changes in Virginia's program as submitted September 10, 1987, and is amending 30 CFR Part 946 to reflect this approval. This final rule is being made effective immediately to expedite the State program amendment process and encourage States to conform their programs to the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VII. 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 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.

Date: June 8, 1988.

Robert E. Boldt,

Deputy Director.

For the reasons set forth in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as follows:

PART 946—VIRGINIA

1. The authority citation for Part 946 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 946.15, a new paragraph (x) is added to read as follows:

§ 946.15 Approval of regulatory program amendments.

* * * * *

(x) The following amendments to the Virginia program, as submitted by letter dated September 10, 1987, are approved effective June 16, 1988.

(1) Revisions to § 480–03–19.700.5 of the Virginia Coal Surface Mining Reclamation Regulations adding definitions of "abatement plan," "actual improvement," "baseline pollution load," "best professional judgment,"

"best technology," and "pollution abatement area."

(2) The addition of section 480–03–19.785.19 to the Virginia Coal Surface Mining Reclamation Regulations establishing permitting requirements for remining areas with existing pollutional discharges, and

(3) The addition of section 480–03–19.825 to the Virginia Coal Surface Mining Reclamation Regulations establishing special performance standards and bond release criteria and schedules for operations remining areas with pollutional discharges.

[FR Doc. 88–13595 Filed 6–15–88; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–88–34]

Regatta; Barnegat Bay Classic, Toms River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.502.

SUMMARY: This notice implements 33 CFR 100.502 for the Barnegat Bay Classic Power Boat Race, an annual event to be held on August 27, 1988. These special local regulations are needed to provide for the safety of participants and spectators on navigable waters during this event. The effect will be to restrict general navigation in the regulated area for the safety of participants in the power boat race.

EFFECTIVE DATES: The regulations in 33 CFR 100.502 are effective from 10:00 a.m. to 4:30 p.m. on August 27, 1988. In case of postponement due to inclement weather, the approved rain date is the following day and these regulations are effective for the same time period.

FOR FURTHER INFORMATION CONTACT: Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, (804) 398–6204.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Commander Robert J. Reining, project attorney, Fifth Coast Guard District Legal Staff.

Discussion

Richard F. Mechler, the Race Chairman of the race, has submitted an application to hold the Barnegat Bay Classic Power Boat Race on August 27, 1988. Approximately 40–60 race boats will race a designed course in Barnegat Bay. Since these regulations will enhance the safety of the participants and the large number of spectator craft expected for the duration of the event, the regulations in 33 CFR 100.502 are being implemented.

This area is used primarily by recreational boaters; any impact on commercial traffic in the area will be negligible.

Dated: June 9, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 88–13634 Filed 6–15–88; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD1 88–037]

Amendment to Empire State Rowing Regatta Regulations, Albany, NY; Correction

AGENCY: Coast Guard, DOT.

ACTION: Final rule, correction.

SUMMARY: The Coast Guard is correcting errors appearing in the final rule for the Empire State Regatta which appeared in the **Federal Register** on Wednesday, May 18, 1988 (53 FR 17697) to reflect the redesignated section number for the amendments.

FOR FURTHER INFORMATION CONTACT: Lieutenant Luke Brown, (617) 223–8311.

SUPPLEMENTARY INFORMATION: The following corrections are made to CGD1 88–021, Amendments to Empire State Rowing Regatta Regulations, Albany, NY, published in the **Federal Register** on May 18, 1988 (53 FR 17697):

1. On page 17697 third column, line 10; change "§ 100.308 [Amended]" to "§ 100.104 [Amended]."

2. On page 17697, third column, line 11 (Amendment 2); change "§ 100.308(a)" to "§ 100.104(a)."

3. On page 17697, third column, line 20 (Amendment 3); change "§ 100.308(b)" to "§ 100.104(b)."

4. On page 17697, third column, line 30 (Amendment 4); change "§ 100.308" to "§ 100.104."

5. On page 17697, third column, lines 51 to 52 (Amendment 5); change "Section 100.308(c)(8) is redesignated as § 100.308(c)(9)" to "Section 100.104(c)(8) is redesignated as § 100.104(c)(9)."

6. On page 17697, third column, line 53 (Amendment 6); change "§ 100.308" to "§ 100.104."

Dated: June 6, 1988.

R.L. Johanson,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 88–13639 Filed 6–15–88; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD 05–88–36]

Marine Event; Fourth of July Celebration, Little Island, Little Egg Harbor, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Fourth of July Celebration. The fireworks will be launched from Little Island, Little Egg Harbor, New Jersey. The celebration will consist of a fireworks display launched from Little Island between 10:00 p.m. and 10:30 p.m., on July 4, 1988. These special local regulations are necessary to control spectator craft, and provide for the safety of life and property on the navigable waters within the immediate vicinity of the celebration.

EFFECTIVE DATE: These regulations are effective from 9:00 p.m. until 11:00 p.m., on July 4, 1988.

FOR FURTHER INFORMATION CONTACT: B.J. Stephenson, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Adherence to normal rulemaking procedures would not have been possible. Specifically, the sponsor's application to hold the event was not received until May 31, 1988, leaving insufficient time to publish a notice of proposed rules or to provide for a delayed effective date.

Drafting Information:

The drafters of this notice are Mr. Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and Commander Robert J. Reining, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Red, White and Blue Committee, Ltd., Beach Haven, New Jersey is sponsoring this celebration, which will consist of a fireworks display launched from Little Island, Little Egg Harbor, New Jersey. A circle around the island with a radius of 1000 feet will be closed to waterborne traffic during the fireworks display. However, vessels transiting the area will not be disrupted since the deep water channel will not be closed.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

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

PART 100—[AMENDED]

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

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

2. A temporary § 100.35–0536 is added to read as follows:

§ 100.35–0536 Little Island, Little Egg Harbor, New Jersey.

(a) *Definitions*—(1) *Regulated Area.* A circle with a radius of 1000 feet around the island with the coordinates for the center of the circle at latitude 37°14'09.0" North, longitude 76°30'24.0" West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Cape May, Cape May, New Jersey.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of the regulated area shall:

(i) Stop his vessel immediately when directed to do so by any Coast Guard commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any Coast Guard commissioned, warrant, or petty officer.

(c) *Effective Dates.* These regulations are effective from 9:00 p.m. until 11:00 p.m., on July 4, 1988.

Dated: June 9, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 88–13631 Filed 6–15–88; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD 09–88–10]

Special Local Regulations; International Freedom Festival Fireworks Display, Detroit River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the International Freedom Festival Fireworks Display. This event will be held on the Detroit River on 30 June 1988. In case of inclement weather, the event will be held on 01 July 1988. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on 30 June 1988 and terminate on 02 July 1988.

FOR FURTHER INFORMATION CONTACT: CWO Patrick M. Farrell, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522–3982.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District, until 12 May, 1988, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date. This has been an annual event for many years and no negative comments have been received concerning the holding of the event in the past.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The drafters of this regulation are CWO Patrick M. Farrell, project officer, Office of Search and Rescue and LCDR C.V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The International Freedom Festival Fireworks Display will be conducted on the Detroit River on 30 June 1988. An unusually large concentration of spectator boats could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Commander, U.S. Coast Guard Group, Detroit, MI).

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

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

PART 100—[AMENDED]

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

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

2. Part 100 is amended to add a temporary § 100.35–0910 to read as follows:

§ 100.35–0910 International Freedom Festival Fireworks Display, Detroit River.

(a) *Regulated area.* (1) The following area will be closed to vessel navigation or anchorage for vessels of 65 feet in length or greater from 8:00 p.m. (local time) 30 June 1988 until 12:00 a.m. on 01 July 1988: The U.S. waters of the Detroit River between the Ambassador Bridge and the downstream end of Belle Isle.

(2) The following portion of the Detroit River will be closed to all vessel traffic, from 8:00 p.m. (local time) 30 June 1988 until 12:00 a.m. on 01 July 1988: The area bound on the south by the International Boundary, on the west by 083 degrees 03 minutes West, on east by 083 degrees 02 minutes West, and the north by the U.S. shoreline.

(b) *Special local regulations.* (1) Vessels under 65 feet shall begin clearing the shipping channels at 11:30 p.m. local or when the fireworks display ends, whichever comes first.

(2) Fireworks barges will be moved to positions in the Detroit River after 5:00 p.m. on 30 June 1988, and will be removed immediately after the fireworks display. The barges will be located within 950 feet of the U.S. riverbank opposite each of the following landmarks: Cobo Hall, Veterans Memorial Bldg., and the Ford Auditorium. Vessel masters shall pass

with caution. Each barge will be marked in accordance with rule 30 of the Inland Rules of the road for a vessel at anchor, and a fixed white light on each corner of the barges will be shown at night and an orange buoy with horizontal white bands will mark each special mooring.

(3) If the weather on 30 June 1988 is inclement, the fireworks display and the river closure will be postponed until 8:00 p.m. 01 July 1988 to 12:00 a.m. on 02 July 1988. If postponed, notice will be given on 30 June 1988 over the U.S. Coast Guard Radio Net.

(4) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. The Patrol Commander may be contacted on channel 16(156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels will be operated at a "no wake" speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

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

(6) This section is effective from 8:00 p.m. on June 30, 1988, to 12:00 a.m. on 2 July 1988.

Dated: June 3, 1988.

A.M. Danielsen,

RAdm, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 88-13635 Filed 6-15-88; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD1 88-036]

National Sweepstakes Regatta, Redbank, NJ; Correction

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: The Coast Guard is correcting errors appearing in the final rule for the National Sweepstakes Regatta which appeared in the **Federal Register** on Tuesday, May 24, 1988 (53 FR 18555).

FOR FURTHER INFORMATION CONTACT: Lieutenant Luke Brown, (617) 223-8311.

SUPPLEMENTARY INFORMATION: The following corrections are made to CGD1 88-022, Final rule, notification of effectiveness of regulations, published in the **Federal Register** on May 24, 1988 (53 FR 18555):

1. On page 18555, first column, lines 57 and 58; change "33 CFR 100.307" to "33 CFR 100.103."

2. On page 18555, second column, line 20; change "33 CFR 100.307" to "33 CFR 100.103."

Dated: June 6, 1988.

R.L. Johanson,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 88-13637 Filed 6-15-88; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3399-1]

Approval and Promulgation of Implementation Plans; North Carolina; Disapproval of Particulate Regulation for Electric Utility Boilers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today, EPA disapproves parts of regulation 15 NCAC 2D.0536 (Particulate Emissions from Electric Utility Boilers) which North Carolina submitted to EPA as a State Implementation Plan (SIP) revision on January 24, 1983, and February 21, 1983. EPA is also disapproving parts of a revision to that regulation which was submitted to EPA on December 17, 1985. The parts of the regulation being disapproved are the parts which apply to the Carolina Power and Light (CP&L) Asheville, Lee, Sutton and Weatherspoon plants. Action is being taken in another notice for nine other plants to which the new regulation applies. The result of today's action is that the previously approved particulate limits for these four plants will remain in effect.

DATE: This action will become effective on July 18, 1988.

ADDRESSES: Copies of the materials submitted by North Carolina may be examined during normal business hours at the following locations:

Air Programs Branch, Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365

Air Quality Section, Division of Environmental Management, North Carolina Department of Natural Resources and Community Development Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina 27611

FOR FURTHER INFORMATION CONTACT: Roger O. Pfaff, of the EPA Region IV Air Programs Branch, at the above address and telephone (404) 347-2864 or (FTS) 257-2864.

SUPPLEMENTARY INFORMATION: On March 26, 1987 (52 FR 9676) EPA proposed to disapprove regulation 2D.0536 as it applies to the CP&L Asheville, Lee, Sutton and Weatherspoon plants. The reason for the proposed disapproval was that North Carolina had failed to submit a demonstration that the new emission limits for these four plants would protect the National Ambient Air Quality Standards (NAAQS) for particulate matter.

A 30 day public comment period was provided to allow public comments on EPA's proposal. The comment period was extended two times at the request of CP&L, and ended finally on June 26, 1987.

Comments were received from the North Carolina Division of Environmental Management (NCDEM), from CP&L, and from the Conservation Council of North Carolina.

Response to Comments

NCDEM

Comment: EPA should postpone disapproval. The nonattainment problems are due to sources other than the CP&L plants, and NCDEM and CP&L are in the process of resolving the problems.

Response: EPA has received no indication, other than this initial statement, dated April 23, 1987, that the problems are being worked out. Informal communications with CP&L indicate that the utility is not making progress in assisting the State in this endeavor. Therefore, EPA has decided to finalize the disapproval. The State still has the opportunity, and the responsibility, to correct any violations of the National Ambient Air Quality Standards which it discovers.

Comment: EPA should reconsider its proposal to disapprove the annual opacity standards, for the following reasons:

1. The annual opacity standards encourage good operation and maintenance.

2. The annual opacity standards protect the annual NAAQS, and EPA implied this was unnecessary.

3. The annual opacity standards are as enforceable as any other standards.

Response: EPA does not argue with the statement that the standards encourage good operation and maintenance. Also, EPA did not mean to imply that the annual NAAQS did not need protection separately from the short-term NAAQS. EPA's position, as stated in the proposal, is that both the short and long term NAAQS are protected by the short-term emission limits, and that the annual opacity standards are so resource consuming as to be unenforceable by EPA. EPA has reconsidered its position on this issue, and has decided to promulgate the disapproval as proposed. First, Appendix P of 40 CFR Part 51 sets forth minimum requirements for continuous emission monitoring. Among those requirements, paragraph 4.1 states, in part, that "[t]he averaging period used for data reporting should be established by the State to correspond to the averaging period specified in the emission test method used to determine compliance with an emission standard for the pollutant/source category in question." The proposed regulation 2D.0536 does not meet this requirement, since the emission test method is conducted over a period of several hours, while the opacity standard is a yearly average. Second, it is EPA policy that, in order for emission limitations to be federally enforceable from the practical standpoint, they must be short term and specific so as to enable the Agency to determine compliance at any time. In comparison to a Method Nine, six-minute average, or a 2D.0521 five- or twenty-minute aggregate, the annual average is not short term.

CP&L

Comment: CP&L's record of compliance with air quality standards is excellent.

Response: CP&L's support for this statement is based upon their analysis of ambient air quality data near its plants which purportedly shows no upward trends. EPA's approval of SIP revisions, however, must be based upon more than ambient monitoring, since the ability of a limited number of monitors to record violations of NAAQS is also limited. Further, the monitors record what has happened under the present regulations, and not what may happen if those regulations are relaxed. Section 110 of the Clean Air Act requires SIP's to protect against violations of the NAAQs. Therefore, any SIP must demonstrate that when sources are emitting at the allowable levels, the NAAQS are not violated.

Comment: The SIP revision will result in no increase in actual emissions from the CP&L plants in question.

Response: EPA's position is that whether an increase in emissions will actually occur is irrelevant. The SIP must prevent emissions increases from occurring which would violate PSD increments or NAAQS. The State must submit an analysis with each SIP revision which demonstrates that the PSD increments and NAAQS will be protected by the new limits. No analysis has been submitted which demonstrates protection of the NAAQS for the four plants.

CP&L also asserts that no increase in allowable emissions would occur. CP&L bases its argument on the fact that they had "no reason to doubt that North Carolina has submitted the proper paper" for EPA to extend a previous 3 year federally approved variance which expired in June, 1982. While this may be true, it does not change the fact that North Carolina did not, in fact, submit the necessary request to EPA to extend the variance. Therefore, the previous federally approved limits have been in effect since 1982, and approval of 2D.0536 would be a relaxation of those limits.

Comment: The EPA should have acted upon the SIP revision in 1983 based on modelling results available at that time and should not have required additional modelling as a condition to approval.

Response: CP&L's position is based on statements making the following two points:

1. EPA is required to act on SIP submittals in 4 months.

2. Even if EPA did not approve the limits for all the plants, it should have approved the limits for plants located in areas where the PSD baseline is not triggered.

If EPA had taken final action on the submittal in 1983, that action could only have been to disapprove the regulation, since a PSD increment analysis had not been submitted. Therefore, taking final action would not have changed the federally approved limits. As to the plants located in untriggered areas, CP&L has now been made aware that EPA's previous guidance on this point was in error. Even for a plant located in an area where the baseline date has not been triggered, an analysis is necessary for all neighboring areas, impacted by the relaxation, where the baseline has been triggered. In addition, it must be pointed out that 2D.0536 is a single regulation. In order to approve parts of it, EPA must receive a request from the State to do so. No such request was received in 1983.

This comment goes on to disagree with EPA's disallowance of the use of "significance levels" to screen out geographic areas from further ambient impact analyses in SIP revisions even though such a procedure is allowed in EPA-mandated permitting programs. The comment is supported by reference to a SIP relaxation in Illinois for the Baldwin Power Plant where a PSD analysis was not required because no major source or major modification had applied for a permit within the significant impact area (52 FR 9676). EPA's response is that use of a significant impact area to exclude sources from review is allowed for permitting but not for SIP revisions. The reason for this is that the EPA regulatory program recognizes a different level of responsibility in these two types of sections for correcting existing problems. In permitting, it is an industrial source which is applying for the increased emissions. The source owner has little power to correct existing ambient problems not caused by his sources. Thus, it would be unfair to prohibit construction of the source unless it contributed significantly to the violation. The basic responsibility for correcting the existing violation lies with the State, through the SIP process, and not with a new source owner.

For a SIP relaxation, however, it is the State who is "applying" for a relaxation to the very tool (the SIP) which is required by the Clean Air Act to correct existing violations and prevent new ones. Thus, to allow any exacerbation of a NAAQS violation through a SIP relaxation would be to contravene the basic purpose of the SIP. As to the Baldwin SIP revision, although the wording of the Federal Register notice may be misleading, the regulatory requirement referred to in the Baldwin action is not the use of a significant impact area for limiting the extent of a modelling analysis. Rather, it is the method for establishing the boundaries of a PSD baseline area, which is defined as the EPA designated attainment or unclassifiable area in which a baseline triggering source locates or has a significant impact. Thus, no PSD analysis is required for a SIP relaxation for a source located in an area which has not been significantly impacted by a PSD source (or is not in the same area as the PSD source). Once the baseline date is established for an area by a PSD source, however any SO_2 or particulate SIP relaxation must contain an increment analysis, and that analysis cannot make use of a significant impact area to limit the extent of the review. In the case of the Baldwin plant, EPA has

identified an area—within the impact area of the source—where the baseline date has been established. EPA is reviewing the source's new allowable emissions to determine whether PSD increment would be consumed. If so, an increment analysis will be required to demonstrate that the proposed relaxation will not cause or contribute to a PSD increment violation for SO_2.

Comment: The SIP revision establishes no less restrictive emission limits than did the variance which EPA previously approved. Therefore, since no new information became available between 1980 and the present which would change EPA's position, the SIP revision should be approved.

Response: EPA agrees with the basic facts of this comment. The inconsistency arises from the fact that EPA should have required an increment analysis for the variance, but erred in not doing so. The reason EPA did not require the analysis was because of the temporary life of this variance.

Conservation Council

Comment: All necessary steps should be taken to reduce particulate emissions from utility boilers, regardless of the NAAQS.

Response: EPA's ability to reduce emissions is limited to its authority under the Clean Air Act. If a SIP relaxation complies with NAAQS, PSD increments, and other statutory and regulatory requirements, EPA is required by law to approve it.

Comment: EPA should ensure that the State and CP&L do not delay in submitting the results of the modelling.

Response: Because the modelling has not been submitted, EPA is disapproving the regulation.

Comment: EPA should approve the annual opacity limits because the State needs them and they encourage better maintenance and operation.

Response: EPA's disapproval of these annual limits has no effect on North Carolina's ability to enforce its own regulations, which are still effective under State law. EPA's disapproval is based upon the inability of EPA to enforce the regulation if it became necessary.

Comment: Modelling should not be restricted to certain state boundaries, PSD areas, etc.

Response: EPA agrees. Modelling is not so restricted in EPA-required analyses, except that, for areas where the PSD baseline is not triggered, no increment is consumed by SIP relaxations, and thus no analysis is needed.

With the disapproval of Regulation 2D.0536, the current federally approved SIP limits for the four plants, under 2D.0503, continue to apply to the plants. A chart showing the limit for each boiler can be found in the notice of proposed rulemaking. For opacity standards for the four plants, Regulation 2D.0521 continues to apply.

It must also be pointed out that EPA, on July 1, 1987 (52 FR 24634) changed the indicator for the particulate matter NAAQS from total suspended particulate matter to particles with an aerodynamic diameter of less than or equal to a nominal ten micrometers (PM_{10}), and changed the level, the averaging times and the methods for calculation and measurement of the standards. Any future resubmittal of 2D.0536 or any other particulate SIP revision must contain a demonstration that the PM_{10} standard is protected, and need not contain a demonstration that the former TSP standard is protected. For PSD, however, the TSP increments remain in effect until some future date when EPA plans to replace them with PM_{10} increments.

Final Action

EPA today disapproves Regulation 2D.0536 as it applies to the CP&L Asheville, Lee, Sutton and Weatherspoon plants. The previous federally approved emission limits under 15 NCAC 2D.0503 will continue to apply to those plants, and have applied since June 30, 1982 when an EPA-approved variance from those limits expired.

Under Executive Order 12291, this action is not "Major." It has been submitted to the Office of Management and Budget for review.

Under section 307(b)(1) 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 August 15, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter, Reporting and recordkeeping requirements.

Dated: June 10, 1988.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart II—North Carolina

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1781 is amended by adding new paragraph (c) to read as follows:

§ 52.1781 Control strategy: Sulfur oxides and particulate matter.

* * * * *

(c) The plan's control strategy for particulate matter as contained in revisions to 15 NCAC 2D.0536 submitted on January 24, 1983, February 21, 1983, and December 17, 1985, is disapproved as it applies to the Carolina Power and Light Asheville, Lee, Sutton and Weatherspoon Plants. These plants will continue to be subject to the particulate limits of 15 NCAC 2D.0503, contained in the original SIP, submitted to EPA on January 27, 1972, and approved on May 31, 1982 at 37 FR 10884.

[FR Doc. 88–13621 Filed 6–15–88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6680

[AK-932-08-4220-10; F-024460]

Partial Revocation of Public Land Order No. 503 for Selection of Lands by the State of Alaska; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order (PLO) insofar as it affects 2.87 acres of public land withdrawn for use by the Bureau of Land Management as an administrative site. The land is no longer needed for the purpose for which it was withdrawn. This action will also classify the land as suitable for selection by the State of Alaska, if such land is otherwise available. If not selected by the State, the land will become subject to the terms and conditions of PLO No. 5180, as amended, and will remain closed to location for metalliferous minerals until a further opening order is published.

EFFECTIVE DATE: June 16, 1988.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and by Section 17(d)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 708

and 709; 43 U.S.C. 1616(d)(1), it is ordered as follows:

1. Public Land Order No. 503 is hereby revoked insofar as it affects the following described land:

Fairbanks Meridian

T. 1 S., R. 1 W.
Sec. 7, lots 56, 60, 68, and 72.
The area described contains 2.87 acres.

2. Subject to valid existing rights, the land described above is hereby classified as suitable for and opened to selection by the State of Alaska under either the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, et seq.; 48 U.S.C. prec. 21, or section 906(b) of the Alaska National Interest Lands Conservation Act of December 2, 1980, 94 Stat. 2437–2438; 43 U.S.C. 1635.

3. As provided by section 6(g) of the Alaska Statehood Act, the State of Alaska is provided a preference right of selection for the land described above, for a period of ninety-one (91) days from the date of publication of this order, if the land is otherwise available. Any of the land described herein that is not selected by the State of Alaska will be subject to the terms and conditions of PLO No. 5180, as amended, and any other withdrawal of record, and shall remain closed to location for metalliferous mining until a further opening order is published.

June 3, 1988.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 88–13528 Filed 6–15–88; 8:45 am]

BILLING CODE 4310–JA–M

43 CFR Public Land Order 6681

[AK–932–08–4220–10; AA–55470]

Public Land Order No. 6590, Correction; Revocation of Withdrawals Affecting Land Conveyed Out of Federal Ownership in Alaska; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order corrects an error in the exceptions listed in paragraph 2 of Public Land Order No. 6590, by authorizing the revocation of powersite reserve and powersite classification withdrawals where the affected land has been conveyed out of Federal ownership, e.g. to a Native corporation, and there is no section 24, Federal Power Act reservation to the United States.

EFFECTIVE DATE: June 16, 1988.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907–271–5477.

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

1. PLO 6590, paragraph 2, exception (1) is hereby corrected to read: (1) Powersite reserves and powersite classifications where the conveyance contains a reservation to the United States under section 24 of the Federal Power Act of June 10, 1920, 16 U.S.C. 818.

2. Any application of PLO 6590 heretofore made in Alaska shall have full force and effect of this order.

June 3, 1988.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 88–13529 Filed 6–15–88; 8:45 am]

BILLING CODE 4310–JA–M

43 CFR Public Land Order 6682

[MT–930–08–4220–10; M 32820]

Revocation of Public Land Order No. 6627; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes Public Land Order No. 6627 in its entirety and opens the land to surface entry and mining. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: July 8, 1988.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–657–6090.

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

1. Public Land Order No. 6627 signed October 21, 1986, which withdrew the following described lands for the Bureau of Reclamation for a material site, is hereby revoked in its entirety:

Principal Meridian

T. 7 N., R. 1E.,
Sec. 26, N½NE¼, N½N½SW¼NE¼, NE¼NW¼ and N½S½NW¼.
The area described contains 170 acres in Broadwater County.

2. At 9 a.m. on July 8, 1988, the land described in Paragraph 1 will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on July 8, 1988, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on July 8, 1988, the land described in Paragraph 1 will be opened to location and entry under the United States mining laws. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C., Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

June 3, 1988.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 88–13530 Filed 6–15–88; 8:45 am]

BILLING CODE 4310–DN–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations; Florida et al.

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each

community. The respective addresses are listed on the following table.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator, has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 65.

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, 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 of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Florida:					
Hillsborough (Docket No. FEMA–6924).	Unincorporated areas	Dec. 23, 1987 and Dec. 30, 1987. *Tampa Tribune*	The Honorable Larry J. Brown, County Administrator, Hillsborough County, P.O. Box 1110, Tampa, Florida 33601.	Dec. 8, 1987	120112
Duval (Docket No. FEMA–6924).	City of Jacksonville	Jan. 24, 1988 and Jan. 31, 1988. *Florida Times Union*	The Honorable Thomas L. Hazouri, Mayor, City of Jacksonville, 220 East Bay Street, 14th Floor, Jacksonville, Florida 32202.	Jan. 19, 1988	120077
Georgia:					
Fulton and DeKalb (Docket No. FEMA–6924).	City of Atlanta	Jan. 29, 1988 and Feb. 5, 1988. *Atlanta Journal-Constitution*	The Honorable Andrew J. Young, Mayor, City of Atlanta, City Hall, 68 Mitchell Street, SW., Atlanta, Georgia 30335.	Jan. 21, 1988	135157
Liberty (Docket No. FEMA–6924).	City of Flemington	Dec. 18, 1987 and Dec. 25, 1987. *Coastal Courier*	The Honorable O.C. Martin, Mayor, City of Flemington, Route 1, P.O. Box 23, Hinesville, Georgia 31313.	Dec. 8, 1987	130124
Illinois:					
Cook (Docket No. FEMA–6924).	Village of Wheeling	Oct. 16, 1987 and Oct. 23, 1987. *The Daily Herald*	The Honorable Thomas Markus, Village Manager, Village of Wheeling, 255 West Dundee, Wheeling, Illinois 60090.	Oct. 2, 1987	170173
New York:					
Erie (Docket No. FEMA–6924).	Town of Amherst	Dec. 9, 1987 and Dec. 16, 1987. *Amherst Suburban Bee*	The Honorable John R. Sharpe, Supervisor of the Town of Amherst, 5583 Main Street, Williamsville, New York 14221.	Nov. 16, 1987	360226C
Westchester (Docket No. FEMA–6924).	City of Yonkers	Jan. 29, 1988 and Feb. 5, 1988. *The Herald Statesman*	Mr. Nicholas De Santis, City Manager, Yonkers City Hall, Yonkers, New York 10701.	Jan. 11, 1988	360936
Texas:					
Denton (Docket No. FEMA–6924).	Unincorporated areas	Jan. 28, 1988 and Feb. 4, 1988. *Denton Record-Chronicle*	The Honorable Vic Burgess, Denton County Judge, Denton County Courthouse, 401 West Hickory, Denton, Texas 76201.	Dec. 31, 1987	480774
Collin and Denton (Docket No. FEMA–6921).	City of Frisco	Dec. 3, 1987 and Dec. 10, 1987. *The Frisco Enterprise*	The Honorable Randy Elliot, Mayor of the City of Frisco, P.O. Box 117, Frisco, Texas 75034.	Nov. 20, 1987	480134

Issued: June 7, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-13587 Filed 6-15-88; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

[Docket No. FEMA-6928]

Changes in Flood Elevation Determinations; Florida et al.

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table.

Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the floodplain management measures required by 60.3 of the program regulations are the minimum that are required. They should be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, 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 of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Florida: Orange	Unincorporated areas	May 26, 1988 and June 2, 1988. *Legal Review*	The Honorable Thomas R. Sewell, County Administrator, Orange County, County Courthouse, P.O. Box 1393, Orlando, Florida 32802-1393.	May 12, 1988	120179
Georgia: Fulton	Unincorporated areas	Nov. 12, 1987 and Nov. 19, 1987. *Atlanta Journal Constitution*	The Honorable Sam Brownlee, County Manager, Fulton County, 207 Administration Building, 165 Central Avenue, SW., Atlanta, Georgia 30335.	Nov. 2, 1987	135160
Illinois: Cook	City of Prospect Heights	Mar. 24, 1988 and Mar. 31, 1988. *Daily Herald*	The Honorable John E. Gilligan, Mayor, City of Prospect Heights, City Hall, 4 East Camp McDonald Road, Prospect Heights, Illinois 60070.	Mar. 15, 1988	170919
New Jersey: Atlantic	City of Brigantine	June 16, 1988 and June 23, 1988. *The Press*	The Honorable George McDermott, City Administrator for the City of Brigantine, 1417 West Brigantine Avenue, Brigantine, New Jersey 08203.	June 1, 1988	345286
Oklahoma: Oklahoma, Canadian, Cleveland, McClain, and Pottawatomie.	City of Oklahoma City	Apr. 18, 1988 and Apr 25, 1988. *The Daily Oklahoman*	The Honorable Ronald J. Norick, Mayor of the City of Oklahoma City, 200 North Walker, Oklahoma City, Oklahoma 73102.	Apr. 6, 1988	405378

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
South Carolina:					
Aiken	Unincorporated areas	Apr. 7, 1988 and Apr. 14, 1988. *Aiken Standard*	The Honorable W. Scott Barnes, County Administrator, Aiken County, 828 Richland Avenue, West, Aiken, South Carolina 29801.	Mar. 31, 1988	450002
Charleston	Unincorporated areas	June 2, 1988 and June 9, 1988. *The News Courier*	The Honorable William Furtwangler, Charleston County Administrator, County Courthouse, 2 Courthouse Square, Charleston, South Carolina 29401.	May 12, 1988	455412
Tennessee: Shelby	Unincorporated areas	Mar. 3, 1988 and Mar. 10, 1988. *Memphis Daily News*	The Honorable William N. Morris, Mayor, Shelby County, 160 North Mid America Mall, Room 701, Memphis Tennessee 38103.	Feb. 22, 1988	470214
Do	....do	June 3, 1988 and June 10, 1988. *Commercial Appeal*	The Honorable William N. Morris, Jr., Mayor, Shelby County, 160 North Mid America Mall, Suite 850, Memphis, Tennessee 38103.	Apr. 24, 1988	470214
Do	....do	May 13, 1988 and May 20, 1988. *Memphis Daily News*	The Honorable William N. Morris, Mayor, Shelby County, 160 North Mid America Mall, 8th Floor, Memphis, Tennessee 38103.	May 3, 1988	470214
Texas:					
Tarrant	City of Arlington	Feb. 16, 1988 and Feb. 23, 1988. *Arlington Daily News*	The Honorable Richard Greene, Mayor of the City of Arlington, P.O. Box 231, Arlington, Texas 76004-0231.	Feb. 9, 1988	485454
Dallas, Denton, Collin, Rockwall, and Kaufman.	City of Dallas	Apr. 22, 1988 and Apr. 29, 1988. *The Dallas Morning News*	The Honorable Annette Strauss, Mayor of the City of Dallas, City Hall, 5 E North, Dallas, Texas 75201.	Apr. 1, 1988	480171C
Fort Bend	Unincorporated areas	Apr. 11, 1988 and Apr. 18, 1988. *The Herald Coaster*	The Honorable Jodie Stavinoha, Fort Bend County Judge, P.O. Box 368, Richmond, Texas 77469.	Mar. 25, 1988	480228B
Harris	Unincorporated areas	Feb. 11, 1988 and Feb. 18, 1988. *The Houston Post*	The Honorable Jon Lindsay, Harris County Judge, Harris County Administration Building, 1001 Preston, Houston, Texas 77002.	Feb. 5, 1988	480287
Tarrant	City of Hurst	Apr. 14, 1988 and Apr. 21, 1988. *Mid-Cities Daily News*	The Honorable Bill Souder, Mayor of the City of Hurst, 1505 Precinct Line Road, Hurst, Texas 76054.	Apr. 7, 1988	480601
Do	City of North Richland Hills.	Apr. 14, 1988 and Apr. 21, 1988. *Mid-Cities Daily News*	The Honorable Dan Echols, Mayor of the City of North Richland Hills, P.O. Box 18609, North Richland Hills, Texas 76180.	Apr. 7, 1988	480607
Dallas and Rockwall	City of Rowlett	Mar. 25, 1988 and Apr. 1, 1988. *Rowlett Record American*	The Honorable H. C. Ruyle, Mayor of the City of Rowlett, P.O. Box 99, Rowlett, Texas 75088.	Feb. 25, 1988	480185B

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: June 7, 1988.

[FR Doc. 88-13588 Filed 6-15-88; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below:

ADDRESSES: See table below:

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood Insurance, Floodplains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

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

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

State, City/Town/County source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD). Modified
ARIZONA	
Navajo County (unincorporated areas), (FEMA Docket No. 6922)	
Rainbow Lake:	
South of Rainbow Lake Road to mouth of Gulch Creek	*6,713
Maps are available for inspection at the Navajo County Engineering Department, 100 E. Carter Drive (S. Highway 77), Holbrook, Arizona.	
La Paz County (unincorporated areas), (FEMA Docket No. 6925)	
Tyson Wash:	
Downstream edge of U.S. Highway 60	*870
Downstream edge of Interstate Highway 10 (westbound lane)	*874
Upstream edge of Interstate Highway 10 (eastbound lane)	*878
3,590 feet upstream of Interstate Highway 10 (eastbound lane)	*893
5,760 feet upstream of Interstate Highway 10 (eastbound lane)	*901
Maps are available for review at the La Paz County Planning and Zoning Office, 1121 Arizona Avenue, Parker, Arizona 85344.	
Pinetop-Lakeside (town), Navajo County (FEMA Docket No. 6922)	
Rainbow Lake:	
South of Rainbow Lake Road to mouth of Gulch Creek	*6,713
Maps are available for inspection at the Town of Pinetop-Lakeside Planning and Zoning Department, Corner of State Route 260 and Stephens Drive, Pinetop-Lakeside, Arizona 85929.	
Thatcher (town), Graham County (FEMA Docket No. 6911)	
Spring Canyon:	
Approximately 1,300 feet downstream of the confluence of Frye Creek	*3,002
At corporate limits approximately 850 feet downstream of the confluence of Frye Creek	*3,006
Frye Creek:	
At Frye Creek Road approximately 150 feet upstream of corporate limits	*3,073
At Frye Creek Road approximately 770 feet upstream of corporate limits	*3,080
At upstream corporate limits	*3,086
Frye Creek Tributary:	
Approximately 270 feet upstream of corporate limits	*3,074
At Valley View Road (upstream corporate limits)	*3,088
Maps are available for inspection at the Town Hall, 230 College Avenue, Thatcher, Arizona.	
ARKANSAS	
Rogers (city), Benton County (FEMA Docket No. 6922)	
Osage/Turtle Creek:	
At the most downstream corporate limits	*1163
Upstream side of most downstream crossing of U.S. Highway 71	*1216
.48 mile downstream of 2nd upstream crossing of U.S. Highway 71	*1254
105 feet downstream of Turtle Creek Road	*1278
At 24th Street (extended)	*1287
Maps available for inspection at the City Administration Building, 300 West Poplar, Rogers, Arkansas.	
CALIFORNIA	
Escondido (city), San Diego County (FEMA Docket No. 6922)	
Reidy Creek:	
Just upstream of Lincoln Avenue	(1)
Approximately 500 feet downstream of Nutmeg Street	(1)
Just downstream of Nutmeg Street	#1
Approximately 80 feet upstream of El Norte Parkway	
Just downstream of State Highway 395	#3
Just upstream of State Highway 395	*689
Maps are available for inspection at the Department of Public Works, 620 N. Ash, Escondido, California.	
Hemet (city), Riverside County (FEMA Docket No. 6925)	
Salt Creek:	
Approximately 3,800 feet upstream of Fisher Street	*1511
Approximately 90 feet downstream of Cawston Avenue	*1519
Approximately 160 feet upstream of Sanderson Avenue	*1523
Approximately 1,560 feet upstream of Sanderson Avenue	*1525
Approximately 1,200 feet downstream of Lyon Avenue	*1536
Approximately 800 feet downstream of Lyon Avenue	*1539
Just downstream of Lyon Avenue	*1547
Maps available for inspection at the Offices of the Director of Public Works, 450 East Latham Avenue, Hemet, California 92343.	
Mendocino County (unincorporated areas), (FEMA Docket No. 6925)	
Baechtel Creek:	
Approximately 120 feet downstream of the Southern Pacific Railroad	*1364
Approximately 325 feet downstream of the Southern Pacific Railroad	*1364
Approximately 1,500 feet downstream of the Southern Pacific Railroad	*1361
Maps are available for inspection at the Mendocino County Planning and Building Services Department, 589 Low Gap Road, Ukiah, California.	
Mountain View (city), Santa Clara County (FEMA Docket No. 6922)	
San Francisco Bay:	
Intersection of Largenta Avenue and Stierlin Road	*8
Intersection of Garcia Avenue and Marine Way	*8
Approximately 1,000 feet east of Stevens Creek at Crittenden Lane	*8
Maps are available for inspection at the Public Works Department, 444 Castro Street, Mountain View, California.	
Willits (city), Mendocino County (FEMA Docket No. 6925)	
Baechtel Creek:	
Approximately 120 feet downstream of Southern Pacific Railroad	*1364
Approximately 325 feet downstream of Southern Pacific Railroad	*1364
Approximately 1,500 feet downstream of Southern Pacific Railroad	*1361
Maps are available for review at City Hall, City Planning Department, 111 East Commercial Street, Willits, California.	
COLORADO	
San Miguel County (unincorporated areas) (FEMA Docket No. 6925)	
San Miguel River:	
Approximately 1,980 feet upstream of the confluence of Leopard Creek	*7290
Approximately 2,550 feet upstream of the confluence of Leopard Creek	*7295
Approximately 2,610 feet upstream of the confluence of Leopard Creek	*7302
Approximately 3,170 feet upstream of the confluence of Leopard Creek	*7303
Approximately 3,720 feet upstream of the confluence of Leopard Creek	*7307
Approximately 7,280 feet upstream of the confluence of Leopard Creek	*7352
Approximately 8,050 feet upstream of the confluence of Leopard Creek	*7358
Approximately 8,350 feet upstream of the confluence of Leopard Creek	*7365
Approximately 9,310 feet upstream of the confluence of Leopard Creek	*7373
Approximately 5,330 feet downstream of the confluence of Fall Creek	*7388
Approximately 4,250 feet downstream of the confluence of Fall Creek	*7398
Approximately 3,790 feet downstream of the confluence of Fall Creek	*7402
Approximately 3,360 feet downstream of the confluence of Fall Creek	*7410
Approximately 2,000 feet downstream of the confluence of Fall Creek	*7420
San Miguel River (near Telluride):	
At western corporate boundary of the Town of Telluride	*8717
Approximately 590 feet upstream of western corporate boundary of the Town of Telluride	*8726
Approximately 1,500 feet upstream of western corporate boundary of the Town of Telluride	*8728
At eastern corporate boundary of the Town of Telluride	*8774
Maps are available for inspection at the San Miguel County Planning Commissioner's Office, 305 West Colorado Avenue, Telluride, Colorado.	
Telluride (town) (San Miguel County) (FEMA Docket No. 6925)	
San Miguel River:	
At western corporate boundary	*8717
Approximately 740 feet downstream of confluence of Cornet Creek	*8725
Approximately 500 feet upstream of confluence of Cornet Creek	*8731
Approximately 1130 feet upstream of confluence of Cornet Creek	*8736
Approximately 80 feet upstream of South Pine Street	*8748
Approximately 240 feet downstream of Maple Street	*8756
Approximately 1,000 feet upstream of Maple Street	*8764
At eastern corporate boundary	*8774
Maps are available for inspection at the Town Hall Annex, 135 South Spruce Street, Telluride, Colorado 81435.	

State, City/Town/County source of flooding and location	# Depth in feet above ground. ^ Elevation in feet (NGVD). Modified
Wheat Ridge (city), Jefferson County (FEMA Docket No. 6915)	
Lena Gulch:	
Downstream of Kipling Street	*5361
Upstream of Kipling Street	(²)
Downstream of Parfet Street	(²)
Upstream of Parfet Street	*5406
Approximately 1,500 feet downstream from Simms Street	*5416
² 100-Year flood contained in the channel.	
Maps are available for inspection at the City Hall, 7500 West 29th Avenue, Wheat Ridge, California.	
GEORGIA	
DeKalb County (unincorporated areas) (FEMA Docket No. 6922)	
Henderson Mill Creek:	
At mouth	*888
About 950 feet upstream of Henderson Creek Road	*905
Peachtree Branch:	
At mouth	*885
About 0.95 mile upstream of Interstate 285	*927
Maps available for inspection at the Planning Department, Decatur, Georgia	
Rome (city), Floyd County (FEMA Docket No. 6925)	
Silver Creek:	
At confluence	*597
Just upstream of Crecent Avenue	*600
About 1.2 miles upstream of U.S. Route 411	*620
Prentis Branch:	
At mouth	*609
Just upstream of Norfolk Southern Railway	*611
Maps available for inspection at the City Clerk's Office, City Auditorium, Rome, Georgia.	
ILLINOIS	
Deerfield (village), Lake and Cook Counties (FEMA Docket No. 6922)	
West Fork North Branch Chicago River:	
About 1180 feet downstream of Lake Cook Road	*653
About 1120 feet upstream of Lake Cook Road	*654
About 2750 feet upstream of Lake Cook Road	*655
Maps available for inspection at the Village Hall, 850 Waukegan Road, Deerfield Illinois.	
Lake Barrington (village), Lake County (FEMA Docket No. 6922)	
Lake Barrington Drain:	
Just upstream of Kelsey Road	*760
About 1900 feet upstream of Kelsey Road	*778
East Tributary Flint Creek:	
At mouth	*775
About 2450 feet upstream of mouth	*756
Tower Lake Creek:	
At mouth	*737
About 2650 feet upstream of River Road	*737
Maps available for inspection at the Lake Barrington Planning Commission, Barrington, Illinois.	
MINNESOTA	
Delano (city), Wright County (FEMA Docket No. 6925)	
South Fork Crow River:	
About 2.4 miles downstream of Bridge Avenue	*917
About 1.8 miles downstream of Bridge Avenue	*919
Maps available for inspection at the City Hall, 205 Bridge Avenue Delano, Minnesota.	
Rice County (unincorporated areas) (FEMA Docket No. 6918)	
Sakatah Lake: Along entire shoreline	*1004
Lower Sakatah Lake: Along entire shoreline	*1004
Maps available for inspection at the Zoning Office, 218 Northwest Third Street, Faribault, Minnesota.	
NEBRASKA	
Lincoln (city), Lancaster County (FEMA Docket No. 6922)	
Antelope Creek:	
Just upstream of Holmes Lake Dam	*1255
About 2100 feet upstream of 70th Street	*1255
Maps available for inspection at the Planning Department, County-City Building, Lincoln, Nebraska.	
NEVADA	
Reno (city), Washoe County (FEMA Docket No. 6922)	
Steamboat Creek:	
Just downstream of Pembroke Drive	*4391
Approximately 1,200 feet upstream of Pembroke Drive	*4391
Approximately 5,520 feet upstream of Pembroke Drive	*4391
Approximately 8,460 feet upstream of Pembroke Drive	*4392
Approximately 9,280 feet upstream of Pembroke Drive	*4395
Maps are available for inspection at the Engineering Division, City of Reno, 450 St. Clair Street, Reno, Nevada 89502.	
Washoe County (unincorporated areas), (FEMA Docket No. 6922)	
Steamboat Creek:	
Just downstream of Pembroke Drive	*4391
Approximately 1,200 feet upstream of Pembroke Drive	*4391
Approximately 5,520 feet upstream of Pembroke Drive	*4391
Approximately 9,260 feet upstream of Pembroke Drive	*4395
Maps are available for inspection at the Washoe County Engineer's Office, 1205 Mill Street, Reno, Nevada 8-520.	
NEW YORK	
Lenox (town), Madison County (FEMA Docket No. 6925)	
Canastota Creek: Approximately 200 feet upstream of Seneca Turnpike bridge	*465
Maps available for inspection at the Lenox Town Hall, 205 South Petersboro Street, Canastota, New York.	
Union (town), Broome County (FEMA Docket No. 6922)	
Nanticoke Creek:	
Approximately 1,950 feet (.37 mile) upstream of Route 26 Bridge	*833
Approximately 5,000 feet (0.95 mile) upstream of Route 26 Bridge	*834
Maps available for inspection at the Town Clerk's Office, 3111 E. Main Street, Endwell, New York.	
OKLAHOMA	
Bartlesville (city), Washington and Osage Counties (FEMA Docket No. 6925)	
Caney River: Approximately 45 feet upstream of Tuxedo Boulevard	*674
Rice Creek:	
Approximately 50 feet upstream of downstream corporate limits	*678
Approximately 60 feet upstream of U.S. Highway 75/Washington Boulevard	*694
Approximately 3,400 feet upstream of U.S. Highway 75/Washington Boulevard	*707
Rice Creek Tributary:	
Approximately 20 feet upstream of most downstream corporate limits	*668
At Silver Lake Road	*668
Eliza Creek:	
Approximately 25 feet downstream of downstream corporate limits	*689
Approximately 25 feet downstream of upstream corporate limits	*704
Butler Creek:	
Approximately 85 feet downstream of downstream corporate limits	*677
Approximately 30 feet upstream of upstream corporate limits	*678
Approximately 40 feet downstream of most upstream corporate limits	*680
Maps available for inspection at the City Hall, 6th Street and Dewey Avenue, Bartlesville, Oklahoma.	
Oklahoma City (city), Oklahoma County (FEMA Docket Nos. 6915 and 6922)	
Tributary 1 of Canadian River:	
Approximately 2,000 feet downstream of S.W 122nd Street	*1189
At upstream side of S.W. 119th Street	*1202
Approximately 550 feet downstream of S.W. 112th Street	*1212
Tributary 4 of Tributary 1 of Canadian River:	
At confluence with Tributary 1 of Canadian River	*1194
Approximately 2,300 feet upstream of S.W. 119th Street	*1212
Approximately 0.65 mile upstream of S.W. 119th Street	*1220
Twin Creek:	
Downstream side of Agnew Avenue	*1202
Approximately 1,350 feet upstream of Agnew Avenue	*1205
Approximately 100 feet downstream of St. Louis-San Francisco Railway	*1209
Approximately 175 feet upstream of St. Louis-San Francisco Railway	*1211
Approximately 500 feet downstream of S.W. 25th Street	*1212
Approximately 100 feet upstream of S.W. 25th Street	*1218
Approximately 50 feet downstream of May Avenue	*1222
Maps available for inspection at the City Engineer's Office, 200 N. Walker, Oklahoma City, Oklahoma.	
OREGON	
Pendleton (city), Umatilla County (FEMA Docket No. 6922)	
Patawa Creek:	
Approximately 500 feet below confluence with Tutuilla Creek	*1083
At confluence with Tutuilla Creek	*1085
Approximately 120 feet above confluence with Tutuilla Creek	*1087
Approximately 858 feet above confluence with Tutuilla Creek	*1094
Approximately 1,523 feet above confluence with Tutuilla Creek	*1101
At corporate limits, approximately 2,320 feet above confluence with Tutuilla Creek	*1104
Maps are available for inspection at City Hall, Planning Department, 34 S.E. Dorion Avenue, Pendleton, Oregon.	
Umatilla County (unincorporated areas), (FEMA Docket No. 6922)	
Patawa Creek:	
At corporate limits for the City of Pendleton, approximately 2,300 feet above confluence with Tutuilla Creek	*1104
Approximately 2,900 feet above confluence with Tutuilla Creek	*1109
Approximately 3,900 feet above confluence with Tutuilla Creek	*1121
Approximately 4,900 feet above confluence with Tutuilla Creek	*1127
Approximately 5,750 feet above confluence with Tutuilla Creek	*1136

State, City/Town/County source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD). Modified
Approximately 6,450 feet above confluence with Tutuilla Creek	*1142
Approximately 7,100 feet above confluence with Tutuilla Creek	*1149
Approximately 7,950 feet above confluence with Tutuilla Creek	*1155
At limit of detailed study approximately 8,550 feet above confluence with Tutuilla Creek	*1161
Maps are available for inspection at the Umatilla County Planning Department, 216 Southeast Fourth Street Pendleton, Oregon.	
TENNESSEE	
Graysville (city), Rhea County (FEMA Docket No. 6925)	
Sale Creek:	
Just upstream of Dayton Avenue	*734
About 1850 feet upstream of Dayton Avenue	*738
Maps available for inspection at the City Hall, Graysville, Tennessee.	
TEXAS	
Flower Mound (town), Denton County (FEMA Docket No. 6922)	
McKamy Creek:	
Approximately 1,000 feet downstream of confluence of Tributary 1 to McKamy Creek	*564
Approximately 50 feet downstream of Flower Mound Road	*595
Tributary 1 to McKamy Creek:	
At confluence with McKamy Creek	*567
Approximately 1,520 feet upstream of confluence with McKamy Creek	*596
Maps available for inspection at the Town Engineer's Office, 2121 Cross Timbers Road, Flower Mound, Texas.	
Junction (city), Kimble County (FEMA Docket No. 6925)	
North Llano River:	
Approximately 1,200 feet downstream of U.S. Routes 83, 290, and 377	*1710
Approximately 0.2 mile upstream of U.S. Routes 83, 290, and 377	*1715
Maps available for inspection at the City Hall, 102 N. 5th, Junction, Texas.	
Waco (city), McLennan County (FEMA Docket No. 6925)	
Brazos River:	
Approximately 5,600 feet downstream of Lake Brazos Dam	*383
At Lake Shore Drive	*395
Upstream corporate limits	*403
Bosque River:	
Confluence with Brazos River	*392
Approximately 500 feet upstream of F.M. 1637	*402
Bosque River Tributary:	
Confluence with Bosque River	*399
Approximately 3,100 feet upstream of confluence with Bosque River	*399
Wilson Creek:	
Confluence with Brazos River	*390
Approximately 2,025 feet upstream of confluence with Brazos River	*392
Delano Avenue Ditch:	
Confluence with Brazos River	*390
Approximately 1,300 feet upstream of confluence with Brazos River	*393
Barron's Branch: Confluence with Brazos River	*389
Marlin's Branch: Confluence with Brazos River	*387
Waco Creek: Confluence with Brazos River	*387
Diversion Ditch:	
Confluence with Brazos River	*394
Approximately 400 feet upstream of confluence with Brazos River	*396
Maps available for inspection at the Waco City Hall, Engineering Department Office, Third and Austin, Waco, Texas.	
VIRGINIA	
Alexandria (city), (independent city) (FEMA Docket No. 6925)	
South Lucky Run:	
Approximately 150 feet upstream of earthen dam	*169
Approximately 400 feet upstream of earthen dam	*169
Maps available for inspection at the City Hall, Alexandria, Virginia.	
Colonial Heights (city), Independent City (FEMA Docket No. 6925)	
Old Town Creek:	
800 feet upstream of U.S. Route 1-301	*54
Approximately 1300 feet upstream of U.S. Route 1-301	*54
Maps available for inspection at the Planning and Community Development Office, 1507 Boulevard, Colonial Heights, Virginia.	
Grundy (town), Buchanan County (FEMA Docket No. 6925)	
Levisa Fork:	
Approximately 1.1 miles downstream of Coal Tipple Bridge	*1025
At downstream side of Coal Tipple Bridge	*1039
At confluence of Slate Creek	*1051
At downstream side of State Route 615 (Hoot Owl Road)	*1066
Approximately 0.7 mile upstream of State Route 615	*1074
Approximately 1.3 miles upstream of State Route 615	*1082
Slate Creek: At confluence with Levisa Fork	*1051
Maps available for inspection at the Town Building, Grundy, Virginia.	
WISCONSIN	
Sheboygan (city), Sheboygan County (FEMA Docket No. 6925)	
Fisherman's Creek:	
Just upstream of South 12th Street	*593
About 420 feet upstream of Washington Avenue	*639
Pigeon River:	
About 400 feet downstream of Mill Road	*592
About 0.86 mile upstream of Calumet Drive	*610
Maps available for inspection at the City Hall, Planning Department, 826 Center Avenue, Sheboygan, Wisconsin.	
WYOMING	
Gillette (city), Campbell County (FEMA Docket No. 6915)	
Stonepile Creek:	
Approximately 100 feet downstream of Interstate Highway 90	*4504
Approximately 50 feet upstream of Interstate Highway 90	(2)
Approximately 100 feet upstream of Stanley Avenue	(2)
Approximately 150 feet downstream of Gurley Avenue	(2)
Just upstream of North Brooks Avenue	(2)
Approximately 50 feet upstream of North Gillette Avenue	(2)
Just upstream of Burma Avenue	(2)
Approximately 220 feet downstream of Highway 14/16	(2)
Approximately 300 feet upstream of Highway 14/16	*4578
Maps are available for inspection at the City Hall, 201 East 5th Street, Gillette, Wyoming 82716.	

[1] Zone A contained in channel.
[2] 100-year flood contained in the channel.

Harold T. Duryee,
Administrator, Federal Insurance Administration.

Issued: June 7, 1988.

[FR Doc. 88-13589 Filed 6-15-88; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-520; RM-5969]

Radio Broadcasting Services; Rochester, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 243C2 for Channel 244A at Rochester, Minnesota, in response to a petition filed by Olmstead County Broadcasting Co. We shall also modify the license of Station KWWK to specify operation on Channel 243C2 in lieu of Channel 244A. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 18, 1988.

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. 87-250, adopted April 29, 1988, and released June 3, 1988. 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. In § 73.202(b), the Table of FM Allotments under Minnesota is amended by deleting Channel 244A and adding Channel 243C2 at Rochester.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88-13553 Filed 6-15-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-469; RM-5976]

Radio Broadcasting Services; Kirksville, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 229C2 for Channel 228A at Kirksville, Missouri, in response to a petition filed by Admiral Broadcasting Corporation. In addition, we shall also modify the license of Station KTUF(FM) to specify operation on Channel 229C2 in lieu of Channel 228A in accordance with §1.420(g) of the Commission's Rules. The coordinates for Channel 229C2 are 40-13-38 and 92-36-35. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 25, 1988.

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. 87-469, adopted May 11, 1988, and released June 9, 1988. 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.

PART 73—[AMENDED]

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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 under Missouri is amended by deleting Channel 228A and adding Channel 229C2 at Kirksville.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88-13551 Filed 6-15-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-502; RM-6052]

Radio Broadcasting Services; Star Lake, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Tia A. Soliday, allocates Channel 290B1 to Star Lake, New York, as the community's first local FM service. Channel 290B1 can be allocated to Star Lake in compliance with the Commission's minimum distance separation requirements with a site restriction of 18.4 kilometers (11.4 miles) southeast to avoid a short-spacing to Station CHEZ-FM, Channel 291C1, Ottawa, Ontario, Canada. The coordinates for this allotment are North Latitude 44-00-38 and West Longitude 74-56-07. Canadian concurrence has been received since Star Lake is located within 320 kilometers of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective July 18, 1988. The window period for filing applications will open on July 19, 1988, and close on August 18, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-502, adopted April 29, 1988, and released June 3, 1988. 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.

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 FM Table of FM Allotments for New York is amended by adding the following entry, Star Lake, Channel 290B1.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88-13552 Filed 6-15-88; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 53, No. 116
Thursday, June 16, 1988

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

Agricultural Marketing Service

7 CFR Part 51

United States Standards for Grades of Mixed Nuts in the Shell

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of withdrawal of proposed rule.

SUMMARY: This action will withdraw the proposed rule to amend the voluntary United States Standards for Grades of Mixed Nuts in the Shell. The amendment would have reduced the minimum percent requirement for each species of nut in a mixture for the U.S. Extra Fancy and U.S. Fancy from 10 to 5 percent. Comments received in response to the proposed rulemaking indicate a significant lack of consensus within the industry over the proposed amendment.

DATE: This withdrawal is effective June 16, 1988.

FOR FURTHER INFORMATION CONTACT: Philip C. Eastman, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2056 South Building, Washington, DC 20090–6456. (202) 447–2185.

SUPPLEMENTARY INFORMATION: The U.S. Standards for Grades of Mixed Nuts in the Shell were established in August 1965 and were last revised in August 1981. The standards specify that the five tree nut species of Almonds, Brazils, Filberts, Pecans and Walnuts shall be included in a mixture. The U.S. Extra Fancy and U.S. Fancy grades in the standards further provide that each species shall constitute a minimum of 10 percent and a maximum of 40 percent of a mixture.

A large packer and marketer of in-shell mixed nuts requested that the current standards be amended to relax the minimum percentage required for each species from 10 to 5 percent in the U.S. Extra Fancy and U.S. Fancy grades. The packer contended that due to crop shortages most packagers of mixed in-shell nuts have sometimes had problems meeting the 10 percent minimum for individual species in a mix.

On March 9, 1988, a notice of a proposed rule to amend § 51.3521–2 of the United States Standards for Grades of Mixed Nuts in the Shell (7 CFR 51.3521–2) was published in the **Federal Register** (Vol. 53 No. 46, 7531–2) with a period for comment ending April 8, 1988. The proposal would have reduced the minimum percent of mixture requirement for each of the five nut species in a mix for the U.S. Extra Fancy and U.S. Fancy grades from 10 to 5 percent.

By number, the comments were about evenly divided between those favoring the proposal and those opposing it. Among areas and interest groups, comments in support were relatively concentrated, while those in opposition were more widely dispersed.

Generally the comments in support of the proposal stated that with a 5 percent minimum for each nut species in a mix, it would be easier to meet the requirements and this would be particularly beneficial in years when a nut species may be in short supply.

The comments that were received against the proposal generally expressed the lack of any real need for a change in the grade standards. Most of those same comments also indicated that the basic economics of business encourage packers of mixed nuts to use the least expensive nuts to fill out a mix. Therefore, nut species that are more expensive to produce and market could be constantly reduced to a level to just meet the 5 percent minimum in the proposed amendment. Under the proposed U.S. Extra Fancy and U.S. Fancy grades of mixed nuts, 80 percent of the mixture could be comprised of only two species, with the remaining 20 percent divided among the remaining three. Currently any two species can together account for no more than 70 percent of the total because the remaining three species must each comprise 10 percent. Some of the opponents of the proposal pointed out that reducing the minimum from 10 to 5 percent would in effect cut their "market share" by 50 percent.

In view of the lack of consensus that a reduction of the minimum required for each nut species would meet the needs of the entire mixed nut industry, the notice of proposed rule is being retracted.

The U.S. Department of Agriculture is prepared to assist industry in continuing efforts to resolve their complex issues and encourages industry representatives to further discuss their areas of concern.

In consideration of the foregoing, the notice of proposed rule published in the **Federal Register** (Vol. 53, No. 46 7531–2) on March 9, 1988, is hereby withdrawn.

List of Subjects in 7 CFR Part 51

Agricultural commodities.

Authority: Secs. 203, 205, 60 Stat. 1087, as amended (7 U.S.C. 1622–1624).

Done in Washington, DC, on June 13, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88–13648 Filed 6–15–88; 8:45 am]
BILLING CODE 3410–02–M

7 CFR Part 51

United States Standards for Grades of Fresh Tomatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of withdrawal of advance notice of proposed rule.

SUMMARY: This action will withdraw an advance notice of proposed rule to amend the United States Standards for Grades of Fresh Tomatoes that would have revised size designation requirements, required mandatory size markings, and eliminated commingling of sizes within any container. Comments received in response to the advance notice of proposed rulemaking indicate a significant lack of consensus within the industry over the proposed revisions.

DATE: This withdrawal is effective June 16, 1988.

FOR FURTHER INFORMATION CONTACT: Paul W. Manol, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2056-South, Washington, DC 20090–6456, (202) 447–5410.

SUPPLEMENTARY INFORMATION: The United States Standards for Grades of Fresh Tomatoes were last amended in December 1976. In June 1987, the Florida Tomato Committee, the Florida Tomato

Exchange, and the California Fresh Market Tomato Advisory Board petitioned the Department to consider a revision of the standards size designations and packaging requirements.

On November 18, 1987, an advance notice of proposed rule to amend § 51.1859 of the United States Standards for Grades of Fresh Tomatoes (7 CFR 51.1859) was published in the **Federal Register** (Vol. 52, No. 222, 44131–44132) with a period for comment ending January 19, 1988. The suggested changes would have (1) required that the size of tomatoes in any container be specified on the container, (2) eliminated the commingling of different sizes within a package, and (3) established four new size designations with a 2/32 inch overlap between each size designation.

Ninety-six comments were received during the official period for comment. Approximately 49 percent of the comments supported all the suggested changes.

While the industry, in general, agrees that uniform size designation terminology and container markings would be beneficial, different segments within the industry are sharply divided over the issues of changing the diameter requirements of the present size designations and the elimination of commingling of different sizes within a package. In view of the lack of any substantial consensus as to whether the suggested changes in diameter requirements and the elimination of commingling would meet the needs of the entire industry at this time, the advance notice of proposed rule is being withdrawan.

Withdrawal will in no way inhibit industry representatives from discussing these areas of concern with the entire industry. The Department is prepared to assist industry in its continuing efforts to resolve these complex issues.

In consideration of the foregoing, the advance notice of proposed rule published in the **Federal Register** (Vol. 52, No. 222, 44131–44132) on November 18, 1987, is hereby withdrawn.

List of Subjects in 7 CFR Part 51

Agricultural commodities.

Authority: Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended; 7 U.S.S. 1622–1624.

Done in Washington, DC, on June 7, 1988.

J. Patrick Boyle,

Administrator, Agricultural Marketing Service.

[FR Doc. 88–13647 Filed 6–15–88; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 51

[Docket Number AMS–FV–88–021PR]

Sweet Peppers; Grade Standards

AGENCY: Agricultrual Marketing Serivce, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed action would revise the United States Standards for Grades of Sweet Peppers. The proposal would allow sweet peppers with pod colors other than green or red to be certified to a U.S. Grade. The West Mexico Vegetable Distributors Association, a trade association representing major sweet pepper importers, producers, and growers, has requested the USDA to revise the paragraphs pertaining to color. This change would improve marketing information and communication between shippers and receivers of sweet peppers with pod colors other than green or red. The Agricultural Marketing Service (AMS), in cooperation with industry, has the responsibility to develop and improve standards of quality, condition, quantity, grade, and packaging in order to encourage uniformity and consistency in commercial practices.

DATE: Comments must be received on or before August 15, 1988.

ADDRESS: Interested parties are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2085, South Building, 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 above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Paul W. Manol, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–5410.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1521–1 and has been designated as "nonmajor" under the criteria contained therein.

Pursuant to the provisions of the Regulatory Flexibility Act, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. The proposed revision of the standards for sweet peppers will not impose substantial direct economic costs, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large buisnesses. Inspection and certification under the U.S. standards is performed only at the request of a shipper or handler, so any additional costs to affected entities will be voluntarily assumed by such entities. In addition, this action proposes changes to the U.S. Standards for Grades of Sweet Peppers which brings the standards into conformity with current marketing practices.

The United States Standards for Grades of Sweet Peppers were last revised in December 1963. Industry representatives have requested that the standards be revised to change the color requirements for the U.S. Fancy, No. 1, and No. 2 grades.

In recent years, sweet peppers with a pod color other than green or red have been developed and introduced into marketing channels. USDA inspectors are frequently requested to apply the U.S. grade standards to a pepper shipment showing various colors such as, white, brown, purple, black, orange, or yellow pod color. Although the grade requirements can be applied, the shipment cannot be certified to a U.S. grade because the standards currently require grade—certified sweet peppers to be either green or red.

In order to allow these U.S. grade standards to be applied to sweet peppers having a pod color other than green or red, the West Mexico Vegetable Distributors association, a trade association representing major sweet pepper importers, producers, and growers, has requested USDA to revise the paragraphs pertaining to color. This proposal, if adopted, would allow shipments of sweet pepper of any pod color to be certified to a U.S. grade.

List of Subjects in 7 CFR Part 51

Fresh fruits, Vegetables, Other products (inspection, certification, and standards).

For reasons set forth in the preamble, it is proposed that 7 CFR Part 51 be amended as follows:

PART 51—[AMENDED]

1. The authority citation for 7 CFR Part 51 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087, as amended, (7 U.S.C. 1622, 1624).

2. In Subpart—United States Standards for Grades of Sweet Peppers, § 51.3270, paragraph (b) would be revised to read as follows:

§ 51.3270 U.S. Fancy

* * * * *

(b) *Color.* Any lot of peppers which meets all the requirements of this grade, except those relating to green color, may be designated as "U.S. Fancy" with the characteristic color specified in connection with this grade, provided that at least 90 percent of the peppers show any amount of the characteristic color, and provided further, that if the peppers fail to meet the color requirement of either "U.S. Fancy" or "U.S. Fancy (color specified)," they shall be designated as "U.S. Fancy Mixed Color." (See Tolerances, § 51.3274).

3. Section 51.3271, paragraph (b) would be revised to read as follows:

§ 51.3271 U.S. No. 1.

* * * * *

(b) *Color.* Any lot of peppers which meets all the requirements of this grade, except those relating to green color, may be designated as "U.S. No. 1" with the characteristic color specified in connection with this grade, provided that at least 90 percent of the peppers show any amount of the characteristic color, and provided further, that if the peppers fail to meet the color requirement of either "U.S. No. 1" or "U.S. No. 1 (color specified)," they shall be designated as "U.S. No. 1 Mixed Color." (See Tolerances, § 51.3274).

4. Section § 51.3272, paragraph (a) would be revised to read as follows:

§ 51.3272 U.S. No. 2.

* * * * *

(a) *Color.* Any lot of peppers which meets all the requirements of this grade, except those relating to green color, may be designated as "U.S. No. 2" with the characteristic color specified in connection with this grade, provided that at least 90 percent of the peppers show any amount of the characteristic color, and provided further that if the peppers fail to meet the color requirement of either "U.S. No. 2" or "U.S. No. 2 (color specified)," they shall be designated as "U.S. No. 1 Mixed Color." (See Tolerances, § 51.3274).

Done in Washington, DC, on June 9, 1988.

J. Patrick Boyle,

Administrator, Agricultural Marketing Service.

[FR Doc. 88-13649 Filed 6-15-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Parts 1106 and 1126

[Docket Nos. AO-231-A56 and AO-210-A48; DA-88-110]

Milk in the Texas and Southwest Plains Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: The hearing is being held to consider proposals by three cooperative associations to amend the producer-handler definitions of the Texas and Southwest Plains milk orders. The hearing was requested by Associated Milk Producers, Mid-America Dairymen, and Southern Milk Sales, which represent a substantial number of dairy farmers who supply the markets. The proposals would establish additional requirements that would have to be met by fluid milk processors that sell more milk than is produced on an average size farm (150,000 pounds of fluid milk sales per month for the Texas order and 100,000 pounds for the Southwest Plains order) to qualify as producer-handlers and, thus, be exempt from the pricing and pooling provisions of the orders. The cooperatives state that the proposals would exempt all existing producer-handlers but are intended to apply to large fluid milk handlers that are adjusting their plant and farm operations to qualify as producer-handlers. Proponents contend that the amendments are necessary to maintain orderly marketing conditions and have requested that the changes be considered on an expedited basis.

DATE: The hearing will convene at 9:00 a.m., local time, on July 19, 1988.

ADDRESS: The hearing will be held at the Holiday Inn, Dallas-Ft. Worth Airport South, 4440 West Airport Freeway, Irving, Texas 75061 (214) 399-1010.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Holiday Inn, Dallas-Ft. Worth Airport South, 4440 West Airport Freeway, Irving, Texas 75061 (214) 399-1010, beginning at 9:00 a.m., local time, on July 19, 1988, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Texas and Southwest Plains marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to the proposals.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (Pub. L. 96-354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purposes of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

List of Subjects in 7 CFR Parts 1106 and 1126

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Parts 1106 and 1126 continues to read as follows:

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

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Associated Milk Producers, Inc.; Mid-America Dairymen, Inc.; and Southern Milk Sales, Inc.:

Amend the Texas order (Part 1126) in the following manner:

Proposal No. 1

Amend § 1126.8 by adding paragraph (f) to read as follows:

§ 1126.8 Nonpool plant.

* * * * *

(f) Exempt handler. Any handler that has monthly route disposition of 150,000 pounds or less will be exempt from the pricing and pooling provisions of this order. However, such handler must file periodic reports as prescribed by the market administrator to enable determination of the exempt status of such handler.

Proposal No. 2

Revise § 1126.10 to read as follows:

§ 1126.10 Producer-handler.

"Producer-handler" means a person who is engaged in the production of milk and also operates a plant from which during the month fluid milk products, except filled milk, is disposed of only direct to consumers through home delivery retail routes or through a retail store located on the same property as the plant, and who has been so designated by the market administrator upon his determination that all of the requirements of this section have been met, and that none of the conditions therein for cancellation of such designation exists. All designations shall remain in effect until cancelled pursuant to paragraph (c) of this section.

(a) Requirements for designation. (1) The producer-handler has and exercises (in his capacity as a handler) complete and exclusive control over the operation and management of a plant at which he handles and processes milk received from his milk production resources and facilities (designated as such pursuant to paragraph (b)(1) of this section), the operation and management of which are under the complete and exclusive control of the producer-handler (in his capacity as a dairy farmer).

(2) The producer-handler neither receives at his designated milk production resources and facilities nor receives, handles, processes or distributes at or through any of his milk handling, processing or distributing resources and facilities (designated as such pursuant to paragraph (b)(2) of this section) milk products for reconstitution into fluid milk products, or fluid milk products derived from any source other than:

(i) His designated milk production resources and facilities,

(ii) Pool plants within the limitation specified in paragraph (c)(2) of this section, or

(iii) Nonfat milk solids which are used to fortify fluid milk products.

(3) The producer-handler is neither directly nor indirectly associated with the business or management of, nor has a financial interest in another handler's operation; nor is any other handler so associated with the producer-handler's operation.

(4) The producer-handler is neither directly nor indirectly associated with the business or management of, nor has a financial interest in another producer's operation (in this or any federal order).

(5) Designation of any person as a producer-handler following a cancellation of his prior designation shall be preceded by performance in accordance with paragraphs (a)(1), (2), (3) and (4) of this section for a period of one month.

(b) Resources and facilities. Designation of a person as a producer-handler shall include the determination and designation of the milk production, handling, processing and distributing resources and facilities, all of which shall be deemed to constitute an integrated operation, as follows:

(1) A milk production resources and facilities: All resources and facilities (milking herd(s), buildings housing such herd(s), and the land on which such buildings are located) used for the production of milk:

(i) Which are directly, indirectly or partially owned, operated or controlled by the producer-handler;

(ii) In which the producer-handler in any way has an interest including any contractual arrangement; and

(iii) Which are directly, indirectly or partially owned, operated or controlled by any partner or stockholder of the producer-handler.

(2) As milk handling, processing and distribution resources and facilities: All resources and facilities (including store outlets) used for handling, processing and distributing any fluid milk product:

(i) Which are directly, indirectly or partially owned, operated or controlled by the producer-handler; or

(ii) In which the producer-handler in any way has an interest including any contractural arrangement, or with respect to which the producer-handler directly or indirectly exercises any degree of management control.

(c) Cancellation. The designation as a producer-handler shall be cancelled under any of the conditions set forth in paragraphs (c) (1) and (2) of this section or upon determination by the market administrator that any of the requirements of paragraphs (a) (1), (2), (3) and (4) of this section are not continuing to be met. Such cancellation is to apply to any month in which the requirements are not met, or the conditions for cancellation occurred.

(1) Milk from the designated milk production resources and facilities of the producer-handler is delivered in the name of another person as producer milk to another handler under this or any other federal order.

(2) The producer-handler handles fluid milk products derived from sources other than the designated milk production facilities and resources, with the exception of purchases from pool plants in the form of fluid milk products which does not exceed the lessor of 5 percent of his Class I disposition during the month or 5,000 pounds.

(d) Public announcement. The market administrator shall publicly announce the name, plant location and farm location(s) of persons designated as producer-handlers, of those whose designations have been cancelled and the effective date of producer-handler status or loss of producer-handler status for each.

(e) Burden of establishing and maintaining producer-handler status. The burden rests upon the handler who is designated as a producer-handler to establish through records required pursuant to § 1000.5 of this chapter that the requirements set forth in paragraph (a) of this section have been and are continuing to be met, and that the conditions set forth in paragraph (c) of this section for cancellation of designation do not exist.

Proposal No. 3

Amend § 1126.12 by adding a new paragraph (b)(6) to read as follows:

§ 1126.12 Producer.

* * * * *

(b) * * *

(6) Any person that delivers milk to or receives milk from a producer-handler or an exempt handler specified in § 1126.8(f), or who has disposition of fluid milk products to consumers at the farm in excess of 110 pounds per day during the month.

Proposal No. 4

Amend the introductory text of § 1126.85 to read as follows:

§ 1126.85 Assessment for order administration.

As his pro rata share of the expense of administration of this part, each handler, including a producer-handler, shall pay to the market administrator on or before the 15th day after the end of

the month four cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to:

* * * * *

Proposal No. 5.

Amend sections 8, 10, 12, and 85 of the Southwest Plains order (Part 1106) to be identical to proposals 1 through 4 for the Texas order (Part 1126) except that the "150,000 pounds" specified in Proposal No. 1 should be "100,000 pounds" and the "four cents" specified in Proposal No. 4 should be "six cents".

Proposed by the Dairy Division, Agricultural Marketing Service:

Proposal No. 6

Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator of the respective order or from the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington office only)
Office of the Market Administrator, Texas and Southwest Plains Marketing Areas

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, DC, on June 10, 1988.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 88-13644 Filed 6-15-88; 8:45 am]

BILLING CODE 3410-02-M

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 420

Proposed Amendment to Comprehensive Plan and Basin Regulations—Water Supply Charges; Proposed Rule and Public Hearing

AGENCY: Delaware River Basin Commission.

ACTION: Proposed rule and public hearing.

SUMMARY: Notice is hereby given that the Delaware River Basin Commission will hold a public hearing to receive comments on a proposed amendment to its Comprehensive Plan and Basin Regulations—Water Supply Charges to include water charges for water use at hydroelectric power projects. The hearing will be part of the Commission's regular business meeting which is open to the public.

DATES: The public hearing is scheduled for Wednesday, August 3, 1988 beginning at 1:00 p.m. Persons wishing to testify at the hearing are requested to register with the Secretary prior to the hearing. The comment closing date will be determined at the hearing.

ADDRESSES: Written comments should be submitted to Susan M. Weisman, Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628. The public hearing will be held in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman Commission Secretary, Delaware River Basin Commission. Telephone (609) 883-9500.

SUPPLEMENTARY INFORMATION:

Background and Rationale

In 1964 the Commission assumed the obligation to repay the Federal Government for the water supply costs of Federal reservoirs constructed in the Basin.

Subsequently, the Commission formulated as water charges program which applies to both new surface water users and those whose taking exceeds their legal entitlement. The charge was determined to be the weighted average unit cost of water supply stored in Federal reservoirs on behalf of the Commission, and was designed to be recomputed whenever new or additional storage having different unit costs was added to the system. The revenues thus obtained provide the funds for annual repayment to the Federal Government.

The initial charge, reflecting the costs of the first reservoir, Beltzville, was established in 1974 at four cents per thousand gallons for consumptive use and four-tenths of a mill for non-consumptive use. In 1978, the Commission amended its Basin Regulations—Water Supply Charges by increasing the rate charged for basin surface water withdrawals from four to six cents per thousand gallons for consumptive use, and from four-tenths to six-tenths of a mill per thousand gallons for non-consumptive use to reflect the unit water supply costs of the Blue Marsh Reservoir.

Article 9 of the Delaware River Basin Compact provides that the waters of the Delaware River and its tributaries may be impounded and used by or under authority of the Commission for generating hydroelectric power and energy, in accordance with the Comprehensive Plan. Proposed new hydroelectric power projects are reviewed by the Commission under section 3.8 of the Compact in order to ensure compatibility with other water resources management objectives. In July 1980 the Commission held a public hearing on a proposed amendment to its Comprehensive Plan concerning hydroelectric power policy. Among its provisions, the policy proposed that the use of Basin waters for the generation of hydroelectric power would be subject to a charge by the Commission.

While the Commission did not adopt that proposal, it has since received applications for approval of certain hydroelectric power projects to which the provisions of Basin Regulations—Water Supply Charges do apply. However, the existing water supply charges were not structured with the operational characteristics of hydroelectric projects in mind. Consequently, staff was directed to develop recommended changes to Resolution No. 74-6 to establish an appropriate system of water suppy charges applicable to hydroelectric projects.

With this in mind, the Commission is now proposing revisions to its Basin Regulations—Water Supply Charges to establish a system of charges that would be more appropriate for such hydroelectric projects.

The subject of the hearing will be as follows: Amendment to the Comprehensive Plan and Basin Regulations—Water Supply Charges

List of Subjects in 18 CFR Part 420

Water supply policy.

Part 420 is proposed to be amended as follows:

PART 420—[AMENDED]

1. The Authority citation for Part 420 continues to read as follows:

Autority: Pub. L. 87–328 (75 Stat. 688).

2. Section 420.51 is added and an undesignated center heading is added preceding it to read as follows:

Hydroelectric Power Water Use Charges

§ 420.51 Hydroelectric power plant water use charges.

(a) *Annual base charges.* Owners of conventional run-of-river hydroelectric power plants that benefit from water storage facilities owned or partially owned by the Commission shall pay an annual base charge to the Commission. The amount of the base annual charge shall be one dollar per kilowatt of installed capacity.

(b) *Annual variable charges.* In addition to the base charge established in paragraph (a) of this section, annual charges based on power generated at each facility will be asssessed as follows:

(1) Owners of hydroelectric power plants that benefit from increased hydraulic head to the hydroelectric project as a result of investments by the Commission shall be charged one mill per kilowatt-hour of energy produced.

(2) Owners of hydroelectric power plants that derive additional benefit from increased flows available to the hydroelectric project that would not have been available without the Commission-sponsored project shall be charged one-half mill per kilowatt-hour of energy produced. No charges for increased flows will be required when charges for increased hydraulic head are in effect.

(3) Charges for the use of any facilities such as pipe conduits, outlet works, and so on, installed in, on or near a Commission-sponsored project that benefit the hydroelectric project in any way will be determined on a case-by-case basis as approved by the Commission.

(c) *Credits.* The owner of any hydroelectric generating facility shall receive a credit against the water use fee otherwise payable to the Commission for any amount which the Commission receives from the U.S. Army Corps of Engineers or from the Federal Energy Regulatory Commission.

(d) *Exemptions.* No payment will be required when hydroelectric power facility use charges would amount to less than $25 per year. Retroactive charges will not be assessed for facilities which have already obtained Commission approval pursuant to Section 3.8 of the Delaware River Basin Compact.

(e) *Payment of bills.* The amount due each year shall bear interest at the rate of 1% per month for each day it is unpaid begining 30 days after the due date. Payments are due within 30 days of the end of each calendar year. Annual base charges will be prorated for periods less than a year.

Delaware River Basin Compact, 75 Stat. 688.

Susan M. Weisman,

Secretary.

June 7, 1988.

[FR Doc. 88–13527 Filed 6–15–88; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Automatic Emergency-Parking Brakes for Rubber-Tired, Self-Propelled Electric Face Equipment; Public Hearing

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of public hearing.

SUMMARY: The Mine Safety and Health Administration (MSHA) will hold a public hearing on its proposed rule for automatic emergency-parking brakes for rubber-tired, self-propelled electric face equipment. The hearing will be held in Charleston, West Virginia, and will cover the major issues raised by comments submitted in response to the proposed rule.

DATES: All requests to make oral presentations for the record should be submitted at least five days prior to the hearing date. Immediately before the hearing, any unallotted time will be made available to persons making later requests.

The public hearing will be held on July 12, 1988, beginning at 9:00 a.m.

ADDRESSES: The hearing will be held at the folllowing location: Holiday Inn Heart of Town Corner of Washington and Broad Streets, Delegate Room, Charleston, West Virginia 25301.

Send requests to make oral presentations to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, Phone (703) 235–1910.

SUPPLEMENTARY INFORMATION: On March 1, 1988, MSHA published a proposed safety standard that would require automatic emergency-parking brakes on rubber-tired, self-propelled electric face equipment used in underground coal mines (53 FR 6512). The automatic emergency-parking brakes described in the proposal engage when there is a loss of power to such equipment, and could be activated by the equipment operator in an emergency situation. The brakes also act automatically as a parking brake when the equipment is intentionally deenergized. The standard was proposed under section 101 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 811).

The written comment period for this proposed rule ended on May 2, 1988. In the comments on the proposed rule, MSHA received requests for a public hearing. The purpose of the public hearing is to receive relevant comment and respond to questions about the proposed rule. The hearing will be conducted in an informal manner by a panel of MSHA officials. Although formal rules of evidence will not apply, the presiding official may exercise discretion in excluding irrelevant or unduly repetitious material and questions.

The public hearing will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. During these presentations, the hearing panel will be available to answer relevant questions. At the discretion of the presiding official, speakers may be limited to a maximum of 20 minutes for their presentations. Time will be made available at the end of the hearing for rebuttal statements. A verbatim transcript of the proceeding will be taken and made part of the rulemaking record. Copies of the hearing transcript will be made available for review by the public.

MSHA will also accept additional written comments and other appropriate data from any interested party, including those not presenting oral statements. Written comments and data submitted to MSHA will be included in the rulemaking record. To allow for the submission of any post-hearing comments, the record will remain open until July 29, 1988.

Issues

Commenters questioned a number of provisions contained in the proposal. However, some portions of the rule raised issues of particular concern, which are discussed below. MSHA will

specifically address these issues at the public hearing and solicit comments on them in addition to any other aspects of the proposed rule.

A. Scope of the Proposed Rule

As proposed, the rule would apply to rubber-tired, self-propelled electric face equipment used underground, with the exception of equipment with drive mechanisms that preclude movement when parked, or equipment that travels at a maximum speed of 2.5 miles per hour or less and which has a parking brake. Some commenters requested that the scope of the rule be expanded to require automatic emergency-parking brakes on outby and diesel equipment, as well as electric face equipment. In support of these positions, commenters stated that outby and diesel-powered equipment without emergency-parking brakes pose as great a hazard to miners as equipment powered by electricity and used in face areas.

Commenters also requested changes in the scope of the exceptions listed in the proposal. In response to the Agency's request for comment, one commenter suggested eliminating the exception for equipment which has a maximum operating speed of 2.5 miles per hour, explaining that slower moving equipment, such as roof-bolting machines, could pose pinning and crushing hazards to miners. Other commenters requested that certain types of personnel carriers and worm-gear driven equipment be excepted from the rule because of their design and use.

B. Justification for and Implementation of the Proposed Rule

Some commenters requested withdrawal of the proposed rule on the grounds that there has been an insufficient demonstration of risk to miners to justify the projected cost of compliance. One party requested that the technical feasibility of compliance with the proposal be considered by an independent body of experts, and that promulgation of the rule be delayed pending the completion of standards for underground equipment brakes being developed by the Society of Automotive Engineers.

In formulating the proposed rule, the Agency utilized two compilations of haulage and machinery-related fatality data for the periods 1966 through 1977, and 1978 through 1987. In response to requests by commenters, MSHA is presently undertaking a more in-depth study of the haulage-related fatalities which have occurred underground from 1978 through the present to determine the impact of a requirement for automatic emergency-parking brakes. The results of that study will be made part of the rulemaking record.

Commenters also suggested that automatic application of the emergency-parking brake upon the unintentional loss of power could increase the risk of injury to miners. In the preamble published with the proposed rule, the Agency recognized the risk referred to and acknowledged that a slight time delay between an unintentional power loss and full engagement of the emergency brake would be acceptable and encouraged in order to protect equipment operations from physical injury. The intent of the standard is to provide for the rapid arresting of equipment motion when the brake is intentionally applied, while allowing some preparation time to protect equipment operators when the brake is unintentionally actuated.

C. Schedule for Compliance

Paragraph (a)(1) of the proposal would require automatic emergency-parking brakes on all new equipment ordered, and equipment originally furnished with retrofitted with such brakes, upon the effective date of the rule. Some commenters objected to the initial compliance date, stating that additional time would be needed to bring affected equipment into compliance with the requirements of the proposal. Other commenters supported the initial compliance date, stating that brake systems which would comply with the proposed performance standards are currently available and in use in the industry.

The proposal would require all other equipment to be in compliance within 24 months after the effective date of the rule. One commenter stated that the dangers to miners posed by underground equipment are immediate, and that a large percentage of the equipment addressed is currently equipped with some form of automatic brake system. Therefore, the commenter requested that all equipment be required to have automatic emergency-parking brakes within 6 months of the effective date of the rule.

D. Brake Design Standards

Some commenters expressed the need for the promulgation of mandatory design standards for automatic emergency-parking brakes. One commenter supported the proposed rule as an improvement in mine haulage safety, but requested that it be followed up with the promulgation of specific design criteria to compliment the letter and intent of the proposed rule. In the commenter's view, specific design standards would permit evaluation and certification of brake systems with the use of engineering and laboratory aids, when necessary. Another commenter also expressed the need for the promulgation of specific design standards in order to facilitate compliance efforts, should the proposal become a final rule.

List of Subjects in 30 CFR Part 75

Mine safety and health, Mandatory safety standards, Underground coal mines, Electric equipment, Automatic emergency-parking brakes.

David C. O'Neal,

Deputy Assistant Secretary for Mine Safety and Health.

Date: June 10, 1988.

[FR Doc. 88-13597 Filed 6-15-88; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Permanent Regulatory Program; Public Comment Period and Opportunity for Public Hearing on Amendments; Revision of Ohio Program Administration Rules

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed amendments to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments concern several changes to Ohio's program administrative rules.

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on July 18, 1988. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on July 11, 1988. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on July 1, 1988.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Ms. Nina Rose Hatfield, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSMRE's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, Room 202, Columbus, Ohio 43232. Telephone: (614) 866–0578.

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street NW., Room 5131, Washington, DC 20240. Telephone: (202) 343–5492.

Ohio Department of Natural Resources, Division of Reclamation, Fountain Square, Building B–3, Columbus, Ohio 43224. Telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated May 24, 1988 (Administrative Record No. OH–1033), the Ohio Department of Natural Resources, Division of Reclamation (ODNR) submitted proposed amendments to the Ohio program at Ohio Administrative Code (OAC) Sections 1501:13–1–02, 4–03, 4–04, 4–05, 4–13, 4–14, 7–03, 7–04, 7–05, 9–04, 9–07, 9–09, 9–14, 9–15, 10–01, 14–02, and 14–05. The proposed changes were initiated by Ohio and are briefly summarized below:

(1) OAC Section 1501:13–1–02 paragraph (MM): to change the rule referenced in this section from 1501:13–9–07 to 1501:13–9–14. This reference change is needed for consistency with the proposed transfer of provisions for blending of spoil included later in the proposed amendments.

(2) OAC Section 1501:13–1–02 paragraph (HHHH): to change the date defining a "previously mined area" to August 3, 1977.

(3) OAC Section 1501:13–1–02 paragraph (MMMM): to clarify that the phrase "property to be mined" includes only those surface and mineral estates proposed for mining.

(4) OAC Section 1501:13–1–02 paragraph (PPPPP): to include language in the definition of "support facilities" which is identical to 30 CFR 701.5 and which clarifies that the phrase "resulting from or incident to" is intended to connote an element of geographic proximity to coal mining and reclamation activities.

(5) OAC Section 1501:13–1–02 paragraph (FFFFFF)(3): to include a provision for continually created valid and existing rights comparable to 30 CFR 761.5.

(6) OAC Section 1501:13–4–03 paragraph (A)(3)(a): to clarify that underground mining applications must identify owners of the property, rather than of the coal, to be mined.

(7) OAC Section 1501:13–4–04 paragraph (C)(2)(a)(i): to revise a paragraph letter notation.

(8) OAC Section 1501:13–4–04 paragraphs (D)(4)(d) (vii) and (viii) and (E)(2) (g) and (h): to delete the requirements to provide analyses of surface and ground water for sulfates and suspended solids.

(9) OAC Section 1501:13–4–04 paragraph (J): to delete the requirement for fish and wildlife studies mandated by 30 CFR 779.20 which was withdrawn by OSMRE on December 11, 1987 (52 FR 47359).

(10) OAC Section 1501:13–4–04 paragraph (L)(3): to revise a paragraph letter notation.

(11) OAC Section 1501:13–4–05 paragraph (E)(2)(a): to delete the requirement to provide information on total sulfates in the determination of probable hydrologic consequences.

(12) OAC Section 1501:13–4–05: to incorporate paragraph (H)(1)(d) into paragraph (H)(2)(b). This change would delete the requirement to submit reclamation plans prepared for MSHA concerning ponds, banks, dams, and embankments to the Chief of the Division of Reclamation (the Chief) but would maintain this requirement for impoundments.

(13) OAC Section 1501:13–4–05: to delete paragraphs (H)(2)(b) (i) through (xviii) and replace the reiteration of the required components of the MSHA plan for impoundments with references to 30 CFR 77.216–(2)(a). Other references at 1501:13–4–05 (H)(3)(c) and (H)(4)(c) to paragraphs (H)(2)(b) (i) through (xviii) would also be replaced with references to 30 CFR 77.216–(2)(a).

(14) OAC Section 1501:13–4–05 paragraph (O): to clarify that the air pollution control plan is intended to apply only to fugitive dust resulting from erosion.

(15) OAC Section 1501:13–4–05 paragraph (P): to substitute language identical with 30 CFR 780.16 (52 FR 47359) concerning fish and wildlife studies.

(16) OAC Section 1501:13–4–13 paragraph (C)(2)(c)(v): to include language comparable to 30 CFR 784.22(b)(2)(iii) allowing the Chief to waive the requirement to analyze the sulfur content present in pyrite.

(17) OAC Section 1501:13–4–13 paragraph (C)(2)(d)(iii): to delete the requirement for analysis of sulfur present in marcasite.

(18) OAC Section 1501:13–4–13 paragraphs (D)(4)(d)(vii) and (viii) and (E)(2)(b)(vii) and (viii): to delete the requirement to provide analyses of surface and ground water for sulfates and suspended solids.

(19) OAC Section 1501:13–4–13 paragraph (J): to delete the requirement for fish and wildlife studies mandated by 30 CFR 783.20 which was withdrawn by OSMRE on December 11, 1987 (52 FR 47359).

(20) OAC Section 1501:13–4–13 paragraphs (L)(3) and (L)(4)(a) and (b): to revise paragraph letter notations.

(21) OAC Section 1501:13–4–14 paragraph (E)(1)(f): to delete the requirement for provisions in hydrologic plans for the restoration of approximate recharge capacity of underground mine permit areas. This requirement was withdrawn by OSMRE on December 2, 1987 (52 FR 45923) in the revision of 30 CFR 784.14(g).

(22) OAC Section 1501:13–4–14 paragraphs (E)(2)(a): to delete the requirement to provide information on total sulfates in the determination of probable hydrologic consequences.

(23) OAC Section 1501:13–4–14 paragraphs (H)(1)(d) and (H)(2)(b): to revise in the same manner as is proposed for 1501:13–4–05 paragraphs (H)(1)(d) and (H)(2)(b). Paragraphs (H)(3)(c) and (H)(4)(c) would be modified to include references to 30 CFR 77.216–(2)(a) as is proposed for 1501:13–4–05 paragraphs (H)(3)(c) and (H)(4)(c).

(24) OAC Section 1501:13–4–14 paragraph (M)(2) and (M)(2)(b): to revise paragraph letter notations and to require that the map of underground workings

indicate the areas where measures will be taken to correct subsidence-related material damage.

(25) OAC Section 1501:13–4–14 paragraph (R): to substitute language identical with 30 CFR 784.21 (52 FR 47359) concerning fish and wildlife studies.

(26) OAC Section 1501:13–7–03 to delete paragraphs (B)(7)(d) and (e) which prohibit the Chief from accepting letters of credit in excess of specified percentages of a bank's capital surplus account.

(27) OAC Section 1501:13–7–04 paragraphs ((B)(3)(b) and (c) and paragraph (D): to adopt the criteria from 30 CFR 800.23(b)(3)(ii), (3)(iii), and (d) for minimum fixed assets and asset to liability ratios of self-bond applicants.

(28) OAC Section 1501:13–7–05 paragraph (A)(2)(b)(iv): to delete the use of non-prime farmland crop yield data in requests for approval of Phase II reclamation.

(29) OAC Section 1501:13–9–04 paragraphs (F)(2)(c), (F)(3)(c), (G)(3)(b)(i) and (ii), (H)(2)(h), and (H)(3)(b): to substitute six-hour precipitation events for the currently required twenty-four-hour precipitation events in the calculation of necessary capacities for temporary and permanent diversions and for principal and emergency spillways.

(30) OAC Section 1501:13–9–04 paragraph (H)(1)(e)(i): to clarify that foundation investigations and laboratory testing should be performed for impoundments meeting the size or other criteria of 30 CFR 77.216(a).

(31) OAC Section 1501:13–9–04 paragraphs (N)(1)(c), (N)(2)(a), (N)(2)(a)(iii), and (N)(2)(b)(iii): to require quarterly rather than monthly monitoring and reporting of ground water and pond discharge analysis for National Pollutant Discharge Elimination System (NPDES) permits.

(32) OAC Section 1501:13–9–07 paragraph (C): to delete the provisions for blending of spoil which are to be transferred to 1501:13–9–14(E).

(33) OAC Section 1501:13–9–07 paragraph (L)(6): to substitute six-hour precipitation events for the currently required twenty-four-hour precipitation events in the calculation of necessary capacities for diversion channels above rock fills.

(34) OAC Section 1501:13–9–09 paragraph (A)(5): to delete requirements for the compaction of coal mine waste which are more stringent than those at 30 CFR 816.81.

(35) OAC Section 1501:13–9–09 paragraphs (B)(1)(b), (C)(2)(b), and (C)(4): to substitute six-hour precipitation events for the currently required twenty-four-hour precipitation events in the calculation of necessary capacities for diversion channels collecting runoff from refuse pile and disposal facilities and for spillways of impounding structures constructed of coal waste.

(36) OAC Section 1501:13–9–14 paragraph (E): to transfer the provisions for blending of spoil deleted from 1501:13–9–07(C).

(37) OAC Section 1501:13–9–15 paragraph (B): to include on exemption from revegetation requirements for small incidental areas where revegetation would conflict with the postmining land use and where no environmental damage would result.

(38) OAC Section 1501:13–9–15 paragraphs (F)(3)(b) and (c): to allow non-noxious volunteer species to contribute to the satisfaction of Phase II and III revegetation requirements.

(39) OAC Section 1501:13–9–15 paragraph (F)(5) (f) and (g): to incorporate requirements for three years of crop harvest yield data for Phase II and III bond release on prime farmland which are comparable to 30 CFR 823.15(b).

(40) OAC Section 1501:13–10–01 paragraph (G)(3)(a): to substitute a six-hour precipitation event for the currently required twenty-four-hour precipitation event in the calculation of necessary capacities for drainage control systems installed for primary roads.

(41) OAC Section 1501:13–14–02 paragraph (C)(5): to delete the requirement that the Chief file copies of show-cause orders with the Ohio Reclamation Board of Review.

(42) OAC Section 1501:13–14–05 paragraph (B): to clarify that informal conferences shall be held within sixty days following the close of the comment period required by 1501:13–5–01(B)(1).

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendments proposed by ODNR satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio 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 Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR MORE INFORMATION CONTACT**" by 4:00 p.m. on July 1, 1988. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and 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 who 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

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "**FOR MORE INFORMATION CONTACT.**" All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each public meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 935

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

Carl C. Close,

Assistant Director, Eastern Field Operations.

Date: June 6, 1980.

[FR Doc. 88–13594 Filed 6–15–88; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD11-88-05]

Temporary Drawbridge Operation Regulations; Cerritos Channel, California

AGENCY: Coast Guard, DOT.

ACTION: Proposed Temporary Rule.

SUMMARY: At the request of California Department of Transportation, the Coast. Guard is considering establishing a temporary drawbridge operation regulation for the Schuyler Heim drawbridge across Cerritos Channel at Long Beach, California, to provide that the draw need not be opened for the passage of vessels during the period October 1, 1988 to March 31, 1989. This proposal is being made to allow necessary repairs to the bridge fender system and the lift controls. This action is expected to accommodate the reasonable needs of navigation. Small boats will be able to pass under the closed bridge. Larger vessels have an alternate channel available; the length of the alternate channel is 11 miles.

DATE: Comments must be received on or before August 1, 1988.

ADDRESSES: Comments should be mailed to Commander (oan-br), Eleventh Coast Guard District, Building 10, Room 214, Coast Guard Island, Alameda, CA 94501-5100. The comments and other materials referenced in this notice will be available for inspection and copying at the address and room above between 7:30 a.m. and 3 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Sharol Taylor, Bridge Administrator, Eleventh Coast Guard District at (415) 437-3514.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reason for concurrence with or any recommended change in the proposal.

The Commander, Eleventh Coast Guard District, will evaluate all communications received and determined a course of final action on this proposal. The proposed temporary regulation may be changed in light of comments received.

This temporary regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Trasportation regulatory policies and procedures (44 FR 11034, February 26, 1979). Since the economic impact is expected to be minimal, a full regulatory evaluation is unncessary. The Coast Guard certifies that it will not have a significant impact on a substantial number of small entities.

Drafting Information

The drafters of this rule are Sharol E. Taylor, project officer, and Lieutenant G. R. Wheatley, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Proposed Regulation

The Schuyler Heim vertical-lift bridge is 40 years old. The age of the bridge combined with the effects of the corrosive salt-air environment has resulted in several incidents when the lift span has been inoperable. Additional, within the last six months the bridge fender system has sustained significant damage from two barge collisions. In order to initiate repairs to the bridge control system, the existing lift controls must be disconnected for an extended period of time. The proposed repairs will require the bridge to be closed to navigation for six months. Repairs will be made to the fender system at the same time.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of Title 33 of the Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REQUIREMENTS

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

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

Subpart B—Specific Requirements

2. Section 117.147(a)(1) is added to read as follows:

§ 117.147 Cerritos Channel.

(a) * * *

(1) During the period October 1, 1988 to March 31, 1989, the draw of the Commodore Schuyler F. Heim highway bridge, mile 4.5, at Long Beach, need not be opened for the passage of vessels.

Dated: June 10, 1988.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 88-13636 Filed 6-15-88; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 482

[BERC-421-P]

Medicare and Medicaid Programs; Revisions to Conditions of Participation for Hospitals and Conditions for Coverage of Services of Independent Laboratories and Conditions for Coverage of Suppliers of End-Stage Renal Disease Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: We are proposing to revise several conditions that facilities must meet in order to participate in the Medicare and Medicaid programs:

- To require hospitals to have a discharge planning process for patients entitled to benefits under the Medicare program and to specify the elements of that process;
- To provide that if the State has licensing or other standards for clinical laboratory directors, individuals who meet these standards will be considered to have met Federal requirements.

These provisions would implement sections 9305(c) and 9339(d) of the Omnibus Budget Reconciliation Act of 1986 (OBRA 86).

In this proposed rule we also address an issue raised by the Office of Management and Budget concerning whether certain regulations requirements for end-stage renal disease facilities include excessive recordkeeping and reporting burdens.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on August 15, 1988.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-421-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Humbert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or
Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Please address a copy of comments on information collection requirements to: Allison Herron, Office of Information and Regulatory Affairs, Room 3208 New Executive Office Building, Washington, DC 20503.

In commenting, please refer to file code BERC–421–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202–345–7890).

FOR FURTHER INFORMATION CONTACT:

Stanley Rosenfeld, (301) 966–4657. For hospital discharge planning process and qualification of laboratory directors.
Rita McGrath, (301) 966–4635. For ESRD requirements.

SUPPLEMENTARY INFORMATION:

I. Background

A. General

Conditions of participation (conditions) is the term used for the requirements that hospitals must meet in orderd to participate in the Medicare program. These conditions implement sections 1861(e), (f), (k), and (z) of the Social Security Act (the Act). The corresponding requirements which independent laboratories must meet to obtain Medicare payment are known as conditions for coverage, and implement the undesignated paragraph following section 1861(s)(11) as well as section 1861(s)(12) and (13) of the Act. In addition, suppliers of end-stage renal disease (ESRD) services are subject to conditions for coverage which implement sections 1102, 1861, 1862(a), 1871, 1874, and 1881 of the Act.

These conditions are intended to protect patient health and safety and to help assure that high-quality care is provided to Medicare and Medicaid patients. The current regulations containing the Medicare conditions of participation for hospitals are located in the Code of Federal Regulations at 42 CFR Part 482, Subparts A, B, C, D, and E. The conditions for coverage of independent laboratories are located at 42 CFR Part 405, Subpart M. The conditions for coverage of suppliers of ESRD services are located in 42 CFR Part 405, Subpart U. We provide that hospitals accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the American Osteopathic Association (AOA) are deemed to meet most of our requirements in the hospital conditions of participation. Other providers, and nonaccredited hospitals, are surveyed by a State survey agency to ensure that they meet our requirements. (Our regulations concerning the survey process for providers affected by this proposal are at 42 CFR Part 405, Subpart S, unless otherwise noted.)

Failure to meet a condition of participation may jeopardize the continuation of a facility's provider agreement.

B. Discharge Planning

Over the past 20 years, the average length of a hospital stay has become significantly shorter for a number of reasons. Factors contributing to this reduction include payment methods for hospitals, such as Medicare's prospective payment system, which furnishes incentives to hospitals to retain only those patients needing care that can be safely furnished only in the inpatient hospital setting. Additionally, increases in the aged population, coupled with shorter lengths of hospital stays, have created a demand for rehabilitative and restorative treatments in non-hospital settings that can be furnished after hospital discharge. To assure the coordination needed to achieve a timely transition to post-hospital care, discharge planning is necessary. It enables a hospital and patient to arrange for services that do not need to be furnished in an inpatient hospital setting.

Our current regulations do not require discharge planning as a distinct condition of participation. However, we include as a standard under the quality assurance condition (42 CFR 482.21) the requirement that a hospital have an effective, ongoing discharge planning program that facilitates the provision of followup care. We require the hospital to initiate the discharge planning in a timely manner and to transfer or refer patients, along with necessary medical information, to appropriate facilities, agencies or outpatient services, as needed, for followup or ancillary services.

Congress enacted section 9305(c) of the Omnibus Budget Reconciliation Act of 1986 (OBRA 86) (Pub. L. 99–509) to require that, as a condition of participation, hospitals have a discharge planning process for patients entitled to benefits under the Medicare program. This process must meet specified guidelines and standards that are developed by the Secretary and that include those enumerated by statute.

C. Clinical Laboratory Director Standards

In order to assure the health and safety of patients, our conditions of participation for hospitals and conditions for coverage of services of independent laboratories include standards that personnel, including laboratory directors, must meet. The clinical laboratory director requirements apply in all States, including those that have adopted their own qualification requirements. We require a hospital laboratory director to be a pathologist or other doctor of medicine or osteopathy with training and experience in clinical laboratory services, or a laboratory specialist with a doctoral degree in physical, chemical or biological sciences, and training and experience in clinical laboratory services (§ 482.27(c)(1)(i)).

Generally, we require an independent laboratory director to be a Board-certified or Board-eligible pathologist, a physician in another specialty who is certified (or eligible for certification) by an appropriate national accrediting board or has specified laboratory training and experience, or a doctoral level scientist who is Board-certified or who has specified laboratory training and experience (§ 405.1312(b)). These general requirements are subject to specific exceptions relating to laboratories specializing in oral pathology and to individuals first qualifying as laboratory directors before July 1, 1971.

Since publication of these regulations, Congress has enacted legislation requiring the Medicare program to rely on State licensure and practice laws, where these laws have been enacted, to assure that clinical laboratory directors are properly qualified. When Congress enacted OBRA 86, it specified in section 9339(d) that if a State has standards that a clinical laboratory director (including a hospital laboratory director) must meet, directors who meet these standards will be considered as meeting Federal standards.

D. Reducing Information Collection Burden

In an effort to decrease the burden imposed by the Federal government on the public for keeping records and filing information, the Paperwork Reduction Act of 1980 authorized the Office of Management and Budget (OMB) to review all information collection and recordkeeping requirements in Federal

regulations (44 U.S.C. 3504(h)). OMB published regulations at 5 CFR 1320.14 to implement the statutory authority. Under § 1320.14(f) of those regulations, an agency whose regulations OMB reviews publishes a notice in the Federal Register informing the public if OMB proposes that changes in the information collection or recordkeeping requirements be considered. The notice indicates that OMB has approved the present requirements for the time needed to consider proposed changes.

OMB reviewed our regulations at 42 CFR Part 405, Subpart U, which concern conditions for coverage of suppliers of ESRD services. OMB determined that several of the sections may have been overly prescriptive and required that we request public comment on all of Subpart U. We published a notice listing the affected sections on February 6, 1986 (51 FR 4619). Subsequently, in three different rulemaking activities, we proposed revisions to Subpart U and have addressed all but three of the information collection requirements in Subpart U. (These rulemakings were published on July 2, 1986, 51 FR 24226; August 15, 1986, 51 FR 29404; and August 26, 1986, 51 FR 39356). We address the remaining three sections in this proposed rule.

II. Recent Legislation

A. Discharge Planning Process

Section 9305(c) (1) and (2) of OBRA 86 amends section 1861(e) of the Act, which defines "hospital", by adding to paragraph (6) a requirement that a hospital have in place a discharge planning process that meets the requirements of a new section 1861(ee) that Congress added to the Act. Under section 1861(ee) of the Act, a discharge planning process of a hospital is sufficient if it applies to services furnished by the hospital to Medicare beneficiaries and meets the guidelines and standards established by the Secretary of HHS to ensure a timely and smooth transition to the most appropriate type of setting for posthospital or rehabilitative care.

Section 1861(ee) requires that the Secretary's standards and guidelines include the following:

(1) The hospital must identify, at an early stage of hospitalization, the patients who are likely to suffer adverse health consequences if discharged without adequate discharge planning.

(2) Hospitals must provide a discharge planning evaluation for the patients identified under (1) above and for other patients upon request of the patient or his or her representative or physician.

(3) Any discharge planning must be made on a timely basis to ensure that appropriate arrangements for posthospital care will be made before discharge and to avoid unnecessary delays in discharge.

(4) A discharge planning evaluation must include an evaluation of a patient's likely need for appropriate posthospital services and the availability of those services.

(5) The evaluation must be included in the patient's medical record for use in establishing an appropriate discharge plan, and the evaluation must be discussed with the patient or his or her representative.

(6) Upon the request of a patient's physician, the hospital must arrange for the development and initial implementation of a discharge plan for the patient.

(7) Any discharge planning evaluation or discharge plan required under section 1861(ee) of the Act must be developed by, or under the supervision of, a registered professional nurse, social worker, or other appropriately qualified personnel. (Although the statute refers to a "registered professional nurse," both in this provision and in section 1861(e)(5) of the Act, there is no distinction between this term and "registered nurse," which is more commonly used. We will hereafter use the term "registered nurse", to be consistent with other references in our regulations.)

Section 9305(c)(3) amends section 1865(a) of the Act so that, in effect, when the JCAHO or AOA requires hospitals to have a discharge planning process or imposes a requirement that serves substantially the same purpose as the condition of participation for discharge planning, the Secretary is authorized to find that those hospitals with JCAHO or AOA accreditation meet that condition of participation.

The provisions of section 9305(c) of OBRA 86 are effective October 21, 1987.

B. Clinical Laboratory Director Standards

Section 9339(d) of OBRA 86 specifies that if a State provides licensing or other standards with respect to the operation of clinical laboratories (including those in hospitals) in the State and establishes qualifications under which an individual may direct a clinical laboratory, title XVIII of the Act may not be construed as authorizing the Secretary of HHS to require other qualifications as a condition of payment.

This provision was effective January 1, 1987.

C. Reducing Information Collection Burden of ESRD Facilities

Although ESRD facilities and ESRD networks have been the subject of recent legislation (see, e.g., Sections 9335(d)–(h) of OBRA 85), there is no legislation that affects the information collection requirements discussed in this proposed rule.

III. Provisions of the Proposed Regulations

A. Discharge Planning Process

To implement section 9305(c) of OBRA 86, we propose to incorporate the provisions of the statute and would add a new hospital condition of participation, § 482.43, Discharge planning. We would delete the current discharge planning requirement now in § 482.21, Quality assurance, as a medically-related patient care service standard.

Section 9305(c) confers authority to include standards and guidelines beyond those enumerated in the statute; at this time we are proposing to specify that the discharge planning evaluation include an evaluation of the Medicare patient's capacity for self-care or the possibility of this patient being cared for in the environment from which he entered the hospital. Under the requirements for the discharge plan, we would require, on an as-needed basis, that the Medicare patient and family members or interested persons be counseled to prepare them for post-hospital care. For clarity, we want to include the concept in the current regulation explicitly requiring the actual transfer or referral of Medicare patients after discharge planning is complete. We are also proposing to require a periodic reassessment of the Medicare patient's discharge plan to determine whether it needs to be changed. We would also require the hospital to reassess its discharge planning process on an ongoing basis to ensure that it meets Medicare patients' discharge needs.

We may consider adding more discharge planning standards or guidelines in the future, after we have evaluated the effectiveness of those we are proposing now. Also deferred are any requirements relating to needs assessment instruments that will be developed by the Secretary as required by section 9305(h) of OBRA 86. The Secretary will submit a report on the needs assessment instrument to Congress by January 1, 1989, including recommendations on the appropriate use of the instrument.

Although statutory requirements governing the hospital conditions of

participation generally apply to all patients, Congress has limited the applicability of a few requirements to hospital services provided to Medicare beneficiaries. One of these limited requirements is hospital discharge planning as described in section 1861(ee). Because the statute is clear on this issue, we have made this a Medicare-specific requirements rather than a general one.

We have not yet made a determination as authorized under section 9305(c)(3) as to whether the JCAHO or AOA discharge planning standards are at least equivalent to the statutory standards and guidelines in section 1861(ee) of the Act. Our regulations at 42 CFR 405.1901(d)(3) already provide that JCAHO and AOA accredited hospitals are deemed to meet our conditions of participation unless our requirements are higher or more precise. We are reviewing each organization's standards to determine if they are at least equivalent and invite comment on this issue. We will announce in the final rule following this proposed rule whether JCAHO or AOA accredited hospitals are deemed to meet the new condition of participation.

The new section 1861(ee)(2)(B) includes the requirement that hospitals provide discharge planning evaluations upon the request of the "patient, patient's representative, or patient's physician." "Patient representative" may be construed to be limited to (1) a legal representative (such as an attorney or legal guardian), or (2) an individual formally authorized by the beneficiary to act on his or her behalf. Since we believe the intent was to interpret the term as broadly as possible, and because of the desirability of allowing relatives, friends and other concerned persons to act for a patient, we would characterize representative in § 482.43(b)(1) as any properly authorized "person acting on the patient's behalf."

We do not intend to require hospitals to inform Medicare patients of the availability of discharge planning services separately from other information furnished. Currently, hospitals give all Medicare patients a notice ("An Important Message from Medicare") that informs beneficiaries, among other things, of the availability of discharge planning. This message was designed to help Medicare patients who may believe they need posthospital services but do not know how to obtain them.

In accordance with the Administration's desire to minimize unnecessary regulations as well as the intent of the Senate Finance Committee report accompanying S. 2706 (S. Rep. No. 348, 99th Cong., 2d Sess. 145–146 (1986)) and with the Conference Committee Report (H.R. Rep. No. 1012, 99th Cong., 2d Sess. 292 (1986)), we would continue the flexibility we grant in current regulations and allow hospitals to determine the appropriate personnel to carry out the discharge planning. In proposed § § 482.43(b)(2) and 482.43(c)(1), we would state that a registered nurse, social worker, or other appropriate personnel (consistent with available community and hospital resources) must develop or supervise the development of the evaluation and discharge plan. We would not stipulate in the regulation what qualifications would be required for an "other qualified health professional" because we believe that such qualifications would need to be related in part to the size and location of the hospital and the variety of resources available for post-discharge care in the area. In our interpretive guidelines, though, we would instruct the surveyor to look at such factors as previous experience in discharge planning, knowledge of clinical and social factors that affect functional status at discharge, knowledge of community resources to meet post-discharge clinical and social needs, and assessment skills.

To be compatible with our other regulations we would divide the condition into several standards: The first concerning identifying Medicare patients in need of evaluation, the second, the evaluation process, the third the discharge plan, and the fourth, referral or transfer of the Medicare patient, along with necessary medical information. (The statute does not explicity require actual transfer or referral of patients after discharge planning is complete so we would retain, for clarity, the concept of current § 482.21(b)(2).) A fifth standard would require an ongoing reassessment of the discharge planning process to ensure that discharge plans are responsive to discharge needs of individual Medicare patients. Because the requirements in §482.43(a), (b)(1), (b)(2), (b)(3), (b)(5), (b)(6), and (c)(2) would be those required by section 1861(ee) of the Act, failure to meet any of these requirements could result in termination of the hospital's participation agreement.

B. Clinical Laboratory Director Standards

To implement section 9339(d) of OBRA 86, we propose to amend the conditions for coverage of independent clinical laboratories and the conditions of participation for hospitals by revising the standards for laboratory director qualifications at 42 CFR 405.1312(b) and 482.27(c)(1). We would change these standards to show that the current qualification requirements for laboratory directors apply only in States that have not adopted licensing or other standards with respect to qualifications required of clinical laboratory directors. In States that have adopted licensing or other standards, individuals who meet those standards would be considered to meet Federal requirements for directing hospital and independent laboratories.

The revised regulations would also affect clinical laboratories that are licensed under the Clinical Laboratories Improvement Act (CLIA laboratories). Current regulations at 42 CFR 74.30 state that the standards for qualification for laboratory directors (and other personnel) are the same as those found in Medicare regulations. Since we would not change this requirement, CLIA laboratory directors would not have to meet Federal credentialling requirements in a State with its own licensing or other standards.

The following statements represent how we interpret the statute and propose to implement it:

- Section 9339(d) of OBRA 86 does not apply to an individual requesting evaluation of his or her qualifications where the result of the evaluation would have no impact on a clinical laboratory's compliance with certification requirements. We approve laboratories, not individuals themselves.
- The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, and American Samoa.
- If a person qualifies to direct a Medicare or CLIA laboratory in one State because of the new provision, he or she would not necessarily qualify in another State. The person would have to be evaluated against the requirements of the State in which the laboratory employing him or her is located, or against Federal requirements if the State has none. This provision does not preclude a director qualifying under this provision in a laboratory in that State from testing specimens received from another State whose requirements for laboratory directors are different.
- The provision affects only laboratory directors. It does not apply to individuals employed as technical supervisors, general supervisors, technologists or technicians.
- If a State has licensing or other standards that apply only to a specific category of providers or suppliers (for example, to independent laboratories

but not to hospital-based laboratories), then the director provision applies only to the category of provider or supplier for which the State has licensing or other standards.

• If a State has adopted another program's or organization's requirements for clinical laboratory directors, that program's or organization's requirements apply for the purpose of this provision.

C. Reducing Information Collection Burden

In these proposed regulations, we address the information collection burden of the three sections in 42 CFR Part 405, Subpart U that have not been addressed in other **Federal Register** documents: viz., §§ 405.2135, 405.2137, and 405.2139.

1. Section 405.2135, Compliance with Federal, State and local laws and regulations, requires that an ESRD facility be in compliance with applicable Federal laws and that an ESRD facility be licensed or approved as meeting applicable standards by the agency of the State or locality responsible for approval. Section 405.2135 further requires a facility to comply with all relevant laws (e.g., laws relating to staff licensure) and requires conformity with other laws (fire safety, equipment maintenance, etc.).

We propose to revise this section by removing specific requirements and by deleting the requirement that a facility comply with State and local laws. It is not the responsibility of the Federal Government to enforce State and local laws and regulations. We would state the basic requirement that the ESRD facility be in compliance with Federal laws and either be licensed or approved as meeting applicable standards by the agency of the State or locality responsible for approval.

2. Current § 405.2137, Condition: Patient long-term program and patient care plan, requires that the facility maintain for each patient a written long-term treatment program and an individualized patient care plan with short-term goal objectives. There are two standards: patient long-term program, with four factors, and patient care plan, with six factors.

We are proposing to reduce recordkeeping and reporting burden by deleting all factors but those in paragraphs (a)(1), (2) and (3) and (b)(2) and (4). Paragraph (a)(3) duplicates a statement in the condition; we would remove it from that position. Paragraph (b)(5) requires that, if the patient is transferred to another facility, the care plan be sent with the patient or within one working day. Current § 405.2160(b)(2) contains the same requirement.

Paragraph (b)(6) requires, for home dialysis patients, periodic monitoring of the patient's home adaptation, including care plan provisions for visits to the patient's home by qualified personnel. Current § 405.2163(e) consists of essentially the same requirement in greater detail. Self-dialysis in this context includes home dialysis treatment and support services the facility or center must furnish. Upon review, we consider the items we recommend for deletion to be repetitive either of the condition of participation or of the standard to which they pertain. The retained items state requirements concerning development and review of patient care plans, which we believe are necessary to assure appropriate selection of treatment options.

3. Current § 405.2139, Condition: Medical records, requires that the facility maintain complete medical records on all patients. It sets forth the content of the medical records, protective safeguards, duties of the medical records supervisor, completion and centralization of records, retention and preservation of records, location of records and facilities for efficient process of records, and requirements for the ready transfer of medical information between treating facilities.

We propose no changes to the regulation at § 405.2139 because the duties and responsibilities are consistent with sound medical records practices. These requirements are essential for assurance of quality of care and continuous treatment and may be necessary for intermediaries in determining the correct payment for services.

The ESRD patient's condition and treatment are unique. (It is not acute as in many hospital situations; it is ongoing and irreversible and will always require treatment in one form or another.) The patient's condition may vary over a period of time and warrant establishment of a different treatment modality. It is necessary to establish two medical programs in most cases: A long range objective and a daily program directed toward obtaining that objective. Again, it is the long-term nature of the patient's condition that continues to require detailed medical records. As a result of the patient's mobility it is also necessary that such records be readily available as the patient often moves from facility to facility and continuity of treatment in accordance with the plan and program is essential. We feel the current requirement provides the necessary detailed findings to assure the continued review of the prescribed treatment and the patient's needs. Hence, we are recommending no change in this condition.

IV. Regulatory Impact Analysis

Executive Order (E.O.) 12291 requires us to prepare and publish a regulatory impact analysis for any proposed regulation that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: An annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed regulation would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all hospitals, clinical laboratories, and ESRD facilities as small entities.

We do not have the data to assess accurately the magnitude of the change in behavior that would result from the proposed condition of participation on discharge planning. However, we believe that adequate planning is already done in most hospitals. First of all, the prospective payment system has created an incentive for hospitals to do good discharge planning. Second, the conditions of participation have a standard requiring each hospital to do discharge planning. In the absence of positive evidence to the contrary, we believe that this proposal would have little effect. We wish to point out, however, that incorporating the statutory requirements as a condition, instead of a standard, could result in graver consequences for those hospitals that do not do adequate planning in the event that a routine or complaint survey establishes noncompliance. We do not expect this to happen often.

If it were correct to presume that a lack of planning leads to systematic underservice of beneficiary needs, then the requirement for discharge planning, especially early assessment of the need for planning, should:

• Ensure that needs are identified and appropriate transfers and referrals are made; and

• Result in some increase in health care utilization by Medicare beneficiaries who might otherwise not have received needed care.

We do not believe that all Medicare beneficiaries receive all needed care. However, factors other than the lack of planning constrain whether or not beneficiaries receive needed services. Even when it is available, beneficiaries sometimes defer or avoid recommended referrals or follow-up care.

The other provisions of this proposed rule also would have no significant impact. While the provision on clinical laboratory direction may increase the number of individuals available for new director positions, we do not expect this factor to cause laboratories to replace existing directors or otherwise significantly alter their staffing patterns because of this provision. The proposed reduction of information burden on ESRD facilities might slightly affect the administrative burden on those facilities, but the impact would be minimal.

For these reasons, we have determined that a regulatory impact analysis is not required. We have also determined and the Secretary certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. We have therefore not prepared a regulatory flexibility analysis.

In addition, section 1102(b) of the Social Security Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds that is located outside a metropolitan statistical area. We have determined, and the Secretary certifies, that this proposed regulation would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

V. Paperwork Reduction Act

Sections 405.2135, 405.2137, 405.2139, and 482.43 of this proposed rule contain information collection requirements that are subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3504, *et seq.*). Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official whose name appears in the ADDRESS section of the preamble.

VI. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble, and, if we decide to proceed with a final rule, we will respond to the comments in the preamble of that rule.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 482

Administrative practice and procedure, Certification of compliance, Contracts (Agreements), Health care, Health facilities, Health professions, Hospitals, Laboratories, Medicare, Onsite surveys, Outpatient providers, Reporting requirements, Rural areas, X-rays.

For the reasons set out in the preamble, 42 CFR Chapter IV would be amended as set forth below:

1. 42 CFR Part 405, Subpart M is amended as set forth below:

PART 405—[AMENDED]

a. The authority citation for Subpart M is revised to read as follows:

Authority: Secs. 1102, 1861(s)(10) and (11), 1864, and 1871; U.S.C. 1302, 1395x(s) (10) and (11), 1395aa, 1395hh, and Section 9339(d) of Pub. L. 99-509.

b. In § 405.1312, the introductory language of paragraph (b) and (b)(5) is republished, subparagraphs (b)(4) and (b)(5)(iv) are revised, and subparagraph (b)(6) is added to read as follows:

§ 405.1312 Condition-clinical laboratories; laboratory director.

* * * * *

(b) *Standard; laboratory director—qualification.* The laboratory director meets one of the following requirements:

* * * * *

(4) Holds an earned doctoral degree from an accredited institution with a chemical, physical, or biological science as a major subject and (i) is certified by the American Board of Medical Microbiology, the American Board of Clinical Chemistry, the American Board of Bioananlysis, or other national accrediting board acceptable to the Secretary in one of the laboratory specialties, or (ii) subsequent to graduation has had 4 or more years of full-time general clinical laboratory training and experience of which at least 2 years were spent acquiring proficiency in one of the laboratory specialties in an approved clinical laboratory;

(5) With respect to individuals first qualifying prior to July 1, 1971, was responsible for the direction of a clinical laboratory for 12 months between July 1, 1961, and January 1, 1968, and, in addition, met one of the following requirements:

* * * * *

(iv) Achieved a satisfactory grade through an examination conducted by or under the sponsorship of the U.S. Public Health Service on or before July 1, 1970; or

(6) Meets the State licensing or other standards for directing an independent clinical laboratory in the State in which the laboratory is physically located.

2. 42 CFR Part 405, Subpart U is amended as set forth below:

a. The authority citation for Subpart U continues to read as follows:

Authority: Secs. 1102, 1861, 1862(a), 1871, 1874, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395y(a), 1395hh, 1395kk, and 1395rr), unless otherwise noted.

b. Section 405.2135 is revised to read as follows:

§ 405.2135 Condition: Compliance with Federal, State and local laws and regulations.

Standard: Licensure. The ESRD facility must be in compliance with applicable Federal laws and either be—

(a) Licensed in accordance with State law, or

(b) Approved as meeting applicable standards by the agency of the State or locality responsible for approval.

c. Section 405.2137 is revised to read as follows:

§ 405.2137 Condition: Patient long-term program and patient care plan.

Each facility maintains for each patient a written long-term program and a written patient care plan to ensure that each patient receives the appropriate modality of care and the appropriate care within that modality. A copy of the current program and plan accompany the patient on interfacility transfer.

(a) *Standard: patient long-term program.* There is a written long-term program representing the selection of a suitable treatment modality (i.e., dialysis or transplantation) and dialysis setting (e.g., home, self-care) for each patient.

(1) The program is developed by a professional team which includes but is not limited to the physician director of the dialysis facility or center where the patient is currently being treated, a physician director of a center or facility which offers self-care dialysis training (if not available at the location where the patient is being treated), a transplant surgeon, a qualified nurse responsible for nursing services, a qualified dietitian and a qualified social worker.

(2) The program is formally reviewed and revised in writing as necessary by a team which includes but is not limited to the physician director of the dialysis facility or center where the patient is presently being treated, in addition to the other personnel listed in paragraph (a)(1) of this section at least every 12 months or more often as indicated by the patient's response to treatment (see § 405.2161(b)(1) and § 405.2170(a)).

(3) The patient, parent, or legal guardian, as appropriate, is involved in the development of the patient's long-term program, and due consideration is given to his preferences.

(b) *Standard: patient care plan.* There is a written patient care plan for each patient of an ESRD facility (including home dialysis patients under the supervision of the ESRD facility; see § 405.2163(e)), based upon the nature of the patient's illness, the treatment prescribed, and an assessment of the patient's needs.

(1) The plan is developed by a professional team consisting of at least the physician responsible for the patient's ESRD care, a qualified nurse responsible for nursing services, a qualified social worker, and a qualified dietitian.

(2) The care plan for patients whose medical condition has not become stabilized is reviewed at least monthly by the profesional patient care team described in paragraph (b)(1) of this section. For patients whose condition has become stabilized, the care plan is reviewed every 6 months. The care plan is revised as necessary to insure that it provides for the patients ongoing needs.

2.42 CFR Part 482 is amended as set forth below:

PART 482—[AMENDED]

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

Authority: Secs. 1102, 1138, 1814(a)(6), 1861 (e), (f), (k), (r), (v)(1)(G), (z), and (ee), 1864, 1871, 1883, 1886, 1902(a)(30), and 1905(a) of the Social Security Act (42 U.S.C. 1302, 1338, 1395(a)(6), 1395x (e), (f), (k), (r), (v)(1)(G), (z), and (ee), 1395aa, 1395hh, 1385tt, 1395ww, 1396a(a)(30), and 1396d(a)).

2. The table of contents for Part 482 is amended by adding the following entry:

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

* * * * *

Subpart C—Basic Hospital Functions

* * * * *

482.43 Condition of Participation: Discharge planning.

* * * * *

3. Section 482.21(b) is revised as follows:

§ 482.21 Condition of participation: Quality assurance.

* * * * *

(b) *Standard: Medically-related patient care services.* They hospital must have an ongoing plan, consistent with available community and hospital resources, to provide or make available social work, psychological, and educational services to meet the medically-related needs of its patients.

4. Section 482.27(c)(1)(i) is revised as follows:

§ 482.27 Condition of participation: Laboratory services.

* * * * *

(c) *Standard: Personnel* * * *

(1) * * *

(i) The director must be a pathologist or other doctor of medicine or osteopathy with training and experience in clinical laboratory services, or a laboratory specialist with a doctoral degree in physical, chemical or biological sciences, and training and experience in clinical laboratory services, or meet the State licensing or other standards for directing a hospital-based laboratory in the State in which the hospital is physically located.

* * * * *

5. A new § 482.43 is added as follows:

§ 482.43 Condition of participation: Discharge planning.

The hospital must have in effect a discharge planning process that applies to patients entitled to benefits under the Medicare program.

(a) *Standard: Identification of patients in need of discharge planning.* The hospital must identify at an early stage of hospitalization all Medicare patients who are likely to suffer adverse health consequences upon discharge if there is no adequate discharge planning.

(b) *Standard: Discharge Planning Evaluation.* (1) The hospital must provide a discharge planning evaluation to the Medicare patients identified in paragraph (a) of this section, and to other patients upon their request, the request of a person acting on the patient's behalf, or of the physician.

(2) A registered nurse, social worker, or other appropriately qualified personnel (consistent with available community and hospital resources) must develop, or supervise the development of, the evaluation.

(3) The discharge planning evaluation must include an evaluation of the likelihood of a Medicare patient needing post-hospital services and of the availability of the services.

(4) The discharge planning evaluation must include an evaluation of the Medicare patient's capacity for self-care or of the possibility of the patient being cared for in the environment from which he entered the hospital.

(5) The hospital personnel must complete the evaluation on a timely basis so that, to the greatest extent possible, appropriate arrangements for post-hospital care are made before discharge, and to avoid unnecessary delays in discharge.

(6) The hospital must include the discharge planning evaluation in the Medicare patient's medical record for use in establishing an appropriate discharge plan and must discuss the results of the evaluation with the patient or individual acting on his or her behalf.

(c) *Standard: Discharge plan.* (1) A registered nurse, social worker, or other appropriately qualified personnel (consistent with available community and hospital resources) must develop, or supervise the development of, a discharge plan if the discharge planning evaluation indicates a need for a discharge plan.

(2) In the absence of a finding by the hospital that a Medicare patient needs a discharge plan, the patient's physician may request a discharge plan. In such a case, the hospital must develop a discharge plan for the Medicare patient.

(3) The hospital must assist in implementing the Medicare patient's discharge plan.

(4) The hospital must periodically reassess the Medicare patient's discharge plan to determine whether the patients discharge needs have changed.

(5) As needed, the patient and family members or interested persons must be counseled to prepare them for post-hospital care.

(d) *Standard: Transfer or referral.* The hospital must transfer or refer Medicare patients, along with necessary medical information, to appropriate facilities, agencies, or outpatient services, as needed, for followup or ancillary care.

(e) *Standard: Reassessment.* The hospital must reassess its discharge planning process on an on-going basis

by reviewing discharge plans to ensure that they are responsive to discharge needs.

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare—Hospital Insurance; No. 13.714, Medical Assistance)

Dated: September 3, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: November 5, 1987.

Otis R. Bowen,

Secretary.

Editorial Note: This document was received for publication at the Office of the Federal Register on June 10, 1988.

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42 CFR Parts 405, 489, 1001 and 1003

[BERC-393-P]

Medicare Program; Participation in CHAMPUS and CHAMPVA, Hospital Admissions for Veterans, Discharge Rights Notice, and Hosptial Responsibility for Emergency Care

AGENCIES: Health Care Financing Administration (HCFA) and Office of Inspector General (OIG), HHS.

ACTION: Proposed rule.

SUMMARY: We are proposing to revise requirements for Medicare participating hospitals by adding the following:

- A hospital must provide inpatient hospital services to individuals who have health coverage provided by either the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) or the Civilian Health and Medical Program of the Veterans Administration (CHAMPVA), subject to limitations provided by regulations, and accept the CHAMPUS/CHAMPVA-determined allowable amount as payment in full for the services.
- A hospital must provide inpatient hospital services to military veterans (subject to the limitations provided in 38 CFR 17.50 ff.) and accept payment from the Veterans Administration as payment in full.
- A hospital must give each beneficiary a statement of his or her rights concerning discharge from the hospital.
- A hospital with an emergency department must provide, upon request and within the capabilities of the hospital, an appropriate medical screening examination and stabilizing treatment to any individual with an emergency medical condition and to any woman in active labor, regardless of the individual's eligibility for Medicare.

HCFA would provide for the termination of a provider's agreement for violation of any of these provisions. In addition, OIG would provide for suspension of a provider's agreement and for civil monetary penalties for violation of the emergency care provision.

These revisions would implement sections 9121 and 9122 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (as amended by section 4009 of the Omnibus Budget Reconciliation Act of 1987), section 233 of the Veterans' Benefit Improvement and Health Care Authorization Act of 1986, and section 9305(b)(1) of the Omnibus Budget Reconciliation Act of 1986.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on August 15, 1988.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-393-P, P.O. Box 26676, Baltimore, Maryland 21207.

Please address a copy of comments on information collection requirements to: Allison Herron, EOMB Desk Officer for HCFA, Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-393-P.

Comments received timely will be available for public inspection as they are received, which generally begins about three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT:

Thomas Hoyer, 301-966-4607. For all provisions except suspensions and civil monetary penalties.

Jim Patton 301-965-9601. For provisions relating to suspensions and civil monetary penalties.

SUPPLEMENTARY INFORMATION:

I. Background

A. Participation in the CHAMPUS and CHAMPVA Programs

CHAMPUS (Civilian Health and Medical Program of the Uniformed Services) and CHAMPVA (Civilian Health and Medical Program of the Veterans Administration) programs pay for health care services furnished to dependents and survivors of military personnel, of retirees and their dependents, and of veterans. Generally, the programs have paid hospitals based on their charges. Section 931 of the Department of Defense Authorization Act, 1984 (Pub. L. 98-94) authorized these programs to pay (to the extent practicable) for inpatient hospital services using Medicare reimbursement procedures. Because the Medicare prospective payment system (PPS) (the system whereby we pay a hospital a predetermined amount based on the patient's diagnosis and any surgical procedures preformed, rather than by the number of days hospitalized) results in Medicare cost savings, the Department of Defense (DoD) expects that it would realize similar savings if it were to use a model similar to Medicare's PPS. Paying on the basis of a fixed rate appropriate to the particular diagnosis involved has been shown to be an equitable method of paying for hospital care. Therefore, the Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS) has published a final rule which includes provisions for the implementation of a DRG-based payment system modeled after Medicare's PPS for CHAMPUS inpatient hospital admissions occurring on or after October 1, 1987 (52 FR 32992).

Hospitals that furnish services to CHAMPUS and CHAMPVA beneficiaries are authorized to provide services to these beneficiaries following an approval process similar to that used for Medicare participation. All hospitals certified by the Joint Commission on Accreditation of Health Care Organizations (JCAHO) are authorized providers; any Medicare hospital may be (and all have been thus far) deemed to be authorized providers. All others are surveyed by OCHAMPUS to determine whether they are authorized providers.

"Participation" has a different meaning for CHAMPUS and CHAMPVA than for Medicare: providers have been able to decide on a case-by-case basis whether to "participate" in the program and thus accept the CHAMPUS/CHAMPVA-determined allowable amount as payment in full (under these

programs, beneficiaries are required to pay a cost-share for each hospital admission, and this is considered to be separate from the CHAMPUS/CHAMPVA payment). Under Medicare, hospitals must agree to bill the program for all beneficiaries and accept Medicare payment as payment in full (less applicable deductibles, coinsurance amounts, and noncovered items).

As indicated above, all Medicare hospitals are also authorized providers in CHAMPUS and CHAMPVA on the basis of their JCAHO-approved status or are deemed authorized providers based on their Medicare-approved status. The benefits to the DoD of requiring them to be paid either under a DRG-based payment system or based on reasonable cost are lost, however, if the hospitals can selectively participate in the CHAMPUS and CHAMPVA programs. Congress, in section 9122 of COBRA, now requires all Medicare hospitals, beginning January 1987, to participate in CHAMPUS or CHAMPVA as authorized providers (i.e., they must bill CHAMPUS or CHAMPVA and accept the CHAMPVA/CHAMPUS-determined allowable amount as payment in full—less applicable deductible, patient cost-share, and noncovered items).

B. Participation in the Veterans Administration (VA) Health Care Program

A retired veteran with a service-connected disability is not required to use Veterans Administration (VA) hospitals but may elect to receive services from "civilian" providers and be reimbursed through CHAMPUS. However, once the VA has made or has authorized payment for services related to a service-connected disability, the veteran is to obtain all services through the VA. In cases where the veteran receives services from a non-VA hospital, either through choice or because there is no available VA hospital which can provide the necessary services, the VA pays for the services based on the hospital's charges.

As with CHAMPUS and CHAMPVA, when they also paid the hospital's charges, this type of payment is more expensive than payment on a prospective basis or based on reasonable costs. As a result, the VA is setting up a national prospective payment system.

To alleviate hospital expenses for the VA, Congress passed section 233 of the Veterans' Benefit Improvement and Health-Care Authorization Act of 1986 (Pub. L. 99–576). This section requires Medicare hospitals to be praticipating providers of medical care to veterans eligible to receive care at the hospital. The hospital then would receive payment for the services under the applicable VA payment system, rather than simply on the basis of the hospital's charges.

C. Statement of Beneficiary Rights

After the prospective payment system became effective for the Medicare program, we began to hear allegations that Medicare beneficiaries were discharged too early from the hospital and we also began to receive complaints that patients did not understand their rights as Medicare beneficiaries in cases where they were advised that discharge was appropriate but they disagreed. On April 17, 1985, 42 CFR 466.78(b)(3) was revised requiring all hospitals to provide Medicare beneficiaries with information about PRO review, including their appeal rights (50 FR 15331). In further response to concerns about early discharges and lack of adequate appeal information, we began requiring hospitals to furnish each beneficiary upon admission a specific statement developed by HCFA (i.e., the "Important Message from Medicare") telling a beneficiary of his rights to be fully informed about decisions affecting Medicare coverage or payment and about appeal rights in response to any hospital notices to the effect that Medicare will no longer cover the care. The "Message" we developed also advises the patient what to do when he receives such a hospital statement and how to elicit more information. The requirements relating to the "Important Message from Medicare" were incorporated into the program's operating instructions.

Congress subsequently passed section 9305(b) of the Omnibus Budget Reconciliation Act of 1986 (OBRA 86). Now, as part of its participation agreement with Medicare, each hospital must agree to furnish each Medicare beneficiary with a notice, at or about the time of admission, that explains the patient's rights in detail.

D. Responsibilities of Medicare Participating Hospitals in Emergency Cases

Hospitals that choose to participate in the Medicare program agree in writing to meet various requirements included in section 1866 of the Social Security Act (the Act). Before enactment of Pub. L. 99–272 on April 7, 1986, the Act did not specifically address the issue of how hospitals with emergency medical departments must handle individuals who have emergency medical conditions or who are in active labor.

In its Report accompanying H.R. 3128, the House Ways and Means Committee indicated that Congress was concerned about the increasing number of reports that hospital emergency rooms are refusing to accept or treat patients with emergency conditions, including medically unstable patients, if the patients do not have medical insurance. In addition, the Report stated that there have been reports that patients in an unstable condition have been transferred improperly, sometimes without the consent of the receiving hospital. Because Congress believed that this situation may have worsened since the Medicare prospective payment system for hospitals became effective, the Report states that the Committee "wants to provide a strong assurance that pressure for greater hospital efficiency are not to be construed as license to ignore traditional community responsibilities and loosen historic standards." (H.R. Rep. No. 99–241, 99th Cong., 1st Sess. 27 (1985).) As a result of this concern, Congress enacted section 9121 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985, Pub. L. 99–272.

II. Legislation

A. Participation in CHAMPUS and CHAMPVA Programs

Section 9122 of COBRA amended section 1866(a)(1) of the Act by adding a new paragraph (J), which requires hospitals in the Medicare program to be participating providers of medical care, for inpatient services only, under any health plan contracted for under 10 U.S.C. 1079 or 1086 (CHAMPUS) or under 38 U.S.C. 613 (CHAMPVA), in accordance with admission practices and payment methodology and amounts as prescribed under joint regulations issued by the Secretaries of Health and Human Services, Defense and Transportation. This requirement applies to services furnished to CHAMPUS and CHAMPVA beneficiaries admitted on or after January 1, 1987.

(Section 9122 of COBRA also required that the legislation apply to all agreements entered into on or after April 7, 1986, but this requirement was deleted by section 1895(b)(6) of the Tax Reform Act of 1986 (Pub. L. 99–514), enacted October 22, 1986.)

B. Participation in the Veterans Administration Health Care Program

Section 233 of the Veterans' Benefit Improvement and Health-Care Authorization Act of 1986 (Pub. L. 99–576) was enacted on October 28, 1986. It

added a new paragraph (L) to section 1866(a)(1) of the Act. It requires hospitals that participate in Medicare to be participating providers under 38 U.S.C. 603, in accordance with the admissions practices, and payment methodology and amounts, prescribed under joint regulations issues to implement this section by the Secretary of HHS and the Administrator of the VA. This provision applies to services furnished to veterans admitted on or after July 1, 1987.

C. Statement of Beneficiary Rights

The Omnibus Budget Reconciliation Act of 1986 (OBRA 86) was enacted on October 21, 1986. Section 9305(b)(1) of OBRA 86 adds a new paragraph (M) to section 1866(a)(1) of the Act. That paragraph puts current regulatory and administrative policies into statute and requires a hospital that is eligible to participate in the Medicare program to agree to furnish, upon admission, a beneficiary, or an individual acting on his or her behalf, with a written statement of the beneficiary's discharge rights. The Statement must explain:

(1) The individual's rights to benefits for inpatient hospital services and for posthospital services under Medicare;

(2) The circumstances under which the beneficiary will and will not be liable for charges for continued stay in the hospital;

(3) The beneficiary's right to appeal denials of benefits for continued inpatient hospital services, including the practical steps to initiate the appeal;

(4) The individual's liability for services if the denial of benefits is upheld on appeal; and

(5) Additional information that the Secretary specifies.

Section 9305(b)(2) of OBRA 86 requires that we prescribe the language to be used in the statement not later than six months after the effective date of OBRA 86. After we have developed the revised language for the statement required under OBRA, the hospitals must begin complying with the requirement to give the revised statement to beneficiaries upon admission.

D. Responsibilities of Medicare Participating Hospitals in Emergency Cases

The Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 was enacted on April 7, 1986. Section 9121 prohibits hospitals with emergency medical departments from refusing to treat medically unstable patients. It also contains provisions designed to halt the inappropriate transfers of these patients to other medical facilities.

Section 9121 of COBRA added a paragraph (i) to section 1866(a)(1) of the Act and added a new section 1867 to the Act. Section 1866(a)(1)(I) requires that a hospital participating in the Medicare program must agree to comply with the requirements of section 1867 of the Act to the extent applicable. Section 1867 provides the following:

(a) A hospital with an emergency department must, within the capabilities of its emergency department, provide an appropriate medical screening examination to any individual who comes to the emergency department for examination or treatment of a medical condition or of active labor and on whose behalf the examination or treatment is requested; the purpose of the examination is to determine whether the individual has an emergency medical condition or is in active labor. This requirement applies regardless of the individual's eligibility for Medicare benefits.

(b) If an individual, regardless of eligibility for Medicare benefits, has an emergency medical condition or is in active labor, the hospital must either provide for further examination and treatment (within its capabilities) or make an appropriate transfer of the patient to another medical facility, unless the treatment or transfer is refused.

(c) A hospital may not transfer a patient unless—

(1) (A) He or she, or a legally responsible person acting on his or her behalf, requests the transfer, or (B) a physician, or other qualified medical personnel when a physician is not readily available, has certified that the medical benefits expected from the treatment at the new facility outweigh the increased risks to the patient's condition resulting from the transfer; and

(2) The transfer is an "appropriate transfer", as defined below.

An "appropriate transfer" is a transfer: (1) In which the receiving facility has available space and qualified personnel for the treatment of the patient and has agreed to accept the transfer and to provide appropriate medical treatment; (2) in which the transferring hospital provides the receiving facility with appropriate medical records (or copies) of the examination and treatment furnished at the transferring hospital; (3) in which the transfer is effected through qualified personnel and transportation equipment, as required, including the use of necessary and medically appropriate life support measures during the transfer; and (4) that meets other requirements as the Secretary may find necessary in the interest of the health and safety of the patient.

(d) A hospital that fails to meet the requirements of section 1867 of the Act—

(1) Is subject to termination of its Medicare agreement or, at the option of the Secretary of the Department of Health and Human Services (HHS), suspension of the Medicare agreement if it knowingly and willfully, or negligently, fails to comply with section 1867. The suspension is subject to reasonable notice to the hospital and the public and is for a duration that the Secretary determines to be appropriate; and

(2) Is also subject to civil monetary penalties (which are in addition to those provided under section 1128A of the Act) if it knowingly violates section 1867. The penalty cannot exceed $25,000 for each violation committed between August 1, 1986 (the effective date of the amendment) and December 21, 1987, or $50,000 for violations on or after December 22, 1987. (The amount was raised by section 4009(a)(1) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203), effective December 22, 1987.) Each responsible physician is also subject to a civil money penalty of not more than $25,000 for each knowing violation ($50,000 for violations on or after December 22, 1987). A responsible physician may also be excluded from Medicare participation for up to five years.

"A responsible physician" is a physician within the meaning of section 1861(r)(1) of the Act (doctor of medicine or osteopathy) who is employed by, or under contract with, the participating provider and acting as such has professional responsibility for the provision of examination or treatment of the individual, or transfer of the individual.

(e) If a hospital violates the requirements of section 1867 and a patient suffers personal harm as a direct result, he or she may, in a civil action against the participating hospital, obtain damages for personal injury under the law of the State in which the hospital is located and may obtain such equitable relief as is appropriate.

(f) Any medical facility that suffers a financial loss as a direct result of a participating hospital's violation of section 1867 may obtain damages available in a civil action against the participating hospital, under the law of the State in which the hospital is located, and may obtain such equitable relief as is appropriate.

(g) No civil action under (e) and (f) above may be brought more than two

years after the date of the violation with respect to which the action is brought.

(h) Section 1867 also contains definitions of several other terms: "emergency medical condition," "participating hosptial," "active labor," "to stabilize," "stabilized," and "transfer."

(i) The provisions of section 1867 do not preempt any State or local law except where they directly conflict.

III. Provisions of the Proposed Regulations

A. Participation in CHAMPUS and CHAMPVA programs

We would revise § 489.20, Basic commitments, to show that a participating Medicare hospital must agree to participate in the CHAMPUS and CHAMPVA programs and accept the CHAMPUS/CHAMPVA-determined allowable amount as payment in full in accordance with a new § 489.25, which incorporates statutory provisions.

In a new section, 42 CFR 489.25, we would require Medicare participating hospitals to be participating providers in the CHAMPUS and CHAMPVA programs. We would require the hospitals to comply with Department of Defense regulations governing admissions practices and payment methodology and amounts for such services. (Those regulations would be issued jointly by the Secretaries of Defense, Transportation and Health and Human Services; CHAMPUS has published a final rule that contains provisions for the implementation of a DRG-based payment system, as mentioned earlier.) We would continue the policy that hospitals participating in CHAMPUS and CHAMPVA that also participate in Medicare must meet all Medicare conditions of participation. Thus, if CHAMPUS or CHAMPVA have requirements for participating that differ from Medicare's, Medicare's requirements would have to be met.

We would require hospitals to accept the CHAMPUS/CHAMPVA-determined allowable amount as payment in full for the services provided to these beneficiaries (less applicable deductible, patient cost-share, and noncovered items).

In addition, we would add a new paragraph (11) to § 489.53, Terminations by HHS, to show that a hospital that does not meet the requirements of § 489.25 would be subject to possible termination. We do not anticipate that Medicare participating hospitals will refuse to accept CHAMPUS or CHAMPVA beneficiaries under these proposed requirements. Should one do so, we would expect appropriate officials from the Department of Defense or Transportation to notify us and we would then discuss the issue with the hospital in hopes of resolving it. If it cannot be resolved, the HCFA regional office would terminate the hospital's provider agreement under the provisions of 42 CFR Part 489, Subpart E, since the hospital's refusal to participate in the CHAMPUS or CHAMPVA programs would violate 42 CFR 489.25 of these regulations.

These revisions would apply only to inpatient hospital services furnished to beneficiaries admitted on or after January 1, 1987.

B. Participation in the Veterans Administration Health Care Program

To implement section 233 of Pub. L. 99–576, we propose to add a new § 489.26. Hospitals do not enter into participation agreements with the Veterans Administration program as they do if they choose to participate in the Medicare program or the CHAMPUS or CHAMPVA programs. Instead, the VA authorizes payment for the treatment, usually on a pre-admission basis at a designated hospital that furnishes the service. We would require a Medicare participating hospital to admit any veteran whose hospitalization is authorized by the VA under 38 U.S.C. 603 (this includes emergency cases, which may be authorized after admission). The hospital would have to meet the requirements of 38 CFR Part 17 regarding admission practices and payment methodology and amounts. This arrangement would not affect the hospitals' need to meet all Medicare hospital conditions of participation.

We would also revise § 489.20, Basic commitments, to require hospitals to admit veterans whose admission is authorized under 38 U.S.C. 603 and to meet the requirements of § 489.26.

We would also revise § 489.53, Termination by HCFA, to show that HHS may terminate any hospital that fails to meet the requirements of § 489.26. This would be included with the paragraph (11) requiring hospitals to participate in CHAMPUS and CHAMPVA.

As with the CHAMPUS and CHAMPVA programs, we do not anticipate that Medicare participating hospitals will resist the requirement to admit veterans. Should one do so, we would expect the appropriate official of the Veterans Administration to notify us and we would then discuss the issue with the hospital in hopes of resolving it. If it cannot be resolved, the HCFA regional office would terminate the hospital's provider agreement under the provisions of 42 CFR Part 489, Subpart E, since the hospital's refusal to admit veterans violates 42 CFR 489.26 of these regulations.

The VA is developing the regulations necessary to implement the statute (e.g., regarding payment methodology).

These regulations would apply to inpatient services furnished to veterans admitted on or after July 1, 1987.

C. Statement of Beneficiary Rights

We would add a new section, 42 CFR 489.27, to require participating hospitals that furnish inpatient hospital services to Medicare beneficiaries to give every beneficiary (or individual acting on his or her behalf) at or about the time of admission the "Important Message from Medicare." We would not specify the contents of the "Message" in these regulations, as the hospital will not be responsible for writing it; we will distribute to the hospitals the "Message" that the hospitals are to use.

We expect the "Important Message from Medicare" to be available before this rule becomes final. The law is self-implementing, and it requires the language for the statement to be prescribed within six months of the enactment of the legislation and distributed by hospitals within two months after it is prescribed. This rule would merely conform the regulations to the statute.

We have revised the earlier "An Important Message from Medicare" to incorporate the statutory requirements and have solicited comments from major beneficiary and provider organizations, such as the Gray Panthers, the American Hospital Association and the American Association of Retired Persons. We have also sent the "Message" to both the Senate and House Select Committees on Aging. The imput from the various entities have been valuable in determining the final version of the "Message"

We would require the hospital to obtain a separate signed acknowledgement from the beneficiary attesting to the receipt of the "Important Message from Medicare" and to retain a copy of the acknowledgement. Effective with admissions on and after March 24, 1986, peer review organizations (PROs) have been required to monitor each hospital to assure that the hospital distributes "An important Message from Medicare" to all Medicare beneficiaries. However, in practice, it has been very difficult for PROs to monitor the issuance of "An Important Message from Medicare" due to a lack of documentation (i.e., the "Message" is given to the beneficiaries generally with several other informational materials

upon admission but there is no record of the transaction). We have received complaints that in some instances beneficiaries have not received the "Message", were not aware that they received, it, and/or did not realize its significance. It has been suggested, and we agree, that requiring the beneficiary to sign a separate, signed acknowledgement attesting to the receipt of the "Message" is a better means of assuring that he or she knows that this is an important document that should be reviewed. Therefore, we are proposing that the hospital be required to obtain the beneficiary's separate, signed acknowledgement attesting to the receipt of the "Message", and to retain a copy of the acknowledgement. We believe that this is important both to assure that the beneficiary receives and is aware of the significance of "An Important Message from Medicare" and to assure that the distribution of it can be monitored. As is always the case with a notice of proposed rulemaking, we seek public comment on this proposed requirement.

We would also revise § 489.20, Basic commitments, to show that a hospital must distribute the "Important Message from Medicare".

We would add a new paragraph (12) to § 489.53, Terminations by HHS, to show that a hospital failing to meet the requirements of § 489.27 may be terminated. Whether or not HHS would terminate a provider would depend on HCFA's judgement as to the scope of the failure and the hospital's correction or plan for correction of the failure. We do not anticipate any hospital opposition to the requirement that the "Message" be distributed. We believe we already have full cooperation from hospitals.

These revisions would apply only to Medicare admissions beginning after we have distributed "An Important Message from Medicare".

D. Hospital Emergency Care

The revisions to the regulations we are proposing would be revisions and additions to 42 CFR Part 489, Provider Agreements under Medicare, and revisions to 42 CFR Part 1001, Program Integrity—Medicare, and Part 1003, Civil Money Penalties and Assessments. Basically, the provisions would parallel the statute.

1. Requirements for Hospitals with Emergency Care Departments

a. We would revise 42 CFR 489.20, which discusses basic commitments, by adding a new paragraph to require hospitals with emergency departments, as part of their participation agreement, to agree to comply with the new § 489.24, which incorporates the statutory requirements.

b. We would add a new § 489.24, Special responsibilities of Medicare hospitals in emergency cases, to set forth requirements for emergency cases for all hospitals that have provider agreements with Medicare. We would require a hospital to take the following measures.

i. Medical Screening Requirement. For any individual, regardless of his or her eligibility for Medicare, for whom emergency treatment or examination is requested, we would require a hospital with an emergency department to provide for an appropriate medical screening examination within the emergency department's capability to determine whether an emergency medical condition exists or whether the individual is in active labor, as defined below. The examinations would have to be conducted by individuals determined qualified by hospital by-laws and who meet the Medicare requirements of 42 CFR 482.55, which are that emergency services be supervised by a qualified member of the medical staff and that there be adequate medical and nursing personnel qualified in emergency care to meet the written emergency procedures and needs anticipated by the facility.

We would allow hospitals maximum flexibility in their utilization of emergency care personnel by not including specific requirements concerning education or credentials for individuals conducting emergency medical examinations. This policy is consistent with the specified intent of the conditions of participation (51 FR 22010; 42 CFR Part 482).

ii. Necessary Stabilizing Treatment for Emergency Medical Conditions and Active Labor. If the individual has an emergency medical condition or is in active labor, the hospital would have to provide either further medical examination and treatment to stabilize the medical condition or treatment of the labor or transfer the individual appropriately to another medical facility. We would not hold the hospital responsible if the individual, or a legally responsible person acting on the individual's behalf, refuses to consent in writing to the further examination and treatment or the appropriate transfer to another hospital.

Under these provisions, the hospital is responsible for treating and stabilizing any individual, regardless of eligibility for Medicare, who presents himself or herself with an emergency condition at the hospital, and for providing such care until the condition ceases to be an emergency or until the patient is properly transferred to another facility. We interpret this to mean, for example, that if a hospital were to admit and then transfer a patient before his or her condition is stabilized, except as provided below, it would be a violation of section 1867 of the Act.

iii. Transfers and Restrictions. If an individual at a hospital has an emergency medical condition that has not been stabilized or the individual is in active labor, the hospital could not appropriately transfer the individual unless one of the following conditions exist:

- The individual (or a legally responsible person on the individual's behalf) requests the transfer.
- A physician (or other qualified medical personnel if a physician is not readily available in the emergency department) has certified in writing that, based upon the reasonable risks and benefits to the individual and the information available at the time, the medical benefits reasonably expected from the provision of appropriate medical treatment at the other facility outweigh the increased risks to the individual's medical condition from the transfer.

We would consider a transfer to be appropriate only if the receiving medical facility has available space and qualified personnel for the treatment of the individual and has agreed to accept transfer of the individual and to provide appropriate medical treatment. The transferring hospital would have to furnish the receiving medical facility with timely appropriate medical records (or copies) of the examination and treatment provided by the transferring hospital. The patient would have to be accompanied by qualified personnel during the transfer; transportation arrangements would have to include the use of necessary and medically appropriate life support measures.

Although the statute authorized the Secretary to find that the transfer must meet "other requirements" in the interest of the health and safety of patients transferred, we are not at this time proposing to adopt any. We do however specifically invite public comment concerning any "other requirements" the Secretary should consider adopting regarding the health and safety of emergency department patients being transferred between medical facilities.

iv. Definitions. We would include in 42 CFR 489.24 the following definitions as included in the statute, without interpretation:

- "Active labor" means labor at a time when delivery is imminent, there is inadequate time to effect safe transfer to

another hospital before delivery, or a transfer may pose a threat to the health and safety of the patient or the unborn child.

• An "emergency medical condition" means a medical condition manifested by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in: (a) Placing the patient's health in serious jeopardy; (b) serious impairment to bodily functions; or (c) serious dysfunction of any bodily organ or part.

• "To stabilize" means, with respect to an emergency medical condition, to provide the medical treatment of the condition necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from the transfer of the individual from a facility.

• "Stabilized" means, with respect to an emergency medical condition, that no material deterioration of the condition is likely, within reasonable medical probability, to result from the transfer of an individual from a facility.

• "Transfer" means the movement (including the discharge) of a patient to outside a hospital's facilities at the direction of any person employed by (or affiliated or associated with, directly or indirectly) the hospital, but it does not include moving a patient who has been declared dead or who leaves the facility without the permission of any person responsible for directing transfers.

For the purpose of these definitions, the term "hospital" means a Medicare facility certified as a hospital with its own provider number.

We would not define "participating provider" in Part 489. This is because 42 CFR 400.202 defines terms applicable to all of 42 CFR Chapter IV and already defines "provider". A provider by definition agrees to participate in Medicare. The agreement is written and requires the provider to fulfill certain obligations. Until recently, the existing version of the provider agreement specified provider requirements through a series of references to sections of the law and regulations applicable to these issues; however the COBRA changes made it necessary to update these references to include the new provisions. In December 1986, we revised the provider agreement forms and sent the revised forms to all participating hospitals to sign. The revised forms were accompanied by a letter explaining the new provisions of law that affect the obligations of providers. (Although not all agreements have been returned signed to us, section 1895(b)(4) of the Tax Reform Act of 1986 (Pub. L. 99–514) amended section 1867(e)(3) of the Act to make it clear that providers did not have to execute a new written agreement specifically to obligate them to comply with section 1867. Rather, the hospitals are obligated to comply with the requirements of section 1867 by virtue of the statute and their current agreements.)

We would add a definition of "participating hospital" and the remaining statutory definition, that of "responsible physician", to 42 CFR Chapter V (Parts 1001 and 1003), since these terms are used in conjunction with monetary penalties, which is under the jurisdiction of the Office of Inspector General. We discuss the definition of "responsible physician" below under "Civil Monetary Penalties."

We invite public comment regarding all definitions.

c. We propose to amend 42 CFR Parts 489, 1001 ane 1003 to provide for types of sanctions that would be applied by the Department, as appropriate:

i. *Resolution of Allegations and Determination of Liability.* If the evidence available establishes that a hospital knowingly and willfully, or negligently, failed to provide the appropriate screening and treatment or transfer as explained above, it would be subject to either termination of its provider agreement by HCFA or suspension of its provider agreement by the OIG in accordance with section 1866(b) of the Act. In addition, the OIG can also impose civil money penalties (CMPs) for knowing violations.

When the Department receives a complaint, or any information or allegation, to the effect that a Medicare hospital did not appropriately comply with the emergency medical screening, stabilizing, treatment or transfer requirements, HCFA would, upon receipt of all available information and evidence, conduct sufficient review to determine whether the complaint falls within the jurisdiction of section 1867. If so, HCFA would consider the complaint a substantial allegation and would investigate the allegation thoroughly.

HCFA would send each complainant a letter acknowledging receipt of the complaint, advising him or her of his or her rights to consider independently the civil enforcement provisions of section 1867 and stating that it will refer the complaint to other agencies if during the complaint investigation, it determines that the matter falls under the jurisdiction of other agencies. Thus, HCFA would refer a complaint to the Office of Civil Rights if it determines that a hospital may be in violation of the Hill-Burton Subpart G Community Service regulations at 42 CFR 124.603(b)(1), which require Medicare participating hospitals that receive Hill-Burton construction grants and loans to provide emergency medical services to any person who resides (or, in the case of some hospitals, works) in the hospital's designated health service area. HCFA would of course inform complainants of the outcome of its investigations.

HCFA would notify State Medicaid authorities, State licensing bodies, the Office of Inspector General, appropriate Peer Review Organizations and the Office of Civil Rights concerning all complaint investigations and all termination actions.

HCFA would determine whether the hospital knowingly and willfully, or negligently, failed to comply with the requirement of § 489.24 based on evidence of (i) inadequate treatment or treatment not being provided; (ii) patients in unstable condition or in active labor not being properly transferred as defined in § 489.24(d)(2); (iii) the hospital's actions, or lack of actions, causing a patient's or infant's death or serious or permanent impairment to a patient's bodily functions; or (iv) a hospital's actions placing a patient's health in serious jeopardy. HCFA would determine the hospital negligent if the hospital and its personnel failed to exercise care that should normally be supplied to a patient experiencing an emergency medical condition or active labor as defined in § 489.24(b).

ii. Termination of a provider agreement by HCFA. HCFA's termination authority under this provision is designed so that quick action may be taken to protect the Medicare program, its beneficiaries and other individuals from any potential harm. The termination of a provider agreement would be the initial action contemplated against a hospital that knowingly and willfully, or negligently, failed to meet the requirements set forth in § 489.24. This section would allow for the termination of the hospital's provider agreement under Medicare in accordance with section 1866(b) of the Act. The termination requirement would be contained in § 489.24 as paragraph (e). (The authority to terminate has been delegated from HHS through the HCFA Administrator to HCFA Regional Offices.)

HCFA would revise 42 CFR 489.53, Termination by HCFA, to include in paragraph (b) failure to comply with the requirements of § 489.24 as a mandatory cause for termination of a provider agreement. HCFA would also revise paragraph (c) to state that, if it determines that a hospital is in violation

of § 489.24(a) through (d), HCFA would consider the violation to pose an immediate and serious threat to the health and safety of persons presenting themselves to the hospital for emergency services and would terminate the hospital's approval for Medicare participation within 2 days of the determination unless the violation is corrected.

In those instances in which HCFA determines that a hospital is in violation of the requirements of the Act, it will initiate termination action. When that action is resolved, HCFA will refer the case to the OIG for possible imposition of CMPs. If the OIG, upon further investigation, discovers past violations that did not form the basis of the termination action, it may decide that a sanction is warranted and could exercise its authority to impose a suspension against the reinstated provider. (See section D.3.c. below.)

In instances where HCFA finds no violation, and therefore does not take an action, the closed case would still be transmitted to the OIG. If the OIG, upon reviewing the case file, believes that further case development is warranted, it would be free to do so. If OIG's investigation indicates that there are additional violations that are not reflected in HCFA's case file, it would refer the new case information back to HCFA with a recommendation that HCFA terminate the hospital's provider agreement based on the new findings.

Whether or not HCFA takes a termination action on a given case, all investigated cases will be referred to the OIG for possible imposition of CMPs.

iii. Suspension of a provider agreement by the OIG Termination and suspension of provider. Agreements are mutually exclusive remedies; a given violation or a group of violations of section 1867 of the Act may give rise to termination or suspension, but not both. However, if HCFA has proposed to terminate, or has terminated, the provider agreement of a hospital based on one or more specific violations of section 1867, the OIG is not precluded from suspending that hospital's provider agreement at a later date if, upon further investigation, OIG determines that there are *other* violations of section 1867 indicating that (1) the pattern of dumping is more widespread than HCFA initially believed, or (2) the additional instances of dumping are so egregious that the penalty of suspension is appropriate.

When it is determined that a hospital's provider agreement should be suspended, the OIG would, in accordance with its notice and appeals procedures set forth in §§ 1001.100 through 1001.115, give notice to the hospital and the public; the suspension would become effective fifteen days after the date of the notice. The hospital would be able to appeal the suspension before an administrative law judge of the Office of Hearings and Appeals of the Social Security Administration. The suspension would be for a minimum of 30 days.

The notice to the hospital would specify:

- The legal and factual basis for the determination;
- The effective date;
- That the duration of the suspension would be for a minimum of 30 days and that during the suspension period, the hospital must demonstrate that further incidents will not occur or the suspension will continue;
- That in addition to denial of payment for Medicare claims, claims for Medicaid payments will not be paid for the care of Medicaid recipients during the period the provider agreement is suspended;
- That the provider will have the opportunity to be reinstated after the suspension, in accordance with §§ 1001.105 through 1001.114;
- The payment policy in effect during the suspension; and
- The appeal rights of the hospital.

For hospitals paid under the prospective payment system, we propose to pay for all covered services furnished to Medicare beneficiaries admitted before the suspension is effective, including payment for a maximum of 30 days after the suspension becomes effective for those cases that qualify as day outliers. On the other hand, we woud not make any payment for inpatient hospital services furnished to patients who are admitted on or after the effective date of suspension.

For hospitals reimbursed under the reasonable cost system, no payment will be made for services provided to persons admitted during the suspension period.

Note: The date of admission is not significant for reasonable cost hospitals.

We are proposing to add a new § 1001.202 to reflect the above policy concerning suspension and we are proposing to make the necessary technical changes to §§ 1001.211 and 1001.221

- We propose to add a new section, § 1001.203, to give the provider procedures to follow when it is suspended and wishes to be reinstated into the Medicare program.

iv. Civil Monetary Penalties. General.

- In addition to termination or suspension of the provider agreement, if a hospital knowlingly violates the requirements concerning screening, treatment and transfer, OIG could also impose a civil money penalty of not more than $50,000 for each violation.
- OIG could also impose a civil money penalty upon each "responsible physician" of not more than $50,000 for each violation. In addition, the OIG may exclude the physician from Medicare participation for up to five years. A responsible physician is a physician within the meaning of section 1861(r)(1) of the Act (doctor of medicine or osteopathy) who is employed by, or under contract with the hospital, who, in that capacity, had professional responsibility for the provision of examination or treatment for the individual, when the violation occurred. A physician may be employed by, or under contract with, a hospital even though the physician receives no compensation from the hospital for furnishing medical services.

For purposes of this provision, a physician would be considered under contract with the participating hospital, and therefore a responsible physician within the context of these regulations, if he or she has a written or oral agreement to take professional responsibility for providing examinations or treatment in the hospital's emergency room for individuals seeking emergency medical care, or for the proper transfer of these individuals whether or not the physician receives compensation from the hospital for providing the services.

In addition, if the provision of emergency medical services is shared by more than one responsible physician, each responsible physician could be held liable and a civil money penalty up to the maximum amount, as well as exclusion from the Medicare program for up to five years, could be imposed against each responsible physician for each violation.

We would revise §§ 1003.100, 1003.102, 1003.103 and 103.105 to reflect these provisions.

Determination of penalty amount.

We propose to establish in 42 CFR 1003.106 three specific criteria and one general criterion that we would consider in determining the penalty amount—

- The degree of culpability of the hospital and the responsible physicians.
- The seriousness of the individual's condition in seeking emergency medical services.
- The prior history of the hospital and the responsible physicians in failing to

provide appropriate emergency medical services or appropriate transfers.

• Other matters required by justice.

We specifically welcome comment on the application of these and other possible criteria, and on the inclusion of specific aggravating and mitigating factors, to be considered in levying penalties under this provision.

We believe that the authority to assess civil money penalties against the responsible physician as well as the hospital will be a strong incentive for both the physician and the hospital to respond to the medical needs of individuals with emergency medical conditions and women in active labor.

HCFA would refer appropriate cases for possible money penalties to the OIG, while at the same time HCFA will authorize the Medicare State survey agency to conduct a complaint investigation if warranted.

The OIG would have to prove by a preponderance of the evidence that the hospital or the responsible physician or physicians, or both, failed to provide emergency medical treatment as required by section 1867 of the Act. This provision would be in 42 CFR 1003.114.

The OIG would notify hospitals and responsible physicians assessed civil money penalties in accordance with 42 CFR 1003.109, which includes hospital and physician appeal rights. We would revise that section to require that the notice would include a description of the episode for which the penalty is proposed and why the penalty is being assessed.

We would also make necessary technical changes to §§ 1003.100, 1003.106, 1003.109 and 1003.114 and add to § 1003.101 definitions of "participating hospital" and "responsible physician", as discussed above.

v. Civil enforcement.

An individual who suffers personal harm, or a medical facility that suffers a financial loss, as a direct result of the hospital's violation of a requirement in 42 CFR 489.24, may bring a civil action, in an appropriate Federal district court, against the hospital for damages and other equitable relief as appropriate. No civil action may be brought more than two years after the date of the violation. The Federal district court will apply the law of the State in which the hospital is located. According to the Conference Committee Report, the committee included the language concerning other equitable relief as appropriate as a directive to the courts:

> [T]he [House of Representatives] language allowing courts to grant 'other appropriate relief' was also modified to read 'other equitable relief as appropriate', to give the courts clearer direction that such relief should be within the courts regular equitable powers and should be granted for the purpose of remedying the violation or deterring subsequent violations. (H.R. Rep. No. 453, 99th Cong., 1st Sess. 476 (1985).)

We do not believe it necessary or appropriate to revise the regulations to reflect this provision.

vi. Preemption of State law. The legislation provides that it does not preempt State or local law except where there is a conflict with the statutory provision. Since Federal law ordinarily supersedes State law where there is a conflict, it is not necessary to include this provision in regulations.

2. Responsibilities of Hospitals Receiving Improperly Transferred Individual.

Preliminary findings of study being conducted by the OIG have confirmed that a number of patients in unstable condition have been transferred improperly and that the cases have not been reported to HCFA. Because we need to know about *all* improper transfers, we are proposing to add a new paragraph (g) to § 489.20 to require a hospital that suspects it may have received an improperly transferred individual to report to HCFA and to the State survey agency. To be in compliance with this requirement, the receiving hospital would have to report any suspected incident within 72 hours of its occurrence. This requirement would appear in manual instructions.

We propose to include in § 489.24 a paragraph (f) that would require a hospital to report promptly patients it receives who were transferred in suspected violation of § 489.24(d).

We also propose to add a paragraph to § 489.53(a) to show that failure to report improper transfers may subject the receiving hospital to termination of its provider agreement.

In those instances in which HCFA determines that a hospital is in violation of § 489.20(g), we would initiate termination action.

3. State Survey Agency Responsibilities

The preliminary findings of the OIG study also identified incidents of improper transfer being reported to the State survey agency that were not then reported to HCFA.

To assure that we are aware of all instances of improper transfer, we also propose to require the State survey agencies to report promptly any credible complaints (that is, complaints that are specific and detailed enough to be investigated) related to violations of section 1867 of the Act. Therefore, we intend to revise § 405.1903, Documentation of findings, by adding a new paragraph (d) that would require State survey agencies to inform HCFA of credible reports of violations of § 489.24.

IV. Regulatory Impact Statement

A. Introduction

Executive Order (E.O.) 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed regulation that meets one of the E.O., criteria for a "major rule"; that is, that would be likely to result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or, significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed regulation would not have a significant economic impact on a substantial number of small entities. Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if this proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis also must conform to the provisions of section 603 of the RFA. For purposes of the RFA, we treat all providers as small entities.

B. Impact on CHAMPUS, CHAMPVA, and VA programs

This proposed rule would require hospitals to provide inpatient hospital services to individuals who have insurance coverage under CHAMPUS, CHAMPVA, and VA programs. Further, the CHAMPUS/CHAMPVA-determined allowable amount from these programs must be accepted as payment in full (less applicable deductible, patient cost-share and noncovered items). The effect of these two requirements is the result of the statute, not this proposed rule.

C. Impact on Hospitals

The provision requiring a Medicare participating hospital with an organized emergency department to provide emergency services within the capabilities of the hospital to any individual with an emergency medical condition and to any woman in active labor would ensure that everyone in an

emergency situation will be stabilized before discharge or transfer, or the hospital may be terminated or suspended from the Medicare program. This provision is also the result of the statute and not this proposed rule, and we have been actively enforcing the statutory requirements. Further, it should be noted that currently, under 42 CFR 124.600, et seq., of the Public Health Service (PHS) regulations, the nearly five thousand hospitals nationwide that received Hill Burton construction grants and loans are required to participate in the Medicare program if eligible to do so. Under these regulations, hospitals are required to provide emergency medical services to any person who resides (or, in the case of some hospitals, works) in the hospital's designated health service area.

We believe the great majority of hospitals do not inappropriately transfer or refuse to treat patients with limited ability to pay for services. The aggregate economic impact of this provision should be minimal, primarily affecting only those hospitals not already under a Hill-Burton agreement, those not complying with their agreements, or those hospitals that as a matter of policy have interpreted their obligations narrowly and refused services to individuals not specifically covered by the Hill-Burton requirements (i.e., those not living or working in the given hospital's designated health service area).

We also are proposing to require each hospital to retain a separate, signed acknowledgement from the beneficiary attesting to the receipt of the "Important Message from Medicare" and a copy of the "Message" itself. Although this would create a slight increase in hospital administrative costs, it is not expected to affect Medicare or Medicaid program expenditures significantly. Hospital cost increases would be limited to obtaining and retaining the beneficiary's acknowledgement. However, we believe that over the long run more informed patients should reduce the necessity to file complaints, off-setting any increased costs.

D. Impact on Patients

After the 1979 establishment of the above-mentioned Hill-Burton requirement, very few community service complaints have been filed with PHS' Office for Civil Rights, although numerous criticisms have been reported in the media concerning admissions for emergency services. We believe that establishment of an additional, broader requirement and an additional avenue of complaint may result in reporting of a larger number of incidents. However, in view of the PHS experience we continue to anticipate that incidents will be sporadic and relatively isolated. We expect this provision basically to increase the incentives for hospitals to avoid such incidents thus improving emergency care for uninsured individuals.

E. Conclusion

For these reasons, we have determined that a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities and would not have a significant impact on the operations of a substantial number of small rural hospitals. Therefore, we have not prepared a regulatory flexibility analysis.

V. Paperwork Reduction Act

Sections 405.1903, 489.20 and 489.27 of this proposed rule contain information collection requirements. As required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3504), we have submitted a copy of this proposed rule to the Executive Office of Management and Budget (EOMB) for its review of these requirements. Other organizations and individuals desiring to submit comments on the information collection requirements should follow the instructions in the **ADDRESS** section.

VI. Response to Comments

Because of the large number of comments we receive on proposed regulations, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments received timely and respond to the major issues in the preamble to that rule.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 485

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare.

42 CFR Part 1001

Administrative practice and procedure, Fraud, Health facilities, Health professions, Medicare.

42 CFR Part 1003

Administrative practice and procedure, Archives and records, Grant programs—social programs, Maternal and child health, Medicaid, Medicare, Penalties.

Title 42 of the Code of Federal Regulations would be amended as follows:

A. Chapter IV is amended as follows:

1. Part 405, Subpart S is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

a. The authority citation for Part 405, Subpart S is revised to read as follows:

Authority: 42 U.S.C. 1302, 1395f, 1395x, 1395bb, 1395cc, 1395dd, 1395qq, 1395rr, and 1395tt.

b. Section 405.1903 is amended by adding a new paragraph (d) to read as follows:

§ 405.1903 Documentation of findings.

* * * * *

(d) If the State agency receives credible information (that is, information that is specific and detailed enough to be investigated) to the effect that a hospital has violated § 489.24 of this part, the State agency is to report the information to HCFA promptly.

2. Part 489 is amended as follows:

a. The authority citation for Part 489 is revised to read as follows:

Authority: Secs. 1102, 1861, 1864m, 1866, 1867, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395aa, 1395cc, 1395dd, and 1395hh), and sec. 602(k) of Pub. L. 98-21 (42 U.S.C. 1395ww note).

b. The table of contents is amended by adding §§ 489.24, 489.25, 489.26, and 489.27 to Subpart B to read as follows:

PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

* * * * *

Subpart B—Essentials of Provider Agreements

Sec.

* * * * *

489.24 Special responsibilities of Medicare hospitals in emergency cases.
489.25 Special requirements concerning the CHAMPUS and CHAMPVA programs.
489.26 Special requirements concerning veterans.
289.27 Beneficiary statement of discharge rights.

c. In § 489.20, the introductory text is republished and the section is amended by adding paragraphs (f), (g), (h), (i), and

(j), and by revising paragraphs (d) and (e) as follows:

§ 489.20 Basic commitments.

The provider agrees—

* * * * *

(d) In the case of a hospital that furnishes inpatient hospital services to a beneficiary, to either furnish directly or make arrangements for all items and services (other than physicians' services as described in § 405.550(b) of this chapter) for which the beneficiary is entitled to have payment made under Medicare;

(e) In the case of a hospital that furnishes inpatient hospital services for which payment may be made under Subpart D of Part 405 of this chapter, to maintain an agreement with a utilization and quality control peer review organization (if there is such an organization for the area in which the hospital is located, which has a contract with HCFA under Part B of title XI of the Act) for that organization to review the admissions, quality, appropriateness, and diagnostic information related to such inpatient hospital services;

(f) In the case of a hospital with an emergency department, to comply with § 489.24 of this subpart;

(g) In the case of a hospital, to report to HCFA and the State survey agency any suspected incident of receiving an individual that has been transferred in unstable condition or in active labor from another hospital, without prior arrangement, in violation of the requirements of § 489.24(d) of this subpart;

(h) In the case of inpatient hospital services, to participate in any health plan contracted for under 10 U.S.C. 1079 or 1086 or 38 U.S.C. 613, in accordance with § 489.25 of this subpart;

(i) In the case of inpatient hospital services, to admit veterans whose admission has been authorized under 38 U.S.C. 603, in accordance with § 489.26 of this subpart; and

(j) In the case of a hospital, to comply with § 489.27 of this subpart by giving each beneficiary a statement of his or her discharge rights, obtaining a separate, signed acknowledgement from the beneficiary attesting to the receipt of the statement of discharge rights, and maintaining a copy of the acknowledgement.

d. A new section 489.24 is added to read as follows:

§ 489.24 Special responsibilities of Medicare hospitals in emergency cases.

(a) *General.* In the case of a hospital that has an emergency department, if any individual (whether or not eligible for Medicare benefits) comes to the emergency department and a request is made on the individual's behalf for examination or treatment of a medical condition, the hospital must provide for an appropriate medical screening examination within the capability of the hospital's emergency department to determine whether or not an emergency medical condition exists or to determine if the individual is in active labor. The examinations must be conducted by individuals determined qualified by hospital by-laws and who meet the requirements of § 482.55 concerning emergency services personnel and direction.

(b) *Definitions.* "Active labor" means labor at a time at which delivery is imminent; there is inadequate time to effect safe transfer to another hospital before delivery; or a transfer may pose a threat to the health and safety of the patient or the unborn child.

"Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in:

(1) Placing the patient's health in serious jeopardy;

(2) Serious impairment to bodily functions; or

(3) Serious dysfunction of any bodily organ or part.

"Stabilized" means, with respect to an emergency medical condition, that no material deterioration of the condition is likely, within reasonable medical probability, to result from the transfer of the individual from a facility.

"To stabilize" means, with respect to an emergency medical condition, to provide the medical treatment of the condition necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from the transfer of the individual from a facility.

"Transfer" means the movement (including the discharge) of a patient outside a hospital's facilities at the direction of any person employed by (or affiliated or associated, directly or indirectly, with) the hospital, but does not include such a movement of a patient who (1) has been declared dead, or (2) leaves the facility without the permission of any such person.

(c) *Necessary stabilizing treatment for emergency medical conditions and active labor*—(1) *General.* If any individual (whether or not eligible for Medicare benefits) comes to a hospital and the hospital determines that the individual has an emergency medical condition or is in active labor, the hospital must provide either—

(i) Within the capabilities of the staff and facilities available at the hospital, for further medical examination and treatment as required to stabilize the medical condition or to provide for treatment of the labor; or

(ii) For transfer of the individual to another medical facility in accordance with paragraph (d) of this section.

(2) *Refusal to consent to treatment.* A hospital meets the requirements of paragraph (c)(1)(i) of this section with respect to an individual if the hospital offers the individual the further medical examination and treatment described in that paragraph but the individual (or a legally responsible person acting on the individual's behalf) refuses to consent in writing to the examination or treatment.

(3) *Refusal to consent to transfer.* A hospital meets the requirements of paragraph (c)(1)(ii) of this section with respect to an individual if the hospital offers to transfer the individual to another medical facility in accordance with paragraph (d) of this section but the individual (or a legally responsible person acting on the individual's behalf) refuses to consent to the transfer.

(d) *Restricting transfers until the patient is stabilized.*—(1) *General.* If a patient at a hospital has an emergency medical condition that has not been stabilized (as defined in paragraph (b) of this section) or is in active labor, the hospital may not transfer the patient unless—

(i)(A) The patient (or a legally responsible person acting on the patient's behalf) requests the transfer; or

(B) A physician (within the meaning of section 1861(r)(1) of the Act) or other qualified medical personnel when a physician is not readily available in the emergency department, has signed a certification that, based upon the reasonable risks and benefits to the patient, and based upon the information available at the time, the meidcal benefits reasonably expected from the provision of appropriate medical treatment at another medical facility outweigh the increased risks to the individual's medical condition from being transferred; and

(ii) The transfer is an appropriate transfer.

(2) A transfer to another medical facility will be appropriate only in those cases—

(i) In which the receiving facility—

(A) Has available space and qualified personnel for the treatment of the patient; and

(B) Has agreed to accept transfer of the patient and to provide appropriate medical treatment;

(ii) In which the transferring hospital provides the receiving facility with appropriate medical records (or copies of them) of the examination and treatment furnished at the transferring hospital;

(iii) In which the transfer is effected through qualified personnel and transportation equipment, as required, including the use of necessary and medically appropriate life support measures during the transfer; and

(iv) That meets such other requirements as the Secretary may find necessary in the interest of the health and safety of patients transferred.

(e) *Termination of provider agreement.* If a hospital knowingly and willfully, or negligently, fails to meet the requirements of paragraphs (a) through (d) of this section, HCFA will terminate the provider agreement in accordance with § 489.53 of this subpart or the OIG will suspend the provider agreement in accordance with § 1001.202 of this title.

(f) *Recipient hospital responsibilities.* If a hospital receives a patient transferred in suspected violation of paragraph (d) of this section, it must report the incident promptly to the State survey agency and to HCFA. In accordance with § 489.53 of this part, HCFA may terminate the hospital for failure to report the incident.

e. A new § 489.25 is added to read as follows:

§ 489.25 Special requirements concerning CHAMPUS and CHAMPVA programs.

For inpatient services, a hospital that participates in the Medicare program must participate in any health plan contracted under 10 U.S.C. 1079 or 1086 (Civilian Health and Medical Program of the Uniformed Services) and under 38 U.S.C. 613 (Civilian Health and Medical Program of the Veterans Administration) and accept the CHAMPUS/CHAMPVA-determined allowable amount as payment in full, less applicable deductible, patient cost-share, and noncovered items. Hospitals must meet the requirements of 32 CFR Part 199 concerning program benefits under the Department of Defense. This section applies to inpatient services furnished to beneficiaries admitted on or after January 1, 1987.

f. A new § 489.26 is added to read as follows:

§ 489.26 Special requirements concerning veterans.

For inpatient services, a hospital that participates in the Medicare program must admit any veteran whose admission is authorized by the Veterans Administration under 38 U.S.C. 603 and must meet the requirements of 38 CFR Part 17 concerning admissions practices and payment methodology and amounts. This section applies to services furnished to veterans admitted on and after July 1, 1987.

g. A new § 489.27 is added to read as follows:

§ 489.27 Beneficiary statement of discharge rights.

A hospital that participates in the Medicare program must furnish each Medicare beneficiary, or an individual acting on his or her behalf, the statement of discharge rights HCFA supplies to the hospital to implement section 1866(a)(1)(M) of the Act. The hospital must furnish the statement at or about the time of admission, obtain a separate, signed acknowledgement from the beneficiary attesting to the receipt of the statement, and maintain a copy of the acknowledgement. This provision is effective with admissions beginning on or after [effective date of final rule].

h. In § 489.53, the introductory language of paragraph (a) is republished, paragraph (a) is amended by adding subparagraphs (10), (11), and (12), paragraph (b) is revised, and paragraph (c)(2) is revised to read as follows:

§ 489.53 Termination by HCFA.

(a) *Basis for termination of agreement with any provider.* HCFA may terminate the agreement with any provider if HCFA finds that any of the following failings is attributable to that provider:

* * * * *

(10) In the case of a hospital that suspects that it may have received an individual transferred by another hospital in violation of § 489.24(d) of this subpart, the hospital failed to report the incident to HCFA and the State survey agency.

(11) In the case of a hospital requested to furnish inpatient services to CHAMPUS or CHAMPVA beneficiaries or to veterans, it failed to comply with § 489.25 of § 489.26 of this part, respectively.

(12) It failed to furnish the notice of discharge rights as required by § 489.27 of this part.

(b) *Required termination of provider agreement.*

(1) In the case of a hospital that has an emergency department, HCFA will terminate the provider agreement if the hospital fails to comply with the requirements of § 489.24(a) through (d) of this subpart, which requires the hospital to examine, treat or transfer emergency medical condition or active labor cases appropriately. (Under some circumstances, the OIG may suspend the agreement instead of HCFA terminating it; see § 1001.202 of this title.)

(2) HCFA will terminate a SNF's provider agreement if it determines that—

(i) The SNF no longer meets a condition of participation specified in Part 405, Subpart K of this chapter; and

(ii) The SNF's deficiencies pose immediate jeopardy to patients' health and safety.

(c) *Notice of termination.* * * *

(2) *Exception.* (i) For a SNF with deficiencies that pose immediate jeopardy to patients' health and safety, HCFA will give notice of termination at least 2 days before the effective date of termination of the provider agreement.

(ii) If HCFA finds that a hospital is in violation of § 489.24 (a) through (d) of this part, HCFA will determine that the violation poses immediate and serious jeopardy to the health and safety of the patients presenting themselves to the hospital for emergency services and HCFA will terminate within two days after the determination is made.

* * * * *

(B) Chapter V, Part 1001 is amended as follows:

PART 1001—PROGRAM INTEGRITY: MEDICARE

1. The authority citation for Part 1001 is revised to read as follows:

Authority: Secs. 1102, 1128, 1842(j) 1842(k), 1862(d), 1862(e), 1866(b)(2)(D), (E) and (F), 1867, and 1871 of the Social Security Act (42 U.S.C. 1302, 1320a–7, 1395u(j), 1395u(k) and 1395y(d), 1395y(e), 1395cc(b)(D), (E) and (F), 1395dd and 1395hh), unless otherwise noted.

2. The Table of Contents for Subpart C is amended by revising the titles of the subpart and §§ 1001.211 and 1001.221, and by adding entries for §§ 1001.202 and 1001.203.

Subpart C—Termination on Suspension of Provider Agreement and Reinstatement After Termination or Suspension

Sec.

* * * * *

1001.202 Suspension of a provider agreement by the OIG.

1001.203 Notice and appeal procedures for termination or suspension of provider agreements.

Sec.

1001.211 Exceptions to effective date of termination or suspension of provider agreement.

1001.221 Reinstatement after termination or suspension of provider agreement.

Subpart C—Termination or Suspension of Provider Agreement and Reinstatement After Termination or Suspension

2a. The title of Subpart C is revised to read as set forth above.

3. In Subpart A, § 1001.2 is amended by adding the definition for the term "participating hospital" to read as follows:

§ 1001.2 Definitions.

* * * * *

"Participating hospital" means a hospital that has entered into a Medicare provider agreement under section 1866 of the Act and has, under the agreement, obligated itself to comply with the requirements of section 1867 of the Act.

* * * * *

4. In Subpart C, § 1001.201 is revised to read as follows:

§ 1001.201 Termination by the OIG.

Basis for termination. The OIG may terminate the agreement of any provider if the OIG finds that any of the following failings can be attributed to that provider:

(a) It has knowingly and willfully made, or caused to be made, any false statement or representation of a material fact for use in an application or request for payment under Medicare.

(b) It has submitted, or caused to be submitted, requests for Medicare payment of amounts that substantially exceed the costs it incurred in furnishing the services for which payment is requested.

(c) It has furnished services that the OIG has determined to be substantially in excess of the needs of individuals or of a quality that fails to meet professionally recognized standards of health care. The OIG will not terminate a provider agreement under this section if HCFA has waived a disallowance with respect to the services in question on the grounds that the provider and the beneficiary could not reasonably be expected to know the payment would not be made. (The rules for determining such lack of knowledge are set forth in §§ 405.334 and 405.336 of this title.)

5. New §§ 1001.202 and 1001.203 are added to read as follows:

§ 1001.202 Suspension of a provider agreement by the OIG.

(a) The OIG may suspend the provider agreement of a Medicare participating hospital with an emergency department when it determines that the hospital knowingly and willfully, or negligently—

(1) Fails to provide an appropriate medical screening examination in accordance with § 489.24(a) of this title;

(2) Fails to provide necessary stabilizing treatment for any individual (whether or not eligible for Medicare) with an emergency medical condition or in active labor in accordance with § 489.24(b) and (c) of this title, or,

(3) Transfers the individual before he or she is stabilized in accordance with § 489.24(b) and (d) of this title.

(b) In addition to suspending the provider agreement of a hospital, the OIG may impose a civil monetary penalty against the hospital and the responsible physician(s) if the OIG determines that the hospital or physician(s) knowingly violated the requirement set forth in § 489.24 of this title. If the OIG makes such a determination, it will use the penalty determination, notification, effectuation, and appeal procedures contained in §§ 1003.100 through 1003.130 of this chapter.

§ 1001.203 Notice and appeal procedures for termination or suspension of provider agreements.

If the OIG makes a determination under § 1001.201 or § 1001.202 (a) or (b) of this part and proposes to terminate or suspend the provider agreement of the Medicare participating hospital, the OIG will use the determination, notification, effectuation, and appeal procedures contained in §§ 1001.105 through 1001.114 of this part.

6. In § 1001.211, the title is revised to read as follows:

§ 1001.211 Exceptions to effective date of termination or suspension of provider agreement.

* * * * *

7. Section 1001.221 is revised to read as follows:

§ 1001.221 Reinstatement after termination or suspension of provider agreement.

When a provider agreement has been terminated by the OIG under § 1001.201, or by HCFA under § 489.53 of this title, or suspended by the OIG under § 1001.202, the OIG or HCFA, as appropriate, will not accept a new agreement, in the case of termination, or reinstate an existing agreement, in the case of a suspension, unless the OIG or HCFA (as appropriate) finds—

(a) That the reason for termination or suspension of the previous agreement has been removed and there is reasonable assurance that it will not recur; and

(b) That the provider has fulfilled, or has made satisfactory arrangements to fulfill, all of the statutory and regulatory responsibilities of its previous agreement.

C. Chapter V, Part 1003 is amended as follows:

PART 1003—CIVIL MONEY PENALTIES AND ASSESSMENTS

1. The authority citation for Part 1003 is revised to read as follows:

Authority: Secs. 1102, 1128, 1128A, 1842(j), 1842(k) and 1867(d)(2) of the Social Security Act (42 U.S.C. 1302, 1320a–7, 1320a–7a, 1395u(j), 1395u(k) and 1395dd(d)(2)).

2. Section 1003.100 is revised to read as follows:

§ 1003.100 Basis and purpose.

(a) *Basis.* This part implements sections 1128(c), 1128A, 1842(j), 1842(k), 1867(d)(2), and 1867(f) of the Social Security Act (42 U.S.C. 1320a–7(c), 1320a–7a, 1395u(j), 1395u(k), and 1395dd(d)(2)).

(b) *Purpose.* This part (1) establishes procedures for imposing (i) civil money penalties and assessments against persons who have submitted certain prohibited claims under the Medicare, Medicaid, or the Maternal and Child Health Services Block Grant programs, and (ii) civil money penalties against a participating hospital with an emergency department and responsible physician or physicians who fail to provide emergency medical treatment as specified in § 489.24 of this chapter to any individual who has an emergency medical condition or is in active labor;

(2) Establishes procedures for suspending from the Medicare and Medicaid programs, persons against whom a civil money penalty or assessment has been imposed; and (3) specifies the appeal rights of persons subject to a penalty or assessment.

D. Section 1003.101 is amended by adding definitions for the terms "participating hospital" and "responsible physician" to read as follows:

§ 1003.101 Definitions.

For purposes of this part:

* * * * *

Participating hospital means a hospital that has entered into a Medicare provider agreement under section 1866 of the Act and has, under the agreement, obligated itself to comply

with the requirements of section 1867 of the Act.

* * * * *

Responsible physician means a physician within the meaning of section 1861(r)(1) of the Act who (i) is employed by, or is under contract with, the participating hospital in providing medical services, and (ii) acting in such capacity, has professional responsibility for the provision of examinations or treatments for an individual, or transfer of the individual, who is seeking emergency medical treatment or who is in active labor. A physician may be employed by, or under contract with, a hospital even through the physician receives no compensation from the hospital for furnishing medical services if the physician has a written or oral agreement with the hospital to take the professional responsibility cited above.

* * * * *

4. Section 1003.102 is amended by redesignating existing paragraph (c) as paragraph (d), and by adding a new paragraph (c) and revising paragraph (d) to read as follows:

§ 1003.102 Basis for civil money penalties and assessments.

* * * * *

(c) The OIG may impose a penalty against a participating hospital with an emergency department, any responsible physician, or both, that it determines in accordance with this part has knowingly violated section 1867(a)–(c) of the Act (42 U.S.C. 1395dd(a), (b) and (c)). (See § 489.24 of this chapter.)

(d)(1) In any case in which it is determined that more than one person was responsible for presenting or causing to be presented a claim as described in paragraph (a) of this section, each such person may be held liable for the penalty prescribed by this part, and an assessment may be imposed against any one such person or jointly and severally against two or more such persons, but the aggregate amount of the assessments collected may not exceed the amount that could be assessed if only one person was responsible.

(2) In any case in which it is determined that more than one person was responsible for presenting or causing to be presented a request for payment described in paragraph (b) of this section, each such person may be held liable for the penalty prescribed by this part.

(3) In any case in which it is determined that more than one physician was responsible for knowingly failing to provide care to an individual who is seeking emergency medical treatment or who is in active labor in accordance with section 1867 of the Act, a penalty may be imposed against each responsible physician deemed responsible for failing to provide the required care.

5. Section 1003.103 is revised to read as follows:

§ 1003.103 Amount of penalty.

(a) The OIG may impose a penalty of not more than $2,000 for each item of service that is subject to a determination under § 1003.102(a) and (b) of this subpart.

(b) The OIG may impose a penalty of not more than $50,000 against a participating hospital and a penalty of not more than $50,000 against each responsible physician or physicians for each violation subject to a determination under § 1003.102(c) and (d)(3) of this subpart.

6. Section 1003.105 is revised to read as follows:

§ 1003.105 Suspension from participation in Medicare or Medicaid.

(a) A person subject to a penalty or assessment determined under § 1003.102 (a) and (b) may, in addition, be suspended from participation in Medicare for a period of time determined under § 1003.107. The OIG may require the appropriate State agency to suspend the person from the Medicare program for a period he or she shall specify. The State agency may request the Secretary to waive suspension of a person from the Medicaid program under this section if it concludes that, because of the shortage of providers or other health care personnel in the area, individuals eligible to receive Medicaid benefits would be denied access to medical care or that such individuals would suffer hardship. The OIG will notify the State agency if and when it waives suspension in response to such a request.

(b) Any responsible physician or physicians subject to a penalty determined under § 1003.102(c) may, in addition, be excluded from participation in Medicare for a period of up to five years, in accordance with procedures set forth in §§ 1001.100 through 1001.115 and 1001.130 through 1001.134 of this chapter.

(c) Any suspension under this section shall become effective only after there is a final decision of the Secretary pursuant to § 1003.125(f), or at any earlier date that the respondent fails within the time permitted, to exercise his or her right to a hearing under § 1003.109 or administrative review under § 1003.125. The effect of such suspension shall be governed by 42 CFR 1001.126

(d) When the Inspector General proposes to suspend a long-term care facility from the Medicare and Medicaid programs, he or she shall, at the same time he or she notifies the respondent, notify the appropriate State Office of Aging, the long-term care ombudsman, and the State Medicaid agency of the Inspector General's intention to suspend the facility.

7. Section 1003.106 is amended by designating the introductory language of (b) as (b)(1) and redesignating current subparagraphs (b)(1)-(5) as (b)(1)(i)-(b)(1)(v) and by revising paragraphs (a), redesignated (b) and (c) to read as follows:

§ 1003.106 Determinations regarding the amount of the penalty and assessment.

(a)(1) In determining the amount of any penalty or in accordance with § 1003.102 (a) and (b), the OIG will take into account:

(i) The nature of the claim or request for payment and the circumstances under which it was presented,

(ii) The degree of culpability of the person submitting the claim or request for payment,

(iii) The history of prior offenses of the person submitting the claim request for payment,

(iv) The financial condition of the person presenting the claim or request for payment, and

(v) Such other matters as justice may require.

(2) In determining the amount of any penalty in accordance with § 1003.102(c) the OIG will take into account:

(i) The degree of culpability of the participating hospital and the responsible physician or physicians;

(ii) The seriousness of the condition of the individual seeking emergency medical treatment;

(iii) The prior history of offenses of the hosptial and responsible physician or physicians in their failure to provide appropriate emergency medical screening, stabilization and treatment of the patient, or to effect an appropriate transfer of the patient to another facility; and

(iv) Such other matters as justice may require.

(b) *Guidelines for determining the amount of the penalty or assessment.*— (1) As guidelines for taking into account the factors listed in paragraph (a)(1), of this section, the following circumstances are to be considered.

(i) *Nature and circumstances of the claim.* It should be considered a mitigating circumstance if all the items

or services subject to a determination under § 1003.102 included in the action brought under this part were of the same type and occurred within a short period of time, there were few such items or services, and the total amount claimed for such items or services was less than $1,000. It should be considered as aggravating circumstance if such items or services were of several types, occurred over a lengthy period of time, there were many suich items or services (or the nature and circumstances indicate a pattern of claims for such items or services), or the amount claimed for such items or services was substantial.

(ii) *Degree of culpability.* It should be considered a mitigating circumstance if the claim for the item or service was the result of an unintentional and unrecognized error in the process respondent followed in presenting claims, and corrective steps were taken promplty after the error was discovered. It should be considered an aggravating circumstance if the respondent knew the item or service was not provided as claimed, or if the respondent knew that no payment could be made because he had been excluded from program reimbursement as specified in § 1003.102(a)(2) or because payment would violate the terms of an assignment agreement or an agreement with a State agency under § 1003.102(b).

(iii) *Prior offenses.* It should be considered an aggravating circumstance if at any time prior to the presentation of any claim which included an item or service subject to a determination under § 1003.102 (a) and (b), the respondent was held liable for criminal, civil, or administrative sanctions in connection with a program covered by this part or any other public or private program of reimbursement for medical services.

(iv) *Financial condition.* It should be considered a mitigating circumstance if imposition of the penalty or assessment without reduction will jeopardize the ability of the respondent to continue as a health care provider. In all cases, the resources available to the respondent will be considered when determining the amount of the penalty and assessment.

(v) *Other matters as justice may require.* Other circumstances of an aggravating or mitigating nature should be taken into account if, in the interests of justice, they require either a reduction of the penalty or assessment or an increase in order to assure the achievement of the purposes of this part.

(c) As guidelines for determining the amount of the penalty and assessment to be imposed, for every item, service or incident subject to a determination under § 1003.102 (a) and (b):

(1) If there are substantial or several mitigating circumstances, the aggregate amount of the penalty and assessment should be set at an amount sufficiently below the maximum permitted by §§ 1003.103(a) and 1003.104, to reflect that fact.

(2) If there are substantial or several aggravating circumstances, the aggregate amount of the penalty and assessment should be set at an amount sufficiently close to or at the maximum permitted by §§ 1003.103(a) and 1003.104, to reflect that fact.

(3) Unless there are extraordinary mitigating circumstances, the aggregate amount of the penalty and assessment should never be less than double the approximate amount of damages sustained by the United States, or any State, as a result of claims subject to a determination under § 1003.102 (a) and (b).

* * * * *

8. Section 1003.109 is amended by revising paragraph (a) to read as follows:

§ 1003.109 Notice of proposed determination.

(a) If the Inspector General proposes to impose a penalty and assessment, or to suspend a respondent from participation in Medicare or Medicaid, in accordance with this part, he or she must deliver or send by certified mail, return receipt requested, to the respondent, written notice of his or her intent to impose a penalty, assessment and suspension, as applicable. The notice will include:

(1) Reference to the statutory basis for the penalty, assessment, and suspension;

(2) With respect to determinations under § 1003.102 (a) and (b), a description of the claims and requests for payment with respect to which the penalty, assessment, and suspension are proposed (except in cases where the Inspector General is relying upon statistical sampling pursuant to § 1003.133, in which case the notice shall describe those claims and requests for payment comprising the sample upon which the Inspector General is relying and shall also briefly describe the statistical sampling technique utilized by the Inspector General);

(3) With respect to determinations under § 1003.102(c), a description of the episode with respect to which the penalty is proposed;

(4) The reason why such claims and requests for payment, or failure to provide emergency medical services as required under section 1867 of the Act, subject the respondent to a penalty, assessment, and suspension; the amount of the proposed penalty, assessment, and the period of proposed suspension (where applicable);

(5) Any circumstances described in § 1003.106 which were considered when determining the amount of the proposed penalty of suspension;

(6) Instructions for responding to the notice, including a specific statement of respondent's right to a hearing, of the fact that failure to request a hearing within 30 days permits the imposition of the proposed penalty, assessment, and suspension without right to appeal, and of respondent's right to request an extension of time in which to respond to the notice and a copy of the rules contained in this part.

* * * * *

9. Section 1003.114 is revised to read as follows:

§ 1003.114 Issues and burden of proof.

(a) To the extent that a proposed penalty and assessment is based on claims or requests for payment presented on or after August 13, 1981, the Inspector General must prove by a preponderance of the evidence that the respondent presented or caused to be presented such claims or requests for payment as described in § 1003.102(a) and (b).

(b) To the extent that is proposed penalty and assessment is based on claims presented before August 13, 1981, the Inspector General must prove by clear and convincing evidence that:

(1) The respondent presented or caused to be presented such claims as described in § 1003.102(a) and (b);

(2) Presenting or causing to be presented such claims could have rendered respondent liable under the provisions of the False Claims Act, 31 U.S.C. 3729 *et seq.*, for payment of an amount not less than that proposed.

(c) To the extent that a proposed penalty is based on a violation of section 1867 of the Act, the Inspector General must prove by a preponderance of the evidence that the hospital and responsible physician or physicians failed to provide emergency medical care as described in § 1003.102(c).

(d) Where a final determination that the respondent (1) presented or caused to be presented a claim or request for payment falling within the scope of § 1003.102(a) or (b), or (2) failed to provide emergency medical services within the scope of § 1003.102(c), has been rendered in any proceeding in which the respondent was a party and had an opportunity to be heard, the respondent shall be bound by such

determination in any proceeding under this part.

(e) The respondent shall bear the burden of producing and proving by a preponderance of the evidence any circumstances described in § 1003.106 that would justify reducing the amount of the penalty or assessment, or the period of suspension.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance)

Dated: October 20, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Dated: October 20, 1987.

Richard P. Kusserow,

Inspector General.

Approved: March 1, 1988.

Otis R. Bowen,

Secretary

[FR Doc 88-13513 Filed 6-15-88; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6929]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of modified base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents. Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed modified flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

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

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Arizona	Coconino County, unincorporated areas.	Oak Creek	Approximately 0.8 mile upstream of Route 179	*4,239	*4,239
			Approximately 0.9 mile upstream of Route 179	*4,243	*4,245
			Approximately 1.0 miles upstream of Route 179.	*4,254	*4,256
			Approximately 1.1 miles upstream of route 179	*4,263	*4,263

Maps are available for inspection at the Conconino County Department Community Development, County Administrative Center, 219 East Cherry Avenue, Flagstaff, Arizona.

Send comments to the Honorable Paul J. Babbitt Jr., Chairman, Coconino County Board of Supervisors, County Administrative Center, 219 East Cherry Avenue, Flagstaff, Arizona 86011.

California	Ventura County, unincorporated areas.	Arroyo Santa Rosa	At confluence of Conejo Creek	*229	*229
			Approximately 1,450 feet upstream of Hill Canyon Road.	*232	*231
			Approximately 100 feet downstream of confluence with Arroyo Santa Rosa Tributary.	*254	*248
			At confluence with Arroyo Santa Rosa Tributary.	*255	*254

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 100 feet downstream of Santa Rosa Road.	*281	*284
			Approximately 100 feet upstream of Santa Rosa Road.	*201	*292
			Approximately 450 feet downstream of East Las Posas Road.	*311	*314
			Approximately 250 feet upstream of East Las Posas Road.	*331	*333
			Approximately 700 feet upstream of East Las Posas Road.	*340	*340
		Arroyo Santa Rosa Overflow	Confluence with Arroyo Santa Rosa Tributary	*294	*296
			Approximately 200 feet upstream of Santa Rosa Road.	*314	*326
			Approximately 500 feet upstream of Santa Rosa Road.	*322	*328
			At East Las Posas Road	*330	*332
		Arroyo Santa Rosa Tributary	Approximately 2,100 feet upstream of confluence with Arroyo Santa Rosa.	*276	*277
			At confluence with Arroyo Santa Rosa Overflow.	*294	*296
			Approximately 1,050 feet upstream of confluence with Arroyo Santa Rosa Overflow.	*307	*308
			Approximately 1,700 feet upstream of confluence with Arroyo Santa Rosa Overflow.	*312	*312
		San Antonio Creek	Approximately 1,600 feet downstream of Fraser Street.	*423	*423
			Approximately 1,100 feet downstream of Fraser Street.	*430	*431
			Approximately 900 feet downstream of Fraser Street.	*431	*433
			Approximately 600 feet downstream of Fraser Street.	*435	*435
Maps are available for review at the Ventura County Public Works Agency, 800 South Victoria Avenue, Ventura, California.					
Send comments to The Honorable Maggie Erickson, Chair, Ventura County Board of Supervisors, 800 South Victoria Avenue, Ventura, California 93009.					
Colorado	Arapahoe County, unincorporated areas.	Big Dry Creek	Approximately 625 upstream of South Franklin Street.	*5,463	*5,463
				*5,478	*5,480
			Approximately 2,700 feet upstream of South Franklin Street.	*5,489	*5,493
			Approximately 2,600 feet downstream of south University boulevard.	*5,506	*5,508
			Just downstream of the Highline Canal	*5,521	*5,521
			Approximately 150 feet upstream of East Arapahoe Road.		
Maps available for inspection at the Arapahoe County Planning Department, County Administration Building, 5334 South Prince, Littleton, Colorado.					
Send comments to The Honorable Robert Brooks, Chairman, Arapahoe County Commission, County Administration Building, 5334 South Prince, Littleton, Colorado 80466.					
Colorado	City of Colorado Springs, El Paso County.	Pine Creek	At confluence with Pine Creek overflow	*6,340	#1
			At Burns Road	*6,397	#1
			At State Highway 83	*6,423	#1
			Approximately 470 feet downstream of U.S. Air Force Academy boundary and corporate limits for the City of Colorado Springs.	*6,440	*6,440
Maps are available for review at the Colorado Springs Planning Department, 30 S. Nevada Street, Suite 301, Colorado Springs, Colorado.					
Send comments to The Honorable Robert Isaacs, Mayor, City of Colorado Springs, P.O. Box 1103, Colorado Springs, Colorado 80947.					
Colorado	City of Commerce City, Adams County.	Sand Creek	Approximately 300 feed upstream of Brighton Boulevard.	*152	*5,152
				*5,154	*5,154
			Approximately 1,580 feet upstream of Brighton Boulevard.	*5,158	*5,158
			Approximately 2,500 feet upstream of Brighton Boulevard.	*5,163	*5,163
			Downstream of Vasquez Boulevard		
Maps are available inspection at the City Hall—Community Development Department, 5291 East 60th Avenue, Commerce City, Colorado 80022.					
Send comments to The Honorable David R.D. Busby, Mayor, City of Commerce City, 5291 East 60th Avenue, Commerce City, Colorado 80022.					
Colorado	El Paso County (unincorporated areas).	Pine Creek	At confluence with Pine Creek overflow	*6,340	#1
			At Burns Road	*6,397	#1
			At State Highway 83	*6,423	#1
			Approximately 470 feet downstream of U.S. Air Force Academy boundary and corporate limits for the City of Colorado Springs.	*6,440	*6,440
Maps are available for review at the Regional Office Building, 101 West Costilla, Colorado Springs, Colorado.					
Send comments to The Honorable Marcy Morrison, Chairperson, El Paso County Board of Supervisors, 21 East Vermijo, Colorado Springs, Colorado 80903.					

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Florida	Unincorporated areas of Osceola County.	Lake Kissimmee	Along entire shoreline	None	*55

Maps are available for inspection at the City Hall, 17 South Vernon Avenue, Room 155, Kissimmee, Florida.

Send comments to The Honorable Bill Beck, Chairman, Osceola County Board of Commissioners, 17 South Vernon Avenue, Room 155, Kissimmee, Florida 32741-5498.

Florida	City of Delray Beach, Palm Beach County.	Lake Delray	Along entire shoreline	None	*12
		Canal L-29	Along entire canal	None	*13
		Canal C-15	....do	None	*12
		Lake Del	Along entire shoreline	None	*12

Maps available for inspection at the Public Works Complex, 434 South Swinton Avenue, Delray Beach, Florida.

Send comments to The Honorable Doak S. Campbell III, Mayor, City of Delray Beach, City Hall, 100 Northwest First Avenue, Delray Beach, Florida 33444.

Florida	Unincorporation Areas of Pasco County.	Cypress Creek	About 2.1 miles downstream of Interstate 75	*52	*52
			Just upstream of Ten Cent Road	*62	*64
			Just downstream of State Road 52	*77	*76
		Trout Creek	About 2.7 miles downstream of Interstate 75	None	*52
			Just upstream of Interstate 75	None	*53
			At Divergence with Cypress Creek	*59	*57

Maps available for inspection at the Planning and Zoning Department, 7530 Little Road, New Port Richey, Florida.

Send comments to The Honorable John J. Gallagher, Country Administrator, Pasco County, 7530 Little Road, New Port Richey, Florida 34654.

Florida	City of Pinellas Park, Pinellas County.	Cross Bayou Canal	Just upstream of Haines Road along Ditch 1	*12	*11
		Ditch 1	Just upstream of CSX railroad	13*	*11
			Just upstream of 58th Street North	None	*14
		Ditch 1A	At the mouth	*14	*13
			Just downstream of Disston Boulevard	*15	*16
		Ditch 1-B-5	Just upstream of 82nd Avenue North	None	*16
		Ditch 2A	About 1000 feet upstream of confluence with Ditch 2.	*13	*11
			Just upstream of U.S. Route 19	*15	*14
		Ditch 4	Just upstream of 62nd Avenue North	None	*12
			Just upstream of 62nd Street North	*17	*15
			Just upstream of of CSX railroad	None	*17
		Ditch 4A	Northwest corner of the intersection of CSX railroad and 62nd Avenue North.	None	*19
		Ditch 4E	About 100 feet upstream of mouth	*16	*15
			About 400 feet upstream of 62nd Avenue North.	None	*18

Maps available for inspection at the Engineering Department, 6051 78th Avenue, North, Pinellas Park, Florida.

Send comments to The Honorable Cecil Bradbury, Mayor, City of Pinellas Park, City Hall, P.O. Box 1100, Pinellas Park, Florida 34664.

Florida	Unincorporated areas of Polk County.	Lake Kissimmee	Along entire shoreline	None	*55

Maps available for inspection at the Planning Department, Graphics Section, P.O. Box 1909, Bartow, Florida.

Send comments to The Honorable Jack Simons, Chairman, Polk County Board of Commissioners, P.O. Box 60, Bartow, Florida 33830.

Illinois	Village of Buffalo Grove, Cook and Lake Counties.	Aptakisic Creek	Just downstream of Weiland Road	*671	*671
			About 300 feet upstream of Copperwood Drive	*678	*675
			Just upstream of Busch Parkway	*679	*679

Maps available for inspection at the Engineering Department, 51 Raupp Boulevard, Buffalo Grove, Illinois.

Send comments to The Honorable William R. Balling, Village Manager, Village of Buffalo Grove, 51 Raupp Boulevard, Buffalo Grove, Illinois 60090.

Massachusetts	Fitchburg, City, Worcester County.	North Nashua River	At downstream corporate limits	*332	*333
			Approximately 1,300 feet upstream of corporate limits.	*334	*335

Maps available for inspection at the Conservation Commission and the Planning Office, Second Floor, City Hall, 718 Main Street, Fitchburg, Massachusetts.

Send comments to The Honorable Ronald B. Ingemie, Acting Mayor of the City of Fitchburg, Worcester County, 718 Main Street, Fitchburg, Massachusetts 01420.

Massachusetts	Leominster, City Worcester County.	North Nashua River	Approximately 350 feet upstream of Hamilton Street.	*330	*331
			At upstream corporate limits	*332	*333
			Approximately 350 feet upstream of corporate limits.	*332	*334

Maps available for inspection at the City Hall, 25 West Street, Leominster, Massachusetts.

Send comments to The Honorable Steven A. Perla, Mayor of the City of Leominster, Worcester County, City Hall, 25 West Street, Leominster, Massachusetts 01453.

Massachusetts	North Reading, town, Middlesex County.	Martins Brook	At most upstream corporate limits	*78	*82
			Upstream side of Burroughs Road	*80	*83

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Martins Pond	Entire shoreline	*80	*83
		Skug River	At confluence with Martins Pond	*80	*83
			Upstream side of Central Street	*82	*83

Maps available for inspection at the Town Hall, Park Street, North Reading, Massachusetts.

Send comments to The Honorable Hartnell Bartlett, Chairman of the Board of Selectmen for the Town of North Reading, Town Hall, Park Street, North Reading, Massachusetts 01864.

Michigan	City of Midland, Midland and Bay Counties.	Snake Creek	Just upstream of Eastman Road	*616	*616
			About 600 feet upstream of Sugnet Road	*617	*618
			Just upstream of East Wackerly Road	None	*636

Maps available for inspection at the City Hall, City Clerk's Office, 202 Ashman Street, Midland, Michigan.

Send comments to The Honorable Joseph R. Mann, Mayor, City of Midland, Midland City Hall, 202 Ashman Street, Midland, Michigan 48640

Michigan	City of Vassar, Tuscola County.	Cass River	About 1000 feet downstream of Chesapeake and Ohio Railway.	None	*634
			Just upstream of Tuscola and Saginaw Bay Railway Company.	*634	*638
			About 1.1 miles upstream of Tuscola and Saginaw Bay Railway Company.	*636	*640

Maps available for inspection at the City Hall, 287 East Huron Avenue, Vassar, Michigan.

Send comments to The Honorable Lloyd Vonk, Mayor, City of Vassar, 287 East Huron Avenue, Vassar, Michigan 48768.

Mississippi	City of Ellisville, Jones County.	Basie Branch	About 1,760 feet downstream of State Highway 29.	None	*211
			About 880 feet upstream of State Highway 29	None	*224
		Little Rocky Creek	About 0.9 mile downstream of Norfolk Southern Railway.	None	*198
			About 0.9 mile upstream of U.S. Highway 11	None	*213
		Rocky Creek	About 3,800 feet downstream of Norfolk Southern Railway.	None	*200
			About 3,000 feet downstream of Norfolk Southern Railway.	*201	*200
			About 2,400 feet upstream of U.S. Highway 11	*207	*207
		Rocky Creek Tributary 2	At mouth	*207	*207
			Just downstream of Dubose Street	*213	*208
			Just upstream of Pettis Street	*219	*216

Maps available for inspection at the City Hall, 110 Court Street, Ellisville, Mississippi.

Send comments to The Honorable Howard W. Laird, Mayor, City of Ellisville, City Hall, 110 Court Street, Ellisville, Mississippi 39437.

Mississippi	City of Jackson, Hinds and Rankin Counties.	Purple Creek	About 0.4 mile upstream of Sedgewick Road	*281	*281
			Just upstream of Woodfield Drive	*303	*296
			Just downstream of County Line Road	*308	*303

Maps available for inspection at the Planning Department, 200 South President's Street, Jackson, Mississippi.

Send comments to The Honorable Dale Danks, Jr., Mayor, City of Jackson, 219 South President's Street, Jackson, Mississippi 39205

Missouri	City of Elsberry, Lincoln County.	Mississippi River	Within community	*456	*450

Maps available for inspection at the City Hall, 201 Broadway Avenue, Elsberry, Missouri.

Send comments to The Honorable William B. Waggoner, Mayor, City of Elsberry, City Hall, 201 Broadway Avenue, Elsberry, Missouri 63343

Nevada	City of Carson City (Independent City)	H-Tributary	Approximately 1,300 feet upstream of East 5th Street.	*4,631	*4,631
			Approximately 3,000 feet upstream of East 5th Street.	*4,634	*4,634
			Approximately 3,800 feet upstream of East 5th Street.	*4,636	*4,637
			Approximately 4,200 feet upstream of East 5th Street.	*4,637	*4,637
			At the intersection of Spartan and Cardinal Way.	*4,639	*4,639
		Saliman Road Tributary	Approximately 250 feet downstream of Railroad Drive.	*4,639	*4,639
			Approximately 200 feet downstream of Railroad Drive.	*4,645	*4,645
			At Crown Drive	*4,650	*4,651
			Approximately 100 feet upstream of Fairview Drive.	*4,654	*4,657
			Approximately 500 feet upstream of Fairview Drive.	*4,658	*4,660
			Approximately 850 feet upstream of Fairview Drive.	*4,661	*4,663
			Approximately 1,000 feet upstream of Fairview Drive.	*4,663	*4,664
			Approximately 200 feet upstream of Colorado and Saliman Road intersection.	*4,668	*4,668

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 300 feet downstream of Shady Oak and Saliman Road intersection.	*4,673	*4,673
			Approximately 280 feet upstream of Shady Oak and Saliman Road intersection.	*4,678	*4,676
			Approximately 300 feet downstream of Sonoma Street and Saliman Road intersection.	*4,683	*4,682
			Upstream of Stonewall Street	*4,688	*4,688
			Approximately 1,150 feet downstream of Koontz Lane and Saliman Road intersection.	*4,693	*4,694
			Approximately 150 feet downstream of Koontz Lane and Saliman Road intersection.	*4,698	*4,699
			Downstream of Valley View Drive	*4,702	*4,703
			At the intersection of Clearview Drive and Hillview Drive.	*4,708	*4,707
			Approximately 700 feet upstream of intersection of Clearview Drive and Hillview Drive.	*4,711	*4,709
			Approximately 150 feet downstream of Appian Way and Bigelow Drive intersection.	*4,713	*4,711
			Approximately 200 feet downstream of Ronald Street and Center Drive intersection.	*4,716	*4,715
			Approximately 100 feet upstream of Center Drive and Ronald Street intersection.	(1)	*4,716
			Approximately 250 feet downstream of Silver Sage Drive.	(1)	*4,717
			Approximately 50 feet upstream of Silver Sage Drive.	(1)	*4,721
			Approximately 50 feet downstream of California Street.	(1)	*4,727
			Approximately 180 feet upstream of California Street.	(1)	*4,732
			Approximately 380 feet upstream of California Street.	(1)	*4,736
			Just downstream of Oak Street	(1)	*4,740
			Approximately 500 feet upstream of Oak Street	(1)	*4,742
Maps are available for inspection at the Carson City Public Works Department, 2621 Northgate Lane, Suite 59, Carson City, Nevada 98701. Send comments to The Honorable Dan Flamer, Mayor City of Carson City, 2621 Northgage Lane, Room 2, Carson City, Nevada 98701					
New Jersey	Franklin, township, Somerset County.	Seeley's Brook	At confluence with Raritan River	None	*20
			At confluence of Tributary B	None	*48
			Approximately 1,410 feet upstream of John F. Kennedy Boulevard.	None	*63
		Tributary A	At confluence with Seeley's Brook	None	*28
			Approximately 60 feet upstream of Winston Drive.	None	*54
		Tributary B	At confluence with Seeley's Brook	None	*48
			Approximately 60 feet upstream of Layne Road	None	*58
Maps available for inspection at the Municipal Building, 475 DeMott Lane, Somerset, New Jersey. Send comments to The Honorable Joseph Martino, Mayor of the Township of Franklin, Somerset County, 475 DeMott Lane, Somerset, New Jersey 08873.					
New Jersey	Greenwich, township, Gloucester County.	Delaware River	Delaware River at downstream corporate limits	*15	*10
			Delaware River at upstream corporate limits	*15	*10
			Repaupo Creek at confluence with Pargey Creek.	*12	*10
			Repaupo Creek at confluence with Delaware River.	*13	*10
			Pargey Creek, approximately 200 feet downstream of Interstate 295.	*12	*10
			Pargey Creek at confluence with Repaupo Creek.	*12	*10
			White Sluice Race at confluence of Still Run	*11	*10
			White Sluice Race at confluence with Aunt Debs Ditch.	*13	*10
			London Branch, approximately 50 feet downstream of Interstate 295.	*11	*10
			London Branch at confluence with White Sluice Race.	*11	*10
			Still Run, approximately 50 feet downstream of Interstate 295.	*11	*10
			Still Run at confluence with White Sluice Race	*11	*10
			Nehonsey Creek at confluence of Sandy Ditch	*12	*10
			Nehonsey Creek at confluence with White Sluice Race.	*12	*10
			Sand Ditch at confluence of Nehonsey Branch	*12	*10
			Sand Ditch at confluence with Aunt Debs Ditch	*13	*10

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Nehonsey Brook, approximately 50 feet downstream of Interstate 295.	*11	*10
			Nehonsey Brook at confluence with Sand Ditch	*12	*10
			Clonmell Creek, approximately 50 feet downstream of CONRAIL Railroad.	*11	*10
			Clonmell Creek, approximately 1,600 feet upstream of confluence with Delaware River.	*11	*10
Maps available for inspection at the Municipal Building, Washington and Walnut Streets, Gibbstown, New Jersey.					
Send comments to The Honorable Richard T. Jenkins, Mayor of the Township of Greenwich, Gloucester County, Washington and Walnut Streets, Gibbstown, New Jersey 08027.					
New Jersey	West Milford, township, Passaic County.	Pequannock River	1.9 miles downstream of CONRAIL Bridge just upstream of Charlotteburg Reservoir.	None	*744
			Approximately 300 feet downstream of Oak Ridge Reservoir Dam.	None	*803
			At Oak Ridge Reservoir Dam	None	*846
Maps available for inspection at the Engineering Department, 30 Marhill Road, West Milford, New Jersey.					
Send comments to The Honorable Stewart C. Perry, Mayor of the Township of West Milford, Passaic County, 1480 Union Valley Road, West Milford, New Jersey 07480.					
New York	Wheatfield, town, Niagara County.	Niagara River	At downstream corporate limits	None	*569
			At upstream corporate limits	None	*570
Maps available for inspection at the Building Inspector's Department, Town Hall, North Tonawanda, New York.					
Send comments to The Honorable Terry W. Kuehn, Supervisor of the Town of Wheatfield, Niagara County, 2800 Church Road, North Tonawanda, New York 14120.					
Ohio	City of Shaker Heights, Cuyahoga County.	Kingsbury Run	Just downstream of Colwin Road	None	*945
			Just downstream of Scottsdale Boulevard	None	*1,040
Maps available for inspection at the City Hall, 3400 Lee Road, Shaker Heights, Ohio.					
Send comments to The Honorable Stephen J. Alfred, Mayor, City of Shaker Heights, City Hall, 3400 Lee Road, Shaker Heights, Ohio 44120.					
Oregon	City of North Plains, Washington County.	Unnamed Tributary	At the confluence of McKay Creek	None	*169
			Just upstream of Glencoe Road	None	*171
			At Pacific Avenue	None	*172
			Approximately 200 feet down-stream of Ninth Street.	None	*174
			Approximately 100 feet upstream of Commercial Avenue.	None	*176
			Approximately 80 feet downstream of City Corporate limit.	None	*180
Maps available for inspection at the City Hall, 440 Commercial Avenue, North Plains, Oregon 97133.					
Send comments to The Honorable Robert Kindle, Jr., Mayor, City of North Plains, P.O. Box 537, North Plains, Oregon 97133.					
Pennsylvania	Athens, borough, Bradford County.	Susquehanna River	Downstream corporate limits	*755	*753
			Upstream corporate limits	*763	*764
		Chemung River	Downstream corporate limits	*755	*753
			Upstream corporate limits	*769	*768
Maps available for inspection at the Borough Manager's Office, 2 South River Street, Athens, Pennsylvania.					
Send comments to The Honorable Kenneth Meade, Mayor of the Borough of Athens, Bradford County, 709 South Main Street, Athens, Pennsylvania 18810.					
Pennsylvania	South Fayette, township, Allegheny County.	Chartiers Creek	Approximately 2,300 feet downstream of Mayview Road.	*837	*838
			Approximately 3,400 feet downstream of Mayview Road.	*836	*837
Maps available for inspection at the Municipal Building, Millers Run Road, Morgan, Pennsylvania 15064.					
Send comments to The Honorable Richard A. Kasmer, Manager of the Township of South Fayette, Allegheny County, Drawer 515, Morgan, Pennsylvania 15064.					
South Carolina	Unincorporated areas of Lexington County.	Congaree Creek	Just downstream of Interstate 26	*142	*142
			Just downstream of Norfolk Southern Railway	*152	*146
			Approximately 3.1 miles upstream of Norfolk Southern Railway.	*167	*163
Maps available for inspection at the Department of Planning and Development, 212 South Lake Drive, Lexington, South Carolina.					
Send comments to The Honorable Gordon Hartwig, County Administrator, Lexington County, 212 South Lake Drive, Lexington, South Carolina 29072.					
South Carolina	Town of Pine Ridge, Lexington County.	Congaree Creek	Approximately 1.6 miles downstream of Norfolk Southern Railroad.	*147	*142
			Just downstream of Norfolk Southern Railroad	*152	*147
Maps available for inspection at the Town Hall, 1015 Fish Hatchery Road, West Columbia, South Carolina.					
Send comments to The Honorable Marvin Watson, Mayor, Town of Pine Ridge, 1015 Fish Hatchery Road, West Columbia, South Carolina 29169.					
South Carolina	Town of South Congaree, Lexington County.	Congaree Creek	Just downstream of confluence of First Creek	*154	*150
			Just upstream of Pine Street	*160	156

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 1.7 miles upstream of Pine Street.	*167	*163
		First Creek	At mouth	*154	*151
			Approximately 1,500 feet upstream of mouth	*154	*154

Maps available for inspection at the Town Hall Office, 1633 Berry Road, South Congaree, South Carolina.
Send comments to The Honorable Andrew Gambrell, Mayor, Town of South Congaree, 1633 Berry Road, South Congaree, South Carolina 29169.

Texas	Balch Springs, city, Dallas County.	South Mesquite Creek	At downstream corporate limits	*425	*428
			At upstream corporate limits	*428	*429
		Stream 2B2	Approximately 1,000 feet downstream of I-635 Service Road.	None	*434
			Approximately 100 feet downstream of I-635 Service Road.	None	*439

Maps available for inspection at the Public Works Department, City Hall, 3117 Hickory Tree Road, Balch Springs, Texas 75180.
Send comments to The Honorable Walter J. Gorzinski, Mayor of the City of Balch Springs, Dallas County, 3117 Hickory Tree Road, Balch Springs, Texas 75180.

Texas	Bandera, city, Bandera County.	Medina River	Approximately 0.9 mile downstream of State Route 173.	None	*1,218
			Approximately 0.4 mile upstream of Sixth Street Extension.	1,244	*1,252

Maps available for inspection at the City Hall, 503 Main Street, Bandera, Texas.
Send comments to The Honorable Raymond Adamite, Mayor of the City of Bandera, P.O. Box 896, Bandera, Texas 78003.

Texas	Cleburne, city, Johnson County.	West Buffalo	Approximately 340 feet downstream of Country Club Road.	*739	*740
			At Poindexter Avenue	*775	*773
			Approximately 2.46 miles upstream of Poindexter Avenue.	None	*811

Maps available for inspection at the Department of Public Works, 302 West Henderson Street, Cleburne, Texas.
Send comments to The Honorable J.T Bass, Mayor of the City of Cleburne, 302 West Henderson Street, P.O. Box 657, Cleburne, Texas 76031.

Texas	Clute, city, Brazoria County.	Gulf of Mexico	Flooding of Oyster Creek at eastern portion of corporate limits (1,000 feet east of intersection of County Routes 503 and 251).	*11	*10
		Oyster Creek	Approximately 0.5 mile north of point where County Route 226 crosses the eastern corporate limits.	*14	*11
			Approximately 300 feet north of intersection of Kyle Road and County Route 749.	*14	*13
			Approximately 1,000 feet north of County Route 286 along Oyster Creek.	*15	*14
			At downstream side of County Route 288	*17	*15

Maps available for inspection at the City Hall, 104 East Main, Clute, Texas.
Send comments to The Honorable Jerry Adkins, Mayor of the City of Clute, Brazoria County, P.O. Box 997, Clute, Texas 77531.

Texas	Mesquite, city, Dallas County.	South Mesquite Creek	From approximately 2,525 feet upstream of Pioneer Road.	*422	*423
			To approximately 400 feet downstream of New Market Road.	*435	*436

Maps available for inspection at the Municipal Building, 711 N. Galloway, Mesquite, Texas 75149.
Send comments to The Honorable George Venner, Sr., Mayor of the City of Mesquite, Dallas County, P.O. Box 137, Mesquite, Texas 75149.

Texas	Richwood, city, Brazoria County.	Oyster Creek	At downstream corporate limits	*15	*13
			At upstream corporate limits	*16	*15

Maps available for inspection at the City Hall, 215 Halbert Street, Richwood, Texas.
Send comments to The Honorable Tommy Jones, Mayor of the City of Richwood, Brazoria County, 215 Halbert Street, Richwood, Texas 77531

Virginia	Prince William County	Bull Run	Approximately 2,000 feet downstream of confluence with Bull Run Tributary D.	*170	*169
			Approximately 650 feet downstream of Interstate Highway 66.	*174	*171
			Approximately 65 feet upstream of Interstate Highway 66.	*176	*175
		Bull Run Tributary D	Approximately 2,700 feet upstream of confluence with Bull Run.	*170	*169

Maps available for inspection at the Department of Development Administration, 1 County Complex Court, Prince William County, Virginia.
Send comments to The Honorable Robert Noe, Prince William County Executive, 1 County Complex Court, Prince William, Virginia 22192.

West Virginia	Raleigh County, unincorporated areas.	Soak Creek	Confluence with Piney Creek	None	*2,263
			Approximately 1.3 miles upstream of Church Street..	None	2,357

Maps available for inspection at the County Commission Offices, 116½ N. Heber Street, Beckley, West Virginia.
Send comments to The Honorable Vernon Barley, President of the Raleigh County Commission, Raleigh County Courthouse, P.O. Box A.N., Beckley, West Virginia 25802.

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Wisconsin	Unincorporated areas of Sheboygan County.	Fisherman's Creek	At confluence with Black River	*584	*584
			About 870 feet upstream of U.S. Highway 141	None	*636

Maps available for inspection at the Planning Department, 615 North Sixth Street, Sheboygan, Wisconsin.

Send comments to The Honorable Harold Lindemann, Chairman, Sheboygan County Board, 615 North Sixth Street, Sheboygan, Wisconsin 53081

[1] Approximate Zone A.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: June 7, 1988.

[FR Doc. 88-13590 Filed 6-15-88; 8:45 am]

BILLING CODE 6718-21-M

COMMISSION ON CIVIL RIGHTS

45 CFR Part 707

Enforcement of Nondiscrimination on the Basis of Handicap in Programs and Activities Conducted by the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation provides for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs or activities conducted by the U.S. Commission on Civil Rights.

DATES: To be assured of consideration, comments must be in writing and must be received on or before August 15, 1988.

ADDRESSES: Comments should be sent to: General Counsel, U.S. Commission on Civil Rights, 1121 Vermont Avenue NW., Washington, DC 20425.

Comments received will be available for public inspection at The Robert S. Rankin National Civil Rights Library, Room 709, 1121 Vermont Avenue NW., Washington, DC 20425.

Copies of this notice are available on tape for those with impaired vision or other physical handicaps. They may be obtained at the above address.

FOR FURTHER INFORMATION CONTACT: William J. Howard, General Counsel, (202) 376-8351, TDD (202) 376-2683.

SUPPLEMENTARY INFORMATION:

Background

The purpose of this proposed rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the U.S. Commission on Civil Rights.

As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Section 119, Pub. L. 95-602, 92 Stat. 2982), and the Rehabilitation Act Amendments of 1986 (Pub. L. 99-506, 100 Stat. 1810), section 504 of the Rehabilitation Act of 1973 states that—

> No otherwise qualified individual with handicaps in the United States, * * * shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*
>
> (29 U.S.C. 794) (1978 amendment italicized)

The substantive nondiscrimination obligations of the agency as set forth in this proposed rule are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. *See* 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) id.; 124 Cong. Rec. 13897 (remarks of Rep. Brademas); id. at 38552 (remarks of Rep. Sarasin).

There are, however, some language differences between this proposed rule and the Federal Government's section 504 regulations for federally assisted programs. These changes are based on the Supreme Court's decision in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting *Davis* and section 504. *See Dopico* v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis*, 655 F.2d 1272 (D.C. Cir. 1981) (APTA); *see also Rhode Island Handicapped Action Committee* v. *Rhode Island Public Transit Authority*, 718 F.2d 490 (1st Cir. 1983).

These language differences are also supported by the decision of the Supreme Court in *Alexander* v. *Choate*, 469 U.S. 287 (1985), where the Court held that the regulations for federally assisted programs did not require a recipient to modify its durational limitation on Medicaid coverage of inpatient hospital care for individuals with handicaps. Clarifying its *Davis* decision, the Court explained that section 504 requires only "reasonable" modifications, id. at 300, and explicitly noted that "[t]he regulations implementing section 504 [for federally assisted programs] are consistent with the view that *reasonable* adjustments in the nature of the benefit offered must at times be made to assure meaningful access." *Id.* at 301 n. 21 (emphasis added).

Incorporation of these changes, therefore, makes this regulation implementing section 504 for federally conducted programs consistent with the Federal government's regulations implementing section 504 for federally assisted programs as they have been interpreted by the Supreme Court. Many of these federally assisted regulations were issued prior to the interpretations of section 504 by the Supreme Court in

Davis, by lower courts interpreting *Davis*, and by the Supreme Court in *Alexander*; therefore their language does not reflect the interpretation of section 504 provided by the Supreme Court and by the various circuit courts. Of course, these federally assisted regulations must be interpreted to reflect the holdings of the Federal judiciary. Hence the Commission believes that there are no significant differences between this proposed rule for federally conducted programs and the Federal government's interpretation of section 504 regulations for federally assisted programs.

This regulation has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298) and distributed to Executive agencies.

This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206).

The regulation applies section 504's nondiscrimination mandate to the specific types of programs and activities conducted by the Commission.

The Commission has incorporated the language suggested to Federal agencies by the Equal Employment Opportunity Commission in its letter dated October 19, 1983, to clarify the prototype provisions regarding employment discrimination. The substitute wording incorporates the definitions, requirements, and procedures promulgated by EEOC under section 501 of the Rehabilitation Act to apply to Federal employment discrimination under section 504.

This regulation is not a major rule within the meaning of Executive Order No. 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared. This regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

Section-by-Section Analysis

Section 707.1 Purpose.

Section 707.1 states the purpose of the proposed rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agences or the United States Postal Service.

Section 707.2 Application.

The proposed regulation applies to all programs or activities conducted by the agency, including activities of the Commission's State Advisory Committees.

Section 707.3 Definitions.

(a) "Agency." For purposes of this regulation "agency" means the U.S. Commission on Civil Rights and its State Advisory Committees.

(b) "Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 707.10, they may also be necessary to meet other requirements of the regulation.

(c) "Complete complaint." "Complete complaint" is defined to include all the information necessary to enable the agency to investigate the complaint. The definition is necessary, because the 180 day period for the agency's investigation (*see* § 707.12(d)) begins when it receives a complete complaint.

(d) "Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs, 28 CFR 41.3(f). The definition includes vehicles rather than "rolling stock" as used in the prototype because the agency does not have any rolling stock.

(e) "Individual with handicaps." The definition of "individual with handicaps" is identical to the definition of "handicapped person" appearing in the section 504 coordination regulation for federally assisted programs, 28 CFR 41.31. Although section 103(d) of the Rehabilitation Act Amendments of 1986 changed the statutory term "handicapped individual" to "individual with handicaps," the legislative history of this amendment indicates that no substantive change was intended. Thus, although the term has been changed in this regulation to be consistent with the statute as amended, the definition is unchanged. In particular, although the term as revised refers to "handicaps" in the plural, it does not exclude persons who have only one handicap.

(f) "Qualified individual with handicaps." The definition of "qualified individual with handicaps" is a revised version of the definition of "qualified handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32). With respect to agency employment practices, the proposed regulation incorporates the definition of "qualified individual with handicaps" contained in the Equal Employment Opportunity Commission's regulations (29 CFR Part 1613) implementing section 501 of the Rehabilitation Act of 1973, as amended. Nothing in this part changes existing regulations applicable to employment.

For other purposes the definition of "qualified individual with handicaps" has two parts. Paragraph (1) deviates from existing regulations for federally assisted programs because of intervening court decisions. It defines "qualified individual with handicaps" with regard to any program under which a person is required to perform services or to achieve a level of accomplishment. In such programs a qualified individual with handicaps is one who can achieve the purpose of the program without modifications in the program that the agency can demonstrate would result in a fundamental alteration in its nature.

This definition reflects the decision of the Supreme Court in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979). In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified individual with handicaps" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.* at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

The agency has incorporated the Court's language in the definition of "qualified individual with handicaps" in order to make clear that such a person must be able to participate in the program offered by the agency. The agency is required to make modifications in order to enable an applicant with handicaps to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve

the purpose of the program offered, not whether the applicant could benefit or obtain results from some other program that the agency does not offer. Although the revised definition allows exclusion of some individuals with handicaps from some programs, it requires that an individual with handicaps who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

The agency has the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in demonstrating that a modification would result in such an alteration, the agency must follow the procedures established in paragraph 707.8(b)(2)(ii), paragraph 707.8(c) and paragraph 707.9(e) which are discussed below, for demonstrating that an action would result in undue financial and administrative burdens. That is, the decision must be made by the agency head or his or her designee in writing after consideration of all resources available for the program or activity and must be accompanied by an explanation of the reasons for the decision. If the agency head determines that an action would result in a fundamental alteration, the agency must consider options that would enable the individual with handicaps to achieve the purpose of the program but would not result in such an alteration.

The second definition of qualified individual with handicaps adopts the existing definition of "qualified individual with handicaps" with respect to services (28 CFR 41.32(b)) in the coordination regulation for programs receiving Federal financial assistance. Under this definition, a qualified individual with handicaps is an individual with handicaps who meets the essential eligibility requirements for participation in the program or activity. This definition applies to the many Commission activities, such as hearings, open meetings, and press conferences, that are intended to be open to the public and for which there are no explicit eligibility or selection criteria for attendance.

Paragraph (3) has been included to make clear that "qualified individual with handicaps" is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 707.7. Nothing in this part changes existing regulations applicable to employment.

(g) "Section 504." This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the agency. The agency does not have authority to operate programs and activities providing Federal financial assistance to outside recipients.

Section 707.4 Self-evaluation and remedial measures.

The agency shall conduct a self-evaluation of its compliance with section 504 within 1 year of the effective date of this regulation. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance. (28 CFR 41.5(b)(2)). Experience under that requirement has demonstrated the self-evaluation process to be a valuable means for establishing a working relationship with individuals with handicaps that promotes effective and efficient implementation of section 504.

Section 707.5 Notice.

Section 707.5 requires the agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

This section also contains the general notice provisions located in the prototype in the Communications section (section 160). These requirements are located in this section to consolidate all provisions relating to notice requirements in one section. Paragraphs (b) and (c) require that interested persons be able to obtain information about accessible services, activities and facilities, and that they be provided with information about their section 504 rights.

Section 707.6 General prohibitions against discrimination.

Section 707.6 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 707.6 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. Whenever the agency has violated a provision in any of the subsequent sections, it has also violated one of the general prohibitions found in § 707.6. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of individuals with handicaps. The agency may not refuse to provide an individual with handicaps with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (*e.g.*, epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question. It would be permissible, therefore, to exclude without an individual evaluation all persons who are blind in both eyes from eligibility for a license to operate a commercial vehicle in interstate commerce; but it may not be permissible to automatically disqualify all those who are blind in just one eye.

Section 504, however, prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Paragraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to an individual with handicaps be as effective as that afforded to others. The later sections on physical access (§ 707.8) and access to communications (§ 707.9) are specific applications of this principle.

Despite the mandate of paragraph (d) that the agency administer its programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, paragraph (b)(1)(iv), in conjunction with paragraph (d), permits the agency to develop separate or different aids, benefits, or services when necessary to provide individuals with handicaps with an equal opportunity to participate in or benefit from the agency's programs or activities. Paragraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids,

benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified individual with handicaps still has the right to choose to participate in the program that is not designed to accommodate individuals with handicaps.

Paragraph (b)(1)(v) prohibits the agency from denying a qualified individual with handicaps the opportunity to participate as a member of a planning or advisory board or committee.

Paragraph (b)(1)(vi) prohibits the agency from limiting a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the agency from utilizing criteria or methods of administration that deny individuals with handicaps access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and the actual practices of the agency. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny individuals with handicaps an effective opportunity to participate. Discriminatory qualifications and selection criteria are addressed more specifically in § 707.11. Paragraph (b)(3)(ii) specifically prohibits the agency from defeating or substantially impairing the accomplishment of the objectives of a program or activity with respect to individuals with handicaps. This section appears in existing section 504 regulations for federally assisted programs. [*See, e.g.*, 28 CFR 41.51(b)(3)(ii)].

Paragraph (b)(4) specifically applies the prohibition enunciated in § 707.6(b)(3) to the process of selecting sites for hearings or other activities, or for the construction of new facilities to be used by the agency. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(5) prohibits the agency in the selection of procurement contractors from using criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive order that are designed to benefit only individuals with handicaps or a given class of individuals with handicaps may be limited to those individuals with handicaps.

Paragraph (d) provides that the agency must administer its programs and activities in the most integrated setting which is appropriate to the needs of qualified individuals with handicaps, i.e., in a setting that enables individuals with handicaps to interact with nonhandicapped persons to the fullest extent possible.

Section 707.7 Employment.

Section 707.7 prohibits discrimination on the basis of handicap in employment by the agency. Courts have held that section 504, as amended in 1978, covers the employment practices of Executive agencies. *Gardner* v. *Morris*, 752 F.2d 1271, 1277 (9th Cir. 1985); *Smith* v. *United States Postal Service*, 742 F.2d 257, 259–260 (6th Cir. 1984); *Prewitt* v. *United States Postal Service*, 662 F.2d 292, 302–04 (5th Cir. 1981). *Contra McGuiness* v. *U.S. Postal Service*, 744 F.2d 1318, 1320–21 (7th Cir. 1984); *Boyd* v. *United States Postal Service*, 752 F.2d 410, 413–14 (9th Cir. 1985).

Courts uniformly have held that, in order to give effect to section 501 of the Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504. *Smith*, 742 F.2d at 262; *Prewitt*, 662 F.2d at 304.

Accordingly, § 707.7 (Employment) of this rule adopts the definitions, requirements, and procedures of section 501 as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR 1978 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap. In addition to this section, § 707.12(b) specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination.

Section 707.8 Physical Access.

This section includes the general nondiscrimination principle (paragraph (a)) underlying the accessibility requirements for existing facilities (paragraph (b)), for new purchases, leases or other arrangements (paragraph (c)), and for new construction and alterations (paragraph (d)). With respect to existing facilities, defined by paragraph (b)(1) to be those owned, leased or used through some other arrangement by the agency on the effective date of the regulation, the regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.56–.58), with certain modifications. Thus, § 707.8(b) requires that each agency program or activity, when viewed in its entirety, be readily accessible to and usable by individuals with handicaps. The proposed regulation also makes clear that the agency is not required to make each of its existing facilities accessible (§ 707.8(b)(2)). However, § 707.8, unlike 28 CFR 41.56–.57, places explicit limits on the agency's obligation to ensure program accessibility (§ 707.8(b)(2)).

Paragraph (b)(2)(ii) generally codifies recent case law that defines the scope of the agency's obligation to ensure program accessibility. This paragraph provides that in meeting the program accessibility requirement the agency is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in § 707.8(c), regarding new purchases, leases or other arrangements and in § 707.9(e), regarding access to communications. This provision is based on the Supreme Court's holding in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. *See, e.g., Dopico* v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis* (*APTA*), 655 F.2d 1272 (D.C. Cir. 1981).

This interpretation is also supported by the Supreme Court's recent decision in *Alexander* v. *Choate*, 469 U.S. 287 (1985). *Alexander* involved a challenge to the State of Tennessee's reduction of inpatient hospital care coverage under Medicaid from 20 to 14 days per year. Plaintiffs argued that this reduction violated section 504 because it had an adverse impact on individuals with handicaps. The Court assumed without deciding that section 504 reaches at least some conduct that has an

unjustifiable disparate impact on individuals with handicaps, but held that the reduction was not "the sort of disparate impact discrimination" that might be prohibited by section 504 or its implementing regulation. *Id.* at 299.

Relying on *Davis*, the court said that section 504 guarantees qualified individuals with handicaps "meaningful access to the benefits that the grantee offers," *id.* at 301, and that "*reasonable adjustments* in the nature of the benefit being offered must at times be made to assure meaningful access." *Id.* at n. 21 (emphasis added). However, section 504 does not require " 'changes,' 'adjustments,' or 'modifications' to existing programs that would be 'substantial' * * * or that would constitute 'fundamental alteration(s) in the nature of a program' " *Id.* at n. 20 (citations omitted). *Alexander* supports the position, based on *Davis* and the earlier, lower court decisions, that in some situations, certain modifications for an individual with handicaps may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. Thus failure to include such an "undue burdens, provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

This paragraph, however, does not establish an absolute defense; it does not relieve the agency of all obligations to individuals with handicaps. Although the agency is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that individuals with handicaps receive the benefits and services of the federally conducted program or activity.

It is our view that compliance with § 707.8(b) or § 707.8(c) would in most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 707.8(b) or § 707.8(c) would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedures established in § 707.12.

Paragraph (b)(3) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the agency shall give priority consideration to those that will provide services in the most integrated setting appropriate to the needs of individuals with handicaps. Structural changes in existing facilities are required only when there is no other feasible way to make the agency's program accessible. It should be noted that "structural changes" include all physical changes to a facility; the term does not refer only to changes to structural features, such as removal of or alterations to a load-bearing structural member. Paragraph (b)(3)(ii) makes clear that while the agency is not necessarily required to make structural changes under this proposed regulation, any structural changes it does make shall comply with the Architectural Barriers Act of 1968, as amended, and implementing regulations.

Paragraphs (b)(4) and (b)(5) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency must make any necessary structural changes in facilities as soon as practicable, but in no event later than 3 years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within 6 months of the effective date of this regulation. Aside from structural changes, all other necessary steps within the agency's control to achieve compliance shall be taken within 60 days.

Paragraph (c) specifies the requirement that whenever the agency acquires an already constructed facility after the effective date of the regulation, that facility must be readily accessible to and usable by individuals with handicaps. This requirement applies to the many facilities the Commission leases for hearings, consultations and State Advisory Committee meetings, and applies regardless of the manner in which the Commission acquires the facility—whether through lease, purchase, loan, or any other arrangement. Paragraph (c) contains an undue burdens defense that is identical to the one found in § 707.8(b)(2)(ii).

Under regulations published thus far by other Executive agencies, facilities acquired after the effective date of the regulation are required to meet the program accessibility standard for existing facilities as enunciated in § 707.8(b)(2). Because the proposed rule differs from regulations issued by other agencies by establishing a separate standard for newly acquired facilities, we specifically urge comment on paragraph (c).

Paragraph (d), New Construction and Alterations, specifies the requirements applicable to facilities which the Commission causes to be constructed or altered. Overlapping coverage exists with respect to new construction under section 504, section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 707.8(d) provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by individuals with handicaps in accordance with the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157) as implemented by 41 CFR 101–19.600 to 101–19.607. The Commission adopts the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the agency after the effective date of this regulation are not required by the regulation to meet accessibility standards simply by virtue of being leased. They are subject, however, to the program accessibility standard for existing facilities in § 707.8(b). To the extent the buildings are newly constructed or altered, they must also meet the new construction and alteration requirements of § 707.8(d).

Federal practice under section 504 has always treated newly leased buildings as subject to the existing facility program accessibility standard. Unlike the construction of new buildings where architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility, and the agency believes the same program

accessibility standard should apply to both owned and leased existing buildings.

In *Rose* v. *United States Postal Service*, 774 F.2d 1355 (9th Cir. 1985), the Ninth Circuit held that the Architectural Barriers Act requires accessibility at the time of lease. The *Rose* court did not address the issue of whether section 504 likewise requires accessibility as a condition of lease, and the case was remanded to the District Court for, among other things, consideration of that issue. The agency may provide more specific guidance on section 504 requirements for leased buildings after the litigation is completed.

Section 707.9 Access to communications.

The concept of communication accessibility, contained in the prototype, but not found in the section 504 Federal financial assistance coordination regulation, is particularly important to the ability of the Commission to fulfill its mandate. The agency's mandate includes acting as a national clearinghouse on civil rights issues (Pub. L. 98–183, section 5(a)(4), 97 Stat. 1301), studying and collecting information concerning civil rights legal developments (*id.*, section 5(a)(2)), appraising the civil rights efforts of the Federal Government (*id.*, section 5(a)(3)), and informing Congress and the President of the agency's findings and recommendations (*id.*, section 5(c)). Because the agency's essential mission is to provide and disseminate information, it is especially important that the agency act to eliminate communications barriers.

Paragraph (a) of § 707.9 contains a general prohibition against discrimination in communications which is parallel to the general prohibition found in the physical access section (§ 707.8(a)). Paragraph (b) requires the agency to take appropriate steps to ensure effective communication. Succeeding paragraphs contain requirements to implement the general prohibition and identify some specific steps which the agency is required to take. The identification in succeeding paragraphs of steps which the agency must take does not imply that other steps are not required by these more general provisions. For example, if the agency provides phones for public use (such as pay phones in the lobby of a building), it is required to direct telephone service providers to provide at least one telephone equipped with a handset amplifier and compatible with hearing aids.

Paragraph (c) requires that oral communications, whether by telephone or in person, be made available in an alternate mode. At least one reliably answered telecommunication device for deaf persons (TDD) is required at headquarters and in each regional office, as is wide dissemination of the TDD number. Paragraph (c)(2) requires the establishment of a system through which the agency can provide interpreters on reasonable notice of the need for them and also requires that the availability of interpreter service be made known. The regulation does not require that the agency have an interpreter on staff. Rather, the agency must be able to provide the interpreter(s) after a qualified individuals with handicaps notifies the agency of the need for an interpreter.

Paragraph (d) requires that written communications be made available in alternate modes. Like the paragraph on the system to enable the agency to provide an interpreter when the need arises, this paragraph requires that the agency establish a system by which it can meet the need for alternate forms of printed matter when the need arises. Notice is required to be given that reader or taping service is available. Paragraph (e) contains a provision which, like that in the physical access section, states that the agency is not required to take any action that it can demonstrate would result in a fundamental alteration in the nature of the agency's programs or activities or undue financial and administrative burden. It is our view, however, that compliance with § 707.9 and § 707.10 would in most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with §§ 707.9 and 707.10 would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedures established in § 707.12.

Section 707.10 Auxiliary aids.

This section requires that the agency provide auxiliary aids when needed to afford individuals with handicaps an equal opportunity to participate in and enjoy the benefits of agency activities. The agency is required to give primary consideration to the type of auxiliary aid requested by an individual with handicaps, and is not required to provide individually prescribed devices. So, for example, the agency might be required to provide an assistant to turn pages for a quadriplegic witness at a hearing, but would not be required to provide the same witness with an electric wheelchair.

Section 707.11 Elimination of discriminatory qualification and selection criteria.

Section 707.11 deals with the elimination of discriminatory qualifications and selection criteria. It prohibits the use of qualification standards, eligibility requirements, and selection criteria that absolutely exclude certain classes of disabled persons (*e.g.*, epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. As was stated earlier in this preamble, the use of an irrebuttable presumption of inability to participate is permissible only when in all cases a condition by its very nature would absolutely prevent an individual from meeting the essential eligibility requirements for participation in the activity in question. The wording of this section is drawn from the preamble discussion relating to § 39.130 of the Department of Justice's section 504 regulation for federally conducted programs. 28 CFR Part 39. For greater clarity and emphasis, § 707.11 expressly incorporates this discussion as a provision of this regulation.

Section 707.12 Compliance procedures.

Paragraph (a) specifies that paragraphs (c) through (l) of this section establish the procedures for processing complaints other than employment complaints.

Paragraph (b) provides that the agency will process section 504 employment complaints according to existing regulations of the EEOC (29 CFR Part 1613) established for adjudication of complaints pursuant to section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791).

Paragraph (f) requires the agency to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a facility subject to the Architectural Barriers Act was designed, constructed, or altered in a manner that

does not provide ready access and use to individuals with handicaps.

Paragraph (g) requires the agency to provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appeal (§ 707.12(g)). One appeal within the agency shall be provided (§ 707.12(i)). The appeal will be heard by the Staff Director or the Staff Director's designee (§ 707.12(i)).

Paragraph (k) authorizes the Staff Director to extend certain time limits established in this section in particular cases where there is good cause to do so.

Paragraph (1) permits the agency to delegate its authority for investigating complaints to other Federal agencies. However, the statutory obligation of the agency to make a final determination of compliance or noncompliance may not be delegated.

List of Subjects in 45 CFR Part 707

Blind, Buildings, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Government Employees, Handicapped, Mentally handicapped, Nondiscrimination, physically handicapped.

For the reasons set forth in the preamble, 45 CFR Part 707 is proposed to be added as follows.

Dated: February 11, 1988.

Susan J. Prado,

Acting Staff Director.

Part 707 is added to read as follows:

PART 707—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY U.S. COMMISSION ON CIVIL RIGHTS

Sec.

707.1 Purpose.
707.2 Application.
707.3 Definitions.
707.4 Self-evaluation and remedial measures.
707.5 Notice.
707.6 General prohibitions against discrimination.
707.7 Employment.
707.8 Physical access.
707.9 Access to communications.
707.10 Auxiliary aids.
707.11 Eliminating discriminatory qualifications and selection criteria.
707.12 Compliance procedures.

Authority: 29 U.S.C. 794.

§ 707.1 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 707.2 Application.

This part applies to all programs, activities, including employment, conducted by the agency.

§ 707.3 Definitions.

For the purposes of this part, the term—

(a) "Agency" means the U.S. Commission on Civil Rights and its State Advisory Committees.

(b) "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

(c) "Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

(d) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, vehicles or other real or personal property.

(e) "Individual with handicaps" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

(f) "Qualified individuals with handicaps" means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; and

(2) With respect to employment, an individual with handicaps who meets the definition set forth in 29 CFR 1613.702(f), which is made applicable to this part by § 707.7 of this rule.

(3) With respect to any other agency program or activity, an individual with handicaps who meets the essential

eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(g) "Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978 (Pub. L. 95–602, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810). As used in this part, section 504 applies only to programs or activities conducted by the agency. The agency does not operate any programs of Federal financial assistance to other entities.

§ 707.4 Self-evaluation and remedial measures.

(a) The agency shall, within one year of the effective date of this part, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 707.5 Notice.

(a) The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in the manner necessary to apprise them of the protections against discrimination assured them by section 504 and this regulation.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall take appropriate steps to provide individuals with handicaps with information regarding their section 504 rights under the agency's programs or activities.

§ 707.6 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, shall not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards or committees; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency shall not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency shall not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The agency shall not, in determining the site or location of a facility, or activity, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency, in the selection of procurement contractors, shall not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§ 707.7 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in programs or activities conducted by the agency.

§ 707.8 Physical access.

(a) *Discrimination prohibited.* Except as otherwise provided in this section, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b) *Existing facilities—program access*—(1) *Existing facilities defined.* For the purpose of this section, "existing facilities" means those facilities owned, leased or used through some other arrangement by the agency on [insert effective date of this regulation].

(2) *General.* The agency shall operate each program or activity conducted in an existing facility so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(i) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps.

(ii) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with this paragraph would result in such alterations or burdens. The decision that compliance would result in such alteration or burdens must be made by the Staff Director or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(3) *Methods.* (i) The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to individuals with handicaps, delivery of services at alternative accessible sites, alteration of existing facilities and construction of new facilities, use of accessible vehicles or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps.

(ii) The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (b)(2) of this section. The agency, in making alterations to existing buildings to achieve program accessibility, shall meet accessibility requirements imposed by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157) as established in 41 CFR 101–19.600 to 101–19.607.

(iii) In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

(4) *Time period for compliance.* The agency shall comply with the obligations established under this section within sixty days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(5) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, within 6 months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(i) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(ii) Describe in detail the methods that will be used to make the facilities accessible;

(iii) Specify the schedule for taking the steps necessary to achieve compliance with this paragraph and, if the time period of the transition plan is longer than 1 year, identify steps that will be taken during each year of the transition period; and

(iv) Indicate the official responsible for implementation of the plan.

(6) The agency shall provide signs at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(c) *New purchases, leases or other arrangements.* (1) Any building or facility acquired after the effective date of this regulation, whether by purchase, lease or any other arrangement shall be readily accessible to and usable by individuals with handicaps.

(2) Nothing in this paragraph requires the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with this paragraph would result in such alterations or burdens. The decision that compliance would result in such alteration or burdens must be made by the Staff Director or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(d) *New construction and alterations.* Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps in accordance with the requirements imposed by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157) as established in 41 CFR 101–19.600 to 101–19.607.

§ 707.9 Access to communications.

(a) *Discrimination prohibited.* Except as otherwise provided in this section, no qualified individual with handicaps shall, because the agency's communications are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel

of other Federal entities, and members of the public.

(c) *Specific requirements regarding oral communications*—

(1) *Telecommunication Devices for Deaf Persons.* (i) The agency headquarters and each regional office shall maintain and reliably answer at least one telecommunications device for deaf persons (TDD), or equally effective telecommunications device.

(ii) The agency shall ensure that all agency letterhead, forms and other documents listing any agency telephone number list the appropriate TDD numbers.

(2) *Interpreter Service.* (i) The agency shall establish a reliable system for the provision of qualified interpreters to individuals with handicaps for agency programs or activities. This provision does not require the agency to have an interpreter on staff, but does require the agency to be able to provide a qualified interpreter on reasonable notice.

(ii) Notice of the availability of interpreter service shall be included in all announcements notifying the public of agency activities to which the public is invited or which it is permitted to attend, including but not limited to Commission meetings, consultations, hearings, press conferences, and State Advisory Committee conferences and meetings. This notice shall designate the agency official(s) and the address, telephone and TDD number to call to request interpreter services.

(d) *Specific requirements for printed communications.* (1) The agency shall establish a system to provide to individuals with handicaps appropriate reader or taping service for all Commission publications which are available to the public. This provision does not require the agency to have a reader or taper on staff, but does require the agency to be able to provide appropriate reader or taping service within a reasonable time and on reasonable notice. The agency shall effectively notify qualified individuals with handicaps of the availability of reader or taping services.

(2) Notice of the availability of reader or taping service shall be included in all publications which are available to the public. This notice shall designate the agency official(s) and the address, telephone and TDD number to call to request interpreter services.

(e) Nothing in this section or § 707.10 requires the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with this section or § 707.10 would result in such alterations or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this paragraph would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§ 707.10 Auxiliary aids.

(a) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(b) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(c) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

§ 707.11 Eliminating discriminatory qualifications and selection criteria.

The agency shall not make use of any qualification standard, eligibility requirement, or selection criterion that excludes particular classes of individuals with handicaps from an agency program or activity merely because the persons are handicapped, without regard to an individual's actual ability to participate. An irrebuttable presumption of inability to participate based upon a handicap shall be permissible only if the condition would in all instances prevent an individual from meeting the essential eligibility requirements for participating in, or receiving the benefits of, the particular program or activity.

§ 707.12 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Responsibility for implementation and operation of this section shall be vested in the Office of General Counsel and Civil Rights Evaluation.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 707.12(g). The Staff Director may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Staff Director or the Staff Director's designee.

(j) The agency shall notify the complainant in writing of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in (d), (g), (h), and (j) of this section may be extended

for an individual case when the Staff Director determines that there is good cause, based on the particular circumstances of that case, for the extension.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[FR Doc. 88-13426 Filed 6-15-88; 8:45 am]

BILLING CODE 6335-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-219, RM-6213]

Radio Broadcasting Services; Uniontown, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by William A. Gunter and Robert J. Long to allot Channel 298A to Uniontown, Alabama, as that community's first local FM service. Channel 298A can be allotted to Uniontown with a site restriction at least 4.9 kilometers southwest of the community. The coordinates at the restricted site are 32-24-46 and 87-32-25.

DATES: Comments must be filed on or before July 25, 1988, and reply comments on or before August 9, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, as follows: William A. Gunter and Robert J. Long, c/o William A. Gunter, 272 Commerce Street, Montgomery, AL 36104.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-219, adopted April 19, 1988, and released June 2, 1988. 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.

Member 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 1.1204(b) 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.

Steve Kaminer,

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

[FR Doc. 88-13564 Filed 6-15-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-231, RM-6131]

Radio Broadcasting Services; Mecca, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Craig L. Fox, seeking the allotment of Channel 249A to Mecca, California, as that community's first local broadcast service.

DATES: Comments must be filed on or before July 25, 1988, and reply comments on or before August 9, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Craig L. Fox, 1213 Madison St., Syracuse, NY 13210.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-231, adopted April 29, 1988, and released June 3, 1988. 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 1.1204(b) 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.

Steve Kaminer,

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

[FR Doc. 88-13554 Filed 6-15-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-221, RM-6177]

Radio Broadcasting Services; Fort Valley and Wrightsville, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Fort Valley Broadcasting Corporation, licensee of Station WQBZ(FM), Fort Valley, Georgia, which seeks to substitute Channel 292C2 for Channel 292A, and to modify its license to the new channel at coordinates 32-33-12 and 83-47-59. In order to permit the proposed modification, petitioner has requested that Channel 260A be substituted for Channel 292A at Wrightsville, Georgia, and the construction permit for Station WIML(FM), be modified to specify Channel 260A at coordinates 32-42-24 and 82-43-08. We are issuing the permittee on Channel 292A at Wrightsville an *Order to Show Cause.*

DATES: Comments must be filed on or before July 25, 1988, and reply comments on or before August 9, 1988.

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: John H. Midlen, Jr., 1050 Wisconsin Avenue, Washington, DC 20007, (Counsel 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. 88–221, adopted April 25, 1988, and released June 2, 1988. 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 1.1204(b) for rules governing permissible *ex parte* contacts.

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.

Steve Kaminer,

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

[FR Doc. 88-13565 Filed 6–15–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88–263, RM–6341]

Radio Broadcasting Services; Brooklyn, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Randy E. Henry proposing the substitution of Channel 256C2 for Channel 257A at Brooklyn, Iowa, and the modification of its permit for Station KSKB to specify the higher powered channel. Channel 256C2 can be alloted to Brooklyn in compliance with the Commission's minimum distance separation requirements and can be used at the site specified in Station KSKB's outstanding construction permit. The coordinates for this allotment are North Latitude 41–42–36 and West Longitude 92–27–54. In accordance with § 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in use of the higher powered channel at Brooklyn nor require petitioner to demonstrate the availability of an additional equivalent channel for use by such parties.

DATES: Comments must be filed on or before August 1, 1988, and reply comments on or before August 16, 1988.

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: Diane H. Ming, Esq., Gammon & Grange, 1925 K Street NW., Suite 300a, Washington, DC 20006–1115 (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. 88–263, adopted May 9, 1988, and released June 9, 1988. 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 or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

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.

Steve Kaminer,

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

[FR Doc. 88–13561 Filed 6–15–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88–255, RM–6211]

Radio Broadcasting Services; Lexington, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by D.J. Fox, proposing the allotment of FM Channel 245A to Lexington, Michigan, as that community's first FM broadcast service. There is a site restriction 3.9 kilometers north of the community at coordinates 43–18–00 and 82–32–30. Concurrence of the Canadian government has been obtained for the allotment of Channel 245A as a specially negotiated short spaced allotment. A Commission study indicates that the allotment would be short spaced by 9 kilometers to Channel 244B at Kitchener, Ontario, Canada. However, since all of the interference would fall over Lake Huron and the U.S.-Canadian Working Agreement specifically exempts the Great Lakes from interference protection, we shall propose the allotment.

DATES: Comments must be filed on or before July 25, 1988, and reply comments on or before August 9, 1988.

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: D.J. Fox, P.O. Box 10223, Lansing, Michigan 48901–0223.

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. 88–255, adopted May 4, 1988, and released June 3, 1988. 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 1.1204(b) for rules governing permissible *ex parte* contacts.

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.

Steve Kaminer,

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

[FR Doc. 88-13556 Filed 6-15-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-254, RM-6219]

Radio Broadcasting Services; La Monte, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Johnson County Broadcasters, Inc., proposing the allocation of FM Channel 246A to La Monte, Missouri, as that community's first FM broadcast service. There is a site restriction 7.4 kilometers (4.6 miles) east of the community. The coordinates used for this allocation are 38-45-36 and 93-20-30.

DATES: Comments must be filed on or before July 25, 1988, and reply comments on or before August 9, 1988.

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: Jim McCollum, Vice President, Johnson County Broadcasters, Inc., Box 547, Clayton, New Mexico 84415.

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. 88-254, adopted May 2, 1988, and released June 3, 1988. 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 1.1208. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

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.

Steve Kaminer,

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

[FR Doc. 88-13555 Filed 6-15-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-262, RM-6340]

Radio Broadcasting Services; Laughlin, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by John Brush to allot Channel 228C to Laughlin, Nevada, as the community's second local FM service. Channel 228C can be allotted to Laughlin in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.7 kilometers (3.5 miles) east to avoid a short-spacing to Stations KRCK, Coachella, California, and KXTZ, Henderson, Nevada. The coordinates for this allotment are North Latitude 35-09-03 and West Longitude 114-30-49. Mexican concurrence in the allotment is required since Laughlin is located within 320 kilometers of the U.S.-Mexican border.

DATES: Comments must be filed on or before August 1, 1988, and reply comments on or before August 16, 1988.

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: Richard J. Hayes, Jr., Esq., 1359 Black Meadow Road, Greenwood Plantation, Spotsylvania, Virginia 22553 (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. 88-262, adopted May 9, 1988, and released June 9, 1988. 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 or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

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.

Steve Kaminer,

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

[FR Doc 88-13562 Filed 6-15-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-261, RM-6339]

Radio Broadcasting Services; Altamont, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Western States Broadcasting proposing the allotment of Channel 300A to Altamont, Oregon, as the community's second local FM service. Petitioner states that it will apply for the channel, if alloted. Channel 300A can be allotted to Altamont in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 42–12–00 and West Longitude 121–43–42.

DATES: Comments must be filed on or before August 1, 1988, and reply comments on or before August 16, 1988.

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:

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. 88–261, adopted May 9, 1988, and released June 9, 1988. 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 or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

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.

Steve Kaminer,

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

[FR Doc. 88–13563 Filed 6–15–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–258, RM–6347]

Radio Broadcasting Services; Covington, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Robin B. Thomas proposing the allotment of Channel 234A to Covington, Pennsylvania, as the community's first local FM service. Channel 234A can be allotted to Covington in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 41–44–41 and West Longitude 77–04–39. Canadian concurrence in the allotment is required since Covington is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before July 25, 1988, and reply comments on or before August 9, 1988.

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:

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. 88–258, adopted May 9, 1988, and released June 3, 1988. 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 or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

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.

Steve Kaminer,

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

[FR Doc. 88–13559 Filed 6–15–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–256, RM–6298]

Radio Broadcasting Services; Jasper, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by KTXJ Radio, Inc., licensee of Station KWYX(FM), Channel 272A, Jasper, Texas, proposing the substitution of Channel 274C2 for Channel 272A and modification of its station's license to specify operation on the higher class channel. A site restriction of 23.7 kilometers (14.7 miles) north of Jasper is required. The restricted site coordinates are 31–07–54 and 93–56–28.

DATES: Comments must be filed on or before July 25, 1988, and reply comments on or before August 9, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: James P. Riley, Esquire, Fletcher, Heald & Hildreth, 1225 Connecticut Avenue NW., Suite 400, Washington, DC 20036 (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. 88–256, adopted May 5, 1988, and released June 3, 1988. 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 1.1204(b) 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.

Steve Kaminer,

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

[FR Doc. 88–13558 Filed 6–15–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88–264, RM–6160]

Television Broadcasting Services; Gosnell, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Gosnell School District #6, requesting the allotment of UHF television Channel 46 to Gosnell, Arkansas, as that community's first local television broadcast service. Reference coordinates for this proposal are 35–57–30 and 89–58–12.

Although the Commission has imposed a freeze on TV allotments, or applications therefor in certain specified metropolitan areas pending the outcome of an inqury into the uses of advanced television systems (ATV) in broadcasting, this proposal is not affected thereby.

DATES: Comments must be filed on or before August 1, 1988, and reply comments on or before August 16, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Gosnell School District #6, Attn: Lynn H. Cox, Superintendent, 600 Highway 181, Gosnell, AR 72315.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–264, adopted May 9, 1988, and released June 9, 1988. 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 1.1204(b) 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

Television broadcasting.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88–13560 Filed 6–15–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–378; RM–5927]

Radio Broadcasting Services; Saint Robert, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: This document dismisses a petition filed by Kevin A. Barton to allot FM Channel 243A to Saint Robert, Missouri. The petition is dismissed because no expression of interest has been filed by the petitioner or any other party. With this action, this proceeding is terminated.

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. 87–378, adopted April 29, 1988, and released June 3, 1988. 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.

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

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88–13550 Filed 6–15–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88–257, RM–6299]

Radio Broadcasting Services; Kingsville, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Riviera Broadcasting Co, licensee to Station KODK(FM), proposing the substitution of Channel 224C2 for Channel 224A at Kingsville, Texas, and modification of its station's license to specify operation on the higher class co-channel. A site restriction of 27.7 kilometers (17.2 miles) east of the community is required. The proposed site coordinates are 27–32–45 and 97–35–18. In addition, the proposal must conform with the technical requirements of § 73.1030(c)(1)–(5) of the Rules regarding protection to the Commission's monitoring station at Kingsville, Texas. Also Mexican concurrence must be obtained.

DATES: Comments must be filed on or before July 25, 1988, and reply comments on or before August 9, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In

addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: John E. Fiorini III, Esquire, Heron, Burchette, Ruckert & Rothwell, 1025 Thomas Jefferson Street NW., Suite 700, Washington, DC 20007 (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. 88–257, adopted May 5, 1988, and released June 3, 1988. 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 1.1204(b) 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.

Steven Kaminer,

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

[FR Doc. 88–13557 Filed 6–15–88; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 53, No. 116
Thursday, June 16, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

June 10, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Office, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Agricultural Marketing Service
  Papayas Grown in Hawaii, Marketing Order No. 928
  Recordkeeping; On occasion; Weekly; Monthly; Annually
  Farms; Businesses or other for-profit; Small businesses or organizations; 1,375 responses; 1,209 hours; not applicable under 3504(h)
  Virginia M. Olson (202) 447–5057.
- Agricultural Marketing Service
  Fresh Peaches Grown in Georgia, Marketing Order No. 918
  On occasion
  Farms; Businesses or other for-profit; 18 responses; 2 hours; not applicable under 3504(h)
  John Toth (813) 299–4886.
- Agricultural Marketing Service
  Cottonseed Review
  CN–235 series (20 forms)
  Weekly
  Small businesses or organizations; 1,500 responses; 75 hours; not applicable under 3504(h)
  Elvis W. Morris (901) 521–2921.
- Extension Service
  Evaluation of the Expanded Food and Nutrition Education Program (EFNEP)
  Annually
  Individuals or households; 231,800 responses; 24,400 hours; not applicable under 3504(h)
  Nancy B. Leidenfrost (202) 447–7151.

New

- Food and Nutrition Service
  WIC Income Verification
  One-time data collection
  Individuals or households; 800 responses; 560 hours; not applicable under 3504(h)
  Steven Gale (703) 756–3115.

Larry K. Roberson,
Acting Departmental Clearance Officer.
[FR Doc. 88–13643 Filed 6–15–88; 8:45 am]
BILLING CODE 3410–01–M

Food and Nutrition Service

Donation of Food for Use in the United States, its Territories and Possessions and Areas Under its Jurisdiction; Food Distribution Program

AGENCY: Food and Nutrition Service; USDA.

ACTION: Notice.

SUMMARY: This notice announces the level of assistance for the Nutrition Program for the Elderly for Fiscal Years 1988, 1989, 1990, and 1991. The per meal level of assistance is set at $.5676 per meal in accordance with section 311(a)(4) of the Older Americans Act of 1965 (the Act), as amended by Pub. L. 100–175.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Susan Proden, Chief, Program Administration Branch, Food Distribution Division, 3101 Park Center Drive, Room 502, Alexandria, Virginia 22302 or telephone (703) 756–3660.

SUPPLEMENTARY INFORMATION: This action which implements a mandatory provision of section 311 of the Act, has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified as "nonmajor" because it does not meet any of the criteria in the definition of "major rule" in the Executive Order. It will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, individual industries, Federal agencies, State or local government agencies, or geographic regions, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. The purpose of this action is to notify States of the per meal rate for donated-food assistance to be provided for nutrition services under the Act during Fiscal Years 1988, 1989, 1990, and 1991.

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review.

This notice is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and therefore is not subject to the requirements of that Act.

In 1986, section 311 of the Act was amended to increase the authorization of appropriations for the U.S. Department of Agriculture (USDA) cash and commodity assistance for Fiscal Years 1985–87 and to set the level of reimbursement at $.5676 for each meal served under Title III for Fiscal Year 1986 and each fiscal year thereafter. This rate was to be adjusted annually

each fiscal year after 1986 to reflect changes in the Consumer Price Index.

On November 29, 1987, President Reagan signed Pub. L. 100–175, "The Older Americans Act Amendments of 1987." This law amended section 311(a)(4) of the Older Americans Act to require the Secretary of Agriculture to maintain an annually programmed level of assistance of not less than $.5676 per meal during Fiscal Years 1986 through 1991 and to remove the provision for rate adjustments based on changes in the Consumer Price Index.

Therefore, subject to the availability of funds appropriated for this program, the Department will reimburse each meal served in Fiscal Years 1986–1991 at $.5676. If at any future time appropriated levels are not adequate to reimburse meals at the $.5676 rate, the Department will notify the public through a subsequent **Federal Register** notice.

Anna Kondratas,

Administrator.

Date: June 9, 1988.

[FR Doc. 88–13547 Filed 6–15–88; 8:45 am]

BILLING CODE 3410–30–M

Forest Service

Tuolumne Wild and Scenic River; Boundary and Classification

Pursuant to the authority delegated to the Regional Forester in 7 CFR 2.60, the classifications and boundary of the Tuolumne Wild and Scenic River are established to include lands approximately ¼ mile on each side of the Tuolumne River and encompassing the following areas:

Mount Diablo Base & Meridian, California

Recreational Classification:

T. 1 S., R. 18 E.,
Sec. 2: NE¼SW¼NW¼, S½SW¼NW¼, NW¼SW¼, N½SW¼SW¼.

Scenic Classification:

T. 1 S., R. 17 E.,
Sec. 23: SE¼NE¼SW¼,S½N½SE¼, NE¼SW¼SE¼, SE¼SE¼;
Sec. 24: S½S½N½, N½SE¼NE¼, S½.
T. 1 S., R. 18 E.,
Sec. 8: E½W½W½, SW¼SW¼SW¼;
Sec. 17: W½W½;
Sec. 18: SE¼SE¼SW¼, S½SE¼;
Sec. 19: Lots 2 and 3, E½NW¼, N½NE¼, SE¼NE¼, NE¼SW¼;
Sec. 20: NW¼NW¼.

Wild Classification:

T. 1 N., R. 16 E.,
Sec. 28: Lot 5;
Sec. 29: Lot 4;
Sec. 31: S½N½, N½S½;
Sec. 32: Lots 2, 3 and 9, Portion of Lots 1, 10, 11 and 12, M.S. 4902, Portion of M.S. 3566, Portion of M.S. 4029, Portion of M.S. 2248, NE¼NE¼, NW¼SW¼, SE¼NW¼ NE¼;
Sec. 33: Lot 3, M.S. 4903, NW¼NW¼, S½NW¼, Portion of E½SW¼ excepting Portion of M.S. 4903, SE¼ excepting Portion of M.S. 4903, S½NE¼;
Sec. 34: SW¼NW¼, N½S½, S½ SE¼NW¼, S½S½NE¼;
Sec. 35: Portion of M.S. 4385, Portion of S½NE¼, S½S½NW¼, N½S½;
Sec. 36: SW¼NW¼, S½SE¼NW¼, NW¼SE¼NW¼, N½SW¼, SE¼SW¼, S½SE¼, S½N½SE¼.
T. 1 N., R. 17 E.,
Sec. 31: Portion of Lot 4.
T. 1 S., R. 16 E.,
Sec. 1: Lot 1, Portion of Lot 2.
T. 1 S., R. 17 E.,
Sec. 5: W½SW¼, SW¼SE¼SW¼, W½SW¼NW¼;
Sec. 6: Portion of Lots 1, 3, 4, and 5, Lots 6 and 7, S½NE¼, SE¼NW¼, N½NE¼ SW¼, N½NW¼SE¼, E½SE¼;
Sec. 7: NE½NE¼NE¼;
Sec. 8: W½SW¼NE¼, SE¼SW¼NE¼, N½NW¼, NE¼SW¼NW¼, E½ NE¼SW¼, N½SE¼, N½S½SE¼;
Sec. 9: SW¼;
Sec. 16: E½NW¼, E½W½NW¼, NE¼ SW¼, E½NW¼SW¼, N½SE¼SW¼, SE¼SE¼SW¼, NW¼NW¼SE¼, S½ NW¼SE¼, SW¼SE¼, W½SE¼SE¼;
Sec. 21: N½NE¼, SE¼NE¼, E½ SW¼NE¼, NE¼SE¼;
Sec. 22: S½NW¼, SW¼NE¼, S½SE¼ NE¼, N½S½;
Sec. 23: S½SW¼NW¼, SE¼NW¼, SW¼NE¼,NW¼SE¼NE¼, S½ SE¼NE¼, N½N½S½, S½NW¼SW¼, SW¼NE¼SW¼.
T. 1 S., R. 18 E.,
Sec. 1: Lots 15 and 16, Portion of Lots 9 and 10;
Sec. 2: Lot 4, NW¼SW¼NW¼;
Sec. 3: Lot 1, SW¼NW¼, S½SE¼NW¼, SW¼SW¼NE¼, E½SW¼NE¼, SE¼NE¼, N½SW¼, N½S½SW¼, NW¼SE¼, NW¼SW¼SE¼, NW¼ NE¼SE¼;
Sec. 4: S½S½NE¼, SW¼, W½SE¼, NE¼ SE¼, N½SE¼SE¼;
Sec. 5: Lot 8, Portion of Lots 7, 9 and 10;
Sec. 8: Portion of Lots 1, 6, 7 and 8, E½ NW¼, E½SW¼;
Sec. 9: N½NE¼NW¼, N½NW¼NE¼;
Sec. 12: Portion of Lots 1 and 2.
T. 1 S., R. 19 E.,
Sec. 2: NW¼NW¼;
Sec. 3: Lots 1 and 2, NW¼, S½NE¼, N½SW¼;
Sec. 4: S½N½, S½N½N½, N½N½SW¼, N½SE¼;
Sec. 5: S½NE¼NW¼, S½N½NE¼, S½N½, N½SW¼, N½N½SE¼, SW¼SW¼;
Sec. 6: S½SE¼NE¼, S½N½SW¼, S½SW¼, SE¼;
Sec. 7: N½N½NW¼, N½NW¼NE¼.

Maps showing the boundary are available for public review in the office of the Stanislaus Forest Supervisor, 19777 Greenley Road, CA 95370; office of the Regional Forester, 630 Sansome Street, San Francisco, CA 94111; and office of the Chief, Forest Service, South Building, 12th and Independence Avenue, SW., Washington, DC 20250.

R. E. Greffenius,

Deputy Regional Forester.

[FR Doc. 88–13523 Filed 6–15–88; 8:45 am]

BILLING CODE 3410–11–M

Rural Electrification Administration

Dairyland Power Cooperative; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and REA Environmental Policies and Procedures (7 CFR Part 1794), has made a finding of No Significant Impact (FONSI) with respect to the contruction and related activities of an ash disposal facility for the E. J. Stoneman Electric Power Generation (EJS) facility in Cassville, Wisconsin. Other activities include the closure and abandoment of the present ash disposal facility, contruction of a new city water well and extenstion of the city water main in Cassville, Wisconsin. The new ash disposal facility will be located in Section 29, T3N, R5W, Town of Cassville in Grant County, Wisconsin. The proposed project will be build by Dairyland Power Cooperative (DPC) of La Crosse, Wisconsin.

FOR FURTHER INFORMATION CONTACT: REA's Environmental Assessment (EA) and FONSI and DPC's Borrow's Environmental Report (BER) may be reviewed at and copies obtained from the office of the Director, Northwest Area—Electric, REA, Room 0230, South Agriculture Building, Washington, DC 20250, telephone (202) 382–1400, or at the office of DPC, James W. Taylor, Manager, 2615 East Avenue, South, La Crosse, Wisconsin 54602–0817, telephone number (608) 787–1258, during regular business hours. Copies of the BER, EA and FONSI can be obtained from either of the contacts listed above. All comments or questions should be directed to the REA contact.

SUPPLEMENTARY INFORMATION: REA reviewed the BER submitted by DPC and determined that it represents an accurate assessment of the environmental impacts of the proposed project. The project consists of constructing a new ash disposal facility, closure and abandonment of the existing

ash disposal site, construction of a new city water well and extension of the city water main in Grant County, Wisconsin. The proposed landfill site is located within EJS facility and has been owned by DPC since the original plant site was acquired. The landfill site is approximately 213 meters (700 ft) away from the EJS generation site and there are no residences along the road connnecting the generation site and the landfill site. The BER and EA adequately consider the potential impacts of the proposed project and concluded that approval of the project would not result in a major Federal action significantly affecting the quality of the human environment. REA determined that the proposed project will have no effect on air quality, water quality, aesthetics, floodplains, wetlands, important farmlands, prime rangelands or forest lands, threatened or endangered species or critical habitat, or any property listed or eligible for listing in the *National Register of Historic Places*. REA has identified no other matters of potential environmental concern related to the proposed project.

Various alternatives to the proposed project were considered, including no action, alternative sites, purchase of power, and alternative methods of ash disposal. REA determined that the proposed project is an environmentally acceptable alternative that meets DPC's need with a minimum of adverse environmental impact. REA has concluded that project approval would not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, the preparation of an Environmental Impact Statement is not necessary.

In accordance with REA's Environmental Policies and Procedures, 7 CFR Part 1794, DPC advertised and requested comments on the environmental aspect of the proposed project in the Grant County Herald Independent, a public weekly newspaper of general circulation. No comments were received.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.850—Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the final rule related notice to 7 CFR Part 3015 Subpart V in 50 FR 47034, November 14, 1985, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Dated: June 8, 1988.

John H. Arnesen,

Assistant Administrator, Electric.

[FR Doc. 88-13659 Filed 6-15-88; 8:45 am]

BILLING CODE 3410-15-M

Soil Conservation Service

Chandler Mountain Watershed, Alabama, Environmental Statements; Availability, etc.

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Chandler Watershed, St. Clair County, Alabama.

FOR FURTHER INFORMATION CONTACT: Ernest V. Todd, State Conservationist, Soil Conservation Service, 665 Opelika Road, Auburn, Alabama, 36830, telephone (205) 821-8070.

SUPPLEMENTARY INFORMATION: The environmental assessment of this Federally assisted action indicates that the project will not cause significant local, regional or national impacts on the environment. As a result of these findings, Ernest V. Todd, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Chandler Mountain Watershed, Alabama

Notice of a Finding of No Significant Impact

The project concerns a plan for reducing serius deterioration of the resource base caused by excessive erosion on sloping cropland, reducing loss of reservoir storage capacity and reducing cost of local service due to sediment deposition on roads and in drainageways. The planned works of improvement include land use conversion of 180 acres of marginal cropland, and accelerated conservation land treatment on 1870 acres of cropland, including conversion of 1560 acres of overhead big-gun irrigation to drip irrigation.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Ernest V. Todd.

No administative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Date: June 9, 1988.

Ernest V. Todd,

State Conservationist.

[FR Doc. 88-13524 Filed 6-15-88; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

California Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the California Advisory Committee to the Commission will convene at 4:00 p.m. and adjourn at 8:00 p.m. on June 29, 1988, at the Airport Hilton Hotel, 5711 West Century Boulevard, Los Angeles, California 90045. The purpose of the meeting is program planning. The discussion will focus on recommendations of the subcommittee on higher education in California.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Deborah Hesse or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 9, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-13525 Filed 6-15-88; 8:45 am]

BILLING CODE 6335-01-M

Florida Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 5:00 p.m. on June 25, 1988, at the United States District Court House, Jury Assembly Room, Federal Court Square, 301 N. Miami Avenue, Miami, Florida. The purpose of the meeting is to conduct a community forum on police/monority community relations in Miami and Dade County.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Michael J. Moorhead (904–392–2211) or John I. Binkley, Director of the Eastern Regional Division of the Commission at (202–523–5264) (TDD 202/376–8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 9, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–13526 Filed 6–15–88; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Commercial Space Advisory Committee; Establishment

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the General Services Administration (GSA) rule on Federal Advisory Committee Management, 41 CFR Part 101–6, and pending consultation with GSA, the Secretary of Commerce intends to establish the Commercial Space Advisory Committee.

The Committee will advise the President, through the Secretary, through the Associate Deputy Secretary, on how the National Space Policy and Commercial Space Initiatives, as announced February 11, 1988, might best be implemented and institutionalized.

The Committee will consist of fifteen members to be appointed by the Secretary to assure a balanced representation of aerospace and non-aerospace Fortune 500 corporations, the academic community and state governors.

The Committee will function solely as an advisory body, and in compliance with provisions of the Federal Advisory Committee Act. The charter will be filed under the Act, fifteen days of publication of this notice.

Interested persons are invited to submit comments regarding the establishment of this committee to Laura Boyle, Director of Special Programs, Office of Commercial Space Programs, U.S. Department of Commerce, Washington, DC 20230. Telephone: 202/377–8125.

Date: June 9, 1988.

Shellyn McCaffrey,

Associate Deputy Secretary.

[FR Doc. 88–13618 Filed 6–15–88; 8:45 am]

BILLING CODE 3510–CW–M

International Trade Administration

[A–588–706]

Antidumping Duty Order of Sales at Less Than Fair Value; Butadiene Acrylonitrile Copolymer Synthetic Rubber from Japan

ACTION: Notice.

SUMMARY: In separate investigations concerning butadiene acrylonitrile copolymer synthetic rubber (nitrile rubber) from Japan, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that nitrile rubber from Japan is being sold at less than fair value and that sales of nitrile rubber from Japan are materially injuring a U.S. industry. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals of nitrile rubber for consumption from Japan, made on or after February 12, 1988, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register.**

EFFECTIVE DATE: June 16, 1988.

FOR FURTHER INFORMATION CONTACT: Debra Conner (202) 377–1778 or Michael Ready (202) 377–2613, Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The product covered by this order is butadiene acrylonitrile copolymer synthetic rubber (nitrile rubber) not containing fillers, pigments, or rubber-processing chemicals, as provided for in the *Tariff Schedules of the United States Annotated* (TSUSA) item number 446.1511. The corresponding Harmonized System (HS) number is 446.59.00.

In accordance with section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act), on April 25, 1988, the Department made its final determination that nitrile rubber from Japan is being sold at less than fair value (53 FR 15436, April 29, 1988). On June 10, 1988, in accordance with section 735(d) of the Act, the ITC notified the Department that such imports materially injure a U.S. industry.

Therefore, in accordance with section 736 of the Act (19 U.S.C. 1673e), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of nitrile rubber from Japan. These antidumping duties will be assessed on all unliquidated entries of nitrile rubber entered, or withdrawn from warehouse, for consumption on or after February 12, 1988, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register** (53 FR 4193).

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins noted below:

Manufacturers/Producers/Exporters	Weighted-average margin percentage
Nippon Zeon	146.50
All Others	146.50

This determination constitutes an antidumping duty order with respect to nitrile rubber from Japan, pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping duty findings and orders currently in effect. Instead, interested parties may contact the Central Records Unit, Room B–099, Import

Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

June 10, 1988.

[FR Doc. 88-13654 Filed 6-15-88; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Flat-Rolled Steel; Request for Comments

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of requests for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC and U.S.-Korea Arrangements Concerning Trade in Certain Steel Products and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products, with respect to certain flat-rolled steel.

DATE: Comments must be submitted on or before June 27, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone (202) 377-0159 or telefax (202) 377-1388.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC and U.S.-Korea Arrangements Concerning Trade in Certain Steel Products, and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products, provides that if the United States determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the United States for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors) an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for certain hot-rolled steel meeting grade 50 of the American Society of Testing Materials A 570 or A 607 specifications: in thicknesses of 0.054, 0.071, and 0.097 inch; widths ranging from 42 to 48 inches; mill edge; and in coils weighing 16,000 to 25,000 pounds.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than June 27, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce at the above address.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

June 9, 1988.

[FR Doc. 88-13655 Filed 6-15-88; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

[Docket No. 80520-8120]

Foreign Fishing; Bering Sea Fishermen's Association

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

ACTION: Notice of decision on petition for rulemaking; Bering Sea Fishermen's Association.

SUMMARY: NOAA publishes notice of its decision on a petition for rulemaking submitted by the Bering Sea Fisherman's Association. The notice summarizes the comments received and NOAA's decision not to undertake the rulemaking requested by the petition at this time. The agency continues to work to develop a comprehensive solution to address issues relating to the harvest of U.S. exclusive economic zone (EEZ) resources from waters beyond the EEZ.

SUPPLEMENTARY INFORMATION:

Background

NOAA published a notice of receipt of a petition for rulemaking submitted by the Bering Sea Fishermen's Association on November 5, 1987 (52 FR 42469). The petition asked the United States Department of Commerce, pursuant to the Magnuson Fishery Conservation and Management Act, (Magnuson Act) 16 U.S.C. 1801 *et seq.* to adopt a rule prohibiting foreign fishing for anadromous species of U.S. origin in the international waters of the North Pacific Ocean and the Bering Sea. The rule submitted provided for observer coverage and a permit system for any fishing for anadromous species outside the EEZ. Petitioners also proposed that foreign fishing for anadromous species be defined to include fishing for anadromous species be defined to include fishing by a foreign fishing vessel for squid, pollock, and other nonanadromous species in the international waters of the North Pacific Ocean and Bering Sea at times of the year and with gear that can reasonably be expected to result in the taking of anadromous species. The notice provided a 60-day comment period. NOAA extended the comment period on the petition for rulemaking at 52 FR 49464 (December 31, 1987), until February 29, 1988, at the request of the North Pacific Fishery Management Council.

Eight comments were received. These were from the Governor of Alaska; the U.S. Coast Guard; the Department of State; the American High Seas Fisheries Association; Garvey, Schubert and Barer (on behalf of the Japan Fisheries Association); Professor William T. Burke; Harold Sparck and Associates; and the North Pacific Fishery Management Council. The majority of comments opposed issuing a rule in response to the petition and are summarized as follows: The Secretary has no jurisdiction to regulate foreign fisheries for nonanadromous species beyond the U.S. EEZ; it is difficult to determine the country of origin of each anadromous fish; far-reaching questions of international law must be considered in relation to U.S. enforcement authority beyond the EEZ; the suggested regulation is in conflict with Article 66 of the United Nations Law of the Sea Treaty (UNCLOS); insufficient scientific information is available to support the requested rule; the petition relies on an improper interpretation of the Magnuson Act; and the suggested action is inconsistent with the Secretary's interpretation of the Magnuson Act that the foreign catch of species fully utilized by the domestic industry be minimized, but not prohibited. Three comments favored the petition for rulemaking and are summarized as follows: The suggested rule would greatly reduce high seas interception of Alaska salmon and

steelhead and provide for better enforcement; and it would prevent foreign fleets from fishing on stocks of U.S.-origin anadromous fish.

Discussion

NOAA has considered the petition and comments in conjuction with other issues relating to the management of U.S. resources taken in foreign fisheries conducted beyond the EEZ. For the time being, NOAA has decided not to undertake the requested rulemaking for the following reasons: (1) NOAA is unable to address satisfactorily the practical considerations relating to enforcement of the action proposed. NOAA continues to examine the available science, as well as U.S. boarding authority and sanctions, in the context of enforcing salmon interception prohibitions beyond the EEZ. While scientific knowledge about salmon is considerable, it is far from complete. It is difficult to prove that U.S. salmon are illegally aboard a vessel because the current scientific methodologies do not permit reliable identification of individual salmon as U.S.-origin fish. The principal methods used for tracing stocks of salmon are area tagging, scale pattern analyses, and electrophoretic separation of proteins. These procedures are generally accepted by the scientific community as capable of indicating the origin of salmon stocks. However, each method is subject to challenge when applied in enforcement actions. Scale pattern analyses do not guarantee accurate results as the method is subject to the individual interpretations and differing opinions of the analysts. Further, the scale pattern data base does not include samples for all age groups and from all geographical areas, and is therefore subject to some degree of uncertainty. Electrophoretic analysis involves a chromatographic separation procedure where amino acids from a fish are separated on a gel plate and analyzed. To provide valid results, samples must be preserved at very low temperatures (−60° to −80 °C) to avoid degradation. Consequently, application of this method to fish preserved in normal freezer boxes may provide inaccurate results. While tagging provides irrefutable evidence as to the origin of an individual fish, very few fish are tagged. Other identification techniques, sun as mitochondrial DNA analysis and FTIR analysis of scales, are still under development. None of the methods mentioned, excluding tagging, are equally effective for all species; moreover, all are time-consuming, require special equipment and training, and are therefore done only in shorebased laboratories. Further, reliability of the determinations varies statistically by technique, species, and individual sample. While the continent of origin can be readily determined, differentiating between U.S. and Canadian fish is difficult, and the distribution of intermingling stocks of North American and Asian stocks further complicates the situtation. In the areas of overlap there is no meaningful way to predict proportions of fish that will be encountered because numerous factors (strength of a year group, weather patterns, ocean temperatures, etc.) influence migration. Analytic techniques used to determine country of origin require a stable laboratory environment to be accurate; at-sea testing is not yet technologically feasible. Consequently, identifying precise areas and times when U.S.-origin salmon are certain to be present, as suggested by the petition, is not currently possible.

(2) NOAA recognizes that under the Magnuson Act, the United States has jurisdiction over U.S.-origin salmon beyond the EEZ except when they are found within the EEZ of another nation. The United Nations Convention on the Law of the Sea (UNCLOS) also provides that states in whole rivers anadromous stocks originate shall have the primary interest in, and responsibility for, such stocks. Though the U.S. government did not sign the UNCLOS, the President has stated the U.S. intention to accept and act in accordance with its provisions relating to traditional uses of the oceans, which generally confirm existing law and practice. The U.S. Department of State (DOS) further confirms that U.S. policy is to exercise jurisdiction over anadromous fish consistent with Article 66 of UNCLOS. In pertinent part, article 66 provides that "Enforcement of regulations regarding anadromous stocks beyond the exclusive economic zone shall be by agreement between the state of origin and other states concerned." In accord with Article 66, and U.S. policy, NOAA is working with the DOS to ensure effective flag state enforcement of U.S. regulations governing U.S.-origin anadromous stocks beyond the U.S. EEZ.

The United States is currently working to develop a fishery management regime for fisheries beyond the EEZ that will protect the long-term viability of all Bering Sea resources, including anadromous species, and provide for the collection of reliable scientific information on conservation of those resources. To this end, (a) NOAA published on April 25, 1988, (53 FR 13410) an emergency rule changing the definition of fish to include fish taken outside the EEZ; (b) NOAA published on April 25, 1988 (53 FR 13422) an advance notice of proposed rulemaking seeking comments on options to respond to illegal fishing in the U.S. EEZ of the Bering Sea, as well as the possibility of harvests in adjacent areas that threaten U.S. stocks; (c) NOAA has met and will continue to meet with the Soviet Union (whose waters adjoin our EEZ) to discuss joint concerns over the Central Bering Sea; (d) NOAA will also be meeting with the Japanese during the summer of 1988 to discuss a variety of fisheries enforcement issues in the Bering Sea (including illegal harvests of salmon); and (e) the United States and the Soviet Union have agreed to invite scientists from concerned countries to a scientific symposium during the summer of 1988 to address the conservation requirements of Bering Sea fishery resources; and (f) NOAA is working with the DOS, the U.S. Coast Guard, and other Federal agencies to seek greater information about unregulated driftnet fishing activities beyond our EEZ that may be adversely affecting U.S. marine resources. The newly enacted Driftnet Impact Monitoring, Assessment, and Control Act of 1987 provides the means for the United States to enter into monitoring and enforcement agreements with foreign nations regarding driftnet fishing which results in the taking of U.S. marine resources, including salmon, on the high seas. NOAA recently asked the DOS to immediately initiate negotiations with concerned Asian countries on these issues.

In view of the above, NOAA believes it would be premature to promulgate a rule responding to the petition submitted by the Bering Sea Fishermen's association. NOAA will continue to work with the DOS to arrive at long-term solution to international fishery issues that bear upon the protection of U.S.-origin anadromous species in the Bering Sea. The agency has concluded that undertaking the rulemaking suggested by the petitioner at this time is likely to compromise these ongoing efforts while offering little in the way of actual stock protection due to the inherent practical difficulties of enforcement. NOAA choose to continue efforts to establish a comprehensive management regime applicable to all resources in the Central Bering Sea and the North Pacifici Ocean. These efforts are intended to produce better scientific information and techniques to ensure the long term viability of U.S.-origin anadromous fish.

Dated: June 10, 1988.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 88-13652 Filed 6-13-88; 4:09 pm]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, July 5, 1988; Tuesday, July 12, 1988; Tuesday, July 19, 1988; and Tuesday, July 26, 1988 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b.(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 10, 1988.

[FR Doc. 88-13610 Filed 6-15-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. QF88-399-000, et al.]

Newbay Corp. et al.; Electric Rate, Small Power Production, and Interlocking Filings

Take notice that the following filings have been made with the Commission:

1. Newbay Corporation

[Docket No. QF88-399-000]

June 9, 1988

On May 24, 1988, Newbay Corporation (Applicant) of 800 Hingham Street, 2 North, Rockland, MA 02370 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to §292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in East Providence, Rhode Island. The facility will consist of a coal-fired atmospheric circulating fluidized bed combustion boiler with a condensing extraction steam turbine generator. The turbine has extraction capability to provide steam for process uses. The useful thermal energy output of the facility, which will be in the form of steam, will be used by the Highland American Corporation of East Providence in the board dryer of their fiber gypsum board plant. The net electric power production capacity of the facility will be 72.5 megawatts.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

2. Enron Cogeneration Company

[Docket No. QF85-116-001]

June 10, 1988.

On May 24, 1988, Enron Cogeneration Company (Applicant), of Three Riverway, Suite 2000, Houston, Texas 77056, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to §292.207 of the Commission's regulations. No determination has been made that the submittal of May 24, 1988, constitutes a complete filing.

The facility, which commenced commercial operation on May 1, 1987, is located in Texas City, Galveston County, Texas, near the Union Carbide Corporation chemical plant.

By order issued on March 29, 1985, the Commission granted certification of the previous facility as a qualifying cogeneration facility (30 FERC ¶62,364). The facility has not been modified from the description of the facility included in the original application.

The current recertification is requested due to a proposed change in the ownership of the Applicant, which, through a second-tier wholly-owned subsidiary, owns the cogeneration facility. A proposed change in the ownership of the Applicant's issued and oustanding shares of common stock will result in a utility (Dominion Resources, Inc. or one of its subsidiaries) equity ownership interest in the facility which will not exceed 50%

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

3. Central Illinois Public Service

[Docket No. ER88-439-000]

June 13, 1988.

Take notice that on May 31, 1988, Central Illinois Public Service Company (CIPS) tendered for filing a new Interconnection Agreement dated June 1, 1988 between CIPS and Kentucky Utilities Company (KU).

The new Interconnection Agreement is intended to replace in its entirety the presently effective Interconnection Agreement between KU and CIPS. The new Interconnection Agreement contains proposed reciprocal Service Schedules for Emergency Energy, Short-Term Power, Short-Term Firm Power, Non-Displacement Energy and Term Energy.

Copies of this filing have been sent to the Kentucky Utilities Company, the Illinois Commerce Commission and the Kentucky Public Service Commission.

Comment date: June 27, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Public Service Company of Indiana, Inc.

[Docket No. ER88-441-000]

June 13, 1988.

Take notice that on June 1, 1988, Public Service Company of Indiana, Inc. (PSI) tendered for filing pursuant to the Power Coordination Agreement between PSI and Wabash Valley Power Association, Inc. (WVPA) a Sixth Supplemental Agreement to become effective August 1, 1988, pursuant to Part 35.2 of the Commission's Regulations.

The Sixth Supplemental Agreement modifies the Agreement to insert a new Service Schedule H—Short Term Power, which deletes the existing Service Schedule H.

Copies of the filing were served upon Wabash Valley Power Association, Inc. and the Indiana Utility Regulatory Commission.

Comment date: June 27, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Boston Edison Company

[Docket No. ER88-443-000]

June 13, 1988

Take notice that on May 31, 1988, Boston Edison Company (Edison) tendered for filing Supplement No. 1 to Rate Schedule FERC No. 158 which is agreement for the sale of power to Public Service Company of New Hampshire. Pursuant to the power sales agreement, on a monthly basis Edison will sell to PSNH varying amounts of power from certain designated Edison jet turbine units.

Edison requests waiver of the Commission's notice requirements to permit Supplement No. 1 to the power sales agreement to become effective as of May 1, 1988.

Copies of the filing have been served upon PSNH and on the Department of Public Utilities of the Commonwealth of Massachusetts.

Comment date: June 27, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Alabama Power Company

[Docket No. ER88-435-000]

June 13, 1988.

Take notice that on May 31, 1988, Alabama Power Company (APCO) tendered for filing Amendment No. 1 to the Interconnection Agreement between APCO and Alabama Electric Cooperative, Inc. (AEC), together with new Service Schedule RP (Reserve Peaking Capacity) from APCO to AEC. Under the Service schedule, APCO would make available and AEC would purchase certain reserve peaking capacity during the period June 1, 1988 through December 31, 1988, at which time the schedule expires and terminates. AEC is entitled to schedule the capacity in accordance with its needs, but utilization cannot exceed a ten percent (10%) capacity factor over the stated 7 month term. The schedule provides for a monthly capacity charge and energy charges, together with a transmission service charge under certain specified circumstances. This new schedule is added to and incorporated in the existing Interconnection Agreement through Amendment No. 1, thereby facilitating transactions pursuant to the other terms and conditions governing the interconnection.

Comment date: June 27, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Iowa Public Service Company

[Docket No. ER88-444-000]

June 13, 1988.

Take notice that on May 31, 1988, Iowa Public Service Company (IPS) tendered for filing executed service agreements to permit the following Iowa municipalities to receive services pursuant to the filed rates: Auburn, Denver, Hudson, Livermore, Pocahontas, Rockford, and Sergeant Bluff.

These tendered rate schedules provides for full requirements services for the customers signing service agreements. This filing also contains tariffs incorporating the price elements of the above agreements as well as model terms and conditions and a service agreement.

Comment date: June 27, 1988, in accordance with Standard Paragraph E at the end of this document.

8. The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, The Toledo Edison Company (CAPCO Group)

[Docket No. ER88-123-000]

June 13, 1988.

Take notice that on May 31, 1988, the CAPCO Group tendered for filing an amendment to the filing of its Appendix 7 supplement to Schedule E of the CAPCO Basic Operating Agreement, as amended September 1, 1980, which is on file with the Commission and identified by the Rate Schedule numbers shown for each listed company:

Company	FERC rate schedule No.
The Cleveland Electric Illuminating Co.	15
Duquesne Light Co.	15
Ohio Edison Co.	144
Pennsylvania Power Co.	35
The Toledo Edison Co.	27

Appendix 7 to Schedule E of the CAPCO Basic Operating Agreement provides the basis for the determination of charges applicable to Unit Capacity and Energy transactions by the CAPCO member companies from Perry Plant Unit No. 1. The services and compensation for Unit Capacity and Energy transactions from base load CAPCO Units are set forth generally in Schedule E, with specific charges from particular CAPCO Units being set forth in Appendices to Schedule E as the particular Unit comes into commercial operation. It is requested that Appendix 7 become effective on November 18, 1987.

The amendment to the filing provides information on the basis for the 35 year decommissioning amortization period used in the proposed filing, provides information with respect to the development of unit cost factors reflected in the previously filed decommissioning study, and provides information on the study's derivation of the cost estimate for utility and decommissioning operations contractor staff.

Comment date: June 27, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Potomac Electric Power Company

[Docket No. ER88-440-000]

June 13, 1988.

Take notice that on May 31, 1988, Potomac Electric Power Company (Pepco) tendered for filing as a Rate Schedule a new tariff pursuant to which Pepco, a member of the Pennsylvania-New Jersey-Maryland Interconnection (PJM), a power pool, will sell to any other member of PJM such portion of its PJM entitlement to the transmission capability of the pool to import reserved economy energy as Pepco may make available from time to time for weekly or monthly periods. The rate(s) for each sale will be fixed by a competitive bidding, auction process in which any member of PJM may participate after first submitting a letter of participation to Pepco in the form contained in the tariff. Pepco reserves the right to fix a minimum bid in advance of each such auction and to retain any or all of the auctioned entitlement amount during a

forthcoming weekly period whenever in its sole judgement it has a need to use such capability for its own purposes.

Pepco requests an effective date of July 1, 1988, in order that the first auction may take place prior to August 1, 1988, and therefore also requests waiver of the Commission's notice requirements.

Comment date: June 27, 1988, in accordance with Standard Paragraph E at the end of this notice.

10. San Diego Gas & Electric

[Docket No. ER88-436-000]

June 13, 1988.

Take notice that on May 31, 1988, San Diego Gas & Electric (SDG&E) tendered for filing as an initial rate schedule the Interruptible Transmission Service Agreement between SDG&E and El Paso Electric Company (El Paso).

The Interruptible Transmission Service Agreement provides for the sale of transmission service on an as-available basis.

Comment date: June 27, 1988, in accordance with Standard Paragraph E at the end of this notice.

11. Duke Power Company

[Docket No. ER88-437-000]

June 13, 1988.

Take notice that on May 31, 1988, Duke Power Company (Duke) tendered for filing a revision in Service Scheule C *Sales of Power and Energy* to its Interconnection Agreement dated October 17, 1983 with Yadkin, Inc., which Agreement was originally accepted for filing by the Commission on February 24, 1984. Service Schedule C provides for interruptible rates with no demand charge for off-peak sales. Rates under Service Schedule C are updated annually as of July 1. Based on the 12-month period ending March 31, 1989, Duke estimates that the proposed change in rates will increase annual revenues to Duke from Yadkin by approximately $97,000.

Duke requests an effective date of July 1, 1988.

Copies of this filing were served on the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: June 27, 1988, in accordance with Standard Paragraph E at the end of this notice.

12. Boston Edison Company

[Docket No. ER88-438-000]

June 13, 1988.

Take notice that on May 31, 1988, Boston Edison Company (Edison) tendered for filing supplemental Exhibits A to a Service Agreement for Braintree Electric Light Department (Braintree), under its FERC Electric Tariff, Original Volume No. III, Non-Firm Transmission Service (the Tariff). The Exhibit A specifies the amount and duration of transmission service required by Braintree under the Tariff.

Edison requests waiver of the Commission's notice requirements to permit the Exhibits A to become effective as of the commencement date of the transactions to which they relate, May 1, 1988.

Edison states that it has served the filing on Braintree and the Massachusetts Department of Public Utilities.

Comment date: June 27, 1988, in accordance with Standard Paragraph E at the end of this notice.

13. Ohio Power Company

[Docket No. ER88-449-000]

June 13, 1988.

Take notice that on June 3, 1988, Ohio Power Company (OPCO) tendered for filing proposed modifications in its Rate Schedule FPC No. 18. These modifications are applicable to the provision of back-up and maintenance service to Wheeling Power Company (WPCO) for use by Federal Energy Regulatory Commission PURPA Section 210 qualified cogeneration and small power production customers of WPCO.

Such service has been requested by PPG Industries, Inc., a qualified cogeneration customer of WPCO (FERC Docket No. QF87-251-000). These facilities require periodic maintenance and experience random forced outages. These modifications to OPCO's Rate Schedule FPC No. 18 are necessary in order for WPCO to provide both back-up and maintenance service to PPG Industries at reasonable cost. The modifications do not affect WPCO's current firm load or the rates charged for such load.

Copies of the filing were served upon Ohio Power Company's jurisdictional customers, the Public Service Commission of West Virginia and the Public Utilities Commission of Ohio.

Comment date: June 27, 1988, in accordance with Standad Paragraph E at the end of this notice.

14. Florida Power Corporation

[Docket No. ER88-451-000]

June 13, 1988.

Take notice that on June 3, 1988, Florida Power Corporation (Florida Power) tendered for filing (1) a Service Schedule J for the Contract for Interchange Service dated August 1, 1983 between Florida Power and the Seminole Electric Cooperative, Inc. (Seminole) and (2) a letter of commitment dated May 31, 1988 to supply and take service under Schedule J and (3) an amended Article IV of the Contract for Interchange Service listing Schedule J as a service schedule under the contract. Schedule J provides for "Negotiated Interchange Service," and the letter of commitment provides for sale by Florida Power to Seminole of up to 200 megawatts of such service for the period June 1, 1988 through August 31, 1988.

Florida Power requests that the amendment be made effective as rate schedules on June 1, 1988, and therefore, requests waiver of the sixty-day notice requirement for filings under section 205 of the Federal Power Act. Alternatively, if the waiver is not granted Florida Power requests an effective date sixty days after the filing date. Copies of the filing have been served on the Seminole and the Florida Public Service Commission.

Comment date: June 27, 1988, in accordance with Standard Paragraph E at the end of this notice.

15. Union Electric Company

[Docket No. ER88-452-000]

June 13, 1988.

Take notice that on June 3, 1988, Union Electric Company (Union Electric) tendered for filing a Letter Agreement dated as of May 5, 1988, between City of Columbia, Missouri, and Union Electric Company.

Union Electric states the purpose of the Letter Agreement is to revise the rate formula for Transmission Service.

Comment date: June 27, 1988, in accordance with Standard Paragraph E at the end of this document.

16. Vermont Electric Power Company, Inc.

[Docket No. ER88-447-000]

June 13, 1988.

Take notice that on June 2, 1988, Vermont Electric Power Company, Inc. (VELCO) tendered for filing a Tariff regarding the allocation of transmission capacity on the VELCO system among the Vermont distribution utilities.

VELCO proposes that the Tariff become effective on June 1, 1988. VELCO requests a waiver of the Commission's Regulations to allow the Tariff to become effective as of that date. If the waiver is granted, VELCO states that there will be no adverse effect upon any of VELCO's customers. If the waiver is not granted, VELCO requests that the Tariff become effective on August 2, 1988. The Tariff is filed as Supplement No. 1 and Supplement No. 3

to existing FERC Rate Filings Nos. 235 and 240, respectively.

VELCO states that it has served the filing upon the Vermont Public Service Board and upon VELCO's transmission customers: Allied Power and Light Company, Barton Village, Inc., Boston Edison Company, The City of Burlington Electric Department, Central Vermont Public Service Corporation, Citizens Utilities Company, Village of Enosburg Falls Water and Light Department, Franklin Electric Light Company, Green Mountain Power Corporation, Village of Hardwick Electric Department, Village of Hyde Park, Inc., Village of Jacksonville, Village of Johnson Electric Light Department, Village of Ludlow Electric Light Department, Village of Lyndonville Electric Department, Village of Morrisville Water and Light Department, Village of Northfield Electric Department, Village of Orleans Electric Department, Public Service Company of New Hampshire, Village of Readsboro Electric Light Department, Rochester Light and Power Company, Village of Stowe Water and Light Department, Village of Swanton, Vermont Department of Public Service, Vermont Electric Cooperative, Vermont Electric Generation and Transmission Cooperative, Inc., Vermont Marble Company, Vermont Public Power Supply Authority, and Washington Electric Cooperative, Inc.

Comment date: June 27, 1988, in accordance with Standard Paragraph E at the end of this notice.

17. Alabama Power Company

Docket No. ER88-450-000]

June 13, 1988.

Take notice that on June 3, 1988, Alabama Power Company tendered for filing a Service Agreement dated May 3, 1988 with the City of Evergreen incorporating the appropriate revision to Rate Schedule MUN-1 as incorporated in Alabama Power Company's FERC Electric Tariff Original Volume No. 1, including, as Exhibit A, a description of two new 115 kV delivery points.

Comment date: June 27, 1988, in accordance with Standard Paragraph E at the end of this notice.

18. Florida Power Corporation

[Docket No. ER88-448-000]

June 13, 1988.

Take notice that on June 2, 1988, Florida Power Corporation (Florida Power) tendered for filing an amendment to Exhibit A, Schedule 1, of the "Agreement for Partial Requirements Service, Transmission/Distribution Service and Demand and Energy Losses Service" between itself and the Florida Municipal Power Agency. The amendment provides a changed basis of establishing the billing determinants for the "Excess Demand Rate" under the agreement.

Florida Power requests that the amendment be made effective as rate schedules on June 1, 1988, and therefore, requests waiver of the sixty-day notice requirement for filings under section 205 of the Federal Power Act. Copies of the filing have been served on the Florida Municipal Power Agency and the Florida Power Service Commission.

Comment date: June 27, 1988, in accordance with Standard Paragraph E at the end of this notice.

19. Union Electric Company

[Docket No. ER88-446-000]

June 13, 1988.

Take notice that on May 27, 1988, Union Electric Company (UE) tendered for filing Fourth Amendment and Third Revised Schedule II to the Interchange Agreement dated May 2, 1969 between St. Joseph Light & Power Company and Union Electric Company.

Said agreements revise certain reservation charges, provide for the addition of Term Energy and inclusion of the rates therefor and extend the term of the Interchange Agreement.

UE requests that the filing be permitted to become effective June 1, 1988.

Comment date: June 27, 1988, in accordance with Standard Paragraph E at the end of this notice.

20. Gulf States Utilities Company

[Docket No. ER88-445-000]

June 13, 1988.

Take notice that on May 31, 1988, Gulf States Utilities Company (GSU) tendered for filing a proposed change in Revised Amendment No. 3 to its Power Supply Agreement with Sam Rayburn Dam Electric Cooperative, Inc., Sam Rayburn Municipal Power Agency, and Sam Rayburn G. & T. Inc. (collectively "San Rayburn"). The change reduces to six (6) months the notice Sam Rayburn must give before terminating Revised Amendment No. 3 to the Power Supply Agreement. The rate schedule change does not constitute a rate increase. The rate schedule change was agreed to by GSU and Sam Rayburn.

GSU requests an effective date of July 30, 1988. Copies of this filing were served upon Sam Rayburn.

Comment date: June 27, 1988, in accordance with Standard Paragraph E at the end of this document.

21. Arizona Public Service Company

[Docket No. ER88-453-000]

June 13, 1988.

Take notice that on June 6, 1988, Arizona Public Service Company (APS) tendered for filing Amendments No. 1, No. 2, No. 3 (collectively "Amendments") and a Notice of Cancellation for the Contract for Interconnection and Transmission Service Agreement (Agreement) (see APS FPC Rate Schedule No. 30) among APS, the United States Department of the Interior—Bureau of Reclamation (WAPA) and the Arizona Power Authority (APS).

The initial term of the Agreement expired on May 31, 1987. The Parties, while negotiating a new agreement, agreed to extend the term of service under the Agreement to December 31, 1987, February 29, 1988 and March 31, 1988 through execution of Amendments No. 1, No. 2 and No. 3 to the Agreement respectively. The aforementioned Amendments provided only for continuation of service at the rates, terms and conditions of service specified in the Agreement. Inasmuch as the new agreement does not provide for any service to rendered by APS, APS has filed a Notice of Cancellation of the aforementioned rate schedule.

APS requests waiver of § 35.3 and 35.15 of the Federal Energy Regulatory Commission's Rules and Regulations to allow cancellation of APS FERC Rate Schedule No. 30 as of April 1, 1988.

Copies of this filing have been served upon WAPA, APA and the Arizona Corporation Commission.

Comment date: June 27, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13662 Filed 6-15-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-424-000, et al]

Florida Gas Transmission Co. et al., Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Florida Gas Transmission Company

[Docket No. CP88-424-000]

June 10, 1988.

Take notice that on May 27, 1988, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP88-424-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of Natural gas for Phoenix Pipeline Company (Phoenix), all as more fully described in the application.

FGT states that Phoenix and FGT have entered into an interruptible transportation agreement dated March 29, 1988, which provides for the receipt of gas by FGT for the account of Phoenix of up to 5,000 MMBtu per day, and for the redelivery of equivalent volumes for Phoenix's account. FGT states that the gas would be received at the following existing points of interconnection between FGT and other entities:

1) Existing point of interconnection between FGt and Amoco Production Company in Baldwin County, Alabama.

2) Existing point of interconnection between FGT and Bay City Minerals in Baldwin County, Alabama.

FGT proposes to deliver the gas to or for the account of Phoenix, less Phoenix's pro rata share of compressor fuel and vented and lost gas, at an existing point of interconnection between FGT and United Gas Pipe Line Company in Baldwin County, Alabama.

FGT further proposes to charge Phoenix the maximum rate applicable to this service. The maximum rate, it is said, currently consists of a facility charge of 7.3 cents per MMBtu delivered and a service charged of 3.9 cents per MMBtu per 100 miles of forward haul.

FGT state that the term of the transportation agreement is for a primary term of ten years from the date of initial deliveries under the contract, and from year to year thereafter.

FGT further states that Phoenix requires this transportation service in order to sell gas to the City of Fairhope, Alabama and the Utilities Board of the City of Atmore, Alabama.

Comment date: July 1, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. El Paso Natural Gas Company

[Docket No. CP88-433-000]

June 10, 1988.

Take notice that on June 1, 1988, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP88-433-000 an application pursuant to section 7(c) of the Natural Gas Act for a blanket certificate of public convenience and necessity under § 284.221 of the Commission's Regulations authorizing the transportation of natural gas on behalf of others, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso requests a blanket certificate authorizing the transportation of natural gas on behalf of others in accordance with Subpart G of Part 284 of the Commission's Regulations. El Paso states that it will comply with the conditions in paragraph (c) of section 284.221 of the Commission's Regulations which paragraph refers to Subpart B of Part 284 of the Commission's Regulation's.

El Paso explains that its request for a blanket open-access certificate is being filed concurrently with, and as an integrated part of, a comprehensive plan to provide for (1) completion of El Paso's transition to a full open access transporter; (2) adoption of the rate recovery procedure set forth in Order No. 500 for El Paso's take-or-pay buyout and buydown costs; (3) implementation of a gas inventory charge; (4) implementation of interruptible on-system and off-system sales service; and (5) implementation of certain rate changes and reductions to improve the competitiveness of El Paso's rates. El Paso states that its willingness to become a permanent open access transporter is dependent upon the approval of all the interrelated elements of the plan.

Comments date: July 1, 1988, in accordance with Standard Paragraph F at the end of this notice.

Trunkline Gas Company

[Docket No. CP88-415-000]

June 10, 1988.

Take notice that on May 26, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas, 77001, filed in Docket No. CP88-415-000 an application pursuant to section 7 of the Natural Gas Act for authorization to sell up to 500 Mcf of natural gas per day to the City of Splendora, Texas (Splendora), for resale, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline proposes to provide sales service to Splendora pursuant to Rate Schedule SG-1 of Trunkline's FERC Gas Tariff Original Volume No. 1. Trunkline also proposes to construct and operate a tap and associated pipeline and to own and operate measuring and regulating facilities to be constructed by Splendora. It is stated that the delivery point would be approximately one and one-half miles downstream of Trunkline's valve Section 34A-100 in Montgomery County, Texas. The total cost of the proposed facilities is estimated to be $20,900.

It is stated that Splendora operates a municipal distribution system which serves residential end-users, the Splendora Independent School District and small commercial end-users in its service area.

Comment date: July 1, 1988, in accordance with Standard Paragraph F at the end of this notice.

Tennessee Gas Pipeline Company

[Docket No. CP88-451-000]

June 14, 1988.

Take notice that on June 6, 1988, Tennessee Gas Pipeline Company, (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-451-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service for Fuel Service Group, a marketer, (Fuel Services), under Applicant's blanket certificate issued in Docket No. CP87-115-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set out in the request on file with the Commission and open to public inspection.

Applicant states that pursuant to a transportation agreement dated April 27, 1988, it proposes to receive up to 11,400 dt equivalent of natural gas per day for Fuel Services at numerous points in Offshore Louisiana and redeliver the gas at specified delivery points located in the states of Texas, Louisiana, Mississippi, New Jersey, Ohio, Kentucky, and Tennessee.

Applicant further states that the peak day, average day, and annual quantities would be 11,400, dt equivalent of natural gas, 3,185 dt equivalent of natural gas, and 1,162,525 dt equivalent of natural gas, respectively. It is indicated that a

120-day transportation service under § 284.223 (a) commenced on May 3, 1988, as reported in Docket No. ST88–3971 on May 31, 1988.

Applicant states that no facilities need be constructed to implement the service. Applicant states that the primary term of the transportation service would expire two years from the date of execution of the transportation agreement but would continue on a month-to month basis unless terminated by either party on thirty days prior notice. Applicant proposes to charge the rates and abide by the terms and condition of its Rate Schedule No. IT.

Comment date: July 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. Trunkline Gas Company

[Docket No. CP88–444–000]

June 14, 1988.

Take notice that on June 3, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642 Houston, Texas 77251–1642 filed in Docket No. CP88–396–000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP86–586–000 pursuant to section 7(c) of the National Gas Act, all as more set forth in the request on file with the Commission and open to public inspection.

Trunkline proposes to transport natural gas for Sun Operating Limited Partnership (Sun), a marketer, pursuant to a transportation agreement dated March 22, 1988. Trunkline explains that service commenced April 1, 1988 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88–3587–000. Trunkline further explains that the peak day quantity would be 300,000 dekatherms, the average daily quantity would be 160,000 dekatherms, and that the annual quantity would by 19,200,000 dekatherms. Trunkline explains that it would receive natural gas for Sun's account at existing points of receipt on its system in the states of Louisiana, Texas, Tennessee, Illinois and offshore Louisiana. Trunkline further explains that, it would redeliver natural gas for the Sun's account at five redelivery points in St. Mary Parish, Louisiana; two redelivery points in Beauregard Parish, Louisiana; one redelivery point in Cameron Parish, Louisiana and one redelivery point in Brazoria County, Texas. Trunkline indicates that the natural gas to be transported is for the ultimate consumption by 206 different local distribution companies and end-users.

Comment date: July 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

6. Natural Gas Pipeline Company of America

[Docket No. CP88–452–000]

June 14, 1988.

Take notice that on June 6, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP88–452–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Chevron U.S.A. Inc. (Chevron), a producer of natural gas, under Natural's blanket certificate issued in Docket No. CP86–582–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural proposes to transport on an interruptible basis up to 350,000 MMBtu of gas on a peak day and 36,500,000 MMBtu on an annual basis for Chevron. It is stated that Natural would receive the gas for Chevron's account at various existing receipt points in Oklahoma, offshore Texas, Louisiana, Offshore Louisiana, New Mexico, Kansas, Illinois and Wyoming, and would deliver equivalent amounts of gas in Illinois, New Mexico, Iowa, Kansas and Texas. It is asserted that the transportation service would be effected using facilities and would not require any construction of additional facilities. It is explained that the service commenced April 1, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations.

Comment date: July 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

7. Tennessee Gas Pipeline Company

[Docket No. CP88–448–000]

June 14, 1988.

Take notice that on June 6, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511 Houston, Texas 77252 filed in Docket No. CP88–448–000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP87–115–000 pursuant to section 7(c) of the Natural Gas Act, all as more set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport natural gas for Woodward Marketing, Inc. (Woodward). Tennessee explains that service commenced May 4, 1988 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88–3981. Tennessee further explains that the peak day quantity would be 15,000 dekatherms, the average daily quantity would be 200 dekatherms, and that the annual quantity would be 73,000 dekatherms. Tennessee explains that it would receive natural gas for Woodward's account in the states of Mississippi, Alabama, and Texas. Tennessee further explains that, it would redeliver natural gas to Woodward in the state of Mississippi. The ultimate delivery point of the gas is Mississippi, it is explained.

Comment date: July 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

8. Tennessee Gas Pipeline Company

[Docket No. CP88–450–000]

June 14, 1988.

Take notice that on June 6, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511 Houston, Texas 77252 filed in Docket No. CP88–450–000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP87–115–000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport natural gas for Tejas Power Corporation (Tejas). Tennessee explains that service commenced May 1, 1988 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88–3965. Tennessee further explains that the peak day quantity would be 50,000 dekatherms, the average daily quantity would be 2,000 dekatherms, and that the annual quantity would be 730,000 dekatherms. Tennessee explains that it would receive natural gas for Tejas' account in Texas, Offshore Louisiana and Louisiana. Tennessee states that the points of delivery are located in the states of Connecticut and Massachusetts.

Comment date: July 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

9. Tennessee Gas Pipeline Company

[Docket No. CP88–446–000]

June 14, 1988.

Take notice that on June 6, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511 Houston, Texas 77252 filed in Docket No. CP88–446–000 a request pursuant to § 284.223 of the Regulations under the Natural

Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP87–115–000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport natural gas for Paragon Gas Corporation (Paragon). Tennessee explains that service commenced April 15, 1988 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88–3968. Tennessee further explains that the peak day quantity would be 40,000 dekatherms, the average daily quantity would be 7,750 dekatherms, and that the annual quantity would be 2,828,750 dekatherms. Tennessee explains that it proposes to transport natural gas for Paragon from various receipt points located in the states of Louisiana, Texas, Offshore Texas and Louisiana, Mississippi, Alabama, New York, and West Virginia, to various delivery points off Tennessee's system, points located in multiple states.

Comment date: July 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

10. Algonquinn Gas Transmission Company

[Docket No. CP88–438–000]

June 14, 1988.

Take notice that on June 3, 1988, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP88–438–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate certain facilities necessary to establish a new delivery point to deliver gas for resale by the Connecticut Light and Power Company (CL&P), under the certificate authorization issued in Docket No. CP87–317–000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Algonquin proposes to construct and operate a new measuring and regulating station which would enable CL&P to make increased deliveries to Montville Electric Generating Station and other gas users in the southeastern Connecticut area. Algonquin currently provides service through the existing Uncasville, Connecticut, meter station (Uncasville Station). Algonquin explains that the new facilities would permit on an interruptible basis a delivery capacity of 935 Mcf per hour with future expansion capability of up to 1,800 Mcf per hour.

Algonquin states that the new delivery point (Montville Station) would be established on land owned by CL&P approximately 500 feet from the Uncasville Station. Algonquin further states that the new station would be used, as is the Uncasville Station, solely to deliver gas to CL&P and that Algonquin would leave the Uncasville Station in place as an alternate delivery point. It is stated that CL&P would pay all costs associated with the project including reimbursement to Algonquin for out of pocket expenses incurred. The total cost of the Montville Station is estimated to be $394,000.

Algonquin states that the existing Uncasville Station measuring facilities are utilized to deliver natural gas to CL&P under Algonquin's Rate Schedules F–1, F–2 and F–3. Algonquin does not propose to increase the maximum Daily Delivery Obligation (MDDO) under firm service agreements between Algonquin and CL&P. Algonquin would designate the Uncasville Station as an alternate delivery point under its service agreements with CL&P and designate the Montville Station as the delivery point in lieu of the Uncasville Station. Accordingly, Algonquin states that its peak day and annual commitments under firm service agreements would not be affected by construction of the Montville Station.

Comment date: July 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

11. Trunkline Gas Company

[Docket No. CP88–443–000]

June 14, 1988.

Take notice that on June 3, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP88–443–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Chevron U.S.A. Inc. (Chevron), a producer, under the certificate issued in Docket No. CP86–586–000 on April 30, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement dated March 28, 1988, it proposes to transport up to 30,000 dekatherms per dasy equivalent of natural gas on an interruptible basis for Chevron from points of receipt listed in Exhibit "A" of the agreement to redelivery points also listed in Exhibit "A". Trunkline states that it would recieve the gas at various existing points on its system from Offshore Louisiana, and that it would transport and redeliver the gas, less fuel used and unaccounted for line loss, to Texas Eastern Transmission Corporation in Beauregard Parish, Louisiana.

Trunkline further states that the estimated average daily and annual quantities would be equivalent to 25,000 dekatherms and 9,125,000 dekatherms, respectively. Trunkline advises that service under § 284.223(a) commenced March 28, 1988, as reported in Docket No. ST88–3649.

Comment date: July 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

12. Trunkline Gas Company

[Docket No. CP88–441–000]

June 14, 1988.

Take notice that on June 3, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP88–441–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Tejas Power Corporation (Tejas), a marketer, under the certificate issued in Docket No. CP86–586–000 on April 30, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement dated April 1, 1988, it proposes to transport up to 50,000 dekatherms per day equivalent of natural gas on an interruptible basis for Tejas from points of receipt listed in Exhibit "A" of the agreement to redelivery points also listed in Exhibit "A". The subject transportation service would involve interconnections between Trunkline and various transporters. Trunkline states that it would receive the gas at various existing points on its system in Illinois, Louisiana, Offshore Louisiana, Tennessee and Texas, and that it would transport and redeliver the gas, less fuel used and unaccounted for line loss, to (1) Acadian Gas Pipe Line System (Acadian) in St. Mary Parish, Louisiana, (2) Bridgeline Gas Distribution Company (Bridgeline) in St. Mary Parish, Louisiana, (3) Monterey Pipeline Company (Monterey) in St. Mary Parish, Louisiana, and (4) Transcontinental Gas Pipe Line Corporation in Beauregard Parish,

Louisiana, for use by Acadian, Bridgeline and Monterey.

Trunkline further states that the average daily and annual quantities would be equivalent to 10,000 dekatherms and 3,650,000 dekatherms, respectively. Trunkline advises that service under Section 284.223(a) commenced April 1, 1988, as reported in Docket No. ST88–3591.

Comment date: July 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

13. MIGC, Inc.

[Docket No. CP88–417–000]

June 14, 1988.

Take notice that on May 26, 1988, MIGC, Inc. (MIGC), 10701 Melody Drive, Suite 609, Denver, Colorado 80234, filed in Docket No. CP88–417–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate a sales tap for the delivery of gas to Kerr-McGee Corporation, an end-user, under the certificate issued in Docket No. CP82–409–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

MIGC states that the quantity of gas to be delivered through the proposed facilities is the MMBtu equivalent of 35,000 Mcf per day for the first three months of operation and the MMBtu equivalent of 15,000 Mcf per day thereafter. MIGC states that it anticipates no impact on its peak day or annual deliveries as a result of the proposed service. MIGC states that it would charge Kerr-McGee the rate set forth under Rate Schedule ITS–1 of MIGC's FERC Gas Tariff.

Comment date: July 29, 1988, 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–13663 Filed 5–16–88; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 9212–002, et al.]

Aero Construction, Inc. et al.; Surrender of Preliminary Permits and Exemptions

June 13, 1988.

Take notice that the following preliminary permits/exemptions have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. Aero Construction, Inc.

[Project No. 9212–002]

Take notice that Aero Construction, Inc. permittee for the proposed Canal Section Lock B Hydro Project No. 9212, has requested that its preliminary permit be terminated. The permit was issued on September 17, 1985, and would have expired August 31, 1988. The project would have been located on the Tennessee-Tombigbee River near Fulton, Itawamba County, Mississippi. The permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The permittee filed request on May 20, 1988.

2. Aero Construction, Inc.

[Project No. 9209–002]

Take notice that Aero Construction, Inc. permittee for the proposed Canal Section Lock D Hydro Project No. 9209, has requested that its preliminary permit be terminated. The permit was issued on September 17, 1985, and would have expired August 31, 1988. The project would have been located on the Tennessee-Tombigbee River near Fulton, Itawamba County, Mississippi. The permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The permittee filed request on May 20, 1988.

3. Swift River/Hafslund Company

[Project No. 9615–001]

Take notice that Swift River/Hafslund Company permittee for the proposed Three Rivers Dam Project No. 9615, has requested that its preliminary permit be terminated. The permit was issued on May 30, 1986, and would have expired April 30, 1989. The project would have been located on the Chicopee River near Three Rivers, Hampton County, Massachusetts. The permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The permittee filed request on May 16, 1988.

4. Aero Construction, Inc.

[Project No. 9211–002]

Take notice that Aero Construction, Inc. permittee for the proposed Canal Section Lock C Hydro Project No. 9211, has requested that its preliminary permit be terminated. The permit was issued on September 17, 1985, and would have expired August 31, 1988. The project would have been located on the Tennessee-Tombigbee River near Fulton, Itawamba County, Mississippi. The permittee cites that the proposed

project is not economically feasible as the basis for the surrender request.

The permittee filed request on May 20, 1988.

5. Aero Construction, Inc.

[Project No. 9213-002]

Take notice that Aero Construction, Inc. permittee for the proposed Canal Section Lock A Hydro Project No. 9213, has requested that its preliminary permit be terminated. The permit was issued on September 23, 1985, and would have expired August 31, 1988. The project would have been located on the Tennessee-Tombigbee River near Fulton, Itawamba County, Mississippi. The permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The permittee filed request on May 20, 1988.

6. Aero Construction, Inc.

[Project No. 9210-002]

Take notice that Aero Construction, Inc. permittee for the proposed Canal Section Lock E Hydro Project No. 9210, has requested that its preliminary permit be terminated. The permit was issued on September 17, 1985, and would have expired August 31, 1988. The project would have been located on the Tennessee-Tombigbee River near Fulton, Itawamba County, Mississippi. The permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The permittee filed request on May 20, 1988.

Standard Paragraphs

I. The preliminary permit/exemption shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13664 Filed 6-15-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ88-2-31-001]

Arkla Energy Resources; Filing of Revised Tariff Sheets in Compliance With Order No. 483

June 13, 1988.

Take notice that on June 6, 1988, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing the following tariff sheets to become effective July 1, 1988:

Rate Schedule No. X-26, Original Volume No. 3
1st Substitute 3rd Revised 45th Revised Sheet No. 185
Rate Schedule No. G-2, First Revised Volume No. 1
1st Substitute 3rd Revised 46th Revised Sheet No. 4

AER states that these tariff sheets reflect AER's first quarterly PGA filing made under the Commission's transitional rules of Order No. 483.

AER states that the proposed changes would increase its system cost by $146,786 and its revenue from jurisdictional sales and service by $2,853 for the PGA period of July, August and September 1988 as adjusted.

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 §§ 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 June 20, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13579 Filed 6-15-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP85-122-009 and RP87-30-013]

Colorado Interstate Gas Co.; Compliance Filing

June 13, 1988.

Take note that on June 6, 1988 Colorado Interstate Gas Company ("CIG") submitted for filing its compliance filing as required by the Commission's Opinion Nos. 290 and 290-A. CIG submitted certain tariff sheets as part of its FERC Gas Tariff, Volumes 1, 1-A and 2.

CIG states that it protests the requirement that it file tariff sheets and change rates in Docket No. RP87-30 based upon the outcome of proceedings in Docket No. RP85-122 when Docket No. RP87-30 rates are being collected subject to refund. CIG states that it reserves its rights to seek judicial review of Opinion Nos. 290 and 290-A and any Commission order issued in response to its request for rehearing of Opinion No. 290-A

The present filing reflects a modified fixed variable rate design using annual D_2 billing determinants based upon nominations of its customers. Because CIG has sought rehearing of Opinion No. 290-A insofar as that opinion requires the acceptance by CIG of nominated D_2 billing determinants CIG requests that the instant filing be considered as an informational filing, and any implementation of the rates and tariff sheets therein be deferred. Alternatively, CIG requests that an effective date be established that is at least thirty days after the Commission accepts the federal tariff sheets in order that CIG's customers may make necessary pass-through filings with state and local regulatory bodies.

Copies of CIG's filing have been served on CIG's jurisdictional customers, interested state commissions, and all parties to the proceedings.

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 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be biled on or before June 20, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13580 Filed 6-15-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ88-1-51-002]

Great Lakes Gas Transmission Co; Filing June 13, 1988.

Take notice that on June 6, 1988, Great Lakes Gas Transmission Company (Great Lakes) filed Second Corrected Substitute Thirteenth Revised Sheet No. 57(i), Corrected Second Substitute Thirteenth Revised Sheet No. 57(i), and Corrected Substitute Fourteenth Revised Sheet No. 57(i).

Great Lakes states that this filing corrects the commodity component of

Rate Schedule CQ–3 in its May 16 and May 20, 1988 filings.

Great Lakes requests Second Corrected Substitute Thirteenth Revised Sheet No. 57(i) and Corrected Second Substitute Thirteenth Revised Sheet No. 57(i) be accepted to be effective on May 1, 1988 and Corrected Substitute Fourteenth Revised Sheet No. 57(i) be accepted to be effective June 1, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before June 20, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–13581 Filed 6–15–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–140–001]

Midwestern Gas Transmission Co.; Request for Waiver of Certain PGA Regulations and Specific Approval of Certain Gas Costs

June 10, 1988.

Take notice that on May 31, 1988, Midwestern Gas Transmission Company tendered for filing a petition requesting waiver of the transitional rules in the PGA regulations promulgated in Order 483 and approval of surcharge recovery of certain unrecovered gas costs incurred during an interim adjustment.

Midwestern Gas Transmission Company (Midwestern) states that its motion requests that the Commission waive the requirements of the transitional rules in its Purchased Gas Adjustment (PGA) Regulations, to be codified at 18 CFR 154.310, relating to the timing of the initial surcharge to amortize unrecovered gas costs for the PGA for Midwestern's Southern System. Midwestern is requesting that it be allowed to implement the initial six month surcharge effective October 1 rather than July 1, 1988 (the effective date of its first quarterly filing under the new regulations). Midwestern states that the requested timing will match the seasonal period of cost recovery to the seasonal period of cost incurrence and will diminish the rate impact of the surcharge.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers on its Southern System and affected state regulatory commissions.

Any persons 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. All such motions or protests should be filed on or before June 17, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–13582 Filed 6–15–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–94–005]

Natural Gas Pipeline Co. of America; Supplement to Tariff Filing

June 13, 1988.

Take notice that on June 7, 1988, Natural Gas Pipeline Company of America (Natural) submitted for filing Second Substitute Alternate Original Sheet Nos. 169 and 170 to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective on May 1, 1988.

Natural states that the purpose of the tariff filing is to correct an error in the calculation of the Base Period volumes underlying the allocation of Take-or-Pay Settlement Costs to jurisdictional and non-jurisdictional customers.

Natural states that a copy of its filing has been mailed to Natural's jurisdictional sales customers, interested state regulatory agencies, and all parties set out on the official service list at Docket No. RP88–94–000.

Any person desiring to be heard or to protest said filing would 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. All such motions or protests must be filed on or before June 20, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–13583 Filed 6–15–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–190–000]

North Penn Gas Co. Petition of North Penn Gas Co. for Authority To Implement Direct Billing Mechanism

June 13, 1988.

Take notice that on June 7, 1988, North Penn Gas Company (North Penn) filed a petition for authority to implement a direct billing mechanism to recover certain take-or-pay costs that North Penn is being assessed on a direct bill basis by Tennessee Gas Pipeline Company and Transcontinental Gas Pipe Line Corporation. North Penn stresses that its recovery proposal is applicable to Corning Natural Gas Corporation (Corning).

North Penn requests waiver of Commission regulations, rules and orders to the extent necessary to permit expeditious approval of the proposed direct billing mechanism.

North Penn states that it has served a copy of the petition on North Penn's wholesale customers (including Corning), the New York State Electric & Gas Corporation (a resale customer of Corning), 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 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 June 20, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13584 Filed 6-15-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-17-010]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 13, 1988.

Take notice that on June 6, 1988, Southern Natural Gas Company (Southern) tendered for filing the following tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective December 1, 1987:

Third Revised Sheet No. 30X
Third Revised Sheet No. 30PP
First Revised Sheet No. 45R.20
Second Revised Sheet No. 45R.22
Third Revised Sheet Nos. 45R.23-45R.24
First Revised Sheet No. 53I.29
First Revised Sheet No. 53I.36
First Revised Sheet No. 53I.45
First Revised Sheet No. 53I.52

Southern states that on May 20, 1988, the Commission issued its Order Granting in Part and Denying in Part Rehearing (Order) in which the Commission addressed certain rehearing petitions and directed Southern to file revised tariff sheets in accordance with the discussion therein within 15 days of such Order. Accordingly, Southern has submitted certain of the revised tariff sheets listed above and has requested a waiver of the Commission's Regulations to make the revised sheets effective December 1, 1987.

In addition, Southern states that it filed certain of the revised tariff sheets listed above as a result of the Commission's issuance of a blanket certificate in Docket No. CP88-316-000 on May 6, 1988, to Southern authority transportation by Southern under Subpart G of Part 284 of the Commission's Regulations which revisions provide for the designation of the type of transportation requested by and provided to each shipper. Southern has requested a waiver of the Commission's Regulations to make the revised sheets effective June 1, 1988, the date Southern accepted its blanket certificate.

Southern states that copies of the filing were mailed to all of Southern's jurisdictional purchasers, shippers, and interested state commissions, as well as the parties listed on the Commission's official service list compiled in this proceeding.

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 the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before June 20, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13585 Filed 6-15-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3397-7]

Science Advisory Board, Environmental Health Committee, Thyroid Document Panel; Open Meeting

Under Pub. L.92-463, notice is hereby given that a one day meeting of the Thyroid Document Panel of the Environmental Health Committee of the Science Advisory Board will be held on July 1, 1988 at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, in the Administrators Conference Room, 1101 West Tower.

The purpose of this meeting will be to review the draft document prepared by the Technical Panel of the Risk Assessment Forum entitled "Thyroid Follicular Cell Carcinogenesis: Mechanistic and Science Policy Considerations".

Documentation for this meeting is available from the Center for Research Information (CERI), 26 West St. Clair Street, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268.

Any member of the public wishing to make a presentation at the meeting should forward a written statement to Dr. C. Richard Cothern, Executive Secretary, Science Advisory Board (A-101F), U.S. Environmental Protection Agency, Washington, DC, 20460 by June 17, 1988. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of claim minutes.

Donald Barnes,

Director, Science Advisory Board.

Dated: June 7, 1988.

[FR Doc. 88-13628 Filed 6-15-88; 8:45 am]

BILLING CODE 6560-50-M

[FRC-3397-5]

Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of CERCLA, as amended by SARA, 42 U.S.C. 9622(i), notice is hereby given that a proposed administrative cost recovery settlement concerning the United Rigging and Hauling site in Beltsville, Maryland was issued by the Agency on May 18, 1988. The settlement resolves an EPA claim under section 107 of CERCLA, 42 U.S.C. 9607, against the Electric Equipment Corporation of Virginia. The Settlement requires the settling party to pay $10,000.00 to the Hazardous Substance Superfund.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at the United States Environmental Protection Agency Information Resource Center, Region III, (3PM21) 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

DATE: Comments must be submitted by July 18, 1988.

ADDRESSES: The proposed settlement is available for public inspection at the U.S. EPA Information Resource Center, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. A copy of the proposed settlement may be obtained in person or by mail from Ms. Diane McCreary, Librarian, Information Resource Center, (3PM21), 841 Chestnut Building, Philadelphia, Pennsylvania 19107, (215) 597-7904. Comments should reference the EEC Settlement-United Rigging and Hauling Site, Beltsville, Maryland and EPA Docket III-88-31-DC and should be addressed to Mary Letzkus, Chief, CERCLA Removal Enforcement Section (3HW14) 841

Chestnut Building, Philadelphia, Pennsylvania 19107.

FOR FURTHER INFORMATION CONTACT: Allyn L. Stern, Assistant Regional Counsel, Office of Regional Counsel (3RC21), U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107, (215) 597–1632.

Date: May 18, 1988.

James M. Seif,

Regional Administrator.

[FR Doc. 88–13627 Filed 6–15–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

June 8, 1988.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Yvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3785.

OMB Number: 3060–0073.

Title: Application for and Certification of Overtime Service Involving Inspection of Ship Radio Equipment.

Form Number: FCC 808.

Action: Extension.

Respondents: Businesses including small businesses.

Frequency of Response: On occasion.

Estimated Annual Burden: 200 Responses, 17 Hours.

Needs and Uses: The FCC Form 808 is used to request an overtime inspection of compulsory shipboard radio equipment pursuant to section 4(f)(3) of the Communications Act of 1934, as amended, and 47 CFR 80.59(e). The affected public are businesses whose vessels require inspection of radio equipment at other than normal duty hours. The information requested certifies that the overtime services was requested and performed. If this form is not completed, the U.S. Government will not be reimbursed the overtime monies that was paid to the employee.

H. Walker Feaster III,

Acting Secretary, Federal Communications Commission.

[FR Doc. 88–13578 Filed 6–15–88; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Proceeding; Barker Broadcasting Co., Inc. 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. Barker Broadcasting, Co., Inc., Manchester, Ky.	BPH–870706MG...	88–272
B. Manchester Communications, Ltd., Manchester, Ky.	BPH–870707MC...	

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 test 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 Applicants

1. Comparative, BOTH
2. Ultimate, BOTH

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant to which it applies are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–13571 Filed 6–15–88; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Proceeding; Boudreaux, Jeffrey L. 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. Jeffrey L. Boudreaux, Rocky Mount, Va.	BPH–870529MA...	88–276
B. WNLB Radio, Inc., Rocky Mount, Va.	BPH–870529MB...	
B. WYTI, Inc., Rocky Mount, Va.	BPH–870529MP...	

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 Applicants

1. Financial, A
2. Environmental, B
3. Comparative, ALL
4. Ultimate, ALL

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant to which it applies is set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–13572 Filed 6–15–88; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Dorsey, Albert L. Jr. et al.

1. The Commisison has before it the following mutually exclusive applications of a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. Albert L. Dorsey, Jr., Nags Head, NC.	BPH-861010SY	88-277
B. Charles M. Edwards et al., d/b/a Alpha FM Partnershp, Nags Head, NC.	BPH-861014SZ	
C. Pamela R. Jones, Nags Head, NC.	BPH-861014TA	
D. Winfas of Nags Head, Inc., Nags Head, NC.	BPH-861014TB	
E. Nags Head Radiophone Company, Inc., Nags Head, NC.	BPH-861014TD	
F. Coastal Broadcasting Company, Inc., Nags Head, NC.	BPH-861014TE	
G. Surfside Broadcasting (A Limited Partnership), Nags Head, NC.	BPH-861014TF	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have beed 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)

1. City Coverage, C
2. Air Hazard, C
3. Comparative, ALL
4. Ultimate, ALL

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant 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 form the Commisison'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. 88-13573 Filed 6-15-88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Hilding, Eric R. 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. Eric R. Hilding, Kings Beach, CA.	BPH-861230MF	88-274
B. William McGee and Frank R. Castillo d/b/a McGee-Castillo Communications, Kings Beach, CA.	BPH-861230MG	
C. Chris W. Kidd d/b/a Kidd Communications, Kings Beach, CA.	BPH-861231ML	
D. California Broadcasting Company, Inc., Kings Beach, CA.	BPH-861231MM	
E. Spanish Aural Services Company, Kings Beach, CA.	BPH-861231MN	

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 the particular applicant.

Issue Heading and Applicant(s)

1. Environmental, A
2. Financial, A
3. Comparative, A11
4. Ultimate, A11

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 the 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. 88-13574 Filed 6-15-88; 8:45 am]

BILLING CODE 6712-01-M

Application for Consolidated Hearing; White Mountain Radio 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. White Mountain Radio, Campton, N.H..	BPH-860828MB	88-273
B. Campton Broadcasting, a Limited Partnership, Campton, N.H..	BPH-860902MF	

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 Applicants

1. Comparative, A,B
2. Ultimate, A,B

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this notice. A copy of the complete HDO is 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. 88-13576 Filed 6-15-88; 8:45 am]

BILLING CODE 6712-01-M

Application for Consolidated Hearing; Zozaya, Julia S. 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. Julia S. Zozaya, Flagstaff, Arizona.	BPH-860703MI.....	88-275
B. A BCD Broadcasting Co., Flagstaff, Arizona.	BPH-860707MG...	
C. Flagstaff Broadcasting Foundation, Flagstaff, Arizona.	BPH-860707NQ...	
D. FM Flagstaff Limited Partnership, Flagstaff, Arizona.	BPH-8607070B....	
E. Flagstaff Broadcasting Partnership, Flagstaff, Arizona.	BPH-8607070C....	
F. Pinetop Partners, Inc., Flagstaff, Arizona.	BPH-8607070D....	
G. Communications, Ltd., Flagstaff, Arizona.	BPH-860707MP...	(DISMISSED)

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 Applicants

1(a). City, Coverage, B
1(b). Misrepresentation, B
1(c). Qualifications, B
2. Environmental, B,C,D,F,
3. Air Hazard, F
4. Comparative, A–F
5. Ultimate, A–F

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants 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. 88–13577 Filed 6–15–88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Authorization for Domestic Open Market Operations

In accordance with the Committee's rules regarding availability of information, notice is given that at the Committee's meeting on March 29, 1988, paragraph 1(a) of the Committee's authorization for domestic open market operations was amended to raise temporarily from $6 billion to $10 billion the limit on changes between Committee meetings in System Account holdings of U.S. Government and federal agency securities for the intermeeting period from March 30, 1988, through the close of business on May 17, 1988.

Note.—For paragraph 1(a) of the authorization, see 36 FR 22697, November 27, 1971.

By order of the Federal Open Market Committee, June 9, 1988.

Normand Bernard,

Assistant Secretary, Federal Open Market Committee.

[FR Doc. 88–13491 Filed 6–15–88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N–88–1803; FR–2520]

Fiscal Year 1988 Restrictions on the Award of Certain Contracts and Subcontracts to Foreign Countries

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: This Notice informs HUD grantees and contractors affected by the requirements of section 109 of Pub. L. 100–202, the Joint Resolution Making Further Continuing Appropriations for Fiscal Year 1988, of HUD's interpretation of that Act and its effects on HUD programs. Section 109 prohibits HUD and other Federal Departments and Agencies from awarding certain contracts or subcontracts to contractors from foreign countries listed by the United States Trade Representative. The purpose of this document is to set out the duties and obligations of the Department, grantees and contractors of both HUD and its grantees.

EFFECTIVE DATE: June 16, 1988.

FOR FURTHER INFORMATION CONTACT: For Community Development Block Grants, Don Patch, Director, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7280, Washington, DC 20410, telephone (202) 755–6587; for Urban Development Action Grants, Stanley L. Newman, Diretor, Office of Urban Development Action Grants, Room 7262, telephone (202) 755–6290; for the Secretary's Discretionary Fund, Syl Angel, Director, Office of Program Policy Development, Room 7138, telephone (202) 755–6090. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This Notice provides guidance to HUD offices and to the public concerning the effect of section 109 of the Joint Resolution Making Further Continuing Appropriations for Fiscal Year 1988 (Pub. L. 100–202), Approved December 22, 1987, 101 Stat. 1329; 1329–434—1329–436) (hereafter, "section 109"), on programs of the Department of Housing and Urban Development.

The Prohibitions

Section 109 provides in part that—

None of the funds appropriated for fiscal year 1988 by this resolution or by any other law may be obligated or expended to enter into any contract for the construction, alteration, or repair of any public building or public work in the United States or any territory or possession of the United States with any contractor or subcontractor of a foreign country, or any supplier of products of a foreign country, during any period in which such foreign country is listed by the United States Trade Representative under subsection (c) of this section.

Paragraph (c)(1) describes this "listing" and provides:

The United States Trade Representative shall maintain a list of each foreign country which—

(A) denies fair and equitable market opportuntiies for products and services of the United States in procurement, or

(B) denies fair and equitable market opportunities for products and services of the United States in bidding, for construction projects that cost more than $500,000 and are funded (in whole or in part) by the government of such foreign country or by an entity controlled directly or indirectly by such foreign country.

Paragraph (c)(2) provides, in part:

Such list shall include—

(B) the country of Japan and any other country which has expressed a policy of denying fair and equitable market opportunities for products and services of the United States in procurement or bidding for projects described in paragraph (1) of this subsection.

On December 30, 1987, the United States Trade Repesentatives (USTR) published an initial list in accordance with section 109. Japan was the only

country on this list. As long as Japan remains on this list, funds appropriated for fiscal year 1988 (and all funds appropriated in previous years' appropriation Acts, where the funds remain available and were not yet obligated by HUD on December 22, 1987, and thus may be considered "for" fiscal year 1988) may not be obligated or expended for affected Federal or federally funded public buildings and public works contracts with Japanese contractors or subcontractors, or with suppliers of Japanese products.

Contracts Affected by the Prohibitions

The prohibitions of section 109 (hereafter "the prohibitions") apply to the obligation or expenditure of funds by HUD or by recipients of funds from HUD used to enter into contracts for public works projects entered into after the date of enactment of section 109—December 22, 1987. Contracts of recipients are reached by the prohibitions without regard to the method of disbursement of the funds to the recipient by HUD.

The Conference Report (H. Rep. No. 498, 100th Cong., 1st Sess. 1183) makes it clear that "[t]hese prohibitions extend to all Federal agencies as well as *all other recipients of Federal funds.*" (Emphasis added.) As a result, the prohibitions apply to covered contracts by Federal agencies and to the contracts entered into, by recipients or subrecipients of HUD funds, with contractors and subcontractors of listed foreign countries.

The prohibitions are applicable to funds appropriated *for fiscal year 1988* by the Joint Resolution or by any other laws. Any funds appropriated "for" fiscal year 1988 are affected by section 109. (For further discussion, see "Funding to which the Prohibitions Apply" elsewhere in this Notice.)

The prohibitions of section 109 affect funds used to enter into any contract with a contractor or subcontractor of a listed country (at this writing, Japan only) for construction, alteration, or repair of any public building or public work project, or any contract for architectural, engineering, or other service directly related to the preparation for or performance of the construction, alteration, or repair of any public building or public project in the United States, or any territory or possession of the United States.

The prohibitions of section 109 also apply to any product used in the construction, alteration, or repair of any public building or public work in the Untied States, including permanently affixed equipment, instruments, utilities, electronic and other devices, but not including vehicles or construction equipment, if more than 50 percent of the total cost of the product is allocable to production or manufacture in a listed country.

Definitions of "Public Building," "Public Work"

Section 109 does not include a definition of these terms. The Department has determined that the most appropriate available definitions of "public building" and "public work" are those appearing in the Federal Acquisition Regulation at 48 CFR Chapter 1, Part 22, Application of Labor Laws to Government Acquisitions. These definitions have been adapted here to reflect activities likely to be contracted for by HUD or by its grantees.

"Public building' as used in this Notice means a building for which construction, completion, rehabilitation or repair is carried on directly by authority of, or with funds of, the Department of Housing and Urban Development (HUD) where the building is or will be publicly owned or operated and is intended to serve the interest of the general public—whether or not HUD, or HUD's grantee, holds title to the building.

"Public work" as used in this Notice means construction activity (as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work). The term incudes construction, completion, rehabilitation or repair of such publicly owned or operated improvements as bridges, dams, parks, streets, sidewalks, curbs, gutters, parking facilities, tunnels sewers, mains, power lines, pumping stations, airports, terminals, docks, piers, wharves, ways, levees, canals, dredging, shoring, rehabilitation or reactivation of public buildings, excavating, clearing, and landscaping, where the work performed is for an improvement intended to serve the interest of the general pubic.

The Department believes that it was the intention of section 109, in employing the terms "public building or public work", to reach federally funded structures and projects where they are publicly owned or operated and are intended to serve the general public, as distinguished (for example), from residential structures. Accordingly, the Department believes that section 109's applicability, with reference to HUD-funded activity, is limited to covered activities funded under the Community Development Block Grant Program-including the State's Program and the Secretary's Discretionary Fund—all authorized by Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320), and under the Urban Development Action Grant Program (42 U.S.C. 5318). These programs, originally enacted to replace a number of categorical grant programs of the Department, frequently can involve the use of grant funds for activity associated with public buildings or public works within the meaning of section 109. Accordingly, where CDBG grantees, or UDAG grantees, have involvement in projects to fund improvements for structures or projects definable as public buildings or public works, the prohibitations set out in this Notice will apply. (Private funding constituting the developer's contribution to a UDAG project is not subject to the proscriptions of section 109.) That portion of CDBG and UDAG, activity that involves construction of such facilities as shopping malls, hotels, and other comparable private construction projects is not definable as construction of a public building or public work and accordingly is not affected by section 109's prohibitions.

The Department's research concerning the normally understood scope of the terms "public building or public work" convinces us that HUD activity associated with residential contruction, including activity associated with emergency shelters or other housing for the homeless, is not reached by the statutory prohibitions. The definition of the term "public building" used throughout 40 U.S.C. Chapter 12 ("Construction, Alteration, and Acquisition of Public Buildings") expressly excludes any buildings "on or used in connection with housing and residential projects." 40 U.S.C. 612(1)(F).

We note also the following evidences that residential structures are not included in these terms:

—An inventory of physical assets included in discussion of the budget process under Title 31 separately lists "public buildings" and "federally assisted housing". 31 U.S.C. 1105(e)(2)(H) and (K).

—In 42 U.S.C. 5555, a statutory provision dealing with solar energy distinguishes between solar heating and cooling of (1) "housing" and (2) "commercial and public buildings".

—While the Architectural Barriers Act (captioned "Design and Construction of Public Buildings to Accommodate Physically Handicapped") *does* cover subsidized housing programs, the actual definition under which residential structures are covered involves the definition of the term "building"—not "public building", although the latter term is used in the catchline. 42 U.S.C. 4151.

These and other statutory and case law-based definitions of the terms used in section 109 convince us that residential structues were not intended to be reached by section 109.

Insurance Programs

Most, but not all, of HUD's mortgage insurance program activity pertains to residential housing. To the limited extent that HUD mortgage insuring activity may involve structures that could be considered public buildings (e.g., a publicly-owed hospital), section 109 nonetheless does not reach these activities, because it is applicable only to "* * * funds appropriated for fiscal year 1988 by this Resolution or any other law * * *" Accordingly, the reach of section 109 is limited to "funds" obligated or expended (*i.e.*, as distinguished from credit authority or other varieties of authority that the Continuing Resolution appropriates). For this reason, the Department believes that none of its mortgage insuring authorities are affected by section 109's restrictions. Based on the same rationale, the Department does not interpret section 109 as being applicable to section 108 loan guarantee arrangements authorized under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5308).

The Department intends to provide, as promply as possible following publication of this Notice, additional direct notification to affected grantees of the duties and obligations created by section 109, and to provide supplemental instructions to these grantees concerning the steps they must take to comply with the statutory prohibitions. Nothwithstanding the acknowledged need for such guidance, section 109 is a self-executing law effective on enactment and requires, where necesary, action on contraacts subject to its prohibitions dating from its December 22, 1987 effective date.

Who is a Contractor or Subcontractor of a [Listed] Foreign Country?

The terms "contractor or subcontractor of a foreign country" are defined in section109(d)(2) to be "any contractor or subcontractor that is a citizen or national of a foreign country or is controlled directly or indirectly by citizens or nations of a foreign country [whose activities are affected by the prohibitions].

A contractor or subcontractor is "controlled directly or indirectly" within the meaning of the statute if—

(1) 50 percent or more of the voting stock of the contractor or subcontractor is owned by one or more citizens or nations of the foreign country;

(2) The title to 50 percent or more of the stock of the contractor or subcontractor is held subject to trust or fiduciary obligations in favor of one or more citizens or nationals of the foreign country;

(3) 50 percent or more of the voting stock of the contractor or subcontractor is vested in or exercisable on behalf of one or more citizens or nationals of the foreign country;

(4) In the case of a corporation, if its president or other chief executive officer or the chairman of its board of directors is a citizen of the foreign country, or if the number of its directors necessary to constitute a quorum are citizens or nationals of the foreign country; or the corporation is organized under the laws of the foreign country or any subdivision, territory, or possession thereof; or

(5) In the case of a contractor or subcontractor who is a participant in a joint venture or a member of a partnership, if any participant of the joint venture or partner meets any of the criteria in (1) through (4) above.

Payments are prohibited by section 109 to a partnership or joint venture if one member or partner is a *firm* controlled by a citizen or national of a listed country. Section 109(a) prohibits using Federal funds to enter into contracts or subcontracts with such a firm. These prohibitions also apply to business enterprises that are combinations of contractors or subcontractors, e.g., partnerships or joint ventures. If a contract or a subcontract is for an activity for which funds would be prohibited under section 109, the contractor or subcontractor does not avoid the prohibitions because of the manner in which it is organized or established. If a member of a partnership or a joint venture is a contractor or subcontractor that would be prohibited by section 109 from receiving HUD funds, but for the business arrangements, the joint venture or partnership arrangement does not avoid the application of the prohibitions. By way of further clarification, an *individual* foreign member of a joint venture or partnership is subject to the measures of "control" set out in numbered paragraphs (1) through (5), above, but a foreign-controlled *firm* participating as a partner or joint venture in a contract will, by its participation, render the contract subject to the prohibitions—without regard to whether the participating foreign partner or member has "control" of the partneship or joint venture.

Funding To Which the Prohibitions Apply

Subsection 109(e) provides that "[p]aragraph (a)(1) of this section shall not apply to contracts entered into prior to the date of enactment of this resolution." The "contracts" in paragraph (a)(1) are public building or public works-related contracts with the contractors and subcontractors of listed countries. The date of enactment of the continuing resolution (H.J. Res. 395) was December 22, 1987. Therefore, the funding prohibitions of section 109 do not apply to contracts that were entered into before December 22, 1987; and the prohibitions do not apply to contracts that were entered into with subcontractors before December 22, 1987. These prohibitions *do* apply, however, to contracts with contractors and subcontractors for covered public buildings and public work projects that were or are entered into after December 22, 1987. Contracts entered into before December 22, 1987, but amended thereafter, are covered if additional funds are involved in the subject matter of the amended contract. Subsection 109(c) does *not* exempt a contract entered into with a subcontractor after the effective date of the continuing resolution, even though the contract was awarded under a prime contract, grant or other funding arrangement that was entered into before the effective date of the resolution.

The Department believes that section 109 is intended to be applied to all funds expended on covered activities using appropriated funds from any Fiscal Year 1988 appropriation Act, and to all funds appropriated in previous years' appropriation Act, where the funds remain available, were not yet obligated by HUD on December 22, 1987, and thus were "for" Fiscal Year 1988.

To the extent funds were appropriated *before* Fiscal Year 1988 but (because of multi-year authority to obligate funds or because or reallocation of previously obligated funds) were not obligated until after December 22, 1987, these funds are also subject to the prohibitions.

In addition, funds obligated under a 1988 appropriation (or under a multi-year authority as described above) before September 30, 1988, but not spent on covered activities until after September 30, 1988, will continue to be subject to the prohibitions.

Action Required With Reference to Existing Contracts Subject to the Prohibitions

Any contracts prohibited by section 109 but nevertheless entered into after

December 22, 1987 must be cancelled, unless cancellation is determined by the Secretary not to be in the public interest. Determinations by the Secretary that cancellation is not in the public interest, or that waiver of the prohibitions should be granted with reference to a new contract or subcontract, will be made on a contract-by-contract basis. If such a determination is made, the Secretary will issue a waiver as authorized by the statute. Waiver requests, including facts concerning any contract or subcontract for which waiver is requested and a statement of the reasons why waiver would be in the public interest, should be forwarded by the grantee, directed to the Manager of the HUD Field Office for the State in which the grantee is carrying out the HUD-funded activity, or, in States with more than one Field Office, to the appropriate Field Office Manager. The Field Office Manager will forward all requests, with recommendations, to the Secretary for final determination. Waiver requests by contractors will not be considered. (Where, however, a grantee has requested a waiver from the Secretary, the contractor whose contract is the subject matter of the request may submit information in support of the request and the Secretary will consider it.)

It is the duty, under section 109, of every HUD grantee who has a covered contract (or whose contractor has a subcontract) with a contractor of a listed foreign country either (1) immediately to cancel the contract or to require the contractor to cancel the prohibited subcontract, or (2) promptly to request a waiver of the prohibition from the Secretary.

Waiver requests should describe the project, the sources of Federal grant funds for the project, the specifics concerning the contract for which waiver is being sought, including contract amount; dates that work was begun under the contract and the progress toward completion; the basis on which the contractor has been determined to be a contractor of a listed foreign country; details concerning the extent of foreign ownership of the contractor; facts concerning related subcontracts that are or may be subject to the prohibition which is the subject of this Notice, and the particular grounds upon which the waiver request is being made.

Comparable descriptive material must be submitted to accompany any request for waiver of the prohibitions as they relate to prospective contracts or subcontracts that, if awarded, would be subject to the prohibitions in section 109.

In addition to the above-listed facts, waiver requests should include a recitation of the reasons the grantee believes it would be in the public interest to grant a waiver; the predicted financial and other consequences to the funded activity in the event waiver is not granted; and any other facts known to the grantee that would aid in the Secretary's determination.

No new contract with a contractor or subcontractor of a listed foreign country may be entered into during the pendency of a waiver request applicable to that contract. Existing contracts subject to the prohibitions described in this Notice must be suspended unless (1) the grantee certifies to the Secretary, and demonstrates factually, that suspension of work during the pendency of the waiver request would cause irreparable injury to the project; *and* (2) a waiver request is filed with the Secretary within 20 calendar days (including weekends and holidays) of the publication date of this Notice. (A grantee seeking to avoid suspension of an existing contract during the pendency of a waiver request may file the request later than 20 days following the publication date of this Notice if the grantee demonstrates that the involvement of a contractor or subcontractor subject to the prohibition was not discovered until a later time.) Work need not be suspended during the pendency of a waiver request that includes the above-described grantee certification unless and until the Secretary notifies the grantee that the certification has been rejected.

Any decision with regard to a requested waiver applicable to a contract will be made after a review of the specific facts involved. In addition to consideration of public purpose arguments in support of maintenance of the contract or waiver of the prohibition on a new contract, other factors that will be considered by the Secretary will include the national security interests of the United States; the availability of necessary products or services; and costs to the taxpayers that significantly exceed the costs associated with cancelling the contract and awarding another for similar products or services.

Notice of any waiver granted by the Secretary shall be published in the **Federal Register** within 10 days after the Secretary's determination. The Notice shall describe in detail the contract or subcontract involved and the specific reasons for granting the waiver.

The prohibitions contained in section 109 are in addition to any other restrictions contained in any other Federal law, including the Buy American Act (41 U.S.C. 10a–10d).

Solicitation Provisions and Use of Contract Clauses

The Department believes that section 109 is a self-executing statute affecting the right of Federal departments and agencies and their grantees to contract. Accordingly, the department does not believe that it is necessary, in order to give legal effect to the prohibitions, to amend existing contracts with HUD contractors, or for grantees to amend existing contracts solely to reflect the prohibitions contained in the statute.

However, the Department has added appropriate contract provisions to covered HUD contracts, in accordance with the directions provided in interim amendments to the Federal Acquisition Regulation published on April 12, 1988, and by this Notice the Department is directing all grantees to include, as appropriate, solicitation provisions and contract clauses identical to or based upon the clauses set out below in all further contracts and in amendments to existing contracts involving HUD assistance subject to the prohibitions.

Solicitation Provisions

Grantees soliciting bids or requesting proposals for contracts for the construction, alteration, or repair of any public building or public work project subject to the prohibitions described in this Notice shall include in their solicitations the following provisions:

Restrictions on Public Buildings and Public Works Projects Certification

(a) *Definitions.* The definitions pertaining to this provision are those that are set forth in the clause entitled, "Restrictions on Public Works Projects." (Set out under "*Contract Clauses*" below.)

(b) *Certification.* Except as provided in paragraph (c) of this provision, by submission of its bid or proposal, the offeror certifies that it—

(1) Is not a Contractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR) (see paragraph (h) of this provision);

(2) Has not or will not enter into any subcontract with a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR; and

(3) Will not provide any product of a country included on the list of foreign countries that discriminate against U.S. firms published by the USTR.

(c) *Inability to certify.* An offeror unable to certify in accordance with paragraph (b) of this provision shall submit with its offer a written explanation fully describing the reasons for its inability to make the certification.

(d) *Applicability of 18 U.S.C. 1001.* The certification in paragraph (b) of this provision concerns a matter within the jurisdiction of an agency of the United States, and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, U.S.C. 1001.

(e) *Notice.* The offeror shall provide immediate written notice to the Contracting Officer if, at any time before the contract award, the offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(f) *Restrictions on contract award.* Unless a waiver to these restrictions is granted by the Secretary of Housing and Urban Development, no contract will be awarded to an offeror (1) who is owned or controlled by a citizen or national of a foreign country included on the list of foreign countries that discriminate against U.S. firms published by the USTR, (2) whose subcontractors are owned or controlled by citizens or nationals of a foreign country on the USTR list or, (3) who incorporates any product of a foreign country on the USTR list in the public works project.

(g) *Recordkeeping.* Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (b) of this provision. The knowledge and information of an offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(h) *USTR list.* The USTR published an initial list in the **Federal Register** on December 30, 1987 (53 FR 49244), which identified one country—Japan. The USTR can add countries to the list, and remove countries from it, in accordance with section 109(c) of Pub. L. 100–202.

[End of Solicitation Clause]

Contract Clauses

Grantees or subgrantee recipients entering into contracts for construction, alteration, or repair of any public building or public work project subject to the prohibitions described in this Notice shall include the following provisions in all such contracts:

Restrictions on Public Buildings and Public Works Projects

(a) *Definitions.* "Component," as used in this clause, means those articles, materials, and supplies incorporated directly into the product.

"Contractor or subcontractor of a foreign country," as used in this clause, means any Contractor or subcontractor that is a citizen or national of a foreign country or is controlled directly or indirectly by citizens or nationals of a foreign country. A contractor or subcontractor shall be considered to be a citizen or national of a foreign country, or controlled directly or indirectly by citizens or nationals of a foreign country—

(1) If 50 percent or more of the Contractor or subcontractor is owned by a citizen or a national of the foreign country;

(2) If the title to 50 percent or more of the stock of the Contractor or subcontractor is held subject to trust or fiduciary obligation in favor of citizens or nationals of the foreign country;

(3) If 50 percent or more of the voting power in the Contractor or subcontractor is vested in or exercisable on behalf of a citizen or national of the foreign country;

(4) In the case of a partnership, if any general partner is a citizen of the foreign country;

(5) In the case of a corporation, if its president or other chief executive officer or the chairman of its board of directors is a citizen of the foreign country or the majority of any number of its directors necessary to constitute a quorum are citizens of the foreign country or the corporation is organized under the laws of the foreign country or any subdivision, territory, or possession thereof; or

(6) In the case of a contractor or subcontractor who is a joint venture, if any participant firm is a citizen or national of a foreign country or meets any of the criteria in subparagraphs (a)(1) through (5) of this clause.

"Product", as used in this clause, means construction materials—*i.e.*, articles, materials, and supplies brought to the construction site for incorporation into the public works project, including permanently affixed equipment, instruments, utilities, electronic or other devices, but not including vehicles or construction equipment. In determining the origin of a product [insert name of grantee], will consider a product as produced in a foreign country if it has been assembled or manufactured in the foreign country, or if the cost of the components mined, produced, or manufactured in the foreign country exceed 50 percent of the cost of all its components.

(b) *Restrictions.* The Contractor shall not (1) knowingly enter into any subcontract under this contract with a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the United States Trade Representative (see paragraph (c) of this clause), or (2) supply any product under this contract of a country included on the list of foreign countries that discriminate against U.S. firms published by the USTR.

(c) *USTR list.* The USTR published an initial list in the **Federal Register** on December 30, 1987 (53 FR 49244), which identified one country—Japan. The USTR can add other countries to the list, or remove countries from it, in accordance with section 109(c) of Pub. L. 100–202.

(d) *Certification.* The Contractor may rely upon the certification of a prospective subcontractor that it is not a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR and that products supplied by such subcontractor for use on the Federal public works project under this contract are not products of a foreign country included on the list of foreign countries that discriminate against U.S. firms published by the USTR, unless such Contractor has knowledge that the certification is erroneous.

(e) *Subcontracts.* The Contractor shall incorporate this clause, modified only for the purpose of properly identifying the parties, in all subcontracts. This paragraph (e) shall also be incorporated in all subcontracts.

(End of Contract Clause)

Questions concerning the applicability of section 109 to particular contracts or subcontracts should be directed to the individuals whose names and addresses appear at the beginning of this document.

Date: June 8, 1988.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 88–13661 Filed 6–15–88; 8:45 am]

BILLING CODE 4210–32–M

[Docket No. N–88–1814]

Privacy Act of 1974; New System of Records

AGENCY: Department of Housing and Urban Development.

ACTION: Notification of a new system of record.

SUMMARY: The Department is giving notice of a system of records it intends

to maintain which is subject to the Privacy Act of 1974.

EFFECTIVE DATE: This proposal shall become effective without further notice on or before July 16, 1988, unless comments are received on or before that date which would result in a contrary determination.

ADDRESS: Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Arthur L. Stokes, Department Privacy Act Officer, Telephone (202) 755–6374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The system is the Long Distanc Telephone Call Detail System, HUD/DEPT–80. It will contain information about official and unofficial long distance telephone usage within the Department. The system will assist management in planning for future telecommunications needs and in controlling long distance telephone costs. A report of the Department's intention to initiate the system was filed with the Speaker of the House, the President of the Senate, and the Director of the Office of Management and Budget on May 16, 1988.

Authority: 5 U.S.C. 552a, 88 Stat. 1896; Sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d))

Issued at Washington, DC June 13, 1988.

Donald J. Keuch, Jr.,

Deputy Assistant Secretary for Administration.

HUD/DEPT–80

SYSTEM NAME:

Long Distance Telephone Call Detail System.

SYSTEM LOCATION:

Headquarters.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who make long distance calls and individuals who receive calls placed from or charged to Department telephones.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include: (1) The names and assigned organizations of individuals who make long distance calls from Department telephones and who receive long distance calls that are charged to Department telephones, (2) the names and addresses of called parties and parties who initiate collect calls from outside the Department which are charged to Department telephones, (3) records indicating assignment of telephone numbers to employees, and (4) records relating to location of telephones. Records may be maintained at worksites and used by supervisors in establishing responsibility for specific telephone calls. Subsequent inquiries may require that these records become a part of an investigation file.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Routine Use paragraphs in prefatory statement. Other routine uses: (1) To Members of Congress to respond to inquiries made on behalf of individual constituents that are record subjects; (2) to representatives of the General Services Administration or the Nation Archieves and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906; (3) in response to a request for discovery or for the appearance of a witness, to the extent that the subject matter in a pending judicial or administrative proceeding concerns the misuse of Government telephones or a violation of law or regulation; (4) in a proceeding before a court or adjudicative body to the extent that the records are relevant and necessary to the proceeding, and the proceeding concerns the misuse of Government telephones or a violation of law or regulation; and (5) to employees of the Department to determine their individual responsibility for telephone calls.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosure may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701 (a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Various portions of the system are maintained on computer disks, magnetic tape, computer printout, and other hard copy.

RETRIEVABILITY:

Records are retrived by employee name or identification number, by name of recipient of telephone call, and by telephone number.

SAFEGUARDS:

Access to records is limited to Department employees who have an official need for the records. Internal procedures governing the use, transfer, and photocopying of the records have been established. Rcords in the system are maintained in a locked room and file folders are maintained in locked cabinets. Automated records are protected from unauthorized access through password identification procedures and other system-based protection methods.

RETENTION AND DISPOSAL:

Records are disposed of as provided in the National Archieves and Records Administration General Records Schedule 12.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Communications and Space Management Division, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about the existence of records, contact the HUD Headquarters Privacy Act Officrer in accorance with procedures in 24 CFR Part 16.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the organization or individual concerned appear in 24 CFR Part 16. If additional information or assistance is required, contact the HUD Headquarters Privacy Act Officer.

CONTESTING RECORD PROCEDURE:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR Part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contents of records, the HUD Headquarters Privacy Act Officer; (ii) in relation to appeals of initial denials, the Department of Housing and Urban Development Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410.

RECORD SOURCE CATEGORIES:

HUD telephone assignment records; call detail listing; and results of administrative inquiries relating to assignment of responsibility for

placement of specific long distance calls.

[FR Doc. 88-13360 Filed 6-15-88; 8:45 am]
BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Privacy Act of 1974; Revision of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to revise a notice describing a system of records maintained by the Office of Surface Mining Reclamation and Enforcement (OSMRE). Except as noted below, all changes being published are editorial in nature, and reflect organization title changes and other minor administrative revisions which have occurred since the publication of the material in the **Federal Register** on August 10, 1987 (52 FR 29570). The revised notice is published in its entirety below.

The notice being revised is titled "Applicant/Violator System (AVS)—Interior, OSMRE–9" and describes records on individuals involved in surface mining operations that are subject to the provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201, *et seq.* Principal changes being made to the notice are:

1. The portions of the notice describing categories of individuals and routine uses are revised to update the list of violations for which permits of responsible parties may be withheld or revoked. They include unabated Federal cessation orders, unpaid federal civil penalties, and outstanding abandoned mine land fees. The list of violations is updated to include: (a) Bond forfeitures; (b) air and water quality violations arising from surface mining operations; (c) unabated State cessation orders; and (d) unpaid State civil penalties. These amendments are made pursuant to OSMRE's general permitting authority under SMCRA and in response to the Permanent Continuing Resolution for fiscal year 1986 (the Congressional Resolution).

It should be noted that information on unabated State cessation orders, unpaid State civil penalties, and air and water quality violations will not be fully collected and integrated into the AVS until after October 1, 1988. Therefore, responses to requests made by individuals for any and all relatedness information about themselves contained in the system will not, prior to the time such collections and integrations are completed, include any information as to these violations.

Also, the reference in the list of violations to abandoned mine land reclamation fees is being recast to read "violations of abandoned mine land reporting and payment requirments." Such language more precisely describes the range of abandoned mine land violations included in the AVS system of records.

2. The description of primary uses of the records in the AVS system is being amended to clarify that OSMRE uses the records to collect civil penalties due it from violators or to collect delinquent abandoned mine land fees.

3. Two new routine use disclosures outside the Department are being added. A routine use disclosure to applicants and permittees in connection with permit determinations is added to allow such individuals to gain access to information linking them to violations or individuals or entities responsible for violations of SMCRA. Such violations can result in revocation or withholding (blocking) of mining permits. Such disclosure would provide individuals the opportunity to correct or rebut the information and, thus, attempt to change the block/revoke recommendation. Disclosures of such information to applicants/permittees for the purpose of correction and rebuttal are clearly compatible with the purpose for which the information was originally collected. These disclosures are also inherent to the proper functioning of the system.

Disclosures to individuals and entities of permit-related information about themselves and other related individuals or entities is added as a second routine use disclosure. This disclosure provides for access by individuals and entities in response to their specific requests for any and all permit-related information contained in the AVS system of records about themselves and other related individuals or entities. This would make explicit those disclosures to which individuals are inherently entitled pursuant to their right of access and amendment granted by 43 CFR 2.60–2.64 and 2.70. Disclosures which would allow individuals and entities to verify the accuracy, relevance, timeliness, and completeness of information about themselves and to rebut any ownership or control linkages which the AVS may generate as a prelude to filing a formal permit application is clearly a "use" of information which is both inherent to the proper functioning of AVS as well as compatible with the purpose for which the information was originally collected.

4. The "Record Source Categories" section of the notice is being amended to more accurately indicate the source of OSMRE and State enforcement and abandoned mine land violation information currently listed in subsection (2).

Upon initial publication in the **Federal Register** of the Applicant/Violator (AVS) Privacy Act system of records notice on August 10, 1987, three comments were received from one respondent regarding the proposed notice. The comments dealt with issues outside the purpose and scope of the public comment provisions of 5 U.S.C. 552a(e)(11), and consisted essentially of resubmissions of comments previously received regarding OSMRE's proposed rules as to ownership and control, permit blocking and rescission, and permit application information requirements. Since the comments lie outside of the scope of the AVS system notice they will be addressed in the **Federal Register** preamble to OSMRE's revised permit application information final rule (30 CFR 778). The comments which were received have been carefully considered in preparing the revisions published below, and appropriate efforts taken to make the system more responsive to each of the issues raised therein. Also, OSMRE intends to refrain from initially disclosing all information about related individuals or entities until reasonable efforts are made pursuant to 43 CFR 2.56(d) to further ensure that the information disclosed is accurate, complete, timely, and relevant.

5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the two new proposed routine use disclosures described in item 3 above. Therefore, written comments on the proposed additions can be addressed to the Department Privacy Act Officer, Office of the Secretary (PMI), Room 2242, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240. Comments received within 30 days of publication in the **Federal Register** will be considered.

The notice shall be effective as proposed without further notice at the end of the comment period, unless comments are received which would require a contrary determination.

Date: June 9, 1988.

Oscar W. Mueller, Jr.,

Director, Office of Management Improvement.

Interior/OSMRE–9

SYSTEM NAME:

Applicant/Violator System (AVS)—Interior, OSMRE–9.

SYSTEM LOCATION:

Office of Surface Mining Reclamation and Enforcement (OSMRE), Department of the Interior, Washington, D.C. 20240 and field locations. For specific addresses of field locations contact the System Manager at the address given below. Major system hardware is located at the National Center, Geological Survey, 12201 Sunrise Valley Drive, Reston, Virginia 22092.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system contains names of coal mining permit holders and applicants; individuals and entities who own or control coal mining permit holders and applicants; operators for and agents of coal mining permit holders and applicants; individuals and entities responsible for unabated Federal or State cessation orders, unpaid Federal or State civil penalties, Federal or State air and water quality violations arising from surface mining operations, bond forfeitures, or violations of abandoned mine land reporting and payment requirements arising under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq. (SMCRA); and individuals or entities who own or control individuals or entities responsibile for unabated Federal or State cessation orders, unpaid Federal or State civil penalties, Federal or State air and water quality violations arising from surface mining operations, bond forfeitures, or violations of abandoned mine land reporting and payment requirements arising under the SMCRA.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Coal Mining Permit Application information and Permit information such as individuals listed in the application or permit (names, addresses, and social security numbers, if available), bond and acreage information; (2) violator information obtained from OSMRE enforcement records, state enforcement records, and abandoned mine land records; (3) ownership and control information on coal mining operations obtained from the aforementioned records, the Mine Safety and Health Administration legal identity forms and other MSHA records, State Corporation Commission and Secretary of State records, clerk of court records, company or operator financial reports and investigative reports provided to OSMRE under contract.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq.; and the February 1, 1985, Revised Court Order in *Save Our Cumberland Mountains, Inc., et al.* v. *William P. Clark, et al.*, Civil No. 81–2134 (D.D.C. 1985).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The primary uses of the records are to: (a) Serve as a tool for OSMRE and State regulatory authorities to determine if any individual or entity who owns or is in control of an operation covered by a coal mining permit or application for a permit was or is in control of any entity with an unabated Federal or State cessation order, unpaid Federal or State civil penalty, Federal or State air and water quality violation, bond forfeiture, or violation of abandoned mine land reporting and payment requirements arising under SMCRA; (b) enable OSMRE and State regulatory authorities to take appropriate action to withhold or revoke permits of entities or individuals responsible for violations of SMCRA, the corresponding provisions of State law, or other laws or regulations referred to in section 510(c) of SMCRA; (c) develop data on coal mining activities on a nationwide basis; (d) provide statistics by company, region; judicial district, State and nationwide for management purposes; (e) enable OSMRE and State regulatory authorities to effectively monitor their program requirements; (f) enable OSMRE to collect civil penalties due it from violators or to collect delinquent abandoned mine land fees. Disclosures outside the Department of the Interior may be made: (1) To the appropriate Federal, State, local or foreign agency responsible for investigating, prosecuting, enforcing or implementing any statute, rule, regulation, or order when OSMRE becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) to the Internal Revenue Service when disclosure will enable OSMRE to collect civil penalties due it from violators or to collect delinquent abandoned mine lands fees; (3) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (4) to public interest groups as may be required under a February 1, 1985, Revised Court Order in *Save Our Cumberland Mountains, Inc., et al.* v. *William P. Clark, et al.*, Civil No. 81–2134 (D.D.C. 1985); (5) to the U.S. Department of Justice or a court or other adjudicative body of competent jurisdiction when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with purpose for which the records were compiled; (6) to applicants and permittees pursuant to permit determinations; (7) to individuals or entities in response to their requests for permit-related information about themselves and related individuals or entities contained within the AVS system of records.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)), or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual form in file cabinets and recorded on computer usable media.

RETRIEVABILITY:

Data is retrievable by numerous combinations or data fileds such as assigned index number, company name, individual name, State, permit number, violation numbers and amount(s) due.

SAFEGUARDS:

Maintained with safeguards meeting the requirements of 43 CFR 2.51 for computerized and manual records. Manual records are maintained in OSMRE areas occupied by OSMRE personnel during working hours with buildings locked and/or guarded during nonworking hours.

RETENTION AND DISPOSAL:

Data stored on computer usable media will be retained until it is determined that the data is not longer needed or required. Manual records will be retained to serve as verification and back-up material. ADP printout records will be disposed of periodically when superseded. Records are retained and disposed of in accordance with OSMRE Records Disposition Authority NC1–433–80–1, Item No. 302–06.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Information Systems Management, Office of Surface Mining, 1951 Constitution Avenue, NW., Washington, D.C. 20240.

NOTIFICATION PROCEDURE:

To determine whether information is maintained on you in this system, write to the Systems Manager. See 43 CFR 2.60 for form of request.

RECORD ACCESS PROCEDURE:

To see your records, write the system Manager. Describe as specifically as possible the records sought and mark the request "Privacy Act Request for Access." See 43 CFR 2.63 for required content of request.

CONTESTING RECORD PROCEDURES:

A petition for amendment of AVS data shall be addressed to the Assistant Director, Information Systems Management and must meet the content requirement of 43 CFR 2.71. The petition for amendment must be submitted in writing.

RECORD SOURCE CATEGORIES:

(1) Federal and State Coal Mining Permit files both manual and computerized. (2) Applicable OSMRE and State Title IV and V programs files both manual and computerized. (3) Mine Safety and Health Administration (MSHA) Legal Identity Forms and other records. (4) Individual, Operator and Company financial reports. (5) MSHA R-31 Comptroller information Data Base. (6) State Corporation Commission, Secretary of State, Taxation bureaus and Clerk of Court Records. (7) Individual or Company Net Worth Determination reports. (8) Department of the Interior Solicitor Files. (9) OSMRE contractors who prepare investigative reports.

[FR Doc. 88-13531 Filed 6-15-88; 8:45 am]

BILLING CODE 4310-05-M

Bureau of Land Management

[NM-943-08-4121-11; NM NM 75605]

Invitation to Participate; Exploration of Coal in New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Members of the public are hereby invited to participate with Salt River Project, on a pro rata cost sharing basis, in a program for the exploration of coal deposits owned by the United States of America. The lands are located in Catron County, New Mexico and are described as follows:

New Mexico Principal Meridian

T. 3 N., R. 16 W., NMPM, Catron County,
Sec. 5: Lots 1, 2, 3, 4, S½N½, S½;
Sec. 6: Lots 1, 2, 3, 4, 5, 6, 7, S½NE¼, SE¼NW¼, E½SW¼, SE¼.
T. 4 N., R. 16 W., NMPM Catron County,
Sec. 31: Lots 1, 2, 3, 4, E½, E½W½.
T. 3 N., R. 17 W., NMPM, Catron County,
Sec. 1: Lots 1, 2, 3, 4, S½N½, S½;
Sec. 12: All.
T. 4 N., R. 17 W., NMPM, Catron County,
Sec. 14: All;
Sec. 15: All;
Sec. 22: All;
Sec. 23: All.

Containing 5,715.50 acres.

Any party electing to participate in this exploration program shall notify in writing, both the State Director, Bureau of Land Management, P.O. Box 1449, Santa Fe, NM 87504 and Salt River Project, P.O. Box 52025, Phoenix, AZ 85072. Such written notice must include a justification for wanting to participate and any recommended changes in the exploration plan with specific reasons for such changes. The notice must be received no later than 30 calendar days after the publication of this notice in the **Federal Register.**

This proposed exploration program is for the purpose of determining the quality and quantity of the coal in the area and is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. A copy of the exploration plan as submitted by Salt River Project may be examined at the Bureau of Land Management, New Mexico State Office, Room 313, Joseph M. Montoya Federal Building and U.S. Post Office, South Federal Place, Santa Fe, NM, and the Bureau of Land Management, 1800 Marquess Street, Las Cruces, NM.

Malcolm J. Schnitker,

Acting State Director.

Date: June 8, 1988.

[FR Doc. 88-13586 Filed 6-15-88; 8:45 am]

BILLING CODE 4310-FB-M

[NV-010-08-7122-09-1083; N-41646]

Intent To Prepare an Environmental Impact Statement on a Coal-Fired Steam/Electric Generating Plant, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Intent to prepare an Environmental Impact Statement (EIS) on a coal-fired steam/electric generating plant in northeastern Nevada and notice of scoping meetings.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management, Elko District, will be directing the preparation of an EIS to be prepared by a third party contractor on the impact of a proposed coal-fired steam/electric generating plant, the Thousand Springs Energy Park (TSEP) project, proposed on public and private lands in Elko County located in northeastern Nevada.

SUPPLEMENTARY INFORMATION: The TSEP project will be jointly owned by Sierra Pacific Resources and a consortium of private interests. It is anticipated that the energy output and capacity of the plant will serve California, Nevada, and other western states. Sierra Pacific Resources (SPR) would act as the Project Manager and Operating Manager for the proposed project. The site selection study for the proposed plant was conducted in 1981. Several sites were identified in a statewide survey as being environmentally and technically satisfactory for power plant development. Potential issues include, but may not be limited to, air quality, social and economic impacts, ground and surface water quantity, waste disposal, wildlife and the land tenure adjustment.

The proposal includes construction of generating units near Toano Draw in Thousand Springs Valley, Elko County, Nevada. Coal would be supplied from mines in Utah and Wyoming, and is proposed to be delivered to the plant site by rail via Cobre or Wells, Nevada. A total of six million tons per year is expected to be required at full capacity. The proposed plant site is located near the Southern Pacific Railroad. Studies are underway to determine the optimum rail spur location into the site.

The planned size and arrangement of the overall project takes into account the airshed capacity in the Toano Draw area. Meteorological and air quality monitoring has been conducted to document pre-project air quality which is considered good. Emissions control equipment will be employed to comply with Nevada State law and Environmental Protection Agency regulations. Ground level pollutant concentrations would not exceed levels permitted by National Ambient Air Quality Standards. The plan would require approximately 30,000 acre-feet of water annually. Water rights associated with SPR's land holdings in Thousand Springs Valley would be expected to be sufficient to meet these requirements. Water is proposed to be delivered from well fields to the plant using a system of pipelines.

Energy generated at the plant would be conveyed via new power transmission facilities. Transmission corridors and terminals for distributing power will not be finally determined until participating utilities have been

identified. SPR plans to use designated and planned utility corridors as identified in Federal land use plans within Nevada the maximum practical extent. Land use amendments may be necessary to accommodate some facilities.

Construction of the units would continue over approximately 20 years beginning in early 1991, with the first operating unit proposed to be ready for commercial operation in 1994. Thereafter, successive units are proposed to be ready for operation at approximately two-year intervals. Estimates of the average and peak construction labor force, as well as the plant operating force, are currently being developed. The proposed project would be constructed in a sparsely populated area and most of the project work force would be assembled from beyond reasonable commuting distances. Alternative project planning includes providing living accommodations for workers at the site, or in nearby communities.

Construction of the power plant is expected to require approximately 2,500 acres, of which the majority would be used for the coal stockpile and waste disposal ponds. Public lands (presently managed by the Bureau of Land Management) will be required for the TSEP project in addition to private land holdings. The public lands needed to accommodate the power plant proposal would be acquired by SPR through a land exchange with the Bureau of Land Management. The Toano Draw area, which has a checkerboard public/private land ownership pattern has been identified by SPR as best suited for the proposed project. In exchange for approximately 11,600 acres of public land in Toano Draw the Bureau of Land Management would acquire approximately 11,500 acres of private land in the Snake Mountain Range west of Wells, Nevada. Those lands are considered to be high resource value lands that would provide important range, wildlife, watershed and recreation management opportunities for the Bureau of Land Management and the public.

The no action alternative will be analyzed in the EIS. Items to be considered for analysis within other alternatives to the proposed action include, but are not limited to: (1) Intermediate plant capacity, (2) Other types of power generating technology, (3) Scheduling of units, (4) Power plant sites, (5) Transmission line routes, (6) Location of worker accommodations, (7) Fuel supply and transport, (8) Water supply, and (9) Plant equipment.

The tentative project schedule is as follows:

Begin Public Comment Period—February 1990
File Final Environmental Impact Statement—August 1990
Record of Decision—September 1990
Completing Licensing and Permitting—May 1991
Begin Construction of Unit 1—Early 1991
Begin Commercial Operation of Unit 1—Early 1994

The Bureau of Land Management's scoping process for the EIS will include: (1) Identification of issues to be addressed; (2) Identification of viable alternatives and (3) Notifying interested groups, individuals and agencies so that additional information concerning these issues can be obtained. The scoping process will consist of a news release announcing the start of the EIS process; letters of invitation to participate in the scoping process; and a scoping document which clarifies the proposed action, alternatives and significant issues being considered to be distributed to selected parties and available upon request.

DATES: A Public Scoping Meeting will be held beginning at 7 p.m., on July 6, 1988 at the Ranch House Cafe at the intersection of State Highway 93 and Interstate 80 in Wells, Nevada.

Additional briefing meetings will be considered as appropriate.

ADDRESS: Written comments will be accepted until July 27, 1988. Comments should be sent to the District Manager, Bureau of Land Management, P.O. Box 831, Elko, NV 89801, ATTN: Thousand Springs Energy Park Project.

FOR FURTHER INFORMATION CONTACT: Nancy Phelps-Dailey, (702) 738-4071.

Date: June 10, 1988.

Fred Wolf,

Associate State Director, Nevada.

[FR Doc. 88-13619 Filed 6-15-88; 8:45 am]

BILLING CODE 4310-HC-M

[MT-920-08-4111-13; MTM 66954]

Proposed Reinstatement of Terminated Oil and Gas Lease; Phillips County, MT

Under the provisions of Pub. L. 97-451, a petition for reinstatement of oil and gas lease MTM 66954, Phillips County, Montana, was timely filed and accompanied by the required rental accruing from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔% respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in sec. 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: June 3, 1988.

June A. Bailey,

Chief, Leasing Unit.

[FR Doc. 88-13540 filed 6-15-88; 8:45 am]

BILLING CODE 4310-DN-M

[MT-920-08-4111-13; MTM 71297]

Proposed Reinstatement of Terminated Oil and Gas Lease; Phillips County, MT

Under the provisions of Pub. L. 97-451, a petition for reinstatement of oil and gas lease MTM 71297, Phillips County, Montana, was timely filed and accompanied by the required rental accruing from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔%, respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: June 3, 1988.

June A. Bailey,

Chief, Leasing Unit.

[OR-100-84-6310-02: GP8-156]

Roseburg District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bureau of Land Management Roseburg District Advisory Council will meet July 11, 1988, beginning at 9:00 a.m. in the Roseburg District Office Auditorium. The purpose of the meeting will be to prepare a

response to *Planning for the Public Lands in Western Oregon: Proposed State Director Guidance.* At the previous Council meeting, on May 27, 1988, a committee was appointed to draft a response and present it to the full Council at the July meeting. Oral or written public comments to the Council regarding the proposed planning guidance will be received at 9:30 a.m. Within 30 days after the meeting, summary minutes will be prepared for distribution and be available for public inspection in the District Office.

ADDRESS: Bureau of Land Management, Roseburg District Office, 777 NW Garden Valley Blvd., Roseburg, OR 97470.

FOR FURTHER INFORMATION CONTACT: Mel Ingeroi, Public Affairs Specialist, Roseburg District (503) 672–4491, ext. 245.

Dated: June 8, 1988.

M.D. Berg,

District Manager.

[FR Doc. 88–13658 Filed 6–15–88; 8:45 am]

BILLING CODE 4310-33-M

[NV-930-08-4212-17]

Camping Limits on Public Lands Within the Elko District, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of Special Camping Rules on Public Lands Administered by BLM in the Elko District, Nevada.

SUMMARY: The following rules apply to camping on public lands administered by BLM in the Elko District:

1. Persons may occupy a site or multiple sites, for casual recreation purposes, on public lands not closed or otherwise restricted to camping, for a total of not more than fourteen (14) days during any thirty (30) day period without written permission. Following the 14 day period, persons may not relocate on public lands within a distance of twenty-five (25) miles of the site that was just occupied until completion of the 30 day period. The 14 day limit may be reached either through a number of multiple visits or through a period of continuous occupation of a site.

2. No person may leave personal property unattended in developed recreation sites or elsewhere on public lands for more than forty-eight (48) hours without permission from the appropriate Area Manager.

3. Exceptions: (1) Official use by an employee, volunteer, licensee, permittee, agent or designated representative of the BLM or one of it's contractors, in the course of his employment, agency or representation; and (2) exceptions posted at developed recreation sites.

SUPPLEMENTARY INFORMATION: These camping limits are established to reduce the incidence of long-term occupancy trespass conducted under the guise of recreational camping and to protect public land resources.

Authority for these rules is contained in CFR Title 43, Chapter II, Part 8360, Subpart 8365.1–2 and 8365.1–6.

DATE: These rules will be effective June 16, 1988.

FOR FURTHER INFORMATION CONTACT: District Manager, Elko District Office, P.O. Box 831, 3900 E. Idaho Street, Elko, NV 89801. Telephone (702) 738–4071.

Dated: June 6, 1988.

Rodney Harris,

District Manager, Elko District.

[FR Doc. 88–13657 Filed 6–15–88; 8:45 am]

BILLING CODE 4310-HC-M

[MT-921-08-4121-11; M 77149]

Coal Exploration License Application; Montana

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of invitation.

Coal Exploration License Application M 77149

Members of the public are hereby invited to participate with Spring Creek Coal Company in a program for the exploration of coal deposits owned by the United States of America in the following described lands located in Big Horn County, Montana:

Principal Meridian, Montana

T. 8 S., R. 39 E.,
Sec. 22: N½SW¼, SW¼SW¼;
Sec. 27: S½NE¼, NW¼NW¼;
Sec. 28: NE¼NE¼.

280.00 acres.

Any party electing to participate in this exploration program shall notify, in writing, both the State Director, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107; and Spring Creek Coal Company, c/o Nerco Coal Corp., P.O Box 66989, St. Louis, Missouri 63166. Such written notice must refer to serial number M 77149 and be received no later than 30 calendar days after publication of this Notice in the **Federal Register** or 10 calendar days after the last publication of the Notice in the Hardin Herald, whichever is later. This Notice will be published once a week for 2 consecutive weeks.

The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. Copies of the exploration plan as submitted by Spring Creek Coal Company may be examined during normal business hours at the Bureau of Land Management, Montana State Office, Granite Tower Building, 222 North 32nd Street, Billings, Montana.

Ray Brubaker,

Acting State Director.

[FR Doc. 88–13533 Filed 6–15–88; 8:45 am]

BILLING CODE 4310-DN-M

[AX040-08-4333-09; INT DEIS 88-31]

San Pedro River Riparian Area Draft Management Plan and Environmental Impact Statement

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of Draft Plan and Environmental Impact Statement (DEIS) and public hearing schedule.

DATES: BLM invites written comments on the DEIS to be submitted within 90 days of its filing with the Environmental Protection Agency. Comments to be received by September 21, 1988.

ADDRESS: Comments should be sent to the District Manager, Bureau of Land Management, 425 E. 4th St., Safford, AZ 85546.

SUMMARY: Safford District has prepared a DEIS on the proposed management plan for the San Pedro River Riparian Area in Safford District, Cochise County, Arizona. The lands included in this plan were acquired in a private exchange in 1986. The purpose of the acquisition is to protect the riparian values of the San Pedro River. The Preferred Alternative represents the balanced use alternative. Other alternatives are No Action, Preservation and Utilization. A limited number of DEIS copies are available upon request to the District Manager at the above address.

Public reading copies are available for review at the following locations:

Safford District Office, Bureau of Land Management, 425 E. 4th St., Safford, AZ 85546, Phone: (602) 428–4040.

Arizona State Office, Public Room, 3707 N. 7th St., Phoenix, AZ 85011, Phone: (602) 241–5547.

Bureau of Land Management, Interior Building, Office of Public Affairs, 18th and C Sts., NW., Washington, 20240, Phone: (202) 343–5717.

In addition, the DEIS will be available for review in city libraries in Phoeni<,

Safford, Sierra Vista and Tucson and at libraries at Arizona State University in Tempe, Northern Arizona University in Flagstaff and University of Arizona in Tucson.

SUPPLEMENTARY INFORMATION: BLM will conduct public hearings in Tucson on August 3, 1988 at Tucson, Hilton East Hotel, 7600 E. Broadway and in Sierra Vista on August 4th, 1988 at Ramada Inn, Highway 92 South. Both hearings will begin at 7:00 p.m. and will continue until 9:00 p.m. The hearing officer may limit the amount of time each individual may have to present testimony. Written comments will also be accepted.

FOR FURTHER INFORMATION CONTACT: Ray A. Brady, District Manager, Safford District, or Jerrold O. Coolidge, Team Leader, Safford District Office at the address given above.

Date: June 6, 1988.

Ray A. Brady,

District Manager.

[FR Doc. 88–13539 Filed 6–15–88; 8:45 am]

BILLING CODE 4310-32-M

Empire-Cienega Resource Conservation Area, Interim Management Guidance, Phoenix Resource Area, Phoenix District, Arizona; Availability

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of Phoenix Resource Area Interim Management Guidance for the Empire-Cienega Resource Conservation Area.

The BLM's Phoenix District has recently acquired, through exchange, 41,000 acres of formerly private land within the Empire, Cienega and Rosetree ranches, 52 miles southeast of Tucson, Arizona. The land was acquired to preserve, protect and enhance the properties' multiple-use values, including extensive riparian areas, endangered species, outstanding small and big game habitat, extensive open space, important watershed and outstanding recreation opportunities.

Pending the development of a land use plan scheduled to begin in Fiscal Year 1989, the following will serve as interim guidance for management. This list will supplement and complement the laws and regulations which apply to any public land being managed for multiple uses. These restrictions are being promulgated under the authority of the Phoenix District Manager as provided in 43 CFR 8364.1.

1. Vehicular travel within the ranches will be allowed on designated roads and routes only. Travel is not permitted off-road or on undesignated roads and routes.

2. The acquired public land will not be open to appropriation under the public land laws, including the mining and mineral leasing laws.

3. Woodcutting will be authorized by permit only. Dead and down wood may be used for campfires when authorized (see No. 4 below).

4. No open campfires will be permitted during high or extreme fire danger periods (fire danger posted at signed entrances).

5. Camping will be allowed unless otherwise posted, but may not exceed stays of more than 14 consecutive days or more than 14 days within six consecutive months.

6. Hunting will be allowed as authorized under the laws and regulations of the State of Arizona, subject to the camping and access restrictions noted above.

Copies of the Interim Guidance and information about the area are available through Arthur E. Tower, Phoenix Resource Area Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027, (602) 863–4464.

Date: June 9, 1988.

Henri R. Bisson,

District Manager.

[FR Doc. 88–13538 Filed 6–15–88; 8:45 am]

BILLING CODE 4310-32-M

[NM-920-08-4121-10]

San Juan River Regional Coal Team Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Regional Coal Team Meeting.

SUMMARY: The San Juan River Regional Coal Team (RCT) will meet to consider future development plans for Federal coal in the region. The public is invited to attend.

The primary purposes of the meeting are to:

1. Review the status of Preference Right Lease application (PRLA) processing;

2. Update the RCT on leasing interest by the Salt Lake River Project in the Fence Lake area;

3. Make a recommendation to the Director, of the Bureau of Land Management, on the mode of leasing (Regional Activity Planning or Leasing by Application) for the region; and

4. Review the draft action plan for the San Juan River RCT, including a timetable for developing data adequacy standards.

5. Review the leasable tracts in the Farmington Resource Management Plan (RMP).

DATE: The RCT will meet at 9 a.m. on Tuesday, August 9, 1988.

ADDRESS: The meeting will be held at the Howard Johnson Plaza Hotel, 4048 Cerrillos Road, Santa Fe, New Mexico 87501, telephone (505) 473–4646. A block of 20 rooms is being held on a first come, first served basis, until July 25, 1988, for people wanting a room for the night of August 8, 1988. The rate is $55 per night plus tax. If reservations are made after July 25, 1988, rooms will be sold at the same rate but on a space available basis.

FOR FURTHER INFORMATION CONTACT: Russell Jentgen or Ed Heffern, Bureau of Land Management, Division of Mineral Resources, P.O. Box 1449, Sante Fe, New Mexico 87504. They may be reached by telephone at (505) 988–6109 or FTS 476–6109.

SUPPLEMENTARY INFORMATION: At this meeting, the RCT will review both the draft action plan for the San Juan River Region and the parts of the Farmington RMP which address coal leasing. Copies of the draft action plan and the Farmington RMP may be obtained from the Public Room of the Bureau of Land Management, New Mexico State Office, P.O. Box 1449, Joseph M. Montoya Federal Building and U.S. Post Office, South Federal Place, Sante Fe, New Mexico 87504, telephone (505) 988–6100 or FTS 476–6100.

The public is requested to submit comments on the draft action plan to Russell Jentgen or Ed Heffern, Bureau of Land Management, Division of Mineral Resources, P.O. Box 1449, Santa Fe, New Mexico 87504, by August 1, 1988. Comments received after August 1, 1988, deadline, but before the RCT meeting, will be made available to the RCT members for consideration as time permits.

The RCT will consider information obtained from the public in making a recommendation on mode of leasing for the region and in making other decisions.

Anyone who wishes to be scheduled to speak at the meeting is requested to provide written copies of their remarks to Russell Jentgen or Ed Heffern, Bureau of Land Management, Division of Mineral Resources, P.O. Box 1449, Sante Fe, New Mexico 87504, by August 1, 1988. Written material will also be accepted in lieu of or in addition to any oral presentation.

Following is a preliminary agenda for this meeting:

1. Introduction

2. Approval of Minutes
3. Status of Preference Right Lease Applications (PRLA's)
4. Status of Existing Leases
5. Leasing Interest in the Fence Lake Area
6. Coal Leasing Tracts in the Farmington RMP
7. Scheduled Presentations
8. Decision on Mode of Leasing
9. Decision on Draft Action Plan
a. Data Adequacy Standards Timetable
b. Lease by Application Procedures
c. Recertification Thresholds
10. Public Comment
11. Scheduling of Next Meeting
12. Adjourn

Dated: June 6, 1988.

Larry L. Woodard,

Chairperson, San Juan River Regional Coal Team.

[FR Doc. 88-13536 Filed 6-15-88; 8:45 am]

BILLING CODE 4310-FB-M

[NM-940-084520-1]

New Mexico; Filing of Plat of Survey

June 2, 1988.

The plats of surveys described below were officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. in the dates shown.

The survey representing the dependent resurvey of the east boundary of the Santa Barbara Grant, a portion of the south boundary and a portion of the subdivisonal lines, the subdivison of section 31 and the survey of Tracts 37 and 38, Township 22 North, Range 14 East, New Mexico Principal Meridian, New Mexico, executed under Group 828, filed June 2, 1988.

This survey was requested by the Regional Forester, Southwestern Region, U.S. Forest Service, Albuquerque, New Mexico.

The survey representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 11, the adjusted 1899 meanders of the right bank of the South Canadian River, the subdivison of section 11, the survey of division of accretion lines, the survey of the 1987 meanders of the right bank of the South Canadian River, and the Survey of Tract 335-A in section 11, Township 8 North, Range 3 West, Indian Meridian, Oklahoma, executed under Group 59, Oklahoma, filed June 2, 1988.

This survey was requested by the Bureau of Indian Affairs, Muskogee Area Office, Oklahoma.

The survey repesenting the dependent resurvey of a portion of the south boundary, the adjusted record meanders of a portion of the 1872 right bank of the North Canadian River in section 31, the reestablishment of a portion of the 1872 medial line of a portion of the North Canadian River in section 31, and the survey of lot boundaries in section 31, Township 12 North, Range 3 West, Indian Meridian, Oklahoma, executed under Group 52, Oklahoma, filed June 2, 1988.

The survey repesenting the dependent resurvey of a portion of the subdivisonal lines, the adjusted record meanders of the left bank of the Canadian River in section 22, and the subdivision of section 22, Township 12 North, Range 10 West, Indian Meridian, Oklahoma, executed under Group 52, Oklahoma, filed June 2, 1988.

The survey representing the dependent resurvey of a portion of the subdivisional lines, the adjusted record meanders of a portion of the right bank of the Deep Fork River in section 13, and the survey of the 1892 medial line of the avulsed bed of the Deep Fork River in section 13, Township 14 North, Range 3 East, Indian Meridian, Oklahoma, executed under Group 52, Oklahoma, filed June 2, 1988.

The survey repesenting the dependent resurvey of a portion of the subdivisonal lines and the adjusted record meanders of the left bank of the North Canadian River in section 22, the subdivision of section 22, and a survey of the meanders of the 1986 left bank of the North Canadian River in section 22, Township 12 North, Range 1, East, Indian Meridian, Oklahoma, executed under Group 52, Oklahoma, filed June 2, 1988.

These surveys were requested by the BLM Area Manager, ORAH, Tulsa District, Oklahoma.

These plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico, 87504. Copies of the plats may be obtained from the office upon payment of $2.50 per sheet.

Kelley R. Williamson,

Acting Chief, Branch of Cadastral Survey.

[FR Doc. 88-13537 Filed 6-15-88; 8:45 am]

BILLING CODE 4310-FB-M

[CO-940-08-4220-11; C-018352]

Proposed Continuation of Withdrawal; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture, proposes that the order which withdrew lands for an indefinite period of time for various picnic grounds, campgrounds, and recreation areas, be modified and the withdrawal be continued for 20 years insofar as it affects approximately 1,202.04 acres of National Forest System land in the State of Colorado. The lands will continue to be closed to the mining laws, but not to mineral leasing.

DATE: Comments should be received on or before September 14, 1988.

ADDRESS: Comments should be addressed to State Director, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, (303) 236-1768.

The Forest Service, U.S. Department of Agriculture, proposes that the existing withdrawal made by Public Land Order No. 1605, as amended, for an indefinite period of time, be modified to expire in 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as it affects the following described lands in the State of Colorado:

Sixth Principal Meridian

White River National Forest

Hornsilver Campground

T. 6 S., R. 80 W.,
Sec. 30, SE¼SE¼SE¼;
Sec. 310, E½NE¼NE¼;

Fulford Campground

T. 6 S., R. 83 W.,
Sec. 35, SE¼NE¼ and E½SW¼NE¼;

Fulford Cave

T. 6 S., R. 83 W.,
Sec. 36, NW¼NW¼.

North Fork Campground

T. 8 S., R. 83 W.,
Sec. 24, S½NE¼NW¼ and N½SE¼NW¼.

Chapman Recreation Area

T. 8 S., R. 83 W.,
Sec. 34, NE¼, N½SE¼, and SE¼SE¼;
Sec. 35, S½NW¼NW¼, SW¼NW¼, NW¼SW¼, and N½SW¼SW¼.

Difficult Campground

T. 10 S., R. 84 W.,
Sec. 33, NW¼NE¼and E½NE¼NW¼.

Maroon Lake Campground

T. 11 S., R. 86 W.,
Sec. 13, N½ and N½SW¼.

Grizzly Creek Picnic Ground

T. 6 S., R. 88 W.,
Sec. 5, lots 7 and 8.

Three Forks Campground

T. 3 S., R. 92 W.,
Sec. 26, NW¼SW¼NW¼.

Spruce Picnic Ground

T. 3 S., R. 92 W.,
Sec. 26, SE¼SW¼SW¼;

Sec. 35, NE¼NW¼NW¼.

North Fork White River Campground

T. 1 N., R. 90 W.,

That portion of HES 142 in Sec. 13 north of the Buford to Trappers Lake Road.

The areas described aggregates approximately 1,202.04 acres in Eagle, Garfield, Pitkin, and Rio Blanco Counties.

The purpose of this withdrawal is for the administration and protection of various picnic grounds, campgrounds, and recreation areas. No change is proposed in the purpose of this withdrawal. The lands will continue to be withdrawn from surface entry and mining, but not from mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed action may present their views in writing to this office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be modified and continued and, if so, for how long. Notice of the final determination will be published in the **Federal Register.** The existing withdrawal will continue until such determination is made.

Richard D. Tate,

Acting Chief Branch of Adjudication.

[FR Doc. 88-13535 Filed 6-15-88; 8:45 am]

BILLING CODE 4310-JB-M

ID-943-08-4220-10; I-3378]

Partial Termination of Proposed Withdrawal and Reservation of Lands

Notice of an application, serial number I-3378, for withdrawal and reservation of lands was published as **Federal Register** Document No. 70-2401 on page 3826 in the issue of February 27, 1970. The applicant's agency has cancelled its application insofar as it involved the lands described below. Therefore, pursuant to the regulations contained in 43 CFR, Subpart 2091, such lands will be at 9:00 a.m. on July 15, 1988, relieved of the segregative effect of the above-mentioned application.

The lands involved in this notice of termination are:

Boise Meridian

Targhee National Forest

T. 1 N., R. 43 E.

Sec. 4, S½SE¼SE¼.

The area described contains 20.00 acres in Bonneville County.

Dated: June 8, 1988.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 88-13534 Filed 6-15-88; 8:45 am]

BILLING CODE 4310-GG-M

Fish and Wildlife Service

Availability of the Final Supplemental Environmental Impact Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This Notice advises the public that the Final Supplemental Environmental Impact Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds is available for public review.

FOR FURTHER INFORMATION CONTACT: Dr. Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240 (202-254-3207).

ADDRESSES: Copies of the Final Statement can be obtained by writing to Director (FWS/MBMO), U.S. Fish and Wildlife Service, Washington, DC 20240, or by visiting the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 536 Matomic Building, 1717 H Street NW., Washington, DC 20240. Comments can be sent to the same address.

DATE: Written comments will be received until July 17, 1988.

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service (Service) announced its intention to supplement its 1975 Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds on July 31, 1986 (51 FR 27430). A Draft Supplemental Statement was released for public review and comment on September 22, 1987 (52 FR 35563). Comments on the Draft have been received and considered in preparation of the Final Supplemental Statement which is now available to the public. The Service intends to publish its Record of Decision on the Final Supplemental Statement as soon as practicable, but not sooner than 30 days following notice of availability of the Final Supplemental Statement published by the Environmental Protection Agency in the **Federal Register.** That anticipated publication date is June 17, 1988.

Date: June 10, 1988.

Steve Robinson,

Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 88-13464 Filed 6-15-88; 8:45 am]

BILLING CODE 4310-55-M

Geological Survey

Digital Cartographic Data Prices; Price Revision

Notice is hereby given that effective June 15, 1988, the prices of digital cartographic data reproduced and distributed by the Geological Survey will be revised. The price revision is needed because of changes in recoverable costs. The last price revision for digital cartographic data was September 1982.

The following table shows the new prices. It eliminates the previous $25 surcharge for each reel of computer magnetic tape, and reflects economies in processing multiple-unit orders.

New Prices for Digital Cartographic Data [1]

Each order for 1 to 5 units of data:

	Number of units ordered				
	1	2	3	4	5
Price category:					
A	$40	$60	$80	$100	$120
B	$50	$75	$100	$120	$140
C	$60	$85	$110	$135	$160
D	$70	$100	$130	$155	$180

Each order for 6 or more units of data has a base charge of $90, plus the indicated charge per unit:

	Unit charge
Price category:	
A	$7
B	$11
C	$15
D	$19

Price categories are defined on the basis of the average size in megabytes of the units of data of a particular type and map series. All types of digital cartographic data from all map series are currently in price category A; price categories B, C, and D are defined for future use.

The sample data tape will continue to sell for $25.

[1] Prices apply only to digital cartographic data delivered on standard computer magnetic tape.

Further information is available from the following office:

National Cartographic Information Center, 507 U.S. Geological Survey National Center, Reston, Virginia 22092.

Date: June 10, 1988.

Lowell E. Starr,

Chief, National Mapping Division, U.S. Geological Survey.

[FR Doc. 88-13532 Filed 6-15-88; 8:45 am]

BILLING CODE 4310-31-M

Minerals Management Service

Development Operations Coordination Document; Cliffs Exploration Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Cliffs Exploration Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 7704, Block 79, South Marsh Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on June 7, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Resources Progress.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: June 9, 1988

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-13542 Filed 6-15-88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; McMoRan Oil & Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that McMoRan Oil & Gas Co. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 3793, Block 83, Grand Isle Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on June 6, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Lars T. Herbst; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2533.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: June 8, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-13543 Filed 6-15-88; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf Advisory Board, Gulf of Mexico Regional Technical Working Group; Meeting

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Gulf of Mexico Regional Technical Working Group (RTWG) meeting.

SUMMARY: Notice of this meeting is issued in accordance with the Federal Advisory Committee Act (Pub. L. No. 92-463). The Gulf of Mexico RTWG meeting will be held July 13-14, 1988, at the Holiday Inn University Mall, Pensacola, Florida. Dates and times are as follows: July 13, 1988—9 a.m. to 4 p.m.; July 14, 1988—9 a.m. to 3 p.m.

The RTWG business meeting will be held in conjunction with the Summer Ternary Studies Meeting. Tentative agenda items for the business meeting include:

Environmental Studies Program Status
Gulf of Mexico Production Trends and Deepwater Potential
Lease Sale 116 Proposed Notice of Sale
1989 and 1990 Pre-Sale Leasing Process Status
Platform Removal Status
Update on MMS Initiatives

FOR FURTHER INFORMATION: This meeting is open to the public. Individuals wishing to make oral

presentations to the Committee concerning agenda items should contact Eileen P. Angelico of the Gulf of Mexico OCS Regional Office at (504) 736–2959 by July 1, 1988. Written statements should be submitted by the same date to the Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123. A taped cassette transcript and complete summary minutes of the Business Meeting will be available for public inspection in the Office of the Regional Director at the above address not later than 60 days after the meeting.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico RTWG is one of six such Committees that advises the Director of the Minerals Management Service on technical matters of regional concern regarding offshore prelease and postlease sale activities. The RTWG membership consists of representatives from Federal Agencies, the coastal States of Alabama, Florida, Louisiana, Mississippi, and Texas, the petroleum industry, the environmental community, and other private interests.

Date: June 7, 1988.

J. Rogers Pearcy,

Regional Director Gulf of Mexico OCS Region.

[FR Doc. 88–13544 Filed 6–15–88; 8:45 am]

BILLING CODE 4310-MR-M

Office of Surface Mining Reclamation and Enforcement

Transfer of Unexpended Abandoned Mine Land Reclamation Funds From the State of Tennessee

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

ACTION: Notice.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement is transferring all State abandoned mine land reclamation (AMLR) monies allocated to Tennessee but not expended to the Secretary's share of the AMLR Fund (Fund) and will no longer allocate AMLR funds to the State, under the authority of sections 4021(g)(2) and 405(c) of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 9587 (SMCRA).

Notice of OSMRE's intent to transfer the unexpended reclamation fund was published on March 8, 1988 (53 FR 7407). An opportunity for public participation in OSMRE's decision was provided. Comments received are discussed below under "Disposition of Comments."

EFFECTIVE DATE: This action will be effective July 15, 1988.

FOR FURTHER INFORMATION CONTACT: Jim Fary, Division of abandoned Mine Land Reclamation, 1951 Constitution Avenue NW., Room 218, Washington, DC 20240, Telephone (202) 343–5819.

SUPPLEMENTARY INFORMATION: The AMLR Fund was established by the Surface Mining Control and Reclamation Act of 1977 in response to concerns over the extensive environmental damage caused by past coal mining activities. Monies from the Fund are appropriated by Congress for grants to the States and Tribes to plan and implement reclamation programs and projects; for Federal reclamation projects administered by the Secretary of the Interior through OSMRE; and for the Rural Abandoned Mine Program (RAMP) administered by the Secretary of Agriculture through the Soil Conservation Service.

Title IV of SMCRA provides that fifty percent of the AMLR funds collected within a State or on Tribal lands are to be allocated to the State or Tribe to accomplish the purposes of Title IV. "Allocated" means the administrative identification in the records of OSMRE of monies in the Fund for use by a State or Tribe for accomplishing the purposes of Title IV. States are elibible to receive such allocated funds only after they have an approved regulatory program pursuant to section 503 of SMCRA and an approved reclamation plan under section 405 of SMCRA. If allocated funds have not been expended by the State, section 402(g)(2) of SMCRA provides the Secretary authority to withdraw such funds from the State accounts and utilize them for other purposes of Title IV. If a State does not have an approved regulatory program, section 405(c) precludes the Secretary from further funding of a State AMLR program and the Secretary need no longer administratively allocate monies to a State account.

The State of Tennessee repealed most of the Tennessee Coal Surface Mining Law of 1980 and the implementing regulations for the active coal mining regulatory program effective October 1, 1984. On this date, OSMRE instituted a Federal regulatory program for active mining and, effective November 5, 1984, suspended the State's AMLR plan. Since that date Tennessee's share of the AMLR funds collected within the State has been administratively allocated to the State-share, but because of the implementation of a Federal regulatory program, the State has been ineligible to receive annual grants to untilize its State-share funds.

All funds allocated but not granted to Tennessee will be transferred to the Secretary's discretionary share under the provisions of section 402(g)(2) for other authorized purposes of Title IV. In addition, under the provisions of section 405(c) of SMCRA, OSMRE will not longer allocate funds to the State of Tennessee and all fees collected in the State will be credited to the Secretary's discretionary share.

Disposition of Comments

Notice of OSMRE's intent to transfer the unexpended reclamation funds was published on March 8, 1988 (53 FR 7407). The notice explained that Tennessee repealed most of the Tennessee Coal Surface Mining Law of 1980 and implementing regulations for the active coal mining regulatory program, effective October 1, 1984. That on that date, OSMRE instituted a Federal regulatory program for active mining, and effective November 5, 1984 suspended the State's AMLR plan. Also that since that date Tennessee's share of the AMLR funds collected within the State had been administratively allocated to the State-share, but because of the implementation of a Federal regulatory program, the State was ineligible to receive annual grants utilizing the State-share funds. That all funds allocated to the State but not granted would be transferred to the Secretary's discretionary share under the provisions of section 402(g)(2) for other authorized purposes of Title IV, and that under the provisions of section 405(c) of SMCRA, OSMRE would no longer allocate funds to the State of Tennessee and all fees collected in the State would be credited to the Secretary's discretionary share.

An opportunity for public participation in OSMRE's decision was provided. Comments were received from the Tennessee Valley Authority and from the Governor of Tennessee.

The Tennessee Valley Authority (TVA) commented that "this proposed transfer will further delay correction of the Abandoned Mined Land (AML) problems that are adversely impacting land and water resources in Tennessee." OSMRE's response is that further retention of State-share monies in Tennessee's account will not quicken the pace of reclamation within the State. Without a regulatory program these monies are unavailable to the State. The transfer of these funds to the Secretary's share will therefore ensure their use for reclamation purposes. Since Tennessee repealed the Tennessee Coal Surface Mining Law of 1980 and OSMRE suspended the State's AMLR plan,

Tennessee has been considered a nonprogram State. A nonprogram State is one in which the State does not have regulatory primacy over active mining and AML reclamation is addressed under OSMRE's Federal Reclamation Program (FRP). Upon becoming a nonprogram State, Tennessee joined other nonprogram States (such as Georgia, Michigan and Washington) and reclamation is being addressed in the State by OSMRE's FRP. Since Tennessee became a nonprogram State more than $4 million has been made available through OSMRE's FRP to address the adverse health and safety impacts associated with abandoned mine lands in Tennessee. OSMRE will continue to address reclamation needs in nonprogram States (including Tennessee).

TVA also expressed concerns that "there is no guarantee that any future AMLR funds collected from coal operators in Tennessee will be used to remedy AML problems within the State." Section 402(g)(2) of SMCRA explicitly gives the Secretary the discretion to utilize funds which have been allocated but not expended by a State or expenditures in any eligible area of the country. OSMRE will assess the AML problems in nonprogram States nationwide and make funding decisions based on need and priority. AML problems in Tennessee will be addressed under OSMRE's FRP.

The Governor of Tennessee commented that: "Although Tennessee has no immediate plans to regain regulatory primacy for surface mining in Tennessee, we reserve the option to seek resumption of that role at some later date, if it should become necessary or desirable to do so. Consequently, we do not believe it is necessary to transfer state-share monies into the Secretary's discretionary fund." SMCRA provides that "the Secretary shall not approve, funds or continue to fund a State abandoned mine reclamation program unless the State has an approved State regulatory program pursuant to section 503 of SMRCA." 30 U. S.C. 1235(c). With a approved regulatory program and an approved State reclamation plan a State is eligible for allocation of a share of AMLR funds. If allocated funds have not been expended by a State within three years after the allocation, section 402(g)(2) of SMCRA provides that the Secretary may withdraw such funds from the State's account and utilize them for other reclamation purposes under Title IV. The Secretary's action therefore is statutorily authorized. Should Tennessee at a future date decide to resume regulatory primacy, a share of the AML fees collected from that date on will again be allocated to the State of Tennessee in compliance with the requirements of SMCRA; the suspension of its AML plan will be removed by the Secretary, and the State will be eligible once again to receive monies from its State-share account.

The Governor also indicated that "we request that any decision to transfer funds from the State-share to the Secretary's discretionary share be delayed until we have had the opportunity to thoroughly discuss proposed federal reclamation program funding levels and schedules with the appropriate officials from OSM." As a nonprogram State, AML reclamation in Tennessee will be addressed by OSMRE's FRP. OSMRE will assess the AML problems in nonprogram States nationwide (including Tennessee), consult with State officials, and make funding decisions based on need and priority. OSMRE officials are willing to meet with the Governor or other officials of the State of Tennessee to discuss any matters pertaining to Tennessee becoming a nonprogram State and the funding of OSMRE's FRP.

Agency Findings

The State of Tennessee repealed most of the Tennessee Coal Surface Mining Law of 1980 and the implementing regulations for the active coal mining regulatory program effective October 1, 1984. The State of Tennessee has indicated that it does not have any immediate plans to regain regulatory primacy over active mining. Therefore, all funds allocated but not granted to the State will be transferred to the Secretary's discretionary share under the provisions of section 402(g)(2) for other authorized purposes of Title IV. Furthermore, under the provisions of section 405(c) of SMCRA, OSMRE will no longer allocate funds to the State of Tennessee and all fees collected in the State will be credited to the Secretary's discretionary share. Until Tennessee regains regulatory primacy, the State will be considered a nonprogram AMLR State and abandoned mine land reclamation in Tennessee will be conducted by OSMRE's FRP.

Robert E. Bolat,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

Date: June 8, 1988.

[FR Doc. 88–13592 Filed 6–15–88; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

[Amdt. No. 9]

Section 5a Application No. 70; [1] Western Motor Tariff Bureau, Inc.—Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision and request for comment.

SUMMARY: Western Motor Tariff Bureau, Inc. has filed, pursuant to section 14(e) of the Motor Carrier Act of 1980 (MCA), an application for approval of its ratemaking agreement under 49 U.S.C. 10706(b). Since some modifications are required before the agreement receives final approval, and because new and complex questions are involved in determining whether the agreement is consistent with the MCA, the Commission solicits public comment on its interpretation and application of specific rate bureau provisions. Copies of Western's proposed amended agreement are available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423, and from Western's representative: M.J. Nicolaus, 5042 Cecelia Street, P.O. Box 1907, South Gate, CA 90280.

DATES: Comments from interested persons are due by July 18, 1988. Replies are due by August 2, 1988.

ADDRESS: An original and 10 copies of comments referring to Section 5a Application No. 70 should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Ronald Thomas, (202) 275–7912 or Richard B. Felder, (202) 275–7691. [TDD information for the hearing impaired (202) 275–1721.]

SUPPLEMENTARY INFORMATION: Western Motor Tariff Bureau, Inc. (Western) has filed an application for approval of its proposed amended collective ratemaking agreement as required by section 14(e) of the Motor Carrier Act of 1980, Pub. L. No. 96–296 (1980) (MCA). Since filing its application, Western has been obliged to observe the requirements of the MCA and the standards in *Motor Carrier Rate Bureaus—Imp. Pub. L. 96–296,* 364 I.C.C. 464 (1980) and 364 I.C.C. 921 (1981) (*Rate Bureau*). We have provisionally

[1] Section 5 was recodified as Section 10706.

approved Western's agreement as consistent with 49 U.S.C. 10706(b) and *Rate Bureau, supra,* subject to certain conditions and modifications in the following subject areas: Identification and description of member carriers; right of independent action; employee docketing; open meetings; proxy voting; quorum standards; rate bureau protests; single-line rates; general increases and decreases; and zone of rate freedom and released rates. We have also offered comments and imposed requirements concerning the agreement generally. Western has been directed to file a revised agreement conforming to the imposed conditions within 120 days of service of the decision.

In light of the complexity of interpretation involved in determining whether the agreement is consistent with the MCA and *Rate Bureau, supra,* we request applicant and other interested parties to comment on our interpretation of the controlling statutory and administrative criteria, and their application to Western's agreement.

A copy of any comments filed with the Commission must also be served on Western, which will have 15 days from the expiration of the comment period to reply. These comments will be considered in conjunction with our review of the modifications that Western must submit to the Commission as a condition to final approval of its agreement.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357/4359 (D.C. Metropolitan area) (assistance for the hearing impaired is available through TDD services (202) 275–1721 or by pickup from Dynamic Concepts, Inc. in Room 2229 at Commission headquarters).

Authortiy: 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: June 8, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88–13600 Filed 6–15–88; 8:45 am]

BILLING CODE 7035–1–M

[Docket No. AB–1 (Sub-No. 202)]

Findings; Chicago and North Western Transportation Co., Abandonment in Nobles and Rock Counties, MN, and Minnehaha County, SD

The Commission has found that the public convenience and necessity permit Chicago and North Western Transportation Company (CNW) to abandon its 65.6-mile line of railroad between Agate, MN, (milepost 0.0) and Ellis, SD (milepost 65.6) in Nobles and Rock Counties, MN, and Minnehaha County, SD.

A Certificate of Interim Trail Use or Abandonment will be issued authorizing CNW to discontinue service (if an Interim Trail Use Agreement is reached) or abandon (if an Interim Trail Use Agreement is not reached), unless within 10 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Dated: June 8, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Commissioners Simmons and Lamboley dissented with separate expressions.

Noreta R. McGee,

Secretary.

[FR Doc. 88–13601 Filed 6–15–88; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31282]

Stone Container Corp.—Control Exemption—Trinity Paper & Plastics Corp.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Interstate Commerce Commission exempts Stone Container Corporation (Stone) from the requirements of 49 U.S.C. 11343 to acquire control of Trinity Paper & Plastics Corporation, which holds motor contract carrier authority. Stone currently controls the Atlanta & St. Andrews Bay Railway Company, Apache Railway Company and Abbeville-Grimes Railway Company, and a motor carrier, Cousins Leasing Corporation. Stone is also affiliated with another motor carrier, Orangeburg Trucking Company. The exemption is subject to employee protective conditions.

DATES: This exemption is effective on June 21, 1988. Petitions for reconsideration must be filed by July 6, 1988.

ADDRESSES: Send pleadings referring to Docket No. 31282 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Ronald S. Flagg, Sidley & Austin, 1722 Eye Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired (202) 275–1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: June 8, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88–13599 Filed 6–15–88; 8:45 am]

BILLING CODE 7035–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the

provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted on or before February 1, 1989.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202–786–0249) and Elaina Norden, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503 (202–395–7316).

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202–786–0249) from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Extension
Title: The NEH Division of Education Programs-Guidelines and Application Instructions
Form Number: 3136–0059
Frequency of Collection: Collections occur once yearly, according to individual program application deadline.
Respondents: Individual or households Academic scholars-teachers, administrators.
Use: The Guidelines and application instructions provide direction for preparing narrative and budgetary parts of applications for grant funds and request additional information regarding grants recently received by applicants.
Estimated Number of Respondents: 275
Estimated Hours for Respondents to Provide Information: 1100

Susan Metts,
Director of Administration.
[FR Doc. 88–13616 Filed 6–15–88; 8:45 am]
BILLING CODE 7536–01–M

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786–0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are 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. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of § 552 of Title 5, United States Code.

(1) *Date:* July 1, 1988
Time: 9:00 a.m. to 4:30 p.m.
Room: M–14
Program: This meeting will review applications for the International Regrants category, submitted to the Division of Research Programs, for projects beginning after December 1988.

(2) *Date:* July 6–7, 1988
Time: 9:00 a.m. to 5:00 p.m.
Room: 415
Program: This meeting will review applications for Undergraduate Education, submitted to the Office of Challenge Grants, for projects beginning after December 1988.

(3) *Date:* July 11, 1988
Time: 8:00 a.m. to 5:00 p.m.
Room: 415
Program: This meeting will review applications submitted for Museums and Historical Organizations, submitted to the Division of General Programs, for projects beginning after January 1989.

(4) *Date:* July 12–13, 1988
Time: 9:00 a.m. to 5:00 p.m.
Room: 315
Program: This meeting will review applications submitted for Undergraduate Education, submitted to the Office of Challenge Grants, for projects beginning after December 1988.

(5) *Date:* July 14–15, 1988
Time: 8:00 a.m. to 5:00 p.m.
Room: 415
Program: This meeting will review applications submitted for Museums and Historical Organizations, submitted to the Division of General Programs, for projects beginning after January 1, 1989.

(6) *Date:* July 19–20, 1988
Time: 9:00 a.m. to 5:00 p.m.
Room: 315
Program: This meeting will review applications submitted for Museums and Historical Organizations, submitted to the Office of Challenge Grants, for projects beginning after December 1988.

(7) *Date:* July 21–22, 1988
Time: 8:00 a.m. to 5:00 p.m.
Room: 415
Program: This meeting will review applications submitted for Museums and Historical Organizations, submitted to the Division of General Programs, for projects beginning after January 1, 1989.

(8) *Date:* July 26–27, 1988
Time: 9:00 a.m. to 5:00 p.m.
Room: 415
Program: This meeting will review applications submitted for Public Outreach, submitted to the Office of Challenge Grants, for projects beginning after December 1, 1988.

(9) *Date:* July 28–29, 1988
Time: 8:00 a.m. to 5:00 p.m.
Room: 415
Program: This meeting will review applications submitted for Museums and Historical Organizations, submitted to the Division of General Programs, for projects beginning after January 1, 1989.

Stephen J. McCleary,
Advisory Committee, Management Officer.
[FR Doc. 88–13617 Filed 6–15–88; 8:45 am]
BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-331]

Iowa Electric Light and Power Co., et al., Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-49, issued to Iowa Electric Light and Power Company, Central Iowa Power Cooperative, and Corn Belt Power Cooperative (the licensees), for operation of the Duane Arnold Energy Center (DAEC), located in Linn County, Iowa.

Environment Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Technical Specifications, (TS) relating to the Engineered Safety Feature (ESF) logic system functional testing frequency and requirements.

The proposed action is in accordance with the licensee's application for amendment dated December 11, 1987.

The Need for the Proposed Action

The proposed changes to the TS are required so that the licensee can perform comprehensive logic system functional testing each refueling outage, in accordance with the staff position on this issue.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the DAEC Technical Specifications. The proposed revisions would extend the logic system functional test frequency from annually to once per operating cycle (typically 18 months), and would clarify the definition of Logic System Functional Test, for consistency with the NRC staff's position. This extension would allow these tests to be performed during periodic plant shutdowns, so that all ESF logic system components can be properly tested. Changing the frequency of various Logic System Functional Tests from annually to once per operating cycle increases the surveillance interval by approximately 50%. The probability of detecting a random failure of a contact or relay in a logic system is similarly decreased by approximately 50%. However, the reliability of the mechanical components of a safety system remains unchanged because these components are functionally tested or calibrated at unchanged and more frequent intervals. Since the probability of a relay or contact failure is small relative to the probability of mechanical component failure, increasing the logic system functional test interval represents no significant change in the overall safety system unavailability. The proposed changes would also result in more comprehensive testing. Therefore, although testing will be less frequent, it will not increase the probability or consequences of accidents. No changes are being made in the types or amounts of any effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed changes to the TS involve systems located within the restricted area as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 4, 1988 (53 FR 15931). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Duane Arnold Energy Center, dated March 1973.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated December 11, 1987 which is available for public inspection at the Commission's Public Document Room, 1717 H. Street, NW., Washington, DC and at the Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, Iowa 52401.

Dated at Rockville, Maryland, this 10th day of June 1988.

For the Nuclear Regulatory Commission.

Kenneth E. Perkins,

Director, Project Directorate III-3, Division of Reactor Projects-III, IV, V and Special Projects.

[FR Doc. 88-13612 Filed 6-15-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

Toledo Edison Co., the Cleveland Electric Illuminating Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-3, issued to Toledo Edison Company and The Cleveland Electric Illuminating Company the licensees, for operation of the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

Environmental Assessment

Identification of Proposed Action

The proposed amendment involves removing all Safety Features Actuation System (SFAS) and Containment Isolation Technical Specifications (TS) closure time requirements from all the valves attached to the sides of the steam generators. Specifically, the proposed amendment, submitted by applicant dated August 7, 1987, would revise the TS section ¾.3.2, Table 3.3-5 by:

(1) Deleting the reqirement for manual and automatic SFAS high containment pressure and low reactor coolant pressure signals to the atmospheric vent valves (AVV) and main steam warm-up drain valves, and

(2) Deleting the requirement for manual and automatic SFAS high-high containment pressure signals to the main steam line valves, main feedwater valves, and main steam warm-up valves.

The proposed amendment would also revise TS section ¾.6.3, Table 3.6–2 by deleting the required isolation times for the above-listed valves, and for the steam generator blowdown valves. With the exception of the blowdown valves, which would be deleted entirely from the TS's the valves would be moved from Section A (Containment Isolation Valves) to Section C (Other) of Table 3.6–2.

The Need for the Proposed Action

The changes proposed are needed to support facility modifications which are planned to improve the reliability and availability of the main feedwater system, and to minimize challenges to the auxillary feedwater system.

Environmental Impact of the Proposed Action

During normal operation of Davis-Besse, the main steam warm-up drain values and the atmospheric vent valves are normally closed. The Level 2 SFAS close signal (high containment pressure or low reactor coolant pressure) only serves as a backup to the procedural requirement to maintain these valves closed. The remaining valves involved with the proposed deletion of SFAS input would be closed by a Level 4 SFAS signal (high-high containment pressure).

A Level 4 SFAS signal can only be caused by large break loss-of-coolant accident (LOCA). Such an accident would cause the Reactor Coolant System (RCS) to depressurize rapidly to a value saturation pressure on the steam system side of steam generators effectively sealing as a leakage path from the RCS. When the pressure falls below 600 psig, a Steam and Feedwater Rupture Control System (SFRC) trip will occur, and the steam generator isolation valves associated with main feedwater and main steam (including the blowdown values) will close, and the remaining valves not closed by automatic action can be closed by manual action by the operators. Furthermore, since the containment pressure will never exceed the pressure in the steam generator and steam system, leakage to the environment will be prevented.

The Commission has evaluated the environmental impact of the proposed amendment and has determined that there would be no increase in any radiological effluents offsite. The Commission has also determined that the probability of accidents has not been increased by the proposed changes and that post-accident radiological releases would not be greater than previously determined. Neither does the proposed amendment otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed amendment.

With regard to potential nonradiological impacts, the proposed amendment involves changes to requirements with respect to the installation or use of a facility component and a change to a surveillance requirement. The staff has determined that the amendment involves no significant increase in the amounts and no significant change in the types of any effluents that may be released offsite. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on January 6, 1988 (53 FR 294). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce the environmental impacts atrributable to this facility. Denial of the action would prevent planned plant modification to improve the reliability and availability of main feedwater and to minimize challenges to the auxiliary feedwater system.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to operation of the Davis-Besse facility.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated August 7, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801, Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland this 10th day of June 1988.

For the Nuclear Regulatory Commission.

Kennth E. Perkins,

Director, Project Directorate III–3, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–13613 Filed 6–15–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–346A and 50–440A]

Cleveland Electric Illuminating Co. et al. Request To Suspend the Perry Nuclear Power Plant and Davis-Besse Nuclear Power Station Antitrust License Conditions

By application dated May 2, 1988, licensees Cleveland Electric Illuminating Company (CEI) and Toledo Edison Company (TE) requested the Director of the Office of Nuclear Reactor Regulation to amend the Perry Nuclear Power Plant (Perry) Facility Operating License No. NPF–58 and the Davis-Besse Nuclear Power Station (Davis-Besse) Facility Operating License No. NPF–3. Facility Operating License No. NPF–58 was issued to CEI, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and TE. Facility Operating License No. NPF–3 was issued to TE and CEI.

In their application, CEI AND TE suggest that: (1) The production cost advantages associated with nuclear power forecasted during the 1970's have not been realized by Perry or Davis-Besse in the 1980's, and (2) the competitive situation has signficantly changed in Ohio. Licensees state that the antitrust license conditions attached to the Perry and Davis-Besse operating licenses were based on the premise that nuclear power would provide an economic or competitive advantage to its owners. The licensees conclude that because the production cost advantages

associated with nuclear power have disappeared and competition in the Ohio bulk power industry has increased, the rationale for attaching antitrust license conditions to Perry and Davis-Besse have also disappeared and consequently, the license conditions as they apply to CEI and TE should be suspended.

Pursuant to 10 CFR 2.101 and 50.90, the staff is publishing receipt of licensees' request to amend the Perry and Davis-Besse Facility Operating Licenses in the **Federal Register** and requesting public comment. A copy of the application for amendment has been forwarded to the Attorney General for his review and comment and a copy of this Notice is being forwarded to counsel for Cleveland Public Power, Inc. (formerly the Municipal Electric Light Department of the City of Cleveland, Ohio). Moreover, a copy of the application for amendment will be available for public inspection in local public document rooms at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081, the University of Toledo Library, Document Department, 2801 Bancroft Avenue, Toledo, Ohio 43606, and at the Commission's Public Document Room located at 1717 H Street, NW., Washington, DC 20555 for inspection by any interested party.

Any person who wishes to express views pursuant to the antitrust issues raised in this amendment request should submit said views within 30 days of the initial publication of this Notice in the **Federal Register** to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland, this 6th day of June 1988.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Acting Director, Project Directorate III-3, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-13614 Filed 6-15-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-440]

Cleveland Electric Illuminating Co. et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-58 issued to the Cleveland Electric Illuminating Company (CEI), the Duquesne Light Company, the Ohio Edison Company, the Pennsylvania Power Company, and the Toledo Edison Company (the licensees) for operation of the Perry Nuclear Power Plant, Unit No. 1, located in Lake County, Ohio. The licensees' application for amendment was dated February 12, 1988 (PY-CE1/NRR-0806) as modified May 20, 1988 (PY-CEI/NRR-0854-L) to modify Technical Specification 3.4.3.1.

The amendment would modify Technical Specification (TS) 3.4.3.1 to provide flexibility to allow that the upper drywell air coolers condensate flow rate monitoring system be operable so long as the drywell floor drain monitoring system and at least one other leakage detection system remain operable.

Current TS's require three combinations of reactor coolant system (RCS) leakage detection systems to be operable. These are:

1. Drywell atmosphere particulate or gaseous radioactivity monitoring
2. Drywell floor drain sump and equipment drain sump flow monitoring system; and
3. Upper drywell air coolers condensate flow rate monitoring system.

With only two of the above systems operable, operation may continue for 30 days, provided certain conditions are met, otherwise the plant will be in hot shutdown within 12 hours and cold shutdown within the next 24 hours.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensees' proposed change and has proposed to determine that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change would permit continued plant operation with the upper drywell air cooler condensate flow rate monitoring system inoperable, as long as the drywell floor drain flow monitoring system and at least one other leakage detection system were operable. The drywell floor drain flow monitoring system is class 1E powered, designed to withstand OBE loads, and has a sensitivity of detection of one (1) gpm within 1 hour.

The licensees have stated that the total flow coming from the upper drywell coolers drain system is collected in the drywell floor drain sump and will be monitored by the drywell floor drain sump monitoring system whether the upper drywell cooler condensate flow monitoring system is operable or not. Therefore, any flow from the upper drywell coolers, which would be indicative of a possible steam leak, would still be monitored and quantified. Additionally, at least one other leakage detection system would be available to confirm any indicated leakage. Thus, there is no increase in the probability of an accident previously evaluated. Since these systems are used to detect minor drywell leakages but not used to mitigate the results of any accidents, this proposed change will not increase the consequences of any previously evaluated accident.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change involves the reactor coolant system leakage detection systems, a group of systems used to monitor for reactor coolant leaks within the drywell. Since these systems are used for monitoring only, the change cannot create a new or different kind of accident from any previously evaluated.

The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not change allowable leakage rates or how those leakage rates will be classified. It attempts to add flexibility to the requirement to have three leakage detection systems available for continuous operation. It is also more consecutive than the previously proposed amendment for which the staff had made a no significant hazards consideration determination. As such, the proposed change does not involve a reduction in the margin of safety.

Therefore, based on these considerations and the three criteria given above, the Commission proposes to determine that the amendment

request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland, from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 18, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene must be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which the petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and state comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Kenneth E. Perkins: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 12 as amended May 20, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Perry Public Library, 3753 Main Street, Perry, Ohio, 44081.

Dated at Rockville, Maryland, this 10th day of June 1988.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Project Manager, Project Directorate III-3, Division of Reactor Projects-III, IV, V and Special Projects.

[FR Doc. 88-13615 Filed 6-15-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Commitee will be held on—

Wednesday, July 20, 1988
Wednesday, July 27, 1988

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street NW., Washington, DC 20415, (202) 632-9710.

Thomas E. Anfinson,

Chairman, Federal Prevailing Rate Advisory Committee.

June 10, 1988.

[FR Doc. 88-13598 Filed 6-15-88; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25794; File No. SR-Amex-88-8]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval to American Stock Exchange, Inc. Proposal Relating to Resumption of Trading Following Halts or Delay, and Permitting Pre-Opening Indications of Interest

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 8, 1988, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change revises the Exchange's trading halts policy to reduce the minimum delay for resuming trading in a security following a halt or delay, and permit pre-opening indications of interest to be disseminated prior to 9:30 a.m.

The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

In 1986, the regulatory halt provision of the Consolidated Tape Association ("CTA") Plan was amended to provide that exchanges were no longer required to wait 15 minutes following full disclosure of news ("T time") before putting an indication of interest on the Tape. (Eighth Substantive Amendment to the Restated CTA Plan; *See,* Securities Exchange Act Release No. 22981 (March 13, 1986)). Exchanges therefore, may, resume trading 15 minutes after T time, provided the primary market has disseminated an indication of interest during that fifteen minute period.

This change placed the Amex and the New York Stock Exchange ("NYSE") at a competitive disadvantage vis-a-vis the regional exchanges, because primary market specialists are required to delay trading for 15 minutes after the stock is indicated, which could be several minutes after T time. Moreover, the Amex and NYSE also required, in cases where more than one indication was made, that trading be delayed for 15 minutes following the last such indication, and the Amex currently requires that trading be further delayed if the opening price variation exceeds certain parameters (*e.g.,* 30 minutes must elapse after the price indication prints on the Tape when the opening price will be four or more points from the previous sale in a stock selling at $20 or more, two points in a stock selling at $10 or more, and one point in a stock selling at less than $10.)

In recognition of the above factors, the NYSE recently received SEC approval for a policy change that reduces the

minimum delay for resuming trading in a previously halted security (Securities Exchange Act Release No. 24880, September 4, 1987, File No. SR–NYSE–87–14). The Amex is proposing to similarly revise its policy.

Under the new policy, the minimum delay for resuming trading when more than one indication is necessary would be reduced from 15 minutes from the last indication to:

—5 minutes, when the last indication overlaps the prior indication; (*e.g.*, an indication of 20–25, followed by an indication of 22–27); or

—10 minutes, when the last indication does not overlap the prior indication (*e.g.*, an indication of 20–25, followed by an indication of 25–30).

However, it is not proposed to change the requirement that a specialist wait at least 15 minutes from the initial information before trading is resumed.

In addition, it is proposed to permit pre-opening indications, subject to appropriate approval, prior to 9:30 a.m. Such indications would be useful in various situations, such as initial public offerings, or following an inter-day trading halt.

Finally, it is proposed to require that final approval as to any non-regulatory (*i.e.*, order imbalance) halt be given by a Floor Governor or Exchange Official, who may dispense with or alter the applicable waiting period to take into account the circumstances of the particular opening situation. Currently, Floor Officials are permitted to give such approval. The Exchange is not proposing to change its policy as to regulatory halts, in which decisions are made by a Floor Official and/or Governor in conjunction with the Securities Division.

The proposed changes will continue to provide investors with adequate time to react to news releases and indications of interest and will enable the Amex to re-open its markets more expeditiously. Moreover, these changes will foster greater procedural uniformity within the securities industry.

(2) Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will remove or lessen existing burdens on competition in that it will enable the Exchange to reopen trading in a stock closer to the time that other markets can do so.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex–88–8 and should be submitted by July 7, 1988.

IV. Commission Findings and Order Granting Accelerated Approval

As noted previously, the proposed Amex rule change is substantially similar to a proposed rule change submitted by the New York Stock Exchange, Inc. ("NYSE") [1] that was recently approved by the Commission.[2] Both the Amex and the NYSE proposed rules were submitted in response to changes in response to changes in the Revised CTA Plan. [3] The changes to the CTA plan permit markets to resume trading after 15 minutes from "T time" (the time at which news has been fully disclosed) so long as the market has disseminated indications of interest during the 15 minute period. The NYSE and Amex rules, by contrast, require specialists to delay trading a full 15 minutes after indications are given in connection with a halt or delayed opening on a stock even where the indication was made several minutes after T time. In addition, under the prior NYSE Rule and the current Amex rule, where more than one indication is given on a stock, specialists are required to delay trading for 15 minutes following the last indication. Finally, as noted in the Amex filing, its rules can delay trading of a stock on which an indication has been issued for as long as 30 minutes after the last indication.[4]

Both the previously approved NYSE rule and the proposed Amex rule change retain the requirement that specialists wait a minium of 15 minutes from the time of the issuance of an initial indication of interest before resuming trading in the particular stock. Where more than one indication of interest has been issued on a stock, both the Amex and the NYSE rules would require a ten minute delay following the issuance of the last indication of interest where the price range for the particular stock given in the last indication and the immediately proceeding indication do not overlap. A five minute delay would be imposed after the last indication where the price in the last indication and the immediately proceeding indication overlap. In addition, both the NYSE and the Amex rules permit a specialist to give pre-opening indications where the specialist obtains the approval of the specified exchange or floor official.

The principal difference between the NYSE rule and the proposed Amex rule are the categories of trading halts set out under the rule.[5] The NYSE and Amex rules, however, encompass the same types of trading halts (inter-day, intra-day, regulatory, and non-regulatory halts) and have essentially the same requirements regarding when floor official approval is necessary for such a halt.

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[1] Section 5 was recodified as Section 10706.

[1] *See* File No. SR-NYSE–87–14, noticed in Securities Exchange Act Release No. 24510, May 26, 1987, 52 FR 20657

[2] Securities Exchange Act Release No. 24880, September 4, 1987, 52 FR 35020.

[3] *See* Securities Exchange Act Release No. 22981, March 13, 1986, 51 FR 8731.

[4] *See* discussion in Section II, *supra*.

[5] The NYSE has five trading halt categories: Intra-Day Regulatory Halts; Other Intra-Day Halts; Inter-Day Regulatory Halts; Other Inter-Day Halts; Delayed Openings. Amex has three trading halt categories: Regulatory Halts; Non-Regulatory Halts; Delayed Opening.

The Proposed Amex rule change also would add Commentary .02 to Amex Rule 22. This Commentary provides that in the case of a non-regulatory halt or a reopening following a non-regulatory halt, the authorizing floor official shall receive the concurrence of a floor governor or Exchange official prior to taking such action. Under the proposed Amex rule, Exchange officials and floor governors may dispense with reopening waiting periods for inter-day non-regulatory halts if no usual situation exists prior to opening the affected stock.

The Commission has carefully reviewed the proposed Amex rule change and compared it to the previously approved NYSE rule change. The Commission believes that the proposed rule adequately balances the need to provide the public sufficient time to react to indications of interest with the Exchange's need to remain competitive with other market places. Neither the Amex proposal nor the previously approved NYSE rule reduces the waiting period for reopening a stock where only a single indication of interest has been provided by the specialist. A minimum 15 minute waiting period would still be required from the initial indication of interest. The Amex proposal does, however, reduce the overall time for reopening trading where successive indications of interest have been given. The Amex will monitor the implementation of these procedures and report its findings to the Commission at the conclusion of the first year of the policy's operation.

The Commission also believes that granting Exchange officials, floor governors, and floor officials the authority to approve the issuance of pre-opening indications of interest for spin-offs, initial public offerings, and other circumstances is appropriate. As noted previously, this provision is essentially the same as a provision in the previously approved NYSE rule. As we stated in our order approving the proposed NYSE rule, "[t]these officials are trained to make appropriate decisions concerning procedures on the floor and should be very familiar with floor operations and trading situations." On this basis, the Amex should be able to rely on the expertise of these officials in authorizing pre-opening indications.

Similarly, the Commission believes that the proposed Commentary to Amex Rule 22 that would require a floor official to obtain the prior concurrence of a floor governor or Exchange official for a non-regulatory trading halt or for a reopening following a non-regulatory trading halt is appropriate. We note that in reviewing specialist performance during the October market break, the Commission staff requested that the Amex examine stocks where trading halts occurred for extended periods of time.[6] We believe that the higher level of review for trading halts being proposed by Amex should help to improve the Amex's current system for determining when the commencement of, or reopening following, a non-regulatory trading halt is appropriate.

Based on the above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof so that the Amex can institute procedures to expedite the reopening of previously halted securities similar to those previously approved for the NYSE. We note that the NYSE proposal was noticed and that no comments were received. Further, the Amex proposal, like the NYSE, is consistent with current amendments to the CTA plan and will decrease the discrepancies that currently exist between other markets and Amex in reopening a stock after a halt and indications have been issued.[7]

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 9, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-13607 Filed 6-15-88; 8:45 am]

BILLING CODE 8010-01-M

[6] *See* "The October 1987 Market Break," Report by the Division of Market Regulation, U.S. Securities and Exchange Commission, February 1988, at 4-41.

[7] The Commission recently participated in the President's Working Group on Financial Markets. The Interim Report (May 1988) of that group recommended coordinated trading halts and reopenings during specified large, rapid market declines. The Commission's approval of Amex's proposed rule change is not intended to address the Working Group's recommendations. The Amex, in the future, may have to amend its trading halts policy further to implement the Working Group's recommendation.

Release No. 34-25791; File No. SR-NASD-88-1]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Accelerated Approval to Proposed Rule Change, as Amended

The National Association of Securities Dealers, Inc. ("NASD") submitted on February 2, 1988, copies of a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend: (1) The Rules of Practice and Procedures governing the operation of the NASD's system for the automatic execution of small orders on an agency basis ("SOES"); and (2) Part VI of Schedule D to the NASD By-Laws, which sets forth requirements applicable to NASDAQ market makers. The proposal—a response to the issues raised by the market break of October 1987—is designed to improve the accuracy of quotations displayed through the NASDAQ system, and to enhance the liquidity of the over-the-counter ("OTC") market by increasing the level of participation of NASDAQ market makers in SOES.

The proposal changes the scope and operation of SOES.[1] Currently, market makers willing to have orders executed against them in SOES ("SOES market makers") participate in the system on a voluntary basis; under the proposal, participation as a SOES market maker will be mandatory for all market makers in NASDAQ/NMS securities.[2] Further, whereas SOES market makers may now withdraw from the system without penalty, the proposal will impose SOES market makers in NASDAQ/NMS securities a penalty of 20 business days for unexcused withdrawal from SOES participation.[3]

[1] SOES was established to permit small orders in NASDAQ securities to be automatically executed at the best bid or ask price (the so-called "inside" market), depending on whether the order is to buy or sell. Accordingly, orders entered into SOES are automatically routed to the SOES market maker displaying the best bid or ask price, to be executed by that market maker. SOES handles only orders entered on behalf of customers ("agency orders"), except in the narrow circumstance in which a firm that is *not* a SOES market maker enters an order on a riskless principal basis. *See* Rules of Practice and Procedures for SOES, section a(8), *NASD Manual*, paragraph 2451, at 2303.

[2] SR-NASD-88-1, at 10-11.

[3] *Id.* The same penalty also will apply to NASDAQ market makers who withdraw their quotations from the NASDAQ system without an acceptable excuse. Currently, unexcused withdrawal of quotations from NASDAQ triggers a penalty of only two days (Schedule D to the NASD By-Laws, Part VI, Section 8, *NASD Manual*, paragraph 1825, at 1584.) The Commission

Continued

The maximum size of orders in NASDAQ/NMS securities eligible to be traded through SOES is currently 1,000 shares. Under the proposal, NASDAQ/NMS securities will be assigned "tiered" maximum order sizes of 200, 500, or 1,000 shares; eligibility for a particular tier will depend upon the trading characteristics of the security.[4] The NASD has set forth guidelines to determine the eligibility of NASDAQ/NMS securities for inclusion in a particular tier.[5] These guidelines are: (1) Average daily non-block trading volume; (2) the bid price of the security; and (3) the number of market makers in the security.[6]

SOES, as amended, has been modified to execute orders continuously in a particular security even when quotations in that security are locked or crossed,[7] remedying the inability of the current system to execute orders in securities whose quotations are locked or crossed.[8] SOES market makers will continue, as they currently do, to set their own "exposure limits," limiting the number of shares of a particular security that may be executed against them in SOES. Under the proposal, however, each NASDAQ/NMS security will be assigned a "minimum exposure limit" equal to five times the maximum order size for SOES execution in that security. Irrespective of whether or not quotations in a NASDAQ/NMS security are locked or crossed, the NMS market makers whose price is the best for the customer will be responsible to execute transactions in an amount equal to either their exposure limit or the minimum exposure limit, whichever is greater, before being given an opportunity to update their quotations.[9] "Preferencing" [10] of SOES orders in NASDAQ/NMS securities to a particular market maker will be eliminated when quotations in those securities are locked or crossed.[11]

Under the proposal, NASDAQ market makers will continue to be permitted to withdraw their quotations from the NASDAQ system; however, the proposal limits the reasons for which withdrawal of quotations is permitted, to:[12] (1) Physical circumstances beyond the control of the market makers; (2) demonstrated legal or regulatory requirements; and (3) religious holidays (with five business days advance notice).[13] Withdrawal because of pending market news, a sudden influx of orders or price changes, or to effect transactions with competitors, will not be permitted. Illness and vacation have been deleted from the list of reasons for which an excused withdrawal will be given.[13]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 25465, March 15, 1988), and by publication in the **Federal Register** (53 FR 9391, March 22, 1988). Four comment letters were received with respect to the proposed rule change.[14]

I. Consistency of the Proposal With the Act and Rules and Regulations Thereunder

The Commission has determined to approve the amended proposal pursuant to section 19(b)(2) of the Act, as being consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of sections 15A and 11A, and the rules and regulations thereunder. Section 15A(b)(6) of the Act requires that the rules of the NASD be designed to * * * "remove impediments to and perfect the mechanism of a free and open market and a national market system, and * * * to protect investors and the public interest." Section 11A(a)(1)(C) provides that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure: "(i) Economically efficient execution of securities transactions * * *; and (ii) the availability to brokers, dealers, and

understands that the NASD expects to enhance the NASDAQ system to allow withdrawn market makers to reregister automatically as NASDAQ market makers at the expiration of the penalty period. Such a modification will require the NASD to file a proposed rules change with the Commission pursuant to section 19(b) of the Act.

[4] *Id.* at 11.

[5] These criteria were filed by the NASD as an amendment to its proposal on May 4, 1988. The amendment provides guidelines for establishing maximum order size levels in SOES, and provides authority to alter those guidelines as market conditions dictate. The amendment was noticed in Securities Exchange Act Release No. 25704 (May 17, 1988), 53 FR 18643 (May 24, 1988). Comments submitted to the NASD expressed support for the concept of tiered maximum order sizes for NASDAQ/NMS securities. *See* letters from: (1) Peter J. DaPuzzo, Senior Executive Vice President, Shearson Lehman Brothers, to Lynn Nellius, Secretary, NASD, December 23, 1987, at 1–2; and (2) John B. Manning, Jr., Vice President and Assistant General Counsel, Merrill Lynch, to Nellius, December 31, 1987, at 2. Further, the National Security Traders Association ("NSTA") urged the NASD to retain the flexibility to change the maximum order size criteria, on the ground that "only experience will develop a basis for accurate establishment of tier divisions." Letter from Gary D. Fender, Chairman of the Board, and John L. Watson III, President, NSTA, to Nellius, December 18, 1987, at 3. That suggestion was ultimately adopted by the NASD in its May 4 amendment.

[6] At the end of each three-month trading period, the NASD will review which securities should be included within each category, and will reclassify any security whose trading patterns are characteristic of a category other than the one in which the security has been placed. Such changes to the classification of a security will be filed quarterly with the Commission as an interpretation of an existing rule under section 19(b)(3)(A). Changes in the designation categories or the terms of designation must be filed for full notice and comment pursuant to section 19(b)(2), unless those changes are made pursuant to the NASD's pending rule proposal (SR–NASD–88–17) that, if approved, will provide the Association's senior officials with certain emergency authority.

[7] Quotations for a security are "locked" when the bid price quoted by one market maker in a security equals the ask price quoted by another market maker in the same security. Quotations are "crossed" when the bid price quoted by one market maker in a security is greater than the ask price quoted by another market maker in the same security. In normal market conditions, locked and crossed markets occur only for short periods of time because both the buying market maker and the selling market maker benefit from making the trade. Because locked and crossed markets should be eliminated immediately, their continued existence indicates that the quotations for a security are suspect and may not provide an accurate reflection of the market for a security.

[8] SR–NASD–88–1 (Amendment No. 1), at 11–13.

[9] *Id.* at 13. Once the appropriate limit has been reached, a SOES market maker will be given a "grace period," set initially at five minutes, within which to either: (1) renew its exposure limit, or (2) update its quotations (in which case the minimum exposure limit automatically becomes applicable to the security). A market maker that reaches its exposure limit and does not renew it, or update its quotations will have its quotations removed from NASDAQ and be subject to the 20 day penalty. The NASD may change the duration of the grace period by filing with the Commission a proposed rule change pursuant to section 19(b)(3)(A) of the Act. (The only means by which SOES market makers who display the inside price may update their quotations prior to exhausting their exposure limit is to update those quotations between executions.)

[10] While SOES orders are generally routed on a rotating basis to market makers displaying the inside quotation, "preferencing" occurs when an order is specifically designated for routing to a particular market maker. If this is done, the order is executed at the best price for that market maker's account even if its quote is not the best. Approximately 40% of the orders executed through SOES are preferenced orders.

[11] *Id.* at 12.

[12] *Id.* at 10.

[13] The proposal stipulates that NASDAQ market makers who have been denied excused withdrawal of quotations, and SOES market markers that have been removed from SOES and are subject to a penalty or to particular conditions that must be met before re-entry into SOES is permitted, have recourse to a hearing, pursuant to Article IX of the NASD Code of Procedure, on the appropriateness of the denial or penalty.

[14] The comment letters are as follows: (1) Letter from Walter Carucci, Vice President, Carr Securities Corp. to David Ruder, Chairman, Securities and Exchange Commission (January 26, 1988); (2) letter from Carucci to Lynn Nellius, Secretary, NASD (December 14, 1987); (3) letter from John D. Browning, Trading Desk Manager, Carr Securities Corp., to Nellius (December 15, 1987); and (4) letter from Basil G. Witt, Vice President, Pacific Brokerage Services, to Richard G. Ketchum, Director, Division of Market Regulation, SEC (March 1, 1988).

investors of information with respect to quotations for and transactions in securities."

As more fully explained *infra*, the amended proposal is designed to further the purposes of these sections. It is crafted to: (1) Enhance the efficient execution of securities transactions by providing for increased participation by NASDAQ market makers in SOES; and (2) increase the accuracy of displayed quotations in NASDAQ by reducing the frequency and duration of locked and crossed markets. Further, the Commission finds good cause for approving the amended proposal prior to the thirtieth day after the date of publication of notice of the filing thereof in order to provide to public investors, at the earliest possible time, the benefits of more efficient execution of transactions and increased accuracy of displayed quotations.

II. The October 1987 Market Break and the NASD's Response Thereto

A. The Performance of the OTC Market During the Market Break

During the market break of October 1987, the OTC market experienced the same trends of sharp downward volatility and high volume that characterized both the New York Stock Exchange ("NYSE") and the American Stock Exchange ("Amex").[15] The composite index representing the NASDAQ market ("the NASDAQ Composite") declined 27.2% during the month of October, while volume reached the unprecedented level of 288 million shares on Wednesday, October 21.[16] During the market break, three problems combined to prevent the efficient execution of transactions through the NASDAQ system and thus frustrate the purposes of sections 11A and 15A of the Act. First, the integrity of the market's mechanisms for accurately pricing NASDAQ securities was degraded, so that displayed quotations did not always reflect the prevailing market. Second, the liquidity of the market was dramatically reduced, as SOES market makers withdrew from SOES in large numbers, and the SOES system became disabled by locked and crossed markets, forcing orders to be negotiated by telephone and handled manually.[17] Finally, there was an unusually high percentage of trades in NASDAQ/NMS stocks reported "out-of-sequence," that is, later than 90 seconds after execution.[18]

B. The Establishment of the Order Confirmation Transaction Service

On December 31, 1987, in response to the market break, the NASD filed a proposed rule change establishing the Order Confirmation Transaction service ("OCT"),[19] that will permit NASD members to communicate, negotiate, and confirm the terms of transactions not eligible for execution through SOES, through the NASDAQ system. OCT provides a medium through which retail firms may contact market makers, and market makers may contact one another, to negotiate trades and confirm executions in orders not entered through SOES, when market conditions impede performance of those functions by telephone.[19] OCT is available on a voluntary basis to NASD member firms that have access to NASDAQ Level 2/3 Terminals or Workstation units and that clear transactions through a registered clearing agency. It enables a broker-dealer to transmit an order through its NASDAQ terminal to a specific market maker; that market maker, in turn, has two minutes to respond to the order by either accepting the order, rejecting the order, or making a counter-proposal. Further, OCT as amended[20] permits a market maker to accept only part of an order communicated to it through OCT. For example, if the initiating firm offers to purchase 5,000 shares of *ABC* security at 10½, the designated market maker receiving the offer may communicate a counter-proposal to sell only 2,000 shares of *ABC*. The initiating firm may then communicate its decision to accept or reject the 2,000 share counter-proposal. If the counter-proposal is accepted, OCT automatically will generate transaction reports for NASDAQ/NMS securities and locked-in trades for both NASDAQ and NASDAQ/NMS securities for clearance purposes.[21]

III. The Anticipated Effects of OCT and the SOES Revisions

A. Effects on Liquidity, Accuracy of Pricing Systems and Trade Reporting

The Commission believes that SOES, as revised by the current proposal, will work in tandem with OCT to further the purposes of sections 15A and 11A of the Act, by enhancing the liquidity of the OTC market, improving the accuracy of its pricing systems, and promoting the timeliness of trade reporting.

The liquidity of the market will be enhanced in two ways: (1) By the capacity to negotiate and execute by computer, orders that otherwise would have to be negotiated by telephone; and (2) by the increased level of participation of NASDAQ market makers in SOES. First, because orders that are not eligible for execution through SOES now may be finalized through OCT, the unwillingness or inability of market makers to answer their telephones will no longer be an insurmountable barrier to the execution of orders as it was during the market break.[22] Second, market maker participation in SOES will be enhanced, even in conditions of downward volatility: not only will participation as SOES market makers be mandatory for all market makers in NASDAQ/NMS stocks, but unexcused withdrawal from participation as a SOES market maker will trigger a 20-business day penalty. Moreover, executions in SOES will be made against the market maker with the best price, even in securities in which markets are locked or crossed. By virtue of this automatic execution during periods of locked or crossed markets, market makers whose quotations lock or cross those of another market maker will have an increased incentive to adjust their quotations more accurately to reflect the prevailing market. Accordingly, displayed quotations will more closely represent the true market, as the incidence and duration of locked and crossed markets decrease. Finally, the percentage of trades reported out of sequence will likely decrease because both OCT and SOES provide for the automatic reporting of trade data to the clearing corporations within 90 seconds.

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[15] *See The October 1987 Market Break, A Report by the Division of Market Regulation, U.S. Securities and Exchange Commission ("Market Study")*, at xi.

[16] *Market Study*, at xi, 9–4.

[17] *See Market Study*, at 9–20—9–22.

[18] *Id.* at 9–2.

[19] The Commission approved OCT on May 11, 1988 (*see* Securities Exchange Act Release No. 25690 (May 11, 1988), 53 FR 17523 (May 17, 1988). Initially, the Commission had provisionally approved OCT for three months (*see* Securities Exchange Act Release No. 25263 (January 11, 1988), 53 FR 1430 (January 19, 1988). On March 28, 1988, the Commission extended that temporary approval for one month (*see* Securities Exchange Act Release No. 25523 (March 28, 1988), 53 FR 10965 (April 4, 1988).

[20] *See* Securities Exchange Act Release No. 25690 (May 11, 1988).

[21] In addition to proposing OCT, the NASD expanded the hours of operation of its Trade Acceptance and Reconciliation Service ("TARS"), which allows firms quickly to reduce the number of uncompared transactions. Further, the NASD plans to initiate an Automatic Confirmation Transaction System ("ACTS") that, together with SOES, OCT, and TARS, would provide an almost total same-day comparison capability for the OTC market.

[22] *See Market Study*, at 9–1.

B. Response to Concerns Raised by the Comment Letters

1. The Effect of Mandating an Increased Level of Participation by NASDAQ Market Makers in SOES

Comments addressed both to the Commission and the NASD express the concern that less highly capitalized market makers, unwilling to risk the heightened exposure to loss that participation in SOES could entail, will cease to make markets in NASDAQ/NMS securities altogether, limiting themselves to non-SOES trading in the more thinly traded non-NMS securities.[23] Thus the proposal will, in the commentators' view, produce the opposite result from that intended: It will decrease, rather than increase, the liquidity of the market by reducing the number of SOES market makers for each NASDAQ/NMS security. Further, the commentators argued that it will place undue strain on the capital of those market makers that remain participants in the system.[24]

The Commission shares the commentators' concern to prevent the withdrawal of less highly capitalized market makers from participation as SOES market makers in NASDAQ/NMS securities. The Commission believes, however, that ensuring market maker participation in volatile markets is an important regulatory goal. Accordingly, the Commission believes that it is entirely consistent with the Act for the NASD to insist that smaller firms who wish to participate as NASDAQ market makers take any steps necessary to meet the NASD's commitment requirements. Moreover, the Commission believes that the NASD has properly addressed this concern by incorporating into its proposal three measures designed to attract and retain the participation, in SOES, of NASDAQ market makers: (1) Tiered maximum order sizes for NASDAQ/NMS securities; (2) the "grace period" within which SOES market makers may renew their quotations after reaching their exposure limit; and (3) the flexibility to change the criteria that determine the levels at which maximum order sizes will be set.

The purpose of establishing tiered maximum order sizes is to create a category of NASDAQ/NMS securities which, by virtue of their relatively low maximum order sizes (200 or 500 shares), pose to SOES market makers a reduced risk of exposure in the event of a falling market, both because of the smaller size of each individual execution and the smaller minimum exposure limit imposed on the market maker for that stock.[25] The provision of the grace period also permits a SOES market maker to avoid further executions in those securities if he is concerned that his risk of exposure to loss is becoming too great.

If larger numbers of SOES market makers choose, despite these protections, to withdraw from participation as SOES market makers,[26] the NASD may adjust the criteria, pursuant to subsequent proposed rule changes under section 19(b) of the Act, that determine maximum order size, to ensure that substantially larger numbers of securities are eligible for inclusion in the 200-share and 500-share categories. This adjustment will have the effect of lessening the risks associated with trading in the reclassified securities; consequently, withdrawn SOES market makers will likely be induced to return to the system.[27]

The Commission is satisfied that these safeguards, incorporated into the proposal to protect less highly capitalized market makers, will encourage the participation of both large and small NASDAQ market makers in the SOES system. Accordingly, the Commission believes that the improvement in the quality of quotation information, and the increased assurance that market makers will continue to provide liquidity both in SOES and generally during periods of market volatility far outweigh any speculative concerns over loss of liquidity as a result of a reduction in market participation.

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[23] *See* letters from: (1) Walter Carucci, Vice President, Carr Securities Corp., to David Ruder, Chairman, Securities and Exchange Commission, January 26, 1988, at 1; (2) Mitchell C. Thomas (OTC Trader) and Sam DiPasquale (Treasurer), Sage Rutty & Co., Inc. to Lynn Nellius, Secretary, NASD, December 2, 1987, at 1; and (3) Pete Miller, Executive Vice President, First National Bancorp, to Nellius, November 23, 1987 at 1.

[24] *Id.*

[25] On the other hand, the Commission recognizes a danger inherent in assigning relative low maximum order sizes to NASDAQ/NMS securities: Orders of medium-to-large size (over 500 shares) will not be eligible for execution through SOES. Outside of SOES, unless a NASDAQ market maker is quoting size, it is only required to execute a transaction for a "normal unit" of trading (100 shares) at its displayed quotations, in response to a bid or offer from another NASDAQ market maker. Schedule to the NASD By-Laws, Part VI, section 2(b), *NASD Manual*, paragraph 1819, at 1580. Accordingly, orders not eligible for execution through SOES may be required to be "shopped" by the market maker in order to be executed in full, thus slowing execution time and impairing the liquidity of the market.

This concern raises the more general concern regarding the size of displayed quotations in NASDAQ. As the Division of Market Regulation noted in its *Market Study* (at 9–27), the uniform practice among NASDAQ market makers is not to disseminate publicly quotations or more than 100 shares. This ongoing refusal by NASDAQ firms to provide firm quotations with size is in market contrast to the willingness of many of those same firms to provide substantial sized quotations in London. The rules of the International Stock Exchange of the United Kingdom and the Republic of Ireland, Limited ("ISE") in London, however, specify that the minimum order size market makers may post is 1,000 shares. Accordingly, the Division's *Market Study* recommended (at 9–27) that the Commission and the NASD review whether OTC market makers should be required to provide U.S. investors with quotations that are at least comparable in size to those that they disseminate abroad. In light of this, the Division of Market Regulation has urged the NASD to adopt a requirement that NASDAQ market makers display realistic sizes with their quotations. *See* letter from Richard G. Ketchum, Director, Division of Market Regulation, S.E.C. to Joseph R. Hardiman, President, NASD (February 12, 1988). The Division also has urged the NASD to further modify OCT so that failure to respond to a message from another maket maker within a set time period would result in an automatic execution against the non-responding market maker. *Id.* The NASD has advised the Division that it does not currently favor either step. *See* letter from Hardiman to Ketchum (February 29, 1988). The Division intends to continue urging the NASD to adopt these changes as part of its overall strategy to improve the liquidity of the OTC market.

[26] The NASD has advised the Division of Market Regulation that it recently has taken a poll of all SOES market makers in NASDAQ/NMS securities, in which it queried those market makers as to whether they would be willing to continue making markets in SOES given the contemplated requirement that all market makers in NASDAQ/NMS securities also be SOES market makers. The results of the poll indicate that very few SOES market making positions would be lost as a result of the change in SOES.

[27] Based on the criteria as initially established, and taking into account trading activity for the first quarter of 1988, 33% of the 2,939 NASDAQ/NMS securities (971 securities) will be classified within either the 500- or 200-share limit; the remaining 67% (1,968 securities) will be classified within the 1,000-share limit. Securities classified in the 500-share limit. Securities classified in the 500-share and 200-share categories account for only 2% of the total volume of shares traded during the first quarter of 1988 (129 million shares out of 5,646 million total shares traded); securities classified in the 1,000-share category represent the remaining 98% of total trading volume in shares (5,517 million shares out of 5,646 million total shares traded). Securities classed in the 500-share and 200-share categories represent only 1.5% of the total dollar volume traded during the first quarter ($1,355 million out of $87,790 million total dollar volume); securities classed in the 1,000-share category account for the remaining 98.5% of the total dollar volume for the quarter ($86,435 million out of $87,790 million total dollar volume).

After the proposal is approved, the NASDAQ system will begin to display, for each NASDAQ/NMS security, the maximum order size assigned to that security. Further, the NASD will publish, in a Notice to Members, a list of all NASDAQ/NMS securities, grouped according to the tiers to which they belong. At the conclusion of the NASD's quarterly review of the classification of NASDAQ/NMS securities (*See infra* n.6) the NASD will disseminate an updated Notice to Members setting forth any changes to the classification of those securities.

2. The Removal of the Category "Illness" as an Acceptable Reason for Excused Withdrawal of Quotations From the NASDAQ System

Part VI, section 7(b) of Schedule D to the NASD By-Laws currently provides that NASDAQ market makers may withdraw their quotations from the NASDAQ system for up to five days, without penalty, for (*inter alia*): (1) Illness, (2) vaccation, or (3) "physical circumstances beyond a market maker's control." The proposal deletes "illness" and "vacation" from this list of reasons. Comments addressed both to the NASD and the Commission express the concern that the deletion of illness as an enumerated excuse discriminates against small broker-dealers that may lack the personnel necessary to cover for traders who suddenly become ill.[28]

While the category "illness" has been deleted from the list of enumerated excuses, the category "physical circumstances beyond a market maker's control" remains. This latter category may encompass instances in which market makers are prevented from doing business by the absence, due to illness, of key personnel. Accordingly, a market maker that withdraws its quotations from NASDAQ because of a trader's absence due to illness, will be able to argue under revised Schedule D that the absence of the trader justifies the excused withdrawal of quotations because the trader's illness was a "physical circumstance beyond the market maker's control." For this reason, the Commission is satisfied that the revision to Schedule D will neither discriminate against small broker-dealers nor pose an undue hardship to larger broker-dealers whose operations are incapacitated because of the illness of key personnel.

IV Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of sections 15A and 11A, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change, as amended, be, the hereby is, approved on an accelerated basis.[29]

[28] *See* letter from Donn R. Dresselhuys, President, Autotrol Corporation, to Lynn Nellius, Secretary, NASD, December 8, 1987, at 1; *see also*, Pacific Brokerage Services letter, at 1.

[29] Concurrently with its approval of this proposal, the Commission is approving, on an accelerated basis, a proposed rule change filed by the NASD that amends Schedule D to require issuers to provide notice to the NASD of any disclosure by the issuers to the public of news that may affect the value of the issuers' securities or influence the decisions of investors; this notification must be given no later than simultaneously with the release of that information to the public (SR–NASD–88–16; *see* Securities Exchange Act Release No. 25792, June 9, 1988).

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: June 9, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–13608 Filed 6–15–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–25792; File No. SR–NASD–88–16]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating To Requirement That NASDAQ Companies Notify the NASD of Material News Releases

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") on May 9, 1988, and amended on June 2, 1988, the proposed rule change described in Items I, II and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement Of the Terms Of Substance Of the Proposed Rule Change

The proposed amendments to Part II of Schedule D to the NASD By-Laws would require NASDAQ issuers to provide notice to the NASD of material news releases no later than simultaneously with the release of such information to the press. Issuers would also be required to respond to information requests by the NASD. The proposed amendment to the "Notification to NASD of News Releases," also contained in Part II of Schedule D, would recommend that issuers notify the NASD of such material information at least ten minutes prior to its release to the press.

II. Self-Regulatory Organization's Statement Of the Purpose Of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change would require that NASDAQ companies provide notice of material information that may affect the value of their securities or influence investors' decisions to the NASD Market Surveillance Department, at least simultaneously with the release of such information to the news media. The current provisions of Part II of Schedule D require the public disclosure of material information but only recommend that notification to the NASD take place simultaneously. The NASD Board of Governors believes that in view of recent market events and of a proposal by the NASD to mandate the use of its Small Order Execution System ("SOES") for transactions in NASDAQ National Market System securities (proposed rule change SR–NASD–88–1, which is being approved concurrently with this filing), it will be of critical importance for the NASD to be notified in a timely fashion of material news. This will be necessary in order to make appropriate determinations with respect to trading halts.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(11) of the Act, which mandates that the rules of the NASD include provisions governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange, and that such rules shall be designed to produce fair and informative quotations, to prevent fictitious and misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations. The NASD believes that requiring issuers to provide it with material information will substantially assist the NASD in

carrying out its obligations under this provision of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed amendments impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests the Commission to find good cause for approving the proposed rule change, for a period of 60 days, prior to the 30th day after its publication in the **Federal Register.** The NASD believes that there is good cause to approve the proposed rule change on an accelerated basis for the following reasons. Pursuant to the proposed rule change in SR–NASD–88–1, market makers in NASDAQ National Market System securities will be required, *inter alia,* to participate is SOES. In light of the significantly increased exposure of such market makers caused by mandatory SOES participation, SOES market makers are concerned that their quotations in the NASDAQ System accurately reflect all the information available in the market. The proposed rule change requires that issuers inform the NASD of the release of material news no later than simultaneously with the release of the information to the public through the press. Accelerated approval will ensure that certain market makers are not trading based on news that has not, as yet, been disseminated to the marketplace.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof. By requiring issuers to notify the NASD of material news no later than simultaneously with notification to the press, the NASD will be able to communicate the news to market makers immediately. Furthermore, accelerated approval for a period of 60 days will address the NASD's concerns about market makers' increased exposure under mandatory SOES.[1] During the temporary approval period, the Commission will seek public comment on a subsequent filing by the NASD seeking permanent approval of the amendments now being approved on a temporary basis.

IV Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should files six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–88–16 and should be submitted by July 7, 1988.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved for a period of 60 days from the date of this order.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: June 9, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–13609 Filed 6–15–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 25795; File No. 0–7016; Administrative Proceeding File No. 3–7019]

Bacardi Corp.; Order for Hearing Pursuant to Section 12(g)(4) of the Securities Exchange Act of 1934

June 9, 1988.

On May 14, 1987, Bacardi Corporation ("Applicant") filed a certification on Form 15 ("Certification") for the termination of the company's registration under section 12(g) of the Securities Exchange Act of 1934 (the "Exchange Act") and the suspension of the duty to file reports under sections 13(a) and 15(d) of the Exchange Act. On June 8, 1987, counsel for Daniel F. Bacardi, a shareholder of Applicant, requested that the Commission notice a hearing to determine whether the Certification was unture. The Commission on August 4, 1987, issued a notice and Opportunity for Hearing on Applicant's Certification. Timely responses were received from counsel for the Applicant and counsel for Daniel F. Bacardi.

In summary, Daniel F. Bacardi contends that Applicant's Certification that it had less than 300 shareholders of record was untrue, since it failed to include as shareholders 238 trusts (the "Trusts") established by Daniel F. Bacardi and others prior to the filing of the Certification. Applicant argues that the Certification was accurate when filed.

Under Exchange Act Rule 12g 5–1(a), the "records of security holders maintained by or on behalf of the issuer" determine who is to be counted as an owner in determining whether an issuer is subject to the provisions of section 12(g) and 15(d) of the Exchange Act. The Commission believes that any documentation identifying security holders that is maintained by or for the issuer would constitute such records. The Division of Corporation Finance of the Commission has advised the Commission that it has made a preliminary examination of the Certification and responses to the Notice and Opportunity for Hearing and that, upon the basis thereof, the following matter is presented for consideration:

Whether the Trusts in question were identified as holders on Records of security holders maintained by or for the Applicant on May 14, 1987 and, if the holdings of the Trusts were so identified, whether the total number of holders of record identified on the records maintained by or on behalf of the Applicant on May 14, 1987, was 300 or more.

It appears to the Commission that it is appropriate in the public interest and in the interest of investors that a hearing be held with respect to said Certification to determine the matter presented above.

It is ordered, pursuant to section 12(g)(4) of the Exchange Act, that a hearing on said Certification be held as provided by Rule 6 of the Commission's Rules of Practice. Any person desiring to be heard or otherwise wishing to participate in the proceedings is directed to file with the Secretary of the Commission his application, as provided by Rule 9(c) of the Commission's Rules

[1] *See* Securities Exchange Act Release No. 25791, June 9, 1988.

of Practice, setting forth any issues of law or fact which he desires to controvert, or any additional issues which he deems raised by this Notice and order or by said application. Persons filing an application to participate or to be heard will receive notice of the date of the hearing, and any adjournments thereof, as well as other actions of the Commission involving the subject matter of these proceedings.

It is further ordered that an Administrative Law Judge, hereafter to be designated, shall preside at said hearing. The Administrative Law Judge so designated is hereby authorized to exercise all powers granted to the Commission under section 22 of the Exchange Act and to a hearing officer under the Commission's Rules of Practice.

It is further ordered that at the aforesaid hearing attention should be given to the matter identified by the Division of Corporation Finance.

It is further ordered that the Division of Corporation Finance shall be party to the proceeding.

It is further ordered that the Secretary of the Commission shall give notice of the aforesaid hearing by mailing a copy of this Notice and Order by certified mail to the Applicant and Daniel F. Bacardi; that notice to all other persons be given by publication of this Notice and Order in the Federal Register; that a copy of this Notice and Order shall be published in the "SEC Docket"; and that an announcement of the aforesaid hearing shall be included in the "SEC News Digest."

By the Commission.

Jonathan G. Katz,

Secretary.

Service List

Alfred P. O'Hara, Chairman, Bacardi Corporation, G.P.O Box 3549, San Jan, Puerto Rico 00936

Roberta S. Karmel, Esquire, Kelley, Drye & Warren, 101 Park Avenue, New York, New York 10178

Samuel C. Butler, Esquire, Cravath, Swaine & Moore, One Chase Manhattan Plaza, New York, New York 10005

William E. Morley, Esquire, Associate Director-Chief Counsel, Division of Corporation Fianance, Securities and Exchange Commission, 450 Fifth Street, NW.—Stop 3–3, Washington DC. 20549

John S. Bernas, Esquire, Special Counsel, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW.—Stop 7–2, Washington, DC 20549

John L. Krug, Esquire, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW.— 7–2, Washington, DC. 20549

Michael Hyatte, Esquire, Special Counsel, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW.—Stop 3–3, Washington, DC. 20549

Beverly Milgram Flowers, Esquire, Attorney at Law, 194 Irving Place, Rutherford, New Jersey 07070

[FR Doc. 88–13603 Filed 6–15–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–16428; File No. 812–7044]

Keystone Provident Life Insurance Co.

June 8, 1988.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Keystone Provident Life Insurance Company ("Keystone"), Keystone Provident Variable Account I ("Variable Account I") Keystone Provident Variable Account II ("Variable Account II") (collectively referred to as "Existing Variable Accounts"), Keystone Provident Financial Services Corp., Cash Income Trust, Government Guaranteed Securities Trust, Government Securities Zero Coupon Trust, Mortgage Securities Income Trust, Investment Grade Bond Trust, High Yield Bond Trust, Managed Assets Trust, Aggressive Stock Trust, Managed Growth Stock Trust ("Existing Eligible Mutual Funds") and one or more other eligible mutual funds (collectively referred to as "Eligible Mutual Funds"), and certain affiliated and unaffiliated life insurance companies and their separate accounts that may invest in the Eligible Mutual Funds (collectively the "Applicants").

Relevant 1940 Act Sections and Rules: Exemption requested under section 6(c) from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

Summary of Application: Applicants seek an order to permit shares of the Eligible Mutual Funds to be sold to the Existing Variable Accounts, to other separate accounts of Keystone and to separate accounts of life insurance companies that are affiliated or unaffiliated with Keystone, issuing variable annuity contracts or variable life insurance policies, including single premium, scheduled premium or flexible premium policies.

Filing Date: The application was filed on June 2, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on June 28, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, Washington, DC 20549. Applicants, c/o Robert R. Baird, Esq., Keystone Provident Life Insurance Company, 99 High Street, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Ulness, Attorney at (202) 272–2026 or David S. Goldstein, Special Counsel at (202) 272–3012 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application the complete application is available for a fee from either the Public Reference Branch in person or the SEC's commercial copier which may be contacted at (800) 231–3282 (in Maryland (301) 738–1400).

Applicant's Representations

1. The Existing Eligible Mutual Funds are open-end, diversified, management investment companies organized as Massachusetts business trusts. The Existing Eligible Mutual Funds are currently being offered to the Existing Variable Accounts, which were established to fund scheduled and flexible individual single premium variable life insurance policies and individual variable annuity contracts.

2. The use of a common management investment company as the investment medium of both variable annuities and variable life insurance is referred to herein as "mixed funding." The use of a common management investment company as the investment medium for separate accounts of unaffiliated insurance companies is referred to herein as "shared funding."

3. Rules 6e–2 and 63–3(T) under the 1940 Act provide certain exemptions from the 1940 Act in order to permit insurance company separate accounts to

issue variable life insurance. However, Rule 6e–2(b)(15) precludes mixed and shared funding and Rule 6e–(T)(b)(15) precludes shared funding. Applicants request extension of relief to life insurers and variable life separate accounts investing in the Eligible Mutual Funds (and principal underwriters and depositors of such separate accounts) which would otherwise be precluded from investing in the Eligible Mutual Funds by virtue of the Eligible Mutual Funds offering its shares to variable life separate accounts and variable annuity separate accounts of affiliated or unaffiliated life insurance companies.

4. Mixed and shared funding will benefit variable contractowners by: (1) Eliminating a significant portion of the costs of establishing and administering separate funds; (2) allowing for the development of larger pools of assets resulting in greater cost efficiencies; and (3) encouraging more insurance companies to offer variable contracts, which should result in increased competition and lower contract charges. The Eligible Mutual funds will not be managed to favor or disfavor any particular insurer or type of insurance product.

5. Applicants request relief from section 9(a) similar to that granted by Rules 6e–2(b)(15) and 6e–3(T)(b)(15) to the extent necessary to permit mixed and shared funding. The same policies that led the Commission to limit the provisions of section 9(a) to those employees of the insurance company engaged in managing the separate account are applicable to insurance companies and their separate accounts that are funded by an investment company offering mixed and shared funding. There is no regulatory reason to apply the provisions of section 9(a) to the many employees of the insurance companies whose separate accounts may utilize the Eligible Mutual Funds as funding medium for variable life insurance policies. Moreover, the requirements of section 9(a) would increase the costs of monitoring compliance and would reduce the net rates of return realized by policyowners.

6. Applicants request relief granted by paragraphs (b)(15) of Rules 6e–2 and 6e–3(T) from sections 13(a), 15(a) and 15(b) be extended to a class of insurance companies and variable life separate accounts which may use the Eligible Mutual Funds as investment medium to fund variable life contracts, subject to the conditions regarding conflicts set out in the application and summarized below.

7. All variable annuity and variable life policyowners will be provided pass-through voting rights with respect to the Eligible Mutual Fund shares held by registered separate accounts. Paragraphs (b)(15) of both Rule 6e–2 and Rule 6e–3(T) permit the insurance company to disregard these voting instructions in certain limited circumstances. This may cause an irreconcilable conflict to develop among the separate accounts. Applicants undertake that if a particular insurance company's disregard of voting instructions conflicted with a majority of policyowners' voting instructions, or precluded a majority vote, the insurer will, at the Eligible Mutual Fund's election, withdraw its separate account's investments in the Eligible Mutual Fund.

8. Applicants submit that their exemptive requests meet the standards set out in section 6(c) and that an order should, therefore, be granted. Accordingly, Applicants request an exemption pursuant to section 6(c) of the Act from sections 9(a), 13(a), 15(a) and 15(b) and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) to the extent necessary to permit mixed and shared funding.

Applicant's Conditions

Applicants state that they will comply with certain conditions set forth in the application, which are summarized as follows:

1. A majority of the Board of Trustees of the Eligible Mutual Funds shall consist of persons who are not "interested persons" of the Eligible Mutual Fund, as defined by section 2(a)(19) of the 1940 Act and the Rules thereunder, and as modified by any applicable order of the Commission.

2. The Board of each Eligible Mutual Fund will monitor the Eligible Mutual Fund for the existence of any material irreconcilable conflict between the interests of the Participants of all separate accounts investing in the Eligible Mutual Fund. A material irreconcilable conflict may (but will not necessarily) arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, or any similar action by insurance, tax or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any portfolio are being managed; (e) a difference in voting instructions given by variable annuity contractowners and variable life insurance policyowners; or (f) a decision by an insurer to disregard the voting instructions of its policyowners or contractowners.

3. The Board of Trustees of any Eligible Mutual Fund will require participating insurance companies and the investment adviser to each Eligible Mutual Fund to report any potential or existing conflicts to the Board. Participating insurance companies and the investment adviser will assist the Board in carrying out its responsibilities under the conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all insurers investing in any Eligible Mutual Fund under their agreements governing participation in any Eligible Mutual Fund.

4. If it is determined by a majority of the Board of any Eligible Mutual Fund, or a majority of its disinterested directors, that a material irreconcilable conflict exists, each insurance company designated by the Board will, at it expense, take whatever steps are necessary to remedy or eliminate the irreconcilable conflict, including: (a) Withdrawing the assets allocable to some or all of the separate accounts from the Eligible Mutual Fund or any portfolio of an Eligible Mutual Fund and reinvesting such assets in a different investment medium, including another Eligible Mutual fund or another portfolio of an Eligible Mutual Fund, or submitting the question of whether such segregation should be implemented to a vote of all affected Participants and, as appropriate, segregating the assets of any particular group (i.e., annuity contractowners, life insurance policyowners of one or more insurer) that votes in favor of such segregation or offering to the affected Participants the option of making such change; and (b) establishing a new registered management investment company or management separate account. If a material irreconcilable conflict arises because of an insurer's decision to disregard voting instructions and that decision represents a minority position or would preclude a majority vote, the insurer will at the Eligible Mutual Fund's election withdraw its separate account's investment in the Eligible Mutual Fund. No charge or penalty will be imposed against a separate account as a result of a withdrawal due to any material irreconcilable conflict. The responsibility to seek remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all insurers under their agreements

governing participation in the Eligible Mutual Funds and these responsibilities will be carried out with a view only to the interests of Participants. For purposes of this condition (4) a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will any Eligible Mutual Fund be required to establish a new funding medium for any variable contract. No insurer will be required by this condition (4) to establish a new funding medium for any variable annuity contract or variable life insurance policy if an offer to do so has been declined by vote of a majority of affected Participants.

5. In the event of a determination of the existence of a material irreconcilable conflict the Board of any Eligible Mutual Fund may consider whether to cause the Eligible Mutual Fund to take action, such as establishing one or more additional portfolios, to remedy the conflict. The Board will cause the Eligible Mutual Fund to take action only if it, in its sole discretion, determines such action to be in the interest of the Participants of all separate accounts in the aggregate investing in the Eligible Mutual Fund in view of all applicable factors, such as cost, feasibility, tax, investment objective and performance, regulatory, and other considerations.

6. The Board shall promptly make known its determination of the existence of a material irreconcilable conflict to all insurance companies investing in any Eligible Mutual Fund.

7. If and to the extent that Rule 6e–2 or Rule 6e–3(T) is amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the Act, or the rules promulgated thereunder, that materially differ from any exemptive order issued by the Commission in connection with this application, then the appropriate Applicants will take all steps as may be necessary to comply with Rule 6e–2 or Rule 6e–3(T), as amended, or Rule 6e–3, as adopted, to the extent such rules are applicable.

8. Participating insurance companies shall provide pass-through voting privileges to all participants. Participating insurance companies shall be responsible for assuring that each of their separate accounts participating in the Eligible Mutual Funds calculate voting privileges in a manner consistent with other participating insurance companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the Eligible Mutual Funds shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Eligible Mutual Funds.

9. All reports received by the Board of any Eligible Mutual Fund of potential or existing conflicts, determining the existence of a conflict, notifying participating insurance companies of a conflict and determining whether any proposed action adequately remedies a conflict will be properly recorded in the minutes of the Board or other appropriate records and such minutes or other records will be made available to the Commission upon request.

For the Commission, by the Division of Investment Management, Pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–13604 Filed 6–15–88; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16430; (812–6865)]

Microsoft Corp.; Application

June 10, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

Applicant: Microsoft Corporation.

Relevant 1940 Act Sections: Order requested pursuant to 3(b)(2), or, alternatively, under section 6(c).

Summary of Application: Applicant seeks an order declaring that it is primarily engaged in a non-investment company business or, alternatively, exempting Applicant from all provisions of the 1940 Act.

Filing Dates: The application was filed on September 9, 1987, and amended on May 12 and May 26, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on June 30, 1988. Request a hearing in writing, giving the nature of your interest, the reason for your request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, c/o Martin E. Lybecker, Esq., Ropes & Gray, 1001 22nd Street, NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Thomas Mira, Staff Attorney (202) 272–3047, or Brion R. Thompson, Special Counsel (202) 272–3016 (Office of Investment Company Regulation.)

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3782 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is primarily engaged in the business of designing, developing, marketing, and supporting a product line of systems and applications microcomputer software for business and professional use, both directly and through controlled foreign companies. As of March 31, 1988, Applicant had non-cash short-term investments which would be classified as "investment securities" of $170,600,000, or 38.7% of the book value of Applicant's total assets of $441,000,000. Applicant believes that the fair market value of its investment securities is substantially less than 40% of the fair market value of Applicant's total assets as determined in good faith by Applicant's Board of Directors in accordance with section 2(a)(41)(A) of the 1940 Act. Nevertheless, to avoid the possibility that it might be classified as an investment company under section 3(a)(3) of the 1940 Act, Applicant seeks an order declaring that it is primarily engaged in a non-investment company business.

2. Applicant was founded as a partnership in 1975. Subsequently, it was incorporated in the State of Washington on June 25, 1981, and on December 24, 1986, Applicant reincorporated in the State of Delaware by merging into a Delaware corporation incorporated by the Applicant for that purpose. Applicant made its initial public offering under the Securities Act of 1933 on March 13, 1986, and became a reporting company under the Securities Exchange Act of 1934 on the same date. Applicant's common stock is traded over-the-counter on the NASDAQ National Market System. As of September 28, 1987 (the record date for the most recent shareholders' meeting), officers and directors of the Applicant held 47.7% of Applicant's outstanding stock and Paul Allen, a founder of Applicant who is no longer affiliated with it, owned an additional 19.9% of the

outstanding stock. As of March 31, 1988, Applicant had 7,027 shareholders of record.

3. Applicant markets over 40 software products, including three operating systems, computer language products in six computer languages, and business applications products in six categories: word processing, spreadsheet, file management, graphics, communications, and project management. Applicant markets and distributes its software products domestically and internationally through both the Original Equipment Manufacturer ("OEM") and retail channels. In the OEM channel, Applicant generally provides an OEM with master copies of systems software and documentation which the OEM duplicates, packages, and distributes. Domestic retail marketing involves the distribution of Applicant's packaged applications software products primarily through independent distributors, large volume dealers, and other dealers, and direct marketing to corporate customers, government agencies, and colleges and universities. International OEM and retail marketing and distribution of domestic and foreign language versions of Applicant's systems and applications software products are conducted through ten foreign subsidiaries and several independent sales representatives.

Applicant's Legal Analysis

1. Notwithstanding that the fair market value of its investment securities has at times exceeded 40% of the book value of the Applicant's total assets, Applicant believes it is primarily engaged in a non-investment company business. Specifically, Applicant states that it is in the business of designing, developing, marketing and supporting a line of systems and applications microcomputer software for business and professional use. Applicant notes that in determining whether a company is primarily engaged in a non-investment company business the SEC considers the following factors: (1) The company's historical development; (2) its public representations of policy; (3) the activity of its officers and directors; (4) the nature of its present assets; and (5) the sources of its present income.

2. During Applicant's twelve-year history, its efforts have been devoted solely towards becoming the leading producer of microcomputer software. Applicant is unaware of any public representations which would suggest that it is in any business other than the microcomputer software business. The prospectus used in Applicant's March 1986 public offering, its reports to shareholders, and its fillings with the SEC are all focused exclusively on Applicant's microcomputer software business. Moreover, during the fiscal years ended June 30, 1986 and 1987, Applicant spent approximately 30% and 25%, respectively, of its net revenues on sales and marketing that focused entirely on Applicant's microcomputer software business.

3. Applicant's directors and executive officers dedicate virtually all of their efforts toward furthering Applicant's efforts in the design, development, marketing, and support of its broad product line of systems and applications microcomputer software for business and professional use. Management of Applicant's investments involves less than the equivalent of two full-time employees out of a total of approximately 1,750 employees. Further, on a fair market value basis (as opposed to book value), Applicant believes that its investment securities represent far less than 40% of its total assets. In addition, income generated from Applicant's investment securities comprise only a small portion of total revenue and total income. Applicant represents that since March 1986, income from investment securities has comprised no more than 1.9% of total revenue and no more than 10.4% of total net income.

4. Applicant's 1986 prospectus indicated that the net proceeds of its March 1986 public offering would be used for general corporate purposes, principally working capital, product development, and capital expenditures. The prospectus also stated that the proceeds might be used to acquire companies, products, or expertise which compliment Applicant's business, and, pending such uses the proceeds would be invested in marketable securities. Applicant represents that the proceeds of the offering, as well as funds generated from operating results, have been used in accordance with these representations. Moreover, Applicant has identified six areas where it anticipates substantial cash needs in addition to its sizable operating cash requirements. These six areas are: (i) Expenditures on Applicant's domestic equipment and facilities; (ii) expenditures on its foreign operations, including capital contributions to several of its existing foreign subsidiaries; (iii) possible acquisitions; (iv) investments in operating companies, strategic alliances, and joint developments; (v) possible payment of dividends; and (vi) a contingency fund.

5. Applicant asserts that subjecting it to the provisions of the 1940 Act would force enormous changes in the nature of its business, create duplicative and unnecessary protection for shareholders, cause Applicant to present financial information in a potentially misleading format, and impose upon Applicant the expense of burdensome but unnecessary regulation. Consequently, Applicant concludes that the issuance of an order declaring that it is primarily engaged in a non-investment company business would be in the public interest, as it would resolve any uncertainties respecting the present status of Applicant and its ability to effectuate its business plans.

Applicant's Conditions

Applicant agrees that if the requested order is granted, it will continue to allocate and utilize its accumulated cash and short-term securities for bona fide business purposes; and it will refrain from investing or trading in securities for short-term speculative purposes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-13605 Filed 6-15-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24657]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

June 9, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 5, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so

requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

American Electric Power Company (70–7316)

American Electric Power Company, Inc. ("AEP"), 1 Riverside Plaza, Columbus, Ohio 43215, a registered holding company, and its electric utility subsidiaries, Appalachian Power Company, 40 Franklin Road, SW., Roanoke, Virginia 24011, Columbus Southern Power Company ("Columbus"), 215 North Front Street, Columbus, Ohio 43215, Indiana Michigan Power Company, One Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801, Kentucky Power Company, 1701 Central Avenue, Ashland, Kentucky 41101, Kingsport Power Company, 40 Franklin Road, SW., Roanoke, Virginia 24011, Michigan Power Company, P.O. Box 413, Three Rivers, Michigan 49093, Ohio Power Company, 301 Cleveland Avenue, SW., Canton, Ohio 44701 and Wheeling Power Company, 51 Sixteenth Street, Wheeling, West Virginia 26003, have filed a post-effective amendment to their application-declaration pursuant to sections 6(a), 6(b), 7 and 12(b) of the Act and Rules 45 and 50 thereunder.

By order dated December 16, 1986 (HCAR No. 24264), AEP was authorized, among other things, to make capital contributions to its subsidiary, Columbus and Southern Ohio Electric Company, now Columbus, from time to time through December 31, 1988 up to an aggregate of $25 million.

AEP now proposes that the amount of capital contributions previously authorized to be made to Columbus be increased from $25 million to $40 million for the period ending December 31, 1988.

Mississippi Power & Light Company (70–7419)

Mississippi Power & Light Company ("Company"), P.O. Box 1640, Jackson, Mississippi 39215–1640, a subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a post-effective amendment to its declaration pursuant to sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

As previously authorized by this Commission (HCAR No. 24526, December 16, 1987), the Company issued and sold on December 17, 1987 to one institutional purchaser ("Purchaser"), in a direct placement transaction, $75 million principal amount of the Company's First Mortgage Bonds, 14.40% Series due December 1, 1992 ("1992 Bonds"), under its Mortgage and Deed of Trust, dated as of September 1, 1944. In connection with this transaction, the Company agreed in the Bond Purchase Agreement for the 1992 Bonds ("Agreement") that, in the event of a default by the Company in the payment of interest on or principal of the 1992 Bonds, the Company would pay the Purchaser such amounts as, when taken together with the interest payable on such overdue amounts under the terms of the 1992 Bonds (6% per annum), would cause total payments to be made with respect to such overdue amounts at a rate of 14.40% per annum (i.e., the Company undertook to pay an additional 8.40% per annum on such overdue amounts). The Company also undertook to use its best efforts to provide security for this additional obligation, subject to receipt of Commission authorization.

The Company now proposes to satisfy this undertaking by issuing and delivering to the Purchaser a general and refunding mortgage bond ("Collateral Bond") to be issued under the Company's Mortgage and Deed of Trust dated as of February 1, 1988 ("1988 Mortgage").

The Collateral Bond will be issued in the principal amount of $12.6 million, will bear interest at the rate of 8.40% per annum, and will mature on December 1, 1992. Prior to defaults by the Company on payment (when due) of principal of the 1992 Bonds and payment (for 15 days after it is due) of interest on the 1992 Bonds, the Company's payment of interest on the 1992 Bonds is a complete credit against the Company's obligations to pay principal of and interest on the Collateral Bond. Thereafter, payments on the Collateral Bond will be required only to the extent that payments made under the terms of the 1992 Bonds and the Agreement do not fully satisfy the Company's obligations under the Agreement. The Collateral Bond will be deemed to be retired in whole upon the earlier of retirement or redemption in whole of the 1992 Bonds or certain transfers of the 1992 Bonds by the Purchaser. The Collateral Bond will be issued on the basis of cumulative Deferred Grand Gulf 1 Costs, as defined in the 1988 Mortgage, recorded on the Company's books.

The Company requests an exception from the competitive bidding requirements of Rule 50.

Eastern Utilities Associates et al. (70–7517) New England Electric System et al.

Eastern Utilities Associates ("EUA"), a registered holding company, One Liberty Square, Boston, Massachusetts 02107, its subsidiaries, Blackstone Valley Electric Company ("Blackstone"), Washington Highway, Lincoln, Rhode Island 02865, EUA Service Corporation ("EUA Service"), 750 West Center Street, P.O. Box 543, West Bridgewater, Massachusetts 02379, and its proposed wholly owned subsidiary, EUA Ocean State Corporation ("Ocean State"), Washington Highway, Lincoln, Rhode Island 02865, have filed a joint application-declaration with New England Electric System ("NEES"), a registered holding company, its subsidiary, New England Power Service Company ("NEPSCO"), both located at 25 Research Drive, Westborough, Massachusetts 01582, and its proposed wholly owned subsidiary, Narragansett Energy Resources Company ("Resources"), 280 Melrose Street, Providence, Rhode Island 02901 pursuant to sections 6(a), 7, 9(a), 10, 12 and 13(b) of the Act and Rules 42, 43, 45, and 46 thereunder.

EUA and NEES each proposes to organize, acquire the capital stock of, and provide initial financing for a new wholly owned subsidiary, Ocean State and Resources, respectively. It is proposed that EUA acquire, from time to time, some or all of the authorized capital stock of 8,000 shares of Ocean State common stock, par value $1.00 per share, at a price of $100 per share for an aggregate purchase price not to exceed $800,000. It is proposed that NEES acquire, from time to time, some or all of the authorized capital stock of 8,000 shares of common stock, par value $1.00 per share, at a price of $1,000 per share for an aggregate purchase price not to exceed $8,000,000.

EUA and NEES both request authorization to provide a continuing source of capital for their subsidiaries, through April 30, 1992, as extendable by Force Majeure Events as defined in the GE construction contract ("Buyout Date"), in the form of purchases of common stock, capital contributions, loans and/or advances, pursuant to capital funding agreements, provided, the aggregate amount of all investments (including purchases of common stock) shall not exceed $30 million and $25 million, respectively.

Both Ocean State and Resources each request authorization, through the Buyout Date, to repurchase their common stock from their respective parent companies and pay dividends out of their capital to reduce the amount of EUA's or NEES's equity investment, respectively.

Ocean State and Resources have been formed for the purpose of participating as general partners in Ocean State

Power ("OSP"), a partnership formed to construct, own, and operate a combined cycle electric generating facility to be located in Burrillville, Rhode Island. Ocean State proposes to acquire a 25% equity interest and Resources proposes to acquire a 20% equity interest in OSP.

It is proposed that OSP will purchase the site, consisting of approximately 40 acres, from Blackstone at a price of approximately $1.6 million. EUA Service and NEPSCO propose to provide certain incidental services for OSP at cost in accordance with the Commission's rules.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-13602 Filed 6-15-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 35-24656; 70-7519]

Filing Under the Public Utility Holding Company Act of 1935 ("Act")

June 9, 1988.

Notice is hereby given that the following filing has been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the declaration for complete statements of the proposed transactions summarized below. The declaration and any amendments thereto are available for public inspection through the Commission's office of Public Reference.

Interested persons wishing to comment or request a hearing on the declaration should submit their views in writing by July 5, 1988, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the declarant at the address specified below. Proof of service (by affidavit or, in case of an attorney-at-law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the declaration, as filed or as amended, may be permitted to become effective.

National Fuel Gas Company (70-7519) Supplemental Notice of Proposal To Issue and Sell Common Stock to DRIP Pursuant to Exception From Competitive Bidding. Order Authorizing Solicitation of Shareholders

National Fuel Gas Company ("National"), 30 Rockefeller Plaza, New York, New York 10112, a registered holding company, has filed a declaration pursuant to sections 6(a) and 7 of the Act and Rules 50(a)(5) and 62 thereunder.

A notice was issued by the Commission on May 19, 1988 (HCAR NO. 24646), in which National proposed, among other things, that participate in National's Dividend Reinvestment and Stock Purchase Plan, as amended ("New Plan"), May elect to receive or reinvest cash dividends on all *or a portion* of common stock and/or to make optional cash purchases of National's common stock. Because of administrative and technical difficulties, National has now amended its declaration to delete from the New Plan the option to receive or reinvest cash dividends on a portion of common stock. In all other respects, the New Plan remains unchanged and is restated herein by reference to the May 19, 1988 notice.

National proposes to solicit the participation of each holder of record of National's common stock in the New Plan, as amended, by mailing of a prospectus and an authorization form. Future shareholders and nonparticipants may be informed of the New Plan, as amended, by remailing of the prospectus and authorization form, by occasional announcements in company publications or by other means. National requests that the effectiveness of its declaration with respect to solicitation of the participation of its exising common shareholders in the New Plan, as amended, by the mailing of the prospectus and authorization form be accelerated as provided in Rule 62. National proposes to mail the prospectus and authorization form to its shareholders on or about June 10, 1988.

It appearing to the Commission that National's declaration regarding the proposed solicitation of its shareholders by mailing of the prospectus and authorization form should be permitted to become effective forthwith, pursuant to Rule 62:

It is ordered, that the declaration regarding the solicitation of the participation of its existing common stockholders in the New Plan, as amended, by mailing of the prospectus and authorization form be, and hereby is, premitted to become effective forthwith, pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan. G. Katz,

Secretary.

[FR Doc. 88-13606 Filed 6-15-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region VII Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region VII Advisory Council, located in the geographical area of Cedar Rapids, will hold a public meeting at 9:00 a.m., on Monday, July 18, 1988, at the Farmers State Bank, 92 East Clark Street, Hiawatha, Iowa, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Francis P. Emery, Acting District Director, U.S. Small Business Administration, 373 Collins Road NE., Cedar Rapids, Iowa 52402-3118—(319) 399-2571.

Jean M. Nowak,

Director, Office of Advisory Councils.

June 10, 1988.

[FR Doc. 88-13545 Filed 6-15-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 88-042]

Meeting of the Tankship Working Group for the Subcommittee on Vapor Control, Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Tankship Working Group for the Subcommittee on Vapor Control of the Chemical Transportation Advisory Committee (CTAC). The Subcommittee is considering requirements for tank vessels and waterfront facilities which use vapor control systems. The purpose of the working group is to develop recommended safety requirements for vapor control systems on tankships. The meeting will be held on Thursday, June 30, 1988 in Room 1303, U.S. Coast Guard Headquarters, 2100 Second Street, SW.,

Washington, DC. The meeting is scheduled to begin at 9:30 a.m. The working group will be developing working papers on new topics from the Subcommittee's Work Plan. Attendance is open to the public. Members of the public may present oral statements at the meetings. Persons wishing to present oral statements should notify the Executive Director of CTAC no later than the day before the meeting. Any member of the public may present a written statement to the Subcommittee at any time.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander R.H. Fitch, U.S. Coast Guard Headquarters (G–MTH–1), 2100 Second St. SW., Washington, DC 20593–0001, (202) 267–1217.

Dated: June 10, 1988.

J.D. Sipes,

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

[FR Doc. 88–13642 Filed 6–15–88; 8:45 am]

BILLING CODE 4910–14–M

[CGD 88–43]

Lower Mississippi River Waterway Safety Advisory Committee Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L 92–403; 5 U.S.C. App I) notice is hereby given of a meeting of the Lower Mississippi River Waterway Safety Advisory Committee. The meeting will be held on Tuesday, July 12, 1988, at the U.S. Coast Guard Support Center, 4640 Urquhart Street, New Orleans, LA at 9:00 a.m. The agenda for the meeting consists of the following items:

1. Call to order.
2. Minutes of the 12 April 1988 meeting.
3. Impact of 1988 Revetment Construction on the Mississippi River Temporary Anchorage Areas.
4. National Weather Service capabilities of weather channel broadcasts.
5. Response report to questionnaire on RACON installed on the Greater New Orleans Bridge.
6. State of Louisiana's proposal to discontinue fog signals on Mississippi River Bridges.
7. Update on Group New Orleans ability to monitor and broadcast channel 67/16.
8. Sectorization of bridge-to-bridge radio on the Mississippi River.
9. Line of demarcation between Inland and International Rules of the Road.

The purpose of this Advisory Committee is to provide consultation and advice to the Commander, Eighth Coast Guard District on all areas of maritime safety affecting this waterway.

Attendance is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander G. A. Bird, USCG, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, C/O Commander, Eighth Coast Guard District (oan), Room 1141, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130–3396, telephone number (504) 589–6234.

Dated: June 8, 1988.

A.E. Henn,

Captain, U.S. Coast Guard Commander, 8th Coast Guard District, Acting.

[FR Doc. 88–13641 Filed 6–15–88; 8:45 am]

BILLING CODE 4910–14–M

Federal Highway Administration

Environmental Impact Statement; Lancaster and Chester Counties, Pennsylvania

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Lancaster and Chester Counties, Pennsylvania.

FOR FURTHER INFORMATION CONTACT:

Philibert A. Ouellet, District Engineer, Federal Highway Administration, 228 Walnut Street, P.O. Box 1086, Harrisburg, Pennsylvania 17108–1086, Telephone: (717) 782–3461

or

Philip D. Miller, Project Manager, Pennsylvania Department of Transportation, 21st & Herr Streets, Harrisburg, Pennsylvania 17103–1699, Telephone: (717) 783–5149.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Pennsylvania Department of Transportation (PennDOT) will prepare separate Environmental Impact Statements to evaluate alternatives which provide a viable means of relieving traffic congestion on U.S. 30 from the end of the bypass around the City of Lancaster, Lancaster County to the end of the bypass around the City of Coatesville, Chester County and on T.R. 23 from U.S. 30 to the area of New Holland in Lancaster County.

Concurrent with the development of the alternative, various types of data will be gathered which will describe the study area as it relates to the alternatives. Typical data will include but not be limited to the following: Socioeconomic and land use, the Amish community, effects on cultural/archeological resources; agriculture, soil erosion, changes in traffic patterns, changes in air and noise levels; business and residential relocations, wetlands impact, toxic waste sites, vegetation and wildlife, surface and groundwater quality and utilities.

Letters describing and proposed action and soliciting comments will be sent to appropriate Federal, state and local agencies, and to private organizations and citizens who express interest in the proposal. Scoping meetings are planned with the concerned agencies for September, 1988 and public meetings will be held in the area during the fall of 1988 and throughout the study process. Public notices of the time and place of these meetings and any required public hearings will be provided. Public involvement and inter-agency coordination will be maintained throughout the development of the EIS.

To insure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments or questions concerning this issues are identified, comments or questions concerning this action and the EIS should be directed to FHWA at the address provided above.

A Notice of Intent was previously published in the **Federal Register** on February 27, 1987 describing the two-phase approach to identify and evaluate alternatives. The initial phase of this process identified potential alternatives to be located through the study area based on traffic demands, general engineering, socioeconomic and environmental consideration.

As a result of this initial phase a preliminary Alternative Analysis Report was prepared to identify and evaluate alternatives which would provide a viable means of relieving traffic congestion on both Traffic Route 23 and U.S. 30. As a result of the preliminary Alternative Analysis, sensitivity to the Amish community and public input, separate Environmental Impact Statements will be prepared for Traffic Route 23 and U.S. 30.

Alternatives under consideration for Traffic Route 23 include (1) do nothing and (2) constructing a four-lane limited access highway on new location.

Alternatives under consideration for U.S. 30 include (1) do nothing; (2) widening the existing three-lane highway to five-lanes and (3)

constructing a four-lane limited access highway on new location.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Manuel A. Marks,

Division Administrator, Harrisburg, Pa.

[FR Doc. 88-13546 Filed 6-15-88; 8:45 am]

BILLING CODE 4910-22-M

UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-67]

Initiation of Section 301 Investigation; Korea's Restrictions on Access to Its Wine Market

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of decision to initiate an investigation under Section 301.

SUMMARY: Pursuant to 19 U.S.C. 2412, the U.S. Trade Representative has determined to initiate an investigation of the Republic of Korea's Policies and practices with respect to the importation, distribution and sale of wine products.

EFFECTIVE DATE: June 11, 1988.

FOR FURTHER INFORMATION CONTACT: Catherine Field, Asssociate General Counsel, (202) 395-3432, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION: On April 27, 1988, the Wine Institute and Association of American Vintners filed a petition under section 302(a) of the Trade Act of 1974, as amended ("Trade Act"), alleging that the Government of the Republic of Korea engaged in acts, policies and practices that are unreasonable or discriminate against imports and burden or restrict U.S. commerce. The import barriers complained of include, among others: (1) The combination of a 100 percent tariff applied to table wines and a quota on imports, creating a price escalation through the distribution system that prevents imported wine from being price competitive with domestically produced wine and other alcoholic beverages; (2) an absolute ban on imports of sparkling wine, wine coolers, brandy and dessert wines, and non-grape wine such as ciders; (3) labeling and packaging requirements, certification procedures, licensing and distribution restrictions and business capitalization requirements that impede access to the Korean market.

On June 11, 1988, the U.S. Trade Representative initiated an investigation of the Korean government's policies and practices affecting efforts to obtain fair and equitable access to the Korean wine market. USTR will request consultations with the Government of the Republic of Korea, as required by section 303(a) of the Trade Act.

USTR will seek information and advice from the petitioner and the appropriate representatives provided for under section 135 of the Trade Act in preparing the U.S. presentations for such consultations. Any interested person is invited to submit comments on the issues raised in the petition. Comments should be filed in accordance with the regulations at 15 CFR 2006.6 and are due no later than July 8, 1988. Comments must be in English and provided in twenty copies to: Chairman, Section 301 Committee, Room 223, USTR, 600 17th Street, NW., Washington, DC 20506.

Judith Hippler Bello,

General Counsel, Chairman, Section 301 Committee.

[FR Doc. 88-13756 Filed 6-15-88; 8:45 am]

BILLING CODE 3190-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 116
Thursday, June 16, 1988

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).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION:

DATE AND TIME: Monday, June 20, 1988, 2:00 p.m. (eastern time).

PLACE: Clarence M. Mitchell, Jr., Conference Room, No. 200–C on the Second Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part of the Meeting will be Open to the Public and Part will be Closed to the Public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)

Closed Session

Litigation Authorization: General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on the EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer, Executive Secretariat on (202) 634–6748.

Date: June 13, 1988.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 88–13705 Filed 6–14–88; 2:26 pm]

BILLING CODE 6750–06–M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NO.: 88–13124.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, June 16, 1988, 10:00 a.m.

THE FOLLOWING ITEM WAS ADDED TO THE AGENDA: Draft Advisory Opinion 1988–25—Robert F. Bauer on behalf of General Motors Corporation.

* * * * *

DATE AND TIME: Thursday, June 21, 1988, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, June 23, 1988, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC. (Ninth Floor).

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Dole for President Committee, Inc.—Payment of Costs for Production of Compatible Computer Tapes to be Used During Audit Fieldwork.
Draft AO 1988–22—J. Miles Reid on behalf of San Joaquin Valley Republican Associates.
Draft Notice of Proposed Rulemaking: Extension of Credit and Debt Settlement by Corporate and Noncorporate Creditors (11 CFR 114.10 and Proposed 110.9).
FEC Drug-Free Workplace Program.
Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

Mary W. Dove,

Administrative Assistant.

[FR Doc. 88–13755 Filed 6–14–88; 3:57 pm]

BILLING CODE 6715–01–M

Corrections

Federal Register
Vol. 53, No. 116
Thursday, June 16, 1988

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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 916

[Docket No. AMS-FV-88-056IR]

Nectarines Grown in California; Size Requirements and Maturity Regulations

Correction

In rule document 88-12038 beginning on page 19226 in the issue of Friday, May 27, 1988, make the following correction:

§ 916.356 [Corrected]

On page 19232, in the third column, in § 916.356(a)(1)(i), in the table, under "Column B maturity guide", the last entry should read "G".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 253

[Docket No. 70905-8087]

Interjurisdictional Fisheries

Correction

In rule document 88-12557 beginning on page 20323 in the issue of Friday, June 3, 1988, make the following corrections:

1. On page 20324, the formula now appearing in the second column, should follow the last line in the third column.

§ 253.3 [Corrected]

2. On page 20326, in § 253.3(a)(1), the formula appearing in the second column should be removed. In the third column, in paragraph (a)(1) insert "A% + B% / 2 = state percentage used to determine State's share of the total available funds" after the second formula.

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Parts 227

Federal Acquisition Regulation Supplement; Patents, Data and Copyrights

Correction

In rule document 88-12621 beginning on page 20632 in the issue of Monday, June 6, 1988, make the following correction:

On page 20632, in the third column, amendatory instruction 1 should read "1. Subpart 227.4 is corrected by correctly revising sections 227.481 through 227.481-2 to read as follows:".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Part 252

Federal Acquisition Regulation Supplement; Contracting With Small Disadvantaged Business Concerns, Historically Black Colleges and Universities, and Minority Institutions

Correction

In rule document 88-12622 beginning on page 20626 in the issue of Monday, June 6, 1988, make the following correction:

252.219-7000 [Corrected]

On page 20630, in the third column, in section 252.219-7000, in paragraph 37, in the first line, "251.219-7000" should read "252.219-7000".

BILLING CODE 1505-01-D

federal register

Thursday
June 16, 1988

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1926

Concrete and Masonry Construction Safety Standards; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S-301A]

Concrete and Masonry Construction Safety Standards

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This rule revises OSHA's safety standards for Concrete and Masonry Construction (formerly *Concrete, Concrete Forms, and Shoring*) located in Subpart Q of 29 CFR Part 1926. The rule corrects problems related to the existing regulations, including ambiguities, redundancies, and gaps in coverage. Additionally, reference to the American National Standard A10.9–1970, "Safety Requirements for Concrete Construction and Masonry Work," has been removed and the applicable requirements from this standard and the more recent ANSI Standard for Concrete and Masonry Work, ANSI A10.9–1983, have been evaluated and used in developing this final rule. The revised rule is intended to reduce occupational fatalities and injuries in concrete and masonry construction work.

EFFECTIVE DATE: August 15, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Telephone (202) 523–8148.

SUPPLEMENTARY INFORMATION:

I. Background

Congress amended the Contract Work Hours Standards Act (40 U.S.C. 327 *et seq.*) in 1969 by adding a new section 107 (40 U.S.C. 333) to provide employees in the construction industry with a safer work environment and to reduce the frequency and severity of construction accidents and injuries. The amendment, commonly known as the Construction Safety Act (Pub. L. 91–54; August 9, 1969), significantly strengthened employee protection by providing for occupational safety and health standards for employees of the building trades and construction industry in Federal and federally-financed or federally-assisted construction projects. Accordingly, the Secretary of Labor issued Safety and Health Regulations for Construction in 29 CFR Part 1518 (36 FR 7340, April 17, 1971) pursuant to section 107 of the Contract Work Hours and Safety Standards Act.

The Occupational Safety and Health Act (OSH Act) (84 Stat. 1590; 29 U.S.C. 651 *et seq.*), which was enacted by Congress in 1970, authorized the Secretary of Labor to adopt established Federal standards issued under other statutes, including the Construction Safety Act, as occupational safety and health standards. Accordingly, the Secretary of Labor adopted the Construction Standards, which were issued under the Construction Safety Act in 29 CFR Part 1518, in accordance with section 6(a) of the OSH Act (36 FR 10466, May 29, 1971).

The Safety and Health Regulations for Construction, Part 1518, were redesignated as Part 1926 at the end of 1971 (36 FR 25232, December 30, 1971). The standard entitled Concrete, Concrete Forms, and Shoring, § 1926.700 through 1926.702, was adopted as an OSHA standard as part of this process. Except for some minor amendments, Subpart Q has not been substantially changed since it was adopted in 1971. In spite of the promulgation in 1971 of these regulations to address hazards in concrete and masonry construction, accidents continue to occur.

II. Hazards in Concrete and Masonry Construction

OSHA examined a number of accidents that occurred in concrete and masonry work since OSHA's inception in 1971, including the accidents at Willow Island, West Virginia, where a cooling tower collapsed and 51 workers were killed, and the collapse of the Skyline Tower Plaza in Fairfax County, Virginia, which took 14 lives. Also included in OSHA's examination were many masonry wall collapses. Although many workers have been injured or killed in wall collapses, these accidents had not received the publicity or public attention that the structure collapses had received, probably because workers are killed one at a time rather than in large numbers at one time. OSHA identified hazards that contributed to these accidents which caused worker injury and death. OSHA then reviewed its existing regulations to determine if the hazards identified such as formwork failure and the collapse of masonry walls were adequately regulated.

The review revealed ambiguities, redundancies, gaps in coverage, and, in some cases, requirements which did not allow use of state-of-the-art technological changes. For example, the existing standard was ambiguous as to which provisions of ANSI A10.9–1970 were referenced by existing §1926.700(a). In particular, the OSHA requirement in §1926.700(a) states that employers shall comply with the "applicable provisions" of ANSI relating to equipment and materials, which could cause confusion as to which of the ANSI requirements are indeed the "applicable" ones.

Another example of ambiguity is the requirement that concrete buckets be equipped with hydraulic or pneumatic operated gates. The existing requirement states that the installation of positive safety latches or equivalent devices is to prevent aggregate and loose material from accumulating on the top and sides. This statement is misleading, as the real purpose of safety latches is to prevent the accidental or premature dumping of the contents of the bucket, not to prevent material accumulation.

Additionally, the existing standard recognizes only one method of testing concrete and yet there are several test methods approved by the American Society for Testing and Materials (ASTM) for testing concrete to determine the extent to which concrete has reached its designed strength.

Based on this review, OSHA determined that a revision of the existing standard was warranted to address more appropriately the hazards in concrete and masonry work. As a first step, OSHA published an Advance Notice of Proposed Rulemaking (ANPR) to gather information for developing a proposed standard. The ANPR, which was published in the **Federal Register** (47 FR 5910, February 9, 1982), requested public comment on the effectiveness of the existing standard in reducing accidents in the concrete and masonry construction industries. OSHA received 46 comments in response to the ANPR (Ex. 1), some of which confirmed OSHA's belief that the existing standard was inadequate for current construction methods.

OSHA then sought the advice and recommendations of OSHA's Advisory Committee on Construction Safety and Health (ACCSH) at its meeting November 30 and December 1, 1982.

Using the information gathered in response to the ANPR and the recommendations received from the ACCSH, OSHA developed and published a Notice of Proposed Rulemaking (50 FR 37543; September 16, 1985) to seek public comment. While OSHA was conducting its rulemaking activities, accidents in concrete and masonry construction continued to occur.

OSHA received 51 comments on the NPRM from individuals, businesses,

labor unions, Federal agencies state governments, and trade associations.

Additionally, OSHA held an informal public hearing on June 17–18, 1986, to examine pertinent issues including those specified in a Notice of Informal Public Hearing published in the **Federal Register** on April 8, 1986 (51 FR 11945). Two expert witnesses testifed at the hearing on behalf of OSHA, and seven additional witnesses who represented various interests such as labor, engineering firms, and formwork designers also presented testimony.

Following the hearing, Administrative law Judge Ellin O'Shea allowed 120 days for the submission of post-hearing comments and 30 days for the submission of arguments and briefs. Judge O'Shea certified the 332-page hearing transcript and all related submissions to OSHA and officially closed the record on December 8, 1986.

All of the comments and testimony were reviewed and analyzed for use in developing this final rule. Then, while OSHA was preparing the final rule, another tragic accident occurred. This time, a building in Bridgeport, Connecticut, collapsed, taking the lives of 28 workers. Like the other accidents, OSHA's investigation of this collapse revealed that there had been a failure to comply with the existing regulations, regulations that some thought were ambiguous and others thought needed more flexibility to provide an incentive for compliance—regulations that OSHA has revised in this Final Rule, except that the regulations for lift-slab operations, as discussed below, are not a part of this Final Rule. The existing requirements for lift-slab operations remain in effect.

The Final Rule removes ambiguities that have existed; closes gaps in coverage; recognizes techological changes; and finally, where possible, uses language that states the performance to be achieved by the employer without specifying unnecessary details as to how the employer must meet the requirement. OSHA believes that compliance with the revised regulations in Subpart Q will reduce the deaths and injuries that have plagued the workers in concrete and masonry construction. The revised regulations set forth requirements to protect construction workers from such hazards as those described above involving premature removal of formwork, failure to brace masonry walls, and other harzardous situations such as failure to support precast panels, inadvertent operation of equipment, and unguarded reinforcing steel.

Some of the revisions made in the final rule include the elimination of the reference to the ANSI A10.9–1970 standard. OSHA, instead, has promulgated many provisions that are identical or similar to provisions in either the ANSI A10.–1970 or the ANSI A10.9–1983 Standard for Concrete and Masonry Work.

OSHA has also revised its requirements for concrete testing, allowing employers to use methods other than the one specified in the existing rule. OSHA believes that all of the testing methods listed in Appendix A will provide the employer with the information necessary to determine if the concrete has reached its design strength, and therefore will reduce the hazards of premature formwork removal.

OSHA observes that it is not revising the existing requirements for lift-slab operations as a part of the Final Rule. Instead, OSHA is reopening the record to receive additional information and evidence. Additional information and evidence became available to OSHA as a result of its investigation of the collapse of a building under construction using the lift-slab construction method, and was not available to the public rulemaking record at the time OSHA was considering its revision to the Concrete and Masonry Construction Safety Standards. OSHA intends to repropose the section on life-slab operations as a separate rulemaking effort. OSHA has met with the ACCSH to obtain their recommendations and advice on the reproposed rule and will publish a Notice of Proposed Rulemaking later this year. When the lift-slab operation requirements are promulgated, they will be located in Subpart Q.

OSHA appreciates the participation of the parties who contributed to the record during this rulemaking. OSHA has developed this final rule based on a full consideration of the entire record of this proceeding, including the recommendations of the ACCSH, the record of the hearing and all written comments and exhibits received.

III. Summary and Explanation of the Final Rule

The following discussion summarizes each of the provisions in the final rule and explains how they differ from the proposal and the existing rule. The discussion also includes an explanation of how the Agency arrived at its final decision.

OSHA requested comments on several specific issues in the preamble of the proposd rule (50 FR 37549) and in the hearing notice (51 FR 11945). All of these issues, and the comments received on them, are discussed in conjunction with the appropriate provisions of this final rule.

Subpart Q Concrete and Masonry Construction

The title of Subpart Q is revised to read "Concrete and Masonry Construction," which properly reflects the construction operations regulated by the subpart. This title is identical to the title that was proposed. OSHA proposed to change the existing title, "Concrete, Concrete Forms, and Shoring" because it implied that the scope of Subpart Q covered only the hazards associated with concrete and the forms and shoring for concrete. The subpart also covers, however, the hazards of masonry construction. The revised title, therefore, reflects the entire scope of the standard.

OSHA received only one comment on the title. That comment was presented by a witness at the public hearing (Tr. I, 84). The witness, John Hanson, said that OSHA should consider changing the title to "Special Requirements for Concrete and Masonry Construction" so it would be emphasized that there were other requirements which are common to all construction operations that also would apply to employers performing concrete and masonry operations. The witness felt that there could be confusion—that employers engaged in concrete and masonry construction would think that only the requirements of Subpart Q applied to their work operations. OSHA agrees that this subpart does not contain *all* of the safety standards requirements that apply to employers engaged in concrete and masonry construction operations, and OSHA does not want employers to be confused about their obligations under the construction safety and health regulations. However, OSHA feels it is more appropriate to clarify the scope of the subpart in the scope and application paragraph rather than attempt a clarification through a change to the title of the subpart.

In addition, it should be pointed out that there are other subparts in the construction standards that address hazards which are unique to a particular trade or operation and those subparts do not use the title of the subpart to convey that information. Thus, to include "Special Requirements" in the title of Subpart Q could create confusion about the scope and application of other subparts not containing this type of qualification in the title.

Therefore, OSHA is promulgating the title as proposed.

Section 1926.700 Scope, application and definitions.

This section of the final rule describes the scope and application of Subpart Q and defines the major terms used in the final rule.

Paragraph (a) contains the scope and application of Subpart Q. The scope and application paragraph in the final rule states that the standard sets forth requirements to protect all construction employees from the hazards associated with concrete and masonry operations performed in workplaces covered under 29 CFR Part 1926. Part 1926 covers workplaces where construction, demolition, alteration and/or repair, including painting and decorating activities are performed. Additionally, OSHA has further indicated in the scope and application paragraph that other requirements throughout Part 1926 may have application to concrete and masonry construction operations. OSHA also observes that while this section addresses hazards unique to concrete and masonry construction, this section is not exclusive to employers in those operations. That is, employees of all trades must be protected from the hazards addressed in this subpart, just as concrete and masonry employees must be protected form the hazards addressed in other subparts of the 1926 regulations. For example, Subpart Q addresses the hazards associated with protruding rebar and collapsing masonry walls. While employees engaged in concrete and masonry operations would most likely be the employees primarily exposed to these hazards, other construction employees (engaged in other than concrete and masonry operations) could also be exposed to these hazards; thus, all exposed employees need protection from these hazards.

The proposed standard contained a scope and application paragraph which indicated that the standard addressed materials, equipment, and procedures for concrete and masonry construction operations. The proposal further identified the scope of the standard by listing some of the hazards associated with such materials, equipment and procedures. In proposing this particular language, OSHA was attempting to establish a uniform format with the scope and application section of all of the construction standards, beginning with Subpart Q. The existing standard does not have a scope and application paragraph. In fact, many of the existing subparts in the construction standards lack a scope and application paragraph. It was OSHA's intent in the proposal to highlight the hazards addressed in each subpart of the construction standards by providing a list of hazards addressed in the standard. This list was, therefore, made a part of the proposed scope and application paragraph.

Upon further consideration, however, OSHA does not feel the intended purpose has been served by merely listing some of the hazards addressed in the standard. The highlighting of only some of the hazards may cause some confusion if employers depend on the scope and application paragraph alone to discover what hazards are addressed by the entire subpart. Therefore, in the final rule, OSHA has retained a revised scope and application paragraph for uniformity, but deleted the list of hazards.

In addition to this change, OSHA has added a new sentence to the language of the scope and application paragraph. This language was prompted by two comments. The first comment, discussed previously, was submitted by John Hanson (Ex. 18). The second comment was submitted by Technical Safety Associates (TSA) (Ex. 14–34). Both commenters recommended that OSHA add a sentence to the scope and application paragraph to make it clear that, in addition to the requirements of Subpart Q, many other requirements throughout Part 1926 apply to concrete and masonry construction operations.

OSHA agrees with the commenters that it is appropriate to make it clearly understood that other requirements in the construction standards (Part 1926) have application to concrete and masonry construction operations. Also, there are requirements in Part 1910, Safety and Health Standards for General Industry, that have been identified as having application to the Construction Industry that may also apply to concrete and masonry construction operations. (See 44 FR 8755; February 9, 1979 and corrected at 44 FR 20940; April 6, 1979). In light of these considerations, OSHA promulgates paragraph (a) as revised.

Paragraph (b) lists and defines eight terms of special application as used in the final rule. There terms are provided to assist employers and employees in understanding the requirements in the final rule. Each definition is discussed separately below.

Paragraph (b)(1) contains the definition for "bull float." OSHA had proposed to delete this definition since the requirement which dealt with bull float handles was proposed for removal and, thus, there would be no need to define a term not used in the standard. There were no comments received on the proposed removal of the term from the definition paragraph. However, upon further consideration OSHA has decided to retain the requirements for bull float handles in the final rule, and, therefore, OSHA retains the term as defined in the existing standard. A complete discussion of why OSHA decided to continue the requirement for bull floats can be found in the summary and explanation for § 1926.702(h).

Paragraph (b)(2) contains the definition for "formwork." Formwork is defined as the total system of support for freshly placed or partially cured concrete, including the mold or sheeting that contacts the concrete as well as all supporting members including shores, reshores, hardware, and bracing.

The existing standard defines "formwork" or "falsework" to mean the total system of support for freshly placed concrete, including the mold or sheeting that is in contact with the concrete as well as all supporting members, hardware, and necessary bracing. OSHA, in proposed paragraph (b)(1), revised the existing definition by deleting the words "falsework" and "necessary." The term "falsework" was removed because the term is no longer widely used in the field or even understood to be synonymous with "formwork." The word "necessary" was removed because it was too vague. Further, the word "necessary" as used in the existing standard indicates that bracing is not always used with formwork, but if it is, it would be part of the "total formwork system." There were no comments on the removal of these words.

In addition, in Issue #9 of the proposed rule (50 FR 37550), OSHA requested specific comment on whether or not the definition of "formwork" should be revised to exclude shores and reshores. OSHA explained in the proposal that it considers shores and reshores to be supporting members and thus considered them part of the "total formwork system" even though the words shore and reshore were not specifically written into the existing definition. Based on a review of the comments on this issue, OSHA sought to determine if it were widely understood that shores and reshores are part of the total formwork system or whether shores and reshores should be defined separately and addressed separately when promulgating regulations for formwork. Several commenters (Exs. 14–2, 14–8, 14–10, 14–27, and 14–48) stated that shores and reshores should be part of the definition because they are part of the total formwork system. Three commenters (Exs. 14–16, 14–35 and 14–44) indicated that they felt shores and

reshores should be defined separately and not included within the definition of formwork. They based their comments on the distinction between the support function of the entire formwork system versus the independent support function of shores and reshores.

In addition, the Building and Construction Trades Department, AFL–CIO (BCTD) (Ex. 14–40) commented "* * * we see no need to redefine formwork to exclude the concept of shoring * * *." They further stated that OSHA should expand the definition to indicate clearly that the formwork system not only supports freshly placed concrete, but also partially cured concrete.

After careful consideration of the comments and testimony received on this definition, OSHA has determined that "shores" and "reshores" are generally considered as part of the total formwork system and has revised the final rule specifically to state this determination. This is accomplished by inserting the words "shore" and "reshoring" after the phrase "supporting members." In addition, OSHA agrees with the BCTD comment that formwork be capable of supporting both freshly placed as well as partially cured concrete. Therefore, OSHA has added language to the definition to make this intent clear. Finally, OSHA has made some editorial changes (the words "is in" have been added before "contact" and the word "with" has been added after "contact") for clarity. OSHA believes the revised definition more clearly describes what formwork is and what role it plays in supporting the concrete.

Paragraph (b)(3) contains the definition for "lift slab." Lift slab is defined as a method of concrete construction in which floor and roof slabs are cast on or at ground level and, using jacks, lifted into position.

OSHA, in proposed paragraph (b)(2), defined "lift-slab" to mean a method of concrete construction in which floor and roof slabs are cast on or at ground level and hoisted into position by jacking. There were no comments received on the proposed definition. The definition for this term in the final rule is essentially the same as definition in the proposal, except the words "by jacking" have been replaced with "using jacks" and "hoisted" has been replaced with "lifted." These revisions are simply editorial and made for the purpose of clarity. This term, however, is not defined in the existing OSHA standard because lift-slab operations are not specifically addressed. The existing standard, however, *requires* compliance with the American National Standards Institute (ANSI) A10.9–1970 (Ex. 9) which addresses lift-slab operations. OSHA proposed to create a specific section on lift-slab construction, using the current ANSI standard as a base document, thus creating a need to define the term "lift-slab." Therefore, OSHA promulgates paragraph (b)(3) as revised.

Paragraph (b)(4) defines "limited access zone" as an area around one side of a masonry wall under construction which is clearly demarcated to limit access by employees. This term was not defined in the proposal nor is it defined in the existing standard because there were no specific proposed or existing requirements for establishing limited access zones.

After careful consideration of the comments and testimony received in response to the requirements proposed for masonry construction in § 1926.706 (see discussion below), OSHA is requiring a new work practice in the final rule which will require the employer to establish a limited access zone. Since this term is not used in the OSHA standards, OSHA has determined that it is necessary to define this term in the final rule. Therefore, OSHA promulgates paragraph (b)(4).

Paragraph (b)(5) contains the definition for "precast concrete." "Precast concrete" means concrete members (such as walls, panels, slabs, columns, and beams) which have been formed, cast, and cured prior to final placement in a structure.

OSHA proposed to define precast concrete to mean a concrete member which is formed, cast, and cured prior to placement in a structure. There were no substantive comments received on the proposed definition. However, the National Institute for Occupational Safety and Health (NIOSH) (Ex. 14–39) in commenting on the specific requirements section for precast concrete, questioned OSHA as to whether or not *slabs* were considered to be a precast member. OSHA observes that if the slab were formed, cast and cured prior to being placed in the structure; i.e., not cast in place, it would be considered to be "precast." However, to avoid any confusion, OSHA has identified several typical types of precast members in the definition. In addition, the word "final" has been added to indicate clearly that the concrete member is placed at a location different than the location where it was formed, cast, and cured. Again, the term "precast" is not defined in the existing standard because precast concrete operations are not specifically addressed. However, the existing standard *requires* compliance with ANSI A10.9–1970 (Ex. 9) which addresses precast concrete operations. OSHA proposed to create a specific section on precast concrete, using the current ANSI standard as a base document, thus creating a need to define the term "precast concrete." Therefore, OSHA promulgates paragraph (b)(5) as revised.

Paragraph (b)(6) contains the definition for "reshoring." "Reshoring" means the construction operation in which shoring equipment (also called reshores or reshoring equipment) is placed as the original forms and shores are removed to support partially cured concrete and construction loads.

OSHA, in proposed paragraph (b)(4), defined "reshoring" to mean the construction operation in which the original shoring is removed and replaced in such a manner as to prevent collapse of the concrete structure. This term is not defined in the existing standard. However, since reshoring operations are specifically addressed in the regulatory text of the final rule, OSHA has determined that it should be defined.

OSHA received only one comment on the proposed definition. That comment was received from the Washington Metropolitan Area Construction Safety Association (WMACSA) (Ex. 14–29). They recommended that "reshoring" be defined to mean the placement of shores after forms are stripped to support members and construction loads safely. In addition, the WMACSA and the BCTD (Ex. 14–40) both commented on the reshoring requirement contained in § 1926.703(b)(10) indicating concern with how OSHA described the time/sequence for erecting reshoring.

After careful consideration of the comments received, OSHA has determined that the proposed definition should be rewritten to more accurately describe when reshoring operations take place—as the original forms and shores are removed. Therefore, OSHA promulgates paragraph (b)(6) as revised.

Paragraph (b)(7) contains the definition for "shore." "Shore" means a supporting member that resists a compressive force imposed by a load. There were no comments received on the definition proposed in paragraph (b)(5), which is identical to the definition contained in the existing standard. OSHA notes that when performing reshoring operations, shores are often referred to as "reshores." Thus, this definition is applicable to both shores and reshores. OSHA, therefore, promulgates paragraph (b)(7) as proposed.

Paragraph (b)(8) contains the definition for "vertical slip forms." "Vertical slip forms" means forms which

are jacked vertically during the placement of concrete. In proposed paragraph (b)(6) OSHA did not change the existing definition, which is essentially the same as the final definition except the words "and continuously" have been deleted. There were no comments received on the definition. However, OSHA did receive one comment on the specific vertical slip form requirement which caused OSHA to revise the definition. That commenter, the National Chimney Construction Safety and Health Advisory Committee (NCCSHAC) (Ex. 14–16), took exception to OSHA's use of words which implied that vertical slip forms move continuously. Rather, they described the process as distinct, discrete steps that occur as the jack moves vertically. OSHA acknowledges that "continuously" is not quite accurate and has decided to delete the word because it appears unnecessary to convey the rate of movement in the definition. Therefore, OSHA promulgates paragraph (b)(8) as revised.

Finally, the existing standard contains the term "guy" to prescribe a method of supporting reinforcing steel in walls, piers, and columns. OSHA proposed to delete the definition for "guy" since the proposal used the words "laterally supported" instead of "guy." OSHA had proposed this change to enable employers to use other methods of supporting the reinforcing steel. There were two comments received on the proposal to delete the definition for "guy." The BCTD (Ex. 14–40) commented that the term "laterally supported" should be defined in the final rule because it is a substitute for the term "guy."

In addition the WMACSA (Ex. 14–29) commented that the definition for the term "guy" should be retained. They further commented, "When bracing reinforcing steel, a tension load is normally applied. A cable, chain, or rod may be used. Lateral implies sideways or horizontal bracing."

However, the final rule for supporting reinforcing steel does not contain either term. Therefore, neither of these terms are defined. A more complete discussion of the reason for deleting these words can be found in the discussion of § 1926.703, cast-in-place concrete.

Section 1926.701 General requirements.

This section of the final rule contains general work practice requirements related to construction loads, reinforcing steel, concrete buckets, working under loads, and personal protective equipment. The proposed rule also contained a section on general requirements, but it contained only one provision. To promote a more logically organized standard, the final rule relocates all "general" type work practice requirements applicable to both concrete and masonry work to the general requirements section.

Paragraph (a) of the final rule prohibits the placement of construction loads on a concrete structure or portion of a concrete structure until the employer makes a determination on the basis of information received from a person qualified in structural design that the structure or portion of the structure is capable of supporting the loads.

The intent of this final rule requirement is to prevent accidents such as the one that occurred on April 27, 1978, in which 51 employees were killed. In that accident, concrete was being placed in the forms for a cooling tower under construction at Willow Island, West Virginia. The formwork collapsed when the third bucket of concrete was being hoisted up to the working platform. All the employees on the formwork fell to the ground below. The National Bureau of Standards, in a report for OSHA, concluded that the most probable cause of the collapse was due to the imposition of construction loads on the tower before the structure had gained the strength to support the loads. Observance of either §§ 1926.701(a)(1) or 1926.701(a)(4) of the existing rules could have prevented this accident. Likewise, observance of the final rule requirements of this paragraph and § 1926.703(a)(1), which address the hazard described above, will prevent these types of accidents.

The final rule is essentially the same as the proposed § 1926.701, except the phrase "engineer/architect" was replaced with "until the employer makes a determination on the basis of information received from a person qualified in structural design." The proposed rule was based on existing § 1926.701(a)(4), which prohibits the placement of any construction load on the partially completed structure unless such loading has been considered in the design and approved by the engineer-architect. OSHA proposed to revise the existing rule by deleting that portion of the provision which required that construction loads be "considered in the design," leaving only the requirement that the engineer/architect approve the placement of loads on partially completed structures. OSHA proposed this revision because engineers/architects are not always aware of all construction loads that will ultimately be placed on the structure, and thus, they would not be able to properly consider all such construction loads in the design stage. However, OSHA believes that the employer, as the person who has the ability to take corrective action and as the person with ultimate responsibility for the safety and health of the workers, also has the responsibility for making such decisions. OSHA also believes that the employer must make the determination about whether or not to place construction loads on the basis of information made available by a person qualified in structural design. Thus, OSHA proposed continuing this part of the provision.

Several comments were received on the proposed provision. Dun-Par Engineered Form Company (Dun-Par) (Ex. 14–10) commented that the proposed provision would prevent any activity on partially completed structures because the engineer or architect will not approve the placement of construction loads because they believe that they may be held liable if a failure occurs. The Milwaukee Construction Industry Safety Council (MCISC) (Ex. 14–19) recommended that the provision be revised to read: "* * * construction loads exceeding 75 percent of the design load shall not be placed on the partially completed structure unless such loading has been approved by an engineer or architect * * *." However, the commenter did not specify why the 75 percent number was selected, or if the limit only applied to concrete structures which had reached the design strength. The WMACSA (Ex. 14–29) commented that the words "engineers" and "architects" are ambiguous and they should be licensed or registered professionals rather than "qualified persons." The BCTD (Ex. 14–40) commented that the engineers and architects should not only consider construction loads in the design, but should also approve their placement on the structure. However, they provided no additional information for the basis of their comment.

Because the comments were not accompanied by supporting data, OSHA sought additional comment in the hearing notice on the placement of construction loads on partially completed concrete structures. OSHA explained that sometimes construction loads are supported by partially completed concrete structures which may not be designed to carry such loads, even if the structure had reached full design strength. Through review of the comments, OSHA sought to determine whether engineers or architects incorporate all the construction loads which may be placed on the structure

into the design of the structure, and if they in practice approve or disapprove the placement of such loads during construction. OSHA also sought to determine who should be responsible for determining whether the structure will support itself and any superimposed loads prior to placement of such loads.

There were three comments received on this issue. Two of the commenters (Exs. 14–47 and 18) argued that engineers or architects do not consider construction loads in the design of the structure. Ceco Industries, Inc. (Ceco) (Ex. 14–47) stated that construction procedures and the nature and magnitude of loads applied to structures are normally left to the contractor. Ceco further stated that the method of concrete construction is the responsibility of the employer. Testimony at the hearing by John Hanson, an OSHA expert witness (Tr. I, 86), addressed this issue.

Mr. Hanson testified that engineers and architects do not consider all construction loads on partially completed concrete structures in the design phase because they cannot envision every possible method of construction or source of construction load. Ingvar Schousboe, the other OSHA expert witness (Ex. 19), commented that construction loads may or may not be considered specifically in the design phase. Mr. Schousboe stated that contractors [employers] should know what construction loads were assumed in the design and should not attempt to place larger loads without competent engineering approval or advice. Mr. Schousboe also stated that this approval or advice was once referred to the project engineer on the design team, but current practice makes it necessary for the contractor to have an in-house engineer or obtain a consultant service.

After carefully considering all the comments and testimony received, OSHA has decided to delete the requirement for the specified engineer-architect services. This decision is based on the comments and testimony received which indicates that engineer-architects frequently do not consider construction loads in the design, nor do they approve their placement on partially completed structures. However, OSHA believes that it is still important that someone be responsible for performing this service. Therefore, OSHA is requiring that the employer make the determination that the structure or portion of the structure is capable of supporting the construction loads. The employer must make this determination on the basis of information received from a person qualified in structural design. This revision also places responsibility for employee safety with the person directly responsible for the concrete operations. In addition, the language in the final rule will allow the employer to consult with engineers or architects or whomever the employer chooses to make the determination, providing the person is, in fact, qualified in structural design. In some cases, the employer or an employee may possess the qualifications necessary to make such determinations on the basis of his or her own qualifications in structural design and may not need to consult with others. Therefore, OSHA promulgates paragraph (a) as revised.

Paragraph (b) of the final rule requires the employer to guard all protruding reinforcing steel to eliminate the hazard of impalement whenever there is a danger that employees will fall onto or into the reinforcing steel. The intent of this provision is to prevent accidents such as the one that occurred on June 11, 1976, in which one employee was killed. The employee was operating a powered concrete buggy to transport concrete when he lost control of the buggy. The employee then fell, landing on protruding reinforcing steel which pierced his shoulder and ear. (Ex. 5). Observance of the requirement in the existing rule in § 1926.700(b)(2) to guard the rebar could have protected the employee from the hazard described. Likewise, observance of this final rule provision will protect employees from the hazard of protruding reinforcing steel.

The final rule differs from the proposed provision which was located in § 1926.702(a) and the existing provision in § 1926.700(b)(2). Under the proposed rule, employers could either protect the reinforcing steel or, in the alternative, protect the employee from falling onto the steel by requiring the employee to use fall protection devices. The existing rule required only that the employer guard vertically protruding reinforcing steel when employees are working above it.

Several comments were received on the proposed revision. The National Erectors Association (NEA) (Ex. 14–22) commented that they agreed with the proposed revision allowing the option of using a fall protection system in lieu of covering, shielding, or bending over the protruding reinforcing steel. The NEA further stated that the proposed rule would eliminate compliance problems at multi-employer work sites where one employer may be required to provide protection for employees of other employers.

Three other commenters (Exs. 14–40, 19, and 24) argued that OSHA should drop the fall protection alternative because it would provide less protection than the existing rule. In particular, the BCTD (Ex. 14–40), said that "* * * permitting fall protection as a substitute for protecting protruding reinforcing steel provides significantly less protection than the current standard does * * *. Moreover, permitting the use of fall protection as a substitute divides responsibility among the various subcontractors on the site whose employees may, at different times, be exposed to the protruding steel rods." BCTD concluded that, "* * * fall protection is an unsatisfactory substitute for actually guarding the steel." They recommended that fall protection be dropped as an alternative.

In addition, the United Brotherhood of Carpenters and Joiners of America (Carpenters) (Tr. I, 38) testified as follows:

> A recent BLS study (Ex. 24A) of falls from elevations showed that in construction, 89 percent of the workers surveyed were not using fall protection at the time of the accident. Of those workers, 32 percent said they were not high enough to need any, 43 percent said it was not practical to use in that type of work. Of those using fall protection, 26 percent fell from the side or area not protected by the guardrail. For nine percent of those using fall protection, the guardrail broke. Three percent of those workers fell over the guardrail, and another three percent fell under the guardrail. In 28 percent of these cases, the fall protection was not connected because the worker was moving around.

The Carpenters, in their post-hearing comment (Ex. 30), further stated that both fall protection and rod covering should be required.

The National Constructors Association (NCA) (Ex. 14–36) stated that the words "to work" should be stricken so that employees are prohibited above protruding reinforcing rods, unless protection is provided. NCA further states that there should be no difference between "working" and "walking" surfaces. OSHA notes that it considers employees who are walking in the area of vertically protruding reinforcing steel to be "working" and thus covered by the proposed rule. However, to avoid any misunderstanding, the revised rule excludes the words "to work" and applies the provision to workers who may become impaled as a result of falling onto or into protruding reinforcing steel.

Finally, Technical Safety Associates (TSA) (Ex. 14–34) commented:

This portion of the standard is not clear to many people. This again appears to refer only to working up in the air above rebar and that protruding rebars from the ground need not be covered or protected. Many accidents occur when employees are walking along ground level, trip, and are impaled on protruding rebar.

The comments received prompted OSHA to seek additional information in the hearing notice on the proposed rule to protect employees working above vertical protruding reinforcing steel. OSHA explained in the notice that the proposal required employers to protect the reinforcing steel or prevent the employee from falling. Through review of the comments, OSHA sought to determine whether fall protection provided less protection against the hazards of impalement than guarding the reinforcing steel.

In response to that notice, John Hanson (Tr. I, 88) testified at the hearing that fall protection is needed to prevent impalement when employees are working above adjacent working surfaces, irrespective of whether the reinforcing steel has been protected.

After careful consideration of the comments received, OSHA agrees that the use of fall protection systems should not be allowed as an alternative to the requirement to guard protruding reinforcing steel, because employee safety will not be adequately provided. The record (as evidenced by the BLS statistics on falls which were presented in testimony and discussed above) demonstrates that even when employees are provided fall protection, fall protection systems, for various reasons, do not always prevent or stop employees from falling. In come cases, employees fall over or under guardrails that should have provided the needed fall protection. In some other cases, employees were required to be in motion and had disengaged from the provided fall protection systems. In other words, fall protection systems are not 100 percent effective in preventing employees from falling and unless the employees are prevented from falling, the hazard of impalement on rebars is not controlled or eliminated. On the other hand, if rebar is guarded at all times (covered or bent over), the hazard of impalement is always controlled or eliminated. In fact, OSHA does not know of a single case where an employee was impaled after having fallen into rebar that had been guarded. Therefore, the proposed option of providing fall protection in lieu of guarding rebar is deleted in the final rule in order to afford the greater employee protection.

In addition, OSHA believes that comment of TSA has merit and that all employees should be protected from being impaled. OSHA's intent is to eliminate the hazard of impalement completely. OSHA did not intend that the use of the word "above" would be construed to mean that the entire body of an employee would have to be "above" the protruding steel. OSHA realizes that employees could be, in fact, often are, in a position where only part of their body is above the protruding steel, such as walking alongside of protruding rebar where as TSA points out, the employee could trip and then fall into the steel. Likewise, there are situations where the steel is protruding from a horizontal direction and employees could fall or trip into the steel and become impaled. To properly protect employees from the hazard of impalement, OSHA has revised the provision to state clearly that all protruding reinforcing steel is to be guarded whenever employees could fall into or onto the steel and thereby become impaled. In light of the above considerations, therefore, OSHA promulgates paragraph (b) as revised.

Paragraph (c) contains provisions related to post-tensioning operations. Paragraph (c)(1) requires the employer to prohibit employees (except those essential to the post-tensioning operations) from being in the area behind the jack during tensioning operations.

Paragraph (c)(2) requires the employer to erect signs and barriers to limit employee access to the post-tensioning area during tensioning operations.

Although there were no specific provisions proposed to address post-tensioning operations, OSHA observes that the existing standard (the referenced ANSI A10.9–1970 standard) prescribes requirements to protect employees from hazards associated with post-tensioning operations. Because OSHA felt that the hazards associated with post-tensioning were adequately addressed by other sections in the 1926 standards, it decided that instead of proposing additional requirements, it would raise an issue regarding this subject. In particular, in Issue #8 of the NPRM, OSHA asked questions regarding pre-stressing and post-tensioning operations. Specifically, OSHA asked what are the hazards associated with such operations and what standards are needed to protect employees performing such operations?

In response to the issue, OSHA received a wide variety of comments, many of which focused on hazards addressed elsewhere in Part 1926—the Construction Safety and Health Standards. For example, fall hazards which are regulated by Subparts E and M were cited; fire hazards which are regulated by Subparts C and F were cited; and the need to establish good work practices (training) which are regulated by Subpart C were cited. Some of the specific comments included the following.

Gilbane (Ex. 14–28) commented on the similarities of erecting pre-stressed concrete and compared it to steel erection, noting the fall hazards associated with the erection process. On post-tensioning, Gilbane noted that in addition to the hazard of falling, the employee could be struck by items falling from above. Gilbane also commented:

Also of concern is the practice of cutting the post-tension in strands. They are torched cut. This could cause a fire hazard to those below. As they are not supposed to be torched cut, but cut with a hydraulic cutter, this should not be a problem. The elements that are being cut cannot be allowed to fall unrestrained to the lower levels. Only trained personnel should perform these hazardous operations.

CAL/OSHA (Ex. 14–2) in commenting on the need for good workmanship in tensioning wires noted that a qualified person should have a good quality control inspection before the concrete is poured into the slab. Likewise, the AGCA (Ex. 14–31) commented, "Any hazards resulting from tensioned wire rope elements (pre or post) have as their root cause poor installation. As is the case with most components associated with concrete placement, proper inspection and good workmanship during installation will avoid mishaps related to tensioned wire rope."

Several commenters noted that employees should not work directly in line with the wire rope being tensioned, that employees should work from the side and that warning signs or audible warning should be used. For example, Bechtel (Ex. 14–35) commented, "No significant hazard exists. Good practice is to avoid working directly behind or in front of wires being tensioned to eliminate the potential for injury if a break of slip occurs. No regulation is required." The Philadelphia Electric Co. (Ex. 14–27) commented that personnel should not be permitted in the vicinity of the tendons during the tensioning process.

NIOSH (Ex. 14–39) commented, "The greatest risk of serious injury is associated with the sudden release of energy from the tensioned element. These elements, rods or wire rope, are oftentimes subject to loads of 200,000 psi. Should a rope or rod fail and strike

an employee, serious injury is likely to occur."

The BCTD (Ex. 14–40) commented, "The process of tensioning the wire rope elements is among the most dangerous of the concrete construction operation. It exposes the workforce to a number of hazards, the most serious of which is getting hit by snapped cables." The BCTD further commented that they believed it was necessary to set standards to protect workers from these hazards. They recommended barriers and signs during post-tensioning as required in the ANSI A10.9–1970 which was formerly incorporated by OSHA.

OSHA expert witness, Ingvar Schousboe (Ex. 19), testified that most pre-tensioning takes place in prefabrication plants. He recommended that warning signals such as flashing red lights and horns or klaxons signify that stressing is to commence so all nonessential persons could leave. He also said, "Nobody ever stands in the line of a strand," adding that, "I know of no case where a strand has been broken after the stressing was completed and the strand properly anchored." On post-tensioning he said, "Nobody should be permitted to be in line with the strand being stressed."

The Carpenters (Ex. 24), when testifying on OSHA's cost figures for the signs and barriers during pre- and post-tensioning operations, commented that these provisions are in the ANSI standards and accepted industry practice which indicated to them that they are a part of any good safety program and could not be considered burdensome. They also said that most of the industry will continue to provide protection from these hazards, OSHA regulation or not.

The NCA (Ex. 14–36) commented that this subject deserves separate and full attention because of the numerous hazards associated with such operations. They suggested that OSHA reserve a section in Subpart Q and seek public comments through an Advance Notice of Proposed Rulemaking. NCA did not elaborate on the "numerous hazards."

The WMACSA (Ex. 14–19) commented that pre-stressed concrete is generally fabricated off the job and post-tensioning is completed on the job. They also commented that the 1983 version of ANSI should be included as part of the OSHA standard. Finally, the AGC of Dallas (Ex. 14–8) commented, "No standards are necessary."

Based on a careful review of the comments and testimony, OSHA has determined that while most of the hazards associated with both pre-tensioned and post-tensioned concrete are adequately covered throughout Part 1926, there is a need for further regulation. In particular, the evidence and testimony demonstrate that during post-tensioning operations, it is critical that all non-essential employees be kept out of the tensioning area. Because construction sites are typically occupied by several trades at the same time, it is virtually impossible to tell each potentially affected employee exactly where the post-tensioning operations will be conducted so that they will stay clear of the area. Additionally, OSHA does not believe that it is feasible for the post-tensioning employer to station an employee at potential entrances to the post-tensioning areas to keep non-essential employees out of the area, yet OSHA is requiring that non-essential employees be prohibited from the area. OSHA believes, as supported by the comments, that the existing requirement located in section 9.5 of the ANSI A10.9–1970 standard to erect signs and barriers is an effective way to communicate with all workers at the site that the area is "off limits." The signs and barriers will limit employee access and therefore employees will not be behind the jack during tensioning operations.

Therefore, to provide a proper level of employee safety, OSHA is continuing the existing requirement that no employee (except those essential to the post-tensioning operations) be permitted to be behind the jack during tensioning operations and that signs and barriers be erected to limit employee access to the post-tensioning area. Based on these considerations, paragraphs (c)(1) and (c)(2) are promulgated.

Paragraph (d) of the final rule prohibits employees from riding concrete buckets. This paragraph was relocated from § 1926.703(a) of the proposal and is based on existing § 1926.700(d)(7)(ii), which prohibits riding concrete buckets for any purpose. The final rule is essentially the same as the proposed rule, except it has been reworded to clarify that the employer cannot permit employees to ride the buckets.

Two comments were received on the provision to prohibit the riding of concrete buckets. The NEA (Ex. 14–22) stated that employees should be able to ride properly equipped buckets to avoid enormous scaffold and ladder problems which could expose employees to potentially more danger than riding the bucket. However, the NEA did not provide any data to support this position. The BCTD (Ex. 14–40) commented, "Since the OSH Act places the responsibility for compliance with standards on employees, 29 U.S.C. 654, this paragraph should be amended to require that employees shall not be permitted to ride concrete buckets."

After careful consideration of the comments received, OSHA has decided to revise the proposed rule using language to reflect the concerns of the BCTD. Therefore, OSHA promulgates paragraph (d) as revised.

Paragraph (e) of the final rule contains two requirements concerning working under loads. The requirements pertain to working under concrete buckets.

Paragraph (e)(1) requires the employer to prohibit employees from working under concrete buckets while the bucket is being elevated or lowered into position. Paragraph (e)(2) requires that when concrete buckets are being routed overhead, the employer must, to the extent practical, route elevated concrete buckets so that no employee, or the fewest number of employees, are exposed to the hazards associated with falling concrete buckets.

The final rule is a revision of the proposed provision in § 1926.703(b), which was based on the existing provision in § 1926.700(d)(7)(ii). Like the existing provision, the proposed rule only afforded protection to workers of vibrating crews. Clearly, overhead concrete buckets pose the greatest hazard to vibrating crews. However, other workers on the site are faced with the same hazard, albeit less often, when concrete buckets pass over their heads. For example, on October 13, 1977, two carpenters were killed when a bucket containing wet concrete dropped and crushed the two workers. On September 29, 1980, a pile driver was killed when he was struck by a bucket filled with concrete. Observance of this provision of the final rule will protect all employees from the hazard of falling concrete buckets, not just the vibrating crew which is afforded protection under the existing requirements in § 1926.700(d)(7)(ii).

Because of the lack of protection to other workers, OSHA decided to request specifically, in Issue #7 of the NPRM, information on the need to expand the proposed provision to prohibit all employees from being under concrete buckets. OSHA explained that concrete buckets have fallen while transporting concrete from the concrete trucks or other source to its placement and crushed employees working below. Several comments were received on the proposed provision and in response to the specific questions asked in Issue #7. Several commenters (Exs. 14–29, 14–36, and 14–40) stated that employees should be kept out from under concrete buckets. The BCTD (Ex. 14–40) commented, "A falling concrete bucket

is a recognized hazard in the industry, against which all employees should be protected." Another commenter (Ex. 14–19) stated that it is not always possible to prevent vibrator crews from working under concrete buckets. Three commenters (Exs. 14–20, 14–21, and 14–35) stated that a requirement to keep all employees out from under concrete buckets would have an adverse impact on construction procedures. For example, Alabama Power (Ex. 14–20) commented, "In some cases, all [concrete] placement and possibly finishing personnel would be required to stop work and move." The commenter also stated that this would disrupt the placing and finishing operation of any concrete placement and would increase costs. Six commenters (Exs. 14–8, 14–16, 14–17, 14–28, 14–31, and 14–45) stated that it was not always practical to keep all employees out from under concrete buckets. For example, the NCCSHAC (Ex. 14–16) commented as follows:

> Proper workplace assignments should strive to assure that loads are not swung directly over working areas. The operator of the equipment must be continually aware of personnel working in the area and govern his operations accordingly. In some operations, however, such as the pouring of slabs, a concrete bucket is swung over the area where concrete is being placed and vibrated. While personnel should not be assigned to work directly under such areas, nevertheless, there may be times when it is unavoidable.

Three commenters (Exs. 14–2, 14–33, and 14–36) recommended that all employees should be kept from under concrete buckets. For example, the NCA (Ex. 14–36) commented, "Reasonable efforts should be taken by employers to keep all employees from under suspended loads, including concrete buckets."

The comments received prompted OSHA to seek additional comment in the hearing notice on whether or not it is practical to keep all employees from under concrete buckets.

Four comments were received in response to this issue. The four commenters (Exs. 14–47, 18, 19 and 21) stated that it would not be reasonable or practicable to keep everyone out from under concrete buckets. For example, Ceco (Ex. 14–47) stated that it would be difficult to remove everyone from the path of the load because this requirement would become very disruptive to the construction process. John Hanson (Ex. 19) stated his agreement with other comments to the effect that it is not reasonable or practical to keep everyone out from underneath concrete buckets. Hanson further stated that, "It would be my view that danger to employees in working underneath overhead loads, and in particular in working underneath concrete buckets, occurs as the load is first being lifted or as the load is brought to its final position." Hanson explained his view, saying that "The hazard comes mainly from sudden or unexpected movement of the load and also the risk of that load hitting some other element on the construction site." Hanson also recommended that § 1926.21(b) should contain a specific requirement for employers to inform and instruct employees of the need to be conscious of overhead loads and to avoid unnecessary exposure to overhead loads. Further, Hanson suggested that the provision in question be revised to require employees to be kept out from under a concrete bucket whenever it is less than 20 feet in height or closer laterally than 10 feet to any other element of the construction. Mr. Hanson acknowledged that the numbers represented his personal judgment, indicating that other persons may have different numbers.

Finally, Ingvar Schousboe (Ex. 19) stated, "It is not always practical to keep everyone out from under concrete buckets" and suggested, "Very careful planning of the bucket's path may help: try to avoid coming in above steel setters and finishers, ahead of and behind the delivery spot, respectively."

OSHA has determined, based on the record, that it is not possible to keep all employees out from under suspended concrete buckets at all times. However, OSHA believes that there are certain precautions that must be taken to eliminate or control the hazard when the greatest potential for exposure exists. The record indicates that the most critical times during the lifting cycle occur when the bucket is initially raised and when it is being lowered into position for unloading. Therefore, employees must be kept out from under concrete buckets while buckets are being elevated or lowered into position.

At other times, i.e., when the bucket is suspended over workers while in route to its placement destination, OSHA believes that employers must take other steps to eliminate or minimize employee exposure. OSHA has determined that total evacuation of the structure, while obviously an effective way to eliminate or minimize the hazard, is not always a practical alternative. However, OSHA has determined that other employer efforts to control the hazard are capable of being done and must be taken. Thus, OSHA is requiring that the employer, to the extent practical, select a routing path so that no employee, or the fewest number of employees, are exposed to the hazard of falling concrete buckets.

Additionally, OSHA observes that other requirements in the construction standards which pertain to rigging equipment must also be observed to afford the greatest level of safety to workers who are working beneath suspended loads. Therefore, OSHA promulgates paragraphs (e)(1) and (e)(2) as revised.

Paragraph (f) of the final rule contains requirements for personal protective equipment. Paragraph (f)(1) requires the employer to prohibit employees from applying a cement, sand, and water mixture through a pneumatic hose unless the employee is wearing protective head and face equipment. This paragraph was relocated from § 1926.703(c) of the proposal and is based on existing § 1926.700(d)(9). OSHA proposed that nozzlemen who are applying a cement, sand, and water mixture through a pneumatic hose shall be required to wear protective head and face equipment.

The final rule is essentially the same as the proposed requirement except the word "nozzlemen" was replaced with "employees." There was only one comment received on the proposed provision, and that was from the NCA (Ex. 14–36) who suggested that OSHA delete the words "be required to." OSHA observes that to remove these words as NCA suggests, would create language similar to the language that the BCTD objected when it was used in proposed § 1926.703(b) (relocated to § 1926.701(d)(1)) which prohibits employees from riding concrete buckets. The BCTD took objection to the proposed provision regarding concrete buckets because they felt the way the provision was written made it appear that OSHA was placing responsibility for safety and health with the worker, rather than the employer. Although it has been clearly established that the employer is responsible for compliance with the OSHA requirements, OSHA revised the provision for riding concrete buckets so that there would be no misunderstanding that it is the employer who must prohibit such tasks. Thus, to accept the NCA suggestion in this provision would be to restructure the provision so that it would appear that it was the responsibility of the employee to wear personal protective equipment. Therefore, OSHA rejects the suggestion of the NCA, and instead promulgates paragraph (f)(1) as revised by rewriting the provision in plain language to state that no employee shall be permitted to apply a cement, sand, and water mixture through a pneumatic hose unless the employee is wearing protecting head and face equipment.

Paragraph (f)(2) requires that the employer prohibit employees from placing and tying reinforcing steel more than six feet above any adjacent working surface unless the employee is protected by the use of a safety belt or equivalent fall protection in accordance with Subpart E of this part. This paragraph was located from § 1926.702(b) of the proposal, and is based on existing § 1926.700(b)(1) which requires that employees working more than six feet above any adjacent working surface, placing and tying reinforcing steel in walls, piers, columns, etc., be provided with a safety belt or equivalent device in accordance with Subpart E of this part. OSHA proposed to delete the words "in walls," "piers," "columns," "etc," and the phrase "in accordance with Subpart E of this part." In addition, the words "provided with" were replaced with "protected by the use of" and the word "device" was replaced with "protection."

No comments were received on exact revisions proposed except the deletion of the reference to Subpart E. The BCTD (Ex. 14–40) recommended that reference to Subpart E be retained in the rule to provide employers with guidance regarding what protective measures are considered equivalent to safety belts. Finding merit in this argument, OSHA has incorporated this comment. Other comments received including comments from the MCISC (Ex. 14–19) and the Associated General Contractors of America (AGC) (Ex. 14–31). Both the MSISC and the AGC commented that fall protection should begin at heights greater than 10 feet. The commenters stated that this height would bring the proposal into conformance with other existing fall protection standards. However, only § 1926.451(a)(4), which requires guardrails on scaffolds, contains such a 10-foot rule. All other fall protection requirements provide that employees be provided with fall protection equipment when they are six feet or more above lower levels, except for roofers performing built-up roofing work.

In connection with the proposed provision, OSHA requested, in Issue #5 of the NPRM, specific comment on what requirements are needed to protect employees while climbing erected reinforcing steel. OSHA explained that employees are often required to climb reinforcing steel during construction and their weight could cause the steel connections to break, thus exposing the employees to fall hazards. Through review of the comments on this issue, OSHA sought to determine whether additional requirements are necessary to protect workers who place and tie reinforcing steel in vertical structures. OSHA received 14 comments on this issue. Ten commenters (Exs. 14–2, 14–8, 14–16, 14–20, 14–28, 14–31, 14–33, 14–35, 14–40, and 14–45) stated that employees who climb erected reinforcing steel are adequately protected by the proposed rule. For example, the BCTD (Ex. 14–40) commented, "* * * safety belts or equivalent protection, as required by paragraph .702(b), will adequately protect employees who must climb the steel." Two commenters (Exs. 14–1 and 14–27) stated that recommendations on typical reinforcing wire size, number of turns, and frequency of ties could be made. Finally, two commenters (Exs. 14–28 and 14–29) stated that work platforms could be erected to support the workers.

After careful consideration of the comments received, OSHA decided that no additional requirements were needed in this Subpart to protect employees while they erect reinforcing steel. While it is true that OSHA could specify the number of turns and the frequency of ties to be made, and OSHA could require the erection of work platforms which in turn could enhance employee safety, OSHA observes that such requirements would require employers to expose other employees to the same hazard for a greater period of time to provide a safer work station for the employees placing and tying reinforcing steel. For this reason, OSHA has determined that paragraph (f)(2) will be promulgated as revised with no change to the provision as proposed, except to restructure it so the provision, as discussed above, clearly places the responsibility for safety with the employer rather than the employee. Further discussion of this topic can be found in the proposed fall protection rule § 1926.501(b)(5). (See 51 FR 42737.)

Issue #6 of the proposed rule was not directly related to any particular provision in the general requirements section. Rather, it was raised so that OSHA could gain specific comment on whether or not it should require employers to have engineers inspect concrete construction operations. OSHA explained in the NPRM that concrete construction operations are often inspected by engineers and local building officials to evaluate conformance with plans, specifications, and building codes. OSHA sought information to determine whether engineering inspections would improve worker safety. There were several comments in response to Issue #6. Seven commenters (Exs. 14–8, 14–10, 14–21, 14–31, 14–33, 14–36, and 14–45) stated that engineering inspections would not improve worker safety. For example, the National Constructors Association (NCA) (Ex. 14–36) stated that concrete employers are in the best position to affect job site conditions positively and immediately because of their direct involvement and observations. Also, Dun-Par (Ex. 14–10) stated that most engineers are experts at design and not experts at construction safety, suggesting that the concrete employer is more knowledgeable in construction safety matters. The other commenters voiced similar concerns.

Three commenters (Exs. 14–17, 14–40, and 14–42) stated that engineering inspections would improve worker safety. For example, C.K. Stope (Ex. 14–17) commented as follows:

> * * * enforcement of construction procedures should be shared by the designer, the constructor, and the owner of the completed project. Especially, for unique structures, the designer and the constructor understand the requirements for this specific type of construction and they are bound to provide a safe work place. The owner also would normally share in this responsibility.

After careful consideration of the comments on this issue, OSHA has determined that convincing record evidence does not exist that engineering inspections as stated in Issue #6 would improve worker safety. Therefore, no further action was taken with regard to Issue #6.

Section 1926.702 Requirements for equipment and tools.

This section of the final rule contains specific requirements to address the hazards associated with equipment and tools used in concrete and masonry construction. The format of the final rule is different from the proposed rule. In the proposed rule, OSHA had placed all concrete equipment requirements in § 1926.704, while masonry equipment requirements were placed in § 1926.707 along with other masonry requirements. The final rule relocates all requirements related to equipment and tools used in both concrete and masonry construction into the same section—§ 1926.702. As each provision is discussed, its paragraph location in the proposed standard will be noted to facilitate comparison between the proposed and final standards.

Paragraph (a)(1) of the final rule contains two requirements related to cement storage facilities. The provisions in paragraphs (a)(1)(i) and (a)(1)(ii) require that bulk storage bins, containers or silos be equipped with conical or tapered bottoms, and mechanical or pneumatic means to start the flow of material. The ir tent for these

provisions is to eliminate the need to place employees inside a storage facility to start the flow of materials, thereby exposing employees to suffocation or injury.

These requirements are identical to the provision in § 1926.704(a) of the proposed standard, and differs from the existing standard only in formatting (i.e., two paragraphs instead of one). The reason for the reformatting is to clarify the requirements by enabling employers to identify quickly and easily their obligations under the standard.

OSHA received only one comment on the proposed paragraph. The WMACSA (Ex. 14–29) commented that OSHA had based its existing standard on the ANSI A10.9–1970, but that OSHA has changed an "or" used in the ANSI standard (to separate the two equipment requirements) to an "and" in the existing standard. OSHA notes that a review of the ANSI A10.9–1970, the original source standard, did not reveal the change alleged by WMACSA. Therefore, since there was no substantive comment on this provision, OSHA promulgates paragraph (a)(1) as proposed.

Paragraph (a)(2) of the final rule prohibits employees from entering storage facilities unless the ejection system has been shut down, locked out, and tagged to indicate that it is unsafe to operate the ejection system. This is a revision of proposed § 1926.704(b) which only required the employer to shut down and lock out the ejection system. The proposed rule did not require a tag to be used in conjunction with the lockout procedure. As explained in the proposed rule, the existing standard did not specifically contain a requirement to shut down and lock out the storage facility, but it did require compliance with the ANSI A10.9–1970 which contained this requirement.

OSHA received several comments on this provision. One commenter, the WMACSA (Ex. 14–29), said that "Allowance should be made for access to repair the ejection system, with proper safeguards, when adjustments are needed." However, the WMACSA did not make any recommendations on what the proper safeguards should be. Another commenter, the NCA (Ex. 14–36), suggested that OSHA consider protecting employees who enter storage facilities from sinking into material present on the inside of the facility. The NCA also did not make any specific recommendations on the type of protection needed. OSHA notes, however, that Subpart H, § 1926.250(b)(2), contains a requirement that employees working on stored material in silos, hoppers, tanks, and similar storage areas shall be equipped with lifelines and safety belts meeting the requirements of Subpart E of Part 1926.

In addition to the above comments, OSHA received a comment from the National Institute for Occupational Safety and Health (NIOSH) (Ex. 14–39). NIOSH stated that OSHA should be consistent with its other lockout requirements, noting that OSHA requires tags to be used in conjunction with other proposed lockout procedures such as those set forth in § 1926.704(k) of the proposal, but yet had only required locking out of ejection systems. OSHA agrees with NIOSH that tags should have been included in the proposal in order to provide a proper level of protection to employees. Additionally, OSHA is specifying that the tags should indicate that the equipment is not to be operated. Therefore, OSHA promulgates paragraph (a)(2) as revised.

Paragraph (b) of the final rule contains two requirements relating to concrete mixers. Paragraphs (b)(1) and (b)(2) require that employers equip concrete mixers that have one cubic yard or larger loading skips with a mechanical device to clear the skip of materials, and that guardrails should be erected on each side of the skip. The intent of these requirements is to protect employees from the hazards associated with the manual clearing of materials from the skip, and to prevent employees from entering the area beneath the skip while the skip is elevated. These requirements are identical to the provisions of proposed § 1926.704 (c)(1) and (c)(2), which are not substantively different from the existing standard. The only difference is that the proposed paragraph was rewritten for clarity, eliminating some of the introductory text. The substantive portion of the provision has not been altered.

One comment was received on these provisions. The WMACSA (Ex. 14–29) said that the "skip" type of mixer is not normally used on building construction. However, WMACSA did not make any recommendation as to whether OSHA should make some change based on their comment. Therefore, OSHA promulgates paragraphs (b)(1) and (b)(2) as proposed.

Paragraph (c) of the final rule requires that employers equip manually-guided powered and rotating type concrete troweling machines with a control switch that will automatically shut off the power whenever the operator removes his or her hands from the equipment handles. The intent of this requirement is to prevent unattended powered concrete troweling machines from striking employees, or otherwise causing injury. This requirement is identical to the provision in § 1926.704(d) of the proposed standard, and is also identical to the existing standard. Since there were no comments received on this requirement, OSHA promulgates paragraph (c) as proposed.

Paragraph (d) of the final rule requires the employer to ensure that concrete buggy handles do not extend beyond the wheels on either side of the buggy. The intent of this requirement is to ensure that buggy handles do not contact other objects, causing employee injury. This requirement is identical to the provision in § 1926.704(e) of the proposal. The proposed standard differs from the existing standard in that OSHA proposed to delete a sentence from the existing rule which *recommended* that knuckle guards be installed on buggy handles. OSHA stated in the proposed rule that it believes knuckle guards are unnecessary because the hazard of employee contact with fixed objects would be eliminated if the buggy handles were not extended beyond the wheels on either side of the buggy.

There were three comments on this requirement. WMACSA, NIOSH, and BCTD (Exs. 14–29, 14–39, and 14–40) indicated that even if the buggy handles were positioned so that they did not extend beyond the wheels, an employee could still be injured. In particular, the WMACSA stated, "This becomes important on a power buggy where a blow could affect control."

These comments prompted OSHA to seek additional comment in the hearing notice on concrete buggy handles. In the notice, OSHA stated that one commenter recommended that knuckle guards be installed to prevent injury while the concrete buggy is turning. OSHA sought injury data to demonstrate that concrete buggies without knuckle guards present a hazard to employees. OSHA received no comment on the request for injury data. Additionally, Ingvar Schousboe (Ex. 14–19) said, "I have not seen a power buggy in use for many years. I have not seen or heard of knuckle injuries in connection with hand buggies." As no injury data was received to justify a requirement for knuckle guards, OSHA promulgates paragraph (d) as proposed.

Paragraph (e) of the final rule contains two requirements relating to concrete pumping systems. The first requirement in paragraph (e)(1) requires employers to provide pipe supports, which are designed for 100 percent overload, on concrete pumping systems using discharge pipes. The intent of this provision is to prevent the pipes from collapsing. The second requirement in paragraph (e)(2) requires employers to

use positive, fail-safe joint connectors on compressed air hoses. The intent of this provision is to prevent separation of compressed air hose sections. These two requirements are identical to proposed provisions § 1926.704 (f) and (g), and are the same as the existing requirements for concrete pumping systems in existing § 1926.701(d)(6).

There was one comment on paragraph (e), and that related to the provision in paragraph (e)(1). The Southern Co. Services (Ex. 14–15) commented that the requirement for 100 percent overload for supports seemed excessive except in some instances. The commenter did not, however, make any specific recommendation for preventing pipe collapse. OSHA believes the requirement to be reasonable and, lacking any substantive information or evidence to the contrary, promulgates paragraph (e) as proposed. Paragraph (e) is substantially identical to the existing standard and creates no new burdens.

Paragraph (f) of the final rule contains two requirements relating to concrete buckets. The first requirement in paragraph (f)(1) requires that positive safety latches or similar safety devices be installed on concrete buckets which are equipped with hydraulic or pneumatic gates to prevent premature or accidental dumping. The second requirement in paragraph (f)(2) requires that concrete buckets be designed to prevent concrete from hanging up on the top and the sides. These two requirements are identical to proposed provisions § 1926.704 (h) and (i), which are revisions of existing requirements. In the proposed rule, OSHA explained that the existing standard requires concrete buckets to be equipped with positive safety latches or similar safety devices to prevent the accumulation of aggregate and loose materials on the top and sides of the buckets. However, the requirement was not clearly stated in the existing standard. The purpose of the safety latches is to prevent premature or accidental dumping and not to prevent the accumulation of aggregate and loose material. To clarify the intent of the provision and to continue the requirement to prevent the accumulation of aggregate and loose material, OSHA proposed to revise the existing standard by creating two provisions, each addressing a different hazard associated with the concrete buckets.

There were no comments on the proposed provisions. However, NIOSH (Ex. 14–39) commented on the preamble discussion of why concrete buckets must be designed to prevent material from hanging up on the top and sides. NIOSH suggested that OSHA erred in stating in the preamble to the proposed rule that the reason buckets should be designed to prevent material from hanging up is to prevent loose material from falling onto workers. NIOSH suggested that the reason buckets should be so designed is to prevent an employee from having to enter the buckets to loosen materials that have become attached to the sides. OSHA agrees that the provision is also intended to prevent employees from having to enter the bucket. However, no change to the language is necessary to respond to NIOSH's concern and, therefore, OSHA promulgates paragraph (f) as proposed.

Paragraph (g) of the final rule requires employers to secure sections of tremies and similar concrete conveyances with wire rope (or equivalent material) in addition to the regular couplings or connections. This requirement is identical to proposed § 1926.704(j), which was based on the ANSI A10.9–1970 standard. The requirement is intended to prevent separation of sections of tremies and similar concrete conveyances. Although the ANSI standard does not specify materials other than wire rope for use in preventing the separation of the sections, OSHA, as discussed in the proposed rule, feels that other materials, such as steel chains, could be used to secure the sections. There were no comments received on the proposed paragraph. In light of the above, OSHA promulgates paragraph (g) as proposed.

Paragraph (h) of the final rule requires that when bull floats are used where they could contact energized electrical conductors, the bull float handles shall be constructed of nonconductive material or insulated with a nonconductive sheath whose electrical and mechanical characteristics provide the equivalent protection of a handle constructed of nonconductive material. It is the same provision as existing § 1926.700(d)(3). OSHA had proposed to delete the existing requirement for bull float handles. OSHA proposed this deletion because the requirement addresses electrical hazards while using bull floats, and electrical hazards are already addressed by § 1926.400 of the construction standards.

OSHA received only one comment on the proposed deletion of this requirement. The commenter, BCTD (Ex. 14–40), objected to OSHA's removal of this provision for several reasons. The BCTD recommended that OSHA retain the requirements for bull floats, stating the following:

> * * * we believe it is more effective to make the standards for a particular industry or operation as comprehensive as possible, rather than relying on the employer to be equally familiar with the standards for all construction. The operation with which the employer is here concerned is the placement of concrete—an operation seemingly unrelated to electrical work. It is more likely that workers will be protected if the provision requiring insulation of bull float handles is included in Subpart Q, with other standards with which the employer is concerned, than if the employer must refer to Subpart K.

OSHA acknowledges that Subpart K, the electrical standards, does not specifically mention bull float handles and that in the interest of employee protection OSHA should retain the more specific requirement as it appears in the existing standard. Therefore, OSHA promulgates paragraph (h) as it appears in the existing standard.

Paragraph (i) of the final rule contains two requirements relating to masonry saws. Paragraph (i)(1) requires that the saws be guarded with a semi-circular enclosure over the blade. Paragraph (i)(2) requires that a method of retaining fragments of shattered blades be incorporated into the enclosure. The intent of these requirements is to prevent contact between the employee and the blade or blade fragments. The requirement in paragraph (i)(1) is identical to proposed § 1926.707(b)(1)(i). However, the requirement in paragraph (i)(2) differs from the requirement in proposed § 1926.707(b)(1)(ii). In the proposed rule OSHA required that masonry saws be guarded with a semicircular enclosure over the blade and that a slotted horizontal hinged bar be mounted underneath the guard enclosure to retain fragments of shattered blades.

OSHA received several comments concerning the provisions required for masonry saws (Exs. 14–3, 14–14, 14–19, 14–24, and 14–26). These commenters said the proposed language would render most saws in violation of the regulations because masonry saws are no longer manufactured with the "slotted hinged bar mounted underneath the guard" as prescribed in the proposed standard. In addition to these comments, testimony was presented at the public hearing by George Miller, representing the Mason Contractors Association of America (Tr. I, 162 and 168), reaffirming the written comments and informing OSHA of the problematic ramifications of such a specification. OSHA finds merit with the commenters' position and has revised the requirement to allow any method which achieves the stated performance—to retain blade fragments.

OSHA believes the revised language responds to the concerns of the commenters and also allows the Agency to address the hazards appropriately. Therefore, OSHA promulgates paragraph (i)(1) as proposed, and paragraph (i)(2) as revised.

Paragraph (j) of the final rule requires the employer to lock out and tag equipment before allowing employees to perform any activities such as maintenance or repairs where unexpected, inadvertent operation could occur and cause injury. The intent of this requirement is to prevent employee injury due to operation of equipment by persons who may be unaware that an employee is maintaining or repairing the equipment.

In proposed § 1926.704(k), OSHA has essentially the same requirement, except that it was not clear that lockout/tagout was only being required where a potentially hazardous situation existed. And, the proposal made no distinction between a "repair" versus a "maintenance" activity. The final rule differs from the proposed rule in that it clarifies the deficiencies in the proposed language as outlined above.

There were three comments on the proposed requirement. The PCA (Ex. 14–9) commented that OSHA should change *cement* pumps to concrete pumps. OSHA notes that it based the proposed requirement on an ANSI provision which was directed specifically to cement pumps at bulk cement transfer facilities. In addition, OSHA relied on another ANSI provision which required other equipment such as compressors, mixers, conveyors, screens, etc., to be locked and tagged out prior to making repairs. By combining these two ANSI provisions, OSHA intended to require that any piece of equipment that could be inadvertently started up and possibly cause employee injury, be locked out and tagged before employees are permitted to perform maintenance or repair work. Since OSHA does not wish to cause any confusion, the word "cement" has been deleted in the final rule so the requirement will apply to any pump where the hazard of inadvertent operation is present. OSHA notes that this revision is not a substantive change because the proposed requirement applied to all equipment and mentioned cement pumps only as an example of equipment addressed by the provision.

The NCA (Ex. 14–36) commented that OSHA should strike the general requirement to lock out equipment, leaving only the requirement for tags. They further suggested substitute language to require equipment to be locked out in addition to the tag if the power supply has facilities for lockout. The NCA supported their comment by pointing out that some equipment, such as liquid fuel powered compressors, pumps and mixers are started by a pull rope. OSHA realizes from this comment that some confusion could result from the wording used in the proposed requirement. Specifically, employers may be under the false impression that it was OSHA's intent in the proposal that all equipment be locked out and tagged before work was performed on the equipment, regardless of the presence of a hazard, when in fact OSHA intended to impose the requirement only when a potential hazard existed. It is OSHA's belief that most equipment operated by a pull rope would not expose an employee to a hazard as a result of inadvertent operation and, if that were the situation, lockout/tagout measures would not be required. However, such equipment may need to be shut down prior to making repairs or performing maintenance. Because of the apparent confusion, OSHA has revised this provision by rewording it in the final rule to reflect more clearly the intent of the provision and the action to be taken when the hazard of inadvertent activation is present.

A final comment received from NIOSH (Ex. 14–39) questioned whether workers entering mixers to chip out dried concrete would be performing a "repair," implying that OSHA may have overlooked this kind of "maintenance" activity when restricting the lockout/tagout measures to equipment being "repaired." It was, and is, OSHA's intent to protect employees who enter mixers (or any other equipment) for any reason from the inadvertent activation of equipment. To further clarify OSHA's intent, OSHA has revised the proposed requirement to include all activities, including maintenance and repair. Additionally, OSHA is specifying what information should be included on the tag to eliminate any misunderstanding. Upon consideration of all the comments, OSHA promulgates paragraph (j) as revised.

Section 1926.703 Requirements for cast-in-place concrete.

Section 1926.703 presents the requirements for cast-in-place concrete. This section addresses formwork in general, shoring and reshoring, vertical slip forms, reinforcing steel, and removal of formwork. The requirements of this section were relocated from proposed § 1926.705 (Formwork) and from proposed paragraph (c) of § 1926.702 (Reinforcing Steel) to promote a more logically organized standard.

Paragraph (a) of the final rule contains the general requirements applicable to all formwork. The intent of these requirements is to prevent accidents such as the one that occurred on September 29, 1978, in which one employee was killed. In that accident, an employee was removing the cables suspended from a crane which temporarily held a section of concrete formwork in place. The formwork fell on the employee after the cables were removed. The formwork was not properly braced to prevent collapse (Ex. 8). Observance of the existing requirements in § 1926.701(a)(1) could have prevented this accident. Likewise, observance of the final rule requirements in this paragraph will prevent these types of accidents.

Paragraph (a)(1) requires formwork (which has been defined to mean the total system of support including forms, shores, reshores, hardware and braces) to be designed, fabricated, erected, supported, braced, and maintained so that it is capable of supporting without failure all vertical and lateral loads that may reasonably be anticipated to be applied to the formwork. This provision was relocated from § 1926.705(a)(1) of the proposal which was based on the existing provision in § 1926.701(a)(1). OSHA observes that the ANSI A10.9–1983 standard contains an essentially similar provision in section 7.1.1. OSHA also observes that the ANSI A10.9–1983 standard contains a number of specific provisions designed to guide employers on how to meet this general, performance requirement. In particular, formwork safety factors are prescribed for various types of shoring systems. In fact, OSHA has indicated in the final rule that formwork which has been designed, fabricated, erected, supported, braced and maintained in conformance with the ANSI requirements in sections 6 and 7 for Formwork and Shoring shall be deemed to meet the requirements of this paragraph. However, the ANSI standard does not provide all the information necessary to meet completely the requirements of § 1926.703(a)(1); i.e., the ANSI standard does not specify every detail of formwork design, fabrication, erection, support, bracing, and maintenance. Therefore, the employer is still responsible for the design, fabrication, erection, support, bracing and maintenance of formwork to ensure that it meets the requirements of § 1926.703(a)(1). OSHA believes the ANSI standard will be of particular assistance in guiding smaller employers who may not engage the services of formwork designers or engineers.

The existing rule, similar to the final rule, requires formwork *and shoring* to be "designed, erected, supported, braced, and maintained so that it will *safely* support all vertical and lateral loads that may be imposed *upon it during placement of concrete.*" OSHA proposed to revise the existing requirement by deleting the words "and shoring" and "safely" and by deleting the phrase "upon it during place of concrete" [emphasized above]. OSHA proposed to delete the words "and shoring" because it had proposed to define formwork as inclusive of "shoring." OSHA proposed to delete the word "safely" because it is a term that cannot be defined with sufficient clarity to be of benefit to employers in complying with the provisions of this paragraph, nor does the word "safely" clarify the rule to a measurable degree greater than the language used in the final rule. Finally, OSHA proposed to delete the phrase "upon it during placement of concrete" because OSHA's intent is that formwork support anticipated loads at all times, not just during the placement of concrete.

OSHA received no comment on the specific revisions it proposed. However, comments were received to suggest that further revision was necessary. Three commenters (Exs. 14–9, 14–36, and 18) suggested that the phrase "that may be imposed" in the proposed standard should be replaced with a phrase such as "normally expected loads," "intended loads" or "normal loads" to indicate clearly the loads for which the formwork must be designed to support. OSHA agrees that the proposed language may be misinterpreted as requiring employers to design, fabricate, erect, support, brace and maintain formwork to support loads *beyond* those which the employer can reasonably anticipate will be applied to the formwork. Therefore, OSHA has revised the provision by substituting the language "may reasonably be anticipated" to describe the loads which the formwork must support.

Other comments were received concerning formwork safety factors and design responsibilities. The WMACSA (Ex. 14–29) commented that OSHA should include the minimum factors of design that are covered in ANSI A10.9–1983 (Ex. 11).

The Scaffolding, Shoring, and Forming Institute (SSFI) (Ex. 14–44) also commented on the need to include formwork safety factors. In addition, a representative from the SSFI testified (Ex. 21 and Tr. I, 173–174) that he felt very strongly that specific safety factors must be included within the body of the standards, stressing that these safety factors are needed to provide additional protection for unknown loads that may be imposed. He also noted that safety factors have been part of the ANSI standards to which OSHA referred but were not included in the proposed standard. When asked if he were aware of any circumstances where safety factors would have prevented worker injury had they been adhered to, the SSFI representative replied, "Well it's my feeling that the safety factors are presently adhered to. If the standard doesn't have a safety factor, then I would be afraid that the contractor is going to start cutting into the safety factors and designing to a 1 to 1 safety factor, and then we're going to see a rash of accidents." (*Id.*)

On the other hand, OSHA's expert witness, John Hanson, (Ex. 18) stated the following:

> I believe that there is a strong tendency in construction, unfortunately, to not pay sufficient attention to shoring. An approach that is often taken, and accepted, is to use a larger-than-customary factor of safety in design of the formwork, and pay less attention to details. Experience shows, however, that the details are essential to safety. In the case in which I was involved, compliance with (a)(1) would have prevented the failure. In my view, bracing is the most essential requirement.

OSHA has not included specific requirements for formwork safety factors in the final rule. However, as stated above, the ANSI A10.9–1983 standard does prescribe formwork safety factors, among other recommendations, which the employer may use as a guide in meeting the provisions of this paragraph. OSHA notes that it did not propose any safety factors in the NPRM, although safety factors were required in the existing standard through reference to the 1970 ANSI A10.9 standard. The removal of requirements for safety factors in the NPRM prompted little information or evidence in the form of written comments or testimony. In fact, the record shows that when formwork safety factors were discussed, the result was disagreement over what the proper factors of safety should be (Tr. I, 192).

Additionally, OSHA believes the performance language of the final rule provides for the proper level of employee protection. OSHA observes, once again, that this paragraph requires that formwork be capable of supporting *without failure* all vertical and lateral loads that may reasonably be anticipated to be applied to the formwork. OSHA believes the language of the final rule states clearly the employer's obligation while allowing the employer to determine how to accomplish the stated performance. If OSHA were to specify safety factors for each type of shoring, employers may falsely believe that they have met their obligations in so far as compliance with the general requirements for formwork by simply adhering to the specified safety factors. Employers must decide whether or not to use the safety factors prescribed by ANSI or the SSFI, or to vary from those factors as they believe necessary so long as formwork can meet the regulatory intent—to support without failure. OSHA interprets "without failure" to mean the breakage and separation of any component part of the formwork system or load refusal, which is the point where the ultimate strength of a component is exceeded. This is the point where structural members lose their ability to carry loads. Therefore, OSHA believes the revised language properly states the expected level of performance for the total formwork system without being overly specific.

Finally, BCTD (Ex. 14–40) suggested that OSHA require formwork to be designed by the structural engineer and included in the original construction specifications. The BCTD explained that such a requirement coupled with a requirement for the engineer to determine what testing is appropriate to determine when formwork may be stripped will address both structural integrity and worker safety, since both concerns will be integrated into the underlying design.

OSHA has not incorporated the BCTD's suggestion to require that all formwork be designed by a structural engineer. This decision is based on OSHA's determination that the requirement of the final rule very clearly states the performance to be achieved by the employer with regard to formwork and, as stated above, that the employer must decide how best to comply with the stated performance. Additionally, there was no evidence submitted to the record to demonstrate a danger to employee safety if employers were not required to have all formwork designed by a structural engineer. Also, at the public hearing there was testimony regarding who should be assigned responsibility for the formwork. A representative from Dun-Par (Tr. II, 8), in putting forth his position that the formwork designer or contractor should have that responsibility rather than an engineer, entered two sets of formwork plans into the record (Ex. 23A and 23B) on which an engineer had written "We have no comments on the drawings and calculations in this

submittal." Dun-Par's representative further stated that the specifications place responsibility for formwork design on the contractor, a practice with which he agrees (Tr. II, 9). Finally, the Dun-Par representative said "The engineer doesn't want to be involved in this, and you can't force him. They are not the experts in the business [of formwork design]."

Furthermore, OSHA notes that the Occupational Safety and Health Act, the primary responsibility for employee safety rests solely with the employer as it is the employer who has control over the worksite and the authority to take corrective action when necessary. In the case of formwork design, employers may determine that the only way they can achieve compliance with this particular requirement is to have a structural engineer design the formwork. In other instances, however, the employer may determine that the formwork can be designed by others who are qualified in formwork design, but who are not structural engineers. OSHA believes there may be situations where the job is so small and so routine that the employer has the knowledge and skills necessary to meet the intent of this requirement without the aid of others.

After careful consideration of all of the comments and testimony received, OSHA has determined that the rule, as revised, provides proper protection for employees while allowing employers flexibility in determining the best way to provide this protection. Therefore, OSHA promulgates paragraphs (a)(1) as revised.

Paragraph (a)(2) requires that drawings or plans, including all revisions, for the jack layout, formwork (including shoring equipment), working decks, and scaffolds be available at the jobsite. This paragraph has been relocated from proposed § 1926.705(a)(2). It is essentially the same requirement as the proposed rule and the existing rule in § 1926.701(a)(2), except the words "including all revisions" has been added. OSHA observes that a similar provision is prescribed in Section 7.4.9 of ANSI A10.9–1983.

OSHA received two written comments, in addition to testimony at the hearing, on this provision. The Technical Safety Associates (TSA) (Ex. 14–34) and SSFI (Ex. 21 and Tr. I, 176) supported the proposed rule. The SSFI testified as follows:

> The Institute strongly endorses the provisions of 1926.705 that require drawings or plans for the jack layout, formwork, shoring, working decks and scaffolding to be available at the job site. Without the drawings or plans immediately accessible at the job site, questions regarding the design and integrity of the forms or shoring layout cannot be properly addressed.

WMACSA (Ex. 14–19) commented that the drawings or plans also should reflect all approved changes. OSHA agrees that it is necessary to have complete drawings or plans and that includes all revisions made to the original drawings or plans. Therefore, OSHA has added the words "including all revisions" to the provision. Additionally, because OSHA is now defining formwork as a total system, including forms, shores, reshores, braces and hardware, it is not necessary to include the term "shoring" which appears in both the existing and proposed provision. However, in order to be consistent with the other provisions in this section, OSHA has added the words "includes shoring equipment" to avoid any misunderstanding. Therefore, OSHA promulgates paragraph (a)(2) as revised.

Whereas paragraph (a) applies to all formwork, paragraph (b) of the final rule contains requirements that apply only to shoring and reshoring operations. Paragraph (b)(1) requires that all shoring equipment (including equipment used in reshoring operations) be inspected prior to erection to determine that the equipment meets the requirements specified in the formwork drawings. Paragraph (b)(2) prohibits the use of shoring equipment found to be damaged such that its strength is reduced to less than that required by § 1926.703(a)(1).

These provisions were relocated from §§ 1926.705(c)(2)(i) and 1926.705(c)(2)(ii) of the proposed rule, which were based on an existing provision in § 1926.700(e)(1)(iii). OSHA observes that the ANSI A10.9–1983 standard contains essentially similar provisions in Sections 6.3.1 and 6.3.2.

OSHA proposed to revise the existing rule by replacing the words "shoring layout" with "formwork drawings" for clarity, and by setting forth the two provisions separately.

OSHA did not receive any comment on the changes proposed. However, it did receive one comment questioning the meaning of "damaged shoring equipment" as used in paragraph (b)(2). The Portland Cement Association (PCA) (Ex. 14–9) stated that the word "damaged" was not sufficiently descriptive. Although they did not make any recommendations on how OSHA might describe "damaged" so that it would be clearly understood by all, they did pose two hypothetical situations to illustrate their concern. Specifically, PCA questioned whether a notch in a timber post or a small dent in a pipe shore would be considered damaged sufficient to reject its use as shoring. OSHA believes that the employer (or his designated competent person who makes inspections of equipment as required in § 1926.20(b)(2)) should determine whether or not, for example, a notch in a timber post constituted damage to such an extent that the post could not provide the support needed for its role in meeting the requirements of § 1926.703(a)(1). OSHA observes that final rule § 1926.703(a)(1) requires that formwork, now defined to include shoring equipment, be designed, fabricated, erected, supported, braced, and maintained to support all vertical and lateral loads that may reasonably be anticipated to be applied to the formwork. Thus, it is OSHA's intent that if the employer cannot ensure that the shoring equipment, which is part of the total formwork system, will provide the support necessary for its role in the overall formwork system because it has a notch in it, then the equipment cannot be used for shoring. OSHA has included language in the final rule to clarify this point. OSHA believes that with the revised language, employers will understand the requirement in (b)(2) and thus be able to determine whether or not shoring has been damaged to such an extent that its use for shoring is questionable.

Additionally, paragraph (b)(1) has been revised to indicate that shoring equipment includes equipment used in reshoring operations. This provision was made simply to serve as a reminder that equipment used in reshoring operations are also subject to the requirements of this paragraph. Therefore, OSHA promulgates paragraphs (b)(1) and (b)(2) as revised.

Paragraph (b)(3) of the final rule requires that erected shoring equipment be inspected immediately prior to, during, and immediately after the placement of concrete.

The final rule is identical to the proposed rule in § 1926.705(c)(3)(i) and the existing rule in § 1926.700(e)(1)(iv). OSHA observes that the final rule is also consistent with Section 6.3.3. of the ANSI A10.9–1983 standard.

Only one comment was received on this provision. The SSFI stated (Tr. I, 177) that "With respect to 1926.705(c)(3), it is the Institute's interpretation that those provisions require the contractor to inspect shoring equipment * * * to assure that the shoring complies with the shoring layout." OSHA observes that in the NPRM it was stated that the purpose of this provision is to determine if any shoring equipment has been damaged or weakened after it had been

erected and that § 1926.703(b)(1) requires inspection to determine that the shoring is as specified in the formwork drawings. Therefore, there being no substantive comment made on this provision, OSHA promulgates paragraph (b)(3) as proposed.

Paragraph (b)(4) of the final rule requires that erected shoring equipment (again, shoring equipment includes equipment used for reshoring) found to be damaged or weakened, such that its strength is reduced to less than required by § 1926.703(a)(1), be immediately reinforced.

This paragraph is essentially the same as proposed § 1926.705(c)(3)(ii) and existing § 1926.700(e)(1)(iv) except it is more clearly written. OSHA observes that Section 6.3.6 of the ANSI A10.9–1983 standard contains an essentially similar provision.

The final rule differs from the proposed rule in that the words "or reshored" used in the proposed and existing rules as an alternate to the word "reinforced," are not carried forward to the final rule and the meaning of the terms "damaged or weakened" has been clarified.

The elimination of the words "or reshored" was made in response to the Ceco (Ex. 14–45) comment that the word "reshored" was misleading. Ceco felt that the requirement to reshore damaged equipment might be confused with the reshoring operation performed after the removal of shores and forms. Ceco also said the concept of immediate reinforcement would be adequate to communicate the correct response. OSHA agrees with Ceco that the use of the word "reshored" could cause confusion, especially since OSHA has noted that equipment used for reshoring is also subject to this requirement. Therefore, OSHA has removed the term "reshored" from the final rule.

Another commenter, SSFI (Ex. 14–44) said that OSHA needed to modify the language of the proposed provision "to insure the degree of appropriate reinforcement." Specifically, the SSFI suggested that OSHA revise the language to read, " * * * reinforced, reshored, or replaced to carry its maximum intended loads that may be imposed."

Again, OSHA reminds employers that the general requirement for formwork in § 1926.703(a)(1) must be met and the requirement in this provision, which is specific to shoring, is only part of the total effort that an employer must put forth to achieve compliance with the requirement for formwork to be " * * * capable of support without failure all * * * loads * * * applied to the formwork." In order to address the concerns of the SSFI and the concern raised by the PCA and discussed in § 1926.703(b)(2) regarding the meaning of "damaged," OSHA has included language to clarify the meaning of damaged or weakened shoring equipment. OSHA believes this makes it clear that when the employer determines that it is necessary to reinforce erected shoring, it is for the purpose of insuring that the strength of the shoring meets the requirements of § 1926.703(a)(1). Therefore, OSHA promulgates paragraph (b)(4) as revised.

Paragraph (b)(5) of the final rule requires that sills for shoring be sound, rigid, and capable of carrying the maximum intended load. This provision is identical to proposed § 1926.705(c)(1) and existing § 1926.700(e)(1)(ii). OSHA observes that the ANSI A10.9–1983 standard contains a similar provision in Section 6.2.6. OSHA received no comments on the proposed rule, indicating to OSHA that commenters, like OSHA, find merit with the existing rule. OSHA, therefore, promulgates paragraph (b)(5) as proposed.

Paragraph (b)(6) of the final rule requires that all base plates, shore heads, extension devices and adjustment screws be in firm contact with the foundation and the form. This paragraph is identical to proposed § 1926.705(c)(4). The proposed paragraph was a combination of existing rules for tubular welded frame shoring in § 1926.700(e)(v), tube and coupler shoring in § 1926.701(c)(4), and single post shores in § 1926.701(d)(2)—all of which contain essentially the same requirement. OSHA proposed to combine the existing rules into one rule which then would be applicable to all types of shoring. However, two changes to the resulting rule were proposed. First, OSHA proposed to replace the word "or" in the existing standard with the word "and" which clarifies OSHA's regulatory intent—that the top of the shore is in firm contact with the form material and that the bottom of the shore is in firm contact at the foundation (formerly referred to as the footing sill) of the shore, rather than the presently implied intent that firm contact need be made only at one or the other end of the shore. And, secondly, OSHA proposed to replace the words "footing sill" with "foundation" to include other types of shoring supports.

OSHA received no comments on the proposed editorial revisions, but it did receive two written comments and oral testimony at the hearing on the topic of securing shores to both the form and foundation. The PCA (Ex. 14–9) recommended that the proposed rule be revised to read as follows: "The ends (top or bottom) of the completed shore shall be in firm contact with either the foundation or the form." The PCA, however, did not provide a basis or reason for recommending this method of shoring erection. OSHA observes that this recommendation would provide firm contact only at one end of the shore, and OSHA believes that both shore ends must be in firm contact with other surfaces to prevent the shores from falling over or otherwise losing their ability to provide support during concrete placement.

The BCTD (Ex. 14–40) recommended that shoring equipment, in order to provide adequate protection, should be "snugged up" or secured to the foundation and form, not just in "firm contact." Like the PCA, BCTD failed to state specifically the reason for their recommendation. OSHA, therefore, decided to seek additional comment by raising an issue in the hearing notice to elicit information to determine whether it was necessary to secure shoring to the foundation and form.

At the hearing, John Hanson, OSHA's expert witness, (Tr. I, p. 91 and Ex. 18) testified as follows:

> In my view, the question of whether or not it is necessary to secure the shoring depends on the type of shoring. Some deformation or movement of the formwork should be expected during the casting operation because of unbalanced loading or perhaps because of some temporary construction load. If the shoring is such that it could become loose, and hence be displaced laterally as a result of the operation, it certainly should be secured. However, if the shoring is such that it is impossible for it to be displaced laterally or to be rendered ineffective, then securing the shoring is unnecessary and I would add a statement to that section to that effect.

Another OSHA expert witness, Ingvar Schouseboe, in his prepared statement (Ex. 19), commented that the proposed requirement is reasonable because the mentioned elements cannot transfer loads in bearing without such contact. He also stated that "If the loads just mentioned can be counted on always to induce compression in bearing and shores, anchoring to forms and foundations are theoretically unnecessary." At the hearing, Mr. Schouseboe also gave testimony on this matter, (Tr. I, p. 138) stating the following:

> * * * if the concrete that comes in weighs 15 times as much per square foot as the form does, it will indeed lift. But, if it weighs only five times that the form does, it will never lift it * * *. So it depends on * * * whether we are talking about a 4-inch slab or a 12-inch slab * * *.

The SSFI (Tr. I, 176) agreed with OSHA that shoring equipment should be in *firm* contact with the foundation and the form. SSFI testified as follows:

> The Institute agrees that * * * all base plates, shore heads, extension devices, and adjustment screws shall be in firm contact with the foundation and the form. In not every case, however, should base plates and heads be *secured* to the foundation and form unless special engineering or circumstances warrant such action.

Dun-Par (Tr. II, 8) testified, "Under certain forming conditions you can have a problem with that, and it should be designed and accounted for under those conditions. To have a blanket statement that all formwork should have it [securing of the shoring members to the form and foundation] is way beyond reason."

Later, upon cross examination, the Dun-Par representative (Tr. II, 25) said he agreed with the proposal language, but that he disagreed with the language [discussed in the hearing notice] suggesting that "everything had to be attached."

A review of all the comments and testimony received indicated that there are circumstances under which it may be necessary to "secure" shores at the top and bottom in order to insure that the formwork system does not fail. However, since these circumstances vary, depending on several factors, it would not be possible for OSHA to identify each situation where securing of the shoring would be necessary. Nonetheless, OSHA believes it has adequately addressed the concerns of the commenters because the general requirement of this section states that formwork (which, as stated before, includes shoring) must be able to support "without failure" all reasonably anticipated vertical and lateral loads. Through this provision, the Agency feels that it has adequately addressed the employer's obligation with regard to formwork. Simply meeting the provision of this paragraph for "firm contact" does not release an employer from the obligation to meet the general requirements for formwork. Thus, when an employer encounters a shoring system that requires "securing" rather than "firm contact," the employer must secure the formwork, as necessary, so that firm contact is maintained, providing the proper level of employee protection, or the employer has not met its obligations under § 1926.703(a)(1). Therefore, OSHA promulgates paragraph (b)(6) as proposed.

Paragraph (b)(7) of the final rule prohibits eccentric loads on shore heads and similar members unless these members have been designed for such loading. This paragraph was relocated from § 1926.705(c)(6) of the proposal where OSHA proposed to continue the existing rule as referenced in the ANSI A10.9–1970 standard (Ex. 9). OSHA observes that section 6 of the ANSI A10.9–1983 standard also contains similar provisions for shoring. The final rule is essentially the same as the proposed rule except that an editorial revision—replacing the word "they" with the words "these members" has been made.

OSHA received a comment on this provision from the Patent Scaffolding Company (Ex. 14–41), a member of the SSFI. Patent commented that the proposed provision had serious deficiencies and referred OSHA to the SSFI comment for specific details. The SSFI (Ex. 14–44) commented that eccentric loads should be prohibited on single post shores because they are relatively unstable.

OSHA's expert witness, John Hanson, in his prepared statement (Ex. 18) commented, "In a technical sense, there is always some eccentricity in the loading applied to a shore head, if for no other reason than the friction between parts used to introduced the load into the shore head. The intent of the provision is clear, that it is important to avoid significant eccentricity in introducing loads onto a shore head, but to fully satisfy the requirement as now written would be virtually impossible * * *."

OSHA agrees with its expert witness that, in the strictest technical sense, it is impossible to avoid all eccentric loading when loads are introduced onto a shore head. The very act of loading will itself produce eccentric loading. Such eccentric loads are inherent and, normally, incidental to the eventual total load to be placed on a shoring system. As Mr. Hanson testified, the concern is with "significant eccentricity;" that is, eccentric loading which is so large that it is no longer incidental when compared to the designed and actual capacity of the shoring system. Such loading can result when too large an amount of concrete is placed in one area of the formwork without proper distribution. Or, it can result when a load of concrete is placed too rapidly causing an additional shock loading to be applied. Whatever the cause of this eccentric loading, the term "significant" is a relative term and is too ambiguous to be incorporated into the language of the final rule. Instead, OSHA believes that, absent appropriate design, all eccentric loading has the potential of being "significant." It is for these reasons that OSHA, like ANSI, places a prohibition on eccentric loads on shoreheads unless they have been designed for such loading. OSHA believes the requirements of this provision, as proposed, adequately address worker protection, are readily understood, and that no revision is necessary. Employers are once again reminded that the requirements of this provision must be met in conjunction with the general requirements of § 1926.703(a)(1) that formwork must be capable for supporting "without failure * * *." Therefore, OSHA promulgates paragraph (b)(7) as revised.

Paragraph (b)(8) of the final rule requires that whenever single post shores are used one on top of another (tiered), the employer shall comply with certain specific requirements in addition to the general requirements for formwork. These requirements include (i) that the employer shall have a qualified designer prepare the design of the shoring and shall have an engineer, qualified in structural design, inspect the erected shoring system; (ii) that the shore be vertically aligned; (iii) that the shores be spliced to prevent misalignment; and (iv) that the shores be adequately braced in two mutually perpendicular directions at the splice level and that each shore (tier) also be diagonally braced in the same two directions.

The final rule is considerably different than the proposed rule located at § 1926.705(c)(5). The proposed rule, like the existing rule, only required that the layout be designed and inspected by a structural engineer if single post shores were to be used in more than one tier. In the proposed rule, OSHA stated that the intent of this provision is to prevent the collapse of formwork due to improper design and erection of single post shores in more than one tier. OSHA also noted that the Advisory Committee on Construction Safety and Health (ACCSH) and recommended that OSHA prohibit the use of single post shores in more than one tier (Ex. 2, p. 175). Finally OSHA stated that it had reviewed accident investigation records involving the failure of double tiered single post shoring systems and found that the employer failed to comply with the existing regulations; thereby leading OSHA to believe that single post shores could be used in more than one tier if they were properly designed and inspected as required by the existing regulations.

OSHA received a number of comments in response to this provision. The WMACSA (Ex. 14–29) recommended that the term "structural engineer" be changed to "registered engineer." The NCA (Ex. 14–41)

recommended that "structural engineer" be changed to "qualified engineer." Additionally, several comments were received recommending that OSHA prohibit the use of tiered single post shores. The BCTD (Ex. 14–40) commented, "With regard to proposed subparagraph .705(c)(5), we concur with the ACCSH recommendation that single-post shoring be prohibited for use on more than one tier."

Mr. Charles W. Borden (Ex. 14–1), the former Corporate Manager of Safety for Ceco Corporation, stated, "It is recommended that the use of single post shores in more than one tier be prohibited * * *." Mr. Borden supported his statement saying that the use of single post shores in more than one tier is an inherently unstable shoring system for formwork. He further stated that regardless of the requirement to use a structural engineer to design and inspect this system, it is highly sensitive to any design error or construction error, and that lateral forces on the system or buckling of any shore can cause complete failure of the entire shoring system. Mr. Borden also said that this system has caused the most failures in the past 30 years. In conclusion, Mr. Borden said that if OSHA approves the use of single post shoring systems, he recommends a full floor be erected between tiers of this system that has the stability equal to that of the supports on which the first tier of shores is resting, and that the design and inspection of the system be done by a structural engineer as well as a qualified formwork designer.

The SSFI (Ex. 14–44) recommended, "* * * the entire requirement of this section be deleted and be replaced with a statement prohibiting the use of post shores in more than one tier." They further stated that they knew of no manufacturer represented in the SSFI that permits use [of single post shores] over one tier and, therefore, do not test equipment for such conditions. They also said that the complexities of plumbness, bracing, and adjustment of each post shore in each successive tier increase the risk of producing an unstable structure.

These comments prompted OSHA to seek additional information on this topic in the hearing notice. OSHA wanted to know whether or not a properly designed and erected tiered single post shoring system can safely transfer loads to lower levels.

In response to the hearing notice, OSHA received written comments and oral testimony, including the following.

The Construction Safety Association of Ontario (CSAO) (Ex. 14–46) stated the following:

> Our experience with single post shoring systems in general and tiered systems in particular when they were more extensively used, was that they were extremely sensitive to errors and omissions in construction as well as errors in design. This is in contrast with more modern techniques such as shoring frames which are much less sensitive to construction errors especially.

Ceco Industries, Inc. (Ex. 14–47) commented as follows:

> Yes, it is possible to safely design and construct such systems but they require design knowledge, construction and inspection care far in excess of what is required for other supporting systems. Systems such as these have been involved in several failures. Safer alternative methods are easily constructed. It is recommended that this type of system be prohibited.

John Hanson (Ex. 18), OSHA's expert witness, in his prepared testimony commented as follows:

> Single-post shores are certainly capable of safely transferring loads to lower levels, where those levels are the floors in a building. This is a very common method of construction. However, single-post shores may not be capable of safely transferring loads to lower levels if those levels are temporary platforms in the construction, which by themselves have no resistance to lateral loading. Indeed, it is difficult for me to conceive of such a system being used. Thus, it would seem that this section could be deleted.

Mr. Hanson also questioned if there was a difference in the structural engineer referred to in this provision and the engineer referred to in other sections, stating his preference that the requirement call for a "registered engineer" if that was the intent, otherwise just use "engineer." When questioned at the hearing on single-post shores, Mr. Hanson responded, "Single-post shores, themselves, I think, are capable of transferring a certain load from a point above to a point below if that point above or for that matter the point below are both properly braced laterally; i.e., if it is between existing floors in a building, I think then that those single-post shores will work." He also said that if you are putting one single-post shore on top of another without bracing of that junction, then in his view it would be a violation of the general requirements for formwork. When asked specifically if he thought it was possible to come up with a design in a construction procedure where one post is put on top of another in an area where a floor is skipped, Mr. Hanson responded, "Yes, I think anything is possible." (Tr. I, 122–123).

Ingvar Schousboe (Ex. 19), OSHA's other expert witness, in his prepared statement said that "Tiered single-post shores should be properly braced, and it may require an engineer to calculate what constitutes proper bracing." He also stated that properly braced single-post shores could safely transfer loads to lower levels under the following conditions: The posts must be accurately lined up vertically; spliced to prevent any misalignment; braced laterally in two orthogonal directions at the splice level; and, each tier must be diagonally braced in the same two directions. At the hearing (Tr. I, 139), Mr. Schousboe testified, "About [the tiering of] single-post shores, I have stated that without any bracing in it, the system, of course, is dangerous, unsatisfactory, and has no resistance to the inevitable forces." He further testified that "Two-tier shores have to be braced totally, not only where they come in and rest upon one another, but also in both directions, in both tiers, they will have to be braced to make sure that any lateral forces that we can expect will not overturn."

SSFI (Ex. 21) also testified at the hearing to reaffirm their position as it appeared in their earlier written comment (Ex. 14–44) opposing the use of single-post shores for multi-tiered construction (Tr. I, 177).

On the other hand, a representative from Dun-Par (Tr. II, 10) agreed with the proposed rule but acknowledged that "Double tier shoring can be very dangerous." But, he also said, "It is a good alternative if it is properly designed and constructed." The Dun-Par representative pointed to the fall hazards associated with erecting a 60 foot scaffold to explain his position that prohibiting tiered single-post shores could pose a greater hazard to workers erecting other shoring systems.

After considering all of the comments and testimony received on this provision, OSHA has decided to allow the use of single post shores in more than one tier provided the employer has a qualified designer prepare the shoring design, and that after the shoring is erected, the employer have an engineer who is qualified in structural design, inspect the shoring. In addition, several criteria for bracing the shoring, as discussed above, have also been made a part of the single post shoring requirements. Additionally, the general requirement in § 1926.703(a)(1) that all formwork (which includes shores) be "* * * capable of supporting without failure * * *" must be met when tiering single post shores. Because of a lack of information and evidence submitted to the record, OSHA has rejected the recommendations of those who sought to have tiered single post shoring prohibited. Although many commenters recommended that OSHA prohibit that

type of shoring, the overwhelmingly stated reason was that tiered single post shores needed special attention; that bracing was critical; and that only qualified designers and engineers could design and erect a system so that it would be safe. OSHA believes all of these concerns have been addressed in the final rule. In addition, OSHA observes that Ceco and Dun-Par (both formwork contractors) as well as both its expert witnesses testified that it is possible to design a safe system. Therefore, OSHA promulgates paragraph (b)(8) as revised.

Paragraph (b)(9) of the final rule prohibits the adjustment of single post shores to raise formwork after the placement of concrete. This is identical to the existing requirement in § 1926.701(d)(5), which OSHA proposed to delete. OSHA explained in the proposal that it felt this rule was not needed for employee protection because it did not believe there was a danger of concrete collapse due to adjustment of single post shores and that the rule was intended to protect property. However, several commenters disagreed with the proposed deletion of this rule. Conshor Incorporated (Ex. 14–11) commented as follows:

> With reference to the proposed elimination of existing Paragraph 701(d)(s) [sic] which prohibits the adjustment of single post shores after placement of concrete, this paragraph should not be eliminated. Adjustment could cause overloading of shore. It is possible that stability or structural lacing would have to be moved in order to adjust shores, creating a very dangerous situation after concrete has been placed.

The WMACSA (Ex. 14–29) commented that § 1926.701(d)(5) in the current standard should be retained. Patent (Ex. 14–41) noted in their comment that there were serious deficiencies in the provision regarding adjustment of forming system after pouring the concrete. Patent referred OSHA to the SSFI comment for details.

The SSFI (Ex. 14–44) commented, "The Institute recommends that a requirement similar to .701(d)(5) of the existing rules should remain in the proposed rules and expanded to cover all shoring." The SSFI explained their belief, "that employee protection can be affected if adjustments either increase or decrease intended loads on that element and/or adjacent members so as to put those elements in danger of immediate or subsequent progressive failure of the formwork."

In addition, the ANSI A10.9–1983 standard (section 6.7.5) also recognizes the potential hazard of adjusting single post shores after the initial set of the concrete. After careful consideration of the comment received, OSHA agrees that the adjustment of shores will likely involve the moving of key bracing elements which are critical for formwork stability. The resulting lack of bracing could lead to formwork collapse and, therefore, pose a danger to employees. Consequently, OSHA has determined that it is necessary to regulate this hazard which could cause formwork collapse. Therefore, OSHA redesignates existing § 1926.701(a)(5) as paragraph (b)(9).

Paragraph (b)(10) of the final rule requires the employer to erect reshoring whenever the concrete is required to support loads in excess of its capacity. It also specifies that the reshoring operation is to be carried out as the forms and shores are removed.

This provision was relocated from § 1926.705(e)(1) of the proposed rule which was based on the existing provision in § 1926.700(e)(1)(v). The existing provision requires that reshoring be provided when necessary to safely support slabs and beams after stripping, or where such members are subjected to imposed loads due to construction work done. OSHA proposed to revise the existing rule to require reshoring to be erected after the removal of forms to transfer loads to other members whenever the concrete is required to support loads in excess of its capacity.

OSHA received two substantive comments on the proposed rule both of which indicated concern with the sequence (timeframe) in which reshoring operations were conducted. The WMACSA (Ex. 14–29) commented that reshoring operations were conducted. The WMACSA (Ex. 14–29) commented that reshoring should be placed *immediately after* form removal because "the placement of reshores is critical and in direct relationship to the time factors involved in form removal." They also suggested that time intervals between stripping and reshoring be in the written program and in no case shall unsupported concrete be left after the end of the working day. OSHA observes that it did not propose a written program and thus has not responded to this portion of the comment.

On the other hand, the BCTD (Ex. 14–40) commented that reshores should be placed *during* the removal of forms. They felt that the proposed language would allow the employer to remove the entire formwork system before any reshoring takes place. They also recommended that the reshoring system, like the initial formwork, should be included in the engineer's design specification and erected under the engineer's supervision.

After careful consideration of the comments received, OSHA has determined that the final rule should indicate clearly that reshoring operations are conducted *as* the original forms and shores are removed rather than *after* all the forms and shores have been removed. Therefore, OSHA promulgates paragraph (b)(10) as revised.

Paragraph (c) of the final rule contains the specific requirements for vertical slip forms. Paragraph (c)(1) requires that the steel rods or pipe on which jacks climb or by which the forms are lifted be specifically designed for that purpose and adequately braced where they are not encased in concrete. The final rule is identical to § 1926.705(b)(1) of the proposed rule and § 1926.701(b)(1) in the existing rule. OSHA observes that similar provisions are contained in Section 6.5.2 of the ANSI A10.90–1970 standard and section 7.5.2 of the ANSI A10.9–1983 standard.

OSHA received one comment on this provision and that was from the BCTD. The BCTD (Ex. 14–40) commented, that in keeping with the concerns they expressed in their comment on the general formwork provision that OSHA should specify that the slip form systems should be designed by the structural engineer. OSHA notes that it has already responded to the BCTD concerns in its discussion of § 1926.703(a)(1), above, and the reasons that OSHA put forth in rejecting the BCTD's suggestion for formwork in general are the same reasons why OSHA has not incorporated their suggestion as it pertains to vertical slip forms in particular. After careful consideration of the singular comment received, OSHA has determined that no revision to the proposed requirement is necessary. Therefore, OSHA promulgates paragraph (c)(1) as proposed.

Paragraph (c)(2) requires that forms be designed to prevent excessive distortion of the structure during the jacking operation. The final rule is essentially the same as the requirement proposed in § 1926.705(b)(5) and the existing rule in § 1926.701(b)(5), except that it has been rewritten in performance language. Specifically, instead of specifying that the forms have to be laterally and diagonally braced to prevent excessive distortion, the final rule allows the employer the flexibility to decide how best to prevent excessive distortion. This change from specification language to performance language is accomplished by removing the words "lateral and diagonal bracing" from the proposed rule and stating the

performance to be achieved—that the forms be designed to prevent excessive distortion of the structure. This revision was prompted by a suggestion by the NCCSHAC in their comment (Ex. 14–16).

The NCCSHAC pointed out that slip forms for tapered columns cannot be rigidly braced because the forming system must decrease in diameter during the placement of concrete. NCCSHAC suggested that the proposed rule be rewritten in more performance type language.

OSHA agrees with NCCSHAC that the proposed language is too specific and, therefore, has revised the provision using language to express the performance to be achieved. OSHA believes the revised language will provide employees the same degree of protection as the proposed requirement while allowing employers flexibility to design the forms in a manner that will prevent excessive distortion of the structure. Therefore, OSHA promulgates paragraph (c)(2) as revised.

Paragraph (c)(3) of the final rule requires that all vertical slip forms be provided with scaffolds or work platforms where employees are required to work or pass. This paragraph was relocated from § 1926.705(b)(7) of the proposal. The proposed rule was based on an existing rule in § 1926.701(b)(7) which requires that all vertical lift forms be provided with scaffolding or work platforms that completely encircle the area of concrete placement. OSHA observes that an essentially similar provision is contained in Section 7.5.9 of the ANSI A10.9–1983 standard.

OSHA proposed two revisions to the existing standard. First, OSHA proposed to replace the word "lift" with "slip" for clarity. Second, OSHA proposed to replace the phrase "completely encircling the area of placement" with the phrase "where employees are required to work or pass." The latter revision was proposed because OSHA had determined that scaffolds and work platforms were needed only in areas where employees would be present, either working or passing through. Since the existing rule required the erection of scaffolds or work platforms completely encircling the area of placement, regardless of whether or not employees were using them, OSHA felt it appropriate to revise the provision to address solely, the issue of employee safety. OSHA observes that a recommendation to effect this change was made by a public participant representing the NCCSHAC at the ACCSH meeting held on November 30, 1982, at which a draft concrete and masonry standard was discussed (Tr. 218). The transcript of the ACCSH meeting did not reveal any objection to the recommendation.

OSHA received no comment on the proposed substitution of the word "slip" for "lift." However, OSHA received three comments on the proposed revision regarding where scaffolds or work platforms should be required. The SSFI (Ex. 21) supported the proposed rule to provide scaffolds or work platforms where employees are required to work or pass. However, they commented that they were concerned that the proposed rule would prohibit the erection of scaffolds on slip forms where the scaffolds are needed for stability. The WMACSA (Ex. 14–29) stated that scaffolds or work platforms that completely encircle the area of placement were required for strength, in addition to being necessary for concrete placement and finishing. The BCTD (Ex. 14–40) commented, "As for OSHA's elimination of the current requirement that scaffolding be placed on both sides of the forms, the agency should consider whether this revision will throw the formwork system out of balance, thereby creating hazards to the employees' safety."

Because the WMACSA and BCTD raised an issue of reduced employee safety if scaffolds or work platforms were not erected to completely encircle the area of placement, OSHA decided to seek additional information in the hearing notice. In that notice, OSHA stated the concerns of the commenters regarding stability and asked for additional information. OSHA sought to determine whether full perimeter access was needed for stability as well as for the use by employees placing and finishing concrete. OSHA received only one comment on this issue. That comment was made by John Hanson, OSHA's expert witness (Ex. 18), who expressed his belief that nearly full perimeter access would be required for proper placement of concrete. Mr. Hanson also commented that he felt elimination of unnecessary scaffolds would not throw the formwork out of balance since the unbalanced condition would be considered in the design of the scaffold.

After careful consideration of the comments received, OSHA has determined that no further revision of the proposed provision is necessary. Since slip form stability is adequately addressed in § 1926.703(a)(1) in the final rule, it need not be addressed again in this provision. OSHA notes that § 1926.703(a)(1) requires all formwork (which includes slip forms) to be designated, fabricated, erected, supported, braced, and maintained to support, without failure, all vertical and lateral loads that may reasonably be anticipated to be applied to the formwork. Additionally, OSHA does not agree with the concern of SSFI that the provision would prohibit erecting scaffolds in areas other than where they were specifically required. If employers wish to erect additional scaffolds or work platforms to provide stability, this requirement is not intended to prohibit it. This provision specifies the particular areas, where, at a minimum, scaffolds or work platforms must be erected. As with any OSHA requirement, employers are always free to go "beyond" the minimal requirements imposed by OSHA. Therefore, the final rule, like the proposal, requires that scaffolds or work platforms must be erected where employees are required to work or pass. If the scaffolds or work platforms are part of the slip form design, the final rule does not prohibit their erection in any area where the employer deems them necessary. Therefore, OSHA promulgates paragraph (c)(3) as proposed.

Paragraph (c)(4) of the final rule requires that jacks and vertical supports be positioned in such manner that the loads do not exceed the rated capacity of the jacks. This paragraph was relocated from § 1926.705(b)(2) of the proposal which contained a similar provision requiring that jacks and vertical supports be positioned in such a manner that "vertical loads are distributed equally." It is also identical to a provision in Section 7.5.3 of the ANSI A10.9–1983 standard.

OSHA received two comments on this provision. The PCA (Ex. 14–9) recommended that OSHA change the word "equally" to "uniformly." The NCCSHAC (Ex. 14–16) pointed out that vertical loads could not be equally distributed on the jacks because during the lifting process some of the jacks retract while others are lifting. They, therefore, recommended that the wording of the proposed rule be revised to reflect their concern. OSHA agrees with the NCCSHAC in that it recognizes that it is almost impossible to distribute the vertical loads equally on the jacks and vertical supports. For example, the weight of concrete as it is placed and the moving weight of employees places unsymmetrical loads on the slip form. The jacks would have to be repositioned every time these loads are moved in order to equally distribute these vertical loads. Therefore, OSHA has revised the provision to delete the specific requirement for equal distribution of the vertical loads. OSHA believes the revised rule will provide protection to employees equivalent to that of the

proposal since the revised rule prohibits employers from exceeding the rated capacity of the jacks. Therefore, OSHA promulgates paragraph (c)(4) as revised.

Paragraph (c)(5) of the final rule requires that jacks or other lifting devices be provided with mechanical dogs or other automatic holding devices to support slip forms whenever failure of the power supply or the lifting mechanism occurs. This provision is identical to § 1926.705(b)(3) of the proposed rule. OSHA observes that Section 7.5.4 of the ANSI A10.9–1983 standard contains an essentially similar provision. The proposed rule was based on an existing rule in § 1926.701(b)(3) which requires jacks or other lifting devices to be provided with mechanical dogs or other automatic holding devices to provide protection in case of failure of the power supply or the lifting mechanism. OSHA proposed to replace the phrase "provided protection in case of" with "support the slip forms whenever failure of the power supply or lifting mechanism occurs." This revision was an editorial change made for the purpose of clarity. OSHA did not receive any comments on the proposed provision and, based on the earlier rationale, promulgates paragraph (c)(5) as proposed.

Paragraph (c)(6) of the final rule requires that the form structure be maintained within the design tolerances for plumbness during the jacking operation. This paragraph was relocated from § 1926.705(b)(6) of the proposal which required the form structure to be maintained in line and plumb during the jacking operation. OSHA observes that Section 7.5.7 of the ANSI A10.9–1983 standard contains an essentially similar provision. The final rule is the same as the proposed rule except the phrase "in line and plumb" has been revised to read "within all specified design tolerances." OSHA received two comments on the proposed provision.

The NCA (Ex. 14–29) commented, "If the primary concern is quality control rather than safety, [this] requirement should be deleted." The NCCSHAC (Ex. 14–16) commented that since "in line" and "plumb" must necessarily have working tolerances, OSHA should rephrase the provision to read as follows: "The form structure shall be maintained within the design tolerances for plumbness during the jacking operation."

OSHA agrees with the NCCSHAC and recognizes that construction practices permit formwork lines, grades, and dimensions to vary from those in the design. In fact, a list of such recommended tolerances for vertically slip formed structures can be found in *The Recommended Practice for Concrete Formwork* (Ex. 12). In view of the foregoing, OSHA decided to revise the proposed rule to require that slip form structures be maintained within all design tolerance specified for plumbness during jacking operation. Therefore, OSHA promulgates paragraph (c)(6) as revised.

Paragraph (c)(7) of the final rule requires that the predetermined safe rate of lift not be exceeded. This paragraph was relocated from § 1926.705(b)(4) of the proposal which required that lifting proceed steadily and uniformly and not in excess of the predetermined safe rate of lift. The final rule is the same as the proposed rule except the phrase "proceed steadily and uniformly" was deleted. OSHA observes that Section 7.5.5 of the ANSI A10.9–1983 standard contains an essentially similar provision.

OSHA received two comments on the proposed provision. The NCCSHAC (Ex. 14–16) pointed out that jacking operations in slip form construction are not "continuous" in the true sense of the word in that the operation proceeds in distinct, discrete steps with the jacks individually extending and retracting within their working length. In view of this, the commenter recommended that the proposed rule be revised to read as follows: "Lifting shall not exceed the predetermined rate of lift." OSHA recognizes that, in fact, slip forms do not move continuously during concrete placement; therefore, the words "proceed steadily and uniformly" were deleted.

Another commenter, the BCTD (Ex. 14–40), wanted an additional requirement for determining the rate of lift. They stated, "The standard itself should make clear that the employer must make decisions regarding the rate of lift in consultation with, and on the approval of the engineer." However, the BCTD did not explain why it felt that it would be appropriate for employers to consult with and obtain the approval of engineers. There being an absence of support or explanation for the recommended change, OSHA has decided not to take any action with regard to the BCTD's suggestion. Therefore, OSHA promulgates paragraph (c)(7) as revised.

Paragraph (d) contains two requirements relating to reinforcing steel. Paragraph (d)(1) requires that reinforcing steel for walls, piers, columns, and similar vertical structures be adequately supported to prevent overturning and to prevent collapse. OSHA observes that Section 3.3 of the ANSI A10.9–1983 standard contains a similar provision. This paragraph combines and relocates §§ 1926.702(c)(1) and 1926.702(c)(2) of the proposed rule. The proposed rule was based on an existing provision in § 1926.700(b)(3) that requires reinforcing steel for walls, piers, columns, and similar vertical structures to be guyed and supported to prevent collapse. OSHA proposed to revise the existing requirement by replacing the words "guy and" with the word "laterally" in order to allow employers the flexibility to support the reinforcing steel by any method of lateral support. OSHA also proposed to add the phrase "to resist overturning forces" to state the purpose of the lateral support. Finally, OSHA proposed, as a separate requirement in § 1926.702(c)(2), a provision that the lateral supports be capable of withstanding the forces that would be applied during construction. OSHA received several comments on the proposed requirements.

The BCTD (Ex. 14–40), recommended that two changes be made to the proposal. First, they noted that OSHA, in the preamble to the proposed rule, had explained that the purpose of lateral supports was to protect against overturning forces and construction forces. The BCTD recommended that this explanation be made a part of the actual requirement. They further suggested how OSHA could rewrite the provision to incorporate the purpose of the requirement. Specifically, they suggested the provision read identical to the proposal with the following language added: "*(such as the wind) and to prevent collapse.*" OSHA agrees that the purpose of the supports, which provides the performance to be achieved by the employer, should be clear in the final rule and, therefore, has revised the final requirement accordingly. Second, the BCTD recommended that lateral support be defined to mean "any properly anchored means of steadying a piece or structure by pulling against or resisting an off-center load.".

The WMACSA (Ex. 14–29) stated that the wording in proposed § 1926.702(c)(1) should be changed to permit guying in addition to lateral support.

Another commenter, Ceco (Ex. 14–45), suggested that OSHA omit the word "lateral" which implied "coming from the side." Ceco pointed out that reinforcing steel can be supported from other directions and cited examples where lateral support coming from the side was impractical. This divergence of comment prompted OSHA to seek additional information through the public hearing notice.

In the hearing notice OSHA explained the various viewpoints of commenters

and asked for additional information to enable OSHA to determine whether or not the proposed requirement should be revised to permit other methods of support (other than lateral support) to prevent the collapse of erected reinforcing steel. OSHA received three comments on this issue.

Ceco (Ex. 14–47) again commented that "lateral" support should not be specified and offered two examples of how to provide support in other than a "lateral" direction.

Ingvar Schousboe, OSHA's expert witness (Ex. 19), commented that "Any kind of bracing that can deliver the lateral force to resist overturning of reinforcing steel cages erected for vertical building elements can be employed." He also stated, "The bracing may be horizontal or inclined as long as the horizontal component of the axial force in the bracing is adequate."

In addition, John Hanson, another OSHA expert witness (Tr. I, 88), testified that guying often is not used because it interferes with the construction process. Instead, he felt that it is more common to use either supplemental pieces of reinforcing steel to crossbrace the erected steel, or to erect one side (or some portion) of the formwork and then brace the steel against it.

After careful consideration of the comments and testimony received, OSHA has decided to revise the proposed rule to allow any method of support so long as it is adequate to resist overturning forces and to prevent collapse. OSHA believes the revised language provides a level of safety equivalent to that of the proposed language, while at the same time providing employer flexibility to select a method of support that will not interfere with other construction operations. Therefore, OSHA promulgates paragraph (d)(1) as revised.

Paragraph (d)(2) of the final rule requires the employer to take measures to prevent unrolled wire mesh from recoiling. Such measures include securing the ends or turning over the mesh. This paragraph was relocated from § 1926.702(d) of the proposal. The proposed rule was essentially the same as the existing rule in § 1926.700(b)(4), except the existing rule contains the word "dangerous" to describe the effect of the recoiling action. OSHA proposed to revise the existing rule by deleting, as unnecessary, the word "dangerous." OSHA observes that Section 3.4 of the ANSI A10.9–1983 standard also addresses the hazards associated with the recoiling of wire mesh.

OSHA received only one comment on the proposed rule. The MCISC (14–19) pointed out that a common practice in the industry is to unroll wire mesh and then flip it over before installation. They also stated that this procedure effectively prevents recoiling action and it should be considered equally safe as securing each end of wire mesh rolls.

OSHA agrees that methods other than "securing each end" are effective in preventing the mesh from recoiling, and therefore, has revised the provision to state the performance to be achieved and to allow employers to take whatever measures they feel are necessary to prevent recoiling action. OSHA feels the revised requirement provides a level of safety equal to that of the proposed rule and, therefore, promulgates paragraph (d)(2) as revised.

Paragraph (e) of the final rule sets forth requirements for the removal of formwork. Paragraph (e)(1) addresses the removal of the original forms and shores and paragraph (e)(2) addresses the removal of reshoring. The intent of these requirements is to prevent accidents such as the one that occurred on March 2, 1973, where 14 employees were killed and 34 employees were injured. In that accident, employees were removing the concrete forms supporting the 23rd floor of an apartment building under construction. The 23rd floor collapsed which caused the progressive failure of other floors of the apartment building. The fatalities and injuries resulted from the collapse of these floors. The National Bureau of Standards in a report for OSHA, concluded that premature removal of forms was a contributing factor to the building collapse (Ex. 3, p. 85). Observance of the existing provisions in the ANSI A10.9–1970 standard could have prevented this accident. Observance of the final rule requirements in this paragraph, which eliminate the reference to ANSI and instead clearly set forth the requirements for formwork removal, will prevent similar accidents of this nature.

Paragraph (e)(1) prohibits the removal of forms and shores until the employer determines that the concrete has gained sufficient strength to support its weight and superimposed loads. To make this determination, compliance with one of the following alternatives is required. The first alternative is that the plans and specifications stipulate conditions for removal of forms and shores, and that such conditions have been followed. The second alternative is that the employer has tested the concrete with an appropriate ASTM standard test method designed to indicate concrete compressive strength, and the test results indicate that the concrete has gained sufficient strength to support its weight and superimposed loads.

The proposed rule also sets forth two alternatives from which the employer could choose to determine the appropriate time for removal of forms and shores. As explained above, one of the alternatives in the final rule is essentially the same as one of the proposed alternatives, and the other is different. Further, both alternatives in the final rule differ from the existing rule (which OSHA incorporated by referencing the ANSI A10.9–1970 standard).

The existing rule (the ANSI standard) prohibits the premature removal of forms and requires that engineer's specifications and local building codes shall be adhered to in determining the length of time forms should remain in place following concrete placement. *In addition,* the existing rule requires that tests shall be made on field-cured concrete specimens [this typically meant that several cylinders would be filled with concrete from the same mix that was being placed at the jobsite, left to cure, and then later, the cylinders would be tested in a laboratory to determine the compressive strength of the concrete] in order to insure that the concrete has obtained sufficient strength to safely support the load prior to the removal of forms. The existing rule also provides a table that can be followed in those situations where engineer's specifications or local building codes are not used to control form removal time. This table is identified by OSHA in the proposed rule and discussed in the final rule as Table Q–1.

OSHA proposed in § 1926.705(d) to revise the existing rule allowing employers to choose between following the times listed in Table Q–1 *or* performing a test, using any ASTM test method that was designed to indicate the concrete compressive strength before removing forms and shores. If the test were chosen, the results would have to indicate that the concrete had gained sufficient strength to support its weight and superimposed loads. OSHA also proposed to revise the existing rule by changing the phrase "field-cured" to "appropriate ASTM standard," thereby allowing the employer to use any one of several test methods currently available to demonstrate compressive strength. This change recognizes technological changes made in testing for concrete strength and provides worker protection equivalent to the existing standard which recognizes only one method of testing the concrete (see discussion above on the cylinder test method). In addition to requesting comment on th proposed language, OSHA also raised four issues in the NPRM specific to

concrete testing. Each issue is discussed below. Because the comments received on the proposed provision are all directly related to one of the four issues raised in the NPRM, the comments will be set forth following each issue.

In Issue #1 OSHA asked for specific comment on whether or not it should require written procedures for testing concrete. OSHA explained that the Advisory Committee on Construction Safety and Health (ACCSH) (Ex.1) recommended that employers prepare written test procedures for testing concrete and make the test results available to the Secretary of Labor. Through this issue OSHA sought to determine the problems and benefits of a requirement for written test procedures. Several comments were received on this issue addressing written procedures. Four commenters (Exs. 14–29, 14–33, 14–36, and 14–40) stated that written test procedures would serve a useful purpose and would be beneficial. For example, Fred Berglund and Sons, Inc. (FBS) (Ex. 14–33) commented, "* * * test results for concrete would serve to show documentation for strength and material content * * *." The BCTD (Ex. 14–40) commented as follows.

* * * we believe that testing should be required before the formwork is removed; that the type of test may be prescribed by the engineer, but should provide accurate information about the condition of the concrete; that the procedures and results should be written and available * * *.

* * * making the test results available will act as a sort of check, to guarantee that the tests are properly and timely performed, and will let the employees know that they are working on a safe job * * *.

However, many commenters (Exs. 14–8, 14–10, 14–20, 14–21, 14–27, 14–31, 14–35, 14–36, and 14–45) stated that written test procedures would serve no useful purpose, nor produce any benefit. For example, Scott Bridge Company (Ex. 14–21) commented, "If [concrete] tests are required, there are enough standardized procedures available that would make preparation of separate procedures by an employer an exercise in duplication." Bechtel (Ex. 14–35) also commented, "* * * few compliance officers are qualified or capable of reviewing plans and test data to determine their adequacy * * *." Finally, the NCCSHAC (Ex. 14–16) commented as follows:

Each employer should be responsible for establishing form removal criteria specific to their equipment and requirements. Making such information available to others could entail publishing what may be considered proprietary information regarding procedures and equipment. Conscientious employers who devote (or have devoted) time and financial resources toward establishing safe equipment and construction procedures should not be penalized by having to make this information available to less conscientious competitors.

It is apparent to OSHA, after reviewing the comments received on this issue, that it did not properly phrase Issue #1, since its intent was widely misunderstood. Specifically, the question was not, "Should employers have to develop a test method (procedures)?" as some commenters apparently thought. OSHA notes that it had already specified that an ASTM test method would have to be used. Rather, the question was, "Should the employer have a plan (procedure) for testing the concrete and should the results of the test(s) be kept at the jobsite for review? In asking this question, some assumptions were made; i.e., that tests would actually be performed and that ASTM test methods would be used. What OSHA sought to determine was *whether or not OSHA should require the employer to have a defined procedure to follow.* Such a procedure might give the following information: what ASTM test method was to be employed, when to conduct the test, and by whom the test would be performed. For example, a procedure might state that 4 days after floor number 1 was placed the concrete would be tested using ASTM Test Method "X" by XYZ Test Company to determine the strength reached. Such a procedure could, of course, be much more detailed. With this information established in written form, along with the results of the test, the employer should be able to determine whether the formwork could safely be removed.

After careful consideration of the comments received in response to Issue #1, OSHA has decided that no additional requirements will be added to this section. Because the majority of the commenters misunderstood the question being asked by OSHA, the information and evidence that was forthcoming was not useful to OSHA in determining whether or not employee safety would be enhanced if employers were required to document their testing procedures and if employers were required to document their test results. However, OSHA notes that its failure to require employers to document their test procedure or to document the results of their test does not, in any way, alter the requirements set forth in § 1926.703(e). Section 1926.703(e) requires that the forms and shores remain in place until the employer determines that the concrete has gained sufficient strength to support its weight and superimposed loads. The employer is given two alternatives, one of which the employer must perform, to make such a determination. One alternative is to follow the plans and specifications (performing whatever tests are specified) and the other is to test the concrete using an appropriate ASTM test.

In Issue #2, OSHA requested specific comment on inplace testing methods—those methods in which the concrete is tested while it is still in the forms. OSHA indicated when raising this issue that it had received comments from interested individuals who recommended that only in-place testing of concrete should be permitted to evaluate the strength of concrete.

OSHA sought to determine whether there were any reasons related to employee safety that it should restrict concrete testing to in-place testing methods rather than allowing employers to conduct a compressive strength test on cylinders which is the typical practice. In response to Issue #2, the AGC (Ex. 14–31) commented as follows:

* * * in-place method of concrete testing is not practical. In-place testing methods are not readily available to contractors, particularly small contractors. Cylinder testing when properly performed and in conformance with engineering specifications and building codes provides the necessary safeguards. Additional testing and training requirements would be redundant and require extra costs.

The State of California (Ex. 14–2) stated that both cylinder and in-place testing should be permitted because in-place testing may not be feasible in some cases such as underwater construction. Two other commenters supported in-place testing procedures. Miller and Long Concrete Construction, Inc. (MLCC) (Ex. 14–42) commented that in-place testing is the most accurate form of concrete testing because the test is performed on the concrete in the forms. The other commenter, BCTD (Ex. 14–40), commented as follows.

It is our view that in-place testing can most adequately determine whether the particular pour of concrete, in the particular location, under the particular circumstances, has reached the proper structural strength to permit the removal of the forms. However, other kinds of tests, prescribed by the engineer, which provide the same information, may also be adequate.

In consideration of the comments received in response to Issue #2, OSHA has determined that both in-place and cylinder tests are equally effective and both should be allowed as acceptable methods of testing concrete. This determination has been reflected in the final rule which allows the employer to perform any appropriate ASTM test

method designed to indicate the compressive strength of the concrete as one way of determining when to remove formwork.

In Issue #3, OSHA requested specific comment on the current industry practice for determining when forms may be removed. OSHA explained that the existing standard requires the concrete forms to be left in place for the length of time indicated by the engineering specifications, local building codes, or as specified in Table 2 of ANSI A10.9–1970 (Ex. 9) (identified as Table Q–1 in the NPRM) and then the concrete is to be tested. Through this issue OSHA sought to determine the current industry practice for determining when to remove forms.

In Issue #4, OSHA requested comment on whether or not it should require the employer to leave the forms in place for the time specified in Table Q–1 and also require the employer to test the concrete for strength before form removal. OSHA explained that the NPRM allowed the employer to choose either one of these methods to determine form removal time.

Several comments were received on these issues. Two comments indicated that the engineer or architect establishes the criteria for determining when the forms may be removed. For example, the AGC (Ex. 14–31) commented:

> Industry practice with regard to concrete form removal has been to conform with engineering specifications. There are many factors which affect concrete strength, and thus concrete form removal. A minimum strength is generally set out in engineering specifications and that strength is determined through cylinder tests and/or required or specified periods of time.

Scott Bridge Company (Ex. 14–21) also stated that the current practice for highway bridge form removal is usually set forth in the specifications of highway or transportation departments.

Three commenters (Exs. 14–2, 14–27, and 14–33) stated that both the time table and concrete testing should be required to provide assurance that the concrete has attained sufficient strength to support loads safely; for example, FBS (Ex. 14–33) stated that allowing for both methods will reduce any error that may surface due to extraneous elements affecting one method and not the other.

Other commenters (Exs. 14–20, 14–21, 14–28, 14–31, 14–36, 14–37, and 14–45) stated that requiring the use of Table Q–1 and concrete testing before form removal would be redundant and delay project completion. For example, the AGC (Ex. 14–31) commented as follows.

> With regard to provisions within the standard to require both testing and time, AGC believes that this requirement would be unnecessarily restrictive. Concrete pours are made in accordance with specifications and in most cases entail testing. Requiring both methods (time and testing) would cause undue cost and possibly impact schedules.

John Hanson, OSHA's expert witness (Tr. I, 92) testified:

> * * * minimum times given in Table Q–1 should not apply if the engineer, or in other words, the responsible person, has established longer times in the project documents. For that matter, in my opinion, they should not have to apply if the responsible engineer or architect has established a shorter time.

Dun-Par (Ex. 14–10) commented, "* * * the engineer of record should have the authority to deviate from those requirements [Table Q–1]. He [the engineer] is the one who designed the structure. He knows more about that building than anybody else." Finally, the AGC (Ex. 14–31) commented that industry practice with regard to concrete form removal has been to conform with engineering specifications.

After careful consideration of the comments and testimony received in both Issues #3 and #4, OSHA has determined that the engineering specifications or formwork plans often stipulate the conditions to be followed, including whatever tests are necessary, prior to the removal of formwork. This determination has caused OSHA to revise the proposed requirement for removal of forms and shores. In particular, OSHA has revised the provision to require that forms and shores (except for slabs on grade and slip forms) remain in place until the employer has determined that the concrete has reached sufficient strength to support its weight and superimposed loads. The employer must make this determination after having complied with one of two alternatives. As a result of the evidence and information received in response to Issues #3 and #4, the final rule has been revised to indicate that one of these alternatives is that the plans or specifications actually stipulate conditions for formwork removal, and the employer has followed those conditions.

An alternative proposed in paragraph (d)(1) of the NPRM, but deleted in the final rule would have allowed the employer to determine when to remove formwork by simply following the times listed in Table Q–1 of the NPRM. OSHA received several comments and several organizations testified at the hearing on the acceptability of Table Q–1 in lieu of an actual test.

The BCTD (Ex. 14–40) objected to the reliance on Table Q–1 to determine the time before removing formwork. They based their objection on, among other things, the belief that employers would ignore the formwork removal variables. They felt that concrete should be tested for proper strength.

Dun-Par (Tr. II, 6) testified, "This Table Q–1 * * * is an antique." Ingvar Schousboe (Ex. 19) commented that concrete elements such as walls, columns, piers, and pile caps may be stripped of forms on the basis of elapsed time and temperature because the risk is low or nonexistent. However, he did not recommend the use of time for removal of forms from under floors. Mr. Schousboe based his recommendation on the need to know, by testing, the quality of the concrete that was delivered to the site.

The UBCJA (Tr. II, 40) testified as follows:

> Of critical importance is the timing of form and shoring removal. OSHA has proposed a timetable Q–1 to be used for form removal. We want to reiterate our objections to the sole reliance on this time, since it does not take into account all of the many variables that can affect concrete strength and curing time.

They again stated their objection to the use of Table Q–1 in post hearing comments (Ex. 30).

The PCA (Ex. 14–5) recommended that the note regarding the minimum curing temperature precede Table Q–1 to provide greater emphasis on the effect of temperature on concrete curing. They also recommended that OSHA prohibit the use of Table Q–1 to remove forms and shores from under concrete containing fly ash or ground granulated iron blast furnace slag. They based their objection on the fact that concrete containing these materials has different strength gain characteristics than standard portland cement concrete. However, the commenter did not provide any information comparing the strength gain characteristics of fly ash concrete with standard portland concrete. OSHA requested comment in the hearing notice on the use of Table Q–1 for removing forms and shores from concrete containing fly ash or ground iron blast furnace slag. In the notice, OSHA stated that one commenter had recommended that such concrete should be tested before removal of forms. OSHA sought to determine whether the use of Table Q–1 should be prohibited for concrete containing these materials.

One person and one company testified at the hearing on this issue. The testimony disagreed with the comment made by the PCA.

John Hanson (Tr. I, 91) testified as follows:

> It is well recognized that the strength-gain characteristics of pozzolan concretes are less

at early ages when compared to portland cement without pozzolans. However, Table Q–1, in my view, should be considered to represent the judgment of qualified people in the profession as to circumstances when, if the concrete has [not] been tested, the forms may be removed.

A representative from Blue Circle Holdings Inc. (Blue Circle) (Tr. I, 205) testified:

* * * Table Q–1 has been used quite successfully over many, many years and has done so at times where the finest and the activity of portland cements was much slower than we have in today's modern cements. This system worked very well for those years, and all of the changes in the construction procedures and the rate of strength gains for conventional portland cements and concrete have increased to the point that we still feel the Table Q–1 is quite relative and does provide an assurance of safety for the worker.

OSHA also requested comment in the hearing notice on the effect of lowering the temperature used in Table Q–1, explaining that Scott Bridge Company (Ex. 14–21) recommended that the temperature used in Table Q–1 be lowered to 40°F because the lower temperature is used in highway specifications for form removal.

One comment was received and two persons testified at the hearing on this issue. The comment and testimony did not support lowering the temperature in Table Q–1 from 50°F to 40°F. John Hanson (Ex. 18) commented as follows:

* * * it would be my view that it is important to stay very close to the ACI [American Concrete Institute] standard from which this table was taken on this matter, since the times represent a judgment of responsible professionals and their judgment was that this temperature should be 50 degrees fahrenheit.

Ingvar Schousboe (Tr. I, 141) testified, "The selected cutoff point for ambient temperature, 50°F or 40°F, if applied to the same time table can hardly be expected to give equally safe results."

Finally, Blue Circle's representative (Tr. I, 206) said the following:

With regard to reducing the temperature to below 50 degrees as noted in Table Q–1 to 40 degrees, we do not feel that this would be a prudent change in those structures that may be elevated and possibly present a problem when forms are removed. The hydration of portland cement is slowed down significantly at 40 degrees. In fact, some may state that the hydration hardly exists at 40-degree temperature * * *.

However, after careful consideration of the comments and testimony on the use of Table Q–1, OSHA has determined that although following Table Q–1 is sometimes acceptable for determining when to remove certain formwork, sole reliance on the table is not sufficient for determining if the concrete has indeed reached the strength needed to support its weight and all superimposed loads. Thus, if an employer relied exclusively on Table Q–1 to determine when to remove formwork, an appropriate level of safety may not be afforded to workers. OSHA does recognize that there are situations where simply waiting for time to pass may be acceptable, but such situations must be determined by a competent person such as the building engineer or the architect of record or by the formwork designer. In addition, evidence in the record, and discussed here, indicates there is widespread opposition to use of the table as proposed for a number of other reasons which cannot be substantiated or rejected by OSHA due to the lack of specific rationale provided with commenter objections. For example, many said too many variables affect the use of the table, but did not list the variables or discuss the basis for their statement. Also, a review of the most recent ANSI A10.9 standard, the 1983 version, shows that the nationally recognized standard for formwork removal is to determine that the concrete has sufficient strength to support its weight and total loads involved by conducting the type and number of tests as specified by the designer of the formwork. (ANSI allows the engineer/architect to determine what the strength should be if this is not indicated on the formwork drawings.) Consequently, OSHA has removed Table Q–1 as an alternative to following engineering specifications.

Paragraph (e)(2) of the final rule prohibits the removal of reshoring until the concrete has attained adequate strength to support its weight and all loads in place upon it. This provision is similar to proposed § 1926.705(e)(2) which was based on a provision in section 6 of the ANSI A10.9–1983 standard.

Three comments were received on the proposed provision concerning loads placed on the concrete. The PCA (Ex. 14–9) recommended that the words "normally expected" be added between the words "all" and "loads." The BCTD (Ex. 14–40) commented that the concrete should be supported until it has achieved the strength to support all loads which may foreseeably be imposed on it. WMACSA (Ex. 14–29) recommended that reshoring remain in place until the structure can support the loads imposed on it.

The comments indicated that the PCA, BCTD, and WMACSA misconstrued the intent of this provision. Each commenter recommended language to address loads to be imposed at a time after the reshoring had been removed. However, OSHA's intent was to address loads that were actually being supported by the reshoring. In other words, if reshoring had been erected to support loads that the concrete was unable to support, then the reshoring could not be removed until the concrete has attained adequate strength to support its own weight and those loads—loads that were on the structure at the exact time that the reshoring was to be removed. The proposed provision did not address loads that would be imposed subsequent to the removal of reshoring. That is, it was not OSHA's intent that this provision conflict with § 1926.701(a) which prohibits placing any construction load on a concrete structure or portion of a concrete structure unless the employer determines, based on information received from a person who is qualified in structural design, that the structure or portion of the structure is capable of supporting the loads.

Because the commenters' concerns have been addressed via § 1926.701(a), no revision of the proposed paragraph is necessary except to revise the language to make it clear that the reshoring is to support the weight of the concrete and loads in place upon it. Therefore, OSHA promulgates paragraph (e)(2) as revised.

Section 1926.704 Requirements for precast concrete.

Section 1926.704 of the final rule contains the requirements for precast concrete. The requirements in this section were relocated from proposed § 1926.706 to promote a more logically organized standard.

Paragraph (a) of the final rule requires that precast concrete wall units, structural framing, and tilt-up wall panels be adequately supported to prevent overturning and to prevent collapse until permanent connections are completed. The intent of this provision is to prevent accidents such as the one that occurred on March 31, 1978, when one employee was killed. The employee was erecting a precast concrete wall panel and the panel fell and crushed the worker. The panel was not braced to prevent collapse (Ex. 6). The existing construction regulations do not contain a specific requirement addressing bracing of precast concrete panels, only the referenced ANSI A10.9–1970 does. However, the final rule requirements of this paragraph clearly set forth requirements for bracing precast members. Observance of these requirements will prevent accidents such as the one described here.

This paragraph has been relocated from § 1926.706(a)(1) of the proposal and

was based on section 9.4 of the ANSI A10.9–1983 standard which contains a similar provision. OSHA proposed that precast concrete wall units, structural framing, or tilt-up wall panels be laterally supported to resist overturning forces until permanent connections are completed. The final rule is the same as the proposed rule except the word "laterally" was replaced with "adequately," the word "or" was replaced with "and" and the phrase "to resist overturning forces" was revised to read "to prevent overturning and to prevent collapse."

OSHA received two comments and one person testified at the hearing on this provision of the proposed rule. The NEA (Ex. 14–22) agreed with the proposed rule. However, they commented, "* * * the completion of permanent connections should not be required in instances where precast panels are provided adequate temporary support prior to unhooking by temporary shoring, a temporary erection connection or part of a permanent connection." OSHA agrees with the commenter. OSHA does not intend for the final rule to require that precast concrete members be permanently secured prior to unhooking from the crane. The other commenter, WMACSA (Ex. 14–29), commented, "redefine to mean only precast concrete structural framing." However, the WMACSA did not explain the reasons for their recommendation. OSHA believes that employee injury could occur as a result of the collapse of any type of precast unit, including wall units and tilt-up wall panels, and that the proposed requirement to support such units has a direct bearing on employee safety. Therefore, it has not redefined the provision to apply only to precast structural members.

In addition to the written comments, OSHA's expert witness, John Hanson (Tr. I, 92), testified that the coverage of the proposed rule would be expanded by using the phrase "to resist overturning forces or collapse." OSHA agrees with the suggested change, acknowledging that its intent was to address the collapse of precast members.

After consideration of the above comments, OSHA determined that the proposed rule should be revised by replacing the word "laterally" with "adequately," the word "or" with "and," and revising the phrase "to resist overturning forces" to read "to prevent overturning and to prevent collapse." The word "laterally" was deleted because the record demonstrates that precast concrete members can be supported from directions other than from their sides. Instead, OSHA has substituted the word "adequately" to allow the employer some flexibility to determine what type of support will prevent overturning and collapse of the precast members. The word "or" was changed to "and" because it may not be clear that any and all precast concrete wall units, structural framing members and tilt-up wall panels must be supported. The use of the word "or" may mistakenly lead employers to believe that if they are erecting one or more of the above types of precast members that they need only brace one "or" the other. OSHA intends that all precast members be adequately supported and so stated this intention when it discussed the proposed requirement at (50 FR 37549) where it used the word "and." Finally, OSHA clarified the purpose of this requirement by stating the reason for this provision—to prevent overturning and to prevent collapse. Therefore, OSHA promulgates paragraph (a) as revised.

Paragraph (b) specifies that lifting inserts which are embedded or otherwise attached to tilt-up wall panels must be capable of supporting twice the maximum intended load applied or transmitted to them. Paragraph (c) specifies that lifting inserts which are embedded or otherwise attached to precast concrete members, other than tilt-up members, must be capable of supporting at least four times the maximum intended load applied or transmitted to them. Paragraph (d) specifies that lifting hardware must be capable of supporting at least 5 times the maximum intended load applied or transmitted to the hardware.

Paragraphs (b) and (c) were relocated from proposed § 1926.706(a)(4)(i) and (ii) which are essentially the same as the final rule. Paragraph (d) was not listed in the proposed rule but is essentially the same as the existing requirement found in the ANSI A10.9–1970 standard which OSHA references. In fact, all of safety factors prescribed for precast operations are based on existing requirements in the OSHA references ANSI A10.9–1970 standard. OSHA observes that all these requirements are essentially the same as the requirements specified in Section 9 of the most recent ANSI standard, A10.9–1983.

OSHA received only one comment on the proposed provisions in paragraphs (b) and (c). The BCTD (Ex. 14–40) commented that OSHA was not completely clear that the proposal provided the same degree of protection as the ANSI standard on which OSHA based its proposed requirements. They also indicated that their concern was with making certain that the support system as installed—and not the hardware in isolation—be required to meet the criteria established in ANSI's 1983 revisions. OSHA agrees with the BCTD and has added the phrase "which are embedded or otherwise attached to" in the final provisions to clarify the Agency's regulatory intent.

Additionally, the BCTD recommended that OSHA include ANSI's A10.9–1983 requirement that lifting hardware have a factor of safety of five. OSHA agrees that the lifting hardware should have a factor of safety greater than the lifting inserts and acknowledges that a failure to maintain a factor of safety of at least five could have a negative impact on worker safety. In fact, this is an existing requirement which OSHA inadvertently failed to include in the notice of proposed rulemaking. Therefore, OSHA promulgates paragraphs (b), (c), and (d) as revised.

Paragraph (e) of the final rule prohibits employees from being under precast concrete members being lifted or tilted into position except those employees required for the erection of those members. The intent of this provision is to limit employee exposure and prevent injury caused by being struck by falling precast members. This paragraph was relocated from § 1926.706(a)(3) of the proposal which prohibited employees from being under precast concrete members being lifted or tilted into position. The proposed rule was based on existing rules located in Sections 10.4 and 11.5 of the ANSI A10.9–1970 (Ex. 9) which applied to tilt-up and lift-slab operations, respectively. Since both these rules were similar, OSHA hoped to combine the provisions rather than have the same provision specified for each method of erection. OSHA observes that the most current ANSI standard for Concrete and Masonry Work, ANSI A10.9–1983, in Sections 9 and 10, also contains essentially similar provisions.

The final rule is essentially the same as the proposed rule, except that an exception for employees who are required for the erection of precast members has been made. OSHA observes that although this general requirement was orignally intended to apply whenever a precast member was positioned—either by lifting, tilting or jacking (which would have included lift-slab operations)—the recent decision by OSHA to reopen the record on the lift-slab operations section, precludes the application of this provision to lift-slab operations. Instead, lift-slab employers will follow the existing requirements

which have been reprinted in the Appendix to § 1926.705 of this Final Rule.

OSHA received two comments on the proposed rule. The NEA (Ex. 14–22) stated that employees must spend some time under precast panels to align them with the existing structure. NIOSH (Ex. 14–39) comments supported the proposed rule; however, NIOSH wanted to know whether the proposed rule would apply to a worker on or underneath a precast member who was aligning the member with connector inserts. OSHA recognizes that some workers, those who are actively engaged in the erection of the member, must be allowed to work under the members which are being lifted or tilted into position. The final rule clearly reflects this allowance. All other employees, however, are prohibited at all times from being under those precast members. Therefore, OSHA promulgates paragraph (e) as revised.

Section 1926.705 Lift-slab operations.

Section 1926.705 of the final rule has been reserved for the unique requirements of lift-slab construction. Even though OSHA proposed specific requirements for lift-slab operations in § 1926.706(b) of the proposed rule, this section of the standard is not being finalized in this document. Instead, is the subject of a separate rulemaking effort. OSHA has determined that it is necessary to reopen the record to consider revision of the proposed rule on the standard addressing lift-slab construction. This would be done in order to address more adequately the information and evidence that will be introduced into the public record as a result of OSHA's investigation of the collapse in Bridgeport, Connecticut. Pending competion of the above action, the existing OSHA requirement to follow Section 11 of the American National Standard Safety Requirements for Concrete Construction and Masonry Work, ANSI A10.9–1970, remains in full force and effect for lift-slab construction. To aid employers in their compliance efforts, OSHA is reprinting these ANSI lift-slab requirements in the Appendix to § 1926.705. In addition, OSHA reminds employers that existing § 1926.305(a) and (b) also contain requirements relating to jacks used in the lift-slab operations.

Section 1926.706 Masonry construction.

Section 1926.706 of the final rule contains requirements for masonry construction. The intent of these provisions is to prevent accidents such as the one that occurred on May 19, 1976, in which two employees were killed. The two employees were tacking metal decking using an electric welder at a high school under construction (Ex. 4). A nearby masonry wall collapsed, struck the two employees, killing them. The existing construction regulations do not contain a specific requirement addressing bracing of masonry walls or limiting access to the collapse zone. However, the final rule requirements of this section clearly set forth requirements for protecting employees from masonry wall collapses. Observance of these requirements will prevent accidents such as the one described here.

Paragraph (a) of the final rule requires that the employer establish a limited access zone whenever a masonry wall is being constructed. Paragraph (a)(1) requires that the zone be established prior to the start of construction. Paragraph (a)(2) requires that the zone run a distance equal to the length of the wall and extend outward a distance equal to the height of the wall to be constructed, plus four feet. Paragraph (a)(3) requires the zone to be established on the side of the wall which will be unscaffolded. Paragraph (a)(4) requires that the employer limit access to the zone to only those employees who are actively engaged in constructing the wall. Paragraph (a)(5) requires the employer to keep the limited access zone in place until the wall is adequately supported to prevent overturning and to prevent collapse *unless* the height of the wall is over eight feet, then the limited access zone must remain in place until the requirements of paragraph (b) below have been met.

Paragraph (b) requires the employer to brace all masonry walls over eight feet in height to prevent overturning and to prevent collapse *unless* the wall is adequately supported so that it will not overturn or collapse. The bracing shall remain in place until permanent supporting elements of the structure are in place.

The requirements of the final rule differ substantially from the requirements of the proposed rule. The proposed rule, § 1926.707(a)(1), would have required all masonry walls to be laterally supported to resist horizontal forces where such walls were not capable of withstanding the forces that will be applied to them during construction. OSHA further proposed in § 1926.707(a)(2) that the lateral supports for masonry walls be capable of withstanding a load of 15 pounds per square foot applied to the wall. Section 1926.707(a)(2) has been deleted (see the discussion under *Requirements Proposed but not Finalized below*). OSHA based its proposed requirements on the ANSI A10.9–1983 requirements for masonry construction.

In connection with the proposed requirements, OSHA raised a specific issue (Issue No. 10) in the NPRM to gather information to determine if lateral support were only needed at certain heights. OSHA asked, among other questions, if pilasters, partition walls, end walls, and masonry walls with reinforcement were adequate lateral supports, at what height should bracing be required, and the reasons why a particular height was recommended by the commenters.

Several comments were received on the proposed provisions and the specific issue, including the following:

CAL/OSHA (Ex. 14–2) commented:

> After the first-story height, the walls should have lateral supports. Beyond 20 feet in height, the unsupported walls would probably collapse. They are usually supported by braces or tie-backs.

The NCCSHAC (Ex. 14–16) commented:

> By the very nature of the circular cross-sections of masonry chimneys and liners, these units are "self-bracing." Further, chimney liners are not exposed to wind load. We therefore recommend that this paragraph be revised to read: Masonry walls (except for industrial chimneys and liners), exposed to wind or other forces, shall be temporarily braced until the design lateral strength of the wall is reached or supporting members are in place to resist such forces as may be applied to them during construction.

Associated General Contractors of Dallas (Ex. 14–8) commented:

> The engineer's design (load bearing, non-load bearing) is complex and therefore the height of masonry walls requiring lateral support cannot be aribtrarily stated.

Safety Consultants (Ex. 14–25) commented:

> Masonry walls while under construction should be shored to withstand a wind load of at least 80 mph and that shoring system should be approved and inspected by the structural design engineers.

Gilbane Building Company (Ex. 14–28) commented:

> With regard to masonry walls, the recommendations in the masonry institute should be followed. There are too many conditions which must be considered by a competent engineer to give a firm answer at what height the walls should be laterally supported. This can vary from five feet to ten feet to twenty feet depending upon conditions and design. The major reason for determining the height of support is the amount of lateral load, i.e., wind that must be resisted.

The question of whether pilasters, partition walls, end walls, and masonry walls with reinforcement are adequate lateral support is one that must be answered by a competent engineer. It is dependent upon the lateral load that is place on the wall that is being supported. If it is to act as a beam, it must be reinforced as a beam. If you expect it to act as a supported column, then it must be reinforced as one. These are decisions which must be made by a competent engineer, not by a regulatory agency such as OSHA.

The current industry practice is to provide lateral support for walls on both sides of the walls. As is known from the many failures and collapses that occur with the type of construction, this is not uniformly practiced.

The WMACSA (Ex. 14–29) suggested the provision be revised as follows:

Shoring and bracing. Masonry walls shall be temporarily shored and braced until designed lateral strength is reached to prevent collapse due to wind or other forces.

Technical Safety Associates (Ex. 14–34) commented that masonry walls over six (6) feet high should be temporarily shored and braced.

The National Constructors Association (Ex. 14–36) commented that OSHA should not specify the height of masonry walls requiring temporary lateral support, further stating that the proposed provision requires lateral support if and when it is needed, which is appropriate. The commenter identified seven variables which must be considered to determine the need for bracing.

General Shale Products Corp. (Ex. 14–43) questioned the reasonableness of OSHA's proposed bracing requirements and suggested that other approaches be considered such as limited access zones, posting of signs and barricading of potential hazards.

And finally, the Mason Contractors Association of America (MCAA) (Ex. 14–30) submitted a suggestion endorsed by employer groups, unions, and manufacturers, including the Mason Contractors Association of America, the National Concrete Masonry Association, the Portland Cement Association, the Brick Institute of America, the Bricklayers & Allied Craftsmen International Union, the Laborers International Union of North America, and the International Masonry Institute. OSHA believes these groups constitute a balanced cross-section of all interests involved in masonry construction. They suggested establishing a limited access zone, which would be restricted to workers actively engaged in constructing the walls, and requiring the bracing of unsupported walls *over 8 feet* in height which are not capable of withstanding forces to be applied during construction. The MCAA also discussed the injury data available from OSHA's Fatality and Catastrophe Abstracts involving masonry wall collapses and how they arrived at this consensus suggestion. According to the MCAA, the injury data they discussed included 20 incidents involving injuries and deaths. In 11 of the cases, the walls were not braced at all. In four of the cases, the walls had been braced, but the bracing had been removed prematurely. In another 4 cases, bracing was used, but the condition of the bracing rendered it ineffective.

These comments prompted OSHA to seek additional information in its hearing notice. In that notice, OSHA discussed the comment that had been received from the MCAA and which was supported by employer groups, unions, and manufacturers. OSHA also asked for accident data on wall collapses.

In response, OSHA heard from both its expert witnesses and several others who attended the hearing. OSHA's expert witness, John Hanson (Ex. 18) testified, "I do not believe that all walls with a nonsupported height of eight feet or less can be excluded from the requirement for bracing. It becomes a function of the width of that wall as well as the height of the wall." Mr. Hanson's statement led to questioning by others at the hearing. Specifically, the Safety Chairman of the Mason Contractors of Missouri, asked Mr. Hanson didn't he think that walls less than eight feet should be excluded from the bracing requirements (Tr. I, 99). After some discussion to clarify the question, Mr. Hanson responded by citing various factors that would have to be considered before deciding whether or not a wall under eight feet needed bracing. He also said, "There are many eight-foot walls that I would be willing to accept as not needing bracing, but there are many other eight-foot high walls in my mind would require bracing . . . therefore I do not believe a requirement based just on a matter of height alone is sufficient."

OSHA's other expert witness, Ingvar Schousboe also testified on the provision for masonry construction. He said, "For part (c) of that, I think it would be reasonable to consider the thickness limitation for an eight-foot high unbraced wall." (Tr. I, 142).

A representative from the International Masonry Institute, testifying on behalf of the Masonry Industry Committee (Tr. I, 148), restated the position put forth by MCAA (as discussed above, Ex. 14–30), in their written comment—creation of a limited access zone, exclusion of all walls under 8 feet from any bracing requirements, and requiring bracing for walls over 8 feet which were not capable of withstanding forces during construction. The representative commented that the revisions represented an informed consensus recommendation of groups familiar with the hazards of masonry construction, and urged OSHA to adopt their suggested revisions.

Upon completion of the MCAA's testimony, the representative was questioned on his thoughts on the statement made by OSHA's expert witness—that walls under 8 feet should not be excluded from bracing simply because of height. The MCAA representative commented, "The eight feet is certainly not a magic number. But it is a number that has been used as a kind of rule of thumb. In masonry construction, there are other items that are rules of thumb from past experience and common sense. Eight feet happens to be one of those numbers." He further commented that the eight feet was used by Factory Mutual in their prevention loss data and that he thought Factory Mutual considered masonry walls below eight feet not to pose a hazard.

It is evident from the comments received that there is a wide variety of opinions regarding the height at which a masonry wall should be braced. As discussed, the record shows recommendations ranging from 5 to 20 feet as the appropriate height. Few, if any, of the recommendations were accompanied by the evidence or support necessary for OSHA's use in promulgating a final rule. Nor was there adequate discussion or comment of the benefits of establishing a limited access zone in lieu of bracing walls with an unsupported height of eight feet or less.

Nonetheless, OSHA feels the record has adequately established that masonry walls do collapse and worker protection is needed (see discussion above and the NPRM at 37543). OSHA has decided, therefore, after carefully reviewing all the comments and testimony, the literature on average wind speed, and the accident data on wall collapses as previously discussed, that the suggestion put forth by the MCAA has merit, as reflected in the final rule. OSHA believes that creation of a limited access zone for all walls and the bracing of all unsupported walls over 8 feet in height, provides an appropriate level of protection to employees. The limited access zone will limit the number of employees exposed to the hazard to those employees who are actively engaged in constructing the wall and who most likely, would be on the side of the wall away from the collapse area. If the wall is 8 feet or under in height, the limited access zone

must remain in place until the wall is adequately supported to prevent overturning and collapse. Such support can be obtained as a result of the wall having reached sufficient strength to prevent overturning and collapse, having been permanently supported, or having been braced. However, if the wall is over eight feet in height and unsupported, the wall must be braced before the limited access zone can be removed and the bracing must remain in place until the permanent supporting elements of the structure are in place. OSHA believes that these provisions provide a level of safety equivalent to that which would have been afforded by the proposed requirement.

OSHA notes, however, that a part of the recommendation of the MCAA does not appear to be necessary for inclusion in the final rule. Specifically, OSHA has not included the language of the MCAA recommendation which seems to imply that masonry walls supported during construction by intersecting walls, piers, and pilasters will have adequate support to prevent overturning and collapse. While OSHA recognizes that intersecting walls, piers, and pilasters which are constructed as the wall is being constructed may indeed provide such support, OSHA also recognizes that it would be necessary to specify the number of intersecting walls, piers, and pilasters that would be needed based on the length of the wall being constructed if OSHA were to incorporate in the final rule, the entire recommendation of the MCAA. For example, OSHA does not believe that a wall 200 feet long would be sufficiently supported because it had one intersecting wall, located 10 feet from one end of the wall. In any event, such elaboration is unnecessary in the final rule since the provision has been written in performance language, requiring the employer to adequately brace all walls over 8 feet in height to prevent overturning and collapse. This provision, of course, as discussed above, does not apply where walls are sufficiently supported such that they are capable of withstanding the forces applied during construction that could cause overturning and collapse. Intersecting walls, piers, pilasters, and end walls as well as having reached their designed strength (self-support) are examples of support that may be used to withstand forces that could cause overturning and collapse. Thus, employers should consider many factors that are appropriate for determining which walls to brace and how to brace the walls. In light of the above, OSHA promulgates § 1926.706 as revised.

Requirements Proposed But Not Finalized

OSHA observes that there are several requirements in the proposed rule that it has decided not to finalize. First, OSHA proposed in § 1926.705(a)(3) that formwork be strengthened whenever reinforcing steel, materials, or equipment are stored on top of the formwork. There were several comments received on the proposed rule. Commenters (Exs. 14–9, 14–10, 14–11, and 18) pointed out that formwork may not require strengthening in all cases. They suggested that words like "if necessary" or "adequate" be placed in the rule for clarity. Two commenters (Exs. 19 and 14–29) suggested that this rule could be deleted since the rule in § 1926.703(a)(1) of the proposal already addressed the strength of formwork. After carefully considering all the comments received, OSHA agrees that § 1926.703(a)(1) adequately addresses the hazard which would have been regulated by § 1926.705(a)(3). OSHA, therefore, has decided not to finalize proposed § 1926.705(a)(3).

Two similar provisions proposed, but not promulgated, are found in §§ 1926.706(a)(2) and 1926.707(a)(2) of the proposal. Both of the proposed provisions required lateral supports to be capable of supporting a load of 15 pounds per square foot (PSF) applied to the precast units (§ 1926.706(a)) or to the masonry walls (§ 1926.707(a)). These two provisions are being discussed together because most commenters indicated that their comment applied to both provisions and both provisions have not been finalized for the same reason.

The proposed provision in § 1926.706(a)(1) was based on paragraph 10.3 of ANSI A10.9–1970 (Ex. 9) which is incorporated into OSHA's existing rule by reference. The proposed rule, however, did not specify the 10 psf limit of the A10.9–1970 standard, but instead, specified the 15 psf limit set forth in the updated A10.9–1983 ANSI concrete standard. The proposed provision in § 1926.707(a)(1) was also based on the ANSI A10.9–1983 standard.

OSHA received several comments on the proposed provisions. Three commenters (Exs. 14–9, 14–13, and 14–31) objected to increasing the support requirement from 10 pounds per square foot to 15 pounds per square foot. They objected to the proposed requirements because they contented that employees would not be working in 70 mile per hour winds and yet OSHA was requiring bracing equivalent to a wind load of 70 mph. For example, the AGC (Ex. 14–31) commented:

> Excessive bracing, would cause additional employee exposure when requiring that lateral supports be capable of withstanding a load of 15 pounds per square foot (PSF). At 15 PSF walls could withstand winds in excess of 70 mph. Since OSHA's responsibility is employee safety, it would be realistic to believe that employees would not be exposed to a hazard as they would not be working in such weather conditions. Consequently this proposed requirement is not within the scope of OSHA's responsibilities.

Milwaukee Construction Industry Safety Council (Ex. 14–19) commented:

> Requiring walls be braced to withstand a lateral force of 15 lbs is excessive. It requires a wind in excess of 70 mph to produce that amount of force * * * we suggest a requirement for a braced wall to withstand a force of 5 lbs psf is sufficient to protect employees without creating hazards associated with excessive bracing.

Another commenter, WMACSA (Ex. 14–29), requested that OSHA clarify whether the requirements for the temporary supports were for the total load, including bracing design, or just the wind load. The SSFI (Tr. I, 178) stated that OSHA should not specify in §§ 1926.706 and 1926.707 requirements for lateral support. The SSFI testified as follows:

> These forces should not be specified in the OSHA standards. The reason is that one specified support force may not be appropriate for the varying curcumstances on all job sites. The standard should affirmatively require that consideration for wall bracing should take into account such matters as the prevailing wind pressure load, mean wind speed gradients at various heights, wind directionality, terrain roughness and building geometry, wall location and time of the year. For example, there may be cases in which ground floor walls may require minimal support force, and subsequent levels require substantially greater bracing force requirements above 15 PSF. Because of these numerous variables, the Contractor and Engineer/Architect of record must be given the responsibility but, still, flexibility in providing adequate wind bracing support throughout the entire construction process.

After careful consideration of the comments and testimony received, OSHA has determined that the proposed rules discussed above are unnecessarily specific and redundant. OSHA observes that §1926.704 (a) adequately addresses supporting precast members and § 1926.706 adequately addresses supporting masonry walls. OSHA feels worker safety would not be reduced if the proposed provisions in question were not promulgated since the hazards are adequately addressed in other provisions. Therefore, OSHA has not promulgated proposed §§ 1926.706(a)(2) or 1926.707(a)(2).

Additionally, OSHA proposed to delete a number of requirements which were specific to shoring operations. OSHA felt that these were redundant since the hazards addressed by the specific requirements were adequately addressed by the existing general requirements for shoring. OSHA received no comment on its proposal to delete these specific requirements for shoring and therefore, deletes these paragraphs as proposed. The following table lists the deleted specific requirement, the corresponding proposed general requirement, and the location of the general requirement in the final rule.

Existing	Proposed	Final
1926.700(e)(2)(i)	1926.705(a)(1)	1926.703(a)(1)
1926.700(e)(2)(ii)	1926.705(a)(1)	1926.703(a)(1)
1926.700(e)(2)(iii)	1926.705(a)(1)	1926.703(a)(1)
1926.700(e)(2)(iv)	1926.705(a)(1)	1926.703(a)(1)
1926.701(c)(1)	1926.705(c)(2)(ii)	1926.703(b)(3)
1926.701(c)(2)	1926.705(a)(1)	1926.703(a)(1)
1926.701(c)(3)	1926.705(a)(1)	1926.703(a)(1)
1926.701(d)(1)	1926.705(a)(1)	1926.703(a)(1)
1926.701(d)(4)	1926.705(a)(1)	1926.703(a)(1)
1926.701(d)(6)	1926.705(c)(2)(ii)	1926.703(b)(2)
1926.701(d)(7)	1926.705(c)(2)(ii)	1926.703(b)(2)
1926.701(d)(8)	1926.705(c)(2)(ii)	1926.703(b)(2)
1926.701(d)(9)	1926.705(c)(2)(ii)	1926.703(b)(2)
1926.701(d)(10)	1926.705(a)(1)	1926.703(a)(1)

Finally, OSHA Notes that it raised one issue in the NPRM and one issue in the hearing notice that have not resulted in a final requirement nor has OSHA discussed them in the final rule in relation to any of the proposed or finalized provisions.

The issue raised in the NPRM was Issue #11 in which OSHA stated that the proposed rule was generally written in performance language to provide flexibility for compliance and asked if any of the requirements in the proposal should be made more specific?

In response, the WMACSA (Ex. 14–29) commented, "It is essential that the new standard for concrete construction contain both specific and performance levels of compliance requirements." They went on the comment that, "It is almost irresponsible to promulgate standards with the great latitude offered in a 'Performance' concept."

Speaking for the need for specific standards, OSHA's expert witness, John Hanson (Ex. 18), testified, "I agree very strongly with the comment that it is almost irresponsible to promulgate standards with the great latitude offered in a performance concept." He also said, "Where the issue with respect to safety is clear or can be clearly defined, I believe that it is appropriate and preferable to establish a specific requirement. The danger with a specific requirements is that there may be special circumstances where it is impractical to perform the construction without violating the requirement." To address these special circumstances, Mr. Hanson recommended that a statement be added in § 1926.700 to the effect that, "The requirements in this Subpart do not need to be met if circumstances are encountered which make the construction impractical. However, before any requirement is not met, alternative requirements shall be established that eliminate or control the hazard."

However, OSHA received a number of comments (Exs. 14–10, 14–16, 14–28, 14–31) which indicated agreement with performance standards, opposition to specification standards, and the need for flexibility. The AGC (Ex. 14–31) comment summarizes the vast majority of the comments received on this issue. The AGC wrote, "AGC believes that performance standards provide the most flexibility when applied to the construction industry. The general consensus is that specific standards preclude contractors from compliance because practicality has not been considered. Specific standards are not necessarily the safest method available."

CAL/OSHA (Ex. 14–2) commented that performance standards are probably more desirable throughout the industry.

OSHA observes that none of the commenters answered the specific question in the NPRM; i.e., "What if any of the requirements in the proposal should OSHA make more specific?" There being no comment on the need to revise any performance standards to specification standards, OSHA has not taken any action on this issue. OSHA appreciates the comments and opinions expressed on the issue of performance versus specification.

In the hearing notice, OSHA indicated that it had received several comments that recommended new regulations be established for the following tasks:

(a) Flying Forms;

(b) Natural Drafting Cooling Tower Construction;

(c) Cleaning Concrete Pumping Systems;

(d) Concrete Buggies;

(e) Concrete Construction Housekeeping;

(f) Storage and Handling of Concrete Blocks and Bricks;

(g) Pretensioning and Post-tensioning Concrete; and

(h) Handling and Storage of Precast Concrete Members.

OSHA asked for data, evidence, and documentation to demonstrate risks associated with the above listed tasks and asked for suggested ways to control these risks.

OSHA received little additional information in response to this issue. OSHA did hear testimony from its expert witness, John Hanson (Ex. 18), who said that he agreed with the comments that additional regulation were needed in a number of areas. The data, evidence and documentation to support the recommendations, however, were not forthcoming.

The data, evidence, and documentation received in response to this issue was so limited that it was insufficient to enable OSHA to determine if additional regulation is needed. Therefore, no action has been taken at this time in response to the issue raised in the hearing notice with the exception of issue (g) which has been discussed above in connection with § 1926.701(c)(1) and (2). Additionally, OSHA observes that some of the items listed are already covered in some detail by existing Part 1926 regulations. For example, Subpart C addressed housekeeping for all construction sites. The hazards associated with storage and handling of materials are addressed in Subpart H. Thus, the concerns of commenters regarding items (e), (f), (g), and (h) above have been addressed. OSHA will continue its efforts to determine if additional regulation in any of the areas listed is needed.

IV. Summary of the Regulatory Impact and Regulatory Flexibility Assessment

Introduction

Executive Order 12291 (46 FR 13197, February 19, 1981) requires that a regulatory analysis be conducted for any rule having major economic consequences on the national economy, geographical regions, individual industries, or levels of government. In addition, the Regulatory Flexibility Act of 1980 (Pub. L. 96–353, 94 Stat. 1164 (5 U.S.C. 601 *et seq.*)) requires the Occupational Safety and Health Administration (OSHA) to determine whether the proposed regulation will have a significant economic impact on a substantial number of small entities.

Consistent with these requirements, OSHA has prepared a Final Regulatory Impact and Regulatory Flexibility Assessment for the current and revised standards governing Concrete and Masonry Construction. This analysis includes a profile of affected firms and industries, a description of the regulatory and nonregulatory alternatives, estimates of the benefits and the costs of full compliance for both the existing and revised standards, and the potential economic and

environmental impacts. The complete analysis, as summarized in this section, is based on data and information provided by JACA Management Consultants in *An Economic Impact Statement/Technological Feasibility Study of the Proposed Revisions to Subpart Q Part 1926.700 Through 1926.702,* which is available in the rulemaking record and on additional information submitted to the record.

The Secretary has determined that this action would not be a "major rule" as defined by section 3(b) of Executive Order 12291 as it will not have an annual effect on the economy of $100 million or more, cause major increases in costs or prices for individual industries, or have any other significant adverse effects. The Secretary also certifies that this action will not have a significant impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. The Final Regulatory Impact and Regulatory Flexibility Assessment is available for inspection and copying in the rulemaking docket.

Statement of the Problem and Summary of Industry Profile

The existing standards governing safety hazards associated with concrete and masonry construction in Subpart Q of 29 CFR Part 1926 were adopted in 1971 with only minor revisions since that time. A number of factors have led OSHA to propose revisions to Subpart Q at this time. First, the requirements of the standard are complicated and confusing as a result of the incorporation by reference of the American National Standards Institute (ANSI) standard for concrete, formwork, and shoring (ANSI A10.9–1970). The ANSI standard, in turn, references that of the American Concrete Institute (ACI No. 347). Thus, the contractor who wishes to comply with OSHA regulations would need to refer to up to three overlapping, and possibly conflicting, sets of rules. To further complicate matters, Subpart Q only requires that any equipment and materials that are used meet ANSI standards, not that the equipment itself be used. Moreover, both ANSI and ACI have updated their standards but the existing Subpart Q still refers to the old ANSI standard.

In addition to these difficulties, Subpart Q is becoming increasingly out of date, creating gaps in coverage. Hazards associated with the collapse of masonry walls have never been adequately covered. Newer technologies, such as the use of precast concrete, are not addressed by the standard, and techniques for in-place testing of concrete are inadquately considered.

A final difficulty has been that Subpart Q's requirements for formwork design and removal have been very narrowly interpreted by Administrative Law Judges. The standard requires that they be adequate during the placement of concrete. This has been intepreted to mean that formwork that collapsed immediately before or after placement was not in violation of the standard.

For all of these reasons, OSHA is revising Subpart Q at this time. The three major purposes of the revisions are to clarify and simplify the standard, to cover inadequately addressed hazards, and to incorporate recent advances in concrete construction technology.

Concrete and masonry work occurs across a broad range of four-digit Standard Industrial Classification (SICs) codes within the construction industry. OSHA has determined that the proposal would affect all of SIC 15 (Building Construction), and all but SIC 1611, (Street and Highway Construction) in SIC 16. In SIC 17, SICs 1741 (Masonry), 1751 (Carpentering), 1771 (Concrete Work), 1794 (Excavation and Foundation Work), and 1799 (Special Trade Contractors Not Elsewhere Classified) would also be affected. OSHA has assumed that virtually all firms with paid employees within these affected SICs would be affected by the standard, although this is doubtlessly an overestimate, particularly for special trade contractors. There were 246,975 firms in these SICs in 1984.

OSHA has also estimated the amount of construction that would be affected by the revised standard. It is estimated to affect about 12.6 percent of total new construction, or about $48.8 billion in 1987. OSHA has also estimated the affected population in several ways. The best estimate of the population potentially at risk is about 503,369 full-time equivalent workers in 1987.

Costs, Benefits and Feasibility

OSHA has estimated the actual compliance costs required by the existing standard and the incremental costs for the revised standard. Annualized costs of compliance with the current standard would be approximately $5.6 million. Full compliance with the revised standard would cost approximately an additional $38.2 million. These costs do not include estimates for any changes in the lift-slab provisions as these will be addressed in a separate **Federal Register** notice.

Based solely on the fatalities avoided, this would translate into a cost per fatality avoided of about $119,000 for coming into full compliance with the existing standard and about $516,000 per fatality avoided for the incremental costs of the revised standard. These costs and thus the cost per fatality avoided would of course also be offset by the lost workday and nonlost workday injuries avoided and the cost savings related to property losses.

OSHA has also estimated the potential cost savings resulting from concrete and masonry accidents that would more than offset the increased costs of compliance. These cost savings resulted from the indirect costs of accidents such as property damage, scheduling delays, increased insurance premiums, and lost worktime. Based on the number of fatalities and injuries that will be avoided under full compliance it is estimated that these cost savings would be about $348 million annually.

OSHA has calculated the maximum impact on profits of the revised standard, assuming a worst case where contractors would bear all of the costs. Due to the incremental costs, the largest potential impact of the proposed standard would be on Masonry and Stonework which could experience a 55 percent decline in return on assets, from 6.5 percent to 2.9 percent. OSHA has also estimated the potential impact on output and employment. The impacts are expected to be quite small for all industries except Masonry and Stonework where there is potential for output and employment declines of about 2.65 percent.

The revised standard would be more protective than is the current standard. Full compliance with the present Subpart Q would prevent an estimated 47 fatalities, 2,259 lost workday injuries, and 1,689 nonlost workday injuries annually. Full compliance with the revised standard would prevent an additional 74 fatalities, 1,556 lost workday injuries and 1,469 nonlost workday injuries annually.

Regulatory Flexibility Assessment

OSHA has evaluated the expected cost of compliance for small entities. For the purpose of this analysis, a small entity has been defined as a firm having nine or fewer employees. Approximately 82 percent of the affected firms would fall within this size category. OSHA has estimated that even in Masonry and Stonework, where the impact is potentially the greatest, the cost per firm would be approximately $339 for the smallest size class. In addition, the standard would not require large capital expenditures or any sort that would put small firms, with limited access to funds, at a relative disadvantage. Nor is

special technical expertise required for compliance that would be beyond the resources of small firms.

For the above reasons, and pursuant to the Regulatory Flexibility Act, OSHA certifies that, while the revised standard may affect a substantial number of small entities, it is not expected to have a significant economic impact for these small entities.

Environmental Impact Assessment—Finding of No Significant Impact

This standard has been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4231 *et seq.*), the guidelines of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and OSHA's DOL NEPA Procedures (29 CPR Part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the revised rule would have no significant environmental impact.

The revisions consist primarily of work practices and procedures, including requirements for reinforcing steel, concrete placement, equipment, formwork, precast concrete, and masonry construction. In addition the revisions include a clarification of the language of the subpart to eliminate ambiguities, uninformative provisions, and redundancies found in the existing standards. To the extent that these safety procedures are in place and are integrated into daily construction operations, the potential for occupational accidents and injuries will be reduced and the safety of the workplace will be enhanced. These changes will not affect the environment outside the workplace and are generally excluded under Subpart B. § 11.10 of the DOL NEPA Regulations (29 CFR Part 11) because they are unlikely to influence air, water or soil quality, plant or animal life, the use of land or other aspects of the environment.

Although activities in the vicinity of construction work as well as the disposal of materials removed from construction sites may tend to impact on the local environment, there is no reason to believe that there will be any adverse impact on air, water or soil quality beyond what will ordinarily occur from such construction operations. That is, the revisions will not alter the nature of these operations, nor further affect the makeup or disposal of the material generated or removed during concrete and masonry construction work.

V. OMBV Approval Under the Paperwork Reduction Act

This subpart contains a collection of information in § 1926.703(a)(3). This provision requires employers to maintain a copy of their formwork plans at the job site. OMB has reviewed this collection and approved it through June 1991. The approval number is 1218–0095.

VI. State Plan Requirements

The 25 States with their own OSHA-approved occupational safety and health plans must review their existing standard within six months of the publication date of the final standard or show OSHA why there is no need for action, e.g., because an existing State standard covering this area is already "at least as effective" as the revised Federal standard. These States are: Alaska, Arizona, California, Connecticut (State and local government workers only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (State and local government workers only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington and Wyoming.

List of Subjects in 29 CFR Part 1926

Concrete placement, Construction safety, Formwork, Masonry Construction, Occupational safety and health, Precast concrete.

VII. Authority

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

Accordingly, pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 653, 655, and 657); section 107 of the Contract Work Hours and Safety Standards Act (38 Stat. 96, 40 U.S.C. 333); Secretary of Labor's Order No. 9–83 (48 FR 35736); and 29 CFR Part 1911, Subpart Q of Part 1926 of Title 29 of the Code of Federal Regulations is amended as set forth below.

Signed at Washington, DC, this 10th day of June 1988.

John A. Pendergrass,

Assistant Secretary of Labor.

Part 1926 of Title 29 of the Code of Federal Regulations is amended as follows:

PART 1926—[AMENDED]

1. By revising Subpart Q of 29 CFR Part 1926 to read as follows:

Subpart Q—Concrete and Masonry Construction

Sec.

1926.700 Scope, application, and definitions, applicable to this subpart.
1926.701 General requirements.
1926.702 Requirements for equipment and tools.
1926.703 Requirements for cast-in-place concrete.
1926.704 Requirements for precast concrete.
1926.705 Requirements for lift-slab operations.
1926.706 Requirements for masonry construction.

Appendix A to Subpart Q—References to Subparts of Part 1926

Subpart Q—Concrete and Masonry Construction

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 3536), as applicable; and 29 CFR Part 1911.

§ 1926.700 Scope, application, and definitions applicable to this subpart.

(a) *Scope and application.* This subpart sets forth requirements to protect all construction employees from the hazards associated with concrete and masonry construction operations performed in workplaces covered under 29 CFR Part 1926. In addition to the requirements in Subpart Q, other relevant provisions in Parts 1910 and 1926 apply to concrete and masonry construction operations.

(b) *Definitions applicable to this subpart.* In addition to the definitions set forth in § 1926.32, the following definitions apply to this subpart.

(1) "Bull float" means a tool used to spread out and smooth concrete.

(2) "Formwork" means the total system of support for freshly placed or partically cured concrete, including the mold or sheeting (form) that is in contract with the concrete as well as all supporting members including shores, reshores, hardware, braces, and related hardware.

(3) "Lift slab" means a method of concrete construction in which floor, and roof slabs are cast on or at ground level and, using jacks, lifted into position.

(4) "Limited access zone" means an area alongside a masonry wall, which is under construction, and which is clearly demarcated to limit access by employees.

(5) "Precast concrete" means concrete members (such as walls, panels, slabs, columns, and beams) which have been

formed, cast, and cured prior to final placement in a structure.

(6) "Reshoring" means the construction operation in which shoring equipment (also called reshores or reshoring equipment) is placed, as the original forms and shores are removed, in order to support partially cured concrete and construction loads.

(7) "Shore" means a supporting member that resists a compressive force imposed by a load.

(8) "Vertical slip forms" means forms which are jacked vertically during the placement of concrete.

§ 1926.701 General requirements

(a) *Construction loads.* No construction loads shall be placed on a concrete structure or portion of a concrete structure unless the employer determines, based on information received from a person who is qualified in structural design, that the structure or portion of the structure is capable of supporting the loads.

(b) *Reinforcing steel.* All protruding reinforcing steel, onto and into which employees could fall, shall be guarded to eliminate the hazard of impalement.

(c) *Post-tensioning operations.* (1) No employee (except those essential to the post-tensioning operations) shall be permitted to be behind the jack during tensioning operations.

(2) Signs and barriers shall be erected to limit employee access to the post-tensioning area during tensioning operations.

(d) *Riding concrete buckets.* No employee shall be permitted to ride concrete buckets.

(e) *Working under loads.* (1) No employee shall be permitted to work under concrete buckets while buckets are being elevated or lowered into position.

(2) To the extent practical, elevated concrete buckets shall be routed so that no employee, or the fewest number of employees, are exposed to the hazards associated with falling concrete buckets.

(f) *Personal protective equipment.* (1) No employee shall be permitted to apply a cement, sand, and water mixture through a pneumatic hose unless the employee is wearing protective head and face equipment.

(2) No employee shall be permitted to place or tie reinforcing steel more than six feet (1.8 m) above any adjacent working surface unless the employee is protected by the use of a safety belt or equivalent fall protection meeting the criteria of Subpart E of this part.

§ 1926.702 Requirements for equipment and tools.

(a) *Bulk cement storage.* (1) Bulk storage bins, containers, and silos shall be equipped with the following:

(i) Conical or tapered bottoms; and

(ii) Mechanical or pneumatic means of starting the flow of material.

(2) No employee shall be permitted to enter storage facilities unless the ejection system has been shut down, locked out, and tagged to indicate that the ejection system is not to be operated.

(b) *Concrete mixers.* Concrete mixers with one cubic yard (.8 m^3) or larger loading skips shall be equipped with the following:

(1) A mechanical device to clear the skip of materials; and

(2) Guardrails installed on each side of the skip.

(c) *Power concrete trowels.* Powered and rotating type concrete troweling machines that are manually guided shall be equipped with a control switch that will automatically shut off the power whenever the hands of the operator are removed from the equipment handles.

(d) *Concrete buggies.* Concrete buggy handles shall not extend beyond the wheels on either side of the buggy.

(e) *Concrete pumping systems.* (1) Concrete pumping systems using discharge pipes shall be provided with pipe supports designed for 100 percent overload.

(2) Compressed air hoses used on concrete pumping system shall be provided with positive fail-safe joint connectors to prevent separation of sections when pressurized.

(f) *Concrete buckets.* (1) Concrete buckets equipped with hydraulic or pneumatic gates shall have positive safety latches or similar safety devices installed to prevent premature or accidental dumping.

(2) Concrete buckets shall be deisigned to prevent concrete from hanging up on top and the sides.

(g) *Tremies.* Sections of tremies and similar concrete conveyances shall be secured with wire rope (or equivalent materials in addition to the regular couplings or connections.

(h) *Bull floats.* Bull float handles, used where they might contact energized electrical conductors, shall be constructed of nonconductive material or insulated with a nonconductive sheath whose electrical and mechanical characteristics provide the equivalent protection of a handle constructed of nonconductive material.

(i) *Masonry saws.* (1) Masonry saws shall be guarded with a semicircular enclosure over the blade.

(2) A method for retaining blade fragments shall be incorporated in the design of the semicircular enclosure.

(j) *Lockout/Tagout Procedures.* (1) No employee shall be permitted to perform maintenance or repair activity on equipment (such as compressors, mixers, screens or pumps used for concrete and masonry construction activities) where the inadvertent operation of the equipment could occur and cause injury, unless all potentially hazardous energy sources have been locked out and tagged.

(2) Tags shall read *Do Not Start* or similar language to indicate that the equipment is not to be operated.

§ 1926.703 Requirements for cast-in-place concrete.

(a) *General requirements for formwork.* (1) Formwork shall be designed, fabricated, erected, supported, braced and maintained so that it will be capable of supporting without failure all vertical and lateral loads that may reasonably be anticipated to be applied to the formwork. Formwork which is designed, fabricated, erected, supported, braced and maintained in conformance with the Appendix to this section will be deemed to meet the requirements of this paragraph.

(2) Drawings or plans, including all revisions, for the jack layout, formwork (including shoring equipment), working decks, and scaffolds, shall be available at the jobsite.

(b) *Shoring and reshoring.* (1) All shoring equipment (including equipment used in reshoring operations) shall be inspected prior to erection to determine that the equipment meets the requirements specified in the formwork drawings.

(2) Shoring equipment found to be damaged such that its strength is reduced to less than that required by § 1926.703(a)(1) shall not be used for shoring.

(3) Erected shoring equipment shall be inspected immediately prior to, during, and immediately after concrete placement.

(4) Shoring equipment that is found to be damaged or weakened after erection, such that its strength is reduced to less than that required by § 1926.703(a)(1), shall be immediately reinforced.

(5) The sills for shoring shall be sound, rigid, and capable of carrying the maximum intended load.

(6) All base plates, shore heads, extension devices, and adjustment screws shall be in firm contact, and

secured when necessary, with the foundation and the form.

(7) Eccentric loads on shore heads and similar members shall be prohibited unless these members have been designed for such loading.

(8) Whenever single post shores are used one on top of another (tiered), the employer shall comply with the following specific requirements in addition to the general requirements for formwork:

(i) The design of the shoring shall be prepared by a qualified designer and the erected shoring shall be inspected by an engineer qualified in structural design.

(ii) The single post shores shall be vertically aligned.

(iii) The single post shores shall be spliced to prevent misalignment.

(iv) The single post shores shall be adequately braced in two mutually perpendicular directions at the splice level. Each tier shall also be diagonally braced in the same two directions.

(9) Adjustment of single post shores to raise formwork shall not be made after the placement of concrete.

(10) Reshoring shall be erected, as the original forms and shores are removed, whenever the concrete is required to support loads in excess of its capacity.

(c) *Vertical slip forms.* (1) The steel rods or pipes on which jacks climb or by which the forms are lifted shall be—

(i) Specifically designed for that purpose; and

(ii) Adequately braced where not encased in concrete.

(2) Forms shall be designed to prevent excessive distortion of the structure during the jacking operation.

(3) All vertical slip forms shall be provided with scaffolds or work platforms where employees are required to work or pass.

(4) Jacks and vertical supports shall be positioned in such a manner that the loads do not exceed the rated capacity of the jacks.

(5) The jacks or other lifting devices shall be provided with mechanical dogs or other automatic holding devices to support the slip forms whenever failure of the power supply or lifting mechanism occurs.

(6) The form structure shall be maintained within all design tolerances specified for plumbness during the jacking operation.

(7) The predetermined safe rate of lift shall not be exceeded.

(d) *Reinforcing steel.* (1) Reinforcing steel for walls, piers, columns, and similar vertical structures shall be adequately supported to prevent overturning and to prevent collapse.

(2) Employers shall take measures to prevent unrolled wire mesh from recoiling. Such measures may include, but are not limited to, securing each end of the roll or turning over the roll.

(e) *Removal of formwork.* (1) Forms and shores (except those used for slabs on grade and slip forms) shall not be removed until the employer determines that the concrete has gained sufficient strength to support its weight and superimposed loads. Such determination shall be based on compliance with one of the following:

(i) The plans and specifications stipulate conditions for removal of forms and shores, and such conditions have been followed, or

(ii) The concrete has been properly tested with an appropriate ASTM standard test method designed to indicate the concrete compressive strength, and the test results indicate that the concrete has gained sufficient strength to support its weight and superimposed loads.

(2) Reshoring shall not be removed until the concrete being supported has attained adequate strength to support its weight and all loads in place upon it.

Appendix to § 1926.703(a)(1)

General Requirements for Formwork

(This Appendix is non-mandatory.)

This appendix serves as a non-mandatory guideline to assist employers in complying with the formwork requirements in § 1926.703(a)(1). Formwork which has been designed, fabricated, erected, braced, supported and maintained in accordance with Sections 6 and 7 of the American National Standard for Construction and Demolition Operations—Concrete and Masonry Work, ANSI A10.9–1983, shall be deemed to be in compliance with the provision of § 1926.703(a)(1).

(Information collection requirements contained in paragraph (a)(2) were approved by the Office of Management and Budget under control number 1218–0095)

§ 1926.704 Requirements for precast concrete.

(a) Precast concrete wall units, structural framing, and tilt-up wall panels shall be adequately supported to prevent overturning and to prevent collapse until permanent connections are completed.

(b) Lifting inserts which are embedded or otherwise attached to tilt-up precast concrete members should be capable of supporting at least two times the maximum intended load applied or transmitted to them.

(c) Lifiting inserts which are embedded or otherwise attached to precast concrete members, other than the tilt-up members, shall be capable of supporting at least four times the maximum intended load applied or transmitted to them.

(d) Lifting hardware shall be capable of supporting at least five times the maximum intended load applied or transmitted to the lifting hardware.

(e) No employee shall be permitted under precast concrete members being lifted or tilted into position except those employees required for the erection of those members.

§ 1926.705 Requirements for lift-slab operations.

In addition to the general requirements of this Subpart, employers engaged in lift-slab operations shall comply with the existing specific requirements for lift-slab operations which are prescribed in ANSI A10.9–1970. These requirements, found in Section 11 of the American National Standard Safety Requirements for Concrete Construction and Masonry Work, ANSI, A10.9–1970, are reprinted in the Appendix to this section. In addition, there are applicable requirements in § 1926.305 (a) and (b) of the Construction Safety and Health Standards which apply to jacks in general, and jacks used specifically in lift-slab construction.

Appendix to § 1926.705—Lift-Slab Operations

(Reprinted from ANSI A10.9–1970)

(This Appendix is Mandatory.)

Section 11. Lift-Slab Operations

11.1 General. The safety requirements and recommendations in Section 11 apply specifically to lift-slab construction operations.

11.2 Design and Planning. Lift-slab operations shall be designed and planned by a qualified professional engineer or architect. Such plans and designs shall include detailed instructions and sketches indicating the prescribed method of erection.

11.3 Jacking Equipment.

11.3.1 Jacking equipment shall not be loaded beyond its safe working capacity, and then threaded rods and other members that transmit loads to the jacks shall have a minimum safety factor of 2.5. Jacking equipment used in lift-slab operations shall meet the criteria in 11.3.1 through 11.3.4. (Note: ANSI has interpreted this provision to mean that the safety factor of 2.5 must be met for all jacking components such as jacks, threaded rods, lifting nuts, lifting angles, as well as shearheads, columns and footings).

11.3.2 Jacks shall be so designed and installed so that they will not continue to lift when overloaded.

11.3.3 Jacks shall be installed with a safety device which will enable them to continue to support the load in any position should the jack malfunction and lose its lifting ability.

11.3.4 The maximum number of manually-controlled jacks on one slab shall be limited to 14, and in no event should the number be

too great to permit the operator to maintain the slab level within specified tolerances.

11.4 Uniform Lifting. Jacking operations shall be synchronized in such a manner as to insure even and uniform lifting of the slab. During lifting, all points of the slab support shall be kept within one-half inch of that needed to maintain the slab in a level position. If leveling is automatically controlled, a device shall be installed which will stop the operation when the one-half-inch tolerance is exceeded or when there is a malfunction in the jacking system. If level is maintained by manual controls, such controls shall be located in a central location and attended by a trained operator while lifting is in progress.

11.5 Falling Hazard. No one shall be permitted under the slab during jacking operations. (Note: ANSI has interpreted this provision as follows: "No one is permitted in the building during jacking operations except those employees required for the jacking operation and to secure slabs.

§ 1926.706 Requirements for masonry construction.

(a) A limited access zone shall be established whenever a masonry wall is being constructed. The limited access zone shall confirm to the following.

(1) The limited access zone shall be established prior to the start of construction of the wall.

(2) The limited access zone shall be equal to the height of the wall to be constructed plus four feet, and shall run the entire length of the wall.

(3) The limited access zone shall be established on the side of the wall which will be unscaffolded.

(4) The limited access zone shall be restricted to entry by employees actively engaged in constructing the wall. No other employees shall be permitted to enter the zone.

(5) The limited access zone shall remain in place until the wall is adequately supported to prevent overturning and to prevent collapse unless the height of wall is over eight feet, in which case, the limited access zone shall remain in place until the requirements of paragraph (b) of this section have been met.

(b) All masonry walls over eight feet in height shall be adequately braced to prevent overturning and to prevent collapse unless the wall is adequately supported so that it will not overturn or collapse. The bracing shall remain in place until permanent supporting elements of the structure are in place.

Appendix A to Subpart Q—References to Subpart Q of Part 1926

(This Appendix is non-mandatory.)

The following non-mandatory references provide information which can be helpful in understanding and complying with the requirements contained in Subpart Q.

- Accident Prevention Manual for Industrial Operations; Eighth Edition; National Safety Council.
- Building Code Requirements for Reinforced Concrete (ACI 318–83).
- Formwork for Concrete (ACI SP–4).
- Recommended Practice for Concrete Formwork (ACI 347–78).
- Safety Requirements for Concrete and Masonry Work (ANSI A10.9–1983).
- Standard Test Method for Compressive Strength of Cylindrical Concrete Specimens (ASTM C39–86).
- Standard Test Method for Making and Curing Concrete Test Specimens in the Field (ASTM C31–85).
- Standard Test Method for Penetration Resistance of Hardened Concrete (ASTM C803–82).
- Standard Test Method for Compressive Strength of Concrete Cylinders Cast In-Place in Cylindrical Molds (ASTM C873–85).
- Standard Method for Developing Early Age Compressive Test Values and Projecting Later Age Strengths (ASTM C918–80).
- Recommended Practice for Inspection and Testing Agencies for Concrete, Steel and Bituminous Materials as Used in Construction (ASTM E329–77).
- Method of Making and Curing Concrete Test Specimens in the Laboratory (ASTM C192–88).
- Methods of Obtaining and Testing Drilled Cores and Sawed Beams of Concrete (ASTM C42–87).
- Methods of Securing, Preparing and Testing Specimens from Hardened Lightweight Insulating Concrete for Compressive Strength (ASTM C513–86).
- Test Method for Comprehensive Strength of Lightweight Insulating Concrete (ASTM C495–86).
- Method of Making, Accelerating Curing, and Testing of Concrete Compression Test Specimens (ASTM C684–81).
- Test Method for Compressive Strength of Concrete Using Portions of Beams Broken in Flexure (ASTM C116–68 (1980)).

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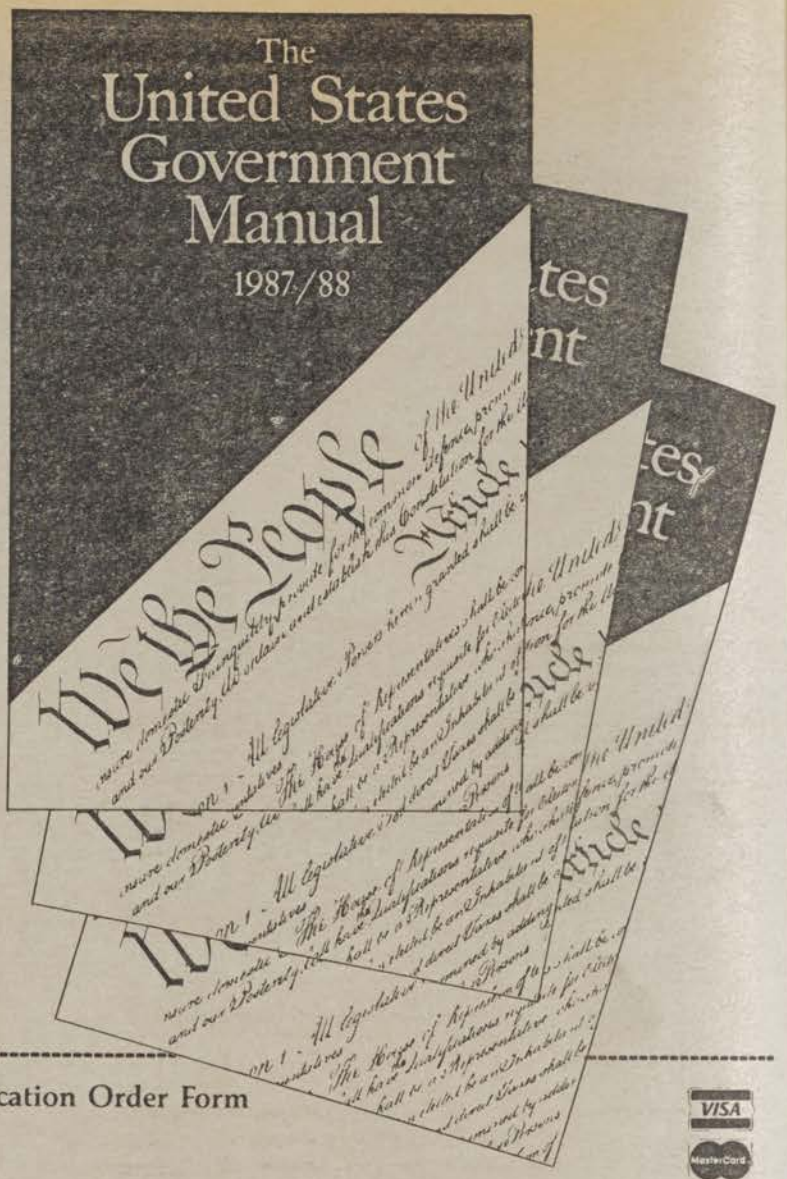
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