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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.
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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 88-102]

Importation of Apples, Peaches, and Citrus from Sonora

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the Fruits and Vegetables regulations by removing Guaymas from the list of definite areas in Sonora, Mexico determined to be free from certain injurious insect pests and from which apples, grapefruit, oranges, peaches and tangerines may be imported without treatment for these pests. This action is necessary to prevent the introduction into the United States of injurious insects.

DATES: Interim rule effective July 20, 1988. Consideration will be given only to comments postmarked or received on or before September 26, 1988.

ADDRESSES: Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC, 20090-6464. Please state that your comments refer to Docket Nunber 88-102. Comments received may be inspected at Room 1141 of the South Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Frank E. Cooper, Senior Operations Officer, Port Operations Staff, PPQ, APHIS, USDA, Room 670, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8295.

SUPPLEMENTARY INFORMATION:

Background

The Fruits and Vegetables regulations in 7 CFR 319.56 *et seq.* (referred to below as the regulations) impose restrictions on the importation of fruits and vegetables in order to prevent the introduction and dissemination of injurious insects, including fruit and melon flies, that are new to or not widely distributed within and throughout the United States. Section 319.56-2(h) of the regulations allows apples, grapefruit, oranges, peaches and tangerines to be imported from certain municipalities in Sonora, Mexico (Altar, Atil, Coborca, Carbo, Empalme, Guaymas, Hermosillo, Pitiquito, Puerto Penasco, and San Miguel), without treatment for five fruit flies known to occur in Mexico (*Ceratitis capitata, Anastrepha ludens, A. serpentina, A. obliqua, and A. fraterculus*).

Section 319.56-2(f) allows a municipality to be listed in § 319.56-2(h) only if surveys show it to be free from infestations of these insect pests. We have received reports from Animal and Plant Health Inspection Service inspectors confirming that, as of May 6, 1988, an infestation of *Anastrepha ludens* exists in the municipality of Guaymas. Therefore, we are removing Guaymas, Sonora, Mexico from the list of municipalities in § 319.56 2(h).

Immediate Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause for publishing this rule without prior opportunity for public comment. Immediate action is necessary to prevent the introduction of injurious insects into the United States.

Since prior notice and other public procedures with respect to this rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are postmarked or received within 60 days of publication of this interim rule in the **Federal Register.** As soon as possible after the comment period closes, we will publish another document in the **Federal Register** discussing the comments we received and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

This action will prevent the importation of apples, grapefruit, oranges, peaches, and tangerines from Guaymas into the United States, unless they are treated for the five listed fruit flies. This change should have no effect on small entities since no commercial shipments of such fruit have been moving from Guaymas to the United States, and there are no planned commercial shipments of such fruit.

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

Paperwork Reduction Act

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

Executive Order 12372

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

List of Subjects in 7 CFR Part 319

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

PART 319—FOREIGN QUARANTINE NOTICES

Accordingly, 7 CFR Part 319 is amended as follows:

1. The authority citation for Part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff; 151–167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 319.56–2 [Amended]

2. In § 319.56–2 paragraph (h) is amended by removing "Guaymas,".

Done at Washington, DC, this 20th day of July, 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–16621 Filed 7–25–88; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–86–AD; Amdt. 39–5985]

Airworthiness Directives: Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which currently requires inspection of trailing edge flap tracks for cracking, and repair, if necessary. This amendment is being issued to include additional inspection requirements for flap tracks Numbers 1 through 8. This amendment is prompted by a recent flap track failure which occurred shortly after the track was inspected visually in accordance with the existing AD. Cracking could lead to failure of the flap track and separation of the flap, which could result in partial loss of controllability of the airplane.

EFFECTIVE DATE: August 15, 1988.

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

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, ANM–120S; telephone (206) 431–1919. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On April 17, 1987, the FAA issued AD 84–19–02–R4, Amendment 39–5612 (52 FR 13632; April 24, 1987), which requires visual inspection for cracking of the flap tracks Numbers 1 through 8, and repair of cracked parts, if necessary. Recently, at 145 landings since the last visual inspection, a Number 3 flap track on a Boeing Model 747 series airplane failed at the forward most fastener hole common to the fail-safe bar. This indicates that the currently required visual inspection apparently is not adequate to detect a crack before it becomes critical. Cracks, if allowed to progress undetected, could lead to failure of the flap track and separation of the flap, which could result in partial loss of controllability of the airplane.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–57A2229, Revision 5, dated June 2, 1988, which describes a procedure for ultrasonic inspection of the area adjacent to the first four fastener holes from the forward end of flap tracks Number 1 through 8, and repair, as necessary.

Since this condition is likely to exist or develop on other airplanes of the same type design, this action supersedes AD 84–19–02–R4 with a new AD to require visual and ultrasonic inspections of the trailing edge flap tracks for cracks, and repair, if necessary, in accordance with the Boeing Alert Service Bulletin described above.

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

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By superseding AD 84–19–02, Amendment 39–4917 (49 FR 36819; September 20, 1984), as amended by Amendments 39–5314 (51 FR 18308; May 19, 1986), 39–5466 (51 FR 40969; November 12, 1986), 39–5567 (52 FR 5531; February 25, 1987), and 39–5612 (52 FR 13632; April 24, 1987), with the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, listed in Boeing Service Bulletin 747–57A2229, Revision 5, dated June 2, 1988, certificated in any category, that have reworked or interim production flap tracks (part numbers identified in the service bulletin). Compliance required as indicated, unless previously accomplished.

To prevent failure of the trailing edge flap tracks, accomplish the following:

A.1. Within the next 50 landings after the effective date of this AD, unless accomplished within the last 250 landings, and at intervals thereafter not to exceed 300 landings, visually and ultrasonically inspect the lower flanges and vertical webs at the front end of the Numbers 1 through 8 flap tracks for cracks adjacent to bolts Numbers 1 through 4, in accordance with the procedures described in Boeing Alert Service Bulletin 747–57A2229, Revision 5, dated June 2, 1988.

2. Replace cracked flap tracks prior to further flight in accordance with Boeing Service Bulletin 747–57–2146, Revision 3, dated May 9, 1986.

B. Within the next 50 landings after the effective date of this AD, unless accomplished within the past 950 landings, and at intervals thereafter not to exceed 1,000 landings, visually inspect the Numbers 1 through 8 flap track webs for cracks extending from all fastener holes not inspected under paragraph A.1., above, in accordance with Boeing Service Bulletin 747–57–2146, Revision 3, dated May 9, 1986. Cracked parts must be replaced prior to further flight.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

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

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

This supersedes AD 84–19–02, Amendment 39–417, as amended by Amendments 39–5314, 39–5466, 39–5567, and 39–5612.

This amendment becomes effective August 15, 1988.

Issued in Washington, DC, on July 20, 1988.

Thomas E. McSweeny,

Acting Director, Office of Airworthiness.

[FR Doc. 88–16813 Filed 7–25–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 88–ASO–7]

Cancellation of Transition Area, Winchester, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment cancels the existing transition area, Winchester, Kentucky. This action will lessen the burden on the public by raising the floor of controlled airspace from 700′ to 1200′ above the surface in this particular area. The transition area was established to afford airspace protection for a special instrument approach procedure to the Codell Airport. The special instrument approach procedure was for the exclusive use of the airport owner/operator. The airport owner/operator has requested the instrument approach procedure be cancelled. Therefore, a need no longer exists for the transition area.

EFFECTIVE DATE: 0901 u.t.c., October 20, 1988.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

The Rule

This amendment to Part 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to cancel the Winchester, Kentucky, transition area and raise the floor of controlled airspace from 700′ to 1200′ above the surface in the vicinity of the Codell Airport.

Because this change reduces the burden on the public and is so minor, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor amendment in which the public would not be particularly interested. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 4, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Winchester, KY [Removed].

Issued in East Point, Georgia, on June 24, 1988.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 88–16697 Filed 7–25–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 556

Animal Drugs, Feeds, and Related Products; Ivermectin Drench

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Merck Sharp & Dohme Research Laboratories, providing for safe and effective oral use of Ivomec® (ivermectin) 0.08 percent sheep drench for treatment and control of certain species of gastrointestinal roundworms, lungworms, and bots. The regulations are also amended to establish a tolerance and safe concentrations for drug residues in edible sheep tissue.

EFFECTIVE DATE: July 26, 1988.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

SUPPLEMENTARY INFORMATION: Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc., P.O. Box 2000, Rahway, NJ 07065, has filed NADA 131–392 providing for oral use of

Ivomec® (ivermectin) 0.08 percent drench for treatment and control of certain species of gastrointestinal roundworms, lungworms, and nasal bots. The NADA is approved. The regulations are amended to reflect the approval and to establish a tolerance for the marker residue and safe concentrations for total residues of ivermectin in edible sheep tissue. The basis for approval is discussed in the freedom of information summary.

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

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Under FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25), an action of this type would require an environmental assessment under 21 CFR 25.31a(a).

List of Subjects

21 CFR Part 520

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 520 and 556 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

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

2. Part 520 is amended by adding new § 520.1194 to read as follows:

§ 520.1194 Ivermectin drench.

(a) *Specifications.* Each milliliter of 0.08 percent (weight per volume) micellar solution contains 0.08 milligram of ivermectin.

(b) *Sponsor.* See No. 000006 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.344 of this chapter.

(d) *Conditions of use*—(1) *Amount.* 3.0 milliliters (2.4 milligrams of ivermectin) per 26 pounds of body weight (or 200 micrograms per kilogram of body weight).

(2) *Indications for use.* It is used in sheep for treatment and control of the adult and fourth-stage larvae of the following parasites of sheep: gastrointestinal roundworms (*Haemonchus contortus, H. placei* (adults only), *Ostertagia circumcincta, Trichostrongylus axei, T. Colubriformis, Cooperia oncophora* (adults only), *C. curticei, Oesophagostomum columbianum, O. venulosum* (adults only), *Nematodirus battus, N. spathiger, Strongyloides papillosus* (adults only), *Chabertia ovina* (adults only), *Trichuris ovis* (adults only)), lungworms (*Dictyocaulus filaria*); and all larval stages of the nasal bot *Oestrus ovis.*

(3) *Limitations.* It is used as a drench in sheep only. Do not treat sheep within 11 days of slaughter. Do not use in other animal species as severe adverse reactions, including fatalities in dogs, may result. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism.

PART 555—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR Part 556 continues to read as follows:

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

4. Section 556.344 is being amended by adding new paragraph (c) to read as follows:

§ 556.344 Ivermectin.

* * * * *

(c) *Sheep.* The marker residue used to monitor the total residues of ivermectin in sheep is 22,23-dihydro-avermectin B_{1a} (H_2B_{1a}). The target tissues selected is liver. A tolerance is established for H_2B_{1a} in sheep of 30 parts per billion in liver. A marker residue concentration of 30 parts per billion in liver corresponds to a concentration for total residues of ivermectin of 125 parts per billion in liver. The safe concentrations for total residues of ivermectin in uncooked edible tissues of sheep are 25 parts per billion in muscle and 125 parts per billion in liver, kidney, and fat.

Dated: July 19, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 88–16775 Filed 7–25–88; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 558

New Animal Drugs For Use in Animal Feeds; Melengestrol Acetate With Lasalocid

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) filed by the Upjohn Co., providing for use of a combination melengestrol acetate with lasalocid Type B feed to make a Type C medicated feed for feedlot heifers. The Type C feed is used for increased rate of weight gain, improved feed efficiency, and suppression of estrus (heat) in heifers fed in confinement for slaughter.

EFFECTIVE DATE: July 26, 1988.

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

SUPPLEMENTARY INFORMATION: The Upjohn Co., Kalamazoo, MI 49001, filed supplemental NADA's 139–876 and 140–288 to provide for use of a combination drug Type B feed containing melengestrol acetate with lasalocid sodium to make Type C feeds for feedlot heifers. Use of single drug Type B feeds to make Type C feeds was previously approved in NADA 139–876 (using drug feeds) and NADA 140–288 (using liquid feeds) (see 52 FR 33803; September 8, 1987). The Type C feed contains 10 to 30 grams of lasalocid sodium activity per ton and 0.25 to 2.0 grams of melengestrol acetate per ton. The drug combination is for increased rate of weight gain, improved feed efficiency, and suppression of estrus in heifers being fed in confinement for slaughter.

The supplemental NADA's are approved and the regulation in § 558.342(c)(3)(ii) is amended to reflect the approvals.

Approval for the use of a combination drug Type B feed instead of previously approved single drug Type B feeds to make approved combination drug Type C feeds does not require added safety and effectiveness data. Therefore, a freedom of information (FOI) summary is not required.

The agency has determined under 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

2. Section 558.342 is being amended by revising paragraph (c)(3)(ii) to read as follows:

§ 558.342 Melengestrol acetate.

* * * * *

(c) * * *

(3) * * *

(ii) *Limitations.* Heifers being fed in confinement for slaughter. Withdraw melengestrol acetate 48 hours prior to slaughter. Lasalocid sodium as provided by No. 000004 in § 510.600(c) of this chapter.

Dated: July 19, 1988.

Richard A. Carnevale,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 88–16774 Filed 7–25–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Occupational Exposure to Ethylene Oxide; Approval of Information Collection Requirements; Effective Date

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

ACTION: Notice of approval of information collection requirements; amendment of effective date of information collection requirements.

SUMMARY: On April 6, 1988, the Occupational Safety and Health Administration (OSHA) published an amendment (53 FR 11414) to the standard for ethylene oxide (EtO) (29 CFR 1910.1047), adding an excursion limit. The information collection requirements contained in the amendment were transmitted to the Office of Management and Budget (OMB) for review and clearance, in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. and 5 CFR Part 1320. At the same time, extension of clearance for information collection requirements found in the existing EtO standard was also requested.

All information requirements contained in § 1910.1047 including the new requirements in paragraphs (a)(2), (d), (f)(2), (g)(3), and (j), have now received OMB paperwork clearance under OMB clearance number 1218–0108. The OMB clearance expires May 31, 1991. This rule announces the effective and compliance dates for those requirements.

EFFECTIVE DATES: Paragraphs (a)(2), (d), (f)(2), (g)(3), and (j) of § 1910.1047 which contain information collection requirements pertinent to the excursion limit are effective August 25, 1988. Start-up dates for compliance with these requirements are extended from September 6, 1988 to October 6, 1988. The amendment to § 1910.1047(m) is effective July 26, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, Office of Public Affairs, Room N–3649, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Telephone (202) 523–8151.

SUPPLEMENTARY INFORMATION: OSHA published a proposed amendment to the rule on EtO on January 21, 1988 (53 FR 1724) and adopted the final amendment on April 6, 1988 (53 FR 11414). The final amendment, which added an excursion limit and related provisions to the standard, contained the following paragraphs which were determined by OMB to constitute additional information collection requirements, related to the new excursion limit, under the Paperwork Reduction Act: (a)(2), Objective data exclusion; (d) Exposure monitoring; (f)(2), Compliance program; (g)(3) Respirator program; and (j), Communication of EtO hazards to employees.

Paragraph (m)(1)(ii) of the final amendment provided for an effective date of June 6, 1988. Paragraph (m)(2)(iii) established a start-up date for compliance with all new excursion limit requirements, except engineering controls, by September 6, 1988. The start-up date for implementation of engineering controls was established by paragraph (m)(2)(iii) to be December 6, 1988.

However, as noted in the final rule at 53 FR 11414, the information collection provisions associated with adoption of the excursion limit had not been cleared by OMB at that time. Accordingly, the effective dates for those requirements in the final EtO amendment have remained in abeyance pending OMB paperwork clearance. OMB has now cleared the new information collection requirements contained in § 1910.1047 under clearance number 1218–0108, through May 31, 1991. Clearance number 1218–0108, which covered the EtO standard prior to the excursion limit rulemaking, now covers the amended standard as well. A reference to that clearance already is included at the end of § 1910.1047 in the Code of Federal Regulations and no change in that reference is necessary.

In accordance with that clearance, OSHA is hereby amending paragraph (m)(1)(ii) of the final EtO standard to establish a new effective date of August 25, 1988, for the excursion limit provisions of paragraphs (a)(2), (d), (f)(2), (g)(3), and (j).

Because of the delay in the effective date of the above noted excursion limit-related provisions, OSHA is also amending paragraph (m)(2)(iii) to provide an additional month delay in the start-up dates of those provisions. That is, the start-up date for paragraphs (a)(2), (d), (f)(2), (g)(3), and (j), as they apply to the excursion limit, is being extended from September 6, 1988, to October 6, 1988. Paragraphs not requiring OMB clearance went into effect on June 6, 1988 and, with the exception of implementation of engineering controls required by paragraph (f)(1), have a start-up date of September 6, 1988. These paragraphs include compliance with the 5 ppm excursion limit (paragraph (c)), institution of work practice controls (paragraph (f)(1)), and provision for and selection of respirators (paragraphs (g)(1) and (g)(2)). The start-up date for implementation of engineering controls specified in paragraph (f)(1) is December 6, 1988.

Authority

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

This action is taken pursuant to section 4(b), 6(b) and 8(c) of the Occupational Safety and Health Act of

1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 9–83 (48 FR 3576) and 29 CFR Part 1911.

List of Subjects in 29 CFR Part 1910

Ethylene oxide, Occupational safety and health, Chemicals, Cancer, Health, Risk assessment.

Signed at Washington, DC, this 19th day of July 1988.

John A. Pendergrass,

Assistant Secretary of Labor.

PART 1910—[AMENDED]

1. The authority citation for Subpart Z of 29 CFR Part 1910 continues, in pertinent part, to read as follows:

Authority: Secs. 6 and 8, Occupational Safety and Health Act (29 U.S.C. 655, 657); Secretary of Labor's Orders Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable; and 29 CFR Part 1911.

* * * * *

Sections 1910.1045 and 1910.1047 also issued under 29 U.S.C. 653.

Part 1910 of Title 29 of the Code of Federal Regulations is amended as set forth below:

2. By revising paragraphs (m)(1)(ii) and (m)(2)(iii) of § 1910.1047 to read as follows:

§ 1910.1047 Ethylene oxide.

(m) * * *

(l) * * *

(ii) The requirements in this section which pertain only to or are triggered by the excursion limit shall become effective June 6, 1988, except for the excursion limit provisions in paragraphs (a)(2), (d), (f)(2), (g)(3) and (j) of this section which shall become effective August 25, 1988.

(2) * * *

(iii) Compliance with the requirements in this section which pertain only to or are triggered by the excursion limit shall be by September 6, 1988, except for compliance with the excursion limit provisions of paragraphs (a)(2), (d), (f)(2), (g)(3), and (j) of this section, which shall be by October 6, 1988, and implementation of engineering controls specified for compliance with the excursion limit, which shall be by December 6, 1988.

[FR Doc. 88–16667 Filed 7–25–88; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R, Amdt. No. 11]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); The Military-Civilian Health Services Partnership Program

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule revises DoD 6010.8–R (32 CFR Part 199), to incorporate revisions resulting from section 1096, Chapter 55, title 10, United States Code, which establishes a Military-Civilian Health Services Partnership Program. Under this program, CHAMPUS beneficiaries can receive inpatient and outpatient care from civilian personnel providing health care services in military treatment facilities and from uniformed service professional providers in civilian facilities. Combining military and civilian health care resources is expected to best utilize available facilities and staff, to provide increased access to health care and to reduce individual incident cost for the CHAMPUS beneficiary and program cost fo the Government.

EFFECTIVE DATE: This rule is retroactively effective to February 1, 1988.

ADDRESS: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: Rose M. Sabo, Office of Program Development, OCHAMPUS, telephone (303) 361–4014.

SUPPLEMENTARY INFORMATION: In FR Doc. 77–7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8–R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title. 32 CFR Part 199 (DoD 6010.8–R) was reissued in the **Federal Register** on July 1, 1986 (51 FR 24008).

I. Background

On January 25, 1988 (53 FR 1927), we published a proposed rule announcing the Military-Civilian Health Services Partnership Program. The Department of Defense Authorization Act for Fiscal Year 1987 contains a provision that permits the sharing of staff, equipment, and resources between the civilian and military health care systems in order to achieve more effective, efficient, or economical health care for authorized beneficiaries. The sharing agreements authorized under section 1096, Chapter 55, Title 10, United States Code, provide for the sharing of personnel, including support personnel, equipment, supplies, and any other item or facility necessary for the provision of health care services. The provider must be otherwise authorized under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). The authorized provider must bill for the services rendered by any support personnel and related supplies, equipment, and other resources. Such charges represent an overhead expense incurred by the provider in his or her professional practice. The services rendered by support personnel must be otherwise covered under CHAMPUS and not of a type usually performed only by a physician or other authorized provider, e.g., minor surgery performed by a physician assistant would be excluded even if performed under the direct supervision of a physician.

For care rendered by a civilian health care provider in a military treatment facility, the beneficiary's cost-share is the same as that for military treatment facility patients under the care of a military health care provider. Care received in a civilian facility will continue to be cost-shared under the normal CHAMPUS cost-sharing provisions.

The Secretary of Defense has issued implementing instructions for the Partnership Program specifically designating individual commanders of military treatment facilities, through their respective Surgeons General of the military departments, as responsible for entering into individual partnership agreements only when they have determined specifically that use of the Partnership Program is more economical to the Government than referring the need for health care services to the civilian community under the normal operation of CHAMPUS.

There are two types of partnership agreements—the external and internal. The external agreement is between a military treatment facility and a CHAMPUS authorized institution, enabling military health care personnel to provide otherwise covered medical care to CHAMPUS beneficiaries in a civilian facility. Authorized costs associated with the use of the facility will be paid through CHAMPUS under normal cost-sharing and reimbursement procedures currently applicable under

the basic CHAMPUS. Savings will be realized under this type agreement by using available military health care personnel to avoid the civilian professional provider charges which would otherwise be billed to CHAMPUS.

The internal agreement permits the use of authorized CHAMPUS civilian health care providers and other resources under their supervision to provide medical care to CHAMPUS beneficiaries on the premises of a military treatment facility. These internal agreements may be established when a military treatment facility is unable to provide sufficient health care services for CHAMPUS beneficiaries due to shortages of personnel and other required resources. In addition to allowing the military treatment facility to achieve maximum use of available facility space, the internal agreement will result in savings to the Government by using civilian medical specialists to provide inpatient care in Government-owned facilities, thereby avoiding the civilian facility charges which would have otherwise been billed to CHAMPUS. Beneficiary cost-share under internal agreements is the same as charges prescribed for care in military treatment facilities. Currently, there are no charges for outpatient care provided in military treatment facilities, and there are no charges for inpatient care provided to retired enlisted members of the uniformed services. All other CHAMPUS beneficiaries are charged a nominal daily rate for inpatient care as prescribed by the Secretary of Defense.

II. Discussion of Comments

We received one public (external) comment, and that comment was supporting the program and the sharing of staff, equipment and resources between civilian and military health care systems. We also received a few internal comments (coordination with Government agencies). One commenter nonconcurred on the basis that the proposed rule would allow for reimbursement for professional charges in excess of the 80th percentile, conflicting with section 8020 of the Appropriation Act. Because of this conflict, we have revised the rule to limit reimbursement to the 80th percentile of billed charges, consistent with the law and with reimbursement for other CHAMPUS providers. The remaining comment was of an editorial nature, requesting deletion of a misleading sentence in the supplementary information. That sentence does not appear in the final rule.

III. Regulatory Impact

We feel that the final rule will not have a significant economic impact on a substantial number of small entities. Its impact will be limited to catchment areas, which is the geographic area of approximately 40 miles in radius surrounding U.S. medical treatment facilities. The impact within the catchment area will be further limited to specifically identified categories of care determined to be necessary to ensure optimal utilization of government resources in the most effective, efficient and economical manner. The impact of the program is primarily that of increasing availability of health care services to CHAMPUS beneficiaries. Beneficiaries will be encouraged, but not required, to use the services available under the partnership agreements. No additional requirements for approval as an authorized provider will be imposed. The Partnership Program provides an equal opportunity for any authorized provider to enter into a voluntary agreement, taking into account the needs of, and staffing shortages at, the particular military treatment facility. It does not restrict access to any provider by any beneficiary. Accordingly, the Secretary certifies that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. It is not, therefore, a "major rule" under Executive Order 12291.

List of Subjects in 32 CFR Part 199

Health insurance, Military personnel, Handicapped.

Accordingly, 32 CFR, Part 199, is amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 1096, 5 U.S.C. 301.

2. Section 199.1(p) is redesignated as § 199.1(q).

3. Add a new paragraph (p) to § 199.1 to read as follows:

§ 199.1 General provisions.

* * * * *

(p) *Military-Civilian Health Services Partnership Program.* The Secretary of Defense, or designee, may enter into an agreement (external or internal) providing for the sharing of resources between facilities of the uniformed services and facilities of a civilian health care provider or providers if the Secretary determines that such an agreement would result in the delivery of health care in a more effective, efficient or economical manner. This partnership allows CHAMPUS beneficiaries to receive inpatient and outpatient services through CHAMPUS from civilian personnel providing health care services in military treatment facilities and from uniformed service professional providers in civilian facilities. The policies and procedures by which partnership agreements may be executed are set forth in Department of Defense Instruction (DoDI) 6010.12, "Military-Civilian Health Services Partnership Program." The Director, OCHAMPUS, or a designee, shall issue policies, instructions, procedures, guidelines, standards, or criteria as may be necessary to provide support for implementation of DoDI 6010.12, to promulgate and manage benefit and financial policy issues, and to develop a program evaluation process to ensure the Partnership Program accomplishes the purpose for which it was developed.

(1) *Partnership agreements.* Military treatment facility commanders, based upon the authority provided by their representative Surgeons General of the military departments, are responsible for entering into individual partnership agreements only when they have determined specifically that use of the Partnership Program is more economical overall to the Government than referring the need for health care services to the civilian community under the normal operation of the CHAMPUS Program. All such agreements are subject to the review and approval of the Director, OCHAMPUS, or designee, and the appropriate Surgeon General.

(i) *External Partnership Agreements.* The external Partnership agreement is an agreement between a military treatment facility commander and a CHAMPUS-auhorized institutional provider, enabling military health care personnel to provide otherwise covered medical care to CHAMPUS beneficiaries in a civilian facility. Authorized costs associated with the use of the facility will be financed through CHAMPUS under normal cost-sharing and reimbursement procedures currently applicable under the basic CHAMPUS. Savings will be realized under this type of agreement by using available military health care personnel to avoid the civilian professional provider charges which would otherwise be billed to CHAMPUS.

(ii) *Internal Partnership Agreements.* The internal partnership agreement is an agreement between a military treatment facility commander and a CHAMPUS-authorized civilian health care provider which enables the use of civilian health

care personnel or other resources to provide medical care to CHAMPUS beneficiaries on the premises of a military treatment facility. These internal agreements may be established when a military treatment facility is unable to provide sufficient health care services for CHAMPUS beneficiaries due to shortages of personnel and other required resources. In addition to allowing the military treatment facility to achieve maximum use of available facility space, the internal agreement will result in savings to the Government by using civilian medical specialists to provide inpatient care in Government-owned facilities, thereby avoiding the civilian facility charges which would have otherwise been billed to CHAMPUS.

(2) *Beneficiary Cost-Sharing.* Beneficiary cost-sharing under the Partnership Program is outlined in § 199.4(f)(5) of this part.

(3) *Reimbusement.* Reimbursement under the Partnership Program is outlined in § 199.14(f) of this part.

(4) *Beneficiary Eligibility and Authorized Providers.* Existing requirements of this Regulation remain in effect as concerns beneficiary eligibility and authorized providers.

(5) *Range of Benefits.* Health care services provided CHAMPUS beneficiaries under the terms of the Partnership Program must be consistent with the CHAMPUS range of benefits outlined in this Regulation. The services rendered must be otherwise covered. Charges allowed for professional services provided under the Partnership Program may include costs of support personnel, equipment, and supplies when specifically outlined in the partnership agreement. However, all CHAMPUS coverage and provider requirements must be met.

4. Section 199.2(b) is amended by adding, in alphabetical order, definitions for the internal and external partnership agreements to read as follows:

§ 199.2 Definitions.

* * * * *

(b) *Specific definitions.*

* * * * *

External partnership agreement. The external partnership agreement is an agreement between a military treatment facility commander and a CHAMPUS-authorized institutional provider, enabling military health care personnel to provide otherwise covered medical care to CHAMPUS beneficiaries in a civilian facility under the Military-Civilian Health Services Partnership Program. Authorized costs associated with the use of the facility will be financed through CHAMPUS under normal cost-sharing and reimbursement procedures currently applicable under the basic CHAMPUS.

* * * * *

Internal partnership agreement. The internal partnership agreement is an agreement between a military treatment facility commander and a CHAMPUS-authorized civilian health care provider which enables the use of civilian health care personnel or other resources to provide medical care to CHAMPUS beneficiaries on the premises of a military treatment facility under the Military-Civilian Health Services Partnership Program. These internal agreements may be established when a military treatment facility is unable to provide sufficient health care services for CHAMPUS beneficiaries due to shortages of personnel and other required resources.

* * * * *

5. Section 199.4, paragraphs (f) (5) and (6) are redesignated as § 199.4 (f) (6) and (7).

6. Add a new paragraph (f)(5) to § 199.4 to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(f) *Beneficiary or Sponsor Liability.*

* * *

(5) *Cost-Sharing under the Military-Civilian Health Services Partnership Program.* Cost-sharing is dependent upon the type of partnership program entered into, whether external or internal. (See paragraph (p) of § 199.1, for general requirements of the Military-Civilian Health Services Partnership Program.)

(i) *External Partnership Agreement.* Authorized costs associated with the use of the civilian facility will be financed through CHAMPUS under the normal cost-sharing and reimbursement procedures applicable under CHAMPUS.

(ii) *Internal Partnership Agreement.* Beneficiary cost-sharing under internal agreements will be the same as charges prescribed for care in military treatment facilities.

* * * * *

7. Section 199.14, paragraphs (f) and (g) are redesignated as § 199.14, paragraphs (g) and (h).

8. Add a new paragraph (f) to § 199.14, to read as follows:

§ 199.14 Provider reimbursement methods.

* * * * *

(f) *Reimbursement under the Military-Civilian Health Services Partnership Program.* The Military-Civilian Health Services Partnership Program, as authorized by section 1096, Chapter 55, Title 10, provides for the sharing of staff, equipment, and resources between the civilian and military health care system in order to achieve more effective, efficient, or economical health care for authorized beneficiaries. Military treatment facility commanders, based upon the authority provided by their respective Surgeons General of the military departments, are responsible for entering into individual partnership agreements only when they have determined specifically that use of the Partnership Program is more economical overall to the Government than referring the need for health care services to the civilian community under the normal operation of the CHAMPUS Program. (See paragraph (p) of § 199.1 for general requirements of the Partnership Program.)

(1) *Reimbursement of institutional health care providers.* Reimbursement of institutional health care providers under the Partnership Program shall be on the same basis as non-Partnership providers.

(2) *Reimbursement of individual health-care professionals and other non-institutional health care providers.* Reimbursement of individual health care professional and other non-institutional health care providers shall be on the same basis as non-Partnership providers as detailed in paragraph (e) of this section.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 20, 1988.

[FR Doc. 88-16755 Filed 7-25-88; 8:45 am]

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Defense Logistics Agency

32 CFR Part 1285

[DLAR 5400.14]

Freedom of Information Act Program

AGENCY: Defense Logistics Agency, DoD.

ACTION: Final rule.

SUMMARY: This final rule revises the Defense Logistics Agency Freedom of Information Act Program which implements the Freedom of Information Act of 1974, as amended (5 U.S.C. 552) within the Agency. This revision supersedes a final rule (51 FR 35634) published on October 7, 1986 and (51 FR 37396) published on October 22, 1986, 32 CFR Part 1285—"Defense Logistics Agency Freedom of Information Act Program." This rule is published pursuant to the Freedom of Information Reform Act of 1986, sections 1801–1804

(Pub. L. 99-570); and section 954 of the National Defense Authorization Act for Fiscal Year 1987 (Pub. L. 99-661).

EFFECTIVE DATE: July 26, 1988.

ADDRESS: Headquarters, Defense Logistics Agency, ATTN: DLA-XAM, Cameron Station, Alexandria, Virginia 22304-6130.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Henshall, (202) 274-6234.

SUPPLEMENTARY INFORMATION: This rule implements the provisions of DoD Regulation 5400.7, DoD Freedom of Information Act Program as published (52 FR 25976) on July 10, 1987, 32 CFR Part 286—DoD Freedom of Information Act Program.

List of Subjects in 32 CFR Part 1285

Freedom of Information.

Accordingly Title 32 is amended by revising Part 1285 to read as follows:

PART 1285—DEFENSE LOGISTICS AGENCY FREEDOM OF INFORMATION ACT PROGRAM

Sec.

1285.1 References.
1285.2 Purpose and scope.
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Appendix A—Fee schedule.
Appendix B—For Official Use Only.
Appendix C—Judicial actions.
Appendix D—Annual FOIA Report.
Appendix E—Addressing FOIA Requests.
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Authority: Title 5, U.S.C. 552, as amended by Pub. L. 93-502.

§ 1285.1 References.

(a) Title 5 U.S.C. 551, The Administrative Procedures Act.

(b) Title 5 U.S.C. 552, The Freedom of Information Act.

(c) Title 35 U.S.C. 181-188, Patent Secrecy.

(d) DoD 5400.7-R, DoD Freedom of Information Act Program.

(e) DoD Federal Aquisition Regulation Supplement (DFARS), Subpart 27.4, Technical Data, Other Data, Computer Software and Copyrights.

(f) DLAR 4185.9, Distribution Statements on Technical Documents.

(g) DLAR 4185.17, Dissemination of DoD Technical Information.

(h) DLAR 5200.12, DLA Information Security Program.

(i) DLAR 5400.12, Administration of Congressional Matters.

(j) DLAR 5400.13, Clearance of Information for Public Release.

(k) DLAR 5400.21, Personal Privacy and Rights of Individuals Regarding Their Personal Records.

(l) DLAR 7230.1 User Charges.

Note: (a) DLA publications may be obtained, if needed, from the Defense Logistics Agency, ATTN: DLA-XPD, Cameron Station, Alexandria, VA 22304-6100.

(b) DoD publications may be obtained, if needed, from the Naval Publications and Forms Center, 5801 Taber Avenue, Philadelphia, PA 19120.

(c) Allied Communication Publications may be obtained, if needed, from the Army Publications and Forms Center, 2800 Eastern Boulevard, Baltimore, MD 21220-2896.

§ 1285.2 Purpose and scope.

This rule implements DoD Directive 5400.7, DoD Freedom of Information Act Program, and provides policy and procedures for the DLA implementation of the Freedom of Information Act. It applies to HQ DLA and all DLA field activities. A list of mailing addresses for DLA activities is provided at enclosure 5.

§ 1285.3 Policy.

(a) *General.* The public has the right of access to information concerning the activities of the Federal Government. DLA policy is to conduct its operations in an open manner and to provide the public with accurate and timely information concerning its activities. Individuals complying with the procedural requirements of this rule shall be provided prompt access to DLA records which are not exempt from disclosure. DLA activities and personnel will comply with the letter and the spirit of the Freedom of Information Act, hereafter referred to as "the FOIA," and this rule will ensure that procedural requirements do not unnecessarily impede public access. DLA activities will also provide assistance to individuals, as required, to help them understand and comply with the requirements of this rule, and to reduce governmental costs and assessable fees.

(b) *Administrative Requirements and Determinations.* A record must be in the possession and control of DLA to be subject to the provisions of this rule. In submitting requests, the requester must provide a reasonable description of the record(s) sought; furthermore, the requester must provide either a declaration of the willingness to pay assessable fees associated with filling the request or a justification for the waiver of fees. Determinations that requests are deficient in these respects are not denials of access; and, except as provided below, such determinations are not subject to administrative appeals:

(1) DLA activities have no obligation to create or compile a record to satisfy a FOIA request. They may do so, however, when it would either result in a more useful response for the requester, or be less burdensome to DLA than providing the records sought, and the requester does not object. When an activity compiles a record to satisfy a request, the fees assessed will not exceed those which would have been charged for the original request.

(2) Records, which originated in or which are based on information obtained from other Federal agencies subject to the FOIA are generally referred to that agency even though the record(s) may be in the possession of DLA. In processing FOIA requests for such records, DLA activities, after coordinating with the originating agency, will refer the request with a copy of the responsive records in its possession, to the agency for direct response. The requester will be notified of the referral. When records and documents are created specifically for the use of another agency, the agency for which the record was created may have an equally valid interest in withholding the record as the agency that created the record. An example of such a situation is a request for audit reports prepared by the Defense Contract Audit Agency. These advisory reports are prepared for the use of contracting officers and their release to the audited contractor should be at the discretion of the contracting officer. FOIA requests will be referred to the appropriate contracting officer.

(3) When the fact of the existence of records itself is classified, DLA activities will confirm classification with the agency or activity exercising control over the record(s), and will provide the requester a response which neither confirms nor denies the existence of the records requested. The request will not be referred to the controlling agency.

(4) When an activity has no records responsive to a request, the requester will be notified promptly. In cases where the request has been misdirected and the activity is aware of the appropriate FOIA respondent, the activity shall refer the request to the appropriate activity or agency and notify the requester of the referral.

(5) Requesters must provide a description of the record(s) sought with sufficient specificity to permit DLA activities to locate it with a reasonable effort. DLA activities receiving requests which do not reasonably describe the record sought will advise the requester of this deficiency and provide the requester an opportunity to correct it.

Generally, a record is not reasonably described unless the requester provides information permitting an organized, nonrandom search of DLA files and information systems. Such information may specifically describe the record, e.g., document type, title, index citation, subject matter, date, and originator, or the events which led to its creation. In providing descriptions based on events, the requester must provide information which permits DLA activities to infer the specific record sought. Notwithstanding the above, any description permitting DLA activities to locate a record with reasonable effort is sufficient.

(6) Requesters must also provide either an adequate declaration of their willingness to pay fees associated with the request or substantiate a claim that a waiver of assessable fees is in the public interest. (See Appendix A of this regulation regarding the schedule of fees.) A fee declaration is adequate when the requester's statements indicate a willingness to pay the fees equal to, or greater than, those assessable under the schedule of fees. When provided, statements in requests regarding the willingness to pay for specific services, such as search, duplication, and review, must encompass those appropriately assessable for the requester category described in Appendix A of this regulation. DLA activities will notify requesters of deficiencies in fee declarations and will provide them opportunities to amend initial declarations. Determinations on the adequacy of requester fee declarations are not subject to appeal unless the DLA activity has denied a specific request for the assessment of fees under one of the categories established in Appendix A of this regulation or has denied a request for the waiver or reduction of fees in the public interest.

(c) *Prompt Response to Requests.* DLA activities will respond promptly to requesters complying with the procedural requirements of this regulation. A determination on access to records will be made within 10 working days after receipt of the request by the activity having possession and control of the record sought unless an extension is authorized under § 1285.8(b)(3) of this rule. Activities with ten or more requests pending access determinations will process the requests in the order of receipt. However, activities are not precluded from completing action on requests, which can be answered promptly, regardless of the order of receipt.

(d) *Privacy Act and Other Procedures.* Requests by individuals for records about themselves will be processed under the statute or regulation (Freedom of Information Act or Privacy Act) cited in the request. If the request cites both Acts, or neither Act, the request will be processed under time limitations of the FOIA and the fee provisions of DLAR 5400.21. No record or information will be withheld from an individual under this regulation which would be available to the individual under the Privacy Act and DLAR 5400.21.

(e) *Exemptions*—(1) *General Provisions.* Records that meet the exemption criteria in § 1285.3(e)(4) may be withheld from public disclosure and need not be published in the **Federal Register**, made available in a library reading room, or provided in response to an FOIA request.

(2) *Public Domain.* Nonexempt records released under the authority of this regulation are generally considered to be in the public domain. Exempt records released pursuant to this regulation or other statutory or regulatory authority, however, may be considered to be in the public domain only when their release constitutes a waiver of the FOIA exemption. When the release does not constitute such a waiver, such as when a disclosure is made to a properly constituted advisory committee or to a Congressional Committee, the released records do not lose their exempt status. While authority may exist to disclose records to individuals in their official capacity, the provisions of this regulation apply if the same individual seeks the records in a private or personal capacity.

(3) *Jeopardy of Government Interest.* An exempted record, other than those being withheld pursuant to exemptions 1, 3, or 6, shall be made available upon the request of any individual when, in the judgment of the releasing DLA activity or higher authority, release would not jeopardize a Government interest. It is appropriate for DLA activities to use their discretionary authority on a case-by-case basis in the release of given records. If a DLA activity determines that a record requested under the FOIA meets the exemption 4 withholding criteria set forth in this regulation, the DLA activity shall not ordinarily exercise its discretionary power to release, absent circumstances in which a compelling public interest will be served by release of that record. Further guidance on this issue may be found at § 1285.3(e)(4)(iv) and § 1285.8(d).

(4) *FOIA Exemptions.* The following types of records may be withheld in whole or in part from public disclosure unless otherwise prescribed by law.

(i) *Exemption 1.* Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by an Executive Order and implemented by regulations, such as DoD 5200.1–R, Information Security Program Regulation. Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified. If such a review is undertaken, the procedures in DoD 5200.1–R, section 2–204f, apply.

(ii) *Exemption 2.* Those containing or constituting rules, regulations, orders, manuals, directives, and instructions relating to the internal personnel rules or practices of a DLA activity if their release to the public would substantially hinder the effective performance of a significant function of the activity and they do not impose requirements directly on the general public. Examples include:

(A) Operating rules, guidelines, and manuals for DLA investigators, inspectors, auditors, or examiners that must remain undisclosed in order for the DLA activity to fulfill a legal requirement.

(B) Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement, or promotion.

(iii) *Exemption 3.* Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issues, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld. Examples of such statutes include:

(A) Pub. L. No. 86–36 (1959), National Security Agency Information Exemption.

(B) Title 35 U.S.C., 181–188. Any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

(C) Title 42 U.S.C. 2162, Restricted Data and Formerly Restricted Data.

(D) Title 18 U.S.C. 798, Communication Intelligence.

(E) Title 10 U.S.C. 130, Authority to Withhold From Public Disclosure Certain Technical Data. (See also DoD Directive 5230.25, Withholding of Unclassified Technical Data From Public Disclosure.)

(F) Title 10 U.S.C. 1102, Confidentiality of Medical Quality Records: Qualified Immunity Participants.

(iv) *Exemption 4.* Those containing trade secrets or commercial or financial information that a DLA activity receives from a person or organization, outside the Government, with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records falling within this exemption must contain trade secrets, or commercial or financial records, the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; would impair the Government's ability to obtain necessary information in the future; or would impair some other legitimate Government interest. Examples include records that contain:

(A) Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data.

(B) Statistical data and commercial or financial information concerning contract performance, income, profit, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

(C) Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commerical or financial information normally considered confidential or privileged.

(D) Financial data provided in confidence by private employers in connections with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate of employees within DLA.

(E) Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

(F) Technical or scientific data developed by a scientific or subcontractor exclusively at private expense, and technical or scientific data developed in part with Federal funds and, in part, at private expense, wherein the contractor or subcontractor has retained legitimate proprietary interests in such data in accordance with 10 U.S.C. 2320, Rights in Technical Data; 10 U.S.C. 2321, Validation of Proprietary Data Restrictions; and DFARS, Subpart 27.4. Technical data developed exclusively with Federal funds may be withheld under *Exemption* 3 if it meets the criteria of 10 U.S.C. 130, Authority to Withhold from Public Disclosure Certain Technical Data and DoD Directive 5230.25. (See § 1285.3(e)(4)(iii).

(v) *Exemption 5.* Except as provided in § 1285.3(e)(4)(v)(B) through (E), of this section, internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in records pertaining to the decisionmaking process of an agency, whether within or among agencies (as defined in 5 U.S.C. 552(e) or within or among DLA activities.

(A) *Examples include:*

(*1*) The nonfactual portions of staff papers, to include afteraction reports and situation reports containing staff evaluations, advice, opinions, or suggestions.

(*2*) Advice, suggestions, or evaluations prepared on behalf of DLA by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations.

(*3*) Those nonfactual portions of evaluations by DLA personnel of contractors and their products.

(*4*) Information of a speculative, tentative, or evaluative nature on such matters as proposed plans to procure, lease, or otherwise acquire and dispose of materials, real estate, facilities or functions, when such information either would provide undue or unfair competitive advantage to private personal interests or would impede legitimate Government functions.

(*5*) Trade secret or other confidential research development, or commercial information owned by the Government, when premature release is likely to affect the Government's negotiating position or other commercial interests.

(*6*) Records that are exchanged among agency personnel and within and among DLA activities or agencies as part of the preparation for anticipated administrative proceeding by an agency or litigation before any Federal or State court, as well as records that qualify for the attorney/client privilege.

(*7*) Those portions of official reports of inspection, reports of the Inspector General, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of one of more DLA activities, when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

(B) If any such intra or interagency record or reasonably segregable portion of such a record, hypothetically, would be made available routinely through the "discovery process" in the course of litigation with the agency, i.e., the process by which litigants obtain information from each other that is relevant to the issues in a trial or hearing, then it should not be withheld from the general public even though discovery has not been sought in actual litigation. If, however, the information, hypothetically, would only be made available through the discovery process by special order of a court based on the particular needs of a litigant, balanced against agency interests in maintaining its confidentiality, then the record or document need not be made available under this rule.

(C) Intra or interagency memoranda or letters that are factual, or those reasonably segregable portions that are factual, shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

(D) A direction or order from a superior to a subordinate, though contained in an internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decisionmaking process.

(E) An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

(vi) *Exemption 6.* Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to the requester, would result in a clearly unwarranted invasion of personal privacy.

(A) Examples of files containing personal information similar to that contained in personnel and medical files include:

(*1*) Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, and contractor employees) for either security clearances or for access to particularly sensitive classified information.

(*2*) Files containing reports, records, and other material pertaining to

personnel matters in which administrative action, including disciplinary action, may be taken.

(B) In determining whether the release of information would result in a "clearly unwarranted invasion of personal privacy," consideration shall be given to the stated or ascertained purpose of the request. When determining whether a release is "clearly unwarranted," the public interest in satisfying this purpose must be balanced against the sensitivity of the privacy interest being threatened. One example of such is lists of names and duty addresses of DLA personnel (civilian and military) assigned to units that are sensitive, routinely deployable, or stationed in foreign territories. Release of such information could aid in the targeting of DoD employees and their families by terrorists. This exemption shall not be exercised in an attempt to protect the privacy of a deceased person; but, it may be used to protect the privacy of the deceased person's family.

(C) Individuals' personnel, medical, or similar file may be withheld from them or their designated legal representative only to the extent consistent with DLAR 5400.21.

(D) A clearly unwarranted invasion of the privacy of the persons identified in a personnel, medical, or similar record, other than the subject of the record, may constitute a basis for deleting those reasonably segregable portions of that record when providing it to the subject of the record.

(vii) *Exemption 7.* Records or information for law enforcement purposes; i.e., civil, criminal, or military law, including the implementation of Executive Orders or rules issued pursuant to law.

(A) This exemption applies, however, only to the extent that production of such law enforcement records or information could result in the following:

(*1*) Could reasonably be expected to interfere with enforcement proceedings.

(*2*) Would deprive a person of the right to a fair trial or to an impartial adjudication.

(*3*) Could reasonably be expected to constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record.

(*4*) Could reasonably be expected to disclose the identity of a confidential source, including a source within the DoD, a State, local, or foreign agency or authority, or any private institution which furnishes the information on a confidential basis.

(*5*) Could disclose information furnished from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by any agency conducting a lawful national security intelligence investigation.

(*6*) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

(*7*) Could reasonably be expected to endanger the life or physical safety of any individual.

(B) Examples include:

(*1*) Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related Government litigation or adjudicative proceedings.

(*2*) The identity of firms or individuals being investigated for alleged irregularities involving contracting with DLA when neither an indictment has been obtained nor any civil action filed against them by the United States.

(*3*) Information obtained in confidence, expressed or implied in the coarse of a criminal investigation by a criminal law enforcement agency or office within a DoD agency or a lawful national security intelligence investigation conducted by an authorized agency or office within a DLA activity. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

(C) The right of individual litigants to investigative records currently available by law (such as 18 U.S.C. 3500, The Jencks Act), is not diminished.

(D) When the subject of an investigative record is the requester of the record, it may be withheld only as authorized by DLAR 5400.21.

(E) Exclusions. Excluded from the above exemption are the following:

(*1*) Whenever a request is made which involves access to records or information compiled for law enforcement purposes, and the investigation or proceeding involves a possible violation of criminal law where there is reason to believe that the subject of the investigation or proceeding is unaware of its pendency, and the disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the records or information during only such times as that circumstance continues, may be treated as not subject to *Exemption 7.* In such situation, the response to the requester will state that no records were found.

(*2*) Whenever information records maintained by a criminal law enforcement organization under the informant's name or personal identifier are requested by a third party using the informant's name or personal identifier, the records may be treated as not subject to *Exemption 7,* unless the informant's status as an informant has been officially confirmed. It is determined that the records are not subject to *Exemption 7,* the response to the requester will state that no records were found.

(viii) *Exemption 8.* Those contained in or related to examination, operation, or condition reports prepared by, on behalf, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(ix) *Exemption 9.* Those containing geological and geophysical information and data (including maps) concerning wells.

§ 1285.4 Definitions.

As used in this regulation, the following terms and meanings shall be applicable.

(a) *Administrative Appeal.* A request by a member of the general public, made under the FOIA, asking the appellate authority to reverse an Initial Denial Authority decision to withhold all or part of a requested record, to deny a request for waiver or reduction of fees, or to impose fees under a standard for individual requester and use categories.

(b) *Agency Record.* (1) The products of data compilation, regardless of physical form or characteristics, made or received by a DLA activity in connection with the transaction of public business and preserved by a DLA activity primarily as evidence of the organization, policies, functions, decisions, or procedures of the DLA activity.

(2) The following are not included within the definition of the word "record":

(i) Library and museum material, made, acquired, and preserved solely for reference or exhibition.

(ii) Objects or articles, such as structures, furniture, paintings, sculpture, three-dimensional models, vehicles and equipment, whatever their historical value or value as evidence.

(iii) Commercially exploitable resources, including but not limited to:

(A) Maps and charts, map compilation manuscripts and map research materials, and data if not created or used as primary sources of information about organization, policies, functions, decisions, or procedures of a DLA activity.

(B) Computer software and related software documentation if not created or used as primary sources of information about organizations, policies, functions, decisions, or procedures of a DLA activity. (This does not include the underlying data which is processed and produced by such software and which may, in some instances, be stored with the software.)

(iv) Unaltered publications and processed documents, such as regulations, manuals, maps, charts, and related geophysical materials, that are available to the public through an established distribution system with or without charges.

(v) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

(vi) Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use.

(vii) Information stored within a computer for which there is no existing computer program or printout.

(3) A record must exist and be controlled by DLA at the time of the request to be considered subject to this regulation. There is no obligation to create, compile, or obtain a record to satisfy a FOIA request.

(c) *Appellate Authority.* The Director, DLA, or his designee, except for fee waivers and category determinations. The appellate authority for such appeals is the Staff Director, Office of Administration, HQ DLA. (See § 1285.7(a)(1)(vi).)

(d) *Commercial Use Request.* A request from, or on behalf of, one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(e) *DLA Activity.* An activity of the Defense Logistics Agency, as defined in paragraph II, which is authorized to receive and act on FOIA requests.

(f) *Duplication.* The process of making a copy of a document necessary to respond to a request. Such copies can take the form of paper copy, microfiche, audiovisual, or machine readable documentation, such as magnetic tape or disc.

(g) *Educational Institution.* A preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of professional education, and an institution of vocational education which operates a program of scholarly research.

(h) *FOIA Request.* A written request for DLA records made by a member of the public, that either explicitly or implicitly invokes the FOIA, DoD Directive 5400.7, DLAR 5400.14, or DLA activity supplements to DLAR 5400.14.

(i) *Initial Denial Authority.* An official who has been granted authority by the Director, DLA, to withhold records requested under the FOIA for one or more of the nine categories of records exempt from mandatory disclosure. This includes the Director of HQ DLA PSEs and Heads of PLFAs.

(j) *Noncommercial Scientific Institution.* An institution that is not operated on a commercial basis and which is operated solely for the purpose of conducting scientific research which is not intended to promote any particular product or industry.

(k) *Other Use.* A request which does not fit into any other category.

(l) *Representative of the News Media.* Any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.

(m) *Review.* The process of examining documents located in response to an FOIA request to determine whether one or more of the FOIA exemptions permit withholding any portion of any documents may be withheld. It also refers to the processing of documents for disclosure, e.g., doing all that is necessary to prepare them for release. Review does not include time spent resolving general, legal, or policy issues regarding the application of exemptions.

(n) *Search.* All time spent looking for material that is responsive to a request, including page-by-page and line-by-line identification of material within documents.

§ 1285.5 Background.

The FOIA describes the kinds of official records and information that are to be made available to and withheld from the public, requires facilities be made available to the public for the examination and copying of records, and provides procedures for the review of denials to the release of records and information to the public.

§ 1285.6 Significant changes.

This revision incorporates the Freedom of Information Reform Act of 1986, Pub. L. No. 99–570 (1986); National Defense Authorization Act, for fiscal year 1987, Pub. L. No. 99–661, section 954 (1986) and DoD 5400.7–R, DoD Freedom of Information Act Program. The text includes a total revision of FOIA fee provisions, which provides for new requester categories, a revised fee schedule, and charges for technical data. The scope of *Exemption 7* § 1285.3(e)(4)(vii) has been expanded to include all law enforcement records. The annual FOIA report has also been revised. Other text modifications are either based on recent court decisions or are made to clarify existing policies and procedures.

§ 1285.7 Responsibilities.

(a) *HQ DLA*—(1) *The Staff Director, Administration, DLA (DLA–X)* will:

(i) Serve as the point of contact for referring members of the public desiring to examine and copy records to the appropriate staff element, within either HQ DLA or the DLA Administrative Support Center (DASC), having custody of the records.

(ii) Maintain copies of certain final decisions in the adjudication of cases, staff manuals, and materials referred to in § 1285.7(b)(3) for public inspection and copying with related indices as required.

(iii) Process requests for records received under provisions of paragraph VIIIA of this regulation.

(iv) Review DLA publications to assure that those meeting the criteria for publication in the **Federal Register** are prepared in proper form and transmitted for publication in the **Federal Register**, as required by DLAR 5025.19, Publication of Material in the **Federal Register**.

(v) Maintain a file of copies of all responses provided by PSEs and denials provided by PLFAs.

(vi) Serve as the appellate authority on fee waivers and category determinations.

(2) *The Staff Director, Office of Public Affairs, DLA (DLA–B)* will serve as a coordinating office for the release of information to the news media.

(3) *The General Counsel, DLA (DLA–G)* will:

(i) Provide advice and assistance to HQ DLA PSEs in determining releasability of records.

(ii) Process appeals to the Director, DLA, of denials to provide records.

(iii) Coordinate denials of releases with Office of the General Counsel, DoD, and the Department of Justice, as appropriate.

(4) *The Heads of DLA Principal Staff Elements (PSEs)* will:

(i) Review all instructions for which they are the proponent to ensure that such instructions are consistent with the provisions of this regulation.

(ii) Ensure that the provisions of this regulation are followed in processing

requests for records from members of the public.

(iii) Forward to the Chief, Resources Management Division, Office of Administration (DLA–XA), any FOIA request received by the PSEs that the request may be administratively controlled.

(iv) Coordinate requests from the public for information with other HQ DLA staff elements, to the extent considered necessary.

(v) Furnish DLA–XA a copy of all responses to provide a record of action taken pursuant to the provisions of § 1285.8(c). Copies will be identified using the control number furnished by DLA–XA. Furnish DLA–XA a completed DLA Form 1786, Freedom of Information Case Summary, for every FOIA request to which the PSE responds.

(vi) Make initial determination to deny release after coordination with DLA–G.

(b) *The Heads of DLA Primary Level Field Activities (PLFAs)* will:

(1) Ensure that the provisions of this regulation are followed in processing requests for records from members of the public.

(2) Provide convenient facilities where members of the public may examine and copy documents which may be released to them.

(3) Maintain a copy of the following for examination and copying by the public:

(i) DLAH 5805.1, DLA Organization Directory, which reflects the mailing addresses of all DLA activities of DLA.

(ii) DLAH 5025.1, Defense Logistics Agency Index of Publications, which contains a topical index of the publications issued by HQ DLA.

(iii) DLAM 5015.1, Files Maintenance and Disposition, which contains a functional description of all records and files generated by DLA. This manual also contains a topical index.

(iv) A copy of such local indexes of opinions, orders, statements of policy, and publications that may exist, or that may be prepared in the future.

(4) For each FOIA request processed, prepare and retain a DLA Form 1786 to ensure that all costs related to the request are properly documented.

(5) Arrange for the collection of fees associated with locating and providing of copies of documentary material (Appendix A).

(6) Furnish DLA–XA a copy of all denials to provide a record made under the provisions of §1285.8(c).

(7) Prepare and submit reports in accordance with § 1285.9.

(8) Establish safeguards to ensure that the official records of the activity are properly safeguarded during the time they are made available for examination by a member of the public.

(9) Establish a control system to ensure that operating procedures provide for prompt response to all requests for records.

(10) Establish a training program for those personnel who may be involved in responding to requests from the public for records.

(11) Refer cases of significance to DLA–G for review and evaluation when the issues raised are unusual, precedent setting, matters of disagreement among activities, or otherwise requiring special attention or guidance.

(12) Maintain a record of all FOIA requests for logistical data (data on magnetic tape extracted from any of the DLA Automated Data Processing (ADP) systems). The record will contain the requester's identification, the date of the request, what information was requested, and what information was furnished. This record will be kept on file for 5 years.

§ 1285.8 Procedures.

(a) *Requests for the Examination or Copies of Records.* (1) Members of the public may make written requests for copies of DLA records or for permission to examine such records during the normal business hours of DLA activities. Such requests should be submitted directly to the appropriate activities listed in Appendix E of this regulation. If the appropriate activity is either unknown or cannot be ascertained, and the record is likely to be in the possession and control of DLA, the request may be submitted to HQ DLA, ATTN: DLA–XAM, Cameron Station, Alexandria, Virginia 22304–6100.

(2) In submitting requests, requesters should:

(i) Identify each record sought with sufficient detail to permit the location of the record with a reasonable amount of effort. Information as to where the record originated, its subject, date, number, or other identifying particulars should be provided whenever possible.

(ii) Identify all other Federal agencies subject to the provisions of the Freedom of Information Act to which the request has been sent. This will reduce processing and coordination time between agencies and redundant referrals.

(iii) Provide a statement of their willingness to pay assessible charges under the schedule of fees in Appendix A of this rule. A statement must include a specific monetary amount if the assessible fees are likely to exceed $15 or a specific justification for any waiver or reduction of fees sought based on public interest in release or disclosure. Requesters should also substantiate any claim for the assessment of fees under a specific fee category as explained in Appendix A of this rule.

(3) DLA activities will promptly forward misdirected requests to the proper agency or activity through FOIA channels and notify the requester of the referral. The 10-working-day period allowed for responding to requests will not begin until the activity having the responsive records receives a request complying with procedural requirements of this regulation, including statements on the payment of fees.

(4) The provisions of the FOIA are intended for parties with private interests. Officials seeking documents or information on behalf of foreign governments, other Federal agencies, and state and local agencies are encouraged to employ official channels. The release of records to individuals under the FOIA is a public release of information. DLA activities will consider FOIA requests from such officials as made in a private, rather than official, capacity and will make disclosure and fee determinations accordingly.

(b) *Control System and Time Limits.* (1) Each DLA activity will maintain a control system designed to ensure compliance with the FOIA. The system shall provide controls to maintain responsiveness in handling requests made under the FOIA and methods to assure accurate cost accounting for the assessment of fees and reporting.

(2) On receipt of a properly submitted FOIA request, DLA activities will locate and assemble responsive records, determine whether they are releasable under the provisions of this regulation, determine the fees appropriately charged, and advise the requester accordingly. Initial determinations on either the release or denial of records, and notice to requesters, should be provided within 10 working days following receipt of the request by the activity maintaining the records.

(3) In certain cases, DLA activities may exercise an extension to the normal 10-working-day period outlined above. Such extensions must be approved by the FOIA Officer for the activity and may not exceed 10 additional workdays. The requester will be notified of approved extensions within the initial 10-working-day period described in paragraph (b)(2) of this section; and, the requester will be advised of the circumstances necessitating the extension and the anticipated date of a determination and response to the request. The circumstances where such extensions may be approved include:

(i) The record(s) sought are located at places other than the activity processing the request, such as Federal Archives and Records Center or geographically separated elements of the activity.

(ii) The request requires the collection and review of a substantial number of records.

(iii) The disclosure determination requires consultation with another activity or agency with a substantial interest.

(4) As an alternative to the extensions described above, DLA activities may seek informal agreements with requesters for extensions in unusual circumstances when time limits become an issue in the activity's response to the request.

(c) *Initial Disclosure Determinations.* (1) Initial determinations to make records available may be made by any official designated by the activity. When a decision is made to release records in response to a FOIA request, the records will be made available promptly to the requester. When the request is for the examination of releasable records, the official will advise the requester when and where he may appear for the purpose. Examinations will be held during normal business hours except in unusual circumstances.

(2) DLA officials with the authority to release information under this regulation should consult public affairs officers when releasing records on matters considered newsworthy or when releasing records to media representatives.

(3) There are seven reasons for not providing a record in response to a FOIA request:

(i) The information or item requested is not a record within the meaning of the FOIA and this regulation.

(ii) The record has not been described with sufficient specificity to enable DLA to locate it by conducting a reasonable search.

(iii) The requester has failed to comply with procedural requirements, including agreements to pay assessable fees, imposed by this regulation.

(iv) DLA determines through knowledge of its files and reasonable searches that it neither controls nor otherwise processes the requested record or that the requested record does not exist.

(v) The request is withdrawn by the requester.

(vi) The request is transferred to another activity or agency.

(vii) The request is denied in accordance with the provisions of this regulation.

(4) Determinations to withhold either records or information within records may be made only by the Heads of DLA PLFAs or the Heads of HQ DLA PSEs. This authority may not be redelegated.

(d) *Consultation on Confidential Commercial Information.* (1) When a request is received for a record containing information provided by a source outside the Federal Government, which is subject to disclosure and, if disclosed, could reasonably be expected to cause substantial competitive harm to the source, the activity will notify the source of the pending disclosure determination and provide the source or its designee with an opportunity to object to the disclosure of any specified portion of the information and to state all grounds on which disclosure is opposed. Notice and consultation with the source of such information is not required, however, when the activity determines:

(i) The information should not be disclosed.

(ii) The information or record has been published or officially made available to the public.

(iii) Disclosure of the information is required by a law other than the FOIA.

(2) In consulting sources under this procedure, DLA activities shall provide sources a reasonable period of time to present objections to disclosure. The requester shall be provided a concurrent notification on the activity's use of this consultation procedure with an estimated date for the activity's disclosure determination.

(3) DLA activities shall give careful consideration to all specified grounds for nondisclosure presented by the source. Initial denial authorities will make disclosure determinations. When a substantial issue has been raised, the activity may seek additional information from the source of the information and afford the source and requester reasonable opportunities to present their arguments on the legal and substantive issues involved prior to making an agency determination.

(i) When the initial denial authority determines the information appropriately withheld, the activity shall issue a denial to the requester under the procedures outlined in § 1285.8(c) and shall provide a copy of the determination to the source.

(ii) In those instances when the source has objected to disclosure, and the initial denial authority determines the information will be disclosed, the activity shall provide the source with a written statement which briefly explains the reasons for disclosure and a scheduled date for release to requester. The statement shall be provided to the source by certified mail with return receipt reasonably prior to the specified disclosure date. A copy of this statement will also be provided to the requester. When the source advises it will seek a restraining order or take court action to prevent release of the record or information, the activity will notify the requester of the proposed action.

(4) Likewise, whenever a DLA activity is informed that a FOIA requester has brought suit in court seeking to compel disclosure of Confidential commercial information, the source will be notified promptly of the suit.

(e) *Denials.* (1) A record in the possession and control of DLA may be withheld only when the record falls within one or more of the nine categories of records exempt from mandatory disclosure under the FOIA, and the use of discretionary authority to release the record is determined to be unwarranted. Staff consultation and coordination with the servicing Office of Counsel are mandatory for all denials.

(2) Although exempt portions of records may be denied, nonexempt portions must be released to the requester when the meaning of these portions is not distorted by the deletion of denied portions and when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. When a record is denied in whole based on distortion or reconstruction potential, the response advising the requester of the determination will specifically state that it is not possible to reasonably segregate meaningful portions for release.

(3) When a request for a record is denied in whole or in part, the Head of the PLFA or the Head of the PSE will inform the requester in writing of the specific exemption(s) on which the denial is based and explain the determination in sufficient detail to permit the requester to make a decision concerning appeal. The determination will also inform the requester of his/her rights of appeal to the Director, DLA. Such appeals must be made within 60 calendar days of the determination, contain the reasons for the requester's disagreement with the determination, and be addressed to HQ DLA (ATTN: DLA–G), Cameron Station, Alexandria, VA 22304–6100.

(i) When the initial denial is based on security classification, the explanation will include a summary of the applicable criteria for classification, as well as an explanation, to the extent reasonably feasible, of how the criteria apply to the particular records in question. (See DLAR 5200.12, DLA Information Security Program, setting forth the criteria or rationale for classification.) The

determination will also advise the requester of the availability of declassification review of records more than 10 years old under DoD 5200.1–R, when appropriate.

(ii) DLA activities will provide an informational copy of each denial to DLA–XAM. No supporting documents such as requests or withheld documents need be forwarded.

(f) *Appeals.* (1) Requesters denied access to records under the provisions of subparagraph E, may appeal such determinations to the Director, DLA. However, a "no record" finding may not be appealed, although a requester may ask the agency to search other files or provide more detailed identification to facilitate another search of the files. The procedures in this section concern appeals regarding disclosure matters and the appropriate use of exemption procedures for appeals of fee determinations are outlined in Appendix A of this rule. Records which are denied should be retained during the time submitted for appeal.

(2) The requester shall be advised that an appeal should be filed so that it reaches the appellate authority within 60 calender days after the date of the initial denial letter. At the conclusion of this period, the case may be considered closed; however, such closure does not preclude the requester from filing litigation. In cases where the requester has been provided a series of determinations for a single request, the time for appeal will begin on the date of the last determination of the series. When filing an appeal, a copy of the letter denying the initial request should be included.

(3) Final determinations normally shall be made within 20 working days of receipt of an appropriately submitted appeal. When additional time is required to respond to the appeal for the reasons outlined in § 1285.8(b)(3), the final determination may be delayed for the number of working days (not to exceed 10 days) not used as additional time for responding to the initial request. DLA–G will advise the requester of the circumstances in the use of such extensions and the anticipated date of a substantive response. Requesters shall be advised that, if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances identified in § 1285.8(b)(3), they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. DLA shall continue to process the case expeditiously, whether or not the requester seeks a court order for release of the records, but a copy of any response provided subsequent to filing a complaint shall be forwarded to the Department of Justice.

(4) When the Director, DLA, makes a determination to release all or a portion of the records sought on appeal, the records shall be made available promptly to the requester after compliance with procedural requirements, such as payment of fees. A final denial to provide records sought will be made in writing, explain the exemptions invoked, advise that the material being denied does not contain meaningful portions that are reasonably segregable, and advise the requester of the right of judicial review. When the final denial is based in whole or in part on a security classification, the explanation will include a determination that the record meets the criteria and rationale of the governing Executive Order, that the determination is based on declassification review, and explain how the review confirmed the validity of continuing classification.

(g) *Privileged Release.* (1) Subject to the limitations in DoD 5200.1–R and DLAR 5400.21, records exempt from mandatory disclosure under this regulation, may be authenticated and released to officials requesting them on behalf of local, state, and Federal Government authorities (including executive, administrative, legislative, and judicial authorities) as follows:

(i) To Congress, in accordance with DoD Directive 5400.4, Provision of information to Congress, and DLAR 5400.12.

(ii) To the Federal courts as ordered by the officers of the court for the administration of justice.

(iii) To executive and administrative agencies of the Federal Government and state and local officials as determined by the Director, DLA, the Heads of HQ DLA PSEs, Commanders of PLFAs, and other authorized officials.

(2) Technical information and data exempt from mandatory disclosure may also be disseminated or released to qualified contractors and registered users under the specific limitations and requirements. (See DoD Instruction 5200.21, Dissemination of DoD Technical Information, and DoD Directive 5230.25.)

(3) Privileged release is not considered public release for the purposes of FOIA and this regulation. DLA activities will inform parties receiving records under this section that such records are exempt from public release under the FOIA and are privileged. They will also provide special handling instructions, where appropriate.

§ 1285.9 Forms and Reports.

Each PLFA shall prepare statistics and accumulate paperwork for the preceding calender year on those items prescribed for the annual FOIA Report (Appendix D), and submit this material to DLA–XAM on or before 15 January each year. This reporting requirement is assigned RCS DD–PA(A)1365.

Appendix A—Fee Schedule

(a) General Provisions

(1) Application

(i) The fees described in this enclosure apply to FOIA requests and other inquiries which solicit DLA records, including those containing technical data. They reflect direct costs in processing of public requests under the FOIA, and direct and indirect costs in processing requests for technical data. The fees identified are subject to limitations on the nature of assessable fees based on the category of the requester, statutory and automatic waivers based on the category determination and cost of routine collection, and either the waiver or reduction of fees when disclosure serves the public interest.

(ii) The specific provisions on assessable fees, restrictions, and waivers are provided in outline from below for easy reference. The chart identifies four classes of requesters and the types of charges which may be assessed each class. The chart lists the waiver of charges which are required by law and the automatic waiver of $15 based on DLA fee collection expenses.

Requester class	Assessable fees	Statutory waiver	Automatic waiver
Commercial Use	Search, Duplication, and Review	None	$15
Media	Duplication	First 100 pages	15
Educational and Noncommercial Scientific Institution.	....do	....do	15
Other	Search and Duplication	First 100 pages, First 2 hours of Search	15

Example: For an "other" request that involved 2 hours and 10 minutes of search time, and resulted in 105 pages of documents, an activity would determine the cost of 10 minutes of search time and only five pages of duplication. If this processing was equal to, or less than, the cost for billing the requester and processing the fee collected ($15 or less), no charges would result.

(2) Fee Assessment

(i) DLA activities will evaluate each request to determine the requester category and adequacy of any fee declaration. An adequate declaration requires a willingness by the requester to pay fees in an amount equal to, or greater than, the assessable charges for the request. When provided, statements in requests regarding the willingness to pay for specific services, such as search, duplication, and review, must encompass those appropriately assessable for the requester category described above. DLA activities will provide requesters an opportunity to amend inadequate fee declarations and provide estimates of prospective charges when required. When a requester fails to provide an adequate declaration within 30 days after notification of a deficiency, the request for information will be considered withdrawn.

(ii) A requester's claims for assessment of fees under a specific category will be carefully considered. A DLA activity may require a requester to substantiate a claim for assessment under a claimed category. In the absence of requester claims, an activity will determine the category into which a requester falls, basing its determination on all available information and evidence.

(iii) When an activity disagrees with a requester claim for fee assessment under a specific category, the initial denial authority for the activity concerned will provide a written determination advising the requester:

(A) The category into which the requester was placed for the assessment of fees and on the rationale for this determination.

(B) That additional information to justify the category claimed should be forwarded.

(C) Absent further information, the activity will render, within 30 calendar days, a final category determination.

(D) That the determination may be appealed to the Staff Director, Administration, HQ DLA, within 60 calendar days of the date of the determination.

(E) Notwithstanding any appeal, a search for responsive records will not be initiated until the requester indicates a willingness to pay assessable fees.

(iv) When an activity estimates or determines that allowable charges are likely to exceed $250, the activity may require a provisional payment in an amount up to the full estimated charges. Provisional payments may not be required for requests with estimated fees of $250 or less.

(v) Where a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 calendar days from the date of billing), activities may require the requester to pay the full amount due from previous requests, plus any applicable interest, or demonstrate satisfaction of the debt and to make an advance payment of an amount up to the amount of estimated fees, before the activity begins to process a new or pending request from the requester.

(vi) The administrative time limits for response on access will begin only after the activity has received from the requester an adequate declaration on a willingness to pay fees and satisfaction of outstanding debts for prior requests.

(3) Aggregating Requests

A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely to avoid payment of fees. When an activity reasonably believes that a requester is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, the activity may aggregate such requests and charge accordingly. One element to be considered in such situation is the time period in which the requests occur. For example, it would be reasonable to presume that multiple requests of this type made within a 30-day period had been made to avoid fees. For requests made over a longer period, such a presumption becomes harder to sustain. In no case may activities aggregate multiple requests on unrelated subjects from one requester.

(4) Fee Waivers

(i) Documents will be furnished without charge, or at a charge reduced below fees assessed to the categories of requesters, when the activity determines that a waiver or reduction of fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of DLA and is not primarily in the commercial interest of the requester. In applying this waiver, DLA activities should consider the following:

(A) Disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government. Factors to consider include:

(*1*) *The subject of the request:*

(*i*) Activities should analyze whether the subject matter of the request involves issues which will significantly contribute to the public understanding of the operations or activities of DLA. Requests for records in the possession of DLA which were originated by non-Government organizations and are sought for their intrinsic content, rather than information value, will likely not contribute to public understanding of the operations or activities of DLA. An example of such records might be press clippings, magazine articles, or records forwarding a particular opinion or concern from a member of the public regarding a DLA activity.

(*ii*) Similarly, disclosures or records of considerable age may not bear directly on the current activities of DLA; however, the age of a particular record shall not be the sole criteria for denying relative significance under this factor. It is possible to envision an informative issue concerning the current activities of DLA, based upon historical documentation. Requests of this nature must be closely reviewed in light of the requester's stated purpose for desiring the records and the potential for public understanding of the operation and activities of DLA.

(*2*) *The informative value of the materials requested to be disclosed.* This factor requires a close analysis of the substantive contents of a record, or portion of the record, to determine whether disclosure is meaningful, and will inform the public on the operations or activities of DLA. While the subject of a request may contain information which concerns operations or activities of DLA, it may not always hold great potential for contributing to a meaningful understanding of these operations or activities. An example of such would be a heavily redacted record, the balance of which may contain only random words, fragmented sentences, or paragraph headings. Whether release of such a record in this situation will contribute to the public understanding of the operations or activities of DLA must be weighed against the arguments offered by the requester. Another example is information already known to be in the public domain. Disclosure of duplicative, or nearly identical information already existing in the public domain, may add no meaningful new information concerning the operations and activities of DLA.

(*3*) *The contribution to an understanding of the subject by the general public likely to result from disclosure.* The key element in determining the applicability of this factor is whether disclosure will inform, or have the potential to inform the public, rather than simply the individual requester or small segment of interested persons. The identity of the requester is essential in this situation in order to evaluate whether the requester has the capability and intention to disseminate the information to the public. Mere assertions of plans to author a book, research a particular subject, research doctoral dissertation work, or indigency are insufficient without demonstrating the capacity to further disclose the information in a manner which will be informative to the general public. Requesters should be asked to describe their qualifications, the nature of their research, the purpose of the requested information, and their intended means of dissemination to the public.

(*4*) *The significance of the contribution to public understanding:*

(*i*) In applying this factor, activities must differentiate the relative significance or impact of the disclosure against the current level of public knowledge or understanding which exists prior to the disclosure. In other words: Will disclosure on a current subject of wide public interest be unique in contributing previously unknown facts, thereby enhancing public knowledge, or will it basically duplicate what is already known by the general public? A decision regarding significance requires objective judgement, rather than subjective determination, and must be applied carefully to determine whether disclosure will likely lead to a significant public understanding of the issue. Activities shall not make value judgements as to whether the information is important enough to be made public.

(*ii*) Disclosure of the information "is not primarily in the commercial interest of the requester."

(A) *The existence and magnitude of a commercial interest.*

(*1*) If the request is determined to be of a commercial interest, activities should address the magnitude of that interest to determine if the requester's commercial interest is primary, as opposed to any secondary personal or noncommercial interest. In addition to profit-making organizations, individual persons or other organizations may have a commercial interest in obtaining certain records.

(*2*) Where it is difficult to determine whether the request is of a commercial nature, activities may draw inference from the requester's identity and circumstances of the request. Activities are remained that in order to apply the commercial standards of the FOIA, the requester's commercial benefit must clearly override any personal or nonprofit interest.

(*B*) *The primary interest in disclosure.* Once a requester's commercial interest has been determined, activities should then determine if the disclosure would be primarily in that interest. This requires a balancing test between the commercial interest of the request against any public benefit to be derived as a result of that disclosure. Where the public interest is served above and beyond that of the requester's commercial interest, a waiver or reduction of fees would be appropriate. Conversely, even if a significant public interest exists, and the relative commercial interest of the requester is determined to be greater than the public interest, then a waiver or reduction of fees would be inappropriate. As examples, news media organizations have a commercial interest as business organizations; however, their inherent role of disseminating news to the general public can ordinarily be presumed to be of a primary interest. Therefore, any commercial interest becomes secondary to the primary interest in serving the public. Similarly, scholars writing books or engaged in other forms of academic research may recognize a commercial benefit, either directly or indirectly (through the institution they represent); however, such pursuits normally are undertaken primarily for educational purposes, and the application of a fee charge would be inappropriate. Conversely, data brokers or others who merely compile Government information for marketing can normally be presumed to have an interest primarily of a commercial nature.

(ii) In addition, the following additional circumstances describe situations where waiver or reduction of fees are most likely to be warranted:

(A) A record is voluntarily created to preclude an otherwise burdensome effort to provide voluminous amounts of available records, including additional information not requested.

(B) A previous denial of access to records is reversed in total, or in part, and the assessable costs do not exceed $30.

(iii) Activities are reminded that the above factors and examples are not all inclusive. Each fee decision must be considered on a case-by-case basis and upon the merits of the information provided in each request. When the element of whether to charge or waive the fee cannot be clearly resolved, activities should rule in favor of the requester.

(b) Collection of Fees and Fee Rates

(1) Collection of Fees

(i) No fee may be charged by DLA activities if the costs of processing the request are equal to or less than $15. The automatic waiver does not apply, however, when the cost of processing exceeds this amount.

(ii) Fees should be assessed only after applicable statutory waivers have been applied and subtracted from the cost of processing the request and the balance exceeds the automatic waiver threshold.

(2) Fee Rates

(i) Manual Search.

Type	Grade	Hourly rate
Clerical	E9/GS-8 and below	$12
Professional	01-06/GS-9-GS/GM-15	25
Executive	07/GS-GM-16/ES1 and above.	45

(ii) Computer Search.

(A) Computer search will be based on the direct cost of the central processing unit, input/output devices, and memory capacity of the actual computer configuration. The salary scale for the computer operator/programmer determining how to conduct and subsequently executing the search will be recorded as part of the computer search costs.

(B) For the purposes of statutory waivers, the first two free hours will be determined against the salary scale of the individual operating the computer for the purposes of the search. As an example, when the direct costs of the computer central processing unit, input-output devices, and memory capacity equal $24 (2 hours of equivalent search at the clerical level), amounts of computer costs in excess of that amount are chargeable as computer search.

(iii) *Duplication.*

Type	Cost per page (cents
Pre-printed material	02
Office copy	15
Microfiche	25
Computer copies (tapes or printouts)	(1)

[1] Actual cost of duplicating the tape or printout (includes operator's time and cost of the tape).

(iv) *Review Time.*

Type	Grade	Hourly rate
Clerical	E9/GS-8 and below	$12
Professional	01-06/GS-9-GS/GM-15	25
Executive	07/GS/GM-16/ES1 and above.	45

(v) *Audiovisual Documentary Materials.* Search costs are computed as for any record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality.

(vi) *Other Records.* Direct search and duplication cost for any record not described above shall be computed in the manner described for audiovisual documentary material.

(vii) *Costs for Special Services.* Complying with requests for special services is at the discretion of the activity. Neither the FOIA nor its fee structure cover these kinds of services. Activities will, therefore, recover the costs of special services requested by the requester after agreement has been obtained in writing from the requester to pay for one or more of the following services:

(A) Certifying that records are true copies.

(B) Sending records by special methods such as express mail, etc.

(c) Computation of Fees and Fee Rates for Technical Data

(1) *Fees for Technical Data*

Technical data, other than technical data that discloses critical technology with military or space application, if required to be released under the FOIA shall be released provided the person requesting such information agrees to pay all reasonable costs attributed to search and duplication and review of the records to be released. Technical data, as used in this paragraph, means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). This term does not include computer software, or data incidental to contract administration, such as financial and/or management information. DLA activities shall retain the amounts received by such a release, and it shall be merged with, and available for, the same purpose and the same time period as the appropriation from which the costs were incurred in complying with request. All reasonable costs as used in this sense are the full costs to the Federal Government of rendering the service, or fair market value of the service, whichever is higher. Fair market value shall be determined in accordance with commercial rates in the local geographical area. In the absence of a known market value, charges shall be based on recovery of full costs to the Federal Government. The full cost shall include all direct and indirect costs to conduct the search, review, and to duplicate the records responsive to the request. This cost is to be differentiated from the direct costs allowable under Appendix A, paragraph (b), for other types of information released under the FOIA.

(2) *Waiver*

Activities shall waive the payment of costs required in subparagraph (i) above, which are greater than the costs that would be required for release of this same information under Appendix A, paragraph (b), if:

(i) The request is made by a citizen of the United States or a United States corporation, and such citizen or corporation certifies that the technical data requested is required to enable it to submit an offer or determine whether it is capable of submitting an offer to provide the product to which the technical

data relates to the United States or a contractor with the United States. However, activities may require the citizen or corporation to pay a deposit in an amount equal to not more than the cost of complying with the request, which will be refunded upon submission of an offer by the citizen or corporation.

(ii) The release of technical data is requested in order to comply with the terms of an international agreement.

(iii) The activity determines in accordance with Appendix A, paragraph (a)(4)(1) that such a waiver is in the interest of the United States.

(3) Fee Rates

(i) *Search Time.*

(A) Manual Search.

Type	Grade	Hourly rate
Clerical	E9/GS-8 and below	$13.35
(Minimum charge)		8.30

Note.—Professional (To be established at actual hourly rate prior to search. A minimum charge will be established at one-half hourly rates.)

(B) Computer search is based on the total cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. The wage (based upon the scale in (1), above) for the computer operator/programmer determining how to conduct, and subsequently executing the search will be recorded as part of the computer search.

(ii) *Duplication.*

Type	Cost
Aerial Photograph Maps, Specifications, Permits Charts, Blueprints, and other technical documents Engineering data (microfilm)	$2.50
(A) Aperture cards:	
(1) Silver duplicate negative, per card	.75
When Key punched and verified, per card	.85
(2) Diazo duplicate negative, per card	.65
When key punched and verified, per card	.75
(B) 35mm roll film, per frame	.50
(C) 16mm roll film, per frame	.45
(D) Paper prints (engineering drawings), each	1.50
(E) Paper reprints of microfilm indices, each	.10

(iii) *Review Time.*

Type	Grade	Hourly rate
Clerical	E9/GS-8 and below	$13.25
(Minimum charge)		8.30

Note.—Professional (To be established at actual hourly rate prior to review. A minimum charge will be established at one-half hourly rates.)

(iv) *Other Technical Data Records.* Charges for any additional services not specifically provided above, consistent with DLAR 7230.1, will be made by activities at the following rates:

(A) Minimum charge for office copy (up to six images)	$3.50
(B) Each additional image	.10
(C) Each typewritten page	3.50
(D) Certification and validation with seal, each	5.20
(E) Hand-drawn plots and sketches, each hour or fraction thereof	12.00

(d) Billing and Collection

DLA activities will routinely bill requesters for services provided in the response providing the records requested, access determination on the request, or in cases of individual examination, after the provision of services. The Debt Collection Act of 1982, Pub. L. 97-365 (1982), provides for a minimum annual rate of interest to be charged on overdue debts owed the Federal Government. Finance Officers may levy this interest penalty for any fees that remain outstanding 30 calendar days from the date of billing (the first demand notice) to the requester on the amount owed.

(1) Billing/responses to requests should take the form of demand notices and ask that payments be sent directly to Finance and Accounting Offices. The requirement can be accommodated by adding standard language or paragraph to responses such as: "Freedom of Information Act processing fees in the amount of $——— have been assessed for this request. This fee is currently due and payable. Please send a copy of this letter with a check or money order payable to the Defense Logistics Agency (provide the mailing address of appropriate Finance and Accounting Office). If not received within 30 days after this billing, interest will accrue to the amount until receipt of payment in full at the rates set by the Secretary of the Treasury as provided under the Debt Collection Act of 1982."

(2) All fees collected for services provided under the FOIA, other than fees collected in providing technical data, will be credited to miscellaneous receipts of the Treasury. Fees collected for providing technical data will be treated as an appropriations refund and credited to the Operations and Maintenance (O&M) or Research, Development, Test, and Evaluation (RDT&E) funds of the activity.

(3) DLA activities should provide the requester the original and one copy of the response, and also provide a copy to the appropriate finance and accounting office with a notation regarding the proper crediting of the funds. To the extent required, finance and accounting officers should pursue collections under DLAM 7000.1, Accounting and Finance Manual, and advise FOIA officers on instances where the requester has failed to pay and subsequent requester settlements for the purposes of suspending requester privileges and reporting.

(4) In those instances where payments are required as a precondition of processing the request (those with estimated charges exceeding $250), activities should have such payments sent to the Freedom of Information Act Officer for subsequent surrender to finance officers under DD Form 1131, Cash Collection Voucher, cash collection procedures. Finance officers should suspend collection on such payments until completed processing and billing on the request.

(e) Fee Appeals

(e) A requester may appeal an initial determination regarding placement in a certain fee assessment category and the waiver or reduction of fees when disclosure serves the public interest to the Staff Director, Office of Administration, HQ DLA. When the Staff Director, Office of Administration is the official making the initial determination, the Chief of Staff, HQ DLA shall act as the appellate authority.

(1) Fee appeals must be submitted in writing to the Staff Director, Office of Administration (ATTN: DLA-XAM) or Chief of Staff, as appropriate, Headquarters, Defense Logistics Agency, Cameron Station, Alexandria, VA 22304-6100 within 60 calendar days of the date of the initial determination on fees and include:

(i) A copy of the request and all other documentation made available by the requester in the initial determination.

(ii) A copy of the initial determination on fees.

(iii) The rational supporting the requester's claim.

(2) Final determinations shall be made in writing within 20 working days of an appropriately submitted appeal.

(3) When the appellate authority upholds the decision of the Initial Denial Authority, the requester will be provided the rationale for the determination and advised of their right to judicial review.

Appendix B—For Official Use Only

(a) General Provisions.

(1) *General.* Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of the reasons cited in FOIA *Exemptions* 2 through 9, shall be considered as being For Official Use Only (FOUO). No other material shall be considered or marked (FOUO), and a FOUO designation is not authorized for use as a form of classification to protect national security interests.

(2) *Prior FOUO Application.* The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under the FOIA. When such a record is requested, the information in it shall be evaluated to determine whether, under current circumstances, FOIA exemptions apply. Even if exemptions apply, information may nonetheless be released when it is determined that no governmental interest will be jeopardized by its release.

(3) *Historical Papers.* Records such as notes, working papers, and drafts retained as historical evidence of DLA activity actions enjoy no special status apart from the exemptions under the FOIA.

(4) *Time to Mark Records.* The marking of records at the time of their creation provides notice of FOUO content and facilitates review when a record is requested under the FOIA. Records requested under the FOIA, that do not bear such markings, should not be assumed to be releasable without

examination for the presence of information that requires continued protection and qualifies as exempt from public release.

(5) *Distribution Statement.* Information in a technical document that requires a distribution statement pursuant to DoD Directive 5230.24, Distribution Statements on Technical Documents shall bear that statement and shall not be marked FOUO.

(b) Markings.

(1) *Location of Markings*

(i) An unclassified document containing FOUO information shall be marked "For Official Use Only" at the bottom on the outside of the front cover (if any), on the first page, on the back page, and on the outside of the back cover (if any).

(ii) Within a classified document, an individual page that contains both FOUO and classified information shall be marked at the top and bottom with the highest security classification of information appearing on the page.

(iii) Within a classified or unclassified document, an individual page that contains FOUO information but no classified information shall be marked "For Official Use Only" at the bottom of the page.

(iv) Other records, such as photographs, films, tapes, or slides, shall be marked "For Official Use Only" or "FOUO" in a manner that ensures that a recipient or viewer is aware of the status of the information therein.

(v) FOUO material transmitted outside the Department of Defense requires application of an expanded marking to explain the significance of the FOUO marking. This may be accomplished by typing or stamping the following statement on the record prior to transfer:

This document contains information EXEMPT FROM MANDATORY DISCLOSURE under the FOIA. Exemptions * * * apply.

(c) Dissemination and Transmission.

(1) *Release and Transmission Procedures.* Until FOUO status is terminated, the following release and transmission instructions apply:

(i) FOUO information may be disseminated within DLA activities and between officials of DLA activities and DLA contractors, consultants, and grantees to conduct official business for DLA. Recipients shall be made aware of the status of such information; and, transmission shall be by means that preclude unauthorized public disclosure. Transmittal documents shall call attention to the presence of FOUO attachments.

(ii) DLA holders of FOUO information are authorized to convey such information to officials in other departments and agencies of the executive and judicial branches so to fulfill a Government function, except to the extent prohibited by the Privacy Act. Records thus transmitted shall be marked "For Official Use Only"; and, the recipient shall be advised that the information has been exempted from public disclosure, pursuant to the FOIA, and that special handling instructions do or do not apply.

(iii) Release of FOUO information to Members of Congress is governed by DLAR 5400.12. Release to the General Accounting Office (GAO) is governed by DoD Directive 7650.1, General Accounting Office Access to Records. Records released to the Congress or GAO should be reviewed to determine whether the information warrants FOUO status. If not, prior FOUO markings shall be removed or effaced. If withholding criteria are met, the records shall be marked FOUO and the recipient provided an explanation for such exemption and marking. Alternatively, the recipient may be requested, without marking the record, to protect against its public disclosure for reasons that are explained.

(2) *Transporting FOUO Information.* Records containing FOUO information shall be transported in a manner that precludes disclosure of the contents. When not commingled with classified information, FOUO information may be sent via first-class mail or parcel post. Bulky shipments, such as distributions of FOUO regulations or testing materials that otherwise qualify under postal regulations, may be sent by fourth-class mail.

(3) *Electronically Transmitted Messages.* Each part of electrically transmitted messages containing FOUO information shall be marked appropriately. Unclassified messages containing FOUO information shall contain the abbreviation "FOUO" before the beginning of the text. Such messages shall be transmitted in accordance with communications security procedures in (U.S. Supp 1), Allied Communication Publication, ACP–121 for FOUO information.

(d) Safeguarding FOUO Information

(1) *During Duty Hours.* During normal working hours, records determined to be FOUO shall be placed in an out-of-sight location if the work area is accessible to non-Governmental personnel. The use of DLA Label 22, FOR OFFICIAL USE ONLY Cover Sheet, is optional. (See Appendix F).

(2) *During Nonduty Hours.* At the close of business, FOUO records shall be stored so to preclude unauthorized access. Filing such material with other unclassified records in unlocked files or desks, etc., is adequate when normal U.S. Government or Government-contractor internal building security is provided during nonduty hours. When such internal security control is not exercised, locked buildings or rooms normally provide adequate after-hours protection. If such protection is not considered adequate, FOUO material shall be stored in locked receptacles such as file cabinets, desks, or bookcases. FOUO records that are subject to the provisions of Pub. L. 86–36, National Security Information Exemption, shall meet the safeguards outlined in any system notice for that group of records.

(e) Termination, Disposal, and Unauthorized Disclosures

(1) *Termination.* The originator or other competent authority, e.g., initial denial and appellate authorities, shall terminate "For Official Use Only" markings or status when circumstances indicate that the information no longer requires protection from public disclosure. When FOUO status is terminated, all known holders shall be notified, to the extent practical. Upon notification, holders shall efface or remove the "for Official Use Only" markings, but records in file or storage need not be retrieved solely for that purpose.

(2) *Disposal.* (i) Nonrecord copies of FOUO materials may be destroyed by tearing each copy into pieces to preclude reconstructing, and placing them in regular trash containers. When local circumstances or experience indicate that this destruction method is not sufficiently protective of FOUO information, local authorities may direct other methods but must give due consideration to the additional expense balanced against the degree of sensitivity of the type of FOUO information contained in the records.

(ii) 2. Record copies of FOUO documents shall be disposed of in accordance with the disposal standards established under 44 U.S.C., CH 33, Disposal of Records, as implemented by DLAM 5015.1.

(3) *Unauthorized Disclosure.* The unauthorized disclosure of FOUO records does not constitute an unauthorized disclosure of DLA information classified for security purposes. Appropriate administrative action shall be taken, however, to fix responsibility for unauthorized disclosure whenever feasible, and appropriate disciplinary action shall be taken against those responsible. Unauthorized disclosure of FOUO information that is protected by the Privacy Act may also result in criminal sanctions against responsible persons. The DLA activity that originated the FOUO information shall be informed of its unauthorized disclosure.

Appendix C—Judicial Actions

(a) General Provisions

(1) This section states current legal and procedural rules for the convenience of the reader. The statements of rules neither create rights or remedies not otherwise available nor bind DLA to particular judicial interpretations or procedures.

(2) A requester may seek an order from a United States District Court to compel release of a record after administrative remedies have been exhausted; i.e., when refused a record by the Director, DLA or an appellate designee or when the DLA activity has failed to respond within the time limits prescribed by the FOIA as set forth in this regulation.

(b) Jurisdiction

The requester may bring suit in the United States District Court in the district in which the requester resides or is the requester's place of business, in the district in which the record is located, or in the District of Columbia.

(c) Burden of Proof

The burden of proof is on DLA to justify its refusal to provide a record. The court shall evaluate the case de novo (anew) and may elect to examine any requested record in camera (in private) to determine whether the denial was justified.

(d) Actions by the Court

(1) When a DLA activity has failed to make a determination within the statutory time

limits but can demonstrate due diligence in exceptional circumstances, the court may retain jurisdiction and allow the activity additional time to complete its review of the records.

(2) If the court determines that the requester's complaint is substantially correct, it may require the United States to pay reasonable attorney fees and other litigation costs.

(3) When the court orders the release of denied records, it may also issue a written finding that the circumstances surrounding the withholding raise questions whether DLA personnel acted arbitrarily and capriciously. In these cases, the special counsel of the Merit System Protection Board will conduct an investigation to determine whether or not disciplinary action is warranted. DLA will be guided by the recommendations of the special counsel.

(4) The court may hold the responsible official in contempt for failure to comply with a court order to produce records that it determines have been withheld improperly.

(e) Non-United States Government Source Information

A requester may bring suit in a U.S. District Court to compel the release or records obtained form a non-Government source. Such source shall be notified promptly of the court action. When the source advises that it is seeking court action to prevent release, the activity shall defer answering or otherwise pleading to the complainant as long as permitted by the Court or until a decision is rendered in the court action of the source, whichever is sooner.

(f) Litigation Status Sheet

The Freedom of Information manager at DLA shall be made aware of litigation under the FOIA. Such information will provide management insights into the use of the nine exemptions by Agency personnel. The Litigation Status Sheet provides a standard format for recording information concerning FOIA litigation. Whenever a complaint under the FOIA is filed in a U.S. District Court, the DLA activity named in the complaint shall forward a Litigation Status Sheet, with items 1 through 6 completed, and a copy of the complaint to HQ DLA, ATTN: DLA–XAM, with an informational copy to DLA–G. A revised Litigation Status Sheet shall be provided at each stage of the litigation.

Litigation Status Sheet

1. Case Number [1]
2. Requester
3. Document Title of Description
4. Litigation
   a. Date Complaint Filed
   b. Court
   c. Case File Number [1]
5. Defendants (agency and individual)
6. Remarks: (brief explanation of what the case is about)
7. Court Action
   a. Court's Finding
   b. Disciplinary Action (as appropriate)
8. Appeal (as appropriate)
   a. Date Complaint Filed
   b. Court
   c. Case File Number [1]
   d. Court's Finding
   e. Disciplinary Action (as appropriate)

Appendix D—Annual FOIA Report

Annual Report Content: The following instructions and attached format will be used in preparing the annual report. DLA Form 1786, Freedom of Information Case Summary, and DLA Form 1776, Freedom of Information Act Annual Report Worksheet, should be used to record and summarize reporting data (see Appendix F).

1. Item 1

a. *Completed Public Requests.* Enter the total number of FOIA requests received and responded to during the reporting period.

b. *Completed Reportable Requests.* Enter the number of actions taken on a completed public request. To arrive at this figure, count the number of blocks checked in the actions taken section of DLA Form 1776 for each request processed. (Note: This figure will be equal to, or greater than, Item a, above.)

c. *Number of Requests Denied.* Enter the number of FOIA requests which were denied in whole, or in part, based on one or more of the nine FOIA exemptions.

d. *Other Reason Responses.* Enter the number of FOIA requests in which you were unable to provide the requested information based on an "Other Reason" response. (See Item 2c, below for an explanation of "other reason" responses.)

e. *Total.* Enter the sum of Item c and d, above.

2. Item 2

a. *Exemptions Invoked on Initial Determinations.* Identify the exemption(s) claimed for each request that was denied in whole or in part. Since more than one exemption may be claimed when responding to a single request, this number will be equal or greater than that of item 1c, above.

b. *"(b)(3)" Statutes Invoked on Initial Determinations.* Identify the statute(s) cited when you claimed a "(b)(3)" exemption. Cite the specific sections when invoking either the Atomic Energy Act of 1954 or the National Security Act of 1947.

c. *Initial Request "Other Reason" Responses.* Identify the "other reason" response cited when responding to a FOIA request and enter the number of times each was claimed.

(1) *Transferred Requests.* Enter the number of times a request was transferred to another DoD Component or Federal agency for action. (NOTE: A referral to another DLA activity is not considered a transfer for the purposes of this report.) This category applies when the responsibility for making a determination or a decision on categories 2, 3, or 4, below, is shifted either to another Component or another Federal agency.

(2) *Lack of Records.* Enter the number of times a search of files failed to identify records responsive to subject request and there was no statutory obligation to create a record. This category covers those situations wherein, the requester is advised that the DLA activity has no record or has no statutory obligation to create a record.

(3) *Failure of Requester to Reasonably Describe Record.* Enter the number of times an FOIA request could not be acted on since the requester failed to reasonably describe the record(s) being sought.

(4) *Other Failures by Requester to Comply with Published Rules and/or Directives.* Enter the number of times a requester failed to follow published rules concerning time, place, fees, and procedures.

(5) *Request/Appeal Withdrawn by Requester.* Enter the number of times a requester withdrew a request/appeal.

(6) *Not an Agency Record.* Enter the number of times a requester was provided a response indicating the requested information was not an agency record.

TOTAL. Enter the sum of columns 1 through 6.

The total will be equal to, or greater than, Item 1d, since more than one "other reason" may be claimed.

3. Item 3

(To be completed by DLA–X.)

Initial Denial Authorities (IDAs) by Participation

a. *Total IDAs Authorized.* Enter one. Only one IDA is authorized per PSE/PLFA.

b. *Individuals Involved in Adverse Determinations.* Enter the name, grade, activity, and title of each individual who signed a partial/total denial or "other reason" response and cite the number of instances of participation.

4. Item 4

(To be completed by DLA–G.)

Number of Appeals and Results

Number of Appeals. Enter the disposition of appeals under the appropriate category and then the total.

5. Item 5

(To be completed by DLA–G.)

a. *Exemptions Invoked on appeal Determinations.* Identify the exemption(s) claimed for each appeal that is denied in whole or part. Since more than one exemption may be claimed when responding to a single appeal, this number will be equal to, or greater than, the total listed in Item 4, above.

b. *Statutes Invoked on Appeal Determinations.* Identify the statute(s) cited when a "(b)(3)" exemption is used.

c. *Other Reasons Cited or Appeal Determination.* Identify the "other reason" response when responding to an appeal. Enter the number of times each was claimed and the total.

6. Item 6

(To be completed by DLA–G.)

Participation of Appellate Authorities (Those Responsible for Denials in Whole or in Part). Enter the name, grade, activity, and title of each individual who signed a partial/total denial or "other reason" response and cite the number of instances or participation.

[1] Number used by activity for reference purposes.

7. Item 7

(To be completed by DLA-G.)

a. *Court Opinions and Action Taken.* Briefly describe the results of each FOIA suit the General Counsel participated in during the calender year. Provide a copy of each final court opinion or order.

For Example:

b. *J. Q. Public v. Department of the Army.* Civil No. 87-2600 (S. D. Cal.)

On January 1, 1988, plaintiff filed suit seeking a CID investigation which was being reviewed by the United States Attorney for possible prosecution. Plaintiff is a former Army Judge Advocate General attorney. Final order, May 1988, ordered release of majority of CID report of investigation.

8. Item 8

(To be completed by DLA-X.)

FOIA Implementation Rules or Regulations. List all changes or revisions of rules or regulations affecting the implementation of the FOIA Program, followed by the Federal Register reference (volume number, date, and page) that announces the change or revision to the public. Append a copy of each.

9. Item 9

FOIA Instructional and Educational Efforts. Report what training/seminars your activity has given or attended during this reporting period.

10. Item 10

a. *Cost of Routine Request.* Some reporting activities will find it economical to develop an average cost factor for processing repetitive routine requests rather than tracking costs on each request as it is processed. This section provides for that economy, however, care must be exercised so that costs are comprehensive so as to include a 25 percent overhead, yet are not duplicated elsewhere in the report.

b. *Sample Computation.* Number of Reportable Requests x Cost factor per request.

c. *Personnel Costs.* (Civilian and Military)

(1) *Direct costs of personnel assigned FOIA duties based upon estimated payroll man-years by grade.* Personnel cost are reported in two ways. This section uses a man-year/wage type of costing by grade. To achieve this computation, identify those individuals who are primarily involved in the planning, program management, and/or administrative handling of FOIA requests. To identify salaries, use DoD 7220.9-M, Department of Defense Accounting Manual, for military personnel and the Office of Personnel Management salary table for civilian personnel.

SAMPLE COMPUTATION

Grade	No. of persons	Salary	Percentage of time	Costs
0-5	1	$50,000	10	$5,000
0-1	1	21,000	30	6,000
GS-12	1	35,000	50	17,500
GS-5	1	18,000	50	9,000

To determine the man-year computation. Add the total percentages of time and divide the percentage by 100.

Sample Computation. Man-years = 140 percent divided by 100 = 1.4 man-years.

(2) *Direct costs for other personnel involved in processing request not included about upon accumulation of total hourly data.* This section accounts for all other personnel (not reported above) who are involved in processing FOIA requests. Enter the total hourly cost for each area. Only search, review, and reproduction costs may be recouped from the requester. Review costs may only be recouped from commercial requesters. In the case of collections resulting from release of technical data, all reasonable costs for search and reproduction may be recouped (see enclosure 1).

(a) *Search Time Cost*—This includes only those direct costs associated with time spent looking for material that is responsive to a request, including line-by-line identification of material within a document to determine if it is responsive to the request. Searchers may be done manually or by computer, using existing programming.

(b) *Classification Review Costs*—This includes all direct costs incurred during the process of examining documents located in response to a commercial use request to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure; e.g., doing all that is necessary to excise them and otherwise prepare them for release. It does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(c) *Coordination and Approval/Denial Decision Costs*—This includes all costs involved in coordinating the release/denial of documents requested under the FOIA.

(d) *Correspondence and Form Preparation Costs*—This includes all cost involved in typing responses, filling out forms and/or logbooks, supplies, etc., to respond to an FOIA request.

(e) *Other Activity Costs*—This includes all other processing costs not covered above, such as processing time by the mail room.

Total Man-hour Costs. Enter the sum of 2(a) through 2(e).

(3) *Application of Overhead*—The overhead rate is 25 percent and includes the cost of supervision, space, and administrative support. Add items 1 and 2, then multiply the sum of 25 percent.

d. *Other Case Related Costs.* Using the fee schedule, enter the total amounts incurred in each area to process FOIA requests.

e. *Other Operating Cost.* Report all other costs which are easily identifiable, such as: per diem, operation of courier vehicles, training courses; printing (indexes and forms), long distance telephone calls, special mail services, use of indicia, etc.

f. *Summary.* The summary data provides a total cost figure for administering the FOIA Program and a recap of the fees collected.

11. Item 11

a. *Formal Time Extensions.* Enter the total number of instances in which it was necessary to seek a formal 10-working-day time extension, because of:

(1) *Location.* The need to search for and collect the requested records from another activity that was separate from the office processing the request.

(2) *Volume.* The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records indicated in a single request.

(3) *Consultation.* The need for consultation with another agency having substantial interest in the material requested.

(4) *Court Involvement.* Where court actions were taken on the basis of exhaustion of administrative procedures because the activity was unable to comply with the request within the applicable time limits, and in which a court ge allowed additional time upon a showing of exceptional circumstances, provide a copy of each court opinion and court order containing such an extension of time.

b. *Total.* Enter the sum of Items 1 through 4

BILLING CODE 3620-01-M

ANNUAL FOIA REPORT ACTIVITY:_____ CY 19____

ITEM 1

A Completed Public Requests	B Completed Reportable Requests	C Number of Requests Denied (Partial & Total)	D Number of "Other Reason" Responses Made	E Total (C + D)

ITEM 2

A. EXEMPTIONS CLAIMED IN DENIAL LETTERS:

(b)(1)	(b)(2)	(b)(3)	(b)(4)	(b)(5)	(b)(6)	(b)(7)	(b)(8)	(b)(9)	TOTAL

B. LIST "(b)(3)" STATUTES CLAIMED IN DENIAL LETTERS:	NUMBER OF TIMES CITED

C. "OTHER REASONS" CITED IN RESPONSE TO FOIA REQUESTS:

1	2	3	4	5	6	TOTAL

ITEM 3

DENIALS AND "OTHER REASON" RESPONSES

A. TOTAL NUMBER OF IDA's AUTHORIZED TO SIGN DENIAL LETTERS: (DLA-X ONLY)	

B. LIST ALL INDIVIDUALS WHO SIGNED DENIAL LETTERS OR "OTHER REASON" RESPONSES:

Name	Rank	Title	Number of Instances of Participation	
			Exemption	Other
(Add'l space available after item 11)				

ITEM 4

NUMBER OF APPEALS RECEIVED AND ACTION TAKEN: (DLA-G ONLY)

1 Granted in Full	2 Granted in Part	3 Denied in Full	4 TOTAL

ITEM 5

A. EXEMPTIONS INVOKED ON APPEAL DETERMINATIONS: (DLA-G ONLY)

(b)(1)	(b)(2)	(b)(3)	(b)(4)	(b)(5)	(b)(6)	(b)(7)	(b)(8)	(b)(9)	TOTAL

B. LIST OF "(b)(3)" STATUTES INVOKED ON APPEAL DETERMINATIONS: (DLA-G ONLY)	NUMBER OF TIMES CITED

C. "OTHER REASONS" CITED ON APPEAL DETERMINAION: (DLA-G ONLY)

1	2	3	4	5	6	TOTAL

ITEM 6

LIST ALL INDIVIDUALS WHO SIGNED APPEAL DETERMINATIONS OR "OTHER REASON" RESPONSES: (DLA-G ONLY)

Name	Rank	Title	Number of Instances of Participation	
			Exemption	Other
(Add'l space available after Item 11)				

ITEM 7

COURT OPINION AND ACTIONS TAKEN: (DLA-G ONLY)

ITEM 8

FOIA IMPLEMENTATION RULES OR REGULATIONS PUBLISHED DURING THE REPORTING PERIOD: (DLA-X ONLY)

Document Identification	Federal Register Reference		
	Number	Date	Page

ITEM 9

FOIA INSTRUCTIONAL AND EDUCATIONAL EFFORTS:

Course	Sponsor	Date	Hours

ITEM 10				
A. COST OF ROUTINE REQUESTS PROCESSED:			$	
B. PERSONNEL COSTS (CIVILIAN AND MILITARY):				
1. Direct costs of personnel assigned FOI duties based upon estimated payroll manyears by grade. TOTAL MANYEARS: ———		$		
2. Direct costs for other personnel involved in processing requests not included above based upon accumulation of total data.				
a. Search Time Costs	$			
b. Classification Review and Excising Action Costs	$			
c. Coordination/Approval/Denial Decision Costs	$			
d. Correspondence and Form Preparation Costs	$			
e. Other Activity Costs	$			
TOTAL MANYEARS COSTS (a + b + c + d + e)		$		
3. Application of Overhead (Subtotal of 1 + 2) x 25% overhead:		$		
TOTAL OF PERSONNEL COSTS			$	
C. OTHER CASE RELATED COSTS:				
1. Computer	$			
2. Office Copy Reproduction	$			
3. Microfiche Reproduction	$			
4. Costs of Printed Records	$			
TOTAL OTHER COSTS (1 + 2 + 3 + 4)			$	
D. OTHER OPERATING COSTS:				
1. Reporting Costs				
a. Operational	$			
b. User	$			
c. Overhead: (a + b + c) x 25%	$			
TOTAL REPORTING COSTS (a + b + c)		$		
2. Other costs as directed or which can be reasonably ascertained.		$		
TOTAL OTHER OPERATING COSTS (1 + 2)			$	
E. SUMMARY:				
1. TOTAL COSTS OF SECTION 10A THRU 10D				$
2. Amount Collected from Requesters During this Reporting Period:				
a. Search	$			
b. Copy	$			
c. Review	$			
d. TOTAL COLLECTED (a + b + c)				$

ITEM 11

A. FORMAL TIME LIMIT EXTENSION TAKEN:

1 Location	2 Volume	3 Consultation	4 Court Involvement

B. TOTAL (1 + 2 + 3 + 4)	

FOR ADD'L REMARKS:

BILLING CODE 3620-01-C

Appendix E—Addressing FOIA Requests

(a) Description of DLA's Central and Field Organization

(1) Defense Logistics Agency, Cameron Station, Alexandria, Virginia 22304–6100

(i) Established pursuant to authority vested in the Secretary of Defense, DLA is an agency of DoD under the direction, authority, and control of the Assistant Secretary of Defense (Acquisition and Logistics) and subject to the DoD policies, directives, and instructions.

(ii) DLA consists of a Director, a Deputy Director, a Deputy Director for Acquisition Management, a Headquarters establishment, and 26 primary level field activities and their subordinate activities. Some of the subordinate activities of the Defense Fuel Supply Center, the Defense Reutilization and Marketing Service, and the Defense Personnel Support Center operate in overseas areas. There also are a number of Headquarters management support offices that are controlled by Headquarters staff elements.

(iii) The mission of DLA is to provide effective and economical support to the Military Services, other DoD Components, Federal civil agencies, foreign governments, and others, as authorized, for assigned materiel commodities and items of supply, including weapons systems, logistics services directly associated with the supply management function, contract administration services, and other support services as directed by the Secretary of Defense. Furthermore, DLA administers the operation of DoD programs, as assigned.

(iv) Under the direction and operational control of its Director, DLA is responsible for the performance of the following major functions:

(A) Materiel management encompassing items management classification, requirements and supply control, procurement, quality and reliability assurance, industrial mobilization planning, storage, inventory, and distribution, transportation, maintenance and manufacture, provisioning, technical logistics data and information, value engineering and standardization.

(B) Contract administration services provided in support of the Military Departments and other DoD Components, the National Aeronautics and Space Administration, other designated Federal and State agencies, and foreign governments.

(C) Administering assigned DoD programs, including the DoD Coordinated Procurement Program, Federal Catalog System, DoD Retail Interservice Support Program (DRIS), Defense Materiel Utilization Program, DoD Industrial Plant Equipment Program, Foreign Military Sales, operating Military Parts Control Advisory Groups (MPCAG) for standardization of parts at the system equipment design stage, DoD-wide program for redistribution/reutilization of excess Government-owned and rented automation equipment, Defense Automatic Addressing System, Defense Previous Metals, Recovery Program, Executive Agent for Materiel Redistribution via the Defense European and Pacific Redistribution Activity (DEPRA), assigned logistics, operations contingent to the Federal Emergency Management Program, assigned aspects of the DoD Food Service Management Program, DoD-wide Interchangeable/Substitutable Program, Military Standard Logistics Systems, Logistics Data Element Standardization and Management Program, Defense Procurement Management Review, providing manpower data support to DoD and other Government agencies assigned, the DoD Hazardous Materiel Data System, and the Program Manager for the Defense Energy Information System.

(D) Monitoring DoD supply relationships with the General Services Administration.

(E) Serving as the operating agency for the DoD Automated Placement Programs, and providing administrative support to the Centralized Referral Activity whose functions are under Assistant Secretary of Defense (Acquisition and Logistics) supervision. These programs are the Centralized Referral System that provides for the placement of displaced DoD employees and returning overseas career employees, the Overseas Employment Referral Program, and the Automated Career Management System (ACMS) for placement of employees registered in the DoD-wide career program for Acquisition/Contracting and Quality Assurance personnel.

(F) Systems analysis and design, procedural development, and maintenance for supply and service systems, as assigned by the Secretary of Defense.

(2) Primary level Field Activities

(i) Supply Centers—The six supply centers, Defense Construction Supply Center, Defense Electronics Supply Center, Defense Fuel Supply Center, Defense General Supply Center, Defense Industrial Supply Center, and the Defense Personnel Support Center, are responsible for materiel management of assigned commodities and items of supply relating to food, clothing, textiles, medical, chemical, petroleum, industrial, construction, electronics, and general items of supply. The Defense Fuel Supply Center is also responsible for contracting for commercial petroleum services and coal, as well as for crude oil and petroleum products for the Strategic Petroleum Reserve. Two of the supply centers also perform depot operations functions for assigned commodities.

(ii) Service Centers—The seven service centers furnish varied support services as follows:

(A) The Defense Logistics Services Center (DLSC) is responsible for maintenance of the Federal Cataloging System records, including the development and dissemination of cataloging and item intelligence data to the Military Departments, and other authorized customers.

(B) The Defense Industrial Plant Equipment Center (DIPEC) is responsible for the DoD General Reserve of industrial plant equipment. DIPEC maintains visibility records of all DoD equipment in use by Government facilities and contractors and provides specified supply support of industrial plant equipment to the Military Departments.

(C) The Defense Technical Information Center (DTIC) is responsible for the development, maintenance, and operation of the management information system in the field of scientific and technical information, acquisition, storage, announcement, retrieval, provision of secondary distribution of scientific and technical reports, and primary distribution of foreign technical reports, records and services are provided to DoD, and authorized users.

(D) The DLA Administrative Support Center (DASC) provides administrative support and common service functions to DLA activities within the Washington, D.C. metropolitan area.

(E) The Defense Reutilization and Marketing Service (DRMS) is responsible for the integrated management of world wide personal property disposal operations, including reutilization serviceable assets, in support of the Military Department, and other authorized customers.

(F) The DLA Systems Automation Center (DSAC) is responsible for the operational execution of the DLA ADP Program and the DLA Telecommunications Program.

(G) The Defense National Stockpile Center (DNSC) is responsible for the acquisition, sale, and management of the National Defense Stockpile of strategic and critical materials.

(iii) Depots—These activities, Defense Depot Mechanicsburg (DDMP), Defense Depot Memphis (DDMT), Defense Depot Ogden (DDOU), Defense Depot Tracy (DDTC), are responsible for depot operations functions for assigned commodities.

(iv) Contract Administration Services Regions (DCASRs)—The nine Defense Contract Administration Services Regions are located in Atlanta, Boston, Chicago, Cleveland, Dallas, Los Angeles, New York, Philadelphia, and St. Louis. They provide contract administration services including the performance of contract administration, production, quality assurance, data and financial management activities, and small business/labor surplus programs within the United States and such external areas as specifically authorized.

DLA Freedom of Information Act

Points of Contact

DCSC—Defense Construction Supply Center, ATTN: FOIA Officer, P.O. Box 3990, Columbus, OH 43216–5000

DESC—Defense Electronics Supply Center, ATTN: FOIA Officer, 1507 Wilmington Pike, Dayton, OH 45444–5252

DFSC—Defense Fuel Supply Center, ATTN: FOIA Officer, Cameron Station, Alexandria, VA 22304–6160

DGSC—Defense General Supply Center, ATTN: FOIA Officer, Richmond, VA 23297–5000

DISC—Defense Industrial Supply Center, ATTN: FOIA Officer, 700 Robbins Avenue, Philadelphia, PA 19111–5096

DNSC—Defense National Stockpile Center, ATTN: FOIA Officer, 18th and F Streets, N.W., Washington, DC 20405

DPSC—Defense Personnel Support Center, ATTN: FOIA Officer, 2800 South 20th Street, Philadelphia, PA 19101–8419
DTIC—Defense Technical Information Center, ATTN: FOIA Officer, Cameron Station, Alexandria, VA 22304–6145
DDMP—Defense Depot Mechanicsburg, ATTN: FOIA Officer, 5450 Carlisle Pike, P.O. Box 2030, Mechanicsburg, PA 17055–0789
DDMT—Defense Depot Memphis, ATTN: FOIA Officer, 2163 Airways Blvd., Memphis, TN 38114–5297
DDOU—Defense Depot Ogden, ATTN: FOIA Officer, Ogden, UT 84407–5000
DDTC—Defense Depot Tracy, ATTN: FOIA Officer, Tracy, CA 95376–5000
DASC HQ DLA—Defense Logistics Agency, Administrative Support Center, ATTN: FOIA Officer, Cameron Station, Alexandria, VA 22304–6130
DIPEC—Defense Industrial Plant Equipment Center, ATTN: FOIA Officer, 2163 Airways Blvd., Memphis, TN 38114–5297
*DLSC *DRMS—Defense Logistics Services Center, ATTN: FOIA Officer, Federal Center, 74 N. Washington, Battle Creek, MI 49017–3084
DSAC—DLA Systems Automation Center, ATTN: FOIA Officer, P.O. Box 1605, 3990 East Broad Street, Columbus, OH 43216–5002
DCASR ATL—Defense Contract Administration, Services Region, Atlanta, ATTN: FOIA Officer, 805 Walker Street, Marietta, GA 30060–2789
DCASR BOS—Defense Contract Administration, Services Region, Boston, ATTN: FOIA Officer, 495 Summer Street, Boston, MA 02110–2184
DCASR CHI—Defense Contract Administration, Services Region, Chicago, ATTN: FOIA Officer, O'Hare International Airport, P.O. Box 66475, Chicago, IL 60666–0475
DCASR CLE—Defense Contract Administration, Services Region, Cleveland, ATTN: FOIA Officer, AJC Federal Office Building, 1240 East Ninth Street, Cleveland, OH 44199–2064
DCASR DAL—Defense Contract Administration, Services Region, Dallas, ATTN: FOIA Officer, 1200 Main Street, 6th Floor, Dallas, TX 75202–4399,
DCASR LA—Defense Contract Administration, Services Region, Los Angeles, ATTN: FOIA Officer, 222 N. Sepulveda Blvd., El Segundo, CA 90245–4320
DCASR NY—Defense Contract Administration, Services Region, New York, ATTN: FOIA Officer, 201 Varick Street, New York, NY 10014–4811
DCASR PHI—Defense Contract Administration, Services Region, Philadelphia, ATTN: FOIA Officer, P.O. Box 7478, Philadelphia, PA 19101–7478
DCASR STL—Defense Contract Administration, Services Region, St. Louis, ATTN: FOIA Officer, 1136 Washington Avenue, St. Louis, MO 63101–1194

DLAH 5025.1, Defense Logistics Agency Index of Publications, is published quarterly and is available from the Defense Logistics Agency, ATTN: DLA–XPD, Cameron Station, Alexandria, VA 22304–6100, (202) 274–6011.

*The Defense Logistics Services Center (DLSC) services the Defense Reutilization and Marketing Service (DRMS).

Note.—The envelope used for Freedom of Information Act requests should plainly display the words FREEDOM OF INFORMATION ACT REQUEST on the lower left-hand corner.

BILLING CODE 3620-01-M

FREEDOM OF INFORMATION CASE SUMMARY

1. REQUEST NUMBER	2. TYPE OF REQUEST ☐ INITIAL ☐ APPEAL	3. TYPE OF REQUESTER ☐ COMMERCIAL ☐ NEWS MEDIA ☐ OTHER ☐ SCIENTIFIC/EDUCATIONAL INSTITUTION

4. ACTIONS TAKEN
☐ GRANTED IN FULL ☐ GRANTED IN PART ☐ DENIED ☐ LACK OF RECORDS ☐ NOT AN AGENCY RECORD
☐ RECORDS NOT DESCRIBED ☐ REQUESTER NONCOMPLIANCE ☐ REQUEST WITHDRAWN ☐ TRANSFERRED TO: _____

5. EXEMPTIONS INVOKED
☐ B1 ☐ B2 ☐ B3 AND STATUTE _____ ☐ B4 ☐ B5 ☐ B6 ☐ B7 ☐ B8 ☐ B9 IDA _____

6. EXTENSIONS
☐ LOCATION ☐ VOLUME ☐ CONSULTATION ☐ COURT INVOLVEMENT

7. PROCESSING COST

Grade levels for each type of direct cost listed below will be as follows: Clerical (E–9/GS–8 and below), Professional (0–1 – 0–6/GS–9 – GS–15) and Executive (0–7/GS–16 and above).

TYPE OF PROCESS (A)	TYPE OF DIRECT COST (B)	HOURLY RATE (C)	NUMBER OF HOURS (D)	COST (C x D) (E)	TOTAL COST (ADD FIGURES IN COLUMN E FOR EACH PROCESS) (F)
Search	Clerical	$12.00			*
	Professional	$25.00			
Review/Excising	Clerical	$12.00			**
	Professional	$25.00			
	Executive	$45.00			
Coordination/ Approval/ Denial	Professional	$25.00			
	Executive	$45.00			
Correspondence Preparation	Clerical	$12.00			
Computer Search	Machine				*
Other Activity	Clerical	$12.00			
	Professional	$25.00			

8. OTHER CASE COSTS

TYPE OF COST (A)	COST PER COPY (B)	TOTAL PAGES (C)	TOTAL COST (B x C) (D)
Office Copy Reproduction	.15		*
Microfiche Reproduction	.25		*
Printed Records	.02		*

9. REMARKS

10. FOR FOI OFFICE USE ONLY

TOTAL COLLECTABLE COSTS	TOTAL PROCESSING COSTS	TOTAL CHARGED	FEES WAIVED/REDUCED ☐ TWO FREE HOURS OF SEARCH TIME ☐ 100 FREE PAGES OF REPRODUCTION ☐ PUBLIC/GOVERNMENT INTEREST ☐ LESS THAN $15.00 THRESHOLD ☐ OTHER: _____
SEARCH FEES PAID	REVIEW FEES PAID	COPY FEES PAID	

DLA FORM SEP 87 1786

*Chargeable to the requester
**Chargeable to commercial requesters

INSTRUCTIONS FOR COMPLETING DLA FORM 1786:

1. REQUEST NUMBER - First two digits will express Calendar Year followed by dash(-) and activity request number, i.e., 87-001.

2. TYPE OF REQUEST - Mark the appropriate block to indicate initial request or appeal of a denial.

3. TYPE OF REQUESTER - Mark the appropriate block to indicate category of requester.

4. ACTIONS TAKEN - Mark the block(s) which summarizes actions taken on the request. If the action was transferred, enter the name(s) of the other DoD Component or Federal Agency to which it was sent. Referrals to other DLA Activities should not be counted for reporting purposes. See DLAR 5400.14, Encl 4, for more information on each action taken.

5. EXEMPTIONS INVOKED - Mark the appropriate exemption(s) invoked to withhold records from the public. In the case of exemption B3, the actual statute should also be entered (e.g., 5 USC 1917).

IDA - Initial Denial Authority - Enter the name of the IDA. This will always be the Commander/Administrator for a Primary Level Field Activity and the Staff Director for a Headquarters, DLA, Principle Staff Element.

6. EXTENSIONS - Mark the appropriate block to indicate the reason for invoking a 10 day extension.

7. PROCESSING COST - For each applicable activity category, enter time expended to the nearest 15 minutes in the number of hours column (D).

SEARCH - Time spent locating from the files the requested information.

REVIEW/EXCISING - Time spent reviewing the document content and determining if the entire document must retain its classification or segments could be excised thereby permitting the remainder of the document to be declassified. In reviewing for other than classification, FOI exemptions 2 through 9 should be considered.

COORDINATION/APPROVAL/DENIAL - Time spent coordinating the staff action with interested offices or agencies and obtaining the approval for the release or denial of the requested information.

CORRESPONDENCE PREPARATION - Time spent in preparing the necessary correspondence and forms to answer the request.

COMPUTER SEARCH - Enter exact computer processing value in the total hours column. The salary scale for the programmer/operator executing the search will be recorded as part of the computer search cost.

-Multiply the total hours by the computer hourly rate and enter the cost figures. Computer search will be based on direct cost only of the Central Processing Unit, input/output devices, and memory capacity of the actual computer and configuration used.

OTHER ACTIVITY - Time spent in activity other than above, such as, duplicating documents, hand carrying documents to other locations, restoring files, etc.

8. OTHER CASE COSTS

OFFICE COPY REPRODUCTION - Enter the number of pages reproduced.

-Multiply by the rate per copy and enter cost figures.

MICROFICHE REPRODUCTION - Enter the number of microfiche copies reproduced.

-Multiply by the rate per copy and enter cost figures.

PRINTED RECORDS - Enter total pages in each category. The categories are:

Forms (include any type of printed forms)

Publications (include any type of bound document, such as directives, regulations, studies, etc.)

Reports (include any type of memorandum, staff action paper, etc.)

-Multiply the total number of pages in each category by the rate per page and enter cost figures.

9. REMARKS - Self explanatory.

10. FOR FOI OFFICE USE ONLY

TOTAL COLLECTABLE COSTS - Add the blocks in the total cost column marked with an asterisk and enter total in the total collectable cost block.

TOTAL PROCESSING COSTS - Add all blocks in the total cost column and enter total in the total processing cost block. The total processing cost in most cases will exceed the total collectable cost.

TOTAL CHARGED - Enter the total amount that the requester was charged, taking into account the fee waiver threshold and fee waiver policy.

SEARCH FEES PAID - Enter total clerical and professional search and/or computer search fees paid by the requester.

REVIEW FEES PAID - Enter total review fees paid by the requester.

COPY FEES PAID - Enter the total amount paid by the requester for Office Copy reproduction/Microfiche reproduction and Printed records (e.g., Forms, Publications and/or Reports).

FEES WAIVED/REDUCED - Mark the appropriate block as applicable. Enter reason for the fee waiver/reduction (e.g., Public interest).

FREEDOM OF INFORMATION ACT ANNUAL REPORT WORKSHEET

PAGE ___ OF ___ PAGE(S)

	ACTIONS TAKEN														EXEMPTIONS INVOKED										STATUTES				EXTENSIONS		DIRECT COSTS					OTHER CASE COSTS						FEES COLLECTED		
FOIA REQUEST	GRANTED IN FULL	GRANTED IN PART	DENIED	TRANSFERRED	LACK OF RECORDS	RECORDS NOT DESCRIBED	REQUESTER NONCOMPLIANCE	REQUEST WITHDRAWN	NOT AN AGENCY RECORD	"b1"	"b2"	"b3"	"b4"	"b5"	"b6"	"b7"	LOCATION	VOLUME	CONSULTATION	COURT INVOLVEMENT	REVIEW/EXCISING	COORDINATION/APPROVAL/DENIAL	CORRESPONDENCE PREPARATION	OTHER	COMPUTER	COPY	MICROFICHE	PRINTED RECORDS	OPERATION COSTS	SEARCH	COPY	REVIEW

FREEDOM OF INFORMATION ACT REQUEST

PRIORITY ACTION

NOTE: RESPONSE TO REQUESTER MUST BE ACCOMPLISHED WITHIN 10 WORKING DAYS AFTER RECEIPT.

(PUBLIC LAW 93-502)

HAND CARRY

DO NOT ROUTE THROUGH MESSAGE CENTERS

DLA FORM 1471 MAY 76

FOR OFFICIAL USE ONLY

COVER SHEET

"FOR OFFICIAL USE ONLY" INFORMATION IS THAT INFORMATION NOT REQUIRING PROTECTION IN THE INTEREST OF NATIONAL DEFENSE, BUT REQUIRING SPECIAL PROTECTION IN ACCORDANCE WITH STATUTORY REQUIREMENTS OR IN THE PUBLIC INTEREST AND WHICH HAS BEEN DETERMINED TO BE EXEMPT FROM PUBLIC DISCLOSURE.

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Jun 69

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BILLING CODE 3620-01-C

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Dave Henshall,

Acting Chief, Administrative Management Branch.

[FR Doc. 88-14837 Filed 7-25-88; 8:45 am]

BILLING CODE 3620-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

National Flood Insurance Program; Elevated Building Coverage

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This final rule will amend the Standard Flood Insurance Policy (SFIP) of the National Flood Insurance Program (NFIP) by providing that the limitation in flood insurance coverage in the SFIP currently applicable to all elevated buildings having enclosures, contents, machinery, building components, equipment, or fixtures below the elevated floor, will be applicable only to elevated Post-FIRM buildings and not to elevated Pre-FIRM buildings. This amendment will correct an unintended disparity in flood insurance coverage between elevated Pre-FIRM buildings with enclosures and nonelevated Pre-FIRM buildings. Post-FIRM buildings are buildings for which the start of construction occurred on or after the effective date of the initial Flood Insurance Rate Map (FIRM) for the community in which the building is located or occurred after December 31, 1974, if that is later. The term Post-FIRM buildings also includes buildings substantially improved (i.e, improved or repaired where the cost is 50% of the market value of the building or greater), as well as new construction. Pre-FIRM buildings are those for which the start of construction or any substantial improvement occurred prior to such dates and which were not subject to the local building restrictions which apply to Post-FIRM buildings. This final rule adds a definition of "Post-FIRM building" to the SFIP.

EFFECTIVE DATE: October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Charles M. Plaxico, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472; telephone number (202) 646-3422.

SUPPLEMENTARY INFORMATION: On April 1, 1988, FEMA published for comment in the **Federal Register** (Vol. 53, page 10347) a proposed rule with respect to flood insurance coverage for certain Pre-FIRM elevated buildings. The proposal related to a limitation of flood insurance coverage under the SFIP which was effective October 1, 1983 (see Vol. 48, **Federal Register**, at page 39066 *et seq.*, August 29, 1983) and which applied to all buildings elevated above grade by means of posts, pilings, piers and other foundation walls. The coverage limitation excluded flood insurance coverage under the SFIP for the contents in enclosed areas below the elevated floors of such buildings, and the enclosed areas themselves, retaining coverage only for essential foundation and other elements in such enclosed areas.

The 1983 limitation was made applicable to both elevated Pre-FIRM buildings, whose enclosure is not prohibited under the NFIP flood plain management rules, and to elevated Post-FIRM buildings, which under local ordinances required to be adopted by communities to conform to NFIP flood plain management rules as a condition of the communities' participation in the

NFIP, are not permitted to be enclosed, and as to which the community is required to keep building records showing to what elevation the building was required to be built.

Program experience since 1983 has disclosed an unintended disparity in treatment as a result of the fact that, while the 1983 limitation excluded coverage for areas of enclosures at grade level, and the contents therein, for elevated pre-FIRM buildings, the coverage afforded under the SFIP to the owners of neighboring nonelevated Pre-FIRM buildings for the areas and contents of such buildings at their grade level floors was not limited, even though the exposure of the contents and buildings elements at grade level of both elevated and nonelevated buildings was basically the same, and even though both types of buildings were constructed in compliance with building ordinances in effect at the time of construction.

The proposed rule sought to correct that disparity by removing the limitation for Pre-FIRM elevated and enclosed buildings, thereby causing the 1983 limitation to apply only to Post-FIRM elevated buildings, which are subject to local building restrictions as to elevation and the prohibiting of enclosures, and as to which the base flood elevation is readily indicated on the FIRM.

Four comments were received on the proposed rule, all of which supported eliminatng the disparity in coverage, but expressing various concerns regarding the manner in which the proposed rule would do this.

Two commenters thought that the coverage limitation should not be removed for all Pre-FIRM buildings because this would encourage owners of Pre-FIRM elevated buildings without enclosures to enclose, knowing they would get flood insurance coverage for the new enclosure. These two commenters suggested removing the coverage limitation only if the enclosure itself was made prior to the issuance of a FIRM. However, another commenter, the Association of State Floodplain Managers, commented that the proposed rule was consistent with the current rule allowing improvements of other sorts, at the existing grade, to Pre-FIRM buildings. This principle of the NFIP, known as the substantial improvement rule, is a well-established and a long-standing one. It allows improvements to Pre-FIRM buildings without requiring that the improvement be elevated above the flood hazard, so long as the cost of the improvement is less than 50% of the market value of the building and without imposing a limitation on coverage.

Another comment referred to the fact that a higher rate is charged for Pre-FIRM elevated buildings with enclosures than for Pre-FIRM nonelevated buildings built at grade and noted that this rate difference would remain under the proposed rule. FEMA believes this difference is justified because Pre-FIRM buildings that are elevated reflect the builders' awareness of a flood hazard by the fact that the buildings were elevated and were mostly in coastal areas. This is in contrast to Pre-FIRM buildings built at grade, which reflects the builders' general belief that the site is relatively safe from flooding, although in some cases the builders may have been ignorant of the nature of the flood risk.

Several comments indicated a misunderstanding of the effect of the proposed change on the premium rates for the buildings to which the change would apply. The proposed rule would only change the coverage provided by the SFIP; it would not change the rates or rating classification of these buildings at all. As indicated in the Supplementary Information for the proposed rule, there may be a future increase in the premium rate differential between the rates for Pre-FIRM elevated buildings without enclosure and the higher premium rates for Pre-FIRM elevated buildings with enclosures, based on claims experience. In that regard, one of the two commenters who objected to removing the coverage limitation for Pre-FIRM buildings with Post-FIRM enclosures (see above) also objected to any premium rate increase being applied to all Pre-FIRM buildings with enclosures, implying that Pre-FIRM buildings with Pre-FIRM enclosures should not be subject to any premium rate increase FEMA believes, as discussed above, that providing the same coverage to all Pre-FIRM elevated buildings with enclosures, without regard to the date of the enclosure, is compelled by and consistent with the NFIP's long-standing and well-established substantial improvement rule. This commenter also envisioned the cost to all NFIP policyholders and to the taxpaying public increasing as a result of the proposed change. However, the premium rates for Pre-FIRM buildings will take into account the loss experience of these buildings, thereby minimizing the chance that any increased claims costs due to the proposed change would be passed on to all NFIP policyholders or to the taxpaying public. Further, FEMA is taking other steps to reduce the taxpayer subsidy. Its annual rate and coverage revision programs are designed to accomplish that objective.

One comment anticipated a problem with revising the policy forms to reflect the proposed change in time for an October 1, 1988 effective date. FEMA believes any such problem would be minimal.

There was a comment inquiring about flood losses suffered before the change would become effective. The answer, of course, is that losses before the effective date of the change would be adjusted on the basis of current policy provisions.

A final comment suggested that a similar change to the one being proposed for elevated buildings be made for buildings with basements, i.e., that the basement coverage limitation that became effective in 1983 at the same time as the elevated building coverage limitation also be removed for Pre-FIRM buildings. FEMA believes that this suggestion raises issues which require further study and will take this recommendation under advisement.

FEMA continues to believe that, in the interest of providing equal coverage to the owners of both kinds of Pre-FIRM buildings (i.e., a building initially built at grade and a building initially elevated above grade and subsequently enclosed), it is necessary and desirable to amend the 1983 coverage limitation so that it will not apply to enclosures and contents below the elevated floors of elevated Pre-FIRM buildings. Therefore, this final rule makes the changes set forth in the proposed rule.

FEMA has determined, based upon an Environmental Assessment, that this final rule will not have significant impact upon the quality of the human environment. As a result, an Environmental Impact Statement will not be prepared. A finding of no significant impact is included in the formal docket file and is available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

This final rule will not have a significant economic impact on a substantial number of small entities and therefore has not undergone regulatory flexibility analysis.

This final rule is not a "major rule" as defined in Executive Order 12291, dated February 27, 1981, and, hence, no regulatory analysis has been prepared.

The collection of information requirement referred to in the Supplementary Information for this rule has been approved by the Office of Management and Budget under control no. 3067-0020.

List of Subjects in 44 CFR Part 61

Flood insurance.

Accordingly, 44 CFR Chapter 1, Subchapter B, is amended as follows:

PART 61—INSURANCE COVERAGE AND RATES

1. The authority citation for Part 61 continues to read as follows:

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

2. Section 61.5 is amended by adding between the word "elevated" and the word "building" in the phrase "elevated building" each of the four times it appears in paragraph (f)(9) the word "Post-FIRM" and by adding to the end of paragraph (f)(9) the following sentence:

§ 61.5 [Amended]

* * * * *

(f) * * *

(9) * * * "Post-FIRM building" means, as used in this paragraph (f)(9), a building for which the start of construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of the initial Flood Insurance Rate Map (FIRM) for the community in which the building is located, whichever is later.

* * * * *

Appendix A(1) of Part 61—[Amended]

3. Appendix A(1) of Part 61, Standard Flood Insurance Policy, is amended as follows:

a. Article II—Definitions is amended by adding, alphabetically, a definition of "Post-FIRM building" to read as follows:

* * * * *

"Post-FIRM building" means a building for which the start of construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of the initial Flood Insurance Rate Map (FIRM) for the community in which the building is located, whichever is later.

* * * * *

b. Article V—Property Not Covered is amended by adding between the word "elevated" and the word "building" in the phrase "elevated building" each of the four times it appears in paragraph F the word "Post-FIRM".

* * * * *

Appendix A(2) of Part 61—[Amended]

4. Appendix A(2) of Part 61, Standard Flood Insurance Policy, is amended as follows:

a. The DEFINITIONS section is amended by adding, alphabetically, a definition of "Post-FIRM building" to read as follows:

* * * * *

"Post-FIRM building" means a building for which the start of construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of the initial Flood Insurance Rate Map (FIRM) for the community in which the building is located, whichever is later.

* * * * *

b. The PROPERTY NOT COVERED section is amended by adding between the word "elevated" and the word "building" in the phrase "elevated building" each of the four times it appears in paragraph F the word "Post-FIRM".

Dated: July 19, 1988.

Harold T. Duryee,

Federal Insurance Administrator.

[FR Doc. 88-16738 Filed 7-25-88; 8:45 am]

BILLING CODE 6718-21-M

NATIONAL SCIENCE FOUNDATION

45 CFR Part 670

Conservation of Antarctic Animals and Plants

AGENCY: National Science Foundation.

ACTION: Final rule.

SUMMARY: Because of recommendations adopted at consultative meetings, NSF is amending its regulations at 45 CFR Part 670 implementing the Antarctic Conservation Act of 1978 to designate additionally specially protected areas and sites of special scientific interest in Antarctica.

DATE: July 26, 1988.

FOR FURTHER INFORMATION CONTACT: Questions concerning this regulation should be addressed to Anton L. Inderbitzen, Polar Coordination and Information Section, Division of Polar Programs, National Science Foundation, Washington, DC 20550, or by telephone on 202-357-7817.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published on May 12, 1988 at 53 FR 16886-16887. One comment was received which expressed concern with limits on Alaskan lands which was not germane to this rule. Accordingly, the final rule is the same as set forth in the notice of proposed rule-making.

This is not a major rule as defined by Executive Order 12291. This regulation will not have a significant impact on a substantial number of small businesses. No new information collection requirements are imposed by the proposed amendment.

List of Subjects in 45 CFR Part 670

Antarctica, Conservation.

Therefore, 45 CFR Part 670 is amended as set forth below:

1. The authority citation for Part 670 continues to read as follows:

Authority: Sec. 11, Pub. L. 91-507, 64 Stat. 149 (42 U.S.C. 1870) as amended; Pub. L. 95-541, 92 Stat. 2048 (16 U.S.C. 2401).

2. Section 670.30 is amended by adding paragraphs (o), (p), and (q) as follows:

§ 670.30 Designation of specially protected areas.

* * * * *

(o) North Coronation Island, South Orkney Islands.

(p) Lagotellerie Island, Marguerite Bay.

(q) New College Valley, Caughley Beach, Cape Bird, Ross Island.

* * * * *

3. Section 670.34 is amended by revising paragraphs (a)(1) and (4) and by adding paragraphs (a)(5), (6), (7), (8), (9), (10), and (11) and (d) to read as follows:

§ 670.34 Designation of sites of special scientific interest and management plans for those sites.

* * * * *

(a) *Sites of Special Scientific Interest Requiring a Permit for Entry.*

(1)(i) Cape Royds on Ross Island, (ii) Cape Crozier on Ross Island, (iii) Haswell Island, (iv) Admiralty Bay, King George Island, (v) Caughley Beach, Cape Bird, Ross Island, and (vi) Cierva Point and offshore Islands, Danco Coast. Management Plan: Entry by foot only for scientific purposes will be authorized. Pedestrians may not move through areas populated by birds or mammals except as necessary in the course of scientific investigations. A compelling scientific purpose must be demonstrated before a permit will be issued to take a native bird or mammal from these sites.

* * * * *

(4)(i) Barwick Valley in Victoria Land and (ii) Harmony Point, West Coast of Nelson Island, South Shetland Island. Management Plan: Entry on foot only will be authorized. Overflight is not permitted. Permanent field camps, landfill disposal, and other activities which would introduce new materials or organisms, including microorganisms, into the Site are not permitted. All materials carried into the Site shall be removed.

(5)(i) Rothera Point, Adelaide Island, (ii) Biscoe Point, Anvers Island and (iii) part of Deception Island, South Shetland Islands. Management Plan: Entry by foot only for scientific purposes will be authorized. Vehicles and helicopters are excluded. Pedestrians will be allowed to enter the Site only in connection with approved monitoring or sampling activities.

(6) Tramway Ridge, Mt. Erebus, Ross Island. Management Plan: Entry by foot

only for scientific purposes will be authorized. Vehicles and helicopters are excluded. Pedestrians should avoid walking on visible vegetation and areas of heated ground. Sterile protective overclothing should be worn and footwear sterilized before entering the Site. Human wastes must not be deposited within the Site.

(7) Canada Glacier, Lake Fryxell, Taylor Valley, Victoria Land. Management Plan: Entry by foot only for scientific purposes will be authorized. Vehicles and helicopters are excluded. Pedestrian movement within the Site is restricted to designated paths and shortest routes consistent with scientific activity.

(8) Potter Peninsula, King George Island, South Shetland Islands. Management Plan: Access is restricted to the northern end in the vicinity of Mirounga Point. Pedestrians and vehicles must use established routes particularly during breeding season. No vehicles or helicopters are allowed near any breeding sites.

(9)(i) North-East Bailey Peninsula and (ii) Clarke Peninsula, Budd Coast, Wilkes Land. Management Plan: Vehicles and pedestrians are restricted to existing access routes which are clearly demarcated. No helicopter landings are permitted within the Site. Particular care should be taken to avoid damaging any vegetation, disrupting of soils or morphological features or changing water quality or drainage.

(10) North-West White Island, McMurdo Sound. Management Plan: Vehicles are not permitted closer than 50 m to the seal population and helicopters are prohibited within the Site. Overflights must be at altitudes of 250 m or more.

(11) Linnaeus Terrace, Asgaard Range, Victoria Land. Management Plan: Entry by foot only for scientific purposes will be authorized. Helicopters are allowed at the designated and marked landing site only. Rocks may not be moved from their natural position and great care should be exercised to avoid accidental breakage of fragile rock formations and disturbing periglacial features.

* * * * *

(d) Expiration dates—For purposes of these regulations the sites of special scientific interest and accompanying management plans shall remain in effect until deleted from the regulations.

Erich Bloch,

Director.

[FR Doc. 88-16832 Filed 7-25-88; 8:45 am]

BILLING CODE 7555-01-M

Proposed Rules

Federal Register
Vol. 53, No. 143
Tuesday, July 26, 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 Parts 1098 and 1007

[Docket Nos. AO-184-A52 and AO-366-A29; DA-88-104]

Milk in the Nashville and Georgia Marketing Areas; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends certain changes in the pooling provisions of the Nashville, Tennessee, and Georgia milk orders based on industry proposals considered at a public hearing held at Nashville, Tennessee, on November 3, 1987. A pool distributing plant physically located in the Nashville, Tennessee, marketing area would be regulated under that order irrespective of the market in which the plant has most of its fluid milk products distribution. Another change in the Nashville order would establish a plus location adjustment of 8.5 cents per hundredweight for milk received at plants located in 18 Tennessee counties south of Nashville. These changes are needed to reflect current marketing conditions and to insure orderly marketing.

DATE: Comments are due on or before August 10, 1988.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, 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.

The Regulatory Flexibility Act (5 U.S.C. 601-612), requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendment would promote orderly marketing of milk by producers and regulated handlers.

This action would change the regulatory status that prevailed when the hearing was held of two pool distributing plants located in the Nashville marketing area. At that time, one of the plants was regulated by the Memphis milk order and the other plant was regulated by the Georgia milk order. Both plants would be regulated under the Nashville order under the provisions adopted herein. The cost of the raw milk supplies to the pool plants would be unchanged. There would be no economic impact of such action on the returns to dairy farmers under the Memphis order because milk is pooled under such order on an individual handler basis. Under the Georgia order, there should be little, if any, change in the returns to dairy farmers due to a shift in regulation because the utilization of milk at the Georgia plant differs little form the Class I utilization percentage of the Georgia market. The returns to dairy farmers under the Nashville order will be reduced slightly since the utilization of milk at the two pool plants that would be added is less than the Nashville market's Class I utilization percentage. The Nashville producers whose blend prices would be reduced are members of Dairymen, Inc. (DI), a cooperative association whose representative testified that the cooperative was not opposed to the "lock-in" proposal which would result in the pooling of additional pool plants under the Nashville order.

Prior document in this proceeding:

Notice of Hearing: Issued October 16, 1987; published October 21, 1987 (52 FR 39232).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the Nashville, Tennessee, and Georgia marketing areas. This notice is issued 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).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC, 20250, by the 15th day after publication of this decision in the **Federal Register.** Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Nashville, Tennessee, on November 3, 1987, pursuant to a notice of hearing issued October 16, 1987 (52 FR 39232).

The material issues on the record of hearing relate to:

1. Regulation of a distributing plant physically located in the Nashville marketing area.

2. Location adjustment for milk received at Tennessee plants located south of Nashville.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Regulation of a distributing plant physically located in the Nashville marketing area.* The Nashville, Tennessee, order (Nashville order) should be amended to provide that a distributing plant which meets the pooling standards of the Nashville order and one or more other Federal orders and which is located in the Nashville order's marketing area shall be a pool plant under the Nashville order irrespective of the quantity of fluid milk products distributed in any other

Federal order market. However, such pool plant status should be accorded only as long as the Nashville order's Class I price at the plant is not less than the Class I price that would be applicable at the plant if regulated under the order for the Federal order marketing area in which the plant has the greatest route disposition.

Presently, when a distributing plant qualifies for pooling under the Nashville order and another order, it is regulated in the market in which it has the greater route sales.

The "lock-in" provision adopted herein for the Nashville order cannot achieve its intended purpose without a corollary change in the pooling standards of the Georgia order. Thus, the Georgia order should provide that any plant with route sales in the Georgia marketing area shall be exempt from full regulation under that order, even though it has more sales in the Georgia market than in the other market, if the plant is subject to full regulation under the other order.

Malone & Hyde Dairy proposed (proposals 1 and 2 as listed in the Notice of Hearing) that a distributing plant that is physically located in the Nashville order's marketing area (Order 98) should be regulated by that order irrespective of the quantity of such plant's route disposition in any other Federal order marketing area. Proposal No. 1 would amend Order 98 by locking in such a plant under the order and proposal No. 2 is intended to amend the Georgia order (Order 7) by releasing from regulation such a plant even though the plant may have more fluid milk sales in the Order 7 area than in the Order 98 area.

A witness for Malone & Hyde stated that this action is necessary in order to minimize disruptive market conditions in the Kentucky and Tennessee supply areas. The witness indicated that the proposal would affect the Malone & Hyde distributing plant located in Nashville, Tennessee, but regulated by the Memphis order (Order 97). It would also affect Heritage Farms (Kroger) distributing plant located in Rutherford County, Tennessee (Order 98 marketing area), but currently regulated by the Georgia order (Order 7). He said that the milk procurement and sales patterns of the Malone & Hyde and Kroger plants establish a primary association of such plants with the Order 98 market.

The Malone & Hyde witness testified that the traditional method of pooling a distributing plant has been on the basis of the market in which the plant has the most sales. The justification for this method, he said, was to ensure that all handlers having the major portion of their sales in the same order area were subject to the same minimum order prices and other regulatory provisions. He said that this principle rested on an assumption that such competing plants would be located in the same geographic area.

Also, the witness for Malone & Hyde said that the traditional method of pooling fluid milk plants has become outdated because of large processing plants, such as chain store plants, that have sales over wide geographical areas. The proposal, he said, better serves the principle of trying to assure that all handlers competing for milk procurement and sales in an order area are subject to the same price as their competition. He indicated the proposal would regulate a distributing plant under the order for the marketing area where it is physically located even though its route distribution was greater in another Federal order's marketing area.

A representative of Southern Milk Sales (SMS), a cooperative association whose members supply about 40 percent of the fluid milk receipts of the Kroger plant at Murfreesboro, Tennessee, testified in support of the proposal to fully regulate under the Nashville order distributing plants physically located within the Nashville marketing area.

A representative for the National Farmers Organization (NFO), which had no member producers on the Nashville or Georgia markets at the time of the hearing, testified in opposition to the lock-in proposal and the proposed change in location adjustment under the Nashville order. It was NFO's position that pooling on the basis of a plant's physical location is "not good Federal order policy." The NFO representative testified that "the issues of producer blend price equity in the Southeast should be addressed by the merger of Federal orders, not by jerry-rigging the present orders to pool targeted plants on selected orders."

NFO contended that the proposed lock-in deviates from the well-established principles of pooling plants and producers in accordance with the sales areas served. The cooperative's representative contended that this pooling technique has fostered both producer and handler equity over the years and should not be abandoned.

At the time of the hearing, there were only three regulated handlers under the Nashville order: Purity Dairies in Nashville, a pool distributing plant; DI in its capacity as the operator of a cooperative balancing plant in Lewisburg, Tennessee; and DI in its capacity as the handler of its member milk. Purity Dairies has Class I distribution principally in the Nashville market with some distribution in Alabama. The Lewisburg plant operates as a manufacturing plant and reload center. During the months of flush production, the plant manufactures milk that is in excess of handlers' fluid milk needs and during the fall months, the plant transfers Class I milk to plant in other markets.

Marketing changes that have occurred since a hearing in 1983 on the issue of whether the Malone & Hyde plant should be pooled under the Nashville order on the basis of the plant's location or under the Memphis order on the basis of greater sales in the market warrant the pooling of the Malone & Hyde plant under the Nashville order. Malone & Hyde purchased its Nashville distributing plant from Kraft Diary Group in 1983. The company distributes milk through company-owned warehouses throughout the Southeast and south central states from Georgia to Arkansas.

Beginning in 1984, the Malone & Hyde plant became regulated under the Memphis order because it distributed the principal portion of its bottled milk to the Memphis market. In 1984, the plant's sales in Memphis represented more than 50 percent of its total distribution and the Nashville-area sales were less than half of the Memphis sales.

While the Malone & Hyde plant's distribution in Memphis has remained fairly constant since 1984, the plant's sales in Nashville and Alabama-West Florida have increased greatly. In Nashville, the fluid milk sales from the plant have doubled since 1984. The plant's sales in Alabama which were nonexistent when the plant first opened are now almost as great as its sales in the Nashville area. In some months, the plant's sales in Alabama have exceeded its sales in the Nashville area.

Recently, Malone & Hyde has acquired supermarkets in the Nashville marketing area which will provide new accounts for the plant in 1988. The plant operator expects its sales in Nashville in 1988 to equal or exceed its sales in the Memphis area.

Malone & Hyde procures its raw milk supply primarily from producers located in south-central Kentucky and central Tennessee. This milk production area provides regular and reserve milk supplies to handlers associated with the Nashville, Georgia and other Federal order markets.

Current marketing conditions warrant the pooling of the Malone & Hyde plant under the Nashville order. As previously noted, the plant's Class I sales in Nashville for 1988 are expected to equal

or exceed its Class I sales in the Memphis market. Furthermore, the pooling of the plant on the basis of its location rather than sales area will avoid the plant shifting regulation among the Memphis, Nashville and Alabama-West Florida milk orders. In that regard, the plant's Class I sales in the Nashville and Alabama markets each accounted for about 19 percent of the plant's distribution and a shift of 400,000 pounds in sales from Memphis to either the Nashville or Alabama market would shift regulation of the plant to such market. An additional reason for pooling the Malone & Hyde plant under the Nashville order by means of the lock-in provision is that the shifting of regulation among orders could impair the plant's ability to maintain its producer milk supply.

Under the Memphis order, an individual handler pool order, when the Malone & Hyde plant has a high Class I utilization percentage, it is able to return to its producers a favorable blend price. During the months of flush production, however, the plant's Class I utilization percentage is less and it must pay producers in excess of the Federal order's blend price to return a competitive pay price to its producers. The pooling of the Malone & Hyde plant under a marketwide pool order should better enable the plant operator to retain its milk supply on a year-round basis.

As previously noted, the provision that would result in the regulation of the Malone & Hyde plant would also fully regulate the Kroger plant at Murfreesboro, Tennessee, under the Nashville order. The Kroger plant is currently regulated under the Georgia order since a plurality of the plant's distribution is in the Georgia market. The milk supply for the plant comes for dairy farms located in the county where the plant is located and from south central Kentucky amd middle Tennessee. The Kentucky and Tennessee areas are the same areas from which Purity Dairies and Malone & Hyde obtain their producer milk supply.

In addition to sharing a common milkshed, Malone & Hyde and Kroger share a common distribution area in the Southeast. Both Malone & Hyde and Kroger have significant distribution in the Nashville market. Malone & Hyde distributes about 20 percent of its plant's Class I sales in the Nashville market. Kroger's distribution in the Nashville market is between 20 and 25 percent of the Murfreesboro plant's total Class I sales.

Regulation of the Kroger plant under the Nashville order is appropriate in this instance since it will result in a common set of regulations for three distributing plants located within 30 miles of each other. As previously noted, the three plants procure milk from a common production area and distribute fluid milk products in a common sales area. Furthermore, the shifting of the Kroger plant to the Nashville market will have no impact upon the Class I price paid for fluid milk products by the plant operator due to a new pricing zone which will retain the $2.605 Class I differential that applies as such plant's location under the Georgia order.

It also appears that the pay prices received by producers supplying the Kroger plant would not be reduced and may be slightly enhanced by the plant's regulation under the Nashville order. The representative of a cooperative association that supplies about 40 percent of the Kroger plant's fluid milk needs supported the pooling of the Kroger plant under the Nashville order. A representative of the Kroger Company who was present at the hearing expressed no position on the proposal to pool the Kroger plant under the Nashville order.

A further reason for pooling the three distributing plants under one order is to facilitate the shifting of milk supplies between the three plants. Such pooling arrangement will permit the milk of dairy farmers to be shipped directly from the farm to the plant where the milk is needed. Currently, Malone & Hyde must use plant transfers to ship milk to Purity Dairy and the Kroger plant. As proponent points out, it would be much more efficient for the milk to move directly from the farm to either Purity Dairy or the Kroger plant rather than being received at the Malone & Hyde plant and then transferred to such plants. However, the current regulations make it impractical for the milk to move directly from the farm to a plant under another order. If milk were shifted from Malone & Hyde, a Memphis order plant, to Purity Dairy, a Nashville order plant, during the months of March through July, the dairy darmer would hage no base under the Nashville order and would receive only the excess price for such milk shipments. If such a shift occurred during the months of September-January, the dairy farmer would lose the opportunity to build a full base under the order. In addition, such shifting of supplies would complicate the accounting and reporting obligations of the plants involved.

Counsel for NFO qustions in his brief the legality ot pooling a distributing plant on the basis of a plant's physical location. In his opinion the Act authorizes regulation by either production area or marketing area. He contends that the Act does not authorize regulation on the basis of plant location.

The proposal uder consideration is merely a means of identifying which order should regulate a plant when such plant qualifies as a pool plant under more than one order. The Malone & Hyde plant and the Kroger plant acquire regulatory status under the Nashville order because they meet the pool standards of the Nashville order. The physical location of the plant become relevant only if the plant also qualifies as a pool plant under an other Federal milk order.

The determination that a distributing plant which qualifies as a pool plant under the Nashville order and also qualifies as a pool plant under one or more other Federal orders should be regulated under the Nashville order if such plant is physically located in the Nashville marketing area is consistent with the authority set forth in section 608c(7)(D) of the Act. This subsection specifies that an order may contain various terms that are incidental to, and not inconsistent with, the terms explicity authorized by the Act if the incidental terms are found necessary to effectuate the other provisions of the order. The special pooling arrangement adopted herein is considered essential for the assurance of adequate supplies and the maintenance of orderly marketing.

Counsel for NFO next raises several points why a plant should not be pooled on the basis of its location if the Department concludes such regulation in permitted by the Act. Counsel suggests that the solution to producer blend price equity in the Southeast should be addressed by the merger of orders. Such suggestion is not a viable alternative at this time because it is beyond the scope of the hearing notice. Under the circumstances, there appears to be no reason to preclude some measure of producer blend price equity through the lock-in provision as an interim measure until there is a consensus among producers on the need to merge orders and the number of milk orders that should be merged.

Counsel also contends that the designated pooling of plants will not allow producers under the Alabama-West Florida, Georgia and possibly other orders to share in the pool proceeds of such plants. While it is true that producers under the Alabama-West Florida order would not be able to share in the pool proceeds attributable to the Malone & Hyde plant if the lock-in provision is adopted, it needs to be pointed out that this works to their advantage. A comparison of the Class I utilization percentage of the Malone &

Hyde plant and the Alabama-West Florida market's average Class I utilization percentage from January 1986 through September 1987 indicates that pooling the Malone & Hyde plant under the Alabama-West Florida order would have resulted in a lower blend price in 14 of the 21 months for producers regularly associated with the Alabama-West Florida market.

With regard to the gains or losses that producers under the Georgia order would incur by the Kroger plant being locked-in under the Nashville order, there is no way to estimate such gains or losses precisely since the month-to-month Class I utilization percentage of the Kroger plant was not placed in evidence. Two witnesses estimated that the Kroger plant's Class I utilization percentage does not vary significantly from the Georgia market's Class I utilization percentage. If that is the case, a "lock-in" of the Kroger plant under the Nashville order would have little impact on the blend price under the Georgia order.

The final objection by counsel for NFO to "locking-in" the Malone & Hyde plant and the Kroger plant under the Nashville order is that the blend price difference are not sufficient to justify the lock-in provision.

Malone & Hyde estimated on the basis of its uniform price under the Memphis order for the months of February through June 1987 that the Kroger plant enjoyed from 16 cents to 32 cents per hundredweight advantage in obtaining its milk supply. For January through September 1987, the cost advantage enjoyed by Kroger (or cost disadvantage of Malone & Hyde) was estimated by Malone & Hyde to amount to $258,000. Such costs are not inconsequential. When these costs are considered in conjunction with other reasons offered by proponents of the lock-in provision, adoption of the proposal is warranted.

2. *Establishment of a plus 8.5-cent location adjustment zone in counties south of Nashville.* A plus 8.5-cent location adjustment zone should be established in Tennessee in an area south and southeast of Nashville. The Tennessee counties that should be included in the plus 8.5-cent zone are Bedford, Cannon, Coffee, DeKalb, Franklin, Giles, Grundy, Lawrence, Lewis, Lincoln, Marshall, Maury, Moore, Rutherford, Van Buren, Warren, Wayne, and White.

Malone & Hyde proposed that a plus 8.5-cent location adjustment apply on milk received at plants located in the Tennessee counties of Cannon, Coffee, DeKalb, Rutherford, Warren, and White. The 8.5-cent location adjustment zone would establish a Class I differential of $2.605 at the Murfreesboro plant, which is in Rutherford County. Such Class I differential would be the same as the Class I differential that applies at the Murfreesboro plant under the Georgia order.

At the hearing, Dairymen, Inc., urged a modification of this proposal. The cooperative proposed that milk that is physically received from producers or from a cooperative association acting as a bulk tank handler at plants located in the Tennessee counties of Bedford, Cannon, Coffee, DeKalb, Franklin, Giles, Grundy, Lawrence, Lewis, Lincoln, Marshall, Maury, Moore, Rutherford, Van Buren, Warren, Wayne, and White, be subject to a plus location adjustment of 8.5 cents per hundredweight.

DI pointed out that under the Georgia order, the location adjustment applicable at both the Murfreesboro and the Lewisburg plants is a minus 47.5 cents per hundredweight—resulting in a Class I price at both locations 8.5 cents higher than a Nashville. DI also took the position that producer milk delivered to pool and nonpool plants in the same general geographic location should receive the same blend price. In this regard, the cooperative noted that the Kroger plant at Murfreesboro, Tennessee, could request that the milk that it receives from cooperative members be diverted to a nonpool plant at which no location adjustment applies while at the same time receiving the milk of independent producurs. Under such arrangement, independent producers would receive an 8.5-cent higher blend price than cooperative members whose milk is diverted to nearby plants.

A representative of Southern Milk Sales supported a plus 8.5-cent-per-hundredweight location adjustment for milk received at the plant at Lewisburg, Tennessee. SMS plans to divert milk to the Lewisburg plant in the coming months. The cooperative wanted its members to receive the 8.5-cent higher blend price whether the milk of such members was received at the Murfreesboro plant or was diverted to the Lewisburg plant.

SMS also suggested an alternative pricing method for milk diverted to the Lewisburg plant. The cooperative proposed that milk diverted to the Lewisburg plant be priced at the plant from which the milk was diverted. It opposed, on the other hand, an alternative suggested by counsel for Malone & Hyde, which would price the milk of producers on the basis of the location of the plant where the majority of the producers' milk is received during the month. SMS claimed that this would not solve the problem of pricing milk diverted to nonpool plants during the months of April, May and June. During such months, SMS would most likely divert its members' milk a greater percentage of the time than the milk of the nonmembers is diverted from the Kroger plant to nonpool plants. In that event, the milk diverted by the cooperative would be priced at the location of the Lewisburg plant while the milk of the nonmembers would be priced at the Murfreesboro location, an eight and one-half-cent higher priced zone.

Malone & Hyde opposed any plus location adjustment in those counties of south central Tennessee in which manufacturing plants are located. The handler noted that DI operates a balancing plant and a cheese plant located at Lewisburg in Marshall County, that Kraft operates a cheese plant at Fayetteville in Lincoln County, and that another cheese plant is located at Ardmore in Giles County. Malone & Hyde expressed concern that adoption of a plus location adjustment for manufacturing plant locations would tend to encourage the movement of milk to manufacturing in perference to delivering milk to fluid milk plants. In addition, such milk movements would reduce the level of the blend price at the central market location in Nashville.

NFO, in its brief, also opposed DI's suggestion that the Lewisburg, Tennessee, plant be in a "plus" location adjustment zone. The cooperative contended that it would be a gross deviation from location pricing practices to grant a plus location adjustment to the supply plant in a market. Opponent pointed out that there would be a lower price to producers if milk supplies were diverted from the Lewisburg plant to the fluid milk plants in Nashville. The cooperative contends that DI's objective is to obtain a competitive advantage for producers supplying the Lewisburg plant versus producers supplying the Malone & Hyde plant in Nashville.

An 8.5-cent location adjustment to the Class I price and the uniform price to producers should apply to milk received at plants in the eighteen-county area proposed by DI. The eighteen-county area forms a corridor between Nashville and Chattanooga and Nashville and the Alabama-West Florida marketing area. Such area with an 8.5-cent plus location adjustment provides a Class I pricing zone with a Class I differential of $2.605 for plants at Murfreesboro and Lewisburg. Such intermediate pricing zone will provide an appropriate alignment between the $2.52 Class I differential that applies in the Nashville area, the $2.77 Class I differential at

Chattanooga under the Tennessee Valley order, and the $2.85 Class I differential at plants located in the northern tier of counties in Alabama under the Alabama-West Florida orders.

The objections raised to providing a higher price to producers for milk delivered to nonpool manufacturing plants than to fluid milk plants are not without merit. However, there are compelling reasons for adopting the higher location adjustments for milk received at plants south of Nashville. The addition of 8.5 cents to the blend price on milk received at the Lewisburg plant will price the milk of producers that is diverted from the Kroger plant at Murfreesboro to the Lewisburg plant at the same level as milk recieved at the Murfreesboro plant. In this case, it is essential that the blend price on milk diverted to the Lewisburg plant be equivalent to the blend price on milk received at the Murfreesboro plant. Such pricing will provide equity between the two groups of producers who supply the Murfreesboro plant—one group of producers are members of a cooperative association while the other group of producers are not members of a cooperative. As long as the blend price for milk diverted to the Lewisburg plant is equal to the blend price for milk recieved at the Murfreesboro plant, the operator of the plant and the cooperative association should be indifferent as to which group of producers is diverted to the nonpool manufacturing plant.

Another factor to be considered in the pricing of milk diverted to Tennessee nonpool plants located south of Nashville is that the primary milk supplies for the Malone & Hyde plant, Purity Dairy at Nashville, and the Kroger plant at Murfreesboro and plants in other sutheastern markets are located in central Kentucky and Tennessee counties to the north of Nashville. In such instance, the 9.5-cent-higher price is not going to draw milk away from the fluid milk plants located in Nashville because the added cost of hauling milk beyond the Nashville area to plants further south will nullify the added returns from the 8.5-cent-higher blend price. Yet, the 8.5-cent higher price at plants south of Nashville is needed to reflect added transportation service provided by those producers in Kentucky and northern Tennessee that haul their milk past Nashville to the Kroger plant.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Nashville, Tennessee and Georgia orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as detemined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

Recommended Marketing Agreements and Orders Amending the Orders

The recommended marketing agreements for the Nashville, Tennessee, and Georgia marketing areas are not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proposed to be amended. The following order amending the orders, as amended regulating the handling of milk in such marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Parts 1098 and 1007

Milk marketing orders, Milk, Dairy products.

1. The authority citation for CFR Parts 1098 and 1007 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–647.

PART 1098—MILK IN THE NASHVILLE, TENNESSEE, MARKETING AREA

2. In § 1098.7, paragraph (d)(2) is revised to read as follows:

§ 1098.7 Pool plant.

* * * * *

(d) * * *

(2) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as route disposition in the marketing area regulated by the other order than as route disposition in the Nashville, Tennessee, marketing area, except:

(i) That such distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order;

(ii) On the basis of a written application made either by the plant operator or by the cooperative association supplying milk to such operator's plant, at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the route disposition in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) route disposition made under limited term contracts to governmental bases and institutions; and

(iii) A plant located in the marketing area that qualifies pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of route disposition shall be subject to all the provisions of this part so long as this order's Class I price applicable at such plant location is not less than the other

order's Class I price applicable at this same location even though the plant may have greater route disposition in the order marketing area than in the Nashville marketing area.

3. In § 1098.52, paragraphs (b) and (c) are redesignated as paragraphs (c) and (d), and a new paragraph (b) is added to read as follows:

§ 1098.52 Plant location adjustment for handlers.

* * * * *

(b) For such milk that is physically received from producers or from a handler described in § 1098.9(c) at plants located in the Tennessee counties of Bedford, Cannon, Coffee, DeKalb, Franklin, Giles, Grundy, Lawrence, Lewis, Lincoln, Marshall, Maury, Moore, Rutherford, Van Buren, Warren, Wayne, and White, the price shall be adjusted by plus 8.5 cents per hundredweight.

PART 1007—MILK IN THE GEORGIA MARKETING AREA

4. In 1007.7, paragraph (e)(3) is revised and a new paragraph (e)(4) is added to read as follows:

§ 1007.7 Pool plant.

* * * * *

(e) * * *

(3) A plant (except a plant that is a pool plant pursuant to paragraph (d) of this section) that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to paragraphs (a) or (b) of this section and, except as provided in paragraph (e)(4) of this section, a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area as route disposition and to pool plants pursuant to paragraphs (a) or (d) of this section than is disposed of from such plant in the marketing area regulated pursuant to the other order as route disposition and to plants qualified as fully regulated plants under such other order on the basis of route disposition in its marketing area.

(4) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order and from which a greater quantity Class I milk, except filled milk, is disposed of during the month in the Georgia marketing area as route disposition than as route disposition in the other marketing area, and such other order which fully regulates the plant does not contain provision to exempt the plant from regulation, even though such plant has greater route disposition in the marketing area of the Georgia order.

Signed at Washington, DC, on: July 21, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88-16764 Filed 7-25-88; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Parts 327 and 381

[Docket No. 86-045P]

Requirements for Foreign Country Import Certification and Live Animal Importation

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat inspection regulations and the poultry products inspection regulations to include revised provisions regarding the residue control programs maintained by foreign inspection systems for products produced for exportation to the United States. The purpose of these provisions is to specify procedures which would better assure that, as implemented, the residue control programs of foreign inspection systems apply requirements at least equal to those applicable to the Federal system of inspection in the United States. The proposed provisions would further the implementation of 1981 and 1985 statutory amendments to the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA). The proposed rule would require that foreign residue control programs incorporate random sampling procedures at the point of slaughter and testing procedures for potential contaminants pursuant to an annual residue control plan approved by the Administrator of FSIS. The Administrator's approval of such an annual plan would constitute a certification that the foreign inspection system maintains a program using approved sampling and analytical techniques to ensure compliance with United States standards for residues. In addition, FSIS is proposing to amend the Federal meat inspection regulations to include provisions regarding the issuance of orders prescribing the terms and conditions for the importation of cattle, sheep, swine, goats, horses, mules, and/or other equines for slaughter and human consumption based on the Secretary's determination that other actions taken by the foreign country are not adequate to protect consumers from exposure to an antibiotic or other drug banned for use in the production of such animals in the United States. These provisions include criteria and procedures for exercising authority added by the 1985 amendment to the FMIA.

DATE: Comments must be received on or before September 26, 1988.

ADDRESSES: Written comments to: Policy Office, ATTN: Linda Carey, FSIS Hearing Clerk, Room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington DC 20250. Oral comments, as provided by the Poultry Products Inspection Act, should be directed to Dr. Lawrence Skinner, (202) 447-6933. (See "Comments" under Supplementary Information.)

FOR FURTHER INFORMATION CONTACT: Dr. Lawrence Skinner, Director, Foreign Programs Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6933.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined in accordance with Executive Order 12291 that this proposed rule is not a "major rule." It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions and it will not have a significant effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The proposed requirements for the annual certification of foreign countries' residue control programs do not impose additional requirements on domestic livestock producers, official establishments, or importers. The proposed regulations for prescribing terms and conditions for the importation of slaughter livestock from eligible countries that permit the use of a drug or antibiotic banned for use in food animals in the United States would impose no regulatory burden on domestic livestock producers or official establishments. The proposed regulations would protect consumers from harmful drug and antibiotic residues in situations where the United States institutes actions to prohibit the use of a drug or antibiotic in food animals.

Effect on Small Entities

The Administrator has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601). The certification requirements for residue control programs would affect foreign inspection systems. The proposal would require that a foreign country desiring to obtain or maintain eligibility to offer meat and/or poultry products for importation into the United States submit to FSIS an annual residue control plan and obtain a certification from the Administrator stating that the country maintains residue programs at least equal to those of the United States. Any terms and conditions prescribed by the Secretary for the importation of live animals administered a drug or antibiotic banned for use in the United States would impact only on those foreign countries desiring to export such live animals to the United States. Although issuance of an order by the Secretary would be rare, it is expected that the Secretary will require that such live animals be held in the foreign country for such period of time that would assure the depletion of any residues from a drug or antibiotic administered to such live animals. Therefore, issuance of an order by the Secretary is expected to have no impact on domestic live animal brokers or dealers.

Comments

Interested persons are invited to submit written comments concerning the proposal. Written comments should be sent to the Policy Office. Please include the docket number which appears in the heading of this document. Any person desiring an opportunity for an oral presentation of views should make such request to Dr. Skinner so that arrangements can be made for such views to be presented. A transcript will be made of all views orally presented. All comments submitted in response to the proposal will be available for public inspection in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

FSIS's duties in implementing the FMIA (21 U.S.C. 601 *et seq.*) and the PPIA (21 U.S.C. 451 *et seq.*) include preventing the importation into the United States of adulterated or misbranded livestock and poultry carcasses and parts and products thereof (21 U.S.C. 466 and 620). In executing this responsibility, FSIS has established a regulatory program in which the eligibility of product for importation into the United States is contingent upon the system of meat or poultry inspection maintained by the foreign country from which such product is to be exported (9 CFR 327.2, 327.4, 381.196, and 381.197).

The regulatory activities under this program involve the question of a country's eligibility for importation. A country desiring to establish eligibility must provide extensive information about the authority for an implementation of its inspection system (9 CFR 327.2(a)(2)(iii) and 381.196(a)(2)(iii)). FSIS studies the information presented, and if it finds adequate documentation, an initial on-site review of the system in operation is conducted by USDA representatives. If the Administrator then determines that the foreign inspection system ensures compliance of establishments preparing products for export to the United States with requirements at least equal to those applied to federally inspected establishments and their products in the United States, and that reliance can be placed upon the certificates required to be made by the foreign country's authorities, the public is notified and the name of the country is included in the list of those from which products covered by foreign inspection certificates are eligible for importation (9 CFR 327.2 and 381.196).

Inspection system officials in such countries certify to USDA that all establishments preparing products for export to the United Sates fully meet "at least equal to" requirements, as set forth in the regulations, and such certifications must be renewed annually (9 CFR 327.2(a)(3) and 381.196(a)(3)). In addition, all products consigned to the United States from foreign countries must be accompanied by their inspection system officials' certification that, among other things, such products comply with requirements "at least equal to" those in the FMIA or PPIA and the applicable regulations (9 CFR 327.4 and 381.197).

FSIS assures that countries continue to apply appropriate controls in inspecting the production of products for export to the United States by periodically reviewing foreign inspection systems in operation and by requiring the submission of information related to the conduct of such inspection systems (9 CFR 327.2 (a)(2)(iii) and 381.196(a)(2)(iii). This periodic review includes observation of the operation of the foreign inspection system in a representative number of establishments certified to export products to the United Sates by foreign inspection system officials (9 CFR 327.2(a)(3) and 381.196(a)(3)). A country's eligibility listing may be withdrawn whenever the Administrator determines that its inspection system does not assure compliance with "at least equal to" requirements, that reliance cannot be placed on the certificates required from its authorities, or that, due to lack of current information concerning the inspection system being maintained, it should be required to reestablish eligibility (9 CFR 327.2(a)(4) and 381.196(a)(4)).

In 1979, the Food Safety and Quality Service (the predecessor of FSIS) determined that by utilizing a risk-based approach, it could increase the effectiveness and efficiency of the regulatory program for foreign products. In developing this approach, the Agency identified risk areas which must be appropriately controlled by a foreign inspection system for it to be viewed as providing an adequate inspection service applying requirements at least equal to those of the Federal inspection system. Residue control was one of the risk areas so identified. Consequently, residue control was included in the questionnaires used to obtain baseline information about foreign inspection systems.

Over time, FSIS implementation of a risk-based approach to preventing the importation of adulterated product has resulted in further specification of the controls necessary in foreign inspection systems. The 1981 Farm Bill (the Agriculture and Food Act of 1981, Pub. L. 97–98) amended the FMIA to mandate, among other things, that meat articles offered for importation are subject to the same residue standards applied to meat products produced in the United States and certain features of an adequate residue control program (section 1122 of the bill, which added a new subsection (f) to section 20 of the FMIA (21 U.S.C. 620(f)). Thereafter, FSIS modified its activities to assure that foreign inspection systems maintain a program which provides for random sampling and testing of internal organs and fat at the point of slaughter, in accordance with Administrator-approved methods, to prevent the exportation to the United States of products-made from poultry as well as livestock—that do not comply with this country's residue standards. In addition, the Federal meat inspection regulations were amended to reflect the new FMIA provisions (9 CFR 317.2(a)(2)(i)(*f*) and (iv) (*c*)). After the 1988 Farm Bill (the Food Security Act of 1985, Pub. L. 99–198) made an analogous change in the

PPIA (section 1701 of the bill, which added a new subsection (d) to section 17 of the PPIA (21 U.S.C. 466 (d)), FSIS proposed comparable amendments to the poultry products inspection regulations (proposed 9 CFR 381.196(a)(2)(i)(*f*) and (iv)(*c*); 52 FR 15960, May 1, 1987).

The 1985 Farm Bill (section 1702(a)) also amended section 20(f) of the FMIA (21 U.S.C. 620(f)) by adding a set of procedural requirements for residue control to the substantive requirements established in 1981: Each foreign country from which livestock products are offered for importation into the United States must obtain a certification, issued by the Secretary, stating that it maintains a program using reliable analytical techniques to ensure compliance with the United States standards for residues therein as a condition of entry for articles from that country. Such certifications are to be reviewed periodically and revoked if the Secretary determines that a country is not maintaining a program which uses reliable analytical methods to ensure compliance with United States standards for residues in such articles. The Secretary's consideration and review of certification are to include the inspection of individual establishments to ensure foreign inspection programs are meeting such standards. Based on actions already taken to assure compliance with United States standards for residues, including the random sampling and testing required to be conducted when foreign establishments are producing livestock or poultry products for importation in the United States, FSIS has concluded that the countries in which establishments currently are certified—i.e., the only foreign establishments from which products may be imported into the United States (9 CFR 327.2(a)(3) and 381.196(a)(3))—qualify for certification that their inspection systems maintain such a program.

In annually reporting to Congress, the Secretary of Agriculture must, among other things, certify that foreign plants which export livestock products have complied with requirements at least equal to all provisions of the FMIA and regulations issued thereunder (21 U.S.C. 620(e)(1)). The report on the 1987 administration of section 20 (21 U.S.C. 620) states that this plant certification reflects the determination that the countries in which these establishments are located, maintain residue control programs that use approved sampling and analytical techniques as required by the 1985 amendment to section 20(f) (21 U.S.C. 620(f)).

This proposal would further the implementation of section 20 of the FMIA and section 17 of the PPIA (21 U.S.C. 620 and 466), as amended in 1981 and 1985, by revising the Federal meat and poultry products inspection regulations to address more specifically the requirements regarding residue control programs, including Agency review and certification thereof, that must be maintained by a foreign inspection system for products produced for exportation to the United States. Under the proposed rule, the annual residue control plan submitted by each eligible country would be evaluated for the plan's effectiveness in preventing residue violative product from being exported to the United States. Pertinent information would be obtained from each eligible country and evaluated in the following areas:

1. Agricultural statistics and practices.
2. The legal authority and organizational structure of the residue control program.
3. A listing of the drugs and agricultural chemicals used in each country including approved uses and controls over availability.
4. Drug and agricultural chemical approval procedures.
5. Design parameters of the residue control program including the decision process used to include drugs and chemicals in the program.
6. Tissue sampling and handling procedures.
7. Laboratory facilities, analytical methods, tolerance levels, and quality assurance methods.
8. Corrective actions such as traceback, quarentine and pre-testing.

Such plans would be approved by the Administrator after a review of all information considered pertinent by the Agency. Further, the Administrator's approval of an annual residue control plan would constitute a certification that the foreign inspection system maintains a program using approved sampling and analytical techniques to ensure compliance with United States standards for residues. The regulations would provide that submission and approval of an annual residue control plan in accordance with the amended provisions is a condition of a country's eligibility for importation (proposed amendments to 9 CFR 327.2(a)(1) and (2)(iv)(*c*) and 381.196(a)(1) and (2)(iv)(*c*).

This proposal also would amend the Federal meat inspection regulations to include criteria and procedures for excercising new authority to prescribe the terms and conditions for the importation of certain live animals that was added to the FMIA, as subsection (g) of section 20 (21 U.S.C. 620(g)), by the 1985 Farm Bill (section 1702(b)). Subsection (g) provides the Secretary with discretion to prescribe terms and conditions under which cattle, sheep, swine, goats, horses, mules, and other equines that have been administered a drug, including an antibiotic, banned for use in the United States, may be imported for slaughter and human consumption and prohibits persons from entering animals into the United States in violation of such an order. Under the proposed rule, such an order may be issued if the Secretary determines that: (1) Livestock intended for importation have been exposed to a drug banned for use in livestock production in the United States; (2) a human health hazard is presented by such exposure; and (3) there is no adequate method of testing to assure residues of such drug are not present (proposed 9 CFR 327.27).

Proposed Rule

For the reasons set forth in the preamble, FSIS is proposing the amendments to the Federal meat inspection regulations (9 CFR Part 327) and the poultry products inspection regulations (9 CFR Part 381) as set forth below.

List of Subjects in 9 CFR Parts 327 and 381

Meat inspection, Imported products, Poultry products inspection.

PART 327—IMPORTED PRODUCTS

1. The authority citation for Part 327 continues to read as follows:

Authority: 38 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*

2. The last sentence of § 327.2(a)(1) would be revised to read as follows:

§ 327.2 Eligibility of foreign countries for importation of products into the United States.

(a)(1) * * * Thereafter, products prepared in establishments which are certified in accordance with paragraph (a)(3) of this section and from livestock which are subject to random sampling at the point of slaughter and testing for residues in accordance with paragraph (a)(2)(iv)(*c*) of this section are eligible for importation into the United States from such foreign country subject to compliance with the requirements of this subchapter.

* * * * *

3. Section 327.2(a)(2)(iii) and (iv)(*c*) would be revised to read as follows:

(a) * * *

* * * * *

(2) * * *

(iii) Countries desiring to establish eligibility for importation of meat products into the United States may request determination of eligibility by presenting copies of the laws and regulations on which the foreign meat inspection system is based, an annual residue control program plan in accordance with paragraph (a)(2)(iv)(*c*) of this section, and such other information as the Administrator may require with respect to matters enumerated in paragraphs (a)(2)(i) and (ii) of this section. Determination of eligibility is based on a study of the documents and other information presented and an initial review of the system in operation by a representative of the Department using the criteria listed in paragraphs (a)(2)(i) and (ii) of this section. Maintenance of eligibility of a country for importation of meat products into the United States depends on the results of periodic reviews of the foreign meat inspection system in operation by a representative of the Department, the annual submission of a residue control program plan in accordance with paragraph (a)(2)(iv)(*c*) of this section, and the annual submission of such documents and other information related to the conduct of the foreign inspection system, including information required by paragraphs (e) and (f) of section 20 of the Act, as the Administrator may find pertinent to and necessary for the determination required by this section of the regulations. If the Administrator determines that any foreign country certified under paragraph (a)(2)(iv)(*c*) is not maintaining a program that uses reliable analytic methods to ensure compliance with United States standards for residues in meat and meat products, the Administrator shall revoke the certification of that foreign country.

(iv) * * *

* * * * *

(*c*) A residue control program for products produced for exportation to the United States, pursuant to an annual residue control plan approved by the Administrator that incorporates, among other things, random sampling at the point of slaughter of tissues, including internal organs and fat, of carcasses which are intended for importation into the United States, or from which meat or meat food products intended for such importation are to be produced, and the testing thereof for potential contaminants: *Provided,* That an annual residue control plan is not required during any period when no establishment in a foreign country is engaged in producing products for exportation to the United States.

(*1*) Approval of such an annual plan depends on the submission of all pertinent information related to the conduct of a foreign country's residue control program, including current information on the following: Animal husbandry and marketing practices; the origin and distribution of drugs and other chemical compounds associated with animal health or other animal food production practices and the conditions under which such compounds are used; the legal authority for and the organization and operation of such components of the residue control program as sampling design and collection, analytical methods, laboratory facilities, establishment of residue limits, and enforcement actions against residue violations; and the results of testing conducted pursuant to the residue control plan for the previous year.

(*2*) Approval of such an annual plan constitutes a certification that the foreign inspection system maintains a program using approved sampling and analytical techniques to ensure compliance with United States standards for residues in meat and meat products: *Provided,* That such certification shall be revoked whenever the Administrator determines that the program, as implemented, is not maintaining a program using such techniques to ensure compliance with such United States standards.

* * * * *

4. The third sentence of § 327.2(a)(3) would be amended by adding ", and no such certification may be renewed unless the Administrator has made the certification described in paragraph (a)(2)(iv)(*c*)(*2*) of this section" at the end before the period.

5. Part 327 would be amended by adding a new § 327.27 to read as follows:

§ 327.27 Order prescribing the terms and conditions for the importation of livestock for slaughter and human consumption.

(a) The Secretary may issue an order prescribing the terms and conditions for the importation of cattle, sheep, swine, goats, horses, mules or other equines for slaughter and human consumption if such livestock have been administered a drug or antibiotic banned for such use in the United States.

(b) Any such order will state the basis for the Secretary's determination, including, but not necessarily limited to the following findings: (1) Cattle, sheep, swine, goats, horses, mules, and/or other equines being imported into the United States have been produced in a country or countries in which such a banned drug is used in the production of livestock for human food.

(2) The Commissioner of the Food and Drug Administration concurs that exposure to such a banned drug or any substance formed as a result of its use constitutes a hazard to human health.

(3) No practicable method is available for testing such livestock to assure that such a banned drug and any substance formed as a result of its use are not present.

(c) The provisions of any such order will specify the drug, species of livestock, and country or countries of production to which the findings described in paragraph (b) of this section apply, and will prescribe the terms and conditions of the importation of any such livestock which have been administered, directly or indirectly, the drug specified therein.

(1) Any order issued pursuant to this section will be published in the **Federal Register** at least 60 days before it is to become effective, unless the Secretary finds that an emergency exists which necessitates an earlier effective date and includes the basis for such finding in the order. Interested parties shall have the opportunity to submit written data, views and arguments regarding the findings and determination therein and the terms thereof up to 30 days after publication of the order. After consideration of the relevant material presented, the Secretary will publish a notice in the **Federal Register** indicating any modifications of such findings or determination and, if such order is not rescinded, any changes in its terms and/or effective date.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

6. The authority citation for Part 381 continues to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et. seq.*).

7. The last sentence of § 381.196(a)(1) would be revised to read as follows:

§ 381.196 Eligibility of foreign countries for importation of poultry products into the United States.

(a)(1) * * * Thereafter, poultry products processed in establishments which are certified in accordance with paragraph (a)(3) of this section and from poultry which are subject to random sampling at the point of slaughter and testing for residues in accordance with paragraph (a)(2)(iv)(*c*) of this section are eligible for importation into the United

States from such foreign country subject to compliance with this part.

* * * * *

8. Section 381.196(a)(2)(iii) and (iv)(*c*) would be revised to read as follows:

§ 381.196 Eligibility of foreign countries for importation of poultry products into the United States.

(a) * * *

* * * * *

(2) * * *

(iii) Countries desiring to establish eligibility for importation of poultry products into the United States may request determination of eligibility by presenting copies of the laws and regulations on which the foreign poultry inspection system is based, an annual residue control program plan in accordance with paragraph (a)(2)(iv)(*c*) of this section, and such other information as the Administrator may require with respect to matters enumberated in paragraphs (a)(2) (i) and (ii) of this section. Determination of eligibility is based on a study of the documents and other information presented and an initial review of the system in operation by a representative of the Department using the criteria listed in paragraphs (a)(2) (i) and (ii) of this section. Maintenance of eligibility of a country for importation of poultry products into the United States depends on the results of periodic reviews of the foreign poultry inspection system in operation by a respresentative of the Department, the annual submission of a residue control program plan in accordance with paragraph (a)(2)(iv)(*c*) of this section, and the annual submission of such documents and other information related to the conduct of the foreign inspection system as the Administrator may find pertinent to and necessary for the determinations required by this section of the regulations. If the Administrator determines that any foreign country certified under paragraph (a)(2)(iv)(*c*) is not maintaining a program that uses reliable analytic methods to ensure compliance with United States standards for residues in poultry and poultry products, the Administrator shall revoke the certification of that foreign country.

(iv) The Foreign inspection sytsem must maintain a program to assure that the requirements referred to in this section, at least equal to those applicable to the Federal system in the United States, are being met. The program as implemented must provide for the following:

* * * * *

(*c*) A residue control program for poultry products produced for exportation to the United States, pursuant to an annual residue control plan approved by the Administrator that incorporates, among other things, random sampling at the point of slaughter of tissues, including internal organs and fat, of carcasses which are intended for importation into the United States or from which poultry products intended for such importation are to be produced and the testing thereof for potential contaminants: *Provided,* That an annual residue control plan is not required during any period when no establishment in a foreign country is engaged in producing poultry products for exportation to the United States.

(*1*) Approval of such an annual plan depends on the submission of all pertinent information related to the conduct of a foreign country's residue control program, including current information on the following: Animal husbandry and marketing practices; the origin and distribution of drugs and other chemical compounds associated with animal health or other animal food production practices and the conditions under which such compounds are used; the legal authority for and the organization and operation of such components of the residue control program as sampling design and collection, analytical methods, laboratory facilities, establishment of residue limits, and enforcement actions against residue violations; and the results of testing conducted pursuant to the the residue control plan for the previous year.

(*2*) Approval of such an annual plan constitutes a certification that the foreign inspection system maintains a program using approved sampling and analytical techniques to ensure compliance with United States standards for residues in poultry and poultry products: *Provided,* That such certification shall be revoked whenever the Administrator determines that the program, as implemented, is not maintaining a program using such techniques to ensure compliance with such United States standards.

* * * * *

9. The third sentence of § 381.196(a)(3) would be amended by adding ", and no such certification may be renewed unless the Administrator has made the certification described in paragraph (a)(2)(iv)(*c*)(*2*) of this section" at the end before the period.

Done at Washington, DC, on: June 22, 1988.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 88-16765 Filed 7-25-88; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-CE-20-AD]

Airworthiness Directives; Mitsubishi Models MU-2B, MU-2B-10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, -40, and -60 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD) applicable to Mitsubishi Models MU-2B, MU-2B-10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, -40, and -60 airplanes, equipped with any manual electric pitch trim system and/or any autopilot other than Bendix. This proposed AD would require: (a) The standardization of the operation, location and color of the autopilot/manual electric pitch trim system disconnect/interrupt push button; (b) vertification that the system can be disconnected, interrupted, or shut off by at least three independent methods; and (c) a "one time" autopilot/manual electric pitch trim switch location and operational check on all MU-2B Series airplanes except those which have complied with AD 88-13-01, June 8, 1988. This proposal continues the effort of providing uniformity in method of autopilot/manual electric pitch trim disconnection in all Mitsubishi MU-2B airplanes which began as a request from the National Transportation Safety Board (NTSB). Based on a review of a series of fatal MU-2B accidents, the NTSB concluded pilots were confused in the operation of the disconnect/interrupt switches for the manual electric pitch trim and autopilot systems installed on individual airplanes. Compliance with this proposed AD would preclude pilot confusion and possible loss of airplane.

DATE: Comments must be received on or before August 25, 1988.

ADDRESSES: Bendix/King Certification Bulletin No. CB10, KPN 006-0712-00, or Mitsubishi Kit Installation Drawing, 035A-985007, no revision, applicable to this AD may be obtained from Beech

Aircraft Corporation (Licensee for Mitsubishi), Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085; Telephone (316) 681-7270, or may be examined in the Rules Docket at the address below. Send comments on the proposal in triplicate to Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 88-CE-20-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT:
Robert R. Jackson, Aerospace Engineer, Wichita Aircraft Certification Office, ACE-130W, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4419.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 88-CE-20-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

The NTSB, after reviewing fatal accidents involving sudden loss of control of Mitsubishi MU-2B Series airplanes resulting in uncontrolled collisions with the ground/water, requested the FAA conduct an investigation of the Bendix M-4 Series autopilot systems as installed on the MU-2B airplanes and take such appropriate action as deemed necessary to correct any deficiencies identified. The result of this investigation, with cooperation between Mitsubishi Heavy Industries (MHI), Mitsubishi Aircraft International (MAI), Beech Aircraft Corporation (licensee for MHI), Bendix Corporation, and the FAA, revealed that there are at least seven different configurations of the disconnect/interrupt switches for the autopilot and electric pitch trim systems. A pilot's familiarity with the autopilot disconnect/interrupt procedures in one MU-2B model airplane does not guarantee the same familiarity with another MU-2B model airplane even if owned by the same operator. This situation could lead to pilot confusion and affect his ability to safely operate an MU-2B Series airplane. The same possible confusion exists on MU-2B airplanes equipped with King KFC 300 AFCS with Sperry Electric Pitch Trim System or Sperry SPZ-200 AFCS with MAI Manual/Electric Pitch Trim or any other autopilot and/or manual electric pitch trim system. Bendix/King have issued Certification Bulletin No. CB10, KPN, 006-0712-00, no revision, and MHI has issued Kit Installation Drawing, 035A-985007, no revision, which cover those MU-2B-35 and -36 airplanes, respectively, equipped with FAA approved installation of the King KFC 300 AFCS with Sperry trim system or Sperry SPZ-200 AFCS with MAI Manual/Electric Pitch Trim System by providing one combination autopilot/electric pitch trim disconnect switch configuration. This disconnect switch is a red bi-level momentary push-button device with a partial depression disconnecting the autopilot. Continued further depressing of the switch will disarm or interrupt the electric pitch trim system. This switch is located below and outboard of the electric pitch trim switch on the outboard horn of the control yoke. This proposed airworthiness action provides standardization of switch location, color and operation in MU-2B Series airplanes equipped with King KFC 300 AFCS or Sperry SPZ-200 AFCS.

To reduce the possible misuse of the autopilot/manual electric pitch trim system, the FAA prepared an "Accident Prevention Program" flyer which explains the operation of the autopilot/electric pitch trim systems and the reasons the pilot should not assist the autopilot system perform its intended function. This flyer was made available to all MU-2B owner/operators through Beech Aircraft Corporation.

To verify that all MU-2B Model airplanes equipped with King KFC 300 or Sperry SPZ-200 systems or any other autopilot/manual electric pitch trim systems, are uniform in configuration and function, a "one time" visual check and functional ground test of the autopilot/manual electric pitch trim is also proposed, except on those MU-2B model airplanes which have complied with AD 88-13-01, June 8, 1988. This visual check will verify that the disconnect switch is red in color and that this switch is located on the outboard horn of the control yoke, and further verify that the autopilot circuit breaker is properly labeled. The proposed functional test is a ground test requiring manually overpowering the autopilot and verifying that the manual pitch trim wheel stops moving after each of the following actions: (1) The red bilevel interrupt/disconnect push button switch is depressed; (2) the autopilot circuit breaker is pulled; and (3) the autopilot master switch or airplane master switch or radio master switch (as appropriate) is positioned to "OFF."

The FAA has determined that the condition addressed by the service bulletin or kit drawing is an unsafe condition that may exist on products of this type design certificated for operation in the United States. Consequently an AD is proposed which would correct the unsafe condition and is applicable to Mitsubishi MU-2B model airplanes, and Models MU-2B-35 and -36, equipped with King KFC 300 AFCS with Sperry Trim System or Sperry SPZ-200 AFCS with MAI Manual/Electric Pitch Trim Systems. The proposed AD would require the incorporation of Bendix/King Certification Bulletin No. CB10, KPN 006-0712-00, no revision, or MHI Kit Installation Drawing 035A-985007, no revision, as appropriate to: (a) Standardize the location, functions and color of the disconnect switch; (b) verify that the system can be disconnected or shut off by at least three independent methods; and (c) on a "one time" basis, install and operationally check an autopilot/manual electric pitch trim installation on all MU-2B Series airplanes except those which have complied with AD 88-13-01, June 8, 1988. The FAA has determined there are approximately 204 airplanes affected by the proposed Ad. Five (5) of these airplanes will require modifications as described in this AD at an estimated cost of $400 per airplane. The remaining 199 airplanes will require only the inspection specified by this AD

estimated to be one (1) hour at a cost of $40 per hour. The cost of complying with this proposed AD is estimated to be $9,960 to the private sector. The cost of compliance with the proposed AD is so small that the expense of compliance will not have a significant financial impact on any small entities operating these airplanes.

The regulations set forth in this notice would be promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulations Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES".**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L 97-449, January 12, 1983); and 14 CFR 11-89.

2. By adding the following new AD:

Mitsubishi: Applies to Models MU-2B, MU-2B-10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, -40, and -60 (all serial numbers, with or without the SA suffix) airplanes certificated in any category, equipped with any manual electric pitch trim system and/or any autopilot other than Bendix.

Note 1.—The serial number of airplanes assembled in the United States by Mitsubishi Aircraft Industries (MAI) under Type Certificate (TC) A10SW are suffixed by "SA." The serial numbers of airplanes manufactured in Japan by Mitsubishi Heavy Industries (MHI) under TC A2PC have no suffix.

Compliance: Within the next 200 flight hours or five (5) calendar months, whichever occurs first, unless already accomplished.

To minimize the possibility of confusion in autopilot/manual electric pitch trim disconnect switch location and function, accomplish the following:

(a) Modify the control yoke in the affected model airplanes as follows:

(1) For MU-2B-35 model airplanes equipped with King KFC 300 AFCS and Sperry Manual/Electric Pitch Trim System in accordance with Bendix/King Certification Bulletin No. CB10, KPN 006-0712-00, no revision, or

(2) For MU-2B-36 model airplanes equipped with Sperry SPZ-200 AFCS and MAI Manual/Electric Pitch Trim System in accordance with MHI Kit Installation Drawing, 035A-985007, no revision.

(b) Prior to returning the airplane to service accomplish a visual configuration check and system functional ground test on all MU-2B, MU-2B-10, -12, -20, -25, -26, -26A, -30, -35, -36, -36A, -40, and -60 airplanes, except those airplanes which have complied with AD 88-13-01, June 8, 1988, as follows:

(1) Visually verify that:

(i) The autopilot disconnect and trim disconnect/interrupt functions are combined on one button mounted on the outboard control wheel grip, and is so oriented that it is easily activated by the pilot/co-pilot.

(ii) The autopilot disconnect and trim disconnect/interrupt button is properly and legibly labeled to indicate functions.

(iii) The button is red in color.

(iv) There are no other red buttons nearby that could be mistaken for the autopilot disconnect.

(v) The autopilot circuit breaker is properly labeled.

(2) Perform an operational check of the autopilot disconnect and trim disconnect/interrupt button to confirm its correct functioning by disconnecting/interrupting the autopilot and trim systems, as follows.

(i) With the manual electric pitch trim system armed, press the trim button to cause the manual pitch trim wheel to rotate, then verify that after each of the following operations is performed the manual pitch trim wheel stops moving when:

(A) The disconnect/interrupt switch is fully depressed;

(B) The Master Electric Power Switch is positioned to "OFF;"

(C) The Radio Master switch is positioned to "OFF" (if installed and so configured),

(D) The electric trim circuit breaker is pulled. (On some MU-2B airplanes without an electric trim circuit breaker, the autopilot circuit breaker/switch is used to disconnect the system in lieu of the electric trim circuit breaker.)

Note 2.—It is very important to verify that the manual pitch trim wheel stops moving after each of the above operations of (b)(2)(i).

(ii) With the autopilot system engaged, verify:

(A) That the autopilot system can be overpowered by pushing or pulling on the control yoke; and,

(B) That, while overpowering the autopilot, the manual pitch trim wheel stops moving and autopilot disconnects when each of the following operations is performed:

(*1*) The disconnect/interrupt switch is depressed;

(*2*) The autopilot master switch is positioned to "OFF" (On some MU-28 airplanes not equipped with an autopilot master switch beside the controller, the radio master switch must be used to disconnect the system in lieu of the autopilot master switch);

(*3*) The autopilot circuit breaker is pulled.

Note 3.—It is very important that the manual pitch trim wheel stops moving after each of these operations.

(c) In addition to the maintenance record entry required by FAR 91.173 enter statement showing successful completion of paragraph (b) of this AD listing the autopilot and/or manual electric trim system installed.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(e) An equivalent method of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, ACE-115W, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Beech Aircraft Corporation (Licensee to Mitsubishi), P.O. Box 85, Wichita, Kansas 67201; Telephone (316) 681-9111; or may examine the documents at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Washington, DC, on July 19, 1988.

M.C. Beard,

Director of Airworthiness.

[FR Doc. 88-16818 Filed 7-25-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-CE-21-AD]

Airworthiness Directives; Cessna TU206, TP206, T207, T210 and P210 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD) applicable to Cessna TU206, TP206, T207, T210 and P210 Series Airplanes, which would require installation of an acceptable fluid hose in place of all Aeroquip Corporation, Aerospace Division fluid carrying 601 type hose assemblies located forward of the firewall. The FAA has determined that certain Aeroquip manufactured hose assemblies are developing serious leaks within 100 hours of original

installation. The proposed AD will preclude engine power loss caused by rapid depletion of lubricating oil or fuel as a result of failure of the suspect Aeroquip 601 hose assemblies.

DATE: Comments must be received on or before August 25, 1988.

ADDRESSES: Cessna Single Engine Service Bulletin SEB 88–5, dated June 24, 1988, may be obtained from Cessna Aircraft Company, Piston Aircraft Marketing Division, P.O. 1521, Wichita, Kansas 67201, or may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 88–CE–21–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Paul O. Pendleton, Aerospace Engineer, ACE–140W, Federal Aviation Administration, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209, telephone (316) 946–4427.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 88–CE–21–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

Incident reports on Cessna Models T210L and T210L airplanes indicate that engine lubricating oil has been lost as a result of cracking from rapid heat aging of certain flexible hose assemblies.

The Aeroquip 601 hose assemblies manufactured and identified with Part Number FSCM 50556 have been determined to be unacceptable for continued use in aircraft engine compartment installations. Several suspect Aeroquip Model 601 hose assemblies have been reported to have developed leaks in less than 100 hours time-in-service. Hose failure has also been reported on unidentified hose assemblies that are thought to be manufactured from the suspect hose material. The cause of the hose leakage has been determined to be cracks induced by the high temperature environment in the engine compartment. Similar Aeroquip 601 hose assemblies manufactured and identified with Part Number FSCM 06827 have not been reported to have an aging problem.

Since the condition described is likely to exist or develop in other turbocharged Cessna 200 series airplanes of the same design, the AD would require the replacement of all unidentified and FSCM 50556 Aeroquip 601 type hose assemblies in the engine compartment of Cessna single engine turbocharged aircraft.

The FAA has determined that approximately 7000 turbocharged single engine airplanes have been manufactured by Cessna Aircraft Company. An estimated 50% (3500) of these airplanes are considered to be currently operational in the United States. The projected cost of replacing all of the Aeroquip Model 601 hoses in 180Q (half of the 3500) of these airplanes is $600 per airplane. The total cost is estimated to be $1,080,000 to the private sector. The cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

The regulations set forth in this notice would be promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, et seq.), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

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

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

2. By adding the following new AD:

Cessna: Applies to all serial numbers of all Model TP206, TU206, T207, T210 and P210 (all serial numbers) airplanes certified in any category. Compliance: Required within the next 75 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent power loss or fire due to failure of the (FSCM 50556 or 00624) Aeroquip 601 hose assemblies, accomplish the following:

(a) Visually inspect all the exterior metal braided flex hose assemblies, including firesleeve hose assemblies, in the engine compartment. If the Aeroquip part number AE701 appears on the identification tag with "50556" or "00624," or if "06827" appears on the tag, no further action is required other than routine maintenance and inspection. If any identification tag displays the sequence of numbers 50556 or 00624 without the part number AE701, or there is no Manufacturing Identification Code on the tag:

(1) Before further flight replace waste gate supply hose assembly, Aeroquip P/N 601000–4–0310 or hose identified as Cessna S1236–4–0310 supplied by sources other than Cessna, or as identified above, with Aeroquip P/N AE3663162E0310 hose or equivalent in accordance with Cessna Service Bulletin SEB 88–5, dated June 24, 1988, or with Aeroquip 601000–4–0310 hose assembly displaying identification code 06827.

(2) Within the next 12 calendar months replace all other nonidentified exterior metal braided hoses and FSCM 50556 or 00624 Aeroquip 601 type hose assemblies in the engine compartment.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent means of compliance with this AD may be used, if approved by the Manager, Wichita Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this AD may obtain copies of the document(s) referred to herein upon request to: Cessna Aircraft Company Piston Aircraft Marketing Division, P.O. Box 1521, Wichita, Kansas 67201. These documents may also be examined at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Washington, DC, on July 19, 1988.

M.C. Beard,

Director of Airworthiness.

[FR Doc. 88-16816 Filed 7-25-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-CE-19-AD]

Airworthiness Directives; Mitsubishi Models MU-2B, MU-2B-10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, -40 and -60 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to certain Mitsubishi Models MU-2B, MU-2B-10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, 40 and -60 airplanes that would require inspection and, if necessary, replacement of the flap control torque tube joints. The proposed AD is a result of a field report indicating that a fatigue crack has been found in the torque tube joint of a MU-2B airplane. Failure of one of these joints can lead to flap control failure and possible asymmetric flap deployment resulting in loss of the airplane.

DATE: Comments must be received on or before August 25, 1988.

ADDRESSES: Mitsubishi Heavy Industries (MHI) Service Bulletin (S/B) No. 189A, dated June 16, 1987, or MHI S/B No. 067/27-008, dated November 16, 1987, applicable to this AD may be obtained from Beech Aircraft Corporation (Licensee for Mitsubishi), Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085; telephone (316) 681-7279, or may be examined in the Rules Docket at the address below. Send comments on the proposal in triplicate to Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rule Docket No. 88-CE-19-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: For Type Certificate (TC) A10SW registered airplanes: Brian Yanez, Aerospace Engineer, Wichita Aircraft Certification Office, ACE-120W, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209, Telephone (316)946-4409. For MHI TC A2PC registered airplanes: James Brown, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-123L, FAA, 3229 E. Spring Street, Long Beach, California 90806-2425; Telephone (213) 988-5232.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 88-CE-19-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

There has been a report that a fatigue crack was found in the torque tube joints of the flap control system on a Mitsubishi Model MU-2B aircraft that had been in service for more than 4,000 hours. Failure of the torque tube joints can lead to flap control failure and possible asymmetric flap deployment. As a result, MHI has issued 2 mandatory Service Bulletins, No. 067/27-008, dated November 16, 1987, and No. 189A, dated June 16, 1987, which cover inspection of the torque tube joints and procedures for replacement of cracked parts. The MHI Service Bulletin No. 189A, pertains to models listed on U.S. Type Certificate (TC) A2PC whereas the MHI Service Bulletin No. 067/27-008, pertains to models listed on U.S. TC A10SW. The proposed AD will require an inspection program in accordance with the applicable service bulletin. The inspection program required by this proposed AD is classified as mandatory by the manufacturer and requires that all affected aircraft with more than 4000 hours total time in service be inspected within the next 100 hours time in service. Repetitive inspections are to follow at 100 hour or 500 hour time in service intervals depending upon the part number joint installed in the aircraft. When cracks are found two (2) replacement alternatives are available:

(1) The cracked torque tube joints can be replaced by original part number (P/N) replacement parts in which case the repetitive inspection schedule mandated by the service bulletin will be required within 4100 hours total time in service time on the replacement joint; or

(2) The cracked joints can be replaced by new improved replacement joints and no further repetitive inspection is required for the replaced joints. Any joints not replaced, however, must continue to be inspected in accordance with the applicable service bulletin.

The Japan Civil Aviation Bureau (JCAB) has issued JCAB AD No. TCD-2252-1-87, dated October 29, 1987. The JCAB, which has responsibility and authority to maintain the continuing airworthiness of these airplanes in Japan, has classified this S/B No. 189A and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under JCAB registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of JCAB combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this type design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of

MHI MU-2B S/B No. 189A, dated June 16, 1987, and MHI S/B No. 067/27-008, dated November 16, 1987, and the mandatory classification of S/B No. 189A by the JCAB. Based on the foregoing, the FAA believes that the condition addressed by these service bulletins is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD would require repetitive inspection of the flap torque tube system and replacement of any cracked joints.

The FAA has determined there are approximately 477 airplanes affected by the proposed AD. The cost of the inspection, as required by the proposed AD is estimated to be $320 per airplane. The maximum total cost to the private sector is estimated to be ($320 × 477 =) $152,640.

The cost of compliance with the proposed AD is so small ($320 per airplane) that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

The regulations set forth in this notice would be promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, et seq.), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Therefore, I certify that this section (1) is not a "major rule" under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

Mitsubishi Heavy Industries, Ltd. (MHI): Applies to Models MU-2B, MU-2B-10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, -40 and -60 (all serial numbers with or without the SA suffix) airplanes certificated in any category.

Compliance: As stated in the AD unless already accomplished.

To preclude flap control failure accomplish the following:

(a) On airplanes with more than 4000 hours Time-In-Service (TIS), within the next 100 hours TIS, and on airplanes with less than 4000 hours TIS, before reaching 4100 hours TIS:

(1) Inspect torque tube joint Part Number (P/N) 010A-61254, of torque tube assembly P/N 010A-61250 for cracks, and replace a cracked joint with a serviceable unit. If no crack is found, repeat the inspection at intervals not to exceed 100 hours TIS, as follows:

(i) For airplanes type certificated in accordance with U.S. Type Certificate (TC) A2PC (those without the serial number suffix SA) as described in MHI MU-2B Service Bulletin (S/B) No. 189A, dated June 16, 1987.

(ii) For airplanes type certificated in accordance with U.S. TC A10SW (those airplanes with the serial number suffix SA) as described in MHI MU-2B S/B No. 067/27-008, dated November 16, 1987.

(2) Inspect all other torque tube joints listed as "existing joints" in Figure 1 of the applicable S/B for cracks, and replace a cracked joint with a serviceable unit. If no crack is found, repeat the inspection at intervals not to exceed 500 hours TIS, as follows:

(i) For TC A2PC airplanes as described in MHI S/B 189A.

(ii) For TC A10SW airplanes as described in MHI S/B No. 067/27-008.

(b) Accomplish the inspections and replacement requirements of paragraph (a) of this AD, as applicable, prior to 4100 hours TIS on each replacement joint listed as an "existing joint", as follows:

(1) For TC A2PC airplanes (without S/N suffix SA) in Figure 1 of MHI S/B No. 189A.

(2) For TC A10SW airplanes (with S/N suffix SA) in Figure 1 of MHI S/B No. 067/27-008.

(c) Repetitive inspection of a torque tube joint is terminated upon installation of a joint listed as an "improved joint", as follows:

(1) For TC A2PC airplanes (without S/N suffix SA) in Figure 1 of MHI S/B No. 189A.

(2) For TC A10SW airplanes (with S/N suffix SA) in Figure 1 of MHI S/B No. 067/27-008.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(e) An equivalent method of compliance with this AD may be used on the A2PC airplanes, if approved by the Manager, Los Angeles Aircraft Certification Office, ANM-120L, FAA, 3229 E. Spring Street, Long Beach, California 90806-2425, Telephone (213) 988-5232, and on the A10SW airplanes, if approved by the Manager, Wichita Aircraft Certification office, ACE-115W, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4400.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Beech Aircraft Corporation (Licensee to Mitsubishi), P.O. Box 85, Wichita, Kansas 67201; Telephone (316) 681-9111; or may examine these documents at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Washington, DC, on July 19, 1988.

M.C. Beard,

Director of Airworthiness.

[FR Doc. 88-16617 Filed 7-25-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ANM-15]

Proposed Amendment of Transition Area; Aspen, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the 700 foot transition area at Aspen, Colorado. Extensive changes in the local air traffic control system and improved aircraft flows require additional controlled airspace in the vicinity.

DATE: Comments must be received on or before August 26, 1988.

ADDRESSES: Send comments on the proposal to: Manager, Airspace & System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 88-ANM-15, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined in the Office of Regional Counsel at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM-536, Federal Aviation Administration, Docket No. 88-ANM-15, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ANM-15." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking any action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Adminstration, Airspace & System Management Branch, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

Communications must identify the notive number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the existing controlled airspace at Aspen, Colorado. The incresed transition area is required to encompass new instrument flight rules (IFR) procedures. This airspace is intended to segregate aircraft operating in visual flight rules (VFR) conditions from other aircraft operating in IFR conditions. The area will be depicted on appropriate aeronautical charts enabling VFR pilots to circumnavigate the area or otherwise comply with IFR procedures.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current.

It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal.

Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Aspen, Colorado [Revised]

That airspace extending upward from 700 feet above the surface beginning at latitude 39°04'00"N., longitude 106°40'00"W.; latitude 39°04'00"N., longtitude 107°07'00"W.; to latitude 39°39'00"N., longitude 107°07'00"W.; to latitude 39°39'00"N., longitude 106°40'00"W. to the point of beginning; and that airspace extending upward from 1,200 feet above the surface beginning at latitude 39°47'45"N., longitude 107°09'00"W.; to latitude 39°47'45"N., longitude 106°43'30"W.; to latitude 39°16'30"N., longitude 106°43'30"W.; to latitude 39°16'30"N., longitude 107°09'00"W.; to the point of beginning, excluding other transition areas which overlap.

Issued in Seattle, Washington, on July 11, 1988.

Francis E. Davis,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 88-16815 Filed 7-25-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-AGL-17]

Proposed Alteration of Transition Area; Rice Lake, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to alter the Rice Lake, WI, transition area to accommodate a new VOR RWY 18 Standard Instrument Approach Procedure (SIAP) to Rice Lake Municipal Airport, Rice Lake, WI. The intended effect of this section is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATE: Comments must be received on or before September 2, 1988.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 88-AGL-17, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory

decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88–AGL–17." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Section 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the designated transition area airspace near Rice Lake, WI.

The present transition area is being modified to accommodate a new VOR RWY 18 SIAP. The modification will consist of an extension from the 5 mile radius to 8.5 miles northeast of the airport, with a 3-mile width each side of the Rice Lake VOR 015 radial.

The development of the procedure requires that the FAA alter the designated airspace to insure that the procedure will be contained within controlled airspace The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Rice Lake, WI [Revised]

That airspace extending upward from 700 feet above the surface within a 5 mile radius of the Rice Lake Municipal Airport (Lat. 45°28'45"N., Long. 91°43'20"W.) at Rice Lake, WI; and 3 miles each side of the 198° bearing from the Rice Lake NDB from the 5 mile radius to 8.5 miles southwest of the airport; and within 3 miles each side of the Rice Lake VOR 174 radial extending from the 5 mile radius to 8.5 miles south of the airport, and within 3 miles each side of the Rice Lake VOR 015 radial extending from the 5 mile radius to 8.5 miles northeast of the airport.

Issued in Des Plaines, Illinois, on July 15, 1988.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 88–16814 Filed 7–25–88; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 240, 249, 270, and 274

[Release Nos. 33–6789; 34–25925; IC–16485; File No. S7–14–88]

Report of Management's Responsibilities

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Commission is publishing for comment proposed rules to require that registants include a report of managmeent's responsibilites (management report) in Forms 10–K and N–SAR and annual reports to security holders. The management report would contain a description or statement of management's responsibilites for the preparation of the registrant's financial statements and other financial information, and for establishing and maintaining a system of internal control directly related to financial reporting. Such report would also include management's assessment of the effectiveness of the registrant's system of internal control and a statement as to how management has responded to any significant recommendations concerning such controls made by its internal auditors and independent accountants. The registrant's independent accountant, pursuant to its exisitng responsibilities under generally accepted auditing standards, would be required to read the disclosures included in the proposed management report and consider whether such information includes a material misstatement of fact. If the independent accountant concludes that such is the case, he is required to take certain actions that would result in appropriate disclosure.

DATE: Comments should be received by October 24, 1988.

ADDRESS: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7–14–88. All comment letters received will be

available for public inspection and copying the Commission's Public Reference Room at the same address.

FOR FURTHER INFORMATION CONTACT: John W. Albert, Jeffrey C. Jones or Robert E. Burns, Ofice of the Chief Accountant, (202)272–2130, or Howard P. Hodges, Division of Corporation Finance, (202) 272–2553, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

Background

Complete and accurate financial reporting by public companies is of paramount importance to the disclosure system underlaying the stability and efficient operation of our capital markets. Investors need reliable financial information when making investment decisions.

The Commission has long emphasized the importance of internal controls to the financial reporting process. On April 30, 1979, the Commission issued for public comment proposed rules that would have required inclusion of a statement of management on internal accounting control in Forms 10–K and in annual reports to security holders.[1] The proposed amendments also would have required that the statement of management on internal accounting control be examined and reported on by an independent accountant. These proposals were later withdrawn, based in part on a determination that private sector initiatives for public reporting on internal accounting control had been significant and should be allowed to continue.[2]

However, in announcing the withdrawal of the proposed rules, the Commission emphasized the importance of effective control systems and stated that some assurance concerning the existence of an effective system is important to investors. Without effective control systems, the Commission indicated, management and investors cannot be assured that unaudited financial statements and other data are reliable.[3]

Subsequent enforcement proceedings have reemphasized the importance of maintaining adequate internal control systems. For example, in an administrative proceeding pursuant to section 15(c)(4)[4] of the Exchange Act of 1934 (Exchange Act)[5] the Commission indicated that:

> Internal controls safeguard assets and assure the reliability of financial records, one of their main jobs being to prevent errors and irregularities that arise in the accounting systems of the company. Internal accounting controls are basic indicators of the reliability of financial statements and the accounting system and records from which financial statements are prepared.[6]

From October 1985 to September 1987, the National Commission on Fraudulent Financial Reporting (hereinafter referred to as the Treadway Commission) conducted a study of the factors contributing to fraudulent financial reporting.[7] In October 1987, the Treadway Commission issued its final report (hereinafter referred to as the Treadway Commission Report) containing recommendations to reduce the incidence of fraudulent financial reporting,[8] an objective endorsed by the Commission.

As the Treadway Commission Report illustrates, the process by which reliable financial statements are generated involves interrelated efforts by managements, independent accountants, and the Commission and other authorities. However, managements of public companies have responsibility for establishing corporate structures and systems capable of collecting and disseminating reliable financial data.

The Treadway Commission Report emphasizes that the prevention and detection of fraudulent financial reporting must start with the entity that prepares financial reports. Within the entity, the Treadway Commission indicated that the "tone at the top" set by management is of overridding importance in preventing fraudulent financial reporting because of its strong and direct influence on the corporate environment within which financial reporting occurs.[9]

To facilitate better communication of management's responsibilities for financial reporting, the Treadway Commission Report includes a recommendation that:

> All public companies should be required by SEC rule to include in their annual reports to stockholders management reports signed by the chief executive officer and the chief accounting officer and/or the chief financial officer. The management report should acknowledge management's responsibilities for the financial statements and internal control, discuss how these responsibilities were fulfilled, and provide management's assessment of the effectiveness of the company's internal controls.[10]

The Commission has preliminary concluded that the Treadway Commission recommendation has merit, and thus is proposing a new Item 703 of Regulation S-K [11] concerning the presentation of a management report that would be required in Forms 10-K [12] and annual reports to security holders.[13] Because such a report will evidence the attention of a registrant's most senior management to preparation of reliable financial information and to the internal control system, the report will reflect the "tone at the top" characterized in the Treadway Commission report as "the most important factor contributing to the integrity of the financial reporting process." [14] As described in the section of this release titled "Role of the Independent Accountant", the Commission believes that further benefits may accrue from the auditor's increased involvement with internal controls in accordance with recently adopted professional auditing standards, coupled with the existing responsibility of the auditor to read and consider other information, such as the proposed management report, included in a document containing audited financial statements.

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[1] Securities Act Release No. 15772 (April 30, 1979) (44 FR 26702).

[2] Accounting Series Release No. (ASR) 278 (June 6, 1980) (45 FR 40134).

[3] *Id.*

[4] 15 U.S.C. 78o(c)(4).

[5] 15 U.S.C. 78a *et seq.*

[6] *In the Matter of DeLaurentiis Entertainment Group, Inc.*, Accounting and Auditing Enforcement Release No. (AAER) 144 (August 10, 1987); *see SEC v. Hermatitie Corp., et al.* Civil Action No. 82–1223 (D.C.C. 1982); *SEC v. World Wide Coin Investments, Ltd.*, 567 F. Supp. 724, 746 (N.D.Ga. 1983); *SEC v. Data Access Systems, Inc. et al.*, Civil Action No. 81–3362 (D.N.J. 1981); *In the Matter of Tonka Corporation*, AAER 73 (September 24, 1985); and *In the Matter of Telex Corporation*, Securities Exchange Release Act Release No. 18694 (April 29, 1982).

[7] Sponsoring organizations were the American Institute of Certified Public Accountants (AICPA), the American Accounting Association, the Financial Executives Institute, the Institute of Internal Auditors and the National Association of Accountants. The Commission is commonly referred to as the Treadway Commission in recognition of its chairman, James C. Treadway, Jr.

[8] Report of the National Commission on Fraudulent Financial Reporting (October 1987). For purposes of its study and report, the Treadway Commission defined fraudulent financial reporting as "intentional or reckless conduct, whether act or omission, that results in materially misleading financial statements * * *. The (Treadway) Commission * * * distinguished frauduent financial reporting from other corporate improprieties, such as employee embezzlements, violations of environmental or product safety regulations, and tax fraud, which do not necessarily cause the financial statements to be materially inaccurate." Treadway Commission Report at 2. Copies of the Treadway Commission Report and related background materials are available from the American Institute of Certified Public Accountants, 1211 Avenue of the Americas, New York, NY 10036.

[9] Treadway Commission Report, at 11.

[10] *Id.*, at 44.

[11] 17 CFR 229.

[12] 17 CFR 249.310.

[13] 17 CFR 240.14a-3 and 240.14c-3.

[14] Treadway Commission Report, at 32.

Content of Proposed Management Report

Financial Information

Proposed Item 703(a) would require a description or statement of management's responsibilities for the preparation of the registrant's financial statements in accordance with generally accepted accounting principles, the determination of the estimates and judgments used therein, and the preparation of other financial information included in a document containing the registrant's financial statements.

Unlike the current proposal, the Commission's 1979 proposal was limited to a statement of management on internal accounting control. A number of commentators on the proposal supported the concept of a "comprehensive management report—such as that recommended by the Cohen Commission (Commission on Auditors' Responsibilities), the FEI (Financial Executives Institute), and the AICPA's Special Advisory Committee on Reports by Management—which includes but is not limited to, an assessment of the effectiveness of the system of internal accounting control * * *." The commentators suggested that a comprehensive management report "would contain more of the information needed by financial statement users than would the limited statement of management on internal accounting control proposed by the Commission," and that "an assessment of the effectiveness of internal accounting control would be more informative when discussed in this context." [15] Many of the management reports that currently are being disclosed voluntarily by registrants are of the broader type.

The proposal is designed to increase the investing public's awareness of management's current responsibilities for the registrant's financial statements and other financial information. The proposed requirements do not increase management's existing responsibilities for the preparation of financial data; they merely require that management acknowledge them. These communications should improve public understanding of the respective roles of management and the independent accountant. In addition, they may also heighten the awareness of senior management of its responsibilities. Commentators are requested to address whether the proposed disclosure will further these objectives, and whether alternative disclosure should be required.

Internal Control System

Proposed Item 703(b) would require a description or statement of management's responsibilities for establishing and maintaining a system of internal control directly related to, and designed to provide reasonable assurance as to the integrity and reliability of, financial reporting. It would also require an assessment, as of the registrant's most recent fiscal year end, of the effectiveness of the registrant's system of internal control that encompasses material matters. Finally, management would be required to state how it has responded to significant recommendations [16] concerning the system of internal control made by its internal auditors (or those performing an equivalent function) and independent accountants.

A key aspect of management's responsibilities for the preparation of financial information is the responsibility to establish and maintain an internal control system. The Commission believes that management's assessment of the registrant's system of internal control is important to investors. In addition, the Commission believes that inherent in maintaining a system is responding to significant recommendations and that disclosure regarding how management has responded to such recommendations may provide useful information to investors.

Signatures

Pursuant to proposed Item 703(c), the report would be signed on behalf of the registrant by its principal executive officer or officers, its principal financial officer, and its controller or principal accounting officer. These individuals are the corporate officials principally responsible for the financial reporting process, and the officers required to sign the Form 10-K annual report.[17] Commentators are requested to address the need for a separate signature requirement for the management report, as well as the scope of the proposed requirement. As an alternative, the Commission is considering requiring a representation that the principal executive officer or officers, principal financial officer, and controller or principal accounting officer have reviewed the report and caused such report to be filed. Comment is solicitied on this approach. Commentators also are requested to consider whether a separate signature requirement will alter the potential liability of those signing the report from that currently imposed on these officers by virtue of their signing the Form 10-K.

Discussion of Proposed 703(b)

Scope of Controls

The internal controls encompassed by proposed Item 703(b) are those that affect financial reporting directly and include internal accounting controls and other elements, such as audit committees and internal audit functions which, when taken together, comprise internal controls that can provide reasonable assurance as to the integrity and reliability of financial reporting.

The proposed scope of proposed Item 703(b) disclosure is consistent with the Treadway Commission's recommendations [18] and Statement on Auditing Standards (SAS) No. 55,[19] recently adopted by the Auditing Standards Board.[20] The Treadway Commission Report indicates that "controls that affect financial reporting directly include more than internal accounting controls. They also include elements not generally considered part of internal accounting controls, such as the internal audit function and the audit committee of the board of directors." [21] SAS No. 55 defines an entity's internal control structure to consist of three elements; the control environment, the accounting system, and control procedures.[22]

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[15] ASR 278, *supra* note 2.

[16] The phrase "significant recommendations" is further discussed *infra*, under the topic "Response to Significant Recommendations."

[17] *See* General Instruction D(2)(a) to Form 10-K, 17 CFR 249.310.

[18] In recommending a broad definition of internal controls, the Treadway Commission also suggests that its sponsoring organizations work together to integrate the various internal control concepts and definitions and to develop a common reference point. Treadway Commission Report, at 48. The Commission understands that the sponsoring organizations of the Treadway Commission have undertaken a project to publish a codification of existing guidance on internal control. While the effectiveness of a particular registrant's system of internal controls must ultimately be determined in the context of its own facts and circumstances, the Commission encourages this initiative by the sponsoring organizations.

[19] Statement on Auditing Standards No. 55, "Consideration of the Internal Control Structure in a Financial Statement Audit" (April 1988) is effective for audits of financial statements for periods beginning on or after January 1, 1990, with early application permissible.

[20] The Auditing Standards Board (ASB) is the senior technical body designated by the AICPA to promulgate auditing standards.

[21] Treadway Commission Repaort, at 34.

[22] Pursuant to SAS No. 55, paragraph 9, a control environment is defined as the collective effect of various factors—such as management's philosophy and operating style, the entity's organizational structure, the functioning of the board of directors

Continued

Examples of controls that generally would be outside the scope of the report would be controls on product quality; production and plant maintenance; and the effectiveness and efficiency of management's decision making processes (*e.g.*, determination of the price to charge for its products or whether to make certain research and development expenditures). Controls that would be within the scope of the report would be those that concern the corporation's ability to record, process, summarize and report financial data.[23] The scope of controls that directly affect financial reporting may vary from company to company depending on the nature of its business, its size, and other factors.

Public comment is specifically invited on the scope of internal controls encompassed in the proposed rule.

Assessment of Effectiveness

In order to assess adequately the effectiveness of the registrant's system of internal control, management must determine whether the internal control system provides reasonable assurance as to the integrity and reliability of financial reporting. The appropriate scope and nature of documentation, control systems and procedures must be determined in the context of the circumstances of each registrant. While large registrants may generally determine that relatively extensive documentation, control systems and procedures are necessary to provide reasonable assurance that the objectives of their control systems are being met, smaller registrants with close management supervision may determine that the objectives of their control systems are being met through less extensive documentation, control systems or evaluation procedures. Accordingly, the proposed rules do not specify minimum standards for documentation, control systems or evaluation procedures.

By incorporating a concept that a system of internal control must be designed to provide reasonable assurance as to the integrity and reliability of financial reporting, proposed Item 703(b) reflects the view that management need not compare its controls to some exact standard or express an opinion as to whether its internal controls are perfect. As previously stated by the Commission:

> The concept of reasonable, as opposed to absolute, assurance is incorporated in the . . . recognition that it is not in the interest of shareholders for the cost of internal accounting control to exceed the benefits thereof. Such benefits, and in many cases such cost, are not likely to be precisely quantifiable. Therefore, many decisions on reasonable assurance will necessarily depend in part on estimates and judgments by management which are reasonable under the circumstances.[24]

Materiality

Proposed Item 703(b) would require the management report to include an assessment of the effectiveness of a registrant's system of internal control that encompasses material matters.[25] This includes matters material to both investment and voting decisions. Public comment is specifically invited on the proposed inclusion of a materiality threshold.

Point-in-time Reporting

Proposed Item 703(b) would require that management's assessment of the effectiveness of its internal control system be *as of* the end of the registrant's most recent fiscal year. The concept of reporting as of a point in time (rather than for a period) has been previously addressed by the Commission. In the release that withdrew the Commission's 1979 proposal,[26] the Commission stated that, for disclosure purposes, there is value in providing management statements that address the effectiveness of internal accounting control systems only as of a recent date. The Commission's view was based in part on concerns expressed by commentators to the 1979 proposal that period reporting [27] would provide a disincentive for prompt correction of internal accounting control weaknesses because these weaknesses would still have to be reported. Commentators also raised questions about the value of disclosing weaknesses that already have been corrected.[28]

While the Treadway Commission recommended reporting as of a point in time, it suggested that such point in time need not necessarily coincide with a registrant's fiscal year end. Because of the direct correlation between a registrant's system of internal control and its ability to prepare reliable financial statements, the proposed rules would require that the assessement of control effectiveness be as of the registrant's fiscal year end. However, proposed Item 703 includes an instruction that indicates that in making its assessment, management must consider any information necessary to prevent its report from being misleading. This includes information coming to management's attention subsequent to year end, but prior to the date of the filing of the report with the Commission or distribution to security holders.

Commentators are encouraged to address whether it would be more appropriate to require management reporting for the period rather than as of a point in time. Comments are also invited as to whether it would be more appropriate to permit reporting at other than fiscal year end as recommended in the Treadway Commission Report.

Response to Significant Recommendations

Proposed Item 703(b) of Regulation S-K would require a statement [28] as to how management has responded to any significant recommendations concerning the system of internal control made by its internal auditors (or those performing an equivalent function) and independent accountants. The Commission believes that those matters considered by the independent auditor to be "reportable conditions" pursuant to SAS No. 60 should be considered significant recommendations.[29] In addition, management's statement would encompass its response to matters communicated by the internal auditor (or those performing an equivalent function) that, in the judgment of the internal auditor, meet the definition of reportable conditions in SAS No. 60.

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and audit committees, management's methods of assigning authority and responsibility, and of monitoring and following up on performance, including internal auditing, performance policy and practices, and various external influences such as examinations by bank regulatory agencies—on establishing, enhancing or mitigating the effectiveness of specific policies and procedures. The control procedures referred to by the ASB are those that concern the authorization of transactions, recording transactions, maintaining custody of assets, the design and use of adequate documents and records, and independent checks on performance and proper valuation of recorded amounts. SAS No. 55, paragraph 11. For a general discussion of the "accountiang system", *see* SAS No. 55, paragraph 10.

[23] SAS No. 55, paragraph 6.

[24] Securities Exchange Act Release No. 15772 (April 30, 1979) [44 FR 26702].

[25] *See* the definition of "material" in Exchange Act Rule 12b-2, 17 CFR 240.12b-2; *see also Basic, Inc. v. Levinson*, 485 U.S. , 108 S. Ct. 978 (1988); *TSC Industries Inc. v. Northway, Inc.*, 426 U.S. 438 (1976).

[26] ASR 278, *supra* note 2.

[27] Period reporting would require a management statement to assess the effectiveness of the registrant's internal control system throughout the entire year.

[28] The Commission emphasizes that the correction of significant deficiencies in the design of operation of the registrant's internal control system entails making the necessary changes and following up to ensure that the changes have been implemented and are operating appropriately.

[29] Statement on Auditing Standards No. 60, "Communication of Internal Control Structure Related Matters Noted in an Audit," (April 1988) is effective for audits of financial statements for periods beginning on or after January 1, 1989, with early application permissible.

SAS No. 60 states that these matters "represent significant deficiencies in the design or operation of the internal control structure, which could adversely affect the organization's ability to record, process, summarize and report financial data consistent with the assertions of management in the financial statement."[30]

SAS NO. 60 indicates that, "[b]ecause timely communication may be important, the auditor may choose to communicate significant matters during the course of the audit rather than after the audit is concluded. The decision on whether an interim communication should be issued would be influenced by the relative significance of the matters noted and the urgency of corrective follow-up action." [31] The Commission strongly encourages timely communication so that management may consider such issues in assessing the effectiveness of its internal controls and planning and implementing necessary timely corrective actions.

Because the proposed rules are based on a criterion of reasonable assurance, the Commission recognizes that management may properly decide not to take action on all recommendations made either by its internal auditors or independent accountants. The Commission believes, however, that security holders may benefit from the disclosure of how management has responded to the recommendations, including whether there were significant recommendations that were not implemented. In disclosing how it has responded to significant recommendations, management may include a general statement as to the extent to which recommendations have been implemented or are intended to be implemented, or will not be implemented due to cost-benefit or other specified reasons. The report would not need to describe the recommendations, although management may believe it is appropriate to do so in describing how it has responded to them.

Commentators are invited to address whether any final rules should include disclosure of the nature of any significant recommendations either not implemented or not timely implemented for cost-benefit or other reasons, along with a discussion of any alternate or compensating procedures followed by management.

[30] SAS No. 60, paragraph 2. SAS No. 60 requires these matters to be communicated to the audit committee or a group equivalent to an audit committee that has been designated for oversight of the financial reporting process.

[31] SAS No. 60, paragraph 18.

Other Disclosures in a Management Report

Proposed Item 703 of Regulation S–K would afford flexibility to management and indicate that management may include other information it considers appropriate in addition to the matters specified. Specific comment is requested as to whether the Commission should specify any other items that should be addressed in a management report.

Role of the Independent Accountant

Although financial statements are the responsibility of management, the independent accountant plays a key role in the financial reporting process. Recently issued SAS Nos. 55 and 60 provide new responsibilities for independent accountants in their consideration of the internal control structure during an audit and in their obligation to report to the registrant significant matters concerning that structure. These SAS's do not require the auditor to test the effectiveness of, or otherwise examine or audit the control structure.[32] Thus, the auditor would not be in a position to opine on the overall effectiveness of the system. However, these responsibilities should provide a more meaningful basis for the auditor's performance of responsibilities under SAS No. 8, "Other Information in Documents Containing Audited Financial Statements," and AICPA Interpretation No. 1 to SAS No. 8,[33] as described more fully below.

SAS No. 55 requires that, in every audit, the auditor obtain a sufficient understanding of the internal control structure to plan the audit of the financial statements, regardless of whether the auditor intends to rely on the controls in conducting the audit.[34] SAS No. 55 indicates that this understanding should include knowledge about the design of relevant policies, procedures, and records, and whether they have been placed in operation. The auditor's assessment of the internal control structure is an ongoing process during an audit.[35]

[32] See, *e.g.*, SAS No. 55, paragraph 17.

[33] AICPA Professional Standards AU Sections 550 and 9550.

[34] SAS No. 55 is not effective until audits of financial statements for periods beginning on or after January 1, 1990. If the Commission determines to adopt a rule based on this proposal, it will consider the effective date of SAS No. 55 in connection with its determination of an effective date for the rule.

[35] SAS No. 55, paragraph 60, indicates that "information may come to the auditor's attention as a result of performing substantive tests or from other sources during the audit that differs significantly from the information on which his planned tests of controls for assessing control risk were based." Because of this, SAS No. 55, paragraph 60, indicates that "the auditor may need to reevaluate the planned substantive procedures, based on a revised consideration of the assessed level of control risk for all or some of the financial statement assertions."

SAS No. 8 requires the independent accountant to read other information, such as the proposed management report, in a document containing audited financial statements, and consider whether such information, or the manner of its presentation, is materially inconsistent with information appearing in the financial statements.[36] Further, this SAS requires that the independent accountant also consider whether such other information is a material misstatement of fact (even though not inconsistent with the financial statements). This responsibility extends to a material misstatement that results from management's failure to disclose a fact necessary to make the statements made regarding internal control not misleading.[37] However, SAS No. 8 indicates that the independent accountant has no obligation to perform any procedures to corroborate such "other information."

In the event the independent accountant discovers a material inconsistency, SAS No. 8 requires that the auditor determine whether the financial statements, his report, or both require revision. SAS No. 8 indicates that if the independent accountant concludes the financial statements and/or his report do not require revision, he should request the issuer to revise the other information. If the other information is not revised to eliminate the material inconsistency, SAS No. 8 indicates the independent auditor should consider other actions "such as revising his report to include an explanatory paragraph describing the material inconsistency, withholding the use of his report in the document, and withdrawing from the engagement." [38]

With respect to situations in which the independent accountant believes the other information is materially misstated (but not inconsistent with the financial statements), SAS No. 8

[36] The annual report on Form 10–K, including the management report, may be incorporated into registration statements under the Securities Act of 1933 (Securities Act) (15 U.S.C. 77a *et seq*). *See, e.g.*, Item 12(a)(1) of Form S–2 (17 CFR 239.12) and Item 12(a)(1) of Form S–3 (17 CFR 239.13). In these instances, however, the fact that the auditor has performed its SAS No. 8 responsibilities concerning the management report would not make the management report a part of a registration statement prepared or certified by an accountant, or a report prepared or certified by an accountant, within the meaning of sections 7 and 11 of the Securities Act (15 U.S.C. 77g, 77k).

[37] *See* AU Section 9550.04.

[38] AU Section 550.04.

indicates that the auditor should discuss the matter with the issuer and others (*e.g.*, the issuer's legal counsel) to determine whether he has a valid basis for his belief that a material misstatement exists. If the independent accountant concludes after such discussions that a material misstatement exists, SAS No. 8 indicates that he should consider steps such as notifying senior management and the board of directors or its audit committee in writing of his views concerning the information and consulting with his legal counsel as to further appropriate action in the circumstances.

Other information included in a document containing audited financial statements and the independent accountant's report does not always relate to matters about which the independent accountant is knowledgeable because of its audit procedures and expertise. However, as indicated in Interpretation No. 1 to SAS No. 8, AU Section 9550.03, "[t]he auditor would often be familiar with matters covered in a management statement on internal accounting control and may become aware of information that causes him to believe that management's statement concerning internal accounting control contains a material misstatement of fact * * *." Although the ability of the independent accountant to provide any assurance about the accuracy and completeness of management's statements in its report regarding internal controls may be limited, the Commission believes that compliance with SAS Nos. 55 and 60, coupled with the knowledge and information obtained during the conduct of other audit procedures, may make it more likely that the independent auditor will discover a material misstatement in management's statements in its report regarding internal controls.[39] Where the independent accountant is able to reach such a conclusion, the Commission believes that the auditor's responsibilities are the same as when the auditor discovers a material inconsistency with the financial statements.[40] Accordingly, in circumstances in which the independent account concludes there is a material misstatement of fact in the management report, he should request the issuer to revise the management report. If the report is not revised, the independent accountant should revise the accountant's report to include an explanatory paragraph describing the material misstatement, withhold the use of the accountant's report, or withdraw from the engagement. In the even the registrant refuses either to amend the management report to reflect the auditor's concerns or to accept a modified report form the auditor and the independent accountant withdraws from the engagement (or is dismissed), the circumstances surrounding the change in independent accountants would be reported as a disagreement on Form 8–K, or other document announcing the change in accounts.[41] Comment is requested on whether the Commission should, in proposed Item 703 of Regulation S–K, specify such responsibility of the auditor in the event of a noted misstatement in management report.

Comparison With 1979 Proposal

The Treadway Commission Report includes an analysis of the Commission's 1979 proposal to require a statement of management on internal accounting controls, discussed above in this release under "Background." The Treadway Commission Report points out that the Commisison's proposal was criticized because of the close correlation of management's opinion of internal accounting control with the internal accounting control provisions of the Foreign Corrupt Practices Act (FCPA).[42] Many commentators viewed the proposal as essentially a statement of compliance with the law and suggested that the proposal was intended primarily to establish the existence of FCPA violations for enforcement purposes.[43]

The current proposal for management reports avoids a direct correlation with the FCPA since it includes a materiality threshold not contained in the FCPA. Furthermore, the current proposal for management reporting will focus on the entire system of internal control, a broader concept than internal accounting controls to which the FCPA is restricted. In addition, the current proposal calls for an assessment of effectiveness as of a point-in-time, whereas the 1979 proposal would have required that the management opinion on controls extend to conditions that existed throughout the period (which parallels the requirement under the FCPA to "devise and maintain" an effective system). Also, the 1979 proposal was limited to a report on controls as opposed to the broader management report currently being proposed.[44]

The Commission's 1979 proposal would also have required that the management statement on internal accounting control be examined and reported on by an independent accountant. Such proposals would have required auditors to express an opinion on the registrant's system of internal accounting control.[45] This extent of auditor involvement was widely criticized by commentators who cited the cost burden associated with direct auditor involvement.

The current proposal should mitigate the concerns about the costs of auditor involvement associated with the 1979 proposal. As described more completely in the section of this release titled "Role of the Independent Accountant," auditor involvement would not entail the comprehensive evaluation necessary for the positive assurance type of opinion contemplated in the 1979 proposal. The proposal would not require the auditor to perform any procedures beyond its existing responsibilities under GASS.

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[39] The Commission recognizes that SAS No. 55 only requires the auditor to test controls to the extent he determines that it is cost-effective to rely on such controls in the conduct of the audit, and that this judgment will vary from company to company. While the auditor may not be able to detect all material misstatements in a management report, he should be in a position to recognize major design flaws and many situations where there are significant deficiencies in the operation of such controls.

[40] The Commission notes that the Treadway Commission Report recommended that the ASB provide explicit guidance to address the situation where, as a result of his knowledge of the company's internal accounting controls, the independent accountant disagrees with the management report. The Commission staff understands that the ASB is considering this issue as well as other issues related to auditor reporting on internal control.

[41] *See* Item 304 of Regulation S–K, 17 CFR 229.304, as amended in Financial Reporting Release No. 31 (April 12, 1988) [53 FR 12924]. Item 304 (a)(1)(v)(A) of Regulation S–K also states that situations involving the accountant having advised the registrant that the internal controls necessary for the registrant to develop reliable financial statements do not exist is a "reportable event" even though there may have been no disagreement.

[42] Section 13(b)(2) of the Exchange Act, 15 U.S.C. 78m(b)(2). Both the FCPA and the criteria for management reports proposed in 1979 were based on a registrant's obligations to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that

(i) Transactions are executed in accordance with management's general or specific authorization;

(ii) Transactions are recorded as necessary (a) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (b) to maintain accountability for assets;

(iii) Access to assets is permitted only in accordance with management's general or specific authorization; and

(iv) The recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

[43] Treadway Commission Report, at 45.

[44] ASR 278, *supra*, note 2.

[45] Auditing standards for direct auditor reporting on internal accounting control are set forth in AU Section 642 of the AICPA Professional Standards.

Scope of Proposed Rules

Form 10–K

The Treadway Commission recommended that management reports be included in annual reports to security holders. The Commission, however, believes that the rationale for providing management reports applies to all Commission registrants annually reporting on Form 10–K, whether or not required to furnish an annual report to security holders.[46] The 10–K requirements is consistent with the Treadway Commission's view that smaller, newly public companies should comply with its recommendations, because "these [smaller] entities may have a disproportionately greater risk of fraudulent financial reporting and thus may reap proportionately greater benefits" [47] from such compliance.[48] Accordingly, the Commission is proposing to include the requirement for a management report in Forms 10–K as well as annual reports to security holders. Comment is solicited on whether the requirement should pertain only to Form 10–K rather than the annual report to security holders.

Securities Act and Exchange Act Registration Statements.

A management report may be beneficial to investors in the company's initial public offering or initial registration with the Commission. Accordingly, the Commission is also considering extending the requirement for a management report to Securities Act registration statements for initial public offerings. These would include all registration statements on Form S–18,[49] as well as those for initial public offerings on Forms S–1,[50] S–4,[51] and S–11.[52] Alternatively, the management report requirement could be extended to all Securities Act registration statements, not merely those used for initial public offerings.[53] Further, the Commission is considering requiring the management report in Form 10,[54] which is the initial Exchange Act registration statement filed by a registrant not subject to Exchange Act reporting registration with the Commission. The Commission invites comments on whether the proposed requirements should be so extended and, if so, whether the Commission should consider exempting any category of issuers from those requirements.

The Commission specifically requests comments on whether the application of these requirements to registration statements for initial public offerings would have any impact on the capital formation process. The Commission recognizes that SAS No. 8 is not applicable when the auditor's report appears in a registration statement filed under the Securities Act and requests comments on the impact of that distinction. If the requirement is extended to these registration statements, comment is requested on whether the Commission should explicitly require that the auditor perform SAS No. 8 procedures regarding such management reports.

Class of Issuer

Foreign Private Issuers

Specific public comment is invited on whether it is appropriate to extend the application of the proposed requirements to foreign private issuers. As proposed, the management report would be required for all registrants filing annual reports on Form 10–K. Accordingly, foreign private issuers [55] filing annual reports on Form 20–F [56] rather than Form 10–K (*i.e.*, all foreign private issuers except for Canadian issuers) would not be subject to the requirement. Comment, however, is solicited on whether foreign private issuers eligible to use Form 20–F also should have to comply with the management report requirement, or, alternatively, whether Canadian issuers filing on Form 10–K should be exempt from the requirement. Comment is solicited on whether, if initial public offering filings become subject to the management report requirement as discussed above, registration statements by foreign private issuers should be included.[57]

Registered Investment Companies

The Commission is proposing comparable changes to the reporting requirements for registered management investment companies. Specifically, the Commission proposes to amend Form N–SAR,[58] the periodic report required of registered investment companies, and Rule 30d–1,[59] the rule that requires all management investment companies to transmit annual reports to security holders, to require the management report called for by proposed Item 703.[60] While management investment companies are already required to furnish, in Form N–SAR only, a report of their independent public accountant on their systems of internal controls,[61] there is no requirement that such report be accompanied by a report of management. There is no internal controls report requirement for the report to security holders of registered investment companies.

Comment is also requested on whether these proposed requirements should be extended to Securities Act registration statements for initial public offerings by registered investment companies, *e.g.*, N–1A,[62] N–2,[63] and S–6.[64] While such a requirement would be largely irrelevant for those investment companies that did not exist until shortly before they made their initial public offering, such a requirement would affect "private" investment companies, *i.e.*, companies relying on section 3(c)(1) of the 1940 Act,[65] that subsequently make a public offering.

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[46] Section 14 of the Exchange Act, 15 U.S.C. 78n, requires that solicitations of proxies, consents or authorizations with respect to securities registered under section 12 of that Act, 15 U.S.C. 78*l*, (other than exempt securities) be made in compliance with the rules and regulations of the Commission. Rule 14a-3, 17 CFR 240.14a-3, requires that if this solicitation is made on behalf of management and relates to an annual or special meeting of security holders at which directors are to be elected, then the proxy statement shall be accompanied or preceded by an annual report to security holders containing specified information. If proxies are not solicited prior to such a meeting of holders of securities registered under section 12, an information statement must be provided to security holders that also must be accompanied or preceded by an annual report to security holders. *See* Rule 14c-3 under the Exchange Act, 17 CFR 240.14c-3. Securities must be registered under Section 12 if they are listed on a national securities exchange or if the issuer has total assets greater than $5 million and the securities are equity held of record by 500 or more persons. Exchange Act Sections 12(b), (g), 15 U.S.C. 78*l*(b), (g); Rule 12g-1, 17 CFR 240.12g-1.

[47] Treadway Commission Report, at 29.

[48] Entities not registered under Section 12 may still have to file annual reports on Form 10–K. Exchange Act section 15(d), 15 U.S.C. 78o(d).

[49] 17 CFR 239.28.

[50] 17 CFR 239.11.

[51] 17 CFR 239.25.

[52] 17 CFR 239.18.

[53] The information would be included in registration statements on Forms S–2 and S–3 by incorporation by reference. *See* note 36, *supra*.

[54] 17 CFR 249.210.

[55] *See* definition of "foreign private issuer" in Exchange Act Rule 3b–4, 17 CFR 240.3b–4.

[56] 17 CFR 249.220f.

[57] Such filings would include some Securities Act registration statements on Forms F–1 and F–4, 17 CFR 239.31 and 239.34, as well as Exchange Act registration statements on Form 20–F.

[58] 17 CFR 274.101.

[59] 17 CFR 270.30d–1.

[60] While Form N–SAR is used for periodic reporting by all registered investment companies, except for face amount certificate companies, the form is divided into different sections relevant to different types of investment companies. The proposed rules would require management reports to be included only in the periodic reports of management investment companies, other than small business investment companies. These are the entities presently required to furnish a report of their independent accountants on their internal control systems.

[61] *See* sub-item 77B, Form N–SAR.

[62] 17 CFR 274.11A.

[63] 17 CFR 274.11a:1.

[64] 17 CFR 239.16.

[65] 15 U.S.C. 80a–3(c)(1).

Specific comment is requested on the costs and benefits of these proposed changes to registered investment companies. Specific comment is also requested on whether investment company registrants should be treated differently from non-investment company registrants.

Solicitation of Public Comment

In addition to the various specific sections in this release where comments have been requested, the Commission requests overall comments as to the form and content of the proposed report. Commentators are specifically requested to indicate whether the Commission should be more or less prescriptive regarding the specific items to be addressed. For example, the Commission could indicate the types of responses that would be appropriate in assessing the effectiveness of internal control, or could require disclosure of the extent to which, due to the size of the company, top management involvement is a principal factor in the registrant's internal control system.

The Commission is also specifically seeking comment on alternatives to the proposed rule, particularly in the area of the role of the independent accountant. The commission is seeking comment on whether independent accountants should be required to report directly in the Form 10–K and annual report on either the internal control structure of the registrant or the proposed management report. Commentators who favor a direct report are asked to comment on whether the report should provide an opinion or discussion of work performed commensuate with the independent accountant's professional responsibilities under SAS Nos. 55 and 60, or whether the independent accountant should be required to perform necessary additional procedures, for example, to opine on the effectiveness of the registrant's internal control structure. Comments on other possible alternatives to the scope of the association by the independent accountant are also requested. The Commission is seeking comment on the incremental costs and benefits associated with direct reporting by the independent accountant on its assessment of the effectiveness of the registrant's internal control structure, or other direct reporting that commentators may believe is necessary.

In addition, the Commission invites comments on whether, and if so how, the proposed revisions may affect or alter the allocation of liability among auditors, board members, management, the registrant, and others.

Cost/Benefits of the Proposed Action

Registrants currently have an obligation under Section 13(b)(2) of the Securities Exchange Act of 1934, 15 U.S.C. 78m (b)(2), among other things, to maintain adequate internal accounting controls sufficient to provide reasonable assurance that transactions are recorded as necessary to (i) permit the preparation of financial statements in accordance with generally accepted accounting principles, and (ii) to maintain accountability for assets. The proposals would not increase these responsibilities, but they would require that management acknowledge them and report on the effectiveness of these and other controls. Incremental burdens on registrants, therefore, should result only due to the reporting on the internal control systems, not from establishing, documenting or maintaining those systems.

The auditor's responsibilities for conducting an audit are presently established under GAAS. The management report would be one more item of disclosure that the auditor would have to read and consider. However, no additional audit work over and above GAAS would be required.

Regarding anticipated benefits, the proposed management report should improve communication to financial statement users about the processes that surround the preparation and presentation of financial information. The proposed rules would also provide a means for the auditor to make public significant concerns it may have about the reported status of the registrant's internal control system.

Competitive Impact

The Commission also requests comments on whether the proposed revisions, if adopted, would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a)(2) of the Exchange Act.[66]

Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding the proposed amendments. The Analysis notes that the objectives of the proposed amendments are to require management reports that improve investors' understanding of management's responsibilities for the company's financial information and internal control system. The Analysis notes that the objectives of the proposed amendments are to require management reports that improve investors' understanding of management's responsibilities for the company's financial information and internal control system. The Analysis indicates that little additional burden should be imposed on registrants due to current statutory requirements [67] for companies to maintain internal accounting controls, and that auditors are presently required under GAAS to read and consider other information in a document containing audited financial statements, such as management's report, and take appropriate action in response to material misstatements of fact. The Analysis further notes that some registrants presently issue management reports on a voluntary basis.

Other appropriate cost-benefit information reflected in the section of this release titled "Costs/Benefits of the Proposed Action" are also reflected in the Analysis.

A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Robert E. Burns, Mail Stop 4–8, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

List of Subjects in 17 CFR Parts 229, 240, 249, 270 and 274

Reporting and recordkeeping requirements, Securities and investment companies.

Text of Proposed Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

1. The authority citation for Part 229 continues to read, in part, as follows:

Authority: Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 901; secs. 205, 209, 48 Stat. 906, 908; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 301, 54 Stat. 857; secs. 8, 202, 68 Stat. 685, 686; secs. 3, 4, 5, 6, 78 Stat. 565–568, 569, 570–574; sec. 1, 79 Stat. 1051; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 28(c), 84 Stat. 1435, 1497; sec. 105(b), 88 Stat.

[66] 15 U.S.C. 78w(a)(2).

[67] 15 U.S.C. 78m(b)(2).

1503; secs. 8, 9, 10, 11, 18, 89 Stat. 117, 118, 119, 155; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 781, 78m, 78n, 78o(d), 78w(a). * * *

2. By adding § 229.703 to read as follows:

§ 229.703 (Item 703) Report on management's responsibilities.

(a) *Financial information.* Furnish a description or statement of management's responsibilities for the preparation of the registrant's financial statements in accordance with generally accepted accounting principles, the determination of the estimates and judgments used therein, and the preparation of other financial information included in a document containing the registrant's financial statements.

(b) *Internal control system.* Furnish a description or statement of management's responsibilities for establishing and maintaining a system of internal control directly related to, and designed to provide reasonable assurance as to the integrity and reliability of, financial reporting. Include an assessment as of the registrant's most recent fiscal year end of the effectiveness of the registrant's system of internal control that encompasses material matters, and state how management has responded to any significant recommendations concerning the system of internal control made by its internal auditors (or those performing an equivalent function) and independent accountants.

(c) *Signatures.* The report required by paragraphs (a) and (b) of this section shall be signed on the behalf of the registrant by its principal executive officer or officers, its principal financial officer, and its controller or principal accounting officer.

Instruction

When furnishing its report, management may include other information it considers appropriate. In making its assessment of the effectiveness of the system of internal control, management must consider any information necessary to prevent its report from being misleading. This includes information coming to management's attention subsequent to year end but prior to the date of the filing of the report with the Commission or distribution to security holders.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 240 continues to read, in part, as follows:

Authority: Sec. 23, 48 Stat. 901, as amended, 15 U.S.C. 78w. * * *

4. By amending § 240.14a–3 to redesignate paragraphs (b)(12) and (b)(13), as paragraphs (b)(13) and (b)(14), to add new paragraph (b)(12), and to revise newly redesignated (b)(13) as follows:

§ 240.14a–3 Information to be furnished to security holders.

* * * * *

(b) * * *

(12) The report shall contain the management report as required by Item 703 of Regulation S–K (§ 229.703 of this chapter).

(13) Paragraphs (b)(5) through (b)(12) of this section shall not apply to an investment company registered under the Investment Company Act of 1940.

* * * * *

5. By revising paragraph (a)(1) and the first sentence of (a)(2) of § 240.14c–3 to read as follows:

§ 240.14c–3 Annual report to be furnished security holders.

(a) * * *

(1) The annual report shall contain the information specified in paragraphs (b)(1) through (b)(12) of Rule 14a–3 (§ 240.14a–3 of this chapter).

(2) Paragraphs (b)(5) through (b)(12) of Rule 14a–3 shall not apply to an investment company registered under the Investment Company Act of 1940. * * *

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

6. The authority citation for Part 249 continues to read in part as follows:

Authority: The Securities Exchange Act of 1934, 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

* * * * *

§ 249.310 [Amended]

7. By amending paragraphs 2, 3, and 4 of General Instruction G to Form 10–K (§ 249.310) by removing parenthetical references to "(Items 1 through 9)" and replacing them with parenthetical references to "(Items 1 through 10)" and by removing parenthetical references to "(Items 10, 11, 12, and 13)" and "(Items 10 through 13)" and replacing them with parenthetical references to "(Items 11 through 14)"; by amending General Instruction I to Form 10–K by removing "Item 11" and replacing it with "Item 12" and removing "Item 13" and replacing it with "Item 14"; by amending General Instruction J(2)(c) of Form 10–K by removing "Item 10", "Item 11", "Item 12", and "Item 13", and replacing them with "Item 11", "Item 12", "Item 13", and "Item 14", respectively; by amending Form 10–K to redesignate Items 10 through 14 as Items 11 through 15 and to add a new Item 10 to be included in Part II of that Form as follows: Note: Form 10–K does not appear in the Code of Federal Regulations.

Form 10–K

* * * * *

Item 10. Management Report.

Furnish the information required by Item 703 of Regulation S–K (§ 229.703 of this chapter).

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

8. The authority for Part 270 continues to read, in part, as follows:

Authority: Secs. 38, 40, 54 Stat. 841, 842; 15 U.S.C. 80a–37, 80c–89; The Investment Company Act of 1940, as amended, 15 U.S.C. 80a–1 *et seq.*; unless otherwise noted.

* * * * *

9. By amending § 270.30d–1 to redesignate paragraphs (b) through (d) as paragraphs (c) through (e) and to add a new paragraph (b) as follows:

§ 270.30d–1 Reports to stockholders of management companies.

* * * * *

(b) The annual report shall contain the management report as required by Item 703 of Regulation S–K (§ 229.703 of this chapter).

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

10. The authority for Part 274 continues to read, in part, as follows:

Authority: The Investment Company Act of 1940, 15 U.S.C. 80a–1 *et seq.*, unless otherwise noted.

* * * * *

§ 274.101 [Amended]

11. By amending Form N–SAR (17 CFR 274.101) to revise the caption to the instructions to sub-item 77B to read "Accountant's report on internal control and report of managment's responsibilities," to redesignate the current four paragraphs of sub-item 77B as part "(a)," and by adding a new paragraph "(b)" as follows:

Form N–SAR

* * * * *

Item 77B. *Accountant's report on internal control and report of management's responsibilities.*

(a) * * *

(b) Provide the information called for by Item 10 of Form 10–K under the Securities Exchange Act of 1934 (17 CFR 249.310). The

information required by this sub-item, both paragraph (a) and paragraph (b), need only be filed in the annual report, not the semi-annual report.

* * * * *

By the Commission.

July 19, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-16830 Filed 7-25-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[(LR-65-87)]

Public Hearing on Proposed Regulations; Treatment of Salvage and Reinsurance

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the treatment of salvage and reinsurance in determining the paid and unpaid losses of property and casualty insurance companies.

DATES: The public hearing will be held on Wednesday, August 31, 1988, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by August 17, 1988.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-65-87), Room 4429, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Angela Wilburn or Carroll Field of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, (202-566-3935), not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the treatment of salvage and reinsurance under section 832(b) of the Internal Revenue Code of 1986. The proposed regulations appeared in the Federal Register for Tuesday, January 5, 1988 (53 FR 153), (53 FR 117). The rules for § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Wednesday, August 17, 1988, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

Dale D. Goode,

Chief, Technical Section, Legislation and Regulations Division.

[FR Doc. 88-16793 Filed 7-25-88; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-88-57]

Special Local Regulations for the Annual Power Boat Regatta, Susquehanna River, Havre De Grace, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal that would establish permanent special local regulations for the Susquehanna Optimist Club Power Boat Regatta, an annual event held on the Susquehanna River, west of Garrett Island, in August. Annual notice of the precise dates and times of the regatta would be published in the Fifth Coast Guard District Local Notice to Mariners and in a **Federal Register** Notice. The special local regulations are necessary to control vessel traffic within the immediate area of the races due to the confined nature of the waterway and the expected congestion at the time of the event. The effect will be to restrict general navigation in the regulated area for the safety of the spectators and the participants in the event.

DATES: Comments should be received on or before September 9, 1988.

ADDRESSES: Comments should be mailed or hand delivered to Commander (bb), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments will be available for inspection and copying at Room 209 of that address. Normal office hours are from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal Holidays.

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

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 05-88-57) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on the proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process. The receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

Drafting Information

The drafters of this notice are Mr. Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and Lieutenant Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Proposed Regulation

The area covered by this proposal is the same as that covered by special local regulations issued for years. The Optimist Club Power Boat Regatta is an annual weekend race consisting of 3 laps around an oval course. Three to twelve boats will race at one time with speeds up to 140 miles per hour. The races will continue for 3 to 4 hours. The special local regulations provide safety for the persons participating in races and control spectator craft during the event. If adopted, this proposal will

apply to the 1988 Optimist Club Power Boat Regatta scheduled as follows:

a. 11:00 a.m. to 7:00 p.m., August 27, 1988.

b. 11:00 a.m. to 7:00 p.m., August 28, 1988.

This proposal also will apply to future Power Boat Regattas, and annual notice of the precise dates and times of the regatta would be published in a Local Notice to Mariners and **Federal Register** Notice.

Economic Assessment and Certification

These proposed 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 closure of the entire waterway is not anticipated and because marine traffic will be allowed to proceed up the Susquehanna River using that portion of the waterway east of Garrett Island, commercial marine traffic will be inconvenienced only slightly. The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, 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 new § 100.510 is added to read as follows:

§ 100.510 Susquehanna River, Havre De Grace, Maryland.

(a) *Definitions:*

(1) *Regulated Area:* The waters of the Susquehanna River west of Garrett Island, bounded on the south by the Conrail Railroad Bridge at latitude 39°33'34.0" North, and on the north by the B & O Railroad Bridge at latitude 39°33'57.0" North.

(2) *Coast Guard Patrol Commander:* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Coast Guard Group Baltimore.

(b) *Special Local Regulations:*

(1) Except for vessels operated by the Susquehanna Optimist Club and participants in the Optimist Club Power Boat Regatta, no person or vessel may enter or remain in the regulated area without the permission of the Coast Guard Patrol Commander.

(2) Spectator vessels may enter and anchor in the designated spectator anchorage areas without the permission of the Patrol Commander, if they proceed at a slow no wake speed.

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

(i) Stop the 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 period:* This section is effective during the Optimist Club Power Boat Regatta, and for one hour before the races begin and one hour after the races end. The Commander, Fifth Coast Guard District, publishes a notice in the **Federal Register** and the Fifth Coast Guard District Local Notice to Mariners that announces the times and dates this section is in effect.

Dated: July 18, 1988.

W.J. Ecker,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District, Acting.

[FR Doc. 88-16711 Filed 7-25-88; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP San Diego Reg 88-11]

Safety Zone Regulations; San Clemente Island, CA, Pacific Ocean

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to establish a permanent Safety Zone in the vicinity of Castle Rock, San Clemente Island, California, consisting of the water area bounded by the following coordinates and the shore line of San Clemente Island:

Point A—33°01'38" N	118°36'18" W
Point B—33°01'11" N	118°37' 25" W
Point C—33°00'00" N	118°36'51" W
Point D—33°00'05" N	118°38'53" W
Point E—33°02'55" N	118°39'05" W
Point F—33°04'25" N	118°37'41" W
Point G—33°02'04" N	118°35'53" W

This action is being taken at the request of the United States Navy and is needed to protect persons, vessels and property from hazards associated with the establishment of a Naval small arms range in this area. Entry into this safety zone will be prohibited unless authorized by the Captain of the Port, San Diego, or the Eleventh Coast Guard District Commander, or their representatives.

DATES: Comments must be received on or before September 9, 1988.

ADDRESSES: Comments should be mailed to U.S. Coast Guard Captain of the Port, 2710 North Harbor Drive, San Diego, CA 92101-1064. The comments and other materials referenced in this notice will be available for inspection and copying at 2710 North Harbor Drive, San Diego, CA. Normal office hours are between 7:00 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LT Tom Orzech, USCG, c/o U.S. Coast Guard Captain of the Port, 2710 North Harbor Drive, San Diego, CA 92101-1064, telephone (619) 557-5860.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (COTP San Diego Reg 88-11) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information:

The drafters of this notice are LT Tom Orzech, Project Officer for the Captain of the Port, and CDR Samuel E. Burton, Project Attorney, Eleventh Coast Guard District Legal Office.

Discussion of Proposed Regulations:

The Commander, Western Division, Naval Facilities Engineering Command, has requested that the Captain of the Port, San Diego, California, establish a permanent safety zone at San Clemente Island, California. The U.S. Navy will be constructing a small arms range facility at the northwest corner of the island.

The range will be using weapons which have an open range danger area of 4100 meters. The request was made to improve safety at the location while protecting persons, vessels and property from the potential hazards of the small arms range. The Captain of the Port concurs with the need for the security zone. There will be no entry into the security zone at anytime except by authorized U.S. Naval craft or by obtaining authorization from the Captain of the Port, San Diego, or the Eleventh District Commander, or their representatives. The Captain of the Port has designated Commander, Naval Base San Diego and the Officer in Charge, Naval Auxiliary Landing Field San Clemente Island, as having concurrent authority to permit entry into this safety zone.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

Economic Assessment and Certification

These proposed 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). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary.

The area within the zone is outside normal shipping channels. The only vessels normally using these waters are U.S. Naval vessels. There will be minimal effect on routine navigation.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

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

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

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

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

2. Section 165.1113 is added to read as follows:

§ 165.1113 Safety Zone: San Clemente Island, California.

(a) *Location:* The following area is a safety zone:

The water area adjacent to San Clemente Island, California, bounded by the following coordinates and San Clemente Island:

Point A—33°01'38" N	118°36'18" W
Point B—33°01'11" N	118°37'25" W
Point C—33°00'00" N	118°36'51" W
Point D—33°00'05" N	118°38'53" W
Point E—33°02'55" N	118°39'05" W
Point F—33°04'25" N	118°37'41" W
Point G—33°02'04" N	118°35'53" W

(b) *Regulations:* (1) In accordance with the general regulations in § 165.23 of this part, no entry is allowed into this safety zone unless authorized by the Captain of the Port, San Diego; (2) Section 165.23 also contains other general requirements.

Dated: June 20, 1988.

J.W. Scarborough,

Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 88–15618 Filed 7–25–88; 8:45 am]

BILLING CODE 4910–14–M

VETERANS ADMINISTRATION

38 CFR Parts 3 and 17

Automobile Allowance and Adaptive Equipment Eligibility; and, Devices To Overcome the Handicap of Deafness

AGENCY: Veterans Administration.

ACTION: Proposed regulatory amendments.

SUMMARY: The Veterans Administration (VA) is proposing to amend its adjudication and medical regulations concerning the automobile allowance and adaptive equipment program for certain severely disabled individuals. These amendments are necessary to implement provisions of law and to properly divide regulatory responsibility for these programs consistent with organizational and functional alignments. The effect of those amendments will be to extend automobile adaptive equipment eligibility for certain severely disabled persons, more clearly define program responsibility, and more accurately describe prerequisites for devices to overcome the handicap of deafness.

DATES: Comments must be received on or before August 19, 1988. Comments will be available for public inspection until September 2, 1988. These regulatory amendments are proposed to be made effective 30 days after publication of the final rule in the **Federal Register.**

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these proposed regulatory amendments to Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in room 132 at the above address only between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays) until September 2, 1988.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service (211B), Department of Veterans Benefits, (202) 233–3005, regarding amendments to 38 CFR Part 3, or Frederick Downs, Jr., Director, Prosthetics and Sensory Aids Service (1211) Department of Medicine and Surgery, (202) 233–2011, regarding amendments to 38 CFR Part 17.

SUPPLEMENTARY INFORMATION: The eligibility criteria for automotive adaptive equipment currently found in adjudication regulations include elements which are not within the control of the Department of Veterans Benefits but rather are within the jurisdiction of the Department of Medicine and Surgery. The following amendments to the adjudication and medical regulations clarify the program responsibilities of each Department and implement the legislative change to the adaptive equipment program made by Pub. L. 98–543 and Pub. L. 97–99. The medical regulations have also been amended to implement Pub. L. 98–528 which authorized furnishing devices to overcome the handicap of deafness.

Adjudication Regulations (38 CFR Part 3)

In order to eliminate the need for regulatory amendments each time there is a legislative change in the amount of financial assistance available to certain severely disabled persons for purchasing an automobile or other conveyance, the VA proposes to remove the monetary rate specified in § 3.808 and replace it with the appropriate statutory citation.

Section 3.808 is also being amended to implement provisions of Pub. L. 97–66 which made individuals suffering from service-connected ankylosis of the knees or hips eligible for adaptive equipment.

With regard to the adaptive equipment program, it is the responsibility of regional office adjudication divisions to certify that an

individual has the specific service-connected disability(ies) required by law for eligibility for the adaptive equipment benefit. General administration of the adaptive equipment program, and determinations regarding other eligibility requirements are within the jurisdiction of the Department of Medicine and Surgery (DM&S). To clarify the responsibilities of each Department, the VA proposes to amend § 3.808 to remove references to matters within the jurisdiction of DM&S. The removed material is being revised and transferred to the medical regulation (38 CFR Part 17). Section 3.808 will contain a cross-reference to the appropriate sections in the medical regulations.

Technical changes are also proposed for § 3.807 to make the language of that section gender neutral.

Medical Regulations (38 CFR Part 17)

The proposed change to 38 CFR 17.115d eliminates the current language pertaining to special automobile equipment which became inapplicable when Pub. L. 93–538 authorized van lifts and interior modifications under 38 U.S.C. Chapter 39. The language of § 17.115d is being changed to cite the authority of the Veterans' Health Care Act of 1984 (Pub. L. 98–528) to furnish devices for assisting in overcoming the handicap of deafness (including telecaptioning television decoders) to any veteran who is profoundly deaf and is entitled to compensation on account of hearing impairment.

Three new paragraphs are being added to the regulations to replace the provisions of § 3.808 which are proposed for removal. These paragraphs will also implement Pub. L. 97–66, Veterans' Disability, Compensation, Housing, and Memorial Benefits Amendments of 1981, concerning the eligibility for adaptive equipment for veterans entitled to compensation for ankylosis of the knee or hip; and to state the limitations concerning vehicle replacement contained in Pub. L. 98–543, Veterans' Benefits Improvement Act of 1984. Finally, the proposed regulations will clarify the authority of the VA to impose cost limitations on adaptive equipment and repairs to such equipment.

The Administrator hereby certifies that these proposed regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that these proposed amendments would not directly affect small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these proposed amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the VA has determined that these proposed regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They 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.

The Catalog of Federal Domestic Assistance Program Number is 64.100.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grants programs—Health, Health care, Health facilities, Health professions—Incorporation by reference, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Approved: June 22, 1988.

Thomas K. Turnage,

Administrator.

38 CFR Part 3, *Adjudication*, and 38 CFR Part 17, *Medical*, are proposed to be amended as follows:

§ 3.807 [Amended]

1. In the cross-references at the end of § 3.807, the words "Husband or widower. See § 3.51" are removed.

2. In § 3.807 the introductory text, paragraphs (a)(4), (b), (d)(2) and (d)(3) are revised to read as follows:

§ 3.807 Dependents' educational assistance-certification.

For the purposes of dependents' educational assistance under 38 U.S.C. Chapter 35 (see § 21.3020), the child, spouse or surviving spouse of a veteran or serviceperson will have basic eligibility if the following conditions are met:

(a) * * *

(4) Died as a result of a service-connected disability; or (if a serviceperson)

* * * * *

(b) *Service.* Service-connected disability or death must have been the result of active military, naval, or air service on or after April 21, 1898. (Pub. L. 89–358) Effective September 30, 1966, educational assistance for a child (but not for a spouse or surviving spouse) may be authorized based on service in the Philippine Commonwealth Army or as a Philippine Scout as defined in § 3.8(b), (c), or (d) of this part.

(Authority: 38 U.S.C. 1765)

* * * * *

(d) * * *

(2) "Spouse" means a person whose marriage to the veteran meets the requirements of § 3.50(a) of this part.

(3) "Surviving spouse" means a person whose marriage to the veteran meets the requirements of § 3.50(b) or § 3.52 of this part.

3. In § 3.808, the introductory text, paragraph (c) and paragraph (d) are revised and paragraph (b)(1)(iv) is added to read as follows:

§ 3.808 Automobile or other conveyances-certification.

A certification of eligibility for financial assistance in the purchase of one automobile or other conveyance in an amount not exceeding the amount specified in 38 U.S.C. 1902 (including all State, local, and other taxes where such are applicable and included in the purchase price) and of basic entitlement to necessary adaptive equipment will be made where the claimant meets the requirements of paragraphs (a), (b) and (c) of this section.

* * * * *

(b) * * *

(1) * * *

(iv) For adaptive equipment eligibility only, ankylosis of one or both knees or one or both hips.

(Authority: 38 U.S.C. 1902)

(c) *Claim for conveyance and certification for adaptive equipment.* A specific application for financial assistance in purchasing a conveyance is required which must contain a certification by the claimant that the conveyance will be operated only by persons properly licensed. The application will also be considered as an application for the adaptive equipment to insure that the claimant will be able to operate the conveyance in a manner consistent with safety and to satisfy the applicable standards of licensure of the proper licensing

authorities. Simultaneously with the certification provided pursuant to the introductory text of this section, a claimant for financial assistance in the purchase of an automobile will be furnished a certificate of eligibility for financial assistance in the purchase of such adaptive equipment as may be appropriate to the claimant's losses unless the need for such equipment is contraindicated by a physical or legal inability to operate the vehicle. There is no time limitation in which to apply. An application by a claimant on active duty will be deemed to have been filed with the VA on the date it is shown to have been placed in the hands of military authority for transmittal.

(Authority: 38 U.S.C. 1902)

(d) *Additional eligibility crtieria for adaptive equipment.* Claimants for adaptive equipment must also satisfy the additional eligibility criteria of §§ 17.119a through 17.119c of this chapter.

(Authority: 38 U.S.C. 1902)

4. Section 17.115d is revised to read as follows:

§ 17.115d Devices to assist in overcoming the handicap of deafness.

Devices for assisting in overcoming the handicap of deafness (including telecaptioning television decoders) may be furnished to any veteran who is profoundly deaf (rated 80% or more disabled for hearing impairment by the Veterans' Administration) and is entitled to compensation on account of such hearing impairment.

(Authority: 38 U.S.C. 1902)

5. Section 17.119a is redesignated as § 17.119d and new §§ 17.119a, 17.119b and 17.119c are added to read as follows:

§ 17.119a Eligibility for automobile adaptive equipment.

Automobile adaptive equipment may be authorized if the Chief Medical Director or designee determines that such equipment is deemed necessary to insure that the eligible person will be able to operate the automobile or other conveyance in a manner consistent with such person's safety and so as to satisfy the applicable standards of licensure established by the State of such person's residency or other proper licensing authority.

(a) Persons eligible for adaptive equipment are:

(1) Veterans who are entitled to receive compensation for the loss or permanent loss of use of one or both feet; or the loss or permanent loss of use of one or both hands; or ankylosis of one or both knees, or one or both hips if the disability is the result of injury incurred or disease contracted in or aggravated by active military, naval or air service.

(2) Members of the Armed Forces serving on active duty who are suffering from any disability described in paragraph (a)(1) of this section incurred or contracted during active military service are eligible to receive automobile adaptive equipment.

(b) Payment or reimbursement of reasonable costs for the repair, replacement, or reinstallation of adaptive equipment deemed necessary for the operation of the automobile may be authorized by the Chief Medical Director or designee.

(Authority: 38 U.S.C. 1902)

§ 17.119b Definition-adaptive equipment.

The term, adaptive equipment, means equipment which must be part of or added to a conveyance manufactured for sale to the general public to make it safe for use by the claimant, and enable that person to meet the applicable standards of licensure. Adaptive equipment includes any term specified by the Chief Medical Director or designee as ordinarily necessary for any of the classes of losses or combination of such losses specified in § 17.119a of this part, or as deemed necessary in an individual case. Adaptive equipment includes, but is not limited to, a basic automatic transmission, power steering, power brakes, power window lifts, power seats, air-conditioning equipment when necessary for the health and safety of the veteran, and special equipment necessary to assist the eligible person into or out of the automobile or other conveyance, regardless of whether the automobile or other conveyance is to be operated by the eligible person or is to be operated for such person by another person; and any modification of the interior space of the automobile or other conveyance if needed because of the physical condition of such person in order for such person to enter or operate the vehicle.

(Authority: 38 U.S.C. 1901, 1902)

§ 17.119c Limitations on assistance.

(a) An eligible person shall not be entitled to adaptive equipment for more than two automobiles or other conveyances at any one time or during any four-year period except when due to circumstances beyond control of such person, one of the automobiles or conveyances for which adaptive equipment was provided during the applicable four-year period is no longer available for the use of such person.

(1) Circumstances beyond the control of the eligible person are those where the vehicle was lost due to fire, theft, accident, court action, or when repairs are so costly as to be prohibitive or a different vehicle is required due to a change in the eligible person's physical condition.

(2) For purposes of paragraph (a)(1) of this section, an eligible person shall be deemed to have access to and use of an automobile or other conveyance for which the Veterans' Administration has provided adaptive equipment if that person has sold, given or transferred the vehicle to a spouse, family member or other person residing in the same household as the eligible person, or to a business owned by such person.

(Authority: 38 U.S.C. 1903)

(b) Eligible persons may be reimbursed for the actual cost of adaptive equipment subject to a dollar amount for specific items established from time to time by the Chief Medical Director.

(Authority: 38 U.S.C. 1902)

(c) Reimbursement for a repair to an item of adaptive equipment is limited to the current vehicles of record and only to the basic components authorized as automobile adaptive equipment. Reimbursable amounts for repairs are limited to the cost of parts and labor based on the amounts published in generally acceptable commercial estimating guides for domestic automobiles.

(Authority: 38 U.S.C. 1902)

§ 17.119d Obtaining vehicles for special driver training courses.

The Administrator may obtain by purchase, lease, gift or otherwise, any automobile, motor vehicle or other conveyance deemed necessary to conduct special driver training courses at Veterans' Administration health care facilities. The Administrator may sell, assign, transfer or convey any such automobile, vehicle or conveyance to which the Veterans' Administration holds title for such price or under such terms deemed appropriate by the Administrator. Any proceeds received from such disposition shall be credited to the applicable Veterans' Administration appropriation.

(Authority: 38 U.S.C. 1903(e)(3))

[FR Doc. 88-16735 Filed 7-25-88; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3420-1]

Approval and Promulgation of Air Quality Implementation Plans; Arkansas; Good Engineering Practice-Stack Height Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This **Federal Register** notice proposes approval of Good Engineering Practice-Stack Height (GEP-SH) and Dispersion Techniques revisions to sections 3 and 5 of the Regulations of the Arkansas Plan of Implementation (SIP) for Air Pollution Control. This proposed GEP-SH SIP revision is intended to implement section 123 of the Clean Air Act, as amended, and Federal regulations at 40 CFR Part 51. If approved, it will enable the State to ensure that the degree of emission limitation required for the control of any air pollutant under its SIP is not affected by that portion of any stack height which exceeds GEP-SH or by any other dispersion technique.

Through today's notice, EPA solicits public comments on its proposed approval of the Arkansas State GEP-SH regulations. The rationale for the proposed approval is contained in this notice and further documented in a *Technical Support Document* which is available for public review.

DATE: Comments must be received on or before August 25, 1988.

ADDRESSES: Written comments should be submitted to the address below: Mr. Thomas H. Diggs, Chief, SIP New Source Section (6T-AN), Air Programs Branch, Air, Pesticides and Toxics Division, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

Copies of the State's submittal and EPA's *Technical Support Document*, along with other information, are available for inspection during normal business hours at the following locations. Interested persons wishing to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

Environmental Protection Agency, Region 6 Air, Pesticides and Toxics Division, Air Programs Branch, SIP New Source Section, 1445 Ross Avenue, Dalas, Texas 75202.

Arkansas Department of Pollution Control and Ecology, Division of Air Pollution Control, 8001 National Drive, P.O. Box 9583, Little Rock, Arkansas 72219.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Diggs, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone (214) 655-7214 or FTS 255-7214.

SUPPLEMENTARY INFORMATION: Section 123 of the Clean Air Act, as amended August 1977, regulates the manner in which techniques for dispersion of pollutants from a source may be considered in setting emission limitations. Specifically, section 123 requires that the degree of emission limitation shall not be affected by the portion of a stack which exceeds GEP-SH or by "any other dispersion technique."

To fulfill this requirement of the Act, EPA initially promulgated GEP-SH regulations limiting stack height credits and otehr dispersion techniques at 47 FR 05864 (February 8, 1982). Portions of those regulations were successfully challenged in the U.S. Court of Appeals for the D.C. Circuit (see *Sierra Club* v. *EPA*, 719 F.2d 436 (D.C. Cir. 1983), resulting in their revision at 50 FR 27892 (July 8, 1985). Since then, the regulations have been renumbered as part of a comprehensive restructuring and consolidation of EPA's SIP development regulations. See 51 FR 40656 (November 7, 1986). Today's **Federal Register** proposal uses are the current numbers for citation.

Pursuant to section 406(d)(2) of the Clean Air Act Amendments of 1977, EPA has required that all States (1) review and revise, as necessary, their SIPs to include provisions that limit stack height credits and dispersion techniques in accordance with the EPA's July 8, 1985, revised regulations and (2) review all existing emission limitations to determine whether any of these limitations have been affected by impermissible stack height credits above GEP or by any other dispersion techniques and, if so, to prepare revised limitations consistent with their revised SIPs. Today's proposal concerns only the first of these requirements. Although the State of Arkansas has reviewed and evaluated emission limitations. of the existing sources by using the criteria provided in the **Federal Register** notice of July 8, 1985, EPA will publish the results of this review and revisions, if any, to emission limitations of the affected sources under a separate notice.

On July 1, 1987, the Governor of Arkansas submitted a copy of the Arkansas GEP-SH revisions to sections 3 and 5 of the Regulations of the Arkansas Plan of Implementation for Air Pollution Control as a proposed SIP revision. Supporting documents for the revision were also submitted. The Arkansas GEP-SH Regulations were developed by the Arkansas Department of Pollution Control and Ecology (ADPC&E) and were adopted by the Arkansas Commission on Pollution Control and Ecology on May 22, 1987. The Arkansas GEP-SH regulations are equivalent to the Federal regulations found at 40 CFR 51.100(z), 40 CFR 51.100(FF)-(kk), 40 CFR 51.118, 40 CFR 51.164, and are largely identical thereto except for minor changes to accommodate the State's regulatory format. EPA's preliminary determination indicates that the State's regulations and procedures are adequate and effective for implementation for the Federal stack height and dispersion technique regulations and section 123 of the Clean Air Act.

The primary substantive requirements for implementation of section 123 through SIPs are found at 40 CFR 51.118 and 40 CFR 51.164. When it promulgated them, EPA intended that 40 CFR 51.118 apply to a State's one-time review of existing sources and that 40 CFR 51.164 apply to its new source review program. 40 CFR 51.118 thus "grandfathers" certain existing sources and requires that modelling or field studies justifying an emission limitation based on GEP-SH in excess of formula height be made publicly avaiable prior to submission of the State's final decision on that existing source to EPA for review and approval as a SIP revision. 40 CFR 51.164, on the other hand, requires that modelling or field studies justifying a new source review permit limitation based on GEP-SH in excess of formula height be made publicly available prior to submission of issuance of the permit.

In adopting corresponding requirements, Arkansas replicated 40 CFR 51.118 in section 5(f) for application in its new source permitting program. As a result, Section 5(f) implicitly requires that permits containing emission limitations based on GEP-SH in excess of formula height be submitted to EPA for review and approval, presumably as SIP revisions. As adopted, the regulation also requires that the modelling or field studies supporting that stack height be made publicly available before the permit is provided to EPA for review. Together with the State's Federally approved permit regulation 4(d) (requiring that "the information submitted by the owner or operator and the Department's analysis of the effect of the proposed emissions on air quality" be made available for public

review prior to issuance of a permit), this is sufficient to satisfy the public participation requirements of 40 CFR 51.164. Although the requirement for EPA review of any such permits is more administratively cumbersome than the Act or EPA's regualtions require, it is found acceptable. However, to avoid future misunderstandings, the State may want to confirm EPA's interpretation of the regulation or amend the regulation to reflect its true intent prior to final approval.

In addition to the required implementing regulations, Arkansas has adopted definitions essential for their meaningful application. The State regulatory definitions for "emission limitation and emission standard" (Section 3(w)), "stack" (Section 3(x)), "a stack in existence" (Section 3(y)), "dispersion technique" (Section 3(r)), "good engineering practice stack height" (Section 3(s)), "nearby" (Section 3(t)), "excessive concentration" (Section 3(u)), and "Major modification" (Section 3(v)) replicate the Federal regulatory definitions at 40 CFR 51.100(z), 40 CFR 51.100(ff), 40 CFR 51.100(gg), 40 CFR 51.100(hh), 40 CFR 51.100(ii), 40 CFR 51.100(jj), 40 CFR 51.100(kk), and 40 CFR 51.165(a)(1)(v)(A) respectively.

The EPA's stack height regulations were challenged in *NRDC v. Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). On January 22, 1988, the U.S. Court of Appeals for the D.C. Circuit issued its decision affirming the regulations in large part, but remanding three provisions to the EPA for reconsideration. These are:

1. Grandfathering pre-October 11, 1983, within-formula stack height increases from demonstration requirements (40 CFR 51.100(kk)(2));
2. Dispersion credit for sources originally designed and constructed with merged or multiflue stacks (40 CFR 51.100(hh)(2)(ii)(A)); and
3. Grandfathering pre-1979 use of the refined H + 1.5L formula (40 CFR 51.100(ii)(2)).

Although the EPA generally proposes to approve Arkansas' stack height rules on the grounds that they satisfy 40 CFR Part 51, the EPA also provides notice that third action may be subject to modification when EPA completes rulemaking to respond to the decision in *NRDC v. Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). If the EPA's response to the *NRDC* remand modifies the July 8, 1985 regulations, the EPA will notify the State of Arkansas that its rules must be changed to comport with the EPA's modified requirements. This may result in revised emission limitations or may affect other actions taken by Arkansas and source owners or operators.

Proposed Action

EPA is proposing to approve a revision to the Arkansas State Implementation Plan (SIP) which adds the Arkansas Good Engineering Practice Stack Height (GEP–SH) Regulations to the SIP. The state has added its GEP–SH Regulations to sections 3 and 5 of its Regulations of the Arkansas Plan of Implementation for Air Pollution Control.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant econmic impact on a substantial number of small entities. (See 46 FR 8709.)

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

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon Monoxide, Hydrocarbons, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Authority: 42 U.S.C. 7401–7642.

Date: December 22, 1987.

Editorial Note: This document was received at the Office of the Federal Register on July 21, 1988.]

Robert E. Layton, Jr.,

Regional Administrator.

[FR Doc. 88–16753 Filed 7–25–88; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 4, 5, and 16

[CGD 86–067]

Programs for Chemical Drug and Alcohol Testing of Commercial Vessel Personnel; Announcement of Public Hearings on Proposed Rulemaking

AGENCY: Coast Guard, DOT.

ACTION: Announcement of public hearings on notice of proposed rulemaking.

SUMMARY: On July 8, 1988, the Coast Guard published in the **Federal Register** a notice of proposed rulemaking entitled, "Programs for Chemical Drug and Alcohol Testing of Commercial Vessel Personnel" (CGD 86–067, 53 FR 25926). This proposed rule would mandate drug and alcohol testing for commercial vessel personnel. The Coast Guard will hold public hearings on this proposal on the dates and at the locations specified below. The hearings will permit the Coast Guard to gather information and views on the regulatory proposal.

DATES: See Supplementary Information

ADDRESSES: See Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Mr. Sean T. Connaughton, Project Manager, Merchant Vessel Personnel Division, Office of Marine Safety, Security and Environmental Protection (G–MVP), Phone (202) 267–0229.

SUPPLEMENTARY INFORMATION: The Coast Guard will hold hearings on the following dates and locations. Each hearing will begin at 9:30 a.m. (0930) and end at 5:00 p.m. (1700) or as soon as all the speakers have been heard.

The hearing schedule is as follows:

Houston, Texas; Wednesday, August 10, 1988. Holiday Inn Crowne Plaza, Galleria Area, 2222 West Loop South.

Chicago, Illinois; Friday, August 12, 1988, Holiday Inn O'Hare, 5440 North River Road, Rosemont.

Washington, DC; Friday, August 19, 1988. FAA Auditorium, FOB–10A, 800 Independence Ave., SW.

San Francisco, California; Monday, August 22, 1988. Officers Dining Facility (Wing C), Support Center Alameda, Coast Guard Island, Alameda.

Interested persons are invited to participate in these hearings. Those wishing to make an oral statement must register at least 2 days before the date of the particular hearing at which the statement is to be made. Oral statements by individuals without prior registration will be allowed only if time permits. The Coast Guard reserves the right to impose time limits on oral presentations.

To register, call the following:

For the August 10, 1988 Houston, Texas Public Hearing: (713) 750–1912.

For the August 12, 1988 Chicago, Illinois Public Hearing: (312) 353–6820.

For the August 19, 1988 Washington, DC Public Hearing: (202) 267–0229.

For the August 22, 1988 San Francisco, California Public Hearing: (415) 437–3142.

Date: July 20, 1988.

J.D. Sipes,

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

[FR Doc. 88–16838 Filed 7–25–88; 8:45 am]

BILLING CODE 4910–14–M

Urban Mass Transportation Administration

49 CFR Part 653

[Docket 88-F]

Control of Drug Use in Mass Transit Operations

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Supplemental notice of public hearings.

SUMMARY: On July 8, 1988, the Urban Mass Transportation Administration (UMTA) published a notice of proposed rulemaking in the **Federal Register** entitled "Control of Drug Use In Mass Transit Operations". In that notice, UMTA announced that it would hold public hearings on the rulemaking, but that dates, times, and locations were not yet available. On July 12, 1988, UMTA announced the times and locations for all the hearings, except the hearing to be held in Los Angeles. This notice provides the date, time, and location for the hearing to be held in Los Angeles.

DATE: A public hearing is scheduled for Wednesday, August 31, 1988, at 10:30 a.m. (local time), in Los Angeles, California.

ADDRESSES: The public hearing will be held in the California State Office Building, Room 1138, 107 South Broadway, Los Angeles, California. Written comments on Docket No. 88-F should be addressed to: U.S. Department of Transportation, Urban Mass Transportation Administration, Office of the Chief Counsel, Docket No. 88-F, 400 7th Street, SW., Room 9316, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Holly Vandervort, Office of the Chief Counsel, (202) 366-1936 to register to make a statement at a hearing or to inquire about the logistics.

SUPPLEMENTARY INFORMATION: On July 8, 1988, the Urban Mass Transportation Administration (UMTA) published a notice of proposed rulemaking (NPRM) entitled "Control of Drug Use in Mass Transit Operations" (53 FR 25910). The proposed rule would require a recipient of Federal transit funding to certify that it has established a comprehensive anti-drug program. On July 12, 1988, UMTA announced that it would hold public hearings on the proposed rulemaking in Washington, DC, New York, NY, Chicago, IL, and Los Angeles, CA (53 FR 26289). The July 12 notice set out dates, times, and locations for all the hearings except the location of the Los Angeles hearing. This notice provides that information. The July 12 notice also set out the procedures for registering and making a statement at the hearings. Individuals interested in making a statement at the hearing or commenting on Docket No. 88-F, are directed to the July 12 notice at 53 FR 26289.

Issued on: July 21, 1988.

Daniel Duff,

Assistant Chief Counsel for Legislation and Regulations.

[FR Doc. 88-16768 Filed 7-25-88; 8:45 am]

BILLING CODE 4910-57-M

Notices

Federal Register
Vol. 53, No. 143
Tuesday, July 26, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Special Committee on Financial Services; Public Meeting

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of a meeting of the Special Committee on Financial Services of the Administrative Conference of the United States. The Committee has scheduled this meeting to develop proposed recommendations dealing with the Administrative Adjudication of Claims Against Savings Institution Receiverships, based upon a study by Professor Lawrence G. Baxter of Duke University School of Law. Copies of the Committee's report and draft recommendation may be obtained from the contact person named in this notice.

DATE: Wednesday, August 17, 1988, at 2:00 p.m.

Location: Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037

Public Participation: Committee meetings are open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meetings. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

FOR FURTHER INFORMATION CONTACT: Brian C. Murphy, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, D.C. 20037. Telephone (202) 254–7020.

Jeffrey S. Lubbers,
Research Director.
April 20, 1988.

[FR Doc. 88–16857 Filed 7–25–88; 8:45 am]
BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[CN–88–101]

Advisory Committee on Cotton Marketing; Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Advisory Committee on Cotton Marketing will meet on Wednesday, August 24, 1988, beginning at 8:00 a.m. at the Peabody Hotel, 149 Union Avenue, Memphis, Tennessee. The purpose of the meeting, the second held by the committee, will be to continue a review of prominent marketing system issues.

Tentative agenda items include: Recommendations from the subcommittee of the Advisory Committee on Cotton Marketing, which met on June 22, 1988, in Dallas, Texas, regarding High Volume Instrument classification quality factors which could be added to the Commodity Credit Corporation loan schedule, an update on changes in the establishment of spot quotations and on efforts to modify the Universal Cotton Standards Agreement; and a review of efforts currently underway to evaluate the differences between processing efficiency and product quality for Light Spotted and White cottons, and to identify causes behind the increase in production of Light Spotted cotton. This meeting is open to the public, and written comments may be submitted in advance or following the meeting to Jesse F. Moore, Director, Cotton Division. Time, however, will be inadequate to permit lengthy public comment on the day of the meeting.

FOR FURTHER INFORMATION CONTACT: Jesse F. Moore, Director, Cotton Division, AMS, USDA, P.O. Box 96456, Washington, DC 20090 6456, (202) 447–3193.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Cotton Marketing was established by the U.S. Department of Agriculture to review the cotton marketing system and to recommend ways of improving its efficiency. Notice of this meeting is provided in accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463).

Dated: July 21, 1988.

J. Patrick Boyle,
Administrator

[FR Doc. 88–16763 Filed 7–25–88; 8:45 am]
BILLING CODE 3410–02–M

Forest Service

Southern Region; Fee Schedule for Communication Uses

ACTION: Notice of proposed policy; request for comments.

SUMMARY: The Regional Forester for the Southern Region is revising procedures governing the determination of rental fees for communication uses on National Forest System lands in the States of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia and the Commonwealth of Puerto Rico. Comments from interested individuals and users are welcome.

DATE: Comments must be in writing and received by September 26, 1988.

FOR FURTHER INFORMATION CONTACT: Vince McCormack or George B. Hemingway, Lands Staff, Forest Service, 1720 Peachtree St. NW, Atlanta, Georgia 30367, (404) 347–2873 or 347–2595.

Current fees are calculated at two-tenths of one percent (0.2%) of the permit holders total investment in facilities and equipment plus 5 percent (5%) of rental income received from building tenants and/or equipment users served by the holder.

The Federal Land Policy and Management Act of 1976 (FLPMA) states that "The Secretary of Agriculture, with respect to lands within the National Forest System, is authorized to grant, issue, or renew rights-of-way over, upon, under, or through such lands for systems for the transmission or reception of radio, television, telephone, telegraph and other electronic signals and other means

of communications" provided that "the holder of such right-of-way shall pay annually in advance the fair market value of such right-of-way as determined by the Secretary."

Regulations promulgated to implement FLPMA state at 36 CFR 251.57 that "The fee will be based upon the fair market value of the rights and privileges authorized as determined by appraisal or other sound business management principles." A revised policy (50 FR 40574, October 4, 1985) that broadens the method of determining annual land use rental fees for communication uses states that "The Chief or Regional Foresters will determine which of three methods (site specific appraisal, competitive bidding, or Regional Fee Schedule) is appropriate for particular geographic areas."

In keeping with this direction the Regional Forester for the Southern Region has determined that:

(1) A fee schedule would be an appropriate cost-effective method to use to assess fees for most communication sites and uses. This schedule is intended to cover the majority of the existing and proposed sites and uses in the Southern Region. However, fees for atypical sites (unique sites/uses or sites/uses servicing high populations) may not be covered by this Schedule. Examples of the types of sites/uses not covered by this Schedule are: Cellular Telephone Uses; the Mt. Pisgah Electronic Site in North Carolina; the East Peak Electronic Site in Puerto Rico; and the communication uses authorized by the Puerto Rico Telephone Company on the El Yunque Electronic Site in Puerto Rico.

(2) The authorized officer may use site specific appraisals, sound business management principles, and/or rental analysis to determine fees for individual sites/uses when market evidence such as leases for similar uses demonstrate the inapplicability of the schedule. Appraisals provided by the holder or other groups may be used to determine fees if the Review Appraisers establish that the appraisal meets Forest Service standards and the fee represents fair market value.

(3) Competitive bidding may be used to establish fees for new sites.

SUPPLEMENTARY INFORMATION: On June 18, 1987 the Southern Region of the Forest Service published a notice of a proposed fee schedule for communication uses (52 FR 23190). That schedule set forth proposed annual rental fees for communication uses by classes for the various states within the Region and the Commonwealth of Puerto Rico. Comments on the proposal were due by August 18, 1987.

Analysis of Public Response: The notice and individual permittee mailings generated 46 written and telephoned responses. A breakdown of the respondents is as follows:

Respondent	No.	Percent
Federal Agencies	3	6
Utility Companies	5	11
Public, nonprofit, noncommercial Broadcasters	4	9
Commercial Broadcasters	2	4
Commercial multi-user systems	11	24
Amateur Radio Operators	12	26
Other minor uses systems	4	9
Others	5	11
Total	46	100

Included in the above were: Three who challenged the category their use was classified for; five Federal, State and quasi-public agencies concerned over their status for exemptions of fees; one user who felt the proposed fee schedule is excellent; and one user who posted the Forest Service of his decision to terminate his use. The other 36 generally felt that the proposed fees are either too high or that the Government should not charge a fee for their type of uses. A number of commentators also felt that the fees were not reflective of fair market value and challenged the basis for determining the proposed fees.

In addition to the above, we have coordinated our efforts with our Washington Office Lands Staff and representatives for the other Regions of the Forest Service. We found that across the nation the permit holders concerns are fairly consistent and for the most part, centered on the topics of: fee exemptions and waivers; fee not fairly reflecting rates found in the private sector; phase-in of fee increases; and the consistency, or inconsistency, of proposed fees from one area to another.

Following is a summary of the comments for this Region together with a discussion of policy, and where applicable, a discussion of the resulting changes in the schedule.

Phase-in of fee increases

That portion of the new fee that exceeds the current fee by 100% but less than $2,000, will be phased-in over a 3 year period. That portion of the new fee that exceeds the current fee by 100%, and by more than $2,000, will be phased-in over a 5-year period.

Fee schedule adjustments

The fee rates listed in the fee schedule will be adjusted annually using the second quarter CPI-U for the proceeding year. For example, the second quarter CPI-U for 1989 will be used to adjust the fee schedule for use in determining fees for 1990.

In addition, market studies including analyses of private rentals will be made in 5 years to determine the need for updating the fee schedule. Changes and adjustments in the schedule will be made as warranted based on those studies and findings.

Applicability of fees to public and non-profit entities

Most of the comments were on this issue. Several Governmental agencies want assurances that they will not lose their fee exemptions. Others want exemptions for those uses that are established specifically for providing aid or education to the public by non-profit entities.

No rental fee will be charged when the holder is another Federal agency (36 CFR 251.57(C)). The payment of a fair share of the cost of operation and maintenance of privately owned structural and land improvements will, however, be required of all Federal agencies who jointly occupy such facilities (FSH 2709.11, Chapter 50, Section 53.9–15).

Under Pub. L. 98–300 and Forest Service Manual 2728.32, facilities and extensions from facilities financed pursuant to the Rural Electrification Act of 1936 are exempt from the payment of fees prescribed by this Schedule.

Fees to State or local governments may be waived (36 CFR 251.57(b)(1)); however, the fee will *not* be waived if the holder charges, or would charge, the United States for similar privileges. Reciprocal agreements between state or local governments and federal agencies will be honored.

For all others: As provided by the Secretary of Agriculture's Regulations 36 CFR 251.57b and current Forest Service policy, all or part of the fees may be waived. These procedures are not affected by the proposed fee schedule. It is the responsibility of the holder to submit a request with justification for fee waiver to the authorized officer. Fees will not be waived below $75 for communication uses.

Fee for commercial communicator

A number of commenters pointed out the inequity of charging a flat fee for those type uses. Some systems serve so few customers that the fee in the schedule exceeds the income derived from the use. Others are designed to serve hundreds of customers and generate high incomes.

Private rentals for these types of uses show an array of fees charged with no standard or particular method for setting

the fees used. While some landowners' charge flat fees, others charge flat fees plus fees per frequency, or unit, or slot; and still others charge a percentage of the income derived from the use.

This category of uses is dynamic and is rapidly changing. New systems and types of uses are being developed at a fairly rapid rate. And the potential growth over the next few years appears greater for these systems than for those in any of the other classes listed in the schedule.

The method selected is to charge a rate per frequency for two way radio systems (subject to a base rate) plus applicable rates for the holder's microwave systems.

Consideration for site improvements and maintenance responsibilities

Several commentators alluded to the principle that the fees should be for only the use of the land that the user occupies. They contend that adjustments should be made for such items as road maintenance, site maintenance and, where applicable, for the electrical power and other services that the permit holders are responsible for.

The data collected from the private sector was sifted and the rentals for sites and uses most similar to those on the National Forest lands were used. Differences among the sites, leases and lessee responsibilities were analyzed and adjusted as necessary. Numerous professional real estate appraisers were used to collect and analyze the data; and that, in turn, was reviewed by Forest Service staff real estate review appraisers. A check on that overall work indicates that proper procedures were followed and that no further adjustments are needed.

Summary: Future fees will be determined by individual appraisals, competitive bidding, or a fee schedule. Fees for some uses will continue to be based on individual appraisals and/or competitive bidding. But for most, fees will be established by reference to a fee schedule. That fee schedule is based on sound business management principles, and as far as practicable, is in accordance with comparable commercial practices for establishing fair market rental fees.

The schedule provides rental fee rates for communication uses based on types of uses for given states or areas. The fee rates will be adjusted annually using the second quarter CPI–U for the year preceding the billing year. Also, the schedule will be reviewed every 5 years and updated and adjusted as necessary based on market studies.

That portion of the new fees that exceed the current fees by 100% will be phased-in.

The fee schedule is effective January 1, 1989 and new fees will be reflected in the billing for CY 1989.

Existing policy and qualification for waiver of fees is set forth in 36 CFR 251.57. Pursuant to that the authorizing officer determines, upon application, whether a particular use qualifies for a full or partial waiver of fees.

Proposed Fee Schedule: This schedule is based on market analyses completed in CY 1988. Market studies were originally performed by Forest Service staff real estate appraisers for each of the states (and the commonwealth of Puerto Rico) identified in the schedule except for Arkansas, Georgia, North Carolina, Tennessee and Virginia. Separate studies were made for the Ozark and Ouachita National Forests in Arkansas and a joint study was made for the areas in Georgia, North Carolina, Tennessee and Virginia. Following the market studies, the appraisers from the mountain areas (AR, GA, KY, NC, TN, VA & PR) performed further studies and analysis to ensure consistency in procedures and in setting fee by use types.

To coordinate our efforts with our Washington Office and those for the other Forest Service Regions we have revised the schedule format and better defined the various types of communication uses covered. This schedule proposes rental fees by the type uses defined herein. Fees for atypical, unique and miscellaneous uses not herein defined (as determined by the authorizing officer) will be established based on appraisals, sound business management principles, and/or negotiations as described in the "revised policy" summarized in the "background" section of this notice.

COMMUNICATIONS USE FEE SCHEDULE, SOUTHERN REGION, FOREST SERVICE, USDA

Use Category [1]	AL	AR	FL	GA	KY	LA	MS	NC	SC	TN	TX	VA	PR
1. Common Carrier Microwave Relay & Industrial Microwave	300	3,000	.....	2,500	2,400	.....	600	2,500	.....	2,500	1,800	2,500	4,000
2. Radio Broadcast	.....	2,400	.....	3,000	1,600	.....	.....	3,000	.....	3,000	.....	3,000	3,000
3. TV Broadcast	300	3,000	.....	3,000	3,000	.....	.....	3,000	.....	3,000	.....	3,000	3,000
4. Cable and Subscription TV	.....	2,500	.....	2,500	3,000	.....	.....	2,500	.....	2,500	.....	2,500	1,300
5. Broadcast Translator [2]	.....	400	.....	400	400	.....	.....	400	.....	400	.....	400	225
6. Passive Reflector	.....	.....	.....	400	.....	.....	.....	400	.....	400	.....	400	225
7. Commercial [3]	.....	200	.....	200	200	.....	.....	200	.....	200	.....	200	225
7A. Communicator	.....	400	.....	400	400	.....	.....	400	.....	400	.....	400	450
8. Cellular Telephone [4]	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
9. Internal Two-Way Radio	300	400	2,000	400	400	300	360	400	.....	400	500	400	1,300
10. Amateur Radio	75	75	75	75	75	75	75	75	75	75	75	75	75
11. Personal/Private "Receive Only"	75	75	75	75	75	75	75	75	75	75	75	75	75
12. Natural Resource & Eviron. Monitoring	75	75	75	75	75	75	75	75	75	75	75	75	75

[1] Appurtenant uses—Except for commercial communicators, appurtenant uses will not be assessed additional fees. Subsidiary firms are considered autonomous and do not qualify for appurtenant use fee exemption.

[2] Translator sites operated by a single licensee are considered one use.

[3] The fee will be calculated on the basis of the applicable rate for each licensed radio transmitting frequency (channel) which is used by: (a) Single user, (b) shared or community repeater, (c) trunked system or specialized mobile radio system, (d) pager system, etc.; plus the applicable rate for each of the commercial communicator's licensed microwave systems on the site; subject, however, to the applicable minimum fee shown in the schedule. Applicable rates for licensed radio transmitting frequencies (channels) are shown above the solid lines in the schedule ($200 for AR, GA, KY, NC, TN, & VA and $225 for PR). Minimum fees for this type of use are shown below the solid line and in parenthesis ($400 for AR, GA, KY, NC, TN, & VA, and $450 for PR). Applicable rates for such microwave systems are those established in use category No. 1—Common Carrier Microwave Relay and Industrial Microwave.

[4] Currently there are no uses on National Forest System lands within the Southern Region; but applications are expected within the next few years. Fees will be based on appraisals until the first review period (1994). At that time fees may be incorporated into this schedule.

Definitions

Common Carrier Microwave Relay Use: This group typically includes longline carriers who relay intra and interstate transmissions using point to point microwave networks or systems. These users are regulated by state Public Utility Commissions and must provide service to any consumer with the ability to pay according to published rate schedule.

Industrial Microwave Use: This group includes entities who are not in the communications business, but have their own internal microwave communications systems or networks. Users in this group may include pipeline and power companies, railroads and land resource management agencies or firms. The communication service is not sold and is limited to the user.

Radio Broadcast Use: This category includes FCC authorized facilities that broadcast AM and FM audio signals for general public reception. Users include radio stations that generate revenues from advertising and public radio stations whose revenues are supported by subscriptions, grants and donations. Broadcast areas often overlap state boundaries. It relates only to primary transmitters and not rebroadcast systems such as translators. Ancillary activities authorized under this use relate to microwave and/or 2-way radio links from a permitted site to studio or other fixed or mobile units directly related to the broadcast activity.

Television Broadcast Use: This category includes FCC authorized facilities that broadcast VHF and UHF audio and video signals for general public reception. Users include commercial television stations (major and independent networks) whose revenues are generated from advertising, and public television stations whose revenues are supported by subscriptions, grants, and donations. Broadcast areas may overlap state boundaries. It relates only to primary transmitters and not rebroadcast systems such as translators. Ancillary activities authorized under this use relate to microwave and/or 2-way radio links from a permitted site to studio or other fixed or mobile units directly related to the broadcast activity.

Cable and Subscription Television Use: This category includes cable TV head-end antenna or satellite dish receivers used for community television pickups that retransmit by cable or any other means whereby subscribers pay periodic fees to receive the signal. These systems normally operate as a commercial entity within an authorized franchise area.

Broadcast Translator Use: This category of use consists of receiving up a television or FM radio broadcast signal and rebroadcasting it on a different channel or frequency for local reception. In some cases the translator relays the signal to another booster or translator. This category of use includes translators associated with public telecommunications service.

Passive Reflector Use: Passive reflectors include various types of nonpowered reflector devices used to bend or ricochet electronic signals between active relay stations or between an active relay station and terminal. The reflector requires point-to-point line-of-sight with the connecting relay stations, but does not require electric power. Maintenance is minimal and reflectors seldom require visitation.

Commercial Communicators Use: An entity whose primary business is providing communications service to others. They may or may not be regulated by State Public Utility Commissions but are required to hold FCC licenses. Some entities also own and lease building, tower and related facility space as part of their business enterprise. Those that do are usually communications facility managers.

Cellular Telephone Use: This use is a specialized service of commercial communicators and involves a mobile UHF radio telephone system. A cell is the area covered by one transmitter/receiving site. Radio signals are automatically picked up by another cell's receiver as the radio telephone transmitter passes from cell to cell.

Internal Two-Way Radio Repeater Use: These are users who operate two-way radio repeaters for the purpose of internal communications in support of business, community activities, or other organizational objectives. The communication service is not sold and is limited to the user.

Amateur Radio Use: Repeaters used by individuals or groups who are licensed by FCC as amateur radio operators.

Personal/Private "Receive Only" Use: These include radio and TV receiving antennas, satellite dishes and other equipment/facilities designed for the reception of electronic signals, serving private homes and recreation residences. These facilities are personally owned and not operated for profit.

Natural Resources and Environmental Monitoring: This use includes the transmission of telemetry data from a remote site to a central receiving station.

Fee Formula Options for Multiple Occupancies

To improve administration of communication sites, Forest Service policy (50 FR 40574, October 4, 1985) provides for authorizing shared facilities under a single authorization. Under the conditions of those authorizations, holdings rather than the Forest Service authorize the use of their facilities by others.

Collection of Forest Service fees and performing certain administrative duties required under this type of authorization are burdens of the holder. In large or complex situations the burdens may become so great as to become unacceptable to the holder without some remuneration by the Forest Service. Therefore, when a determination by the Forest Service is made that it is beneficial to do so (considering cost benefits to the Government, contributions to the Secretary's program, general public benefit, and costs incurred by the holder to administer the uses), the authorized officer may allow a fee based on: (1) 100% of the scheduled fee for the highest value use allowed under the holder's authorization; and (2) a percentage of the schedule fee for each additional use allowed under holder's permit (Note, the percentage of the fee retained by the holder is intended to cover the cost of administering the use within the terms of the holders authorization plus a reasonable profit). It will not apply to holders whose primary business is the rental of space to others (facility managers) and in some cases commercial communicators.

Consolidation of facilities on a site may meet the objectives of the Forest Service. In these cases, the authorized officer may negotiate a temporary discount in fees to encourage consolidation. Fee discounts cannot exceed the holders' cost of consolidation. In no case will fees be discounted for cost incurred by the holder to meet the conditions of the authorization (maintenance, safety requirements, etc.).

Fee Waivers

No rental fee will be charged when the holder is another Federal agency [36 CFR 251.57 (C)]. The payment of a fair share of the cost of operation and maintenance of privately owned structural and land improvements will, however, be required of all Federal agencies who jointly occupy such facilities (FSH 2709.11, Chapter 50, section 53.9—15).

Under Pub. L. 98–300 and Forest Service Manual 2728.32, facilities and

extensions from facilities financed pursuant to the Rural Electrification Act of 1936 are exempt from the payment of fees prescribed by this Schedule.

Fees to State and local governments may be waived [36 CFR 251.57(b)]; except that fees will *not* be waived if the holder charges, or would charge, the United States for similar privileges. Reciprocal agreements between State or local governments and Federal agencies will be honored. Fee waivers by the Forest Service have no effect on fees charged by the holder for the use of his facilities and/or equipment. For all others: As provided by the Secretary of Agriculture's Regulations 36 CFR 251.57b and current Forest Service policy, all or part of the fees may be waived. These procedures are not affected by the proposed fee schedule. It is the responsibility of the holder to submit a request with justification for fee waiver to the authorized officer. Fees will not be waived below $75 for communication uses.

Annual Fee Schedule Adjustment

All categories of use are subject to an annual fee adjustment. The U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI–U) for July of the current year will be divided by the CPI–U multiplier which will be used to annually update the Communication Fee Schedule.

Periodic Review of Fee Schedule

The Forest Service recognizes the need for granting reasonable security to its permit holders and of protecting the public's interest by providing for the adjustment of fees when the value of the use authorized or the operations of the holder clearly indicate that a fee change is justified. To insure this mutual protection, the Region shall, by September 1, 1994, review the existing schedule to determine whether market conditions and business practices have changed sufficiently to warrant a schedule revision. Holders will be given an opportunity to provide data which might have a bearing on that review and fee adjustments, if appropriate, will be announced to the holder at least 90 days before becoming effective on January 1, 1995.

Phase-in

That portion of the new fee that exceeds the current fee by 100%, but less than $2,000, will be phased-in over a 3 year period. That portion of the new fee that exceeds the current fee by 100% and by more than $2,000 will be phased-in over a 5 year period. Fees phased-in will be subject to the CPI–U annual fee adjustment.

Implementation

The fee schedule would be effective January 1, 1989 and the new fees reflected in the billing for CY 1989.

Date: June 30, 1988.

Marvin Meier,

Deputy Regional Forester.

[FR Doc. 88–16762 Filed 7–25–88; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Semiconductor Technical Advisory Committee; Closed Meeting

A meeting of the Semiconductor Technical Advisory Committee will be held August 17, 1988, at 9:00 a.m., Herbert C. Hoover Building, Room 4830, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to Semiconductor equipment or technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information call Ruth D. Fitts at 202–377–2583.

Date: July 20, 1988.

Betty A. Ferrell,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 88–16769 Filed 7–25–88; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Docket No. 23–88]

Proposed Foreign-Trade Zone—Victoria and Calhoun Counties, Texas; Subzones for CMC Steel Fabricators, Inc.; Extension of Comment Period

The period for comments regarding the proposed subzones for CMC Steel Fabricators, Inc., in Victoria County, Texas (53 FR 17739, 5/18/88), is extended to August 18, 1988, to allow interested parties additional time to comment on the subzones.

Comments in writing and invited during this period. Submissions should include 5 copies. The public record will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: July 20, 1988.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 88–16796 Filed 7–25–88; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 386]

Resolution and Order Approving The Application of The Westport Economic Development Corp. For a Foreign-Trade Zone In El Paso, TX

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Westport Economic Development Corporation, a Texas non-profit corporation, filed with the Foreign-Trade Zones Board (the Board) on November 23, 1987, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in El Paso, Texas, within the El Paso Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to

carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant To Establish, Operate, and Maintain a Foreign-Trade Zone In El Paso, TX

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Westport Economic Development Corporation (the Grantee), a Texas non-profit corporation, has made application (filed November 23, 1987, FTZ Docket 37–87, 52 FR 45981) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a second foreign-trade zone in El Paso, Texas, within the El Paso Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 150 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC this 13th day of July 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.

C. William Verity, Jr.,

Chairman and Executive Officer.

Attest: John J. Da Ponte, Jr., Executive Secretary.

[FR Doc. 88–16798 Filed 7–25–88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-588-801]

Postponement of Preliminary Antidumping Duty Determination; Certain All-Terrain Vehicles from Japan

AGENCY: International Trade Administration, Import Administration, Commerce.

SUMMARY: This notice informs the public that we have received a second request from petitioner in this investigation to postpone the preliminary determination as permitted by section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act). Based on this request, we are postponing our preliminary determination of whether sales of certain all-terrain vehicles from Japan have occurred at less than fair value until not later than September 6, 1988.

EFFECTIVE DATE: July 26, 1988.

FOR FURTHER INFORMATION CONTACT: Gregory G. Borden or Louis Apple, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377–3003 or (202) 377–1769.

SUPPLEMENTARY INFORMATION: On March 7, 1988 (52 FR 7222) we published a notice of initiation of an antidumping duty investigation to determine whether certain all-terrain vehicles from Japan are being, or are likely to be, sold in the United States at less than fair value. The notice stated that we would issue our preliminary determination by July 18, 1988.

As detailed in the notice, the petition alleged that imports of certain all-terrain vehicles from Japan are being, or are likely to be, sold in the United States at less than fair value.

On July 6, 1988, we published a notice postponing the preliminary determination of whether sales of certain all-terrain vehicles from Japan have occurred at less than fair value until not later than August 8, 1988.

On July 14, 1988, petitioner, Polaris Industries L.P., requested that the Department extend the period for the preliminary determination until not later than 210 days after the date of receipt of the petition in accordance with section 733(c)(1)(A) of the Act. Accordingly, the period for determination in this case is hereby extended. We intend to issue a preliminary determination not later than September 6, 1988.

This notice is published pursuant to section 733(c)(2) of the Act.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88–16794 Filed 7–25–88; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Stainless Steel; Request For Comments

AGENCY: Import administration, International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products, with

respect to certain AISI grade 303 stainless steel wire.

DATE: Comments must be submitted on or before August 5, 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, (202) 377–0159.

SUPPLEMENTARY INFORMATION: Paragraph 8 of the U.S.-Japan Arrangement on Certain Steel Products provides that if the U.S. determines that "* * * because of abnormal supply or demand factors, the United States steel industry will be unable to meet demand in the United States of America for a particular category or subcategory (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such category or subcategory * * *".

We have received a short-supply request for certain AISI grade 303 stainless steel wire with diameters ranging from 2.403 mm to 2.430 mm or from 2.605 to 2.623 mm, in coils weighing between 50 and 55 kilograms each, with a tensile strength of 123,000 to 145,000 psi, and with a 12 RMS finish or better.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than August 5, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments on this request in a public file. Anyone submitting business proprietary information should clearly identify that portion of their 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, Import Administration, U.S. Department of Commerce, Room B–099 at the above address.

July 13, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88–16797 Filed 7–25–88; 8:45 am]

BILLING CODE 3510–DS–M

University of Medicine and Dentistry of New Jersey et al.; Consolidated Decision on Applications For Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88–154. *Applicant:* University of Medicine and Dentistry of New Jersey, Piscataway, NJ 08854. *Instrument:* Electron Microscope, Model JEM-1200EX. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 53 FR 17094, May 13, 1988. *Instrument Ordered:* February 9, 1988.

Docket Number: 88–157. *Applicant:* Dana-Farber Cancer Institute, Boston, MA 02115. *Instrument:* Electron Microscope, Model JEM-100CX. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 53 FR 17094, May 13, 1988. *Instrument Ordered:* January 25, 1988.

Docket Number: 88–162. *Applicant:* University of Wisconsin-Madison, Madison, WI 53706. *Instrument:* Electron Microscope, Model JEM-1200EX/SEG/DP/DP. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 53 FR 1709J, May 13, 1988. *Instrument Ordered:* January 14, 1988.

Docket Number: 88–166. *Applicant:* Harvard Medical School, Boston, MA 02115. *Instrument:* Electron Microscope, Model JEM-1200EX. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 53 FR 18329, May 23, 1988. *Instrument Ordered:* January 27, 1988.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88–16795 Filed 7–25–88; 8:45 am]

BILLING CODE 3510–05–M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be issued.

FOR FURTHER INFORMATION CONTACT: John E. Stiner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Compnay Act of 1982 (Pub. L. 97–290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 88–00010." A summary of the application follows.

Applicant: Michigan Export Development Authority, State of

Michigan, P.O. Box 30017, Lansing, Michigan 48909. Contact: Randy Harmson, Executive Director, Telephone: (517) 373–1054.

Application #: 88–00010.

Date Deemed Submitted: July 14, 1988.

Members (in addition to applicant): None.

Summary of the Application:

Export Trade:

Products

All products.

Export Trade Facilitation Services (as they relate to the export of products)

Michigan Export Development Authority (MEDA) intends to provide or arrange for the provision of shipping (overseas freight transportation, inland freight to the terminal or port, terminal or port storage, packing and crating, freight forwarding, chartering of vessels, consolidation of shipments, documentation, wharfage and handling charges, and other services directly related to the movement of goods being exported or in the course of being exported), credit and banking terms, financing, insurance, legal, foreign exchange, product adaptation, taxation, and marketing services.

Export Markets:

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation:

MEDA seeks certification to:

1. Enter into joint discussion and negotiations with foreign buyers concerning:

(a) Standardized production specifications, quantities, timing, shipping, packing, credit, and banking terms necessary to meet the needs of the foreign buyer, MEDA, and members;

(b) Standardized quality standards that meet foreign buyer specifications; and

(c) Standardized bidding procedures acceptable to foreign buyers.

2. Act jointly to negotiate charges and other terms and to negotiate contracts with providers of transportation services, including advantageous freight contracts with individual carriers and carrier conferences, chartering of vessels for MEDA and members, and negotiations for inland transportation for goods in the course of being exported.

3. Enter into agreements among MEDA and members on the terms of each party's participation in the negotiation and fulfillment of transportation contracts, including participation in inland transportation negotiations for goods to be exported.

4. Refuse to deal with an individual or company with respect to the export of any goods or service to a foreign buyer.

5. Refuse to deal with respect to the export of any goods or service to a foreign buyer with any member not complying with the standards, agreements, or other terms of export trade set by MEDA and/or its members.

6. Exchange information and make agreements concerning the extent of member participation in transactions which involve MEDA and/or members. The information to be exchanged includes:

(a) Information that is already available to the trade or to the general public;

(b) Information (such as selling strategies, prices, projected demand, customary terms of sale) solely about the export market;

(c) Information on costs specific to the export market (such as ocean freight, inland freight to terminal or port storage, wharfage and handling charges, insurance, agents, commissions, export sales documentation and service, and export sales financing);

(d) Information about U.S. and foreign legislation and regulation affecting sales to export markets;

(e) Information about the price, quality, quantity, source, and delivery dates of goods or services available from members for exports;

(f) Information about terms and conditions of contracts for sales in the export market to be considered and/or bid on by MEDA and its members; and

(g) Any other commercial, financial, or industrial information (such as production capacity or quality control procedures) strictly regarding exports that is not already generally available to the trade or public from members or suppliers to a transaction.

7. Enter into exclusive or nonexclusive agreements with export intermediaries of any type to appoint an export intermediary to act for or provide services to MEDA and members, whereby each export intermediary may agree not to represent MEDA and members' competitors in the sale of goods or services to any export market and not to buy any goods or services from any of MEDA or members' competitors for resale in any export market.

8. Enter into exclusive or nonexclusive agreements with foreign customers, whereby each customer may agree not to purchase goods or services from MEDA's or members' competitors.

9. Enter into exclusive or nonexclusive agreements with export intermediaries of any type to provide Export Trade Facilitation Services.

10. Limited membership in MEDA to businesses operating in Michigan and to Michigan residents.

11. Enter into joint ventures and other agreements between members and nonmembers (including nonmembers located outside Michigan) that specify or meet standards on quality, quantity, and price specifications for transactions. MEDA will engage in price, quality, quantity, and other negotiations directly with the foreign buyer when appropriate. Otherwise, such specifications will be set by agreement between MEDA and members and the customer.

Date: July 20, 1988.

John E. Stiner,

Director, Office of Export Trading Company Affairs.

[FR Doc. 88–16748 Filed 7–25–88; 8:45 am]

BILLING CODE 3510-DR-M

[A–508–801]

Initiation of Antidumping Duty Investigation; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Israel

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of industrial belts and components and parts thereof, whether cured or uncured, (hereinafter referrd to as industrial belts) from Israel are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before August 15, 1988. If that determination is affirmative, we will make a preliminary determination on or before December 7, 1988.

EFFECTIVE DATE: July 26, 1988.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–1769.

SUPPLEMENTARY INFORMATION:

The Petition

On June 30, 1988, we received a petition filed in proper form by Gates Rubber Company on behalf of the domestic industrial belts industry. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of industrial belts from Israel are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury, to, a U.S. industry.

If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the **"FOR FURTHER INFORMATION CONTACT"** section of this notice.

United States Price and Foreign Market Value

Petition considers the prices it must use to meet the competition as its best evidence of Israeli selling prices in the United States. United States price was based on distributor's selling prices to industrial consumers. Petitioner deducted, where appropriate, profit, movement charges, and import duties.

Petitioner based foreign market value on its own export prices which its representative in Israel advises are necessary for its belts to be competitive in Israel. Petitioner also adjusted for any difference in credit terms between the United States and the home market.

Based on a comparison of United States price and foreign market value, petitioners allege dumping margins ranging from 3.8% to 252.5%.

Petitioners also allege that "critical circumstances" exist, within the meaning of section 733(e) of the Act, with respect to imports of industrial belts from Israel.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on industrial belts from Israel and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are iitiating an antidumping duty investigation to determine whether imports of industrial belts from Israel are being, or are likely to be, sold in the United States at less than fair value. We will also make a determination as to whether critical circumstances exist with respect to the subject merchandise. If our investigation proceeds normally, we will make our preliminary determination by December 7, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are industrial belts and components and parts thereof, whether cured or uncured, currently provided for under TSUSA item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510, 773.3520 and currently classifiable under HS item numbers 5910.00.10, 5910.00.90, 4010.10.10, and 4010.10.50.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combusion engines, including trucks, tractors, buses, and lift trucks.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivilged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by August 15, 1988, whether there is a reasonable indication that imports of industrial belts from Israel materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

July 20, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88–16800 Filed 7–25–88; 8:45 am]

BILLING CODE 3510–DS–M

[A–475–802]

Initiation of Antidumping Duty Investigation; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of industrial belts and components and parts thereof, whether cured or uncured (hereinafter referred to as industrial belts), from Italy are being,

or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before August 15, 1988. If that determination is affirmative, we will make a preliminary determination on or before December 7, 1988.

EFFECTIVE DATE: July 26, 1988.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–1769.

SUPPLEMENTARY INFORMATION:

The Petition

On June 30, 1988, we received a petition filed in proper form by Gates Rubber Company on behalf of the domestic industrial belts industry. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of industrial belts from Italy are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the "For Further Information Contact" section of this notice.

United States Price and Foreign Market Value

Petitioner considers the prices it must use to meet the competition as its best evidence of Italian selling prices in the United States. United States price was based on distributor's selling prices to industrial consumers. Petitioner deducted, where appropriate, profit, movement charges, and import duties.

Petitioner calculated foreign market value by multiplying the published list price in the home market by a multiplier representing the distributor "best buy" discount. Petitioner also adjusted for any difference in credit terms between the United States and the home market. That resulting price in local currency was then divided by the applicable exchange rate to obtain a price in dollars.

Based on a comparison of United States price and foreign market value, petitioners allege dumping margins ranging from 2.3% to 138.7%.

Petitioners also allege that "critical circumstances" exist, within the meaning of section 733(e) of the Act, with respect to imports of industrial belts from Italy.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on industrial belts from Italy and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of industrial belts from Italy are being, or are likely to be, sold in the United States at less than fair value. We will also make a determination as to whether critical circumstances exist with respect to the subject merchandise. If our investigation proceeds normally, we will make our preliminary determination by December 7, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are industrial belts and components and parts thereof, whether cured or uncured, currently provided for under TSUSA item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510, 773.3520 and currently classifiable under HS item numbers 5910.00.10, 5910.00.90, 4010.10.10, and 4010.10.50.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protection order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by August 15, 1988, whether there is a reasonable indication that imports of industrial belts from Italy materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

July 20, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88–16801 Filed 7–25–88; 8:45 am]

BILLING CODE 3510–DS–M

[A-588-807]

Initiation of Antidumping Duty Investigation; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of industrial belts and components and parts thereof, whether cured or uncured, (hereinafter referred to as industrial belts) from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before August 15, 1988. If that determination is affirmative, we will make a preliminary determination on or before December 7, 1988.

EFFECTIVE DATE: July 26, 1988.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-1769.

SUPPLEMENTARY INFORMATION:

The Petition

On June 30, 1988, we received a petition filed in proper form by Gates Rubber Company on behalf of the domestic industrial belts industry. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of industrial belts from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the "For Further Information Contact" section of this notice.

United States Price and Foreign Market Value

Petitioner considers the prices it must use to meet the competition as its best evidence of Japanese selling prices in the United States. United States price was based on the distributor's selling prices to industrial consumers. Petitioner deducted, where appropriate, profit, movement charges, and import duties.

Petitioner calculated foreign market value by multiplying the published list price in the home market by a multiplier determination by December 7, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are industrial belts and components and parts thereof, whether cured or uncured, from Japan currently provided for under TSUSA item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510, 773.3520 and representing the distributor "best buy" discount. Petitioner also adjusted for any difference in credit terms between the United States and the home market. The resulting price in local currency is then divided by the applicable exchange rate to obtain a price in dollars.

Based on a comparison of United States price and foreign market value, petitioners allege dumping margins ranging from 11.3% to 176.5%.

Petitioners also allege that "critical circumstances" exist, within the meaning of section 733(e) of the Act, with respect to imports of industrial belts from Japan.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on industrial belts from Japan and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of industrial belts from Japan are being, or are likely to be, sold in the United States at less than fair value. We will also make a determination as to whether critical circumstances exist with respect to the subject merchandise. If our investigation proceeds normally, we will make our preliminary currently classifiable under HS item numbers 5910.00.10, 5910.00.90, 4010.10.10, and 4010.10.50.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by August 15, 1988, whether there is a reasonable indication that imports of industrial belts from Japan materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

July 20, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-16802 Filed 7-25-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-559-802]

Initiation of Antidumping Duty Investigation; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Singapore

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of industrial belts and components and parts thereof, whether cured or uncured, (hereinafter referred to as industrial belts) from Singapore are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before August 15, 1988. If that determination is affirmative, we will make a preliminary determination on or before December 7, 1988.

EFFECTIVE DATE: July 26, 1988.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-1769.

SUPPLEMENTARY INFORMATION:

The Petition

On June 30, 1988, we received a petition filed in proper form by Gates Rubber Company on behalf of the domestic industrial belts industry. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of industrial belts from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the "For Further Information Contact" section of this notice.

United States Price and Foreign Market Value

Petitioner considers the prices it must use to meet the competition as its best evidence of Singapore selling prices in the United States. United States price was based on distributor's selling prices to industrial consumers. Petitioner deducted, where appropriate, profit, movement charges, and import duties.

Petitioner calculated foreign market value by multiplying the published list price in the home market by a multiplier representing the distributor "best buy" discount. Petitioner also adjusted for any difference in credit terms between the United States and the home market. That resulting price in local currency is then divided by the applicable exchange rate to obtain a price in dollars.

Based on a comparison of United States price and foreign market value, petitioners allege dumping margins ranging from 0 to 42.2%.

Petitioners also allege that "critical circumstances" exist, within the meaning of section 733(e) of the Act, with respect to imports of industrial belts from Singapore.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on industrial belts from Singapore and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of industrial belts from Singapore are being, or are likely to be, sold in the United States at less than fair value. We will also make a determination as to whether critical circumstances exist with respect to the subject merchandise. If our investigation proceeds normally, we will make our preliminary determination by December 7, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are industrial belts and components and parts thereof, whether cured or uncured, currently provided for under TSUSA item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510, 773.3520 and currently classifiable under HS item numbers 5910.00.10, 5110.00.90, 4010.10.10, and 4010.10.50.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal

combustion engines, including trucks, tractors, buses, and lift trucks.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by August 15, 1988, whether there is a reasonable indication that imports of industrial belts from Singapore materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

July 20, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-16803 Filed 7-25-88; 8:45 am]

BILLING CODE 3510-05-M

[A-580-801]

Initiation of Antidumping Duty Investigation; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from South Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of industrial belts and components and parts thereof, whether cured or uncured, (hereinafter referred to as industrial belts) from South Korea are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before August 15, 1988. If that determination is affirmative, we will make a preliminary determination on or before December 7, 1988.

EFFECTIVE DATE: July 26, 1988.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-1769.

SUPPLEMENTARY INFORMATION:

The Petition

On June 30, 1988, we received a petition filed in proper form by Gates Rubber Company on behalf of the domestic industrial belts industry. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of industrial belts from South Korea are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the "For Further Information Contact" section of this notice.

United States Price and Foreign Market Value

United States price was based on distributor's selling prices to industrial consumers. Petitioner deducted, where appropriate, profit, movement charges, and import duties.

Petitioner calculated foreign market value by multiplying the published list price in the home market by a multiplier representing the distributor "best buy" discount. Petitioner also adjusted for any difference in credit terms between the United States and the home market. That resulting price in local currency was then divided by the applicable exchange rate to obtain a price in dollars.

Based on a comparison of United States price and foreign market value, petitioners allege dumping margins ranging from 0 to 145.7%.

Petitioners also allege that "critical circumstances" exist, within the meaning of section 733(e) of the Act, with respect to imports of industrial belts from South Korea.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on industrial belts from South Korea and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of industrial belts from South Korea are being, or are likely to be, sold in the United States at less than fair value. We will also make a determination as to whether critical circumstances exist with respect to the subject merchandise. If our investigation proceeds normally, we will make our preliminary determination by December 7, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional aproval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Sepcialist at their local Customs office to consult the schedule.

The products covered by this investigation are industrial belts and components and parts thereof, whether cured or uncured, currently provided for under TSUSA item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600,

657.2520, 773.3510, 773.3520 and currently classifiable under HS item numbers 5910.00.10, 5910.00.90, 4010.01.10, and 4010.10.50.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by August 15, 1988, whether there is a reasonable indication that imports of industrial belts from South Korea materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

July 20, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-16804 Filed 7-25-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-804]

Initiation of Antidumping Duty Investigation; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of industrial belts and components and parts thereof, whether cured or uncured (hereinafter referred to as industrial belts) from Taiwan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before August 15, 1988. If that determination is affirmative, we will make a preliminary determination on or before December 7, 1988.

EFFECTIVE DATE: July 26, 1988.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1769.

SUPPLEMENTARY INFORMATION:

The Petition

On June 30, 1988, we received a petition filed in proper form by Gates Rubber Company on behalf of the domestic industrial belts industry. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of industrial belts from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the **"FOR FURTHER INFORMATION CONTACT"** section of this notice.

United States Price and Foreign Market Value

Petitioner considers the prices it must use to meet the competition as its best evidence of Taiwanese selling prices in the United States. United States price was based on distributor's selling prices to industrial consumers. Petitioner deducted, where appropriate, profit, movement charges, and import duties.

Petitioner calculated foreign market value by multiplying the published list price in the home market by a multiplier representing the distributor "best buy" discount. Petitioner also adjusted for any difference in credit terms between the United States and the home market. That resulting price in local currency was then divided by the applicable exchange rate to obtain a price in dollars.

Based on comparison of United States price and foreign market value, petitioners alleged dumping margins ranging from 0 to 38.7%.

Petitioners also allege that "critical circumstances" exist, within the meaning of section 733(e) of the Act, with respect to imports of industrial belts from Taiwan.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on industrial belts from Taiwan and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of industrial belts from Taiwan are being, or are likely to be, sold in the United States at less than fair value. We will also make a determination as to whether critical circumstances exist with respect to the subject merchandise. If our investigation proceeds normally, we will make our preliminary determination by December 7, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are industrial belts and components and parts thereof, whether cured or uncured, currently provided for under TSUSA item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510, 773.3520 and currently classifiable under HS item numbers 5910.00.10, 5910.00.90, 4010.10.10, and 4010.10.50.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by August 15, 1988, whether there is a reasonable indication that imports of industrial belts from Taiwan materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

July 20, 1988.

Jan. W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-16805 Filed 7-25-88; 8:45 am]

BILLING CODE 3510-05-M

[Docket No. A-412-802]

Initiation of Antidumping Duty Investigation; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of industrial belts and components and parts thereof, whether cured or uncured, (hereinafter referred to as industrial belts) from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before August 15, 1988. If that determination is affirmative, we will make a preliminary determination on or before December 7, 1988.

EFFECTIVE DATE: July 26, 1988.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-1769.

SUPPLEMENTARY INFORMATION:

The Petition

On June 30, 1988, we received a petition filed in proper form by Gates Rubber Company on behalf of the domestic industrial belts industry. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of industrial belts from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the "For Further Information Contact" section of this notice.

United States Price and Foreign Market Value

Petitioner consider the prices it must use to meet the competition as its best evidence of the United Kingdom's selling prices in the United States. United States price was based on distributor's selling prices to industrial consumers. Petitioner deducted, where appropriate, profit, movement charges, and import duties.

Petitioner calculated foreign market value by multiplying the published list price in the home market by a multiplier representing the distributor "best buy" discount. Petitioner also adjusted for any difference in credit terms between the United States and the home market. That resulting price in local currency was then divided by the applicable exchange rate to obtain a price in dollars.

Based on a comparison of United States price and foreign market value, petitioners allege dumping margins ranging from 3.4% to 123.7%

Petitioners also allege that "critical circumstances" exist, within the meaning of section 733(e) of the Act, with respect to imports of industrial belts from the United Kingdom.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on industrial belts from the United Kingdom and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of industrial belts from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value. We will also make a determination as to whether critical circumstances exist

with respect to the subject merchandise. If our investigation proceeds normally, we will make our preliminary determination by December 7, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate Tariff *Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for 366 consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are industrial belts and components and parts thereof, whether cured or uncured, currently provided for under TSUSA item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510, 773.3520, and currently classifiable under HS item numbers 5910.00.01, 5910.00.90, 4010.10.10, and 4010.10.50.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These includes V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivilieged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written conent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by August 15, 1988, whether there is a reasonable indication that imports of industrial belts from the United Kingdom materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

July 20, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-16806 Filed 7-25-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-802]

Initiation of Antidumping Duty Investigation; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From the Federal Republic of Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of industrial belts and components and parts thereof, whether cured or uncured, (hereinafter referred to as industrial belts) from the Federal Republic of Germany are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before August 15, 1988. If that determination is affirmative, we will make a preliminary determination on or before December 7, 1988.

EFFECTIVE DATE: July 26, 1988.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-1769.

SUPPLEMENTARY INFORMATION:

The Petition

On June 30, 1988, we received a petition filed in proper form by Gates Rubber Company on behalf of the domestic industrial belts industry. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of industrial belts from the Federal Republic of Germany are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

If any interested party as described under paragraph (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the "For Further Information Contact" section of this notice.

United States Price and Foreign Market Value

Petitioner considers the prices it must use to meet the competition as its best evidence of German selling prices in the United States. United States price was based on distributor's selling prices to industrial consumers. Petitioner deducted, where appropriate, profit, movement charges, and import duties.

Petitioner calculated foreign market value by multiplying the published list price in the home market by a multiplier representing the distributor "best buy" discount. Petitioner also adjusted for any difference in credit terms between the United States and the home market. That resulting price in local currency was then divided by the applicable exchange rate to obtain a price in dollars.

Based on a comparison of United States price and foreign market value, petitioners allege dumping margins ranging from 0 to 269.8%.

Petitioners also allege that "critical circumstances" exist, within the meaning of section 733(e) of the Act, with respect to imports of industrial

belts from the Federal Republic of Germany.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on industrial belts from the Federal Republic of Germany and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of industrial belts from the Federal Republic of Germany are being, or are likely to be, sold in the United States at less than fair value. We will also make a determination as to whether critical circumstances exist with respect to the subject merchandise. If our investigation proceeds normally, we will make our preliminary determination by December 7, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are industrial belts and components and parts thereof, whether cured or uncured, currently provided for under TSUSA item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510, 773.3520, and currently classifiable under HS item numbers 5910.00.10, 5910.00.90, 4010.10.10, and 4010.10.50.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts, and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not discuss such information either publicly or under administrative protective order without written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by August 15, 1988, whether there is a reasonable indication that imports of industrial belts from the Federal Republic of Germany materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

July 20, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88–16799 Filed 7–25–88; 8:45 am]

BILLING CODE 3510–05–M

[C–508–802]

Initiation of Countervailing Duty Investigation; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from Israel

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Israel of industrial belts and components and parts thereof, whether cured or uncured (industrial belts), as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports from Israel materially injure, or threaten material injury to, a U.S. industry. The petition also alleges that "critical circumstances" exist within the meaning of section 703(e)(1) of the Tariff Act of 1930, as amended (the Act). If this investigation proceeds normally, the ITC will make its preliminary determination on or before August 14, 1988, and we will make our preliminary determination on or before September 23, 1988.

EFFECTIVE DATE: July 26, 1988.

FOR FURTHER INFORMATION CONTACT: Rick Herring or Barbara Tillman, Office of Investigations, Import Administration, Room B–099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–0187 or 377–2438.

SUPPLEMENTARY INFORMATION:

The Petition

On June 30, 1988, we received a petition filed in proper form from the Gates Rubber Company on behalf of the U.S. industry producing industrial belts. In compliance with the filing requirements of section 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Israel of industrial belts receive subsidies within the meaning of section 701 of the Act. In addition, the petition alleges that such imports materially injure, or threaten material injury to, the U.S. industry producing a like product. The petition also alleges that "critical

circumstances" exist within the meaning of section 703(e)(1) of the Act.

Since Israel is a "country under the Agreement" within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Israel materially injure, or threaten material injury to, a U.S. industry.

Petitioner has alleged that it has standing to file the petition. Specifically, petitioner has alleged that it is an interested party as defined under section 771(9)(C) of the Act and that it has filed the petition on behalf of the U.S. industry manufacturing the products that are subject to this investigation.

If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the "FOR FURTHER INFORMATION CONTACT" section of this notice.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on industrial belts from Israel and have found that it meets the requirements of section 702(b) of the Act. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Israel of industrial belts, as described in the "Scope of Investigation" section of this notice, receive subsidies. If our investigation proceeds normally, we will make our preliminary determination on or before September 23, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are industrial belts and components and parts thereof, whether cured or uncured, currently provided for under TSUSA item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510, and 773.3520 and currently classifiable under HS item numbers 5910.00.10, 5910.00.90, 4010.10.10 and 4010.10.50.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly or rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

Allegations of Subsidies

The petition lists a number of practices by the Government of Israel which allegedly confer subsidies on manufacturers, producers or exporters in Israel of industrial belts. We are initiating an investigation on the following alleged programs:

- *Benefits Under the Encouragement of Capital Investment Law (ECIL)*
  - —Investment Grants
  - —Long-term Industrial Development Loans
  - —Accelerated Depreciation
  - —Direct Reduction of Corporate Tax
  - —Interest Subsidy Payments
- *Special Export Marketing Financing*
- *Exchange Rate Risk Insurance*
- *Encouragement of Research and Development Law (ERDL) Grants*
- *Labor Training Grants from the Ministry of Labor.*

Although alleged by petitioner, we are not investigating the following programs:

- *Benefits Under the Encouragement of Industry Law (EIL) of 1969*

The Department has previously investigated accelerated depreciation and income tax deductions under the EIL and found that these programs are not limited to specific regions or to a specific enterprise or industry, or group of enterprises or industries. See *Final Affirmative Countervailing Duty Determination: Industrial Phosphoric Acid from Israel*, (52 FR 25447, July 7, 1987) (*Phosphoric Acid*). Because petitioner has presented no new evidence or alleged changed circumstances with repect to this program, we are not initiating an investigation on this program.

- *Export Financing from the Bank of Israel*

In *Phosphoric Acid* we found that the interest rate charged by the Bank of Israel on loans under the Export Production Fund, the Export Shipments Fund, and the Imports for Export Fund were no longer preferential as of July 1985. We requested updated information from petitioner, if available. Petitioner presented information published in 1988. However, close examination of that information indicates that it was compiled in June 1985, before the date of our verification of *Phosphoric Acid*. Because our determination in *Phosphoric Acid* was based upon verified information which is more current than that supplied by petitioner, and indicates that loans under this program are no longer preferential, we are not investigating this program.

Allegation of Critical Circumstances

Petitioner alleges that critical circumstances exist with respect to imports of industrial belts from Israel. Petitioner claims that the products concerned benefit from export subsidies that are inconsistent with the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement of Tariffs and Trade, and that imports have been massive over a relatively short period. We will determine whether critical circumstances exist with respect to these imports in our preliminary and final detterminations.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files,

provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination By ITC

The ITC will determine by August 14, 1988, whether there is a reasonable indication that imports from Israel materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 702(c)(2) of the Act.

Jan W. Mares,

Assistant Secretary for Import Administration.

July 20, 1988.

[FR Doc. 88-16807 Filed 7-25-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-580-802]

Initiation of Countervailing Duty Investigation; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in the Republic of Korea (Korea) of industrial belts and components and parts thereof, whether cured or uncured (industrial belts), as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifiying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports from Korea materially injure, or threaten material injury to, a U.S. industry. The petition also alleges that "critical circumstances" exist within the meaning of section 703(e)(1) of the Tariff Act of 1930, as amended, (the Act). If this investigation proceeds normally, the ITC will make its preliminary determination on or before August 14, 1988, and we will make our preliminary determination on or before September 23, 1988.

EFFECTIVE DATE: July 26, 1988.

FOR FURTHER INFORMATION CONTACT: Rick Herring or Barbara Tillman, Office of Investigations, Import Administration, Room B-099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-0187 or 377-2438.

SUPPLEMENTARY INFORMATION:

The Petition

On June 30, 1988, we received a petition filed in proper form from the Gates Rubber Company on behalf of the U.S. industry producing industrial belts. In compliance with the filing requirements of section 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Korea of industrial belts receive subsidies within the meaning of section 701 of the Act. In addition, the petition alleges that such imports materially injure, or threaten material injury to, the U.S. industry producing a like product. The petition also alleges that "critical circumstances" exist within the meaning of section 703(e)(1) of the Act.

Since Korea is a "country under the Agreement" within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Korea materially injure, or threaten material injury to, a U.S. industry.

Petitioner has alleged that it has standing to file the petition. Specifically, petitioner has alleged that it is an interested party as defined under section 771(9)(c) of the Act and that it has filed the petition on behalf of the U.S. industry manufacturing the products that are subject to this investigation.

If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the **"FOR FURTHER INFORMATION CONTACT"** section of this notice.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on industrial belts from Korea and have found that it meets the requirements of section 702(b) of the Act. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Korea of industrial belts, as described in the "Scope of Investigation" section of this notice, receive subsidies. If our investigation proceeds normally, we will make our preliminary determination on or before September 23, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are industrial belts and components and parts thereof, whether cured or uncured, currently provided for under TSUSA item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510, and 773.3520 and currently classifiable under HS item numbers 5910.00.10, 5910.00.90, 4010.10.10 and 4010.10.50.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combusion engines, including trucks, tractors, buses, and lift trucks.

Allegations of Subsidies

The petition lists a number of practices by the government of Korea which allegedly confer subsidies to manufacturers, producers or exporters in Korea of industrial belts. We are initiating an investigation on the following alleged programs:

- Short-Term Export Financing under the Foreign Trade Financing Regulations;
- Loans to Promising Small- and Medium-Sized Enterprises;
- Export Tax Reserves under Articles 22, 23, and 24 of the Act Concerning the Regulation of Tax Reduction and Exemption;
- Accelerated Depreciation under Article 25 of the Act Concerning the Regulation of Tax Reduction and Exemption;
- Special Depreciation under Article 11 of the Act Concerning the Regulation of Tax Reduction and Exemption;
- Tax Credits for Investment for Key Industries;
- Exemption from the Acquisition Tax under the Law for the Promotion of Income Sources in Rural Areas;
- Tax Incentives for Businesses Moving to a Provincial Area;
- Tax Incentives under the Free Export Zone Program;
- Unlimited Deduction of Overseas Entertainment Expenses under Article 18-2 of the Corporation Tax Act;
- Duty Drawback on Non-Physically Incorporated Items and Allowances for Excessive Loss and Wastage Rates;
- Tariff Reductions on Plant and Equipment under Article 28 of the Customs Law;
- Export Credit Financing from the Export-Import Bank of Korea (KXMB);
- Export Guarantees from the KXMB; and
- Loans for Expansion or Construction of Manufacturing Facilities.

Allegation of Critical Circumstances

Petitioner alleges that critical circumstances exist with respect to imports of industrial belts from Korea. Petitioner claims that the products concerned benefit from export subsidies that are inconsistent with the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade, and that imports have been massive over a relatively short period. We will determine whether critical circumstances exist with respect to these imports in our preliminary and final determination.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by August 14, 1988, whether there is a reasonable indication that imports from Korea materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 702(c)(2) of the Act.

July 20, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-16808 Filed 7-25-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-559-803]

Initiation of Countervailing Duty Investigation; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Singapore

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Singapore of industrial belts and components and parts thereof, whether cured or uncured (industrial belts), as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports from Singapore of certain of the products included in the scope of this investigation materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before August 14, 1988, and we will make our preliminary determination on or before September 23, 1988.

EFFECTIVE DATE: July 26, 1988.

FOR FURTHER INFORMATION CONTACT: Rick Herring or Barbara Tillman, Office of Investigations, Import Administration, Room B-099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-0187 or 377-2438.

SUPPLEMENTARY INFORMATION:

The Petition

On June 30, 1988, we received a petition filed in proper form from the Gates Rubber Company on behalf of the U.S. industry producing industrial belts. In compliance with the filing requirements of section 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Singapore of industrial belts receive, directly or indirectly, certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

Since Singapore is not a "country under the Agreement" within the meaning of section 701(b) of the Act, section 303 of the Act applies to this investigation. However, Singapore is a signatory to the General Agreement on Tariffs and Trade, and certain products included in the scope of this investigation (*i.e.*, those items classified under 358.0610, 358.069, 358.1400, 657.2520, 773.3510, and 773.3520 of the *Tariff Schedules of the United States Annotated* (TSUSA)) are nondutiable. Therefore, in accordance with section 303(a)(2), petitioner is required to allege that, and the ITC is required to determine whether, imports of these products from Singapore materially injure, or threaten material injury to, a U.S. industry.

The remaining TSUSA items, as described in the "Scope of Investigation" section of this notice, are dutiable. Therefore, in accordance with section 303(b) of the Act, petitioner is not required to allege that, and the ITC is not required to determine whether, imports of these products from Singapore materially injure, or theaten material injury to, a U.S. industry.

Petitioner has alleged that it has standing to file the petition. Specifically, petitioner has alleged that it is an

interested party as defined under section 771(9)(C) of the Act and that it has filed the petition on behalf of the U.S. industry manufacturing the products that are subject to this investigation.

If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the "For Further Information Contact" section of this notice.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on industrial belts from Singapore and have found that it meets these requirements. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Singapore of industrial belts, as described in the "Scope of Investigation" section of this notice, receive bounties or grants. If our investigation proceeds normally, we will make our preliminary determination on or before September 23, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are industrial belts and components and parts thereof, whether cured or uncured, currently provided for under TSUSA item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510, and 773.3520 and currently classifiable under HS item numbers 5910.00.10, 5910.00.90, 4010.10.10 and 4010.10.50.

The merchandise covered by this investigation includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts, and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord of strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

Allegations of Bounties or Grants

Petitioner lists a number of practices by the Government of Singapore which allegedly confer bounties or grants on manufacturers, producers or exporters in Singapore of industrial belts. We are initiating an investigation on the following programs:

- *Economic Expansion of Incentives Act of 1985 (EEIA)*

1. Part II, Pioneer Enterprises.
2. Part IV, Expansion of Established Enterprises.
3. Part VI, Product For Export.
4. Part VII, International Trade Incentives.
5. Part VIII, Foreign Loans for Productive Equipment.
6. Part IX, Royalties, Fees and Development Contributions.
7. Part X, Research and Development Investment Allowances, and Amendments thereto.

- *Income Tax Act (ITA)*

1. Section 14(B) and 14(C), Double Deduction for Export Promotion Expenses.
2. Section 14E, Double Deduction for R&D Expenses.
3. Section 19B. Writing Down Allowance for Expenditures Relating to Patents and Know-How.

- *Monetary Authority of Singapore (MAS) Rediscount Facility*

- *Singapore Economic Development Board (EDB) Programs*

1. Capital Assistance Scheme.
2. Product Development Assistance Scheme.
3. Initiatives in New Technologies.
4. Research and Development Incentives.

- *Research and Development Assistance Scheme (RDAS) Under the Singapore Science Council*

Although alleged by petitioner, we are not investigating the following programs:

- *Skills Development Fund Under the EDB*

The Department has previously investigated the Skills Development Fund under the EDB and has found that these loans are not limited to a specific enterprise or industry, or group of enterprises or industries. [See *Final Negative Countervailing Duty Determinations: Certain Textile Mill Products and Apparel from Sinapore*, (50 FR 9840, March 12, 1985)]. Because petitioner has presented no new evidence or alleged changed circumstances with respect to the Skills Development Fund, we are not initiating an investigation on this program.

- *Location in Industrial Estates*

Petitioner alleges that the Jurong Town Corporation (JTC) controls most of the land and buildings used by international companies, and that the JTC provides prepared sites with infrastructural facilities at lower rents. Petitioner also alleges that the Singapore Science Park provides similar facilities for technology-oriented companies. We previously investigated location in industrial estates and determined that it was not limited to a specific enterprise or industry, or group of enterprises or industries. See *Final Negative Countervailing Duty Determination: Carbon Steel Wire Rod from Singapore* (51 FR 3357, January 27, 1986). In that determination, we stated that "location in industrial estates and rental charges cannot be considered countervailable unless the government limits which industries can locate in the industrial estates . . ." Because petitioner has not submitted any new evidence or alleged changed circumstances, we are not initiating an investigation on this program. With respect to the Singapore Science Park, the petitioner provided no supporting documentation that benefits are being provided through location in the Science

Park, nor that the Singapore industrial belt companies are located in the Science Park.

• *Section 16 of the ITA, Initial and Annual Allowances*

The Department has previously found that the depreciation allowances available under this program are standard in Singapore for all types of industrial buildings. See *Final Negative Countervailing Duty Determination: Carbon Steel Wire Rod from Singapore* (53 FR 16304, May 6, 1988) (*Wire Rod II*). Because petitioner has presented no new evidence or alleged changed circumstances with respect to this program, we are not initiating an investigation on this program.

• *Section 19A of the ITA, Accelerated Depreciation*

The Department has previously found that the accelerated depreciation available under this program applies to all capital expenditures except for automobiles and robotics, and that it is available to all enterprises in Singapore. See *Wire Rod II*. Because petitioner has presented no new evidence or alleged changed circumstances with respect to this program, we are not initiating an investigation on this program.

Allegation of Critical Circumstances

Petitioner alleges that critical circumstances exist within the meaning of section 703(e)(1) of the Act with respect to imports of industrial belts from Singapore. Petitioner claims that the products concerned benefit from export subsidies that are inconsistent with the Agreement on Interpretation and Application or Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (the GATT Subsidies Code), and that imports have been massive over a relatively short period. Although not a signatory to the GATT Subsidies Code, Singapore is a member of the GATT. Insofar as certain items subject to this investigation are nondutiable, imports of those items will be investigated by the ITC to determine whether they materially injure, or threaten material injury to, a U.S. industry. For imports of those items that receive an injury test, we will determine whether critical circumstances exist in our preliminary and final determinations.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by August 14, 1988, whether there is a reasonable indication that imports from Singapore of certain of the products included in the scope of this investigation materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, our investigation with respect to the products classified under TSUSA item numbers 358.0610, 358.0690, 358.1400, 657.2520, 773. 3510, and 773.3520 will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 702(c)(2) of the Act.

Jan W. Mares,

Assistant Secretary for Import Administration.

July 20, 1988.

[FR Doc. 88-16809 Filed 7-25-88; 8:45 am]

BILLING CODE 3510-05-M

Minority Business Development Agency

Business Development Center Applications; Columbus, OH

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a 3 year period, subject to available funds. The cost of performance for the first (12) months is estimated at $165,000 in Federal funds and a minimum of $29,118 in non-federal contributions for the budget period January 1, 1989 to December 31, 1989. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Columbus, Ohio geographic service area. The award number of this MBDC will be 05-10-89001-01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for the firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

Closing Date: The closing date for applications is September 2, 1988. Applications must be postmarked on or before September 2, 1988.

ADDRESS: Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, Suite 1440, Chicago, Illinois 60603, 312/353-0182.

FOR FURTHER INFORMATION CONTACT
David Vega, Regional Director, Chicago Regional Office.

SUPPLEMENTARY INFORMATION:
Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance).

David Vega,

Regional Director, Chicago Regional Office.

Date: July 20, 1988.

[FR Doc. 88-16709 Filed 7-25-88; 8:45 am]

BILLING CODE 3510-21-M

National Bureau of Standards

Announcement of Workshops for Users and Implementors of Integrated Services Digital Network (ISDN)

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice.

SUMMARY: The Institute for Computer Sciences and Technology at the National Bureau of Standards (NBS) announces another workshop of a continuing workshop series to discuss issues related to the use and implementation of Integrated Services Digital Network (ISDN) technology. These workshops are part of the North American ISDN Users' Forum (NIU-FORUM) which was formed recently under the auspices of NBS to create a strong user voice in the implementation of ISDN and ISDN applications and to ensure that the emerging ISDN meets users' application needs.

DATES: A Joint ISDN Users' and Implementors' Workshop will be held in St. Louis, Missouri on September 27, 28, and 29, 1988. The Users' Workshop will continue to identify, define and prioritize applications of ISDN and the Implementators' Workshop will define implementation agreements for ISDN and sponsor multivendor trials and demonstrations.

ADDRESS: To obtain registration forms for the North American ISDN Users' Forum, contact: ISDN Workshop Series, Attn: Trudy Johnson, National Bureau of Standards, Building 225, Room A224, Gaithersburg, MD 20899, Telephone: (301) 975-2985.

Upon receipt of the completed registration form, additional registration information for the appropriate workshop(s) will then be mailed to the registrant. An NBS representative will confirm workshop registration reservations by telephone.

FOR FURTHER INFORMATION CONTACT:
Steve Recicar (301) 975-2937.

SUPPLEMENTARY INFORMATION:
Attendance at the workshops is limited due to space requirements and the size of the conference facility; therefore, registration is on a first come, first served basis with recommended limitation of two participants per company. A registration fee will be charged for attending the workshops. Participants are expected to make their own travel arrangements and accommodations. NBS reserves the right to cancel any part of the workshops.

Date: July 21, 1988.

Ernest Ambler,

Director.

[FR Doc. 88-16792 Filed 7-25-88; 8:45 am]

BILLING CODE 3510-CN-M

Patent and Trademark Office

[Docket No. 80743-8143]

Notice of Inquiry; Motion Pictures, Alteration; New Technologies

AGENCY: Patent and Trademark Office, Department of Commerce.

ACTION: Notice of inquiry and request for comments.

SUMMARY: The Patent and Trademark Office solicits written comments concerning the applicability of the Trademark Act of 1946, and in particular section 43(a) of the Act, to new technologies for the alteration of existing motion pictures, including colorization, time compression, and panning and scanning.

DATE: Written comments should be submitted to the Patent and Trademark Office by September 23, 1988.

ADDRESS: Comments should be sent to: Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT:
Richard Owens, Office of Legislation and International Affairs, U.S. Patent and Trademark Office, Box 4, Washington, DC 20231. Telephone: (703) 557-3065.

SUPPLEMENTARY INFORMATION: The Subcommittee on Courts, Civil Liberties and the Administration of Justice of the House Committee on the Judiciary has asked the Patent and Trademark Office to study the extent to which the Trademark Act of 1946 (Lanham Act), 15 U.S.C. 1051 *et seq.*, may be utilized to address potential problems relating to the use of new technologies for the alteration of existing motion pictures, including colorization, time compression, and panning and scanning. In particular, the Subcommittee has asked the Patent and Trademark Office to examine the applicability of section 43(a) of the Lanham Act, 15 U.S.C. 1125(a), to such technologies.

The Subcommittee has asked the U.S. Copyright Office to prepare a related, more comprehensive study. In a Request for Information published at 53 FR 18937 (May 25, 1988), the Copyright Office announced that it would conduct an inquiry concerning the nature, extent and effect of the new technologies on the creators and users of audiovisual works, including motion pictures and television programming. The Copyright Office stated that it will also examine the impact of the new technologies on the integrity of our national film heritage and the creative freedom of filmmakers.

The scope of the Patent and Trademark Office's inquiry is narrower. The Office seeks specific, thorough comment on the extent to which the Lanham Act may be applied to address potential problems relating to the use of new technologies for the alteration of existing motion pictures. The Office solicits information on whether legal arguments have been or are likely to be made for the application of the Lanham Act, and particularly section 43(a), to such technologies. Discussion of relevant case law, including unreported cases, is requested. The Office also seeks comment on whether the Lanham Act should be amended to provide expanded protection against such alteration, and, if so, on the proper scope of such amendments. Recommendations for amending the Act should be precise and detailed.

(1) To what extent is it contemplated that the Lanham Act, 15 U.S.C. 1051 *et seq.*, and particularly section 43(a) of the Act, 15 U.S.C. 1125(a), may be used to address potential problems relating to the use of new technologies for the alteration of existing motion pictures, including but not limited to colorization, time compression, and panning and scanning?

(2) Should the Lanham Act be amended to provide more or different protection than is currently available? If so, what form should new legislation take? Who should be protected?

Copies of all comments received will be available for public inspection after September 26, 1988, in Suite 902, Crystal Park Building 2, 2121 Crystal Drive, Arlington, VA. 22202.

July 20, 1988.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 88-16767 Filed 7-25-88; 8:45 am]

BILLING CODE 3510-16-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next scheduled meeting is Friday, 16 September 1988 at 10:00 a.m. at the Commission's offices at 708 Jackson Place, NW., Washington, DC 20006 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the offices (566-1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, 16 July 1988.

Charles H. Atherton,

Secretary.

[FR Doc. 88-16761 Filed 7-25-88; 8:45 am]

BILLING CODE 6330-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Request for Bilateral Textile Consultations With the Government of the People's Republic of China To Review Trade in Categories 633, 643 and 870

July 21, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: July 28, 1988.

Authority: E.O 11651 of March 3, 1972, as amended; S. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; Bilateral Textile Agreement of February 2, 1988.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION: On June 30, 1988, the Government of the United States requested consultations with the Government of the People's Republic of China regarding Categories 633, 643 and 870, produced or manufactured in the People's Republic of China.

Summary market statements concerning these categories follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 633, 643 and 870, under the agreement with the People's Republic of China, or in any other aspect thereof, or to comment on domestic production or availability of products included in the categories, is invited to submit 10 copies of such comments or information to James H. Babb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 633, 634 and 870. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the **Federal Register.**

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the Correlation: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987).

July 21, 1988.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement

Men's and Boys' Man-Made Fiber: Suit-Type Coats (Category 633) China, June 1988.

Summary and Conclusions

U.S. imports of men's and boys' man-made fiber suit-type coats (Category 633) from China reached 31,687 dozen during the year ending March 1988, 47 percent above the 21,547 dozen imported a year earlier. Men's and boys' man-made fiber suit-type coat imports from China were 27,932 dozen in 1987 and 22,644 dozen in 1986. During the first three months of 1988, imports of men's and boys' man-made fiber suit-type coats (Category 633) from China reached 9,713, a 63 percent increase above the 5,958 dozen imported during the same period of 1987.

The sharp and substantial increase in imports of Category 633 from China is a real risk of market disruption.

U.S. Production and Market Share

U.S. production of men's and boys' man-made fiber suit-type coats has been on the decline, dropping from 1,189 thousand dozen in 1983 to 951 thousand dozen in 1985, a decline of 20 percent. Production in 1986 recovered slightly, reaching 1,006 thousand dozen, but fell again in 1987 to a level of 907 thousand dozen, 10 percent below the 1986 level and 24 percent below the 1983 level. The domestic manufacturers' share of the market fell from 87 percent in 1983 to 71 percent in 1987, a drop of 16 percentage points.

U.S. Imports and Import Penetration

U.S. imports of men's and boys' man-made fiber suit-type coats (Category 633) more than doubled between 1983 and 1987, increasing from 175 thousand dozen in 1983 to 364 thousand dozen in 1987. During the first three months of 1988, imports of men's and boys' man-made fiber suit-type coats (Category 633) reached 103 thousand dozen, nine percent above the level imported during the same period of 1987. The ratio of imports to domestic production nearly tripled, increasing from 15 percent in 1983 to 40 percent in 1987.

Duty-Paid Value and U.S. Producers' Price

Approximately 70 percent of Category 633 imports from China during the first three months of 1988 entered under TSUSA number 381.9510—men's man-made fiber woven suit-type coats and jackets, not ornamented. These garments entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable garments.

Men's and Boys' Man-Made Fiber: Suits (Category 643), China, June 1988.

Summary and Conclusions

U.S. imports of men's and boys' man-made fiber suits (Category 643) from China reached 360,390 units during the year ending March 1988, a 67 percent increase over the 215,916 units imported a year earlier. Men's and boys' man-made fiber suit imports from China were 258,036 units in 1987 and 205,896 units in 1986. During the first three months of 1988, imports of men's and boys' man-made fiber suits (Category 643) from China reached 171,486 units, two and one half times the 69,132 units imported during the same period of 1987.

The sharp and substantial increase in imports of Category 643 from China is a real risk of market disruption.

U.S. Production and Market Share

U.S. production of men's and boys' man-made fiber suits (Category 643) has been on the decline, dropping from 11,340 thousand units in 1982 to 6,168 thousand units in 1987, a 46 percent decrease. The domestic manufacturers' share of this market fell from 89 percent in 1982 to 72 percent in 1987, a drop of 17 percentage points.

U.S. Imports and Import Penetration

U.S. imports of men's and boys' man-made fiber suits (Category 643) reached 2,389 thousand units in 1987, 64 percent above the 1,452 thousand units imported in 1982. The ratio of imports to domestic production tripled, increasing from 13 percent in 1982 to 39 percent in 1987.

Duty-Paid Value and U.S. Producers' Price

Approximately 78 percent of Cateogry 643 imports from China during the first three months of 1988 entered under TSUSA numbers 381.9564—men's and boys' man-made fiber woven suits, having a jacket with a single back panel, other than those with two pairs of pants, excluding leisure suits, not ornamented and 381.9568—men's and boys' man-made fiber woven suits, other than those having a jacket with a single back panel and those with two pairs of pants, excluding leisure suits, not ornamented. These suits entered the U.S. at duty-paid landed values below U.S. producers' prices for comparable suits.

Category 870—Luggage of Silk-Blend and Vegetable Fiber Other than Cotton, China, June 1988.

Summary and Conclusions

U.S. imports of Category 870 luggage—silk blend and vegetable fiber other than cotton—from China reached 5.2 million pounds for the year ending March 1988, making China the second largest supplier of Category 870 imports accounting for 20 percent of total imports. Imports of Category 870 from China were 3.8 million pounds for the eight month period August 1987 through March 1988, nearly 7 times the 557 thousand pounds imported during the period August 1986 through March 1987.[1] During the latest eight months, August 1987 through March 1988, China's share of Category 870 imports reached 22 percent of total imports in this category.

Imports of silk-blend and vegetable fiber, other than cotton, luggage compete with domestically produced man-made fiber luggage—Category 670 part. The sharp and substantial increase of Category 870 imports from China is a real risk of market disruption.

Import Penetration and market Share

The ratio of imports to production in Category 670 part, luggage, increased to 336 percent in 1987. The share of this market held by domestic manufacturers dropped to 23 percent in 1987. When imports of the directly competitive Category 870 are included, the import to production ratio increases to 397 percent and the domestic manufacturers' share of the market declines to 20 percent.

U.S. imports of Category 870 for the year ending March 1988 reached 26,182 thousand pounds representing 16 percent of total man-made fiber, silk-blend and vegetable fiber, other than cotton, luggage.

Duty-Paid Import Values and U.S. Producer's Prices

Nearly all of Category 870 imports from China entered under TSUSA 706.3850—luggage of vegetable fiber excluding cotton. These imports from China entered at low duty-paid values, resulting in whosesale prices well below those of comparable U.S. produced luggage.

[1] Import data on silk-blend and vegetable fiber, other than cotton, luggage started to be collected in August 1986. Therefore, directly comparable Category 870 import data exist for the eight month periods August 1986 through March 1987 and August 1987 through March 1988.

Committee for the Implementation of Textile Agreements

July 21, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20029.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement on February 2, 1988, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 28, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in China and exported during the period which began on June 30, 1988 and extends through December 31, 1988, in excess of the following levels of restraint:

Category:	*Restraint limit*
633	18,500 dozen.
643	210,345 numbers.
870	3,040,660 pounds.

Categories 633 and 643 shall remain subject to the Group II limt established in the directive of December 30, 1987.

Textile products in Categories 633, 643 and 870 which have been exported to the United States prior to June 30, 1988 shall not be subject to the limts established in this directive.

Textile products in Category 870 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementaion of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-16770 Filed 7-25-88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Per Diem, Travel and Transportation Allowance Committee; Changes in Per Diem Rates

AGENCY: Per Diem, Travel and Transportation Allowance Committee.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 144. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and possessions of the United States. Bulletin Number 144 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: June 1, 1988.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

Civilian Personnel Per Diem Bulletin Number 144

To the Heads of the Executive Departments and Establishments.

Subject: Maximum Per Diem Rates for Official Travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government Civilian Employees.

1. This bulletin is issued in accordance with Executive Order 12561, dated July 1, 1986, which delegates to the Secretary of Defense the authority of the President in 5 U.S. Code 5702(a) to set maximum per diem rates and actual expense reimbursement ceilings for Federal civilian personnel traveling on official business in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and possessions of the United States. When appropriate and in accordance with regulations issued by competent authority, lesser rates and ceilings may be prescribed.

2. The maximum per diem rates shown in the following table are continued from the preceding Bulletin Number 143 except for the cases identified by asterisks which rates are effective on the date of this Bulletin unless otherwise indicated.

3. Each Department or establishment subject to these rates shall take appropriate action to disseminate the contents of this Bulletin to the appropriate headquarters and field agencies affected thereby.

4. The maximum per diem rates referred to in this Bulletin are:

Locality	Maximum rate
Alaska:	
Adak [1]	$25
Anaktuvuk Pass	140
Anchorage	125
Atqasuk	215
Barrow	146
Bethel	127
Bettles	110
Cold Bay	120
Coldfoot	122
College	114
Cordova	130
Deadhorse	113
Dillingham	114
Dutch Harbor-Unalaska	127
Eielson AFB	114
Elmendorf	125
Fairbanks	114
Ft. Richardson	125
Ft. Wainwright	114
Homer	115
Juneau	114
Katmai National Park	148
Kenai	119
Ketchikan	111
King Salmon [3]	134
Kodiak	118
Kotzebue [3]	143
Kuparuk Oilfield	127
Murphy Dome [3]	114
Noatak	143
Nome	129
Noorvik	143
Petersburg	111
Point Hope	160
Point Lay	179
Prudhoe Bay	113
St. Paul Island	115
Sand Point	103
Seward	122
Shemya AFB [3]	30
Shungnak	143
Sitka-Mt. Edgecombe	111
Skagway	111
Spruce Cape	118
St. Mary's	100
Tanana	129
Tok	109
Umiat	160
Unakakleet	105
Valdez	147
Wainwright	165
Walker Lake	136
Wrangell	111
Yakutat	110
All Other Localities [3], [4]	91
American Samoa	81
*Guam M.I	122
*Hawaii:	
Hawaii, Island of:	
Hilo	70
Other	91
Kauai, Island of:	
12-20—3-31	127
4-1—12-19	95
Oahu, Island of	116
All Other Islands	91
Johnston Atoll [2]	23
Midway Islands [1]	13
Northern Mariana Islands:	
Rota	76
Saipan	92
Tinian	68
All Other Islands	20
Puerto Rico:	
Bayamon:	
12-16—5-15	134
5-16—12-15	107
Carolina:	
12-16—5-15	134
5-16—12-15	107
Fajardo (Including Luquillo):	
12-16—5-15	134
5-16—12-15	107
Ft. Buchanan (Incl GSA Service Center, Guaynabo):	
12-16—5-15	134
5-16—12-15	107
Roosevelt Roads:	
12-16—5-15	134
5-16—12-15	107
Sabana Seca:	
12-16—5-15	134
5-16—12-15	107
San Juan (Including San Juan Coast Guard Units):	
12-16—5-15	134
5-16—12-15	107
All Other Localities	107
Virgin Islands of U.S.:	
12-1—4-30	180
5-1—11-30	144
Wake Island [2]	20
All Other Localities	20

[1] Commercial facilities are not available. The per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler. For Adak, Alaska: on any day when Government quarters are not used and quarters are obtained at a construction camp, a daily travel per diem allowance of $69 is prescribed to cover the costs of lodging, meals and incidental expenses.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

[3] On any day when US Government or contractor quarters and US Government or contractor messing facilities are used, a per diem rate of $13 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Cold Bay, Fort Yukon, Galena, Indian Mountain, King Salmon, Kotzebue, Murphy Dome, Sparrevohn, Tatalina and Tin City. This rate will be increased by the amount paid for US Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[4] On any day when US Government or contractor quarters and US Government or contractor messing facilities are used, a per diem rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for US Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed

herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 20, 1988.

[FR Doc. 88-16756 Filed 7-25-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Assistant Secretary of the Army (Civil Works): Request for Nominations to the Inland Waterways Users Board

AGENCY: Department of the Army, DOD.

ACTION: Notice in the Federal Register.

SUMMARY: Section 302 of Pub. L. 99-662 established the Inland Waterways Users Board. The Board is an independent Federal advisory committee. Its eleven members are appointed by the Secretary of the Army. This notice is to solicit nominations for five appointments or reappointments to two-year terms that will begin January 1, 1989.

EFFECTIVE DATE: July 15, 1988.

ADDRESS: Office of the Assistant Secretary of the Army (Civil Works), Department of the Army, Washington, DC 20314-1000. Attention: Inland Waterways Users Board Nominations Committee.

FOR FURTHER INFORMATION CONTACT: Dr. G. Edward Dickey; 202-272-0126.

SUPPLEMENTARY INFORMATION: The selection, service, and appointment of board members are covered by provisions of section 302 of Pub. L. 99-662. The substance of those provisions is as follows: *Selection.* Members are to be selected from the spectrum of commercial carriers and shippers using the inland and intracoastal waterways, to represent geographical regions, and to be representative of waterway commerce as determined by commodity ton-miles statistics. *Service.* The Board is required to meet at least semi-annually to develop and make recommendations to the Secretary of the Army on waterway construction and rehabilitation priorities and spending levels for commercial navigation improvements, and reports its recommendations annually to the Secretary and to Congress. *Appointment.* The operation of the Board and appointment of its members are subject to the Federal Advisory Committee Act (Pub. L. 92-463 as amended) and Departmental implementing regulations. Members serve without compensation but their expenses due to Board activities are reimbursable.

The considerations specified in section 302 for the selection of the Board members, and certain terms used therein, have been interpreted, supplemented, or otherwise clarified as follows: *Carriers and Shippers.* The law uses the terms "primary users and shippers." Primary users has been interpreted to mean the providers of transportation services on inland waterways such as barge or towboat operators. Shippers has been interpreted to mean the purchasers of such services for the movement of commodities they own or control. Individuals are appointed to the Board, but they must be either a carrier or shipper, or represent a firm that is a carrier or shipper. For that purpose a trade or regional association is neither a shipper or primary user. *Geographical Representation.* The law specifies "various" regions. For the purpose of selecting Board Members, the waterways subjected to fuel taxes and described in Pub. L. 95-502 as amended have been aggregated into six regions. They are (1) the Upper Mississippi River and its tributaries above the mouth of the Ohio; (2) the Lower Mississippi River and its tributaries below the mouth of the Ohio and above Baton Rouge; (3) The Ohio River and its tributaries; (4) The Gulf Intracoastal Waterway in Louisiana and Texas; (5) The Gulf Intracoastal Waterway east of New Orleans and associated fuel-taxed waterways including the Tennessee Tombigbee, plus the Atlantic Intracoastal Waterway below Norfolk; and (6) the Columbia-Snake River System and Upper Willamette. The intent is that each region shall be represented by at least one board member, with that representation determined by the residence and principal place of business of the individual. *Commodity Representation.* Waterway commerce has been aggregated into six commodity categories based on "inland" ton-miles shown in *Waterborne Commerce of the United States.* In rank order they are (1) Farm and Food Products; (2) Coal and Coke; (3) Petroleum Crude and Products; (4) Minerals, Ores, and Primary Metals and Mineral Products; (5) Chemicals and Allied Products; and (6) All other. A consideration in the selection of Board members will be that the commodities carried or shipped by those individuals or their firms will be reasonably representative of the above commodity categories.

Reflecting the preceding selection criteria, the present representation by Board members is as follows:

Members whose terms expire December 31, 1988 include two shipper representatives representing the Ohio River and Upper Mississippi regions, and chemicals and petroleum, and grain, respectively; three carrier representatives representing the Columbia River, Ohio River, and West Gulf regions, and grain and other, coal and ores, and ores and chemicals respectively.

Members whose terms expire December 31, 1989, include three shipper representatives representing the Ohio River, Upper Mississippi and Lower Mississippi regions, and coal (2), and grain and coal, respectively; three carrier representatives representing the East Gulf and Ohio River (2) regions, and coal and ores, coal and chemicals, and coal and grain, respectively.

Nominations to fill the anticipated vacancy representing the West Gulf, or to replace other members whose terms will expire in 1988, may be made by individuals, firms, or associations. Nominations should state the region to be represented and whether the nominee is to represent carriers or shippers. Information should be provided on the nominee's personal qualifications and the commercial operations of the carrier and/or shipper that the nominee is associated with. The latter information should show the actual or estimated ton-miles of commodities carried or shipped on inland waterways in a recent year (or years) using the waterway regions and commodity categories previously listed.

Nominations received in response to the Federal Register notice published February 13, 1987, have been retained. Those nominees, including the individuals subsequently appointed to the Board and whose terms expire in 1988, will be given consideration for appointment or reappointment. Renomination is not required but may be desirable.

Deadline for Nominations: All nominations must be received at the address shown above no later than August 15, 1988.

Dated: July 15, 1988.

John O. Roach II,

Army Liaison Officer with the Federal Register.

[FR Doc. 88-16725 Filed 7-25-88; 8:45 am]

BILLING CODE 3710-92-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ES88-47-000 et al.]

Glen Park Associates Limited Partnership et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Glen Park Associates Limited Partnership

[Docket No. ES88-47-000]

July 15, 1988.

Take notice that on July 11, 1988, Glen Park Associates Limited Partnership ("Glen Park"), filed an application seeking authority to assume obligations of up to $45.1 million under an installment sales agreement with the Industrial Development Agency of Jefferson County, New York, and two letter of credit agreements. The purpose of the financing is to obtain permanent financing for the 32.6 MW Glen Park hydro project which is now in operation.

In addition, Glen Park seeks short-term borrowing authority in an amount not to exceed $4.9 million.

Comment date: July 29, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Pacific Power & Light Company an Assumed Business Name of PacifiCorp

[Docket No. EC88-25-000]

July 18, 1988.

Take notice that on July 8, 1988, Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, a Maine corporation, qualified to transact business in the states of Oregon, Wyoming, Washington, California, Montana, and Idaho, with its principal business office in Portland, Oregon, tendered for filing an application with the Federal Energy Regulatory Commission, pursuant to section 33 of the Commission's Regulations seeking an order authorizing it to sell to Idaho Power Company, Pacific's Midpoint 500 kV Substation located in Jerome County, Idaho.

Pacific respectfully requests that pursuant to § 33.10 of the Commission's Regulations, the Commission accept this application for filing to be effective forty-five (45) days after the date of filing.

Comment date: August 1, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Alabama Power Company

[Docket No. ER88-450-000]

July 18, 1988.

Take notice that on July 5, 1988, Alabama Power Company tendered for filing an amended Exhibit A to replace the Exhibit A provided in the original filing dated May 26, 1988.

A copy of this filing has been served upon the City of Evergreen.

Comment date: August 1, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. MSU System Services, Inc.

[Docket No. ER88-512-000]

July 18, 1988.

Take notice that on July 5, 1988, MSU System Services, Inc. (SSI), as agent for Mississippi Power & Light Company (MP&L), tendered for filing Service Schedule LF—Limited Firm Capacity and Energy between Alabama Electric Cooperative, Inc. (Alabama Electric and MP&L (Service Schedule), and a letter agreement for the sale of limited firm capacity to Alabama Electric from MP&L (Letter Agreement).

SSI requests an effectice date of May 31, 1988 for the Service Schedule and of June 1, 1988 for the Letter Agreement. SSI requests waiver of the Commission's notice requirements under § 35.11 of the Commission's Regulations.

Comment date: August 1, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. MSU System Services, Inc.

[Docket No. ER88-511-000]

July 18, 1988.

Take notice that on July 5, 1988, MSU System Services, Inc. (SSI), as agent for Arkansas Power & Light Company (AP&L), Louisiana Power & Light Company (LP&L), Mississippi Power & Light Company (MP&L) and New Orleans Public Service Inc. (NOPSI), tendered for filing a Contract for Purchases of Economic Energy by Oglethorpe Power Corporation from AP&L, LP&L, MP&L, and NOPSI (Contract), and a letter agreement for the purchase of reserve capacity and energy by Oglethorpe AP&L, LP&L, MP&L, and NOPSI (Letter Agreement).

SSI requests an effectice date of June 1, 1988 for the Contract and June 14, 1988 for the Letter Agreement. SSI requests waiver of the Commission's notice requirements under § 35.11 of the Commission's Regulations.

Comment date: August 1, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Central Vermont Public Service Corporation

[Docket No. ER88-456-000]

July 18, 1988.

Take notice that on May 27, 1988, Central Vermont Public Service Corporation (Company) tendered for filing the 1987 Cost Report based on actual costs as required under Article 2.4 on First Revised Sheet No. 18 of FERC Electric Tariff, Original Volume No. 3, in which the Company provides transmission and distribution service to the following Customers:

Vermont Electric Cooperative, Inc.
Lyndonville Electric Department
Village of Ludlow Electric Light Department
Village of Johnson Water and Light Department
Village of Hyde Park Water and Light Department
Allied Power and Light Company
Rochester Electric Light and Power Company

Comment date: August 1, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Arizona Public Service Company

[Docket No. ER88-518-000]

July 18, 1988.

Take notice that on July 1, 1988, Arizona Public Service Company (APS) tendered for filing informational material related to the Supplemental Agreement No. 1 to the Wholesale Power Supply Agreement between APS and the Papago Tribal Utility Authority.

Comment date: August 1, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Northeast Utilities Service Company

[Docket No. ER88-517-000]

July 18, 1988.

Take notice that on July 11, 1988, Northeast Utilities Service Company as an agent for Connecticut Light and Power Company tendered for filing a Notice of Termination, effective the 31st day of July 1988 are Rate Schedules FERC 242, 356, 241, and 354, effective dates May 1, 1987, December 29, 1985, May 1, 1981, and December 15, 1985, respectively.

The rate schedules are to be terminated because they are no longer being utilized by the parties to the agreements. The Commission is requested to waive the notice requirements in order to allow the termination to take effect on July 31, 1988.

Notice of the proposed terminations has been served upon Northfield Electric

Department, Central Vermont Public Service Corporation, Taunton Municipal Lighting Plant, and Montaup Electric Company.

Comment date: August 1, 1988, in accordance with Standard Paragraph E at the end of this document.

9. Oklahoma Gas and Electric Company

[Docket No. ER88-516-000]

July 18, 1988.

Take notice that on July 11, 1988, Oklahoma Gas and Electric Company (OG&E) tendered for filing a new Agreement intended to supersede OG&E's Rate Schedule FERC No. 123. This Agreement is the contract between OG&E and the Southwestern Power Administration (SWPA). The new rate is identical to the old rate, and provides for the sale of Replacement Energy and Emergency Service to SWPA.

OG&E requests an effective date of June 1, 1988, and therefore requests waiver of the Commission's notice requirements.

Comment date: August 1, 1988, in accordance with Standard Paragraph E at the end of this notice.

10. Iowa Power and Light Company

[Docket No. ER88-515-000]

July 18, 1988.

Take notice that on July 11, 1988, Iowa Power and Light Company (Iowa Power) tendered for filing a Notice of Cancellation of an Agreement between Iowa Power and Associated Electric Cooperative, Inc. (AEC), dated December 31, 1987.

Iowa Power states that the Agreement expired on its own terms on December 31, 1987; that the Notice of Cancellation was mailed to AEC, the only purchaser under the Agreement; and that the filing was mailed to the Iowa State Utilities Board.

Iowa Power requests an effective date of December 31, 1987, and therefore requests a waiver of the Commission's notice requirements.

Comment date: August 1, 1988, in accordance with Standard Paragraph E at the end of this notice.

11. Arkansas Power and Light Company

[Docket No. ER83-297-009]

July 18, 1988.

Take notice that on July 12, 1988, Arkansas Power & Light Company tendered for filing, pursuant to Commission order issued April 29, 1988, a revised Compliance Report showing the monthly billing determinants which were modified under this filing, revenue receipt dates, monthly refunds and the monthly interest computed for the total refund period from October 1985 through February 1988.

A copy of this filing has been served upon all parties affected by this proceeding.

Comment date: August 1, 1988, in accordance with Standard Paragraph E at the end of this notice.

12. Empire District Electric Company

July 18, 1988.

[Docket No. ER88-513-000]

Take notice that on July 8, 1988, a Consent Settlement Agreement executed by the Commission Trial Staff (Staff), and the Empire District Electric Company (Empire), together with a revised rate schedule for municipal wholesale customers, and a revised Fuel Adjustment Clause was filed with the Commission. Under the Consent Settlement Agreement Empire would reduce its cost of service to its municipal wholesale customers by $91,308.00, and refund the sum of $68,056.00 to tis wholesale customers as a one-time refund to account for the time value of the monies already collected for estimated coal land reclamation costs. In addition, Empire has agreed to revise its Fuel Adjustment Clause to provide for estimated coal land reclamation costs and a final true-up of those costs to reflect actual charges. Empire will also adjust its books of account to reflect full federal income tax normalization.

The signatories request an effective date for the filed rate schedules of May 1, 1988.

Copies of this filing were served upon Arkansas Public Service Commission, Missouri Public Service Commission, State Corporation Commission of Kansas, Corporation Commission of Oklahoma, Sekan Electric Cooperative, Twin Valley Electric Cooperative, the City of Chetopa, Kansas, the City of Monett, Missouri, the City of Mount Vernon, Missouri, and the City of Lockwood, Missouri.

Comment date: August 1, 1988, in accordance with Standard Paragraph E at the end of this notice.

13. Iowa Power and Light Company

[Docket No. ER88-514-000]

July 18, 1988.

Take notice that on July 11, 1988, Iowa Power and Light Company (Iowa Power) tendered for filing a Notice of Cancellation of the Joint Dispatch Data Exchange Agreement (Agreement), and the three Amendments thereto, as entered into between Iowa Power, Iowa-Illinois Gas & Electric Company, Iowa Public Service Company, Iowa Southern Utilities Company, Interstate Power Company, and Iowa Electric Light and Power Company. The Agreement was dated March 29, 1978; Amendment No. 1 was dated August 1, 1979; Amendment No. 2 was dated December 23, 1980; and Amendment No. 3 was dated August 31, 1984.

The Agreement related to the implementation and operation of a central data exchange facility for the purpose of coordinating the parties' respective interests in operational control of jointly-owned electric power generating facilities. The Agreement expired by its own terms on March 28, 1988; the parties also filed a separate document memorializing their consent to termination of the Agreement.

Iowa Power requests that the Commission waive its prior notice requirements and accept the Notice of Cancellation for filing with a retroactive effective date of March 28, 1988.

Copies of this filing were mailed to each affected party and to the Iowa State Utilities Board.

Comment date: August 1, 1988, in accordance with Standard Paragraph E at the end of this notice.

14. Southwestern Power Administration

[Docket No. EF88-4011-000]

July 18, 1988.

Take notice that on July 6, 1988, the Under Secretary, U.S. Department of Energy, tendered for filing the following Southwestern Power Administation System rates to the Commission for confirmation and approval on a final basis, pursuant to the authority vested in the Commission by Delegation Order No. 0204-108, as amended:

Rate Schedule P-87A, Peaking Power
Rate Schedule P-87B, Peaking Power through Oklahoma Utility Companies and/or Oklahoma Municipal Power Authority
Rate Schedule F-87B, Firm Power through Oklahoma Utility Companies
Rate Schedule TDC-87, Transmission Service
Rate Schedule EE-87, Excess Energy
Rate Schedule IC-87, Interruptible Capacity

The System rates were confirmed, approved and placed in effect on an interim basis by the Under Secretary of Energy in Rate Order No. SWPA-21 for the period July 1, 1988, through September 30, 1991. The Under Secretary of Energy has submitted the rates to the Commission for confirmation, approval and implementation on a final basis for the same period.

The System rate schedules would increase annual revenue by $2,814,600

from $87,971,100 to $90,785,900 to recover projected increases in annual operating expenses for the generation and transmission facilities. This would be accomplished primarily through an increase in the base energy charge for sales of Federal hydroelectric power and energy, although a slight decrease in the basic monthly demand charges and the combination of a decrease and an increase in the conditions of service charges for 69 kV, and load center or below 69kV deliveries respectively, contribute as well. Significantly increased charges for the use of SWPA's transmission system to delivery non-Federal power and energy are indicated and new alternate energy-based transmission rates have been designed for delivery of economy energy. Further, a credit, specifically designed for each customer, will apply against the purchased power adder component of the rate schedules to refund excess reveneus collected in the purchased power deferral account during recent years of favorable water conditions. This credit is intended to effectively equalize each customers average purchased power adder cost and should reduce the deferral account to a level needed to cover system purchases under one year of critical water conditions. The credit will offset the effects of the overall rate increase for the vast majority of customers, except those to which the purchased power adder does not apply, who will experience an increase of about one percent power adder does not apply, who will experience an increase of about one percent in their basic 1200 hour peaking service. The total rate increase is derived about 20 percent from the basic peaking and firm service, about 45 percent from non-firm energy sales, and about 35 percent from facilities and transmission service charges. The proposal also includes a provision for SWPA's Administrator, at his discretion, to adjust the purchased power adder annually up to $0.0005 per kilowatthour as necessary, with notification to the Commission.

Comment date: August 1, 1988, in accordance with Standard Paragraph E at the end of this document.

15. Southern California Edison Company

[Docket No. ER88-519-000]

July 18, 1988.

Take notice that on July 3, 1988, Southern California Edison Company (Edison) tendered for filing pursuant to § 35.13 of the Federal Energy Regulatory Commission's Regulations and the Federal Power Act the following Letter Agreements (Agreements) which have been executed by Edison and the United States of America, Department of Energy, acting by and through the Bonneville Power Administration (BPA).

Letter Agreement Dated August 19, 1987 (Umbrella Agreement, Contract No. DE-MS79—87BP92410)

Letter Agreement Dated April 26, 1988 (Subsequent Agreement)

These Agreements supersede the Power Sales Contract executed by BPA and Edison as of July 31, 1967 (Power Sales Contract, Contract No. 14-03-54125). The Power Sales Contract, by its terms, terminated July 31, 1987. The Parties executed these Letter Agreements to facilitate additional sales and exchange arrangements.

The Umbrella Agreement provides a 20-year contractual mechanism for the purchase and sale or exchange of surplus energy and/or capacity and/or other services for short-term periods, not to exceed 24 months.

The Subsequent Agreement was executed pursuant to the Umbrella Agreement and provides for specific storage and exchange of capacity and energy from April 9, 1988, through February 1, 1989, except that as specified the Subsequent Agreement may be extended to March 1, 1989.

Edison respectfully requests waiver of the notice provisions of § 35.3 of the Commission's Regulations to permit the Agreements to become effective on July 31, 1987 to coincide with termination of the Power Sales Contract and to permit an effective termination date of July 31, 1987 for the Power Sales Contract to coincide with the termination date in the Power Sales Contract.

Copies of this filing were served upon the Public Utilities Commission of the State of California and BPA.

Comment date: August 1, 1988, in accordance with Standard Paragraph E at the end of this document.

16. Allegheny Electric Cooperative, Inc.

[Docket No. QF88-452-000]

July 19, 1988.

On July 6, 1988, Allegheny Electric Cooperative, Inc. (Applicant), of 212 Locust Street, P.O. Box 1266, Harrisburg, Pennsylvania 17108-1266 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed hydro electric facility will be located on the Raystown Branch of the Juniata River, in south central Pennsylvania, approximately four miles southeast of Huntington, Pennsylvania, on lands owned by the United States Government. Electric power production capacity of the facility will be approximately 21.747 MW.

The facility is owned by the Connecticut Bank and Trust Company, National Association, as Owner Trustee (Owner). The applicant will operate the facility pursuant to a lease with the owner.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comment on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 10 CFR Part 292. It does not relieve a facility of any other requirements of local State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

17. Calderon Energy Company

[Docket No. QF88-434-001]

July 19, 1988.

On June 15, 1988, Calderon Energy Company (Applicant) of 419 Gould Street, Suite #3, P.O. Box 126, Boiling Green, Ohio 43402 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations (Docket No. QF88-434-000). On June 29, 1988, Applicant submitted for filing an amendment to the application for certification requesting certification of the facility as a qualifying small power production facility instead of as a qualifying cogeneration facility. No. determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located at 2500 South Dunbridge Road, Boiling Green, Wood County, Ohio. The facility will be constructed adjacent to a proposal coal gasification/methanol plant to be built by Applicant. The facility will consist of a combustion turbine generator unit, a heat recovery steam generator, and a condensing steam turbine generator. Applicant states that the primary energy source of the facility will be "waste" in the form of low Btu synthetic gas produced as a by-product of the operations at the proposed coal gasification/methanol plant. The net electric power production capacity of the facility will be 79 megawatts with approximately 72 megawatts available for sale.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

18. Stone Connecticut Paperboard Corp.

[Docket No. QF88–453–000]

July 19, 1988.

On July 5, 1988 Stone Connecticut Paperboard Corp., of 125 Depot Road, P.O. Box 1500, Uncasville, Connecticut 06832, submitted for filing an application for certification of a facility as a qualifing 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 at the Stone Container plant site in Uncasville, Connecticut. The facility will consist of an existing oil-fired steam generator, and a new back-pressure steam turbine generator (BPSTG). Steam to the BPSTG will be provided from two sources; (1) from the existing oil-fired steam generator; (2) from the adjacent cogeneration facility (AES Thames, Inc. (AES); 34 FERC ¶ 62,079 (1986)). Steam recovered from the facility and part of the steam from AES will be used in the paper production process. The maximum net electric power production capacity of the facility will be 2.2 MW. The primary source of energy will be coal (at AES) and No. 6 fuel oil. The installation of the facility will begin on about August 1988.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

19. AEM Corp.

[Docket No. QF84–377–003]

July 19, 1988.

On June 30, 1988, AEM Corp. and Colstrip Energy Limited Partnership (collectively, the Applicant) of 3366 N. Torrey Pines Court, Suite #220, La Jolla, California 92037 submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The application for recertification of the facility as a qualifying small power production facility requests changes in the ownership, description, and electric power production capacity of the facility. The proposed small power production facility was previously certified as a qualifying cogeneration facility on December 11, 1984, (Docket No. QF84–377–000, 29 FERC ¶ 62,254 (1984)) and as a qualifying small power production facility on October 9, 1987, (Docket No. QF84–377–002, 41 FERC ¶ 62,031 (1987)). On November 19, 1986, an application for recertification of the facility as a qualifying cogeneration facility was filed with the Commission and is currently under review (Docket No. QF84–377–001).

The proposed small power production facility was previously to be owned and operated by the AEM Corp. of 1445 Palisades Drive, Pacific Palisades, California 90272. The instant application requests changes in the ownership and operator of the facility to a limited partnership, Colstrip Energy Limited Partnership (Partnership). AEM Corp. will transfer all of its interests in the facility to the Rosebud Energy Corporation, the general partner of the Partnership. The limited partners of the Partnership are: Spruce Limited Partnership, a Delaware limited partnership, and Harrier Power Corporation, a subsidiary of an electric utility. Applicant states that the Harrier Power Corporation will not under the limited partnership agreement be entitled to more than a 50 percent equity interest in the facility.

The description of the facility will change to more accurately describe the circulating fluidized bed combustion boiler and the extraction/condensing steam turbine generator unit that will be utilized in the facility. The circulating fluidized bed combustion boiler will have a rated steam capacity of 350,000 lbs/hr @ 955 °F and 1300 psig. The extraction/condensing steam turbine generator unit will have a rated gross electric power production capacity of approximately 41.5 megawatts. The net electric power production capacity of the facility will increase from 30 megawatts to 35 megawatts. All other aspects of the facility remain unchanged.

Comment date: Thirty days from publication in the **Federal Register**, 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 88–16742 Filed 7–25–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–213–000]

Colorado Interstate Gas Co.; Request for Waiver of Tariff To Allow Recovery of Certain Costs Through Purchased Gas Adjustment Provision

July 20, 1988.

Take notice that on July 7, 1988, Colorado Interstate Gas Company (CIG) filed a request for waiver of section 21 of its FERC Gas Tariff, Original Volume No. 1, and the related Commission Regulations in order that CIG may recover through its Purchased Gas Adjustment Tariff provision certain charges that it will incur when the Commission accepts tariff filings of Northwest Pipeline Corporation (Northwest) to implement its acceptance of the "Blanket Certificate" issued in Docket No. CP86–578. CIG states that pursuant to the terms of Northwest's acceptance of that certifcate, CIG has exercised a one-time right to convert to transportation 100 percent of its firm sales contract demand under NPC's Rate Schedule PL–1. CIG requests that the reservation charges that it incurs related to this converted sales contract demand be recovered through its PGA mechanism.

CIG requests waiver of its Volume No. 1 Tariff (section 21) such that it can continue to reflect and recover through its PGA tariff provisions the transportation reservation fees resulting from CIG's 100 percent conversion of sales entitlements to transportation entitlements pursuant to Northwest's acceptance of its blanket certifcate. CIG requests this waiver only so long as its presently effective service agreement (or any service agreement replacing this sales service agreement as a result of this conversion) continues in effect through its primary term ending October 31, 1989.

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 July 27, 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. 88-16746 Filed 7-25-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-44-007]

El Paso Natural Gas Co.; Compliance Filing

July 20, 1988.

Take notice that on July 14, 1988, pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, El Paso Natural Gas Company ("El Paso") submitted certain tariff sheets to its FERC Gas Tariff to comply with the Commission's orders issued January 29, 1988 and June 30, 1988 and the letter orders dated March 31, 1988 and June 21, 1988 issued by the Director of the Office of Pipeline and Producer Regulations ("OPPR") in this proceeding.

El Paso states that by order issued January 29, 1988 at Docket Nos. RP88-44-000 and CP88-203-000, the Commission, among other things, conditionally accepted, to be effective July 1, 1988, subject to refund, certain tariff sheets tendered as part of El Paso's notice of change in rates for jurisdictional natural gas service filed December 31, 1987 pursuant to section 4 of the Natural Gas Act.

El Paso states that on February 26, 1988, it tendered certain tariff sheets reflecting its understanding of the Commission's directives in the January 29, 1986 order. By letter order dated March 31, 1988 issued by the OPPR, the Commission rejected El Paso's compliance filing for noncompliance with the January 29, 1988 order.

El Paso states that on May 6, 1988, it tendered a revised filing in compliance with the January 29, 1988 order and the directives contained in the March 31, 1988 letter order. By letter order dated June 21, 1988, the Commission rejected the May 6, 1988, revised compliance filing for noncompliance with the January 29, 1988 order.

El Paso states that on June 1, 1988, it filed at Docket No. RP88-44-000, primary and alternate tariff sheets to reflect certain modifications to those rates which were suspended until July 1, 1988 at Docket No. RP88-44-000. Such rates differ from the rates reflected in the revised compliance filing of May 6, 1988 in that the revised compliance rates were adjusted to reflect the removal of take-or-pay buyout and buydown costs, an increase in throughput quantity and certain other adjustments. By order issued on June 30, 1988 at Docket No. RP88-44-004, the Commission approved El Paso's primary tariff sheets, subject to refund and conditioned upon El Paso filing revised sheets within fifteen (15) days of the issuance of the order which comply wih the Commission's January 29, 1988 order and subsequent compliance orders in said proceeding.

El Paso states that, as a result of the foregoing, it is required to make two (2) compliance filings. In particular, one set of tariff sheets must be tendered to comply with the Commission's order dated January 29, 1988, and subsequent orders issued by the OPPR. El Paso is authorized to place such tariff sheets into effect on or after October 1, 1988 if settlement of this proceeding has not been achieved by that date. In addition, by order issued June 30, 1988, El Paso is authorized to place rates into effect on July 1, 1988 subject to the conditions that such tariff sheets comply with the Commission's January 29, 1988 order and subsequent OPPR letter orders.

El Paso states that in response to the requirements of the January 29, 1988 order and the subsequent OPPR letter orders, it has reformulated its firm transportation rates under Rate Schedule T-3 to comply with the directive in the OPPR's letter order of June 21, 1988 that El Paso eliminate any rate discrimination among customers. The reformulation of the T-3 rates consists of three (3) changes: (1) Redesign of the reservation charges to state separately the mainline charges and the field charges; (2) recalculation of the reservation charges based on the demand costs underlying the Rate Schedule T-1 rates; and (3) explicit incorporation of the production area charges (dehydration, purification, and products extraction). The sales demand costs have been allocated using the deliveries for the period February 25-27, 1987.

El Paso states that in compliance with the June 30, 1988 order, El Paso has refiled rates which are derived from the rates filed in compliance with the January 29, 1988, March 31, 1988 and June 21, 1988 orders.

With respect to the tariff sheets tendered in compliance with the January 29, 1988 order and the subsequent OPPR letter orders, EL Paso requests that the Statement of Rates tariff sheets be permitted to become effective not earlier than October 1, 1988, upon a thirty (30) day notice filing by El Paso, in the event El Paso has not achieved settlement, at least in principle, by October 1, 1988 and that the remaining tarriff sheets reflecting conforming changes become effective July 1, 1988.

With respect to the tariff sheets tendered in compliance with the June 30, 1988 order, El Paso requests that those Statement of Rates be accepted and permitted to become effective July 1, 1988 in accordance with the June 30, 1988 order.

El Paso further states that a copy of the compliance filing has been served upon all parties of record in Docket No. RP88-44-000 and, otherwise, upon all interstate pipeline system customers of El Paso and interested state regulatory commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 27, 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 in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-16747 Filed 7-25-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-538-000, et al.]

K N Energy, Inc. et al.; Natural Gas Certificate Filings

July 20, 1988.

Take notice that the following filings have been made with the Commission:

1. K N Energy, Inc.

[Docket No. CP88-538-000]

Take notice that on July 1, 1988, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP88-538-000 a request

pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act for authorization to add two existing interconnection points as wholesale delivery points to Public Service Company of Colorado (PSCo) in Beaver and Texas Counties, Oklahoma, under the blanket authorization issued in Docket Nos. CP83–140–000 and CP83–140–001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

K N states that under its currently authorized sale-for-resale arrangement with PSCo, K N transports natural gas volumes to Colorado Interstate Gas Company (CIG) for PSCo's account at an interconnection of K N's and CIG's facilities in Weld County, Colorado. CIG then transports the gas to PSCo. PSCo has now requested that K N add two existing interconnection points as delivery points to PSCo. K N states that it would deliver up to 20,110 Mcf of natural gas per day to CIG for PSCo's account at the proposed Baker delivery point in Texas County, Oklahoma, and cause up to 5,030 Mcf of natural gas per day that K N purchases from Sun Operating Limited Partnership (Sun) to be delivered to CIG for PSCo's account at the proposed Mocane-Laverne delivery point (an existing interconnection between CIG and Sun) in Beaver County, Oklahoma. CIG would then transport under section 311 of the Natural Gas Policy Act of 1978 authorization any gas that K N sells to PSCo at the proposed Baker and Mocane-Laverne delivery points to PSCo's system in Colorado. No new facilities would be required to implement the hereinbefore described proposal. K N states that PSCo would use any gas it purchases from K N at these two delivery points for its system supply.

K N states these two new wholesale delivery points to PSCo would have no impact on K N's peak day and annual deliveries. K N also states that it would have sufficient capacity to accomplish the hereinbefore proposed natural gas deliveries without detriment or disadvantage to K N's other existing customers.

Comment date: September 6, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. ANR Pipeline Company

[Docket No. CP88–543–000]

Take notice that on July 1, 1988, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP88–543–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act for authorization to add an existing interconnection between ANR and Northern Indiana Public Service Company (NIPSCO) in Adams County, Indiana, as a delivery point under the blanket authorization issued in Docket No. CP82–480–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR states that the proposed delivery point would enable NIPSCO to receive a maximum of 3,500 dekatherms of natural gas per day, which would be within NIPSCO's currently existing peak day and annual entitlements from ANR. ANR states that its natural gas sales to NIPSCO would be made pursuant to their existing service agreement.

Comment date: September 6, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Tennessee Gas Pipeline Company

[Docket No. CP88–573–000]

Take notice that on July 13, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252 filed in Docket No. CP88–573–000 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 Citizens Gas Supply Corporation (Citizens). Tennessee explains that service commenced June 22, 1988 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88–4662. Tennessee further explains that the peak day quantity would be 160,000 dekatherms, the average daily quantity would be 1,200 dekatherms, and that the annual quantity would be 438,000 dekatherms. Tennessee explains that it would receive natural gas for Citizens' account from points of receipt located Offshore Louisiana and the states of Alabama, Louisiana, Texas, and Mississippi. Tennessee states that the points of delivery are located in the states of Alabama, Louisiana, New York and West Virginia. Tennesee further explains that locations of the ultimate delivery point of the gas are in the states of Ohio, Tennessee, West Virginia, New York, Alabama, Mississippi, Kentucky and Florida.

Comment date: September 6, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP88–562–000]

Take notice that on July 11, 1988, Northern Natural Gas Company Division of Enron Corp. (Northern) 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP88–562–000, a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 284.223) for authority to provide interruptible transportation service to Cabot Energy Marketing Corp. (Cabot), a marketer, under Northern's blanket certificate issued December 22, 1986, in Docket No. CP86–435–000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern proposes to transport for Cabot up to 1,500,000 MMBtu per day or approximately 547,500,000 MMBtu annually, pursuant to a transportation agreement dated April 20, 1988. Northern states that the transportation service for Cabot under the 120-day automatic authorization provisions of § 284.223(a) was filed with the Commission in Docket No. ST88–3126.

Also, pursuant to the transportation agreement Northern proposes to compress, on an interruptible basis, up to 40,000 MMBtu of gas for Cabot in Northern's Fort Buford Compressor Station, McKenzie County, North Dakota, for delivery to Northern Border Pipeline Company (NBPL) for subsequent transportation by NBPL.

Comment date: September 6, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. Williams Natural Gas Company

[Docket No. CP88–571–000]

Take notice that on July 12, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP88–571–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon (1) by sale approximately 1.5 miles of 6-inch pipeline and appurtenant facilities in Wilson County, Kansas, and (2) the transportation of gas through said facilities, under the certificate authorization issued in Docket No. CP82–479–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

WNG states that U.S. Oil Management, Inc. (U.S. Oil) has requested that WNG sell this section of pipeline to them for use as a gathering line for wells which U.S. Oil proposes to drill in the vicinity of its Sutcliffe storage field. It is stated that there are three domestic customers (Howard Brant, Bernard Hardin, Jr., and Bill McMillen) on this pipeline served on a resale basis by KPL Gas Service (KPL), and that KPL agrees to the abandonment proposed by WNG. WNG explains that it has made arrangements to provide alternative service for those residential customers. WNG states that the reclaim cost of the facilities is estimated to be $7,650, the salvage value $3,115, and the sale price $10,000.

Comment date: September 6, 1988, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issurance 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. 88-16827 Filed 7-25-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-544-000, et al.]

Natural Gas Pipeline Co. of America et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Natural Gas Pipeline Company

[Docket No. CP88-544-000]

July 15, 1988.

Take notice that on July 5, 1988, Natural Gas Pipeline Company of America (Natural) 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP88-544-000 a request pursuant to the notice procedure in § 157.205 and 284.223(2)(b) of the Commission's Reglations for authorization to transport, on an interruptible basis, up to a maximum of 500,000 MMBtu (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS) for Cabot Energy Marketing Corporation (Cabot), a marketer of natural gas. The receipt points are in Texas, Offshore Texas, Louisiana, Offshore Louisiana, Illinois, Oklahoma, New Mexico, Nebraska, Arkansas, Iowa and Kansas and delivery points are located in Texas, Oklahoma, Illinois, Iowa, Arkansas, Missouri, Nebraska and Kansas. Transportation would be performed under Natural's blanket certificate issued in Docket No. CP86-582 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural commenced the transportation of natural gas for Cabot on May 4, 1988 at Docket No. ST88-4404 for a one hundred and twenty (120) day period ending September 1, 1988, pursuant to § 284.223(a)(1) of the Commission's Regulations and the blanket certificate issued to Natural in Docket No. CP86-582. Natural proposes to continue this service in accordance with § 284.221 and 284.223(2)(b).

Comment date: August 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Northern Natural Gas Company Division of Enron Corporation

[Docket No. CP88-540-000]

July 15, 1988.

Take notice that on July 1, 1988, Northern Natural Gas Company, Division of Enron Corporation (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP88-540-000, a prior notice request pursuant to § 157.205, 157.211 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Terra International, Inc. (Terra) and to construct a new sales tap to accommodate the redelivery of the transported gas to Terra, under the certificate issued in Docket Nos. CP86-435-000 and CP82-401-000, all as more fully set forth in the request which is on file with the Commisson and open to public inspection.

Northern proposes to transport up to 35,000 MMBtu of natural gas per day, pursuant to an April 18, 1988, agreement between Northern and Terra. Northern would provide the service to Terra under the provisions of its Rate Schedule IT-1, it is indicated. Northern further proposes to construct tap and measuring facilities with an estimated cost of $79,000.00 to accommodate the direct delivery of gas to Terra. Northern states that Terra would reimburse Northern for the cost of such facilities. Northern further states that the average and annual quantities would be 30,000 MMBtu and 11,000,000 MMBtu, respectively.

Comment date: August 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. United Gas Pipe Line Company

[Docket No. CP88-544-000]

July 18, 1988.

Take notice that on July 7, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP88-554-000 a prior notice request pursuant to § 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas on an interruptible basis on behalf of Exxon Corporation (Exxon), a producer of natural gas, under the certificate issued in Docket No. CP88-6-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that it proposes to transport on an interruptible basis pursuant to a gas transportation agreement dated March 24, 1988, a maximum daily quantity of 20,600 MMBtu of natural gas and that service commenced April 1, 1988, as reported in Docket No. ST88-4366, pursuant to § 284.224(a) of the Commission's Regulations. United further states that the average day and annual quantities would be 20,600 MMBtu and 7,519,000 MMBtu, respectively.

Comment date: September 2, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. United Gas Pipe Line Company

[Docket No. CP88-552-000]

July 18, 1988.

Take notice that on July 7, 1988, United Gas Pipe Line Company, Post Office Box 1478, Houston, Texas 77251-1478 filed in Docket No. CP88-552-000 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 Amoco Production Company (Amoco), under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth set out in the request on file with the Commission and open to public inspection.

United states that pursuant to a transportation agreement dated April 25,

1988, it proposes to receive up to 120,000 dt equivalent of natural gas per day at an existing interconnection between United and Sea Robin Pipeline Company near Erath, Vermilion Parish, Louisiana, and redeliver the gas at the existing interconnection between the facilities of United and Florida Gas Transmission Company at Arnaudville, St. Landry Parish, Louisiana.

United states that the peak day, average day, and annual quantities would be 123,600, 123,600, and 45,114,000 dt equivalent of natural gas, respectively. It is indicated that a 120-day transportation service under Section 284.223 (a) commenced on June 2, 1988, as reported in Docket No. ST88-4365 on June 24, 1988.

United states that no facilities need be constructed to implement the service. United states that the primary term of the transportation agreement would expire one year from the date of initial transportation but would ocntinue on a month-to-month basis unless terminated by either party on thirty-days written notice. United proposes to charge the rates and abide by the terms and conditions of its Rate Schedule ITS.

Comment date: September 2, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. United Gas Pipe Line Company

[Docket No. CP88-556-000]

July 18, 1988.

Take notice that on July 8, 1988, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251 filed in Docket No., CP88-556-000 a request pursuant ot § 284.223 of the Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-6-000 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.

United proposes to transport natural gas for The Resource Group (Resource Group). United explains that service commenced May 23, 1988 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-4501. United explains that the peak day quantity would be 3,090 dekatherms, the average daily quantity would be 3,090 dekatherms, and that the annual quanitity would be 1,127,850 dekatherms. United explains that it would receive natural gas for Resource Group's account at points of receipt in Panola and Shelby Counties, Texas. United states that it would redeliver the gas for Resource's Group's account at an existing interconnection between United and Mississippi Chemical Corporation in Jackson County, Mississippi.

Comment date: September 2, 1988, in accordance with Standard Paragraph G at the end of this notice.

6. Northern Natural Gas Company Division of Enron Corporation

[Docket No. CP88-556-000]

July 18, 1988.

Take notice that on July 12, 1988, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP88-566-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Texaco, Inc. (Texaco), under the authorization issued in Docket No. CP88-435-000 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.

Northern would perform the proposed interruptible transportation service for Texaco, a producer of natural gas, pursuant to an interruptible transportation agreement dated July 11, 1988. The term of the transportation agreement is for three years and month to month thereafter unless terminated upon 30 days prior written notice by one party to the other party. Northern proposes to transport on a peak day up to 50,000 MMBtu; on an average day up to 37,500 MMBtu; and on an annual basis 6,000,000 MMBtu of natural gas for Texaco. Northern proposes to receive the subject gas from numerous points of receipt in New Mexico, Oklahoma, Kansas, and Texas. Northern would then transport and redeliver such volumes to five delievery points located in Texas, Kansas, and Iowa. Northern avers that construction of facilities would not be required to provide the proposed service.

Northern states that it would perform such transportation service for Texaco pursuant to its Rate Schedule IT-1, or any effective superseding rate schedule on file with the FERC or any successor thereof. It is explained that the proposed service is currrently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's regulations. Northern commenced such self-implementing service on June 1, 1988, as reported in Docket No. ST88-4535-000.

Comment date: September 2, 1988, in accordance with Standard Paragraph G at the end of this notice.

7. National Fuel Gas Supply

[Docket Nos. CP85-826-003 and CP86-96-003]

July 19, 1988.

Take notice that on July 5, 1988, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket Nos. CP85-826-003 and CP86-96-003 a petition to amend further the orders issued in Docket Nos. CP85-826-000, as amended, and CP86-96-000, as amended, pursuant to section 7(c) of the Natural Gas Act, so as to modify the existing transportation service performed by National Fuel on behalf of The Southern Connecticut Gas Company (SCGC), Elizabethtown Gas Company (EGC) and New Jersey Natural (NJN), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

In Docket No. CP85-826-003 National Fuel proposes to transport natural gas for an additional year for EGC and NJN beyond the current expiration date of August 11, 1988 and to designate additional existing interconnections between National Fuel and Tennessee Gas Pipeline Company in Pennsylvania and New York as receipt points for the gas to be transported. In Docket No. CP86-96-003 National Fuel proposes to transport gas for an additional year for SCGC beyond the current expiration date of June 30, 1988, and to increase the daily transportation volume from 1,500 Mcf to 4,000 Mcf. It is stated that in all other respects, the transportation services, as currently authorized, would remain the same.

Comment date: August 9, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

8. Southern Natural Gas Company

[Docket No. CP88-545-000]

July 19, 1988.

Take notice that on July 6, 1988, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202 filed in Docket No. CP88-545-000 an application pursuant to section 7(b) of the Natural Gas Act for an order permitting and approving the abandonment of a 46 horsepower skid-mounted field compressor and appurtenances located at Southern's Spider Compressor Station located in DeSoto Parish, Louisiana, all as more fully set forth in the application on file with the Commission and open for public inspection.

Southern avers that the compressor was installed in 1983 pursuant to a request for authorization filed by

Southern in Docket No. CP83-390-000 under its blanket certificate of public convenience and necessity issued in Docket No. CP82-406-000. Southern states that the compressor was installed to increase the pressure at the Spider Field Compressor Station to obtain a sufficient pressure to enable the Spider Field gas to enter Southern's 14-inch Logansport Line. Southern further states that the 46 horsepower skid-mounted compressor is not presently needed as a result of an increased suction pressure at said station caused by the reworking of certain wells in the Spider Field and Southern does not anticipate its need in the foreseeable future. In order to save maintenance expenses and to simplify the operation of the Spider Field Compressor Station, Southern proposes to abandon the 46 horsepower skid-mounted compressor. Southern also states that the proposed abandonment would not affect the capacity of Southern's pipeline system or require termination of any service to southern's customers.

Accordingly, Southern requests the Commission to issue an order authorizing the abandonment of the compressor and appurtenances as proposed herein. Upon receipt of such authorization, the compressor and appurtenances would be removed and held in inventory for use elsewhere and the facilities would be retired.

Southern further states that the cost of the proposed abandonment would be approximately $950 with an estimated salvage value of $20,900.

Comment date: August 9, 1988, in accordance with Standard Paragraph F at the end of this notice.

9. Granite State Gas Transmission, Inc.

[Docket No. CP88-559-000]

July 19, 1988.

Take notice that on July 11, 1988, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, filed a request pursuant to § 157-205 of the Commission's Regulations for authorization to construct and operate a new delivery point for service to its affiliated distribution customer, Northern Utilities, Inc. (Northern Ulitities), under Granite State's blanket certificate issued in Docket No. CP82-515-000, 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.

Granite State proposes to install a new delivery point on its system in Greenland, New Hampshire, in order to serve a new customer of Northern Utilities. It is estimated that the cost of the facility would be $14,820, and it is asserted that Granite State would be reimbursed for the cost by Northern Utilities, which would own the delivery point. It is explained that the deleivery point would be used for estimated annual deliveries of 1,190 Mcf of natural gas. It is stated that the delieveries through the proposed facility would not increase Northern Utilities' presently authorized contract demand from Granite State and that no existing customers of Granite State would be negatively impacted.

Comment date: September 2, 1988, in accordance with Standard Paragraph G at the end of this notice.

10. Placid Oil Company

[Docket No. CP88-463-000]

July 20, 1988.

Take notice that on June 13, 1988, Placid Oil Company (Placid), 3900 Thanksgiving Tower, 1601 Elm Street, Dallas, Texas 75201, filed in Docket No. CP88-463-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the operation of the entire 51-mile Green Canyon-Ship Shoal Line and the construction of the remaining 8-mile segment of the line, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Placid states that the Green Canyon-Ship Shoal Line is a 51-mile, 16-inch line commencing at its floating production platform located on Green Canyon Block 29 and terminating at the interconnection with ANR Pipeline Company on Ship Shoal Block 207, all in offshore Louisiana. It is stated that the Green Canyon area is located in water depths of 1,500 to 3,800 feet or deeper and more than 80 miles offshore Louisiana. Placid indicates that natural gas and crude oil have been discovered in commercial quantities in Green Canyon Blocks 29 and 31, and Ewing Bank Block 999. It is also stated that the floating production platform on Green Canyon Block 29 will be located in a water depth of 1,540 feet. Placid states that the line's design capacity is 200 MMcf of natural gas per day. It is projected that the Green Canyon gas production will peak at 140 MMcf of natural gas per day.

Placid states that the floating production platform separation process would result in two streams—one, gas which still contains amounts of water, condensate and entrained liquefiables that will be accommodated through a 51-mile, 16-inch line extending from the floating production platform to Ship Shoal Block 207 platform. It is stated that the other stream would consist of oil, condensate, water and varying amounts of gas which will be accommodated through a 51-mile, 14-inch pipeline from the floating production platform to the Ship Shoal Block 207 platform. Placid states that the continuous operation of the field would necessitate the movement of gas, oil, condensate and water to the Ship Shoal Block 207 platform without interruption, explaining, that any time either pipeline has to be shut in for any reason, the remaining line, liquid or gas, would be operated as a two-phase flowline, that is, gas, oil, condensate and water would be transported through a single line in order to maintain production.

Placid states that 43 miles of the shallow water portion of the line has been installed and the remaining 8 miles was initially assembled at Matagorda Island, Texas and damaged enroute to the Green Canyon Block 29 area. Placid states that the segment is being salvaged, repaired and readied for installation at the Green Canyon Block 29 area. Placid states that the 43 miles of line was installed on the assumption that the Green Canyon-Ship Shoal Line was a gathering line, and therefore, exempt from Commission jurisdiction. However, the Commission issued a declaratory order on May 3, 1988, in Docket No. CP88-146-000, finding that the proposed pipeline would be used for the transportation of natural gas in interstate commerce subject to the Commission's jurisdiction under section 7(c) of the Natural Gas Act. On July 8, 1988, in Docket No. CP88-146-001, the Commission issued an order denying a rehearing of the declaratory order.

Comment date: August 10, 1988, in accordance with Standard Paragraph F at the end of this notice.

11. Tennessee Gas Pipeline Company

[Docket No. CP88-529-000]

July 20, 1988.

Take notice that on June 28, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-399-000 an application pursuant to section 7(b) of the Natural Gas Act, for an order permitting and approving abandonment of certain pipeline facilities, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

More specifically, Tennessee proposes to abandon a dual 24" aerial crossing of the Lake Tappan Reservoir in Bergen County, New Jersey, extending from M.P. 330-1 + 1.49 to M.P. 330-1 + 1.98

and consisting of two 24" pipelines supported by concrete piers. Tennessee states that during the last weeks of February, 1988, normal thermal expansion of the 24" Line No. 300–1 was not transferred to the expansion loops on each end of the aerial crossing. It is stated that the accumulation of stress in the pipelines resulted in a shifting of the pipe and piers by as much as three feet. In order to maintain the integrity of its 24" Station 313 to Greenwich line, Tennessee advises that, pursuant to § 2.55 of Part 1 of the Commission's Regulations [18 CFR 2.55(b)], it initiated the construction of a single underwater, buried 24" pipeline from M.P. 330–1 + 1.49 to M.P. 330–1 + 1.98, to replace the dual aerial crossing. It is stated that such line was placed in service on April 14, 1988.

Tennessee states that, assuming peak design day conditions, the pressure drop in the original dual 24" crossing has been calculated to be 0.7 psi, while the pressure drop in the single buried line is calculated to be 2.8 psi. Tennessee contends that this increased pressure drop would have an insignificant effect on the capacity of its 24" Station 313 to Greenwich line. Tennessee submits that the removal of the complete dual aerial crossing is in the public interest in that such abandonment would avoid the unnecessary expenses of maintaining and operating any part of the original dual aerial crossing. Finally, it is estimated that the cost to remove the dual aerial pipeline and piers, less salvage, would be $420,000.00.

Comment date: August 10, 1988, in accordance with Standard Paragraph F at the end of the notice.

12. Great Lakes Gas Transmission Company

[Docket No. CP88–541–000]

July 20, 1988.

Take notice that on July 1, 1988, Great Lakes Gas Transmission Company (Great Lakes) 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP88–541–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Great Lakes to provide firm natural gas service for Southeastern Michigan Gas Company (Southeastern) and construct and operate facilities necessary to provide such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Great Lakes proposes to transport on a firm basis up to 15,000 Mcf per day for Southeastern which Southeastern is purchasing from Western Gas Marketing Ltd. It is stated that Great Lakes would provide transportation of such volumes from a point on the International Boundary at Emerson, Manitoba, to (1) a proposed point of interconnection between the facilities of Great Lakes and Southeastern to be located near Muttonville, Michigan (Muttonville Delivery Point No. 1) and (2) an existing point of interconnection between the facilities of Great Lakes and ANR Pipeline Company (ANR) near Muttonville. It is further stated that ANR would transport and deliver any Southeastern volumes it receives to an existing interconnection between the facilities of ANR and Southeastern located in Columbus Township, Michigan.

It is alleged that the volumes to be transported are expected to be imported by Southeastern pursuant to import authorization that would be requested from the Economic Regulatory Administration (ERA) by Southeastern, or other available valid import authorization by the ERA. To provide the proposed transportation service, Southeastern and Great Lakes entered into a transportation service agreement (agreement) dated May 12, 1988. It is asserted that this agreement provides for a 15 year term to commence when the facilities that Great Lakes must construct to provide the subject transportation have been placed in service. To provide such service for Southeastern, Great Lakes proposes to construct and/or install (1) one pipeline loop of 2.9 miles of 36 inch diameter pipe; (2) a meter station at the Muttonville Delivery Point No. 1; and (3) four aerodynamic assembles at various Great Lakes Compressor stations.

Great Lakes estimates the cost of the proposed facilities to be $4,032,000. It is alleged that the facilities would be financed with funds generated internally, together with borrowing from banks if required. It is further alleged that any bank borrowing would be retired with funds generated internally.

It is stated that the Southeastern Service Agreement provides for a monthly Demand–1 charge of $2.040 per Mcf of contract quantity, Demand–2 charge of $.06705 per Mcf multiplied by one-twelfth of the annual contract quantity, and commodity charge of $.23921 per Mcf for volumes received for transportation under the Agreement. It is further stated that these demand and commodity charges represent the transportation components of the Base Tariff Rates of Rate Schedule T–15 of Great Lakes' FERC Gas Tariff, under which volumes are also transported from the International Bounday near Emerson, Manitoba to points in Great Lakes' Eastern Zone.

Comment date: August 10, 1988, in accordance with Standard Paragraph F at the end of this notice.

13. Great Lakes Gas Transmission Company

[Docket No. CP88–542–000]

July 20, 1988.

Take notice that on July 1, 1988, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP88–542–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing transportation of natural gas, on a firm and interruptible basis, for Midland Cogeneration Venture (MCV), a Michigan Limited Partnership, and POCO Petroleum Ltd. (POCO), a Canadian supplier, and to construct and operate facilities necessary to provide such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Great Lakes states that MCV and POCO have requested that Great Lakes transport up to 55,000 Mcf per day and 25,000 Mcf per day, respectively, from a point of the International Boundary at Emerson, Manitoba, to a point of interconnection between the facilities of Great Lakes and Michigan Gas Storage Company (Michigan Gas), to be located in Chippewa Township, Isabella County, Michigan (Chippewa Delivery Point). It is further stated that both the POCO and MCV volumes would be utilized as fuel gas in MCV's gas-fired cogeneration plant under construction in Midland, Michigan.

To implement the arrangements, Great Lakes states it has entered into Transportation Service Agreements (Agreements) with MCV and POCO respectively, each dated May 25, 1988. The Agreements provide for a 15-year term for firm service, to commence upon the later of May 1, 1990, and the date when the facilities that Great Lakes must construct to provide the subject transportation have been placed in service. To provide the service, Great Lakes proposes to construct and/or install: (1) Nine loops, totalling 83.2 miles of 36 inch diameter pipe, (2) a meter station to be located at the Chippewa Delivery Point, and (3) eight aerodynamic assemblies at various Great Lakes' compressor stations, at an estimated cost of $75,304,100.

Great Lakes states that the Agreements provide for rates for the firm service, of a monthly Demand–1

charge of $2.040 per Mcf contract quantity, Demand–2 charge of $0.6705 per Mcf multiplied by one-twenlfth of the annual contract quantity, and commodity charge of $.23921 per Mcf. Great Lakes further states that these demand and commodity charges represent the transportation components of existing Rate Schedule T–15 of Great Lakes' FERC Gas Tariff, under which volumes are also transported from the International boundary near Emerson Manitoba to points in Great Lakes' Eastern Zone.

In addition to the above-described form service, it is stated that the Agreements provide for interruptible transportation which is expected to commence March 1, 1989, and will terminate when the facilities required to provide the firm service have been placed in-service by Great Lakes. Great Lakes indicates that the rate for interruptible service is the 100 percent loan factor rate, as determined from the demand and commodity components utilized for the firm service.

Comment date: August 10, 1988, in accordance with Standard Paragraph F at the end of this notice.

14. Panhandle Eastern Pipe Line Company

[Docket No. CP88–548–000]

July 20, 1988.

Take notice that on July 7, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP88–548–000 an application pursuant to section 7(c) of the Natural Gas Act for permission and approval to abandon jurisdictional sales service provided to Michigan Consolidated Gas Company (MichCon), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is asserted that MichCon is an existing jurisdictional gas sales customer of Panhandle and is served pursuant to Panhandle's Rate Schedule SS–1 and a Gas Sales Contract dated April 26, 1982 (Contract) which expires on October 31, 1988. It is further asserted that Panhandle's gas sales to MichCon were first authorized by order issued October 17, 1945, at Docket No. G–254, 4 FPC 1081. Panhandle states that it currently provides a quantity of 217,000 Mcf of natural gas per day of firm sales service to MichCon.

It is averred that by letter dated March 20, 1987, MichCon informed Panhandle that it no longer requires any sales service from Panhandle and gave notice of cancellation of the Contract effective October 31, 1988 (Termination Notice). It is further averred that MichCon has confirmed that at the present time it does not require any "replacement" service from Panhandle. It is indicated that there would be no abandonment of facilities. The facilities presently in place would be used to provide transportation service as may be required by MichCon and other shippers.

Panhandle states that the proposed abandonment authority reflects the fact that MichCon no longer wishes to utilize service from Panhandle and should be conditioned on the ultimate recovery by Panhandle of the appropriate residual costs associated with the service to MichCon in addition to any amounts due and payable pursuant to the Contract. It is asserted that concerning take-or-pay costs, contract reformation costs and similar items, it is noted that under Order No. 500, Panhandle has until December 31, 1988, to elect the procedure for recovery and resolution of its take-or-pay obligations.

Comment date: August 10, 1988, in accordance with Standard Paragraph F at the end of this notice.

15. Equitrans, Inc.

[Docket No. CP88–546–000]

July 20, 1988.

Take notice that on July 7, 1988, Equitrans, Inc. (Equitrans) 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP88–546–000 an application pursuant to section 7(c) of the Natural Gas Act for: (1) A blanket certificate authorizing the interruptible sale for resale of natural gas supplies, which are in excess of the current and projected needs of Equitrans' on system customers, to off system and on system customers, to off system and on system purchasers including interstate and Hinshaw pipelines, marketers and local distribution companies pursuant to a proposed new rate schedule, Interruptible Sales Service (ISS): And (2) blanket authorization to use Equitrans' transmission facilities to accomplish the interruptible direct sale of gas to end-users, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Equitrans states that it proposes to charge a negotiated rate for sales under the proposed Rate Schedule ISS ranging between a maximum rate equal to Equitrans' 100 percent load factor rate found in Rate Schedule PLS and a minimum rate equal to Equitrans' actual weighted average cost of gas as included in Equitrans' current PGA, plus fuel, variable delivery costs, and GRI and Annual Charge Adjustments (ACA) if appropriate. Equitrans indicates further that sales under Rate Schedule ISS would be with existing facilities and that third party transportation costs would be born by the gas purchaser.

Comment date: August 10, 1988, in accordance with Standard Paragraph F at the end of this notice.

16. Trunkline Gas Company

[Docket No. CP88–549–000]

July 20, 1988.

Take notice that on July 7, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP88–549–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to partially abandon a transportation service provided to Bridgeline Gas Distribution Company (Bridgeline), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline states that by Commission order dated August 21, 1985, in Docket No. CP84–98–000, Trunkline was authorized to transport, on a firm basis, up to 27,000 Mcf of natural gas per day and, on an interruptible basis, up to 13,000 Mcf of natural gas per day for Bridgeline, pursuant to a Transportation Agreement dated August 28, 1984 (Transportation Agreement). Trunkline states further that it receives gas from Bridgeline's account from Sabine Pipe Line Company in South Timbalier Block 200, Offshore Louisiana. Trunkline avers that it delivers this volume of gas for Bridgeline's account to Columbia Gulf Transmission Company and directly to Bridgeline in St. Mary Parish, Louisiana.

Trunkline proposes to abandon the firm portion of the Transportation Agreement. The abandonment, it is said, would become effective on the first day of the first month after abandonment authorization is received and accepted by Trunkline. Trunkline states that the interruptible portion of the Transportation Agreement would remain in place for Bridgeline's continuing use.

Comment date: August 10, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of

the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-16828 Filed 7-25-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-389-001, CP83-71-001, CP85-608-013, CP88-225-001]

National Fuel Gas Supply Corp.; Petition To Amend

July 20, 1988.

Take notice that on July 1, 1988,[1] National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP87-389-001 a petition to amend its certificate of public convenience and necessity issued therein so as to extend the term of the existing interruptible transportation service for National Fuel Gas Distribution Corporation (Distribution) for a term of one year commencing September 25, 1988. In addition, National Fuel filed in Docket Nos. CP88-71-001, CP85-608-013 and CP88-225-001 to amend the certificates issued therein in order to increase previously authorized transportation volumes and/or modify receipt points with respect to certain end-users covered by National Fuel's authorization in Docket Nos. CP88-71-000, CP85-608-000 as amended, and CP88-225-000, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that National Fuel was authorized on September 25, 1987 in Docket Nos. CP87-389-000 to transport up to 20,985 Mcf/day of natural gas on behalf of its affiliate, Distribution, for the account of 69 existing end-user customers of Distribution and up to 1,000 Mcf/day for the account of Distribution for Rochester Gas and Electric Corporation (RG&E). It is further stated that on December 23, 1987 in Docket No. CP88-71-000, and on April 27, 1988 in Docket No. CP88-225-000, the Commission subsequently authorized National to transport additional volumes of gas and/or modify the receipt or delivery points of certain other end-user customers.

National Fuel hereby requests to amend the certificate issued in Docket No. C-87-389-000 so as to extend the term of the interruptible transportation of up to 19,430 Mcf of natural gas per day on behalf of Distribution for a period of one-year commencing September 25, 1988 for 55 of the original 69 customers, including RG&E. National Fuel also seeks authorization to transport up to 16,684 Mcf of natural gas per day on behalf of Distribution for 58 additional end-users.

In addition, National Fuel requests authorization to transport additional volumes and/or modify receipt points with respect to certain end-users covered by National Fuel's existing authorization in Docket Nos. CP88-71-000, CP85-608-000, as amended, and CP88-225-000. It is stated that the proposed changes would involve the transportation of 100 Mcf per day in excess of the volumes authorized in Docket No. CP88-225-000.

Appendix A hereto indicates the maximum daily volume for each of the 55 customers for which an extension of service is sought and Appendix B indicates the maximum daily volume for the additional 58 customers proposed to be served. Appendix C indicates the modifications in service for those end-users presently receiving transportation service under authorization granted in Docket Nos. CP88-71-000, CP85-608-000, as amended, and CP88-71-000. Details such as receipt points and sellers are available in National Fuel's application.

National Fuel states that it would receive the subject transportation volumes at existing receipt points on its system and would deliver the volumes to Distribution at existing points of delivery. National Fuel adds that it would charge Distribution pursuant to its T-1 Rate Schedule which currently provides for a rate of 31.28 cents per Mcf and 2 percent shrinkage.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 10, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to

[1] The application was rendered for filing June 27, 1988, however, the fee required by § 381.207 of the Commission's Rules (18 CFR 381.207) was not paid until July 1, 1988. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

Appendix A—End-Users Seeking an Extension of Transportation Service Authorized in Docket No. CP87–389–000

End user	Presently authorized maximum daily volume (MCF)	Proposed maximum daily volume (MCF)
1. American Olean Tile, Olean, NY	450	450
2. American Stone Mix:		
Batavia, NY	150	150
Fredonia, PA	185	185
3. Bison Brand Foods Scott St., Buffalo, NY	112	112
4. Brockway Pressed Metals Brockway, NY	350	350
5. Canisius College Buffalo, NY	215	215
6. Catholic Diocese of Buffalo:		
Cardinal O'Hara High Sch., Tonawanda, NY	130	130
Niagara Catholic High Sch., Niagara Falls, NY	100	100
St. Mary High Sch., Lancaster, NY	80	80
Turner-Carroll High Sch., Buffalo, NY	65	65
Catholic Center, Buffalo, NY	60	60
7. Clarion Sintered Metals, Clarion, PA	157	157
8. Dad's Dog Food, Meadville, PA	185	500
9. Daemen College, Amherst, NY	150	150
10. Dunbar Slag, Sharon, PA	300	300
11. Dunkirk Ice Cream, Dunkirk, NY	140	140
12. Exolon-Esk Co., Tonawanda, NY	500	500
13. Frontier Foundries:		
Titusville, PA,	140	200
Niagara Falls, NY	110	200
14. GAF Corp., Erie, PA	1,000	1,000
15. Gibralter Steel, Cheektowaga, NY	210	210
16. Hilbert College, Hamburg, NY	83	83
HOSPITAL SHARED SERVICES		
17. Andrew Kaul Memorial Hosp., St. Marys, PA	153	153
18. Bradford Hospital, Bradford, PA	300	300
19. Brookville, Hospital, Brookville, PA	50	50
20. Clarion Ost. Comm. Hosp., Clarion, PA	46	46
21. Corry Memorial Hosp., Corry, PA	51	51
22. DuBois Regional Med. Ctrs., DuBois, PA:		
Maple Street, Hospital Avenue	83	83
Hospital Avenue	106	106
23. Elk County Gen. Hosp., Ridway, PA	53	53
24. Erie County Geriatric Ctr., Girard, PA	150	150
25. Franklin Regional, Franklin, PA	100	100
26. Greenville Regional Hosp., Greenville, PA	130	130
27. Hamot Medical Center, Erie, PA	50	50
28. Meadville Medical Ctr., Meadville, PA:		
Liberty St.	135	135
Grove St.	130	130
29. Metro Health Center, Erie, PA	116	116
30. Millcreek Comm. Hosp., Erie, PA	53	53
31. Oil City Area Health Ctr., Oil City, PA	146	146
32. St. John Lutheran Care	134	134
33. St George School, Erie, PA	40	40
34. St. Vincent Health Ctr., Erie, PA	500	500
35. Seton School, Meadville, PA	80	80
36. Sharon General Hosp., Sharon, PA	129	129
37. Titusville Hosp., Titusville, PA	50	50
38. Wesbury United Meth. Com., Meadville, PA	140	140
39. J.N. Adam Devel. Ctr., Perrysburg, NY	200	200
40. Lenders Bagel Bakery, West Seneca, NY	300	300
41. Marathon Petroleum, Tonawanda, NY	275	275
42. Mt. St. Mary's Hospt., Lewiston, NY	557	557
43. NYS Office of Gen. Svcs., General Donovan Bldg., Buffalo, NY	55	70
44. Niagara Frontier Trans, Auth., Buffalo, NY:		
Fuhrman Blvd., Buffalo, NY	68	150
180 Ellicott, Buffalo, NY	70	70
455 Cayuga, Buffalo, NY	115	230
East Terminal, Cheektowaga, NY	80	150
West Terminal, Cheektowaga, NY	70	140
Niagara Fall Airport, Niagara Fall, NY	33	150
South Park, Buffalo, NY	35	150
Broadway Ave., Buffalo, NY	58	150
Frontier, Buffalo, NY	37	75
Cold Spring, Buffalo, NY	44	150
45. Rochester Gas & Elec. Co., Rochester, NY	1,000	1,000
46. Rockwell Intn'l.,* DuBois, PA	375	375
47. St Joseph's Inter-Comm.,* Hosp., Cheektowaga, NY	189	189
48. Suny & Alfred, Alfred, NY	843	843
49. Suny & Buffalo (Main St), Buffalo, NY	486	775
50. Suny & Fredonia, Fredona, NY	1,739	1,739
51. Senaca Steel, Buffalo, NY	120	120
52. Upstate Milk, Producers:		
Buffalo, NY	100	100
Jamestown, NY	50	50
53. Villa Maria College, Cheektowaga, NY	75	150
54. West Seneca Devel. Ctr., West Seneca, NY	120	2,000
55. Wheatland Tube, Wheatland, PA	1,100	1,100
Total		19,430

Appendix B—Additional End-Users Proposed To Be Served in Docket No. CP87–389–001

End user	Proposed maximum daily volume (MCF)
1. Bakery Salvage, Buffalo, NY	80
2. Brockway Area Schools, Brockway, PA	175
3. Brookville Area Schools, Brokville, PA	350
4. Buffalo News, Buffalo, NY	250
5. Cameron County Schools, Emporium, PA	100
6. Columbus McKinnon, Tonawanda, NY	250
7. Copes Vulcan, Lake City, PA	100
8. Corry Contract, Corry, PA	185
9. Con Agra (FNA International Multi-Foods), Buffalo, NY	200
10. Cytemp Specialty Steel, Titusvile, PA	1,000
11. DuBois Area Comm. Ctr., DuBois, PA	100
12. DuBois Area Schools, DuBois, PA	400
13. Empire Cheese Inc., Cuba, NY	325
14. Erie Malleable Iron & Erie Wheel, Erie, PA	475
15. Erie Sanitary Linens, Erie, PA	150
16. Erie Wastewater, Erie, PA	700
17. Falconer Metal Spec., Lakewood, NY	175

End user	Proposed maximum daily volume (MCF)
18. Fedco Automotive Components Co., Buffalo, NY	200
19. Franciscan Sisters of St. Joseph, Hamburg, NY	110
20. Franklin Area Sch. Dist., Franklin, PA	250
21. Friendship Foundry, Friendship, NY	17
22. Saginaw Steering Gear, Buffalo, NY	191
23. Harrison Radiator, Buffalo, NY	201
24. New Departure Hyatt, Tonawanda, NY	175
25. CPC Tonawanda Egnine, Tonawanda, NY	400
26. George-White Dev. Co., Hermitage, PA	40
27. Georgia Pacific, Buffalo, NY	300
28. Harborcreek School Dist., Harborcreek, PA	150
29. Hermitage School Dist., Hermitage, PA	350
30. Humphrey Charcoal, Brookville, PA	100
31. Inland Container, Erie, PA	200
32. Joy Cone Co., Hermitage, PA	350
33. Laurel Manufacturing, DuBois, PA	125
34. L-Tec Welding/Cutting, Niagara Falls, NY	200
35. Marlette National, Buffalo, NY	400
36. McGraw-Edison, Olean, NY	200
37. Meadow Brook Dairy, Cuba, NY	190
38. Mercyhurst College, Erie, PA	200
39. Nabisco Brands, Buffalo, NY, Niagara Falls, NY	900
40. New York Wire Mils, Tonawanda, NY	700
41. North Tonawanda Muncip., Housing Auth., North Tanawanda, NY	175
42. Oil City School Dist., Oil City, PA	250
43. Paris Cleaners, Erie, PA	125
44. Powder Metal Products, St. Marys, PA	300
45. Reserve Gas Corp., Alden, NY	1,400
46. Rouse Warren County, Home, Youngsville, PA	75
47. Russer Foods, Buffalo, NY	400
48. St. Fidelis Seminary, Herman, PA	85
49. Specialty Packaging, Erie, PA	225
50. Seaway Aluminum, Erie, PA	125
51. Sharon School Dist., Sharon, PA	150
52. Stratcor, Niagara Falls, NY	200
53. Stackple Carbon, Kane, PA	500
54. Union City School Dist., Union City, PA	145
55. Warren General Hosp., Warren, PA	150
56. Wattsburgh Area Schools, Wattsburgh, PA	90
57. W. Middlesex School Dist., West Middlesex, PA	125
58. W & F Manufacturing, Buffalo, NY	300
Total	16,684

Appendix C—Modification to Authorization Granted in Docket Nos. CP88–71–000, CP85–608–000, as Amended, and CP88–225–000

(1) End-users for which National Fuel seeks new receipt points:

End user

1. American Locker Group, Ellicottville, NY
2. American Malting, Buffalo, NY
3. Applied Design, Buffalo, NY
4. Better Baked Foods, Westfield, NY
5. Brockway Clay, Brockway, PA
6. Brooks Memorial Hosp., Dunkirk, NY
7. Buffalo Batt & Felt, Depew, NY
8. Buffalo Crushed Stone, Buffalo, NY (3 plants)
9. Buffalo Forge (2 plants)
10. Cliffstar, Durkirk, NY
12. Christ The King Manor, DuBois, PA
13. Electro Minerals (US), Niagara Falls, NY
14. Erie Plating, Erie, PA
15. Exotic Metals, Ridgeway, PA
16. Fisher Price Toys, East Aurora, NY
17. Fredonia Products, Fredonia, NY
18. Goldome, Buffalo, NY, Goldome Park, Goldome Center
19. Goodyear Tire & Rubber, Niagara Fall, NY
20. Great Lakes Carbon, Niagara Falls, NY
21. Greenville Metals, Greenville, PA
22. Growers Co-op Grape Juice Co., Westfield, NY
23. Houghton College, Houghton, NY
24. Kaiser Aluminum
25. Lord Corp., Cambridge Springs, PA, Saegertown, PA
26. Jack Hunt, Tonawanda, NY, Buffalo, NY
27. McDowell Intermediate, Erie, PA
28. McDowell Manufacturing, DuBois, PA
29. Millcreek School Dist., Erie, PA
30. Modern Industries, Erie, PA
31. Molded Fiber Glass, Linesville, PA
32. Motion Control Ind., Ridgeway, PA
33. National Forge Co., Irvine, PA, Erie, PA
34. Neville-Synthese, Pittsburg, PA
35. Pendrick Laundry, Buffalo, NY
36. Pennsylvania Pressed Metals, Emporium, PA
37. Pohlman Foundry, Buffalo, NY
38. PPG Industries, Pittsburg, PA
39. PVS Chemicals, Buffalo, NY
40. Ridgeway School Dist., Ridgeway, PA
41. Ridgeway Color Co., Ridgeway, PA
42. Rich Products, Buffalo, NY
43. Royal Bedding Co., Buffalo, NY
44. St. Marys Metal Finishing, St. Marys, PA
45. Sharon Tube, Sharon, PA
46. Spaulding Corp., Tonawanda, NY
47. Sphar Roses, Inc., Attica, NY
48. Summco Inc., Sykesville, PA
49. Thiel Collage, Greenville, PA
50. Triangle Auto Spring Co., DuBois, PA
51. True Temper, Lake City, PA
52. Tudor Gardens North, Buffalo, NY
53. Neber-Knapp, Jamestown, NY
54. J.S. Wilson School, Erie, PA
55. Witco, Bradford, PA
56. General Mills Inc., Buffalo, NY

(2) End-users seeking to increase daily volumes:

End user	Presently authorized maximum daily volume (MCF)	Proposed maximum daily volume (MCF)
1. St Marys Metal Finishing, St. Marys, PA	100	200

[FR Doc. 88–16826 Filed 7–25–88; 8:45 am]
BILLING CODE 6717–01–M

[Project No. 9718–001]

Loree Nelson; Surrender of Exemption From Licensing

July 20, 1988.

Take notice that Loree Nelson, exemptee for the proposed South Fork Deep Creek Project No. 9718, requested by letter filed June 27, 1988, that the exemption be terminated. The exemptee states that a preliminary study found that the project would not be economically feasible to develop at this time.

The exemption for Project No. 9718 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 exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–16825 Filed 7–25–88; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP88–214–000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 20, 1988.

Take notice that CNG Transmission Corporation (CNG) on July 13, 1988 filed First Revised Sheet Nos. 54, 88 and 89 and Original Sheet No. 54A to its FERC Gas Tariff, Volume No. 1.

CNG states that the proposed effective date is January 1, 1989. The tariff sheets are being filed in connection with a certificate application

to allow Transmission's customers to adjust their levels of standby service and to clarify Transmission's service obligations thereafter.

Copies of the filing were served upon Transmission's jurisdictional customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene 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 motions of protests should be filed on or before July 27, 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. 88-16743 Filed 7-25-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-125-002 and TQ88-1-22-002]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 20, 1988.

Take notice that CNG Transmission Corporation ("CNG"), on July 13, 1988, filed the following revised tariff sheets to be effective June 1, 1988 all to Original Volume No. 1 of its tariff:

Second Substitute Original Sheet Nos. 31, 32, 150 through 161 and 163. Second Substitute Original Sheet No. 40.

CNG states that the purpose of the filing is to comply with the Commission's May 31, 1988 order in this proceeding. The effect of the filing is to decrease RQ and CD commodity rates by 1.11 cents per Dt from the original filing in this proceeding. The D-1 and D-2 demand rates have been reduced by 2.0 cents per Dt and 1.28 cents per Dt, respectively.

CNG states that the filing is based upon a quarterly gas supply and requirements estimate required by the Commission but reflects only those costs of gas used for operations (including lost and unaccounted for gas) allocable to sales for the quarter. CNG also made miscellaneous changes to its tariff in accordance with the Commission's May 31st order.

CNG will revise its take-or-pay passthrough proposals in another docket.

Copies of the filing were served upon CNG's sales customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene 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 and 385.211). All motions or protests should be filed on or before July 27, 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. 88-16744 Filed 7-25-88; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Requirement Approval by Office of Management and Budget

July 14, 1988.

The following information collection requirements have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0066

Title: Application for Renewal of Instructional Television Fixed Station and/or Response Station(s) and Low Power Relay Station(s) License

Form No.: FCC 330-R

The approval has been extended through 4/30/91. The July 1985 edition with a previous expiration date of 4/30/88 will remain in use until updated forms are available

OMB No.: 3060-0110

Title: Application for Renewal of License for Commercial and Noncommercial AM, FM or TV Broadcast Stations

Form No.: FCC 303-S

A revised form has been approved for use through 5/31/91. The October 1987 edition with an expiration date of 8/31/90 is obsolete.

OMB No.: 3060-0410

Title: Forecast of Investment Usage Report and Actual Usage of Investment Report

Form Nos.: FCC 495-A and 495-B

Two new reports have been approved for use through 3/31/91. The program was implemented effective May 31, 1988.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-16716 Filed 7-25-88; 8:45 am]

BILLING CODE 6712-01-M

[Report No. CF-11]

Window Notice for the Filing of FM Broadcast Applications

Released: July 18, 1988.

Notice is hereby given that applications for vacant FM Broadcast allotment listed below may be submitted for filing during the period beginning on the date of release of this public notice and ending August 25, 1988 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

Channel	City and State
270C	Hill City, KS.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-16714 Filed 7-25-88; 8:45 am]

BILLING CODE 6712-01-M

[Report No. W-45]

Window Notice for the Filing of FM Broadcast Applications

Release: July 18, 1988.

Notice is hereby given that applications for vacant FM broadcast allotment listed below may be submitted for filing during the period beginning July 18, and ending August 25, 1988 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

Channel—283A

Glenwood	AR
Lake Isabella	CA
Carrier Mills	IL
Saginaw	MI
Washington	MO
Mechanicville	NY
Montpelier	OH
Knoxville	TN
Jefferson	TX

Plymouth [1] ..... WI
Whitewater ..... WI

Channel—283C1

Pueblo ..... CO

Channel—283C2

Lexington-Fayette ..... KY

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[HR Doc. 88–16715 Filed 7–25–88; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: New collection.

Title: Executive Fire Officer Program Application for Admission.

Abstract: Senior level (executive) fire officers will be required to complete the Executive Fire Officer Program Application for Admission to compete for acceptance into the program.

Type of Respondents: Individuals and State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 300.

Number of Respondents: 300.

Estimated Average Burden Hours Per Response: 1 hour.

Frequency of Response: One time.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Francine Picoult, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: July 18, 1988.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 88–16739 Filed 7–25–88; 8:45 am]

BILLING CODE 6718–01–M

[1] The availability of channel 283A at Plymouth, WI is the subject of appeal in the DC Circuit Court. *James Reeden* vs. *the FCC* Case Number 86–1045.

FEDERAL HOME LOAN BANK BOARD

Senior Executive Service—Performance Review Board Updated Membership

July 19, 1988.

In accordance with Title IV of the Civil Service Reform Act of 1978, the Federal Home Loan Bank Board hereby gives notice of new memberships on the SES Performance Review Board. Current members are Gregory Rothwell (Chairman), Frank Haas, Karl Hoyle, Eugene Katz, Dennis Pittman and Rosemary Stewart.

FOR FURTHER INFORMATION CONTACT: Sue A. Rendleman, Director of Personnel, Federal Home Loan Bank Board, (202) 377–6050.

John Buckley, Jr.,

Secretary, Federal Home Loan Bank Board.

[FR Doc. 88–16757 Filed 7–25–88; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200143.

Title: Maryland Port Administration Terminal Agreement.

Parties: Maryland Port Administration (MPA) Puerto Rico Maritime Shipping Authority (PRMSA).

Synopsis: The proposed agreement provides for PRMSA's two (2) year lease of terminal space at MPA's Dundalk Marine Terminal for use in handing cargo in connection with common carriage by water.

By Order of the Federal Maritime Commission.

Dated: July 21, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–16820 Filed 7–25–88; 8:45 am]

BILLING CODE 6730–01–M

GENERAL SERVICES ADMINISTRATION

Report to Congress; Report on the Costs of Operating Privately Owned Vehicles

The Travel Expense Amendments Act of 1975 (Pub. L. 94–22, May 19, 1975) requires the periodic investigation of the operating costs of privately owned vehicles (automobiles, motorcycles, and airplanes) to Government employees while engaged on official business. Further, the Act requires that the results of these investigations be reported to the Congress and published in the "**Federal Register.**"

The following report is being published to comply with the requirements of the Act.

Dated: July 14, 1988.

John Alderson,

Acting Administrator.

Report to Congress

The Travel Expense Amendments Act of 1975 (Pub. L. 94–22, May 19, 1975), 5 U.S.C. 5707(b), requires that the Administrator of General Services, in consultation with the Comptroller General of the United States, the Secretaries of Defense and Transportation, and representatives of Government employee organizations, conduct a periodic investigation of the costs of operating privately owned vehicles to Government employees while engaged on official business and report the results to the Congress at least once a year. The Act further requires that a determination of the average, actual cost per mile be made based on the results of the investigation. Such figures must be reported to the Congress within 5 working days after the determinations have been made.

The General Services Administration (GSA) conducted a cost investigation based on calendar year 1987 data and consulted with representatives of employee ogranizations, the General Accounting Office, and the Departments of Defense and Transportation on the results. As required, GSA is reporting the results of that investigation and the cost per mile determinations.

GSA's investigation of the costs of operating privately owned vehicles revealed an average cost of 22.5 cents per mile for operating an automobile,

78.5 cents per mile for operating an airplane, and 21.5 cents per mile for operating a motorcycle. GSA is currently processing a revision to the Federal Travel Regulations increasing the automobile mileage reimbursement rate from the current level of 21 cents to 22.5 cents. GSA, however, is not making any changes in the airplane and motorcycle reimbursement rates of 45 cents per mile and 20 cents per mile, respectively, because those rates are currently set at the statutory ceilings.

This report on the costs of operating privately owned vehicles will be published in the "Federal Register."

[FR Doc. 88-16724 Filed 7-25-88; 8:45 am]
BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Vessel Sanitation Program (Cruise Ship Industry, etc.)

ACTION: Notice of public meeting between the Centers for Disease Control (CDC) and the cruise ship industry, private sanitation consultants, and other interested parties.

Time and Date: 9:00 a.m.—Wednesday, September 7, 1988.

Place: Miami Port Authority Passenger, Terminal No. 10, 1007 North American Way, Miami, Florida.

Status: Open to the public for participation, comment, and observation, limited only by space available.

SUPPLEMENTARY INFORMATION: As part of the revised Vessel Sanitation Program, CDC announced its intention to conduct quarterly public meetings with members of the cruise ship industry, private sanitation consultants, and other interested parties. This meeting is the fifth in a continuation of that series of public meetings.

Matters to be Considered: Experience to date with the operation of the Vessel Sanitation Program including a review of the results of vessel sanitation inspections. Information on the decision not to award a contract for the routine sanitation inspections and its impact on the program. Status of the proposed Vessel Sanitation Program Advisory Committee and other matters.

For a period of 15 days following the meeting, through September 22, 1988, the official record of the meeting will remain open so that additional material or comments may be submitted to be made part of the record of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Vernon N. Houk, M.D., Director, Center for Environmental Health and Injury Control, CDC, Atlanta, Georgia 30333. Telephone: FTS: 236-4111; Commerical: (404) 488-4111.

Dated: July 19, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88-16710 Filed 7-25-88; 8:45 am]
BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 88N-0247]

Reimportation of Prescription Drugs for Human Use; Import Alert; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of Import Alert 66-14 "Reimportation of all Prescription Drugs for Human Use" which provides guidance to FDA personnel regarding the reimportation of prescription drugs for human use. Import Alert 66-14 implements section 3 of the Prescription Drug Marketing Act of 1987 (Pub. L. 100-293) that amended the Federal Food, Drug, and Cosmetic Act.

ADDRESS: Written requests for single copies of Import Alert 66-14 to John Browne, Import Operations Branch (HFC-131), Food and Drug Administration, Rm. 12-16, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the Branch in processing your requests.)

FOR FURTHER INFORMATION CONTACT: Sally L. Maher, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8049.

SUPPLEMENTARY INFORMATION: The Prescription Drug Marketing Act of 1987 (Pub. L. 100-293) was signed into law by the President on April 22, 1988. Section 3 of the new law amends section 801 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*) by banning the reimportation of prescription drugs for human use produced in the United States, except when the drug is returned to the person who manufactured it or when the reimportation is authorized by the Secretary for emergency medical care. FDA has prepared Import Alert 66-14 to guide FDA's district offices in administering the new law.

Consistent with the mandate of the new law and under Import Alert 66-14, all reimported prescription human drugs for which the United States was the country of origin will be automatically detained and refused admission unless the importer was the manufacturer of the reimported drug or the importer has obtained appropriate authorization for use of the drug in a medical emergency. Import Alert 66-14 provides guidance on identifying those persons who may be considered the manufacturer of the drug for the purpose of being permitted to reenter it into the United States and on the information to be considered by FDA personnel in evaluating an application for reimportation based on alleged medical emergency.

Import Alert 66-14 is available for public examination at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9:00 a.m. and 4 p.m., Monday through Friday.

Dated: July 19, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-16773 Filed 7-21-88; 3:59 pm]
BILLING CODE 4160-01-M

[Docket No. 88F-0227]

N.L. Industries, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that N.L. Industries, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of bentonite clay modified by reaction with benzyl dimethyl hydrogenated tallow alkyl ammonium chloride and sodium stearate, and for safe use of hectorite clay modified by reaction with a mixture of benzyl methyl bis(hydrogenated tallow alkyl) ammonium chloride and dimethyl bis(hydrogenated tallow alkyl) ammonium chloride, as pigments in resinous and polymeric coatings complying with 21 CFR 175.300 for use on repeated-use bulk food containers.

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

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic

Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4082) has been filed by N.L. Industries, Inc., P.O. Box 1090, Hightstown, NJ 08520, proposing that § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) be amended to provide for the safe use of bentonite clay modified by reaction with benzyl dimethyl hydrogenated tallow alkyl ammonium chloride and sodium stearate, and for safe use of hectorite clay modified by reaction with a mixture of benzyl methyl bis(hydrogenated tallow alkyl) ammonium chloride and dimethyl bis(hydrogenated tallow alkyl) ammonium chloride, as pigments in resinous and polymeric coatings for use on repeated-use bulk food containers.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: July 18, 1988.

Fred R. Shank,

Acting Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-16772 Filed 7-25-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-930-08-4332-09]

Intent To Prepare and Environmental Impact Statement and Conduct Scoping Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

This notice will correct the Notice of Inteant published in Vol. 53, No. 136, Friday, July 15, 1988 pages 26890—26891. The notice is corrected by changing the following addressess for scoping meetings to be conducted in Arizona:

Arizona: Scoping meetings will be conducted on August 2, 1988, from 7 to 9 p.m. at the following locations:

1. Phoenix District, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

2. Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona 85364.

July 19, 1988.

Marlyn V. Jones,

Associate State Director, Wyoming.

[FR Doc. 88-16741 Filed 7-25-88; 8:45 am]

BILLING CODE 4310-22-M

[OR-942-08-4520-12: GP8-192]

Filing of Plats of Survey: Oregon/ Washington

A **Federal Register** Notice published on Wednesday, June 29, 1988 (Vol. 53, No. 125, Pg. 24502), inadvertently indicated the township of two plats in column (2), lines 43 and 44 (from the top of the column), as being:

Oregon

T. 23 N., R. 9 E., accepted May 13, 1988,
T. 24 N., R. 9 E., accepted May 13, 1988.

It should have read:

Oregon

T. 23 S., R. 9 E., accepted May 13, 1988,
T. 24 S., R. 9 E., accepted May 13, 1988.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

Dated: July 15, 1988.

[FR Doc. 88-16721 Filed 7-25-88; 8:45 am]

BILLING CODE 4310-33-M

[OR-942-08-4520-12: GP8-191]

Filing of Plats of Survey: Oregon/ Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Williamette Meridian

Oregon

T. 10 S., R. 10 W., accepted July 1, 1988,
T. 8 S., R. 3 E., accepted July 1, 1988,
T. 8 S., R. 1 E., accepted July 8, 1988,
T. 3 S., R. 6 W., accepted July 8, 1988.

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land management, 825 NE. Multnomah, Portland, Oregon 97208, and will be available to the public as a matter of information only. Copies of the palt(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a portest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thrity (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 NE., Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

Dated: July 15, 1988.

[FR Doc. 88-16722 Filed 7-25-88; 8:45 am]

BILLING CODE 4310-33-M

[WY-930-08-4220-11; WYW 0105362, WYW 042188, WYW 49110]

Proposed Continuation of Forest Service Withdrawals; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service proposes to continue three withdrawals on 3,210 acres of national forest land in the Big Horn National Forest for an additional 20 years. All of the land will remain segregated from entry and location under the mining laws. The land in the Medicine Wheel Historic Area is additionally segregated from surface entry and mineral leasing. All of the other land remains open to mineral leasing.

EFFECTIVE DATE: Comments should be received by October 24, 1988.

ADDRESS: Comments should be sent to the Wyoming State Director, BLM, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, BLM Wyoming State Office, 307-772-2072.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that Public Land Order No. 3282, as modified by 3302, 1432, and 5600, dated December 3, 1963, January 13, 1964, June 6, 1957, and August 11, 1976, respectively, be continued for a period of 20 years to protect the natural areas and associated recreational and watershed values on two natural area sites, and to protect the archaeological values on the Medicine Wheel Historic Area. The continuation is pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

Sixth Principal Meridian

Big Horn National Forest

Bull Elk Park

T. 57 N., R. 89 W.,
Sec. 19, SW¼SE¼NE¼, NW¼SW¼NE¼, S½SW¼NE¼, S½NE¼NW¼, E½SE¼NW¼, E½NE¼SW¼, W½NE¼SE¼, W½SE¼, NW¼SE¼SE¼, and S½SE¼SE¼;
Sec. 20, SW¼SW¼SW¼;
Sec. 29, S½SE¼NE¼, S½SW¼NE¼, W½NW¼NE¼, S½NW¼, N½SE¼, N½SE¼SE¼, SW¼SE¼, and SW¼;
Sec. 30, E½;
Sec. 31, NW¼NE¼NE¼, and NW¼NE¼.

Medicine Wheel Historic Area

T. 56 N., R. 92 W.,
Sec. 15, SW¼SW¼;
Sec. 16, SE¼SE¼.

Story Mineral Entry

T. 51 N., R. 84 W.,
Sec. 12, NE¼E½NW¼, and NE¼SE¼.
T. 52 N., R. 84 W.,
Sec. 23, S½NE¼, E½SW¼, and SE¼;
Sec. 26, NE¼, NE¼NW¼, N½SE¼, and SE¼SE¼.
T. 53 N., R. 84 W.,
Sec. 14, all;
Sec. 15, NE¼NE¼;
Sec. 23, E½;
Sec. 26, NE¼.

The areas described aggregate 3,210 acres in Sheridan, Big Horn, and Johnson Counties.

The purpose of the withdrawals is protection of the watershed, wildlife, public recreation, historical, and scenic values of the two natural areas known as Bull Elk Park and Story Mineral Entry. The Medicine Wheel Historic Area withdrawal is needed to preserve and protect the historical and archaeological values of the Medicine Wheel, which is a registered national historic landmark. The Medicine Wheel Historic Area withdrawal segregates the land from surface entry, location and entry under mining laws, and from mineral leasing. The remainder of the land, located in the natural areas, is segregated only from location and entry under the mining laws. No change is proposed in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations, may present their view in writing to the Chief, Branch of Land Resources, in the Wyoming State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued, and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Date: July 14, 1988.

Hillary A. Oden,

State Director.

[FR Doc. 88-16723 Filed 7-25-88; 8:45 am]

BILLING CODE 4310-22-M

Bureau of Indian Affairs

Cancellation of a Notice of Intent To Prepare an Environmental Impact Statement; Santa Ana Pueblo Indian Reservation (Near Bernalillo, NM) for the Albuquerque International Raceway

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Cancellation of a Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: This Notice is to inform the public of the cancellation of an Environmental Impact Statement (EIS) for the proposal to lease approximately 525 acres of tribal lands on the Santa Ana Pueblo Indian Reservation (near Bernalillo, New Mexico) for a major international auto raceway in Sandoval County. The decision to cancel the EIS is based upon a Finding of No Significant Impact and an Environmental Assessment, which have been prepared for the project.

Availability: Copies of the Finding of No Significant Impact and the Environmental Assessment are available for public inspection or can be obtained at the following locations: Bureau of Indian Affairs, Albuquerque Area Office, Branch of Environmental Quality, 615 First Street, NW., P.O. Box 26567, Albuquerque, New Mexico 87125-6567 and Bureau of Indian Affairs, Southern Pueblos Agency, Branch of Real Property Management, 1000 Indian School Road, NW., P.O. Box 1667, Albuquerque, New Mexico 87103.

DATES: Interested persons may file written comments on the Finding of No Significant Impact within thirty (30) days of the date of this publication and should address them to the Bureau of Indian Affairs' official identified below:

ADDRESS: Written comments should be addressed to Mr. Sidney L. Mills, Area Director, Albuquerque Area Office, Bureau of Indian Affairs, P.O. Box 26567, Albuquerque, New Mexico 87125-6567.

FOR FURTHER INFORMATION CONTACT: Marcus J. Sekayouma, Area Environmental Protection Specialist, or Bruce G. Harrill, Area Archeologist, Branch of Environmental Quality, Albuquerque Area Office, Bureau of Indian Affairs, P.O. Box 26567, Albuquerque, New Mexico 87125-6567; telephone (505) 766-3374 or FTS 474-3374.

SUPPLEMENTARY INFORMATION: On February 10, 1988, the Bureau of Indian Affairs published in the Federal Register, 53 Fed. Reg. 27 3946 (1988) a Notice of Intent to Prepare an Environmental Impact Statement. Santa Ana Pueblo Indian Reservation (near Bernalillo, NM) for the Albuquerque International Auto Raceway. The notice invited the public to attend scoping meetings to provide input and questions concerning the proposal and the Environmental Impact Statement. Two scoping meetings were held on March 1, 1988, at the Governor's Office, Santa Ana Pueblo, New Mexico, and at the Amberly Suites Hotel, Albuquerque, New Mexico.

No oral or written comments were received at either scoping meeting nor were written comments submitted in response to the Notice of Intent, published in the **Federal Register** on February 10, 1988.

In preparing the Draft Environmental Impact Statement for the proposed Federal action to issue a lease to the applicant, Raceway Development Corporation, the Area Director, Albuquerque Area Office, Bureau of Indian Affairs, has determined that the proposed action is not a major Federal action requiring the preparation of an Environmental Impact Statement.

The Finding of No Significant Impact and the Environmental Assessment for this proposal have been prepared in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et.*

seq.), Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), Department of the Interior procedures (516 DM 1–6), and the Bureau of Indian Affairs Handbook (30 BIAM Supplement 1) for compliance with the procedures.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Date: July 18, 1988.

W.P. Ragsdale,

Acting Assistant Secretary, Indian Affairs.

[FR Doc. 88–16733 Filed 7–25–88; 8:45 am]

BILLING CODE 4310-02-M

Fish and Wildlife Service

Annual Waterfowl Status Meeting and Meetings of the U.S. Fish and Wildlife Service Migratory Bird Regulations Committee

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: The U.S. Fish and Wildlife Service, Office of Migratory Bird Management will conduct an open meeting on July 25 to review the status of waterfowl populations and the 1988 fall flight forecast for ducks. The Service Regulations Committee will meet August 2 to develop 1988–89 waterfowl hunting regulations recommendations for presentation at the August 3 public hearing to be held in Washington, DC (as announced in the March 9, 1988, **Federal Register** at 53 FR 7702), and will meet immediately after the public hearing to review the public comments presented at the hearing and develop proposed 1988–89 waterfowl hunting regulations framework.

DATES: Waterfowl Status Meeting, July 25, 1988; Service Regulations Committee Meetings, August 2 and 3, 1988.

ADDRESSES: The Waterfowl Status Meeting will be held at the Stouffer Concourse Hotel, 3801 Quebec Street, in Denver, Colorado. The Service Regulations Committee Meeting on August 2, 1988, will be held in the Board Room, American Institute of Architects, 1735 New York Avenue (corner of 18th & E Streets, NW.), Washington, DC. The Service Regulations Committee Meeting on August 3, 1988, will be held in the North Penthouse, Room 8068, Department of the Interior Building, 18th & C Streets, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Matomic Building—Room 536, Department of the Interior, Washington DC 20240, telephone (202) 254–3207.

SUPPLEMENTARY INFORMATION: On July 25 at 8:30 a.m. at the Stouffer Concourse Hotel in Denver, Colorado, the U.S. Fish and Wildlife Service, Office of Migratory Bird Management will review for State and Federal officials and any other interested parties or individuals results of the various field investigations and data analyses that are used annually to determine the status of waterfowl populations and the fall flight forecast for ducks. The information presented will have a bearing on regulations and the regulatory proposals; however, the meeting is not a regulations meeting. Public comment will be limited to that which supplements the status information presented.

The U.S. Fish and Wildlife Service, Migratory Bird Regulations Committee, including Flyway Council Consultants to the Committee, will meet in Washington, DC on August 2 at 8:30 a.m., in the Board Room, American Institute of Architects, 1735 New York Avenue (corner of 18th & E Streets, NW), and on August 3 at 1 p.m. in the North Penthouse, Room 8068, Department of the Interior Building. The meeting on August 2 is to review discussions that occurred at the flyway council meetings and to discuss and develop recommendations for 1988–89 waterfowl hunting regulations to be presented at the public hearing to be held in Washington, DC on August 3 at 9 a.m. The August 3 meeting of the Service Regulations Committee is to review the public comments presented at the hearing and to determine on the basis of those comments whether any modifications need to be recommended to the Director in regard to the regulations recommendations presented at the hearing.

In accordance with Departmental policy regarding meetings of the Service Regulations Committee that are attended by persons outside the Department, the meetings of August 2 and 3 will be open to public observation. Members of the public may submit to the Director written comments on the matters discussed.

Dated: July 20, 1988.

Frank Dunkle,

Director.

[FR Doc. 88–16771 Filed 7–25–88; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

Approval for the collection of information listed below has been requested from the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the collection of information requirement and supporting documentation may be obtained by contacting the Bureau Clearance Officer at the phone number listed below. Comments and suggestions on the collection of information should be made within 30 days directly to the Bureau Clearance Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395–7340; with copies to Gerald D. Rhodes; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091.

Title: Oil and Gas and Sulphur Operations in the Outer Continental Shelf, 30 CFR Part 250.

Abstract: Rules governing oil, gas, and sulphur operations in the Outer Continental Shelf (OCS) were consolidated into the revised and updated 30 CFR Part 250 which became effective May 31, 1988. All subparts of the revised rule contain narrative information collection requirements which have been approved by OMB. After the information collection was approved by OMB, the information collection requirements contained in § 250.126(b)(1) and (2) of Subpart H, Production Safety Systems, were written. The Minerals Management Service determined that the additional information was necessary to allow lessees to continue to use pre-1980 uncertified valves from inventory. This action minimizes the economic impact of the revised regulations on lessees.

Bureau Form Number. None.

Frequency: On occasion.

Description of Respondents: Federal OCS oil, gas, and sulphur lessees.

Subpart H, Production Safety Systems

Estimated Completion Time: 11.8 hours.

Annual Responses: 148.

Recordkeeping: 1687 hours.

Annual Burden Hours: 3,433.

Bureau Clearance Officer: Dorothy Christopher, telephone (703) 435–6213.

Date: July 11, 1988.

Richard B. Krahl,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 88–16720 Filed 7–25–88; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; CNG Producing 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 CNG Producing Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 8443, Block 75, South Timbalier 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 Houma, Louisiana.

DATE: The subject DOCD was deemed submitted July 15, 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.

ADDRESSES: 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 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: Mr. Michael D. Joseph; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. 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 Coastal Resources Program.

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.

Dated: July 18, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–16759 Filed 7–25–88; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Hall-Houston

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Hall-Houston has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 6203, Block A–173, High Island Area, offshore Texas. 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 Sabine Pass, Texas.

DATE: The subject DOCD was deemed submitted on July 13, 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. Mike Joseph; Minerals Management Service, Gulf fo Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendment 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 May 31, 1988 (53 FR 10595). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: July 18, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–16760 Filed 7–25–88; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 16, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by August 10, 1988.

Carol D. Shull,

Chief of Registration, National Register.

COLORADO

Eagle County

Woods Lake Resort, 11 mi. N of Thomasville at Woods Lake, Thomasville vicinty, 88001226

ILLINOIS

McLean County

White Place Historic District, White Pl., Clinton Blvd., and E side of Fall Ave. betwen Empire and Emerson Sts., Bloomington, 88001230

Rock Island County

Connor House, 702 Twentieth St., Rock Island, 88001227

Tazewell County

Allentown Union Hall, 2 mi. E of IL 121, Allentown, 88001228

Warren County

Carr House, 416 E. Broadway, Monmouth, 88001229

INDIANA

Allen County

Blackstone Building, 112 W. Washington, Fort Wayne, 88001219
Fort Wayne Printing Company Building, 114 W. Washington St., Fort Wayne, 88001220
Kresge—Groth Building, 914 S. Calhoun St., Fort Wayne, 88001223
Mohr, Louis, Block, 119 W. Wayne St., Fort Wayne, 88001222
Schmitz Block, 926—930 S. Calhoun St., Fort Wayne, 88001224

Bartholomew County

McKinley School, Seventeenth St. and Home Ave., Columbus, 88001221

Delaware County

Wysor Heights Historic District, Roughly bounded by Highland Ave., White River, N. Elm St. and N. Walnut St., Muncie, 88001217

Grant County

Wilson, J. Woodrow, House, 723 W. Fourth St., Marion, 88001218

Marion County

Buschmann, William, Block, 968—972 Fort Wayne Ave., Indianapolis, 88001225

NEW YORK

Oswego County

Sloan, George B., Estate, 107 W. Van Buren St., Oswego, 88001237

OKLAHOMA

Sequoyah County

Ellison #2 Site (34SQ85), Address Restricted, Short vicinity, 88001234
Fears Site (34SQ76), Address Restricted, Nicut vicinity, 88001235

OREGON

Klamath County

Richardson—Ulrich House, 636 Conger Ave., Klamath Falls, 88001244

Marion County

Marion County Housing Committee Demonstration House, 140 Wilson St., S, Salem, 88001243

Multnomah County

Price, O.L., House, 2681 SW Buena Vista, Portland, 88001242
Hortman, H.C., House, 1111 SW Vista Ave., Portland, 88001245

PUERTO RICO

Mayaguez Municipality

Cementerio Municipal de Mayaguez (Cemeteries in Puerto Rico, 1804—1920 MPS), Southern end of Port St., Mayaguez, 88001247

Ponce Municipality

Cementerio Catolico San Vicente de Paul (Cementeries in Puerto Rico, 1804—1920 MPS) Off PR 10, Ponce, 88001249

San Juan Municipality

Cementerio Santa Maria Magdalena de Pazzis (Cemeteries in Puerto Rico, 1804—1920 MPS) Calle del Cementerio, San Juan, 88001246

Correction: Some of the properties within the Canyonlands MRA were erroneously listed as individual properties and should read as follows:

UTAH

Garfield County

Moab vicinity, *Kolb Brothers "Cat Camp" Inscription (Canyonlands National Park MRA)*, Big Drop #2 vicinity 88001250

San Juan County

Moab vicinity, *Cave Springs Cowboys Camp (Canyonlands National Park MRA)*, Cave Springs vicinity 88001233
Moab vicinity, *Julien Inscription (Canyonlands National Park MRA)*, Lower Red Lake vicinity 88001248
Moab vicinity, *Kirk's Cabin Complex (Canyonlands National Park MRA)*, Upper Salt Walsh 88001252
Moab vicinity, *Lost Canyon Cowby Camp (Canyonlands National Park MRA)*, Lost Canyon vicinity 88001232
Moab vicinity, *Murphy Trail and Bridge (Canyonlands National Park MRA)*, Murphy Point vicinity 88001236

Wayne County

Moab vicinity, *D.C.C. & P. Inscription "B" (Canyonlands National Park MRA)*, Confluence vicinity 88001251

[FR Doc. 88-16837 Filed 7-25-88; 8:45 am]
BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

San Francisco Movers Tariff Bureau—Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision and request for comment.

SUMMARY: San Francisco Movers Tariff Bureau (San Francisco) 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 San Francisco'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 San Francisco's representative: Ann M. Pougiales, 100 Bush Street, Suite 1333, San Francisco, CA 94104.

DATE: Comments from interested persons are due August 25, 1988. Replies are due 15 days thereafter.

ADDRESS: An original and 10 copies, if possible, of comments referring to section 5a Application No. 24 should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423,.

FOR FURTHER INFORMATION CONTACT:

Thomas J. Berry, (202) 275–7762.
or
Richard Felder, (202) 275–7691.
[TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: We have provisionally approved San Francisco's agreement as consistent with 49 U.S.C. 10706(b) and *Motor Carrier Rate Bureaus—Implementation of P.L. 96-296*, 364 I.C.C. 464 (1980) and 364 I.C.C. 921 (*Rate Bureau*), subject to certain conditions and modifications in the following areas: Identification and description of member carriers; open meetings; final disposition of cases; and general standards for carrier discussion and voting on collectively established rates. We also have offered comments and imposed requirements concerning the agreement generally. San Francisco 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 the *Rate Bureau* case, *supra*, we request applicant and other interested parties to comment on our interpretation of the controlling statutory and administrative criteria, and their application to San Francisco's agreement.

A copy of any comments filed with the Commission also must be served on San Francisco, 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 San Francisco must submit to the Commission as a condition to final approval of its agreement.

Additional information is contained in the Commission's decision. Copies may be obtained from the Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423, or call (202) 275–7428 (assistance for the hearing impaired is available through TDD services (202) 275–1721).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: July 19, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88-16745 Filed 7-25-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290; Sub-No. 32]

Southern Railway Co.; Abandonment Between Wabash Mine and Ledford in Wabash, Edwards, White, Gallatin and Saline Counties, IL; Notice of Findings

The Commission has issued a certificate authorizing Southern Railway Company to abandon its 58.4-mile rail line between Wabash Mine (milepost CB-132.0) and Ledford (milepost CB-190.4), in Wabash, Edwards, White, Gallatin, and Saline Counties, IL. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial 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 shall 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.

Noreta R. McGee,

Secretary.

[FR Doc. 88-16919 Filed 7-25-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 18, 1988, a proposed consent decree in *United States v. City of Sarasota and the State of Florida,* Civil Action No. 87-210-CIV-T-15B, was lodged with the United States District Court for the Middle District of Florida. The Complaint filed by the United States alleged violations of the Clean Water Act for failure to comply with a construction schedule, effluent limitations, and operations and maintenance requirements under the terms of its National Pollutant Discharge Elimination System permit. The complaint sought injunctive relief to require the defendant to comply with the Clean Water Act and civil penalties for past violations. The decree requires defendants to achieve compliance with the Clean Water Act by ceasing all unpermitted discharges by not later than September 30, 1990. In addition, defendant must comply with interim discharge requirements and effluent limitations and must perform monitoring and reporting activities. Defendant must also pay a civil penalty for past violations of $500,000.00 and must contribute $100,000.00 into a trust fund for a study of Sarasota Bay.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Chief, Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044-7611, and should refer to *United States v. City of Sarasota and State of Florida,* D.J. Ref. 90-5-1-1-2788.

The proposed consent decree may be examined at the office of the United States Attorney, Middle District of Florida, Robert Timberlake Building, 500 Zack Street, Tampa, Florida, and at the Region IV office of the Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. Copies of the proposed consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW, Washington, DC. A copy of the proposed consent decree may be obtained in person from the above address or by mail from the Chief, Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044-7611. When requesting a copy, please refer to *United States v. City of Sarasota and State of Florida,* D.J. Ref. 90-5-1-1-2788, and enclose a check in the amount of $2.00 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-16758 Filed 7-25-88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable. How often the recordkeeping/reporting requirement is needed. Who will be required to or asked to report or keep records. Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer,

Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New Collection

Employment Standards Administration

29 CFR Part 502; Reporting and Employing Requirements for Employers of Certain Workers Employed in Seasonal Agricultural Services

29 CFR Part 502

Recordkeeping

Individuals or households; State or local governments; farms; businesses or other for-profit; Federal agencies or employees; small businesses or organizations

52,000 recordkeepers; 52,000 total recordkeeping hours; 15 minutes per record per quarter

Section 210A of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act (IRCA) requires any employer to report information about the quantity of work performed by a special agricultural worker employed in seasonal agricultural services. This information is submitted in certificate form to the Federal government and to any individual replenishment agricultural worker.

Employment Standards Administration

Work-Day Report

ESA–92

Quarterly

Individuals or households; farms; businesses or other for-profit; Federal agencies or employees; small busineses or organizations 52,000 respondents; 35,534 total hours; 20 min. per response; 1 form section 210 A of the Immigration and Nationality Act (INA) and 29 CFR Part 502 requires employers of reportable workers in seasonal agricultural services during the period beginning October 1, 1988, through September 30, 1992, to certify such worker's employment to the Federal government.

Revision

Employment Standards Administration

Wage Statement

1215–0148; WH–501 and 501R(S)

Every pay day or every two weeks

Individuals or households; State or local governments; farms; businesses or other for-profit; Federal agencies or employees; small businesses or organizations

52,000 respondents; total reporting hours 84,933; 1½ minutes per response; 52,000 recordkeepers; 60,666 total recordkeeping burden; 1 minute per form; total annual burden 145,599

The Immigration and Nationality Act requires employers of replenishment workers to provide a report to the worker certifying their employment with each wage payment. The Migrant and Seasonal Agricultural Worker Protection Act requires employers of agricultural workers to maintain specific weekly payroll information and provide written copies to each worker and the person furnished the worker.

Revision

Occupational Safety and Health Administration

Onsite Consultation Agreements

1218–0110

States participating in the OSHA 7(c)(1) Consultation Program are required to prepare an annual cooperative agreement. In addition, as part of the consultation services provided, State consultants are required to furnish written reports of their safety and health findings to the employer. Employers receiving the services are required to notify the consultation State office of the correction of serious hazards found during the consultation visit.

Regulatory Requirements

1. Notify OSHA Enforcement Authority * * * if employer fails to take correctdive action (29 CFR 1908.6(f)(4).
2. Prepare and transmit to the employer a written report of consultant's findings (29 CFR 1908.6(g).
3. Establish and maintain an organized consultant performance monitoring system (29 CFR 1908.9(b).
4. Compile and submit factual and statistical information (29 1908.9(c).
5. Prepare and submit Annual Cooperative Agreement (29 CFR 1908.10(c).
6. Notify the consultation project manager, by written confirmation, of the correction of the hazards unless correction of the serious hazards is verified by direct observation by the consultant (29 CFR 1908.6(f)(5).
7. Inform any OSHA or State Compliance Officer who arrives that a consultation visit is in progress (29 CFR 1908.7(b)(1).
8. Post a notice of participation (29 CFR 1908.7(b)(4).

Req. No.	Affected public	Respondents	Frequency	Average time per response	Total hours
1	State Government	5	On occasion	30 minutes	3
2	State Government	24,600	do	5¾ hours	133,086
3	State Government	479	Annually	6 hours	
		65	Quarterly	2.1 hours	3,420
4	State Government	65	On occasion	30 hours	2,002
5	State Government	48	Annually	2 hours	96
6	Businesses	24,600	On occasion	5 minutes	1,968
7	Businesses	1,355	do	10 minutes	122
8	Businesses No burden calculations are associated with this activity.				
	Total hours				140,697

Signed at Washington, DC, this 21st day of July 1988.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 88-16824 Filed 7-25-88; 8:45 am]

BILLING CODE 4510-27-M

Employment Standards Administration; Wage and Hour Division

Child Labor Advisory Committee; Subcommittee on Hazardous Occupations Order No. 10; Cancellation of Meeting

The meeting of the Child Labor Advisory Committee, Sub-Committee on Hazardous Occupations Order No. 10, which was scheduled to be held on August 3 and 4, 1988, is cancelled.

Telephone inquiries concerning the cancellation of this meeting should be directed to Ms. Nila Stovall, Coordinator for the Child Labor Advisory Committee, at (202) 523-7640.

Signed at Washington, DC, this 20th day of July, 1988.

Paula V. Smith,

Administrator.

[FR Doc. 88-16822 Filed 7-25-88; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Allen Automated Systems Co. et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 5, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 5, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 18th day of July 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Allen Automated Systems Co. (Company)	Saginaw, MI	7/18/88	7/6/88	20,804	Automated assembly and material handling systems.
Aris Isotoner (UAW)	Secausus, NJ	7/18/88	7/7/88	20,805	Distribution center gloves and other accessories.
Bates Shoe Co. (Workers)	Webster, MA	7/18/88	7/8/88	20,806	Shes and boots for military, police and civilian use.
C. Cosentino Fabrics (ACTWU)	Paterson, NJ	7/18/88	7/7/88	20,807	(Cotton and silk) upholstery fabric.
Crown Central Petroleum Corp. (Workers)	Bellaire, TX	7/18/88	7/1/88	20,808	Crude oil and natural gas.
Crown Central Petroleum Corp. (Workers)	Midland, TX	7/18/88	7/1/88	20,809	Crude oil and natural gas.
Crown Central Petroleum Corp. (Workers)	Oklahoma City, OK	7/18/88	7/1/88	20,810	Crude oil and natural gas.
DMS, Inc. (Company)	Whitman, MA	7/18/88	7/5/88	20,811	Women's sportswear.
Damon Creations (Workers)	North Bergen, NJ	7/18/88	7/7/88	20,812	Men's shirts, ties and sweaters.
Fashion Barn (UAW)	Saddlebrook, NJ	7/18/88	7/7/88	20,813	Distribtuion center for "ready to Wear" retail chain.
Fisher Stevens, Inc. Pharmaceutical Industry (UAW).	Totowa, NJ	7/18/88	7/7/88	20,814	Various services for pharmaceutical industry.
Head Sports, Inc. (Workers)	Boulder, CO	7/18/88	6/27/88	20,815	Tennis and squash rackets.
Lone Star Industries, Utah Div. (IBB)	Salt Lake City UT	7/18/88	7/8/88	20,816	Cement.
Rokeach (UAW)	Farmingdale, NJ	7/18/88	7/7/88	20,817	Kosher foods.
N.G. Toys Corp. (UAW)	New Brunswick, NJ	7/18/88	7/7/88	20,818	Plastic toy.
Queen Casuals, Inc. (ILGWU)	Philadelphia, PA	7/11/88	6/30/88	20,819	Ladies' knitwear.
Queen Casuals, Inc. (ILGWU)	ATCO, NJ	7/11/88	6/30/88	20,820	Ladies' knitwear.
Tultex (Workers)	Vesta, VA	7/18/88	7/7/88	20,821	Fleecewear.

[FR Doc. 88-16823 Filed 7-25-88; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (88-66)]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearence (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by August 25, 1988. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB

Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: John F. Duggan, NASA Agency Clearance Officer, Code NPN, NASA Headquarters, Washington, DC 20546; Bruce McConnell, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 453–1090.

Reports

Title: Patent License Report.
OMB Number: 2700–0010.
Type of Request: Extension.
Frequency of Report: Annual.
Type of Respondent: Businesses or other for profit, small businesses or organizations.
Number of Respondents: 600.
Hours per Response: 0.5.
Annual Responses: 600.
Annual Burden Hours: 300.
Abstract-Need/Uses: NASA grants patent licenses to businesses for the commercial use of NASA-owned inventions. Each licensee is required to report its progress annually in commercializing our inventions and the amount of royalties due to NASA.

John F. Duggan,
Director, General Management Division.
July 13, 1988.
[FR Doc. 88–16702 Filed 7–25–88; 8:45 am]
BILLING CODE 7510–01–M

[Notice (88–67)]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearence (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by August 25, 1988. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: John F. Duggan, NASA Agency Clearance Officer, Code NPN, NASA Headquarters, Washington, DC 20546; Bruce McConnell, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 453–1090.

Reports

Title: Tape Use Survey.
OMB Number: 2700–0012.
Type of Request: Reinstatement.
Frequency of Report: On occasion.
Type of Respondent: Businesses or other for profit, non-profit institutions, small businesses or organizations.
Number of Respondents: 580.
Hours per Response: 0.3.
Annual Responses: 580.
Annual Burden Hours: 174.
Abstract-Need/Uses: NASA produces audio tapes each month to report status on its programs and research underway. These tapes are mailed to TV and radio stations throughout the country for use as public service programming or as news features. This "post-card" report is used to measure the effectiveness of the tapes and provides the date and time they are aired.

John F. Duggan,
Director, General Management Division.
July 13, 1988.
[FR Doc. 88–16703 Filed 7–25–88; 8:45 am]
BILLING CODE 7510–01–M

[Notice (88–68)]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by August 25, 1988. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: John F. Duggan, NASA Agency Clearance Officer, Code NPN, NASA Headquarters, Washington, DC 20546; Bruce McConnell, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 453–1090.

Reports

Title: Application for Patent License.
OMB Number: 2700–0039.
Type of Request: Extension.
Frequency of Report: As Required.
Type of Respondent: Individuals or households, businesses or other for profit, small businesses or organizations.
Number of Respondents: 25.
Hours per Responses: 6.
Annual Responses: 25.
Annual Burden Hours: 150.
Abstract-Need/Uses: Pursuant to 35 U.S.C. 209, applicants for patent license must submit specific information in support of their request for a patent license. The information submitted is used to determine whether the license should be granted.

John F. Duggan,
Director, General Management Division.
July 13, 1988.
[FR Doc. 88–16704 Filed 7–25–88; 8:45 am]
BILLING CODE 7510–01–M

[Notice (88–69)]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection

requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by August 25, 1988. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: John F. Duggan, NASA Agency Clearance Officer, Code NPN, NASA Headquarters, Washington, DC 20546; Bruce McConnell, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 453–1090.

Reports

Title: Patent Waiver Report.

OMB Number: 2700–0050.

Type of Request: Extension.

Frequency of Report: Annually.

Type of Respondent: Businesses or other for profit.

Number of Respondents: 153.

Hours per Responses: 2.

Annual Responses: 306.

Annual Burden Hours: 326.

Abstract-Need/Uses: The NASA Patent Waiver form which is completed by NASA contractors is designed to elicit information that is deemed necessary for the NASA Inventions and Contributions Board to evaluate the progress of development and commercialization for waived inventions. The NASA Patent Waiver Regulations require the waiver recipient to report on the utilization of waived inventions.

John F. Duggan,

Director, General Management Division.

July 15, 1988.

[FR Doc. 88–16705 Filed 7–25–88; 8:45 am]

BILLING CODE 7510–01–M

[Notice (88–70)

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted ot OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by August 25, 1988. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: John F. Duggan, NASA Agency Clearance Officer, Code NPN, NASA Headquarters, Washington, DC 20546; Bruce McConnell, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 453–1090.

Reports

Title: NASA/Goddard Space Flight Center, Greenbelt, MD Application for Volunteer Program.

OMB Number: 2700–0057.

Type of Request: Reinstatement.

Frequency of Report: On occasion.

Type of Respondent: Individuals or households.

Number of Respondents: 50.

Hours per Response: 1.

Annual Responses: 50.

Annual Burden Hours: 50.

Abstract-Need/Uses: Goddard Space Flight Center has established a volunteer program for conducted tours for visitors. Respondents will furnish information to enable selection. An anticipated 50 to 100 applications from retirees, students, housewives and senior citizens are expected.

John F. Duggan,

Director, General Management Division.

July 15, 1988.

[FR Doc. 88–16706 Filed 7–25–88; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal 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 by August 25, 1988.

ADDRESSES: Send comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Miss Anne Cowperthwaite, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania NW., Washington, DC 20506; (202 682–5401).

FOR FURTHER INFORMATION CONTACT: Miss Anne Cowperthwaite, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202–682–5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests a review of the revision of a currently approved collection. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Museum Program Application Guidelines for FY 1990.

Frequency of Collection: One-time.

Respondents: Individuals or households; State or local governments; Non-profit institutions.

Use: Federal aid is provided in the form of grants for arts and educational oriented projects. Guideline instructions and applications elicit relevant information from individuals, non-profit organizations and state and local arts agencies that apply for funding under specific Museum program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 787.

Average Burden Hours per Response: 18.24.

Total Estimated Burden: 22,377.

Murray R. Welsh,

Director, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 88-16740 Filed 7-25-88; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nculear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Extension.

2. The title of the information collection: State Agreements Program.

3. The form number if applicable: N/A.

4. How often the collection is required: One time or as needed.

5. Who will be required or asked to report: The respondent universe are 29 States who have signed section 274(b) agreements with NRC.

6. An estimate of the number of responses: 1,000 annually.

7. An estimate of the total number of hours needed annually to complete the requirement or request: 10,000 annually, 10 hours per response.

8. Section 3504(h), Pub. L. 96-511 does not apply.

9. Abstract: Agreement States are surveyed to obtain comprehensive information on the materials regulatory program in their States.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H. Street, NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Nicolas B. Garcia, (202) 395-3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 21 day of July 1988.

For the Nuclear Regulatory Commission.

William G. McDonald,

Director, Office of Administration and Resources Management.

[FR Doc. 88-16781 Filed 7-25-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-341]

Detroit Edison 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-43, issued to the Detroit Edison Company (DECo) and the Wolverine Power Supply Cooperative, Incorporated (the licensees) for operation of Fermi-2 located in Monroe County, Michigan.

Environmental Assessment

Identification of Proposed Action

The amendment would revise the Fermi-2 Technical Specifications (TSs) to correct an error in Table 3.3.7.12-1, "Radioactive Gaseous Effluent Monitoring Instrumentation," in response to the licensee's letter dated November 20, 1987 (NRC-87-0217).

The Need for the Proposed Action

The proposed change to the TSs is required to make Table 3.3.7.12-1 consistent with the surveillance requirements of Table 4.3.7.12-1.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TSs. The proposed amendment would revise Table 3.3.7.12-1 by deleting Item 3.d, Effluent System Flow Monitor, for the Standby Gas Treatment System.

In the licensee's Radiological Effluent Technical Specifications, radioactive gaseous effluent monitoring operability and surveillance requirements are recorded for six different gaseous effluent systems. For all six systems, the surveillance requirements involve: a) Noble gas monitor, b) iodine sampler, c) particulate sampler, and d) sampler flow rate monitor. For the operability requirements, five of the systems include the same items a-d above, but for the sixth, Standby Gas Treatment System, a fifth entry, "Effluent System Flow Rate Monitor," appears. This is the item that the licensee proposes to remove, since it was inadvertently left in the Technical Specifications while reference to flow rate monitor was removed for the other systems.

A more conservative approach than using the actual flow rate has been taken in the calculations of set points for all six systems in the Offsite Dose Calculation Manual. This approach uses the maximum flow rate, and consequently, a flow rate monitor is not necessary. Therefore, the proposed change does not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and 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 change to the TSs involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no signficant 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 March 25, 1988 (53 FR 9831). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Because the Commission has concluded that there is no significant environmental impact associated with the proposed amendment, any alternative would have either no or greater environmental impact. The principal alternative would be to deny the requested amendment. This would not reduce the environmental impacts attributed to the facility.

Alternative Use of Resources

This action involves no use of resources not previously considered in connection with the "Final

Environmental Statement Related to Operation of Fermi-2," dated August 1981.

Agencies and Persons Consulted

The Commission's staff reviewed the licensees' 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, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with aspect to this action, see the application for amendment dated November 20, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 20th day of July 1988.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Director, Project Directorate III–1 Division of Reactor Projects–III, IV, V and Special Projects.

[FR Doc. 88–16782 Filed 7–25–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–341]

Detroit Edison Co., Woverine Power Supply Cooperative, Inc.; 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–43, issued to the Detroit Edison Company (DECo) and the Wolverine Power Supply Cooperative, Incorporated (the licensees) for operation of Fermi-2 located in Monroe County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise provisions in the Fermi-2 Technical Specifications (TSs) relating to the Radioactive Gaseous and Liquid Effluent Monitoring Instrumentation.

The Need for the Proposed Action

The proposed changes to the TSs are required to allow continued use of release pathways for which effluent monitoring instrumentation may not be operable provided that grab samples and analyses and/or flow rate calculations are made at the specified frequencies. A plant shutdown may be avoided when the primary instrumentation is inoperable even though compensatory measures are available.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TSs. The proposed revision would make the Fermi-2 TSs meet the intent of the Commission's model Radiological Effluent Technical Specifications for BWRs, NUREG–0473, Revision 2, February 1, 1980, by providing appropriate compensatory measures in the event of inoperable primary monitoring. The reporting requirements would also be made consistent with the TS changes. The proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and 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 impact.

With regard to potential nonradiological impacts, the proposed amendment involves systems located within the restricted area as defined in 10 CFR Part 20. It does not effect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concudes 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 13, 1988 (53 FR 17130). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Because the Commission has concluded that there is no significant environmental impact associated with the proposed amendment, any alternative would have either no or greater environmental impact. The principal alternative would be to deny the requested amendment. This could result in unnecessary plant shutdowns.

Alternative Use of Resources

This action involves no use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Fermi-2," dated August 1981.

Agencies and Persons Consulted

The Commission's staff reviewed the licensees' 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, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with aspect to this action, see the application for amendment dated March 28, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 20th day of July, 1988.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–16783 Filed 7–25–88; 8:45 a.m.]

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 locatd in Ottawa County, Ohio.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Technical Specifications (TS's) relating to incorporation of ASME Section III, 1971 Edition, code requirements for the Main Steam Safety Valves' (MSSV's) setpoints versus citing specific setpoints for each of the MSSV's in accordance

with Toledo Edison Company's application dated March 4, 1988 and supplemented by letter dated May 4, 1988. Specifically, the proposed amendment would:

(1) Delete Technical Specification Table 4.7–1, "Steam Line Safety Valves Per Steam Generator";

(2) Remove the reference to Table 4.7–1 from the Technical Specification Surveillance Requirement 4.7.1.1;

(3) Revise the Technical Specifications Basis 3/4.7.1.1 to reflect the ASME Section III, 1971 Edition code requirements and how they are met; and

(4) Revise Technical Specifications 3.7.1.1 to incorporate the ASME Setion III, 1971 Edition code requirements by specifying

(a) A minimum of two OPERABLE safety valves per steam generator, one with a setpoint not greater than 1050 psig (+/− 1%), and

(b) A maximum setpoint of 1100 psig (+/− 1%) for any OPERABLE safety valve.

The Need for the Proposed Action

The proposed changes are needed to support greater flexibility in the requirements for valve set pressure and in valve replacement, while maintaining required overpressure protection for the steam generators and main steam system consistent with the requirements of ASME Section III, 1971 Edition.

Environmental Impacts of the Proposed Action

The Davis-Besse MSSV's provide steam generator and main steam system overpressure protection following turbine trip from rated power coincident with a total loss of condenser heat sink. This overpressure protection is accomplished by assuring that the total relieving capacity of the MSSV's is at least as large as the steam produced during operation at rated thermal power, and that the valve lift settings are in accordance with the ASME Code. With the proper relieving capacity of the valves, the pressure will not exceed 110 percent of the design pressure for any system upset conditions. The proposed amendment would only change certain of the valve setpoints. The integrated steam mass released through the MSSV's to the atmosphere is independent of this change and, therefore, previously postulated off-site doses due to the mass release are unaffected by the MSSV setpoint change.

The Commission has evaluated the environmental impact of the proposed amendment and has determined that post-accident radiological releases would not be greater than previously determined and occupational radiation exposure is unaffected. Neither does the proposed amendment otherwise affect radiological plant effluents during normal operation. 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 a change to the Main Steam Safety Valve setpoints. 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 May 24, 1988 (53 FR 18631). 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 alternative 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 attributable to this facility and would result in the MSSV setpoints remaining as they are specifically cited presently in the Technical Specifications.

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 March 4, 1988 and supplemental letter dated May 4, 1988 which are 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 19th day of July, 1988.

For the Nuclear Regulatory Commission.

Kenneth E. Perkins,

Director, Project Directorate III–3, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 88–16784 Filed 7–25–88; 8:45 a.m.]

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 would revise the provisions in the Technical Specifications (TS's) relating to Steam and Feedwater Rupture Control System Instrumentation in accordance with Toledo Edison Company's application dated January 28, 1988. Specifically, the proposed amendment would delete references to 8 of 16 pressure switches used to initiate the Steam and Feedwater Rupture Control System on Low Steam Generator pressure.

The Need for the Proposed Action

The proposed changes are needed to reflect the configuration being implemented by the licensee wherein 8 of 16 currently used low pressure switches will no longer be in use. Currently, two pressure switches per steam line provide input to each logic channel. Actuation of either of these pressure switches will trip the logic channel. There are two redundant logic channels for each independent Steam and Feedwater Rupture Control System actuation channel. The proposed amendment would reduce the number of pressure switches so that only one

pressure switch per steam line would provide input to each logic channel. The total number of channels, channels to trip, minimum channels operable, and required action would remain unchanged. This reduction in the number of switches will decrease the probability of spurious actuations of the Steam and Feedwater Control System.

Environmental Impacts of the Proposed Action

The Davis-Besse Steam and Feedwater Rupture Control System is designed to mitigate the consequences of a main steam or main feedwater line break. The low pressure switches provide a means of detecting rupture of main steam or main feedwater piping. This reduction in the number of switches will not increase the likelihood or consequences of an accident since the switches being removed are redundant. Following the reduction in the number of pressure switches, there will be one pressure switch for each steam line in each logic channel. Since there are redundant logic channels, the single failure criteria is maintained. In addition, decreasing the number of pressure switches, will decrease the likelihood of a transient resulting from a spurious Steam and Feedwater Rupture Control System initiation.

The Commission has evaluated the environmental impact of the proposed amendment and has determined that post-accident radiological releases would not be greater than previously determined. Neither does the proposed amendment otherwise affect radiological plant effluents during normal operation. 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 a change in Steam and Feedwater Rupture Control System actuation switches. 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 May 24, 1988 (53 FR 18630). 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 alternative 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 attributable to this facility and would result in increased potential for spurious Steam and Feedwater Rupture Control System actuations.

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 January 28, 1988, 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 19th day of July, 1988.

For the Nuclear Regulatory Commission.

Kenneth E. Perkins, Jr.,

Director, Project Directorate III-3, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 88-16785 Filed 7-25-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-029]

Yankee Atomic Electric Co., Yankee Nuclear Power Station; 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-3 issued to Yankee Atomic Power Company, (the licensee), for operation of the Yankee Nuclear Power Station located in Rowe, Massachusetts.

Environmental Assessment

Identification of Proposed Action

The proposed amendemnt would modify the Technical Specifications (TS) by changing the shutdown margin switching temperature from 490°F to 470°F. In addition, a typographical error and the omission of a previously approved surveillance requirement is corrected.

The proposed action is in accordance with the licensee's application for amendment dated March 23, 1988.

The Need for the Proposed Action

The proposed change to the TS was submitted by the licensee to increase flexibility during Mode 3 operation and to correct two administrative errors.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the Technical Specifications. The proposed revisions would permit the licensee to go from Mode 1 to Mode 3 operation without making large boration changes. This change affects Mode 3 operation only. In Mode 3 the reactor is shutdown and is defined as "Hot Standby." During an unplanned shutdown, a situation arises where the transition from power operation (Mode 1) to Mode 3 occurs at temperatures below 490°F. This situation requires large borations of the coolant and subsequent deboration. The proposed T.S. change would preclude this unnecessary injection of Boric Acid into the primary coolant and ultimately reduce the quantity of undesirable activated solid waste products. The change would provide a beneficial impact on the environment. The Staff has reviewed the proposed amendment and has concluded that the change does not adversely affect safety of operation, the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and 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 non-radiological impacts, the proposed change to the TS involves systems located within the restricted areas as defined in 10 CFR Part 20. It does not

affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

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 not meeting NRC requirements.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in previous reviews for the Yankee Nuclear Power Station. The plant was licensed to prior to the requirement for issuance of a Final Environmental Statement.

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 March 23, 1988 which is available for pblic inspection at the Commission's Public Document Room, Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 19th day of July, 1988.

For the Nuclear Regulatory Commission.

Richard H. Wessman,

Director, Project Directorate I-3, Division of Reactor Projects I/II.

[FR Doc. 88-16786 Filed 7/25/88;8:45am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Auxiliary Systems; Meeting

The ACRS Subcommittee on Auxiliary Systems will hold a meeting on August 10, 1988, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, August 10, 1988—8:00 a.m. until 12:30 p.m.

The Subcommittee will discuss the proposed resolution of USI A-17, "Systems Interactions in Nuclear Power Plants," and other related matters.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statement will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS Staff member, Mr. Sam Duraiswamy (telephone 202/634-3267) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date July 20, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88-16777 Filed 7-25-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Improved Light Water Reactors; Meeting

The ACRS Subcommittee on Improved Light Water Reactors will hold a meeting on August 9, 1988, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, August 9, 1988—8:30 a.m. until the conclusion of business.

The Subcommittee will review Chapters 3, 4, and 5 of the EPRI LWR Requirements Document. The NRC Staff will briefly discuss Chapter 2.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statments should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 202/634-1413) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: July 18, 1988.

Morton W. Kibarkin,

Assistant, Executive Director for Project Review.

[FR Doc. 88–16778 Filed 7–25–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, and of the ACNW, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published June 14, 1988 (53 FR 22241). Those meetings which are definitely scheduled have had, or will have, an indiviual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 A.M. and ACRS Subcommittee meetings usually begin at 8:30 A.M. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings and when ACRS Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the August 1988 ACNW and the August 1988 ACRS full Committee meetings can be otained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 202/634–3265, ATTN: Barbara Jo White) between 7:30 A.M. and 4:15 P.M., Eastern Time.

ACRS Subcommittee Meetings

Decay Heat Removal Systems, July 27, 1988, Washington, DC. The Subcommittee will continue its review of the NRC Staff's resolution position for USI A–45.

Adanced Reactor Designs, August 3, 1988, Washington, DC. The Subcommittee will continue its review of the draft SER of the Modular HTGR conceptual design.

Safety Philosophy, Technology and Criteria, August 4, 1988, Washington, DC. The Subcommittee will review the status of NUREG/1251 (Implications of Chernobyl) and the NRC Staff's program (at BNL) to address the implications of Chernobyl in regard to severe reactivity transients. NUREG–1251 discussion will include: (1) Human Factors and Operational Control and (2) Emergency Planning and Containment.

TVA Organizational Issues, August 5, 1988, Washington, DC. The Subcommittee will continue its review of the generic lessons learned from the Staff's review in regard to the restart of Sequoyah 2.

Improved Light Water Reactors, August 9, 1988, Washington, DC. The Subcommittee will review Chapters 2, 3, 4, and 5 of the EPRI LWR Requirements Document.

Auxiliary Systems August 10, 1988, Washington, DC. The Subcommittee will discuss the proposed resolution for USI A–17, "Systems Interactions in Nuclear Power Plants" and other related matters.

Regulatory Policies and Practices, August 10, 1988, Washington, DC. The Sucommittee will review the NRC Staff's response to the ACRS comments on USI A–47, "Safety Implications of Control Systems" and other related matters.

Maintenance Practices and Procedures, September 7, 1988, Bethesda, MD. The Subcommittee will disuss and review the maintenance rule and associated NUREG document.

Pilgrim Restart, September 28, 1988 (tentative), Plymouth, MA. The Subcommittee will review the proposed restart of the Pilgrim plant.

Advanced Boiling Water Reactors, November 15–16, 1988, Bethesda, MD. The Subcommittee will continue its FDA review of this standard plant. Detailed ACRS questions will be covered on review module 1. An overview of the second review module is planned.

Advanced Pressurized Water Reactors, Date to be determined (August/September), Bethesda, MD. The Subcommittee will review the licensing review bases document being developed for Combustion Engineering's Standard Safety Analysis Report-Design Certification (CESSAR-DC).

Safety Philosophy, Technology, and Criteria, Date to be determend (August/September), Bethesda, MD. The Subcommittee will discuss the Staff's proposed implementation plan for the Safety Goal Policy Statement.

Advanced Pressurized Water Reactors, Date to be determined (August/September), Bethesda, MD. The Subcommittee will review the draft SER in regard to the reactor, reactor coolant system, and regulatory conformance for the WAPWR RESAR SP/90 design.

Advanced Reactor Designs, Date to be determined (August/September), Bethesda, MD. The Subcommittee will review the draft SERs for the liquid metal reactors (LMRs).

Occupational and Environmental Protection Systems, Date to be determined (September), Bethesda, MD. The Subcommittee will review: (1) the "hot particle" problem, (2) monitoring the quality and quantity of airborne radionuclides in/out of containment following an accident, (3) the emergency planning rule, (4) the control room habitability report by ANL, and (5) other related matters.

Advanced Pressurized Water Reactors, Date to be determined (September), Bethesda, MD. The Subcommittee will discuss the comparison of WAPWR (RESAR SP/90) design with other modern plants (in U.S. and abroad).

Containment Requirements, Date to be determined (September/October), Bethesda, MD. The Subcommittee will review the NRC Staff's document on interim recommedations for containment performance and improvements (BWR Mark I only).

Severe Accidents/Probabilistic Risk Assessment, Date and location to be determined (September/October). The Subcommittee will review the methodology for the treatment of uncertainties in the final version of NUREG–1150. Also, the Subcommittee will review the results of the front-end reanalysis of the five plants studied.

Joint Core Performance/Thermal Hydraulic Phenomena, Date to be determined (October/November), Bethesda, MD. The Subcommittee will review the implications of the core power oscillation event at LaSalle, Unit 2.

Decay Heat Removal System, Date to be determined, Bethesda, MD. The Subcommittee will explore the issue of the use of bleed and feed for decay heat removal in PWRs.

Systematic Assessment of Experience, Date and location to be determined. The Subcommittee will review the Diagnostic Evaluation Program and other related licensee performance review effort by the NRC Staff.

Thermal Hydraulic Phenomena, Date to be determined, Bethesda, MD. The Subcommittee will discuss the status of Industry Best-Estimate ECCS Model submittals for use with the revised ECCS Rule.

Auxiliary System, Date to be determined, Bethesda, MD. The Subcommittee will discuss the: (1) Criteria being used by utilities to design Chilled Water Systems, (2) regulatory requirements for Chilled Water System Design, and (3) criteria being used by

the NRC Staff to review the Chilled Water Systems design.

Decay Heat Removal Systems, Date to be determined, Bethesda, MD. The Subcommittee will review the proposed resolutions of Generic Issue 23, "RCP Seal Failures," and Generic Issue 99, "Loss of RHR Capability in PWRs."

Auxiliary Systems, Date to be determined, Bethesda, MD. The Subcommittee will review the adequacy of the Staff's plans to implement the recommendations resulting from the Fire Risk Scoping Study.

ACRS Full Committee Meetings

August 11–13, 1988—Items are tentatively scheduled.

*A. *Hierarchical Structure for Safety-Related Issues (Open)*—Discuss proposed hierarchical structure for important safety-related issues identified by the ACRS members.

*B. *Diagnostic Evaluation Program (Open)*—Briefing regarding diagnostic assessment of McGuire and Dresden Nuclear Power Stations.

*C. *Hydrogen Control Requirements (USI A–48) (Open)*—Briefing regarding proposed hydrogen control requirements for Mark III and ice condenser containment types.

*D. *MOV Testing (Open)*—Briefing regarding in-situ testing of motor operated valves.

*E. *Meeting with Executive Director for Operations (Open)*—Discuss topics of current interest including proposed NRC Staff plans for completion and implementation of NUREG–1150, Reactor Risk Reference Document.

*F. *Future ACRS Activities (Open)*—Discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

G. *New ACRS Members (Closed)*—Discuss qualifications of persons nominated for appointment as members of the ACRS.

*H. *International Symposium on the Operational Safety Experience from Nuclear Power Plants (Open/Closed)*—Report by ACRS member who attended this IAEA sponsored meeting.

*I. *Decay Heat Removal Systems (Open/Closed)*—Review and comment on the proposed resolution of USI A–45 and GI–99, "Loss of Shutdown Cooling."

*J. *Standardization of Nuclear Plants (Open)*—Briefing and discussion of EPRI proposed document (Chapters 2–5) on improved LWRs.

*K. *ACRS Subcommittee Activity (Open)*—Hear and discuss reports of designated ACRS subcommittee activities regarding assigned areas including thermal hydraulic phenomena.

*L. *System Interactions (USI A–17) (Open)*—Review and comment regarding proposed NRC Staff resolution of USI A–17.

*M. *Safety Implications of Control Systems (USI A–47) (Open)*—Review and comment regarding the adequacy of the assumptions and limitations to be used by ORNL in the Multiple Systems Response program for evaluating residual concerns associated with USI A–47.

*N. *Emergency Planning (Open)*—Briefing regarding full Federal emergency preparedness exercise at the Zion Nuclear Power Station.

*O. *TVA Organizational Issues (Open)*—Discuss lessons learned by the NRC from the review of TVA construction/management problems in regard to the shutdown/restart of their nuclear plants and recent TVA reorganization/staffing changes.

*P. *Equipment Qualification-Risk Scoping Study (Open)*—Discuss proposed ACRS report on the Equipment Qualification-Risk Scoping Study.

*Q. *Foreign Operating Experience (Open)*—Briefing and discussion regarding NUREG–1251, Implications of Chernobyl, review of the Staff's program at BNL to address severe reactivity transients, emergency planning, and containment.

*R. *Maintenance of Nuclear Facilities (Open)*—Briefing by NRC Staff representatives regarding status of action related to NRC rulemaking regarding maintenance of nuclear power plants.

*S. *Modular High Temperature Gas-Cooled Reactor (Open)*—Review and comment regarding the modular HTGR design being developed by the DOE.

September 8–10, 1988—Agenda to be announced.

October 6–8, 1988—Agenda to be announced.

ACNW Full Committee Meetings

Advisory Committee on Nuclear Waste (ACNW) will hold its third meeting on August 3–5, 1988. On August 3rd the meeting will start at 4:00 p.m. and on August 4th at 6:00 p.m. at the Holley Inn, 235 Richland Avenue and Laurens Street, Aiken, SC. On August 5th the meeting will start at 2:00 p.m. at the Fims Building, 2600 Bull Street, Room 405, Columbia, SC. Topics to be discussed by the Committee include the following:

*A. The Committee members will discuss their visits to the LLW disposal facility at Barnwell, SC, and the Chem-Nuclear operations center.

*B. The Committee members will discuss their visit to the waste handling and storage facilities at DOE's Savannah River Plant.

*C. The Committee members will discuss their visit to the facilities of LN Technologies and meet with representatives of the South Carolina Bureau of Radiological Health.

The meeting was previously announced in the **Federal Register** on July 15, 1988 (53 FR 26915).

September 13–14, 1988—Agenda to be announced.

November 3–4, 1988—Agenda to be announced.

Date: July 20, 1988.

Samuel J. Chilk,

Acting Advisory Committee Management Officer.

[FR Doc. 88–16779 Filed 7–25–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Regulatory Policies and Practices; Meeting

The ACRS Subcommittee on Regulatory Policies and Practices will hold a meeting on August 10, 1988, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, August 10, 1988—2:00 p.m. until the conclusion of business.

The Subcommittee will review the NRC Staff's May 20, 1988 response to the April 12, 1988 ACRS letter to the NRC Chairman on Safety Implications of Control Systems USI A–47.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hold discussions with past and present representatives of the NRC regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the

Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid call to the cognizant ACRS staff member, Mr. Gary Quittschreiber (telephone 202/634-3267) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date July 20, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88-16780 Filed 7-25-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-293]

Boston Edison Co., Pilgrim Nuclear Power Station

Exemption

I.

The Boston Edison Company (BECo), the licensee, is the holder of Operating License No. DPR-35 which authorizes operation of the Pilgrim Nuclear Power Station. The license provides, among other things, that the Pilgrim Nuclear Power Station is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The plant is a boiling water reactor at the licensee's site located in Plymouth County, Massachusetts.

II.

On November 19, 1980, the Commission published a revised § 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45FR76602). The revised § 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains 15 subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. The technical requirements of section III.G of Appendix R, is the subject of the licensee's exemption requests.

Section III.G.1 of Appendix R requires fire protection features to be provided for structures, systems, and components important to safe shutdown and capable of limiting fire damage so that:

a. One train of systems necessary to achieve and maintain hot shutdown conditions from either the control room or emergency control station(s) is free of fire damage; and

b. Systems necessary to achieve and maintain cold shutdown from either the control room or emergency control station(s) can be repaired within 72 hours.

Section III.G.2 of Appendix R requires that one train of cables and equipment necessary to achieve and maintain safe shutdown be maintained free of fire damage by one of the following means:

a. Separation of cables and equipment and associated nonsafety circuits of redundant trains by a fire barrier having a 3-hour rating. Structural steel forming a part of or supporting such fire barriers shall be protected to provide fire resistance equivalent to that required of the barrier.

b. Separation of cables and equipment and associated nonsafety circuits of redundant trains by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area.

c. Enclosure of cable and equipment and associated nonsafety circuits of one redundant train in a fire barrier having a 1-hour rating. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area.

If the above conditions are not met, section III.G.3 requires that there be alternative or dedicated shutdown capability independent of the fire area of concern. It also requires that fire detection and a fixed suppression system be installed in the fire area of concern. These alternative requirements are not deemed to be equivalent; however, they provide equivalent protection for those configurations in which they are accepted.

Because it is not possible to predict the specific conditions under which fires may occur and propagate, design basis protective features rather than the design basis fire are specified in the rule. Plant-specific features may require protection different from the measures specified in section III.G. In such a case, the licensee must demonstrate, by means of a detailed fire hazard analysis, that existing protection or existing protection in conjunction with proposed modification will provide a level of safety equivalent to the technical requirements of section III.G of Appendix R.

In summary, section III.G is related to fire protection features for ensuring that systems and associated circuits used to achieve and maintain safe shutdown are free of fire damage. Fire protection configurations must meet the specific requirements of section III.G or an alternative fire protection configuration must be justified by a fire hazards analysis. Generally, the staff will accept an alternative fire protection configuration if the following criteria, to the extent applicable to the requested exemption, are satisified:

—The alternative ensures that one train of equipment necessary to achieve hot shutdown from either the control room or emergency control station(s) is free of fire damage,

—The alternative ensures that fire damage to at least one train of equipment necessary to achieve cold shutdown is limited so that it can be repaired within a reasonable time (minor repairs using components stored on the site),

—Fire-retardant coatings are not used as fire barriers, and

—Modification required to meet Section III.G would not significantly enhance fire protection safety levels above that provided by either existing or proposed alternatives, or modifications required to meet Section III.G would be detrimental to overall facility safety.

III.

By letter dated August 10, 1987 (BECo 87-135) the licensee, Boston Edison Company, requested three exemptions (Nos. 15, 18, and 22) from the technical provisions of Section III.G of Appendix R to 10 CFR Part 50.

Request No. 15 is for an exemption from the requirement to install full area fire detection and automatic suppression in the Radwaste and Control Building between Corridor #137 on elevation 23 feet and Corridor #49 on elevation (–) 1 foot containing, respectively, redundant Division A and Division B, safe shutdown cables. Request No. 15 also requests an exemption from the provisions of III. G.2.b to the extent that full area fire detection and automatic fire suppression would be required for the area between Corridor #137 (containing Division A safe shutdown circuits) on elevation 23 feet and Corridor #49 (containing redundant Division B safe shutdown circuits) on elevation (–) 1 foot.

Request No. 18 is for an exemption from the requirement that no intervening combustible be present between two redundant safe shutdown systems located in the same fire area. In this instance a single cable tray is located between redundant trains of the Reactor Building Closed Water System (RBCCW) and the Salt Service Water System (SSW) in the water treatment area of the Reactor Building.

Request No. 22 is for an exemption from the requirement for fire detection and automatic fire suppression for torus

water level indication instrumentation cable located in the Reactor Building.

The licensee has identified a condition where redundant safe shutdown conduits are not separated by a 3-hour fire rated barrier but are separated by more than 20 feet horizontally, but without area wide fire detection and automatic fire suppression provided. Another consideration, in addition to simple spatial separation, is that the redundant safe shutdown conduits are located on different levels in the Radwaste and Control Building.

Train A conduits are located in Corridor No. 137 on Elevation 23 feet. Redundant Train B conduits are located in Corridor No. 49 on Elevation (–) 1 foot. The floor on Elevation 23 feet, separating the two elevations and the redundant safe shutdown conduits, is of reinforced concrete construction that exceeds the 3-hour fire rating. However, an open stairway (Stairwell No. 6) communicates between Elevations (–) 1 foot and 23 feet. Thus the potential exists for a single fire on either elevation to damage the cables in both of these safe shutdown conduits. The licensee has evaluated the potential for fire to spread either way between Corridor Nos. 49 and 137 and has concluded that the risk is not sufficiently great to require the installation of automatic fire detection or suppression capability in this general area. In order for fire to spread from Corridor No. 49 on Elevation (–) 1 foot to Corridor No. 137 on Elevation 23 feet, it would have to travel by one or two paths. One path is up the open Stairwell No. 6 to Elevation 23 feet, across the Health Physics access area, which is protected by smoke detectors and full automatic sprinkler coverage, through Corridor No. 138 and into Corridor No. 137.

The second potential pathway for fire from Corridor No. 49 is up through the open Stairwell No. 6 past Elevation 23 feet into Elevation 51 feet. At Elevation 51 feet, the fire would have to traverse approximately 30 feet of open area into Fan Room No. 2 and then proceed down through the ventilation duct space into Elevation 23 feet to Corridor No. 137.

The reverse of these two pathways would be necessary for fire to travel from Corridor No. 137 on Elevation 23 feet to Corridor No. 49 on Elevation (–) 1 foot. Three mechanisms exist for fire growth and propagation to other combustible materials.

The first mechanism, conductive heat transfer (including direct flame impingement) is unlikely for either of the above pathways because their is no continuity of combustibles.

Radiant heat transfer (the second mechanism for fire growth) depends on direct, line-of-sight geometry which does not exist for either of the above described pathways. Therefore, this method of fire propagation is not of concern.

The third method, convection heat transfer, is theoretically possible but as a practical matter is of little concern. In the first pathway, the fire would have to heat up the air volume in Corridor No. 49 (Elevation (–) 1 foot), rise through open Stairwell No. 6, travel east across the health physics access area (Elevation 23 feet) which is protected by smoke detectors and automatic sprinklers, and travel south into Corridor No. 137. Similarly in the second pathway, the fire would have to heat up the air volume in Corridor No. 49 (Elevation (–) 1 foot), rise through open Stairwell No. 6 past Elevation 23 feet to Elevation 51 feet. From there, the heated air would have to travel across the 30 feet of open space, raise the temperature of the room volume sufficiently to be able to breach the ventilation duct in Fan Room No. 2, then travel back down to Elevation 23 feet and proceed south into Corridor No. 137 to damage the redundant train of safe shutdown conduits. Again, for fire to originate in Corridor No. 137 on Elevation 23 feet and travel to Corridor 49 on Elevation (–) 1 foot so as to damage redundant safe shutdown cables located in conduits in the two corridors it would have to travel the same routes described above but in the reverse directions. These two paths, considering the lack of continuity of combustibles and presence of automatic detection and suppression capability in the Health Physics access area on Elevation 23 feet, argue against convective heat transfer as a viable means of fire propagation between these two corridors.

Based on the above evaluation the staff concludes that the existing physical arrangement consisting of (1) redundant safe shutdown conduits located on two different levels (Elevation (-) 1 foot and 23 feet), (2) separated by more than 20 feet in horizontal distances, (3) lack of continuity of combustibles between the redundant safe shutdown conduits, and (4) the presence of automatic detection and suppression protection in the Health Physics access area on Elevation 23 feet, make unlikely a single fire damaging redundant safe shutdown cables contained in conduits located in Cooridor Nos. 49 and 137 located respectively on Elevations (–) 1 foot and 23 feet.

Therefore, it is unnecessary to install area while detection and automatic suppression between Corridor Nos. 49 and 137 and the licensee's request for an exemption from the provisions of III.G.2.b should be granted for this area.

Exemption Request No. 18 requests an exemption from the provisions of III.G.2.b to the extent that no combustibles or fire hazards are to be located between two redundant safe shutdown systems located in the same fire area. The subject of this exemption request is a single cable tray located 13 feet above the floor on Elevation 23 feet that is located between the Train A and Train B Reactor Building Closed Cooling Water (RBCCW) rooms.

The Train A RBCCW room is located in Fire Zone (FZ) 1.21 and the Train B RBCCW room is located in FZ 1.22. Both are located on Elevation 3 feet, are adjacent to each other, and are separated by a two-feet thick unrated wall running east-west between column lines 2.5 and 5 about midway between column lines L and M. The wall is full height between the floors on Elevations 3 feet and 23 feet and is constructed of solid concrete blocks. The other 10 feet of the wall is supported on a reinforced concrete beam and the blocks are fully grouted. The lower 10 feet of the wall is constructed without grout (the blocks are simply set in the wall) so as to be easily removable if open access is required into FZ 1.21 which is located south of the wall from FZ 1.2 which is located north of the wall. A rolling fire door, which is supported independently from the lower part of the wall is installed in the east end of the wall to provide normal access between the two fire zones. An equipment hatchway is located just north of the wall and provides access from FZ 1.29 on Elevation 23 feet into FZ 1.22. The redundant systems located in FZs 1.21 and 1.22 include the RBCCW, Salt Service Water (SSW) and the Diesel Generator Fuel Oil Transfer system.

The redundant trains of these systems are separated by (1) horizontal distances greater than 20 feet, (2) the above described 2-foot thick wall (which is unrated because the blocks in the lower 10 feet are not grouted) constructed of solid concrete blocks, and (3) the floor at Elevation 23 feet which is constructed of 12-inch concrete slab on metal deck.

Penetrations through this concrete floor from FZ 1.29 consist of a manhole access (equipped with steel cover) into the Acid Neutralizing Sump in FZ 1.21 and an equipment hatch (equipped with 12-inch thick concrete plug) into FZ 1.22. Fire protection in FZ 1.29 consists of area wide automatic detection and automatic sprinkler suppression. In addition, hand held extinguishers and manual hose stations are available for use by the plant fire brigade. The only

intervening combustibles between the two redundant trains that are separated as described above is a single cable tray running east to west, approximately 13 feet above the floor in FZ 1.29 (Elevation 23 feet).

There are three possible methods, as sequences, whereby a single fire can damage both redundant trains of safe shutdown equipment in FZs 1.21 and 1.22.

In the first sequence, a fire starts in FZ 1.29 (water treatment are Elevation 23 feet), in either the cable tray which is located 13 feet above the floor, or in the waste oil station located approximately eight feet west of the equipment hatch into FZ 1.22 and approximately 22 feet north of the manhole into FZ 1.21. The waste oil station tanks are enclosed in a 3-foot high dike capable of containing the entire contents of the tanks. The fire would have to go undetected by the automatic detection system and exceed the capability of the automatic sprinkler system, and then spread down through the openings in the Elevation 23 feet concreate floor into both FZs 1.21 and 1.22 with sufficient intensity to damage both redundant trains.

In the second sequence a fire starts in FZ 1.21 (the acid neutralizing sump in Elevation 13 feet), and forces up through the manhole access into and across FZ 1.29 and then down through the equipment hatchway into FZ 1.22. Such a fire is unlikely since no combustible materials are located in the sump except for safe shutdown cables in question, and these are all run in conduits. In addition, FZ 1.29 is protected by area wide detection and automatic sprinkler suppression, and the equipment hatchway into FZ 1.22 is closed with a removable concrete plug when not in actual use for moving equipment into or out of these rooms.

The third sequence is the opposite of the second one, i.e., fire starts in FZ 1.22 on Elevation 13 feet, forces up through the sealed equipment hatchway into and across FZ 1.29 on Elevation 23 feet and then down through the manhole access into the acid neutralizing sump to damage the safe shutdown cables that are located in conduits.

All three of these sequences are considered unlikely because: (1) there is no continuity of combustible fuels between FZs 1.21 and 1.22; (2) FZ 1.29 is protected with area wide detection and automatic sprinkler suppression and; (3) a concrete plug seals the equipment hatchway into FZ 1.22 except when equipment is actually being moved through it.

Based upon the above evaluation the staff concludes that a single fire capable of simultaneously damaging both redundant safe shutdown trains of RBCCW, SSW and emergency diesel fuel oil transfer pump systems located in FZs 1.21 and 1.22 is unlikely, and that removing the only intervening combustible (a single cable tray located 13 feet above the floor on Elevation 23 feet in FZ 1.29) would not enhance fire safety.

Therefore, it is unnecessary to remove this cable tray and the licensee's request for an exemption from the provisions of III.G.2.b should be granted for this cable tray.

Exemption Request No. 22 requests an exemption from the provisions of III.G.3 that requires fire detection and automatic suppression for redundant safe shutdown equipment (in this case the normal torus water level indication cables) located in the same fire area when alternative safe shutdown capability is provided.

All of the torus water level indication circuits leave the torus in fire zone 1.30A and all are run in metal conduits. Train A cables leave the torus in the southeast quadrant, Train B leaves the torus about 120° away in the northwest quadrant and the alternative cables leave the torus in the southwest quadrant about 85° from Train B and 155° from Train A. The Alternative train cables are fully protected by a 1 hour rated fire wrap (the torus instrumentation cables were the subject of Exemption Request No. 5, which was granted partly on the basis of separation with over 100 feet between Train A and Train B cables and the alternate instrumentation cables). After leaving the torus, the Train A water level cables rise directly into Fire Zone 1.9 (Elevation 23 feet). The Train B cables rise into Fire Zone 1.10 (Elevation 23 feet), turn east and cross into Fire Zone 1.9 then turn south to the vicinity of the Train A cables. From there on both Train A and Train B travel together through Fire Zone 1.9 into Fire Zone 1.11 (Elevation 51 feet), turn east through the fire wall at column line 17 across a small portion of Fire Zone 1.23 and through another fire wall at column line 18.5 into Fire Zone 3.4 still on Elevation 51 feet. From there these cables turn down through the floor into Fire Zone 3.11 on Elevation 37 feet and then turn south through the fire wall into the Control Room.

After leaving the southwest quadrant of the torus, the alternative train cables run north along the wall on column line 5 and then turn up through the ceiling into an alternative safe shutdown station located in Fire Zone 1.10 on Elevation 23 feet in the Reactor Building. Automatic detection and suppression is not provided in Fire Zones 1.23, 3.4 and 3.11 where both Train A and Train B cables are located. Although these zones are part of Fire Area 1.10, which also includes the alternative torus water level cables, they are located on the opposite side of the torus and separated by reinforced concrete floor (Elevation 51 feet) and walls. Because of the lack of continuous combustibles, spatial separation and the above mentioned reinforced concerete barriers between the redundant normal torus level indicator systems and the redundant systems, automatic fire detection and suppression in Fire Zones 1.23, 3.4 and 3.11 would not enhance safe shutdown of the plant.

Based upon the above evaluation, the staff concludes that it is not necessary to install area wide detection and automatic suppression capability in the vicinity of the redundant normal Torus Water Level Indication cables where they are located in Fire Zones 1.23, 3.4 and 3.11.

Therefore the licensee's request for an exemption from the provisions of III.G.3 for these cables should be granted.

IV.

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) the exemption as described in Section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present in that application of the regulation is not necessary to achieve the underlying purpose of Appendix R to 10 CFR Part 50 and literal compliance would not significantly enhance fire protection safety levels. Therefore, the Commission hereby grants the exemption from the requirements of Section III.G of Appendix R to 10 CFR Part 50 regarding:

(1) The lack of fire detection and automatic fire suppression in the area between Corridor Nos. 49 and 137 containing redundant safe shutdown circuits in fire zones 3.4, 3.7 and 3.9 (subsection III.G.2.b); 2) the presence of a single cable tray (combustible material) that is located between two redundant safe shutdown trains that are separated by a horizontal distance greater than 20 feet in fire zones 1.21, 1.22 and 1.29 (subsection 3.2.b) and 3) the lack of fire detection and automatic fire suppression in areas containing both redundant normal safe shutdown trains when an alternative safe shutdown train is provided in fire zones 1.23, 3.4 and 3.11 (subsection III.G.3).

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result

in any significant environmental impact. A copy of the licensee's request for exemption dated August 10, 1987 is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360. Copies may be obtained upon written request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

This Exemption is effective upon issuance.

Dated at Rockville, Maryland, this 20th day of July 1988.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-16787 Filed 7-25-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-289]

GPU Nuclear Corp. et al., Issuance Of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 142 to Facility Operating License No. DPR-50, issued to GPU Nuclear Corporation (the licensee), which revised the Technical Specifications for operation of the Three Mile Island Nuclear Station, Unit 1 located in Dauphin County, Pennsylvania.

The amendment modified the Technical Specifications to support core reload for Cycle 7 of operation. The core design changes for Cycle 7 include a slight increase in core lifetime from approximately 425 effective full power days (EFPD) to approximately 445 EFPD. The fresh fuel has a slightly higher U-235 enrichment than previous fuel.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on April 25, 1988 (53 FR 13456). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated April 5, 1988 (2) Amendment No. 142 to License No. DPR-50 (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Local Public Document Room, Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland, this 18th day of July, 1988.

For the Nuclear Regulatory Commission.

Ronald W. Hernan,

Senior Project Manager, Project Directorate I-4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-16789 Filed 7-25-88; 8:45am]

BILLING CODE 7590-01-M

[Docket No. 50-498]

Houston Lighting & Power Co.; 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-76, issued to Houston Lighting & Power Company (the licensee), for the operation of the South Texas Project, Unit 1, located in Matagorda County, Texas.

The proposed amendment would reflect an adjustment in ownership interests in the South Texas Project which results from the settlement of litigation between the licensee and the City of Austin, memorialized in a Settlement Agreement dated March 17, 1988.

Before issusance 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 amendment request 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 Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7751). An example of an amendment which involves a no significant hazards consideration is example (viii) which states that "a change to a license to reflect a minor adjustment in owership shares among co-owners already shown on the license."

The licensee has concluded and the staff agrees, that the proposed amendment fits the guidance provided in example (viii) because it is administrative in nature and involves only the transfer of an ownership interest from one entity to another entity which is already an owner and licensee.

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.

By August 25, 1988, the licensee 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 the 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 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 proceedings; (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 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 safisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the 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 should 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.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice 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 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 Jose A. Calvo: 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-Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Newman & Holtzinger, P.C., 1615 L Street, NW., Washington, DC 20036, attorneys for the licensee.

Nontimely filings of the petition 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 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 which is available for public inspection at the Commission's Public Document Room 1717 H Street, NW., Washington, DC, and at Wharton Junior College Library, Wharton Texas 77488.

Dated at Rockville, Maryland, this 19th day of July, 1988.

For the Nuclear Regulatory Commission,

George F. Dick, Jr.,

Project Manager, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–16788 Filed 7–25–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–133]

Pacific Gas and Electric Co.; Issuance of Amendment to Facility License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 23 to Facility License No. DPR–7 to Pacific Gas and Electric Company (the licensee) for the Humboldt Bay Power Plant, Unit No. 3. This amendment revises License No. DPR–7 to: (1) Delete certain license conditions related to seismic modifications required before the NRC would authorize a return to power operation; (2) revise the Technical Specifications to reflect the possess-but-not-operate status; (3) approve the decommissioning of Humboldt Bay Unit 3 in accordance with the licensee's Decommissioning Plan and (4) extend License No. DPR–7 for 15 additional years to November 9, 2015 to be consistent with the Decommissioning Plan. Also, Section D of License No. DPR–7 is deleted as it refers to 10 CFR Part 50.60 with respect allocation of fuel by the AEC to a licensee. That function by the AEC/NRC is no longer a part of the regulations and Section D is moot.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules ane regulations in 10

CFR Chapter I, which are set forth in the license amendment.

A Notice of Opportunity for Prior Hearing related to the requested action was published in the **Federal Register** on July 3, 1986 (51 FR 24458). Pursuant to that notice, members of the public petitioned for leave to intervene and requested a hearing. Their request was granted by the Atomic Safety and Licensing Board No. 86–536–07 LA (the Board).

On February 9, 1988 the Board issued an order which dismissed all contentions and terminated the proceeding following a resolution of all disputed issues.

The Commission issued a Final Environmental Statement (FES) on May 6, 1987 (NUREG–1166). Notice of availability of the FES was published in the **Federal Register** on may 12, 1987 (52 FR 17863). In the FES the staff concluded that: (1) A technical basis exists for decommissioning nuclear plants in a safe, efficient manner; (2) no significant environmental impacts will result from the storage of spent fuel in the spent-fuel pool; and (3) Humboldt Bay Unit 3 can be placed in SAFSTOR for a 30-year period with minimal environmental impact.

For further details with respect to this action, see (1) the application for amendment dated July 30, 1984 as revised by letters dated February 28, 1985 through May 23, 1988, (2) Amendment No. 23 to Facility License No. DPR–7, and (3) the Final Environmental Statement (NUREG–1166). All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at Eureka-Humboldt County Library, 421 I Street (County Courthouse), Eureka, California 95501. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 19th day of July 1988.

For the Nuclear Regulatory Commission.

Lester S. Rubenstein,

Acting Director, Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–16790 Filed 7–25–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–443–OL, 50–444–OL (ASLBP No. 82–471–02–OL) (Offsite Emergency Planning)]

Public Service Co. of New Hampshire, et al. (Seabrook Station, Units 1 and 2); Prehearing Conference

July 20, 1988.

Before Administrative Judges: Ivan W. Smith, Chairman, Gustave A. Linenberger, Jr., and Dr. Jerry Harbour.

The Atomic Safety and Licensing Board will conduct a prehearing conference in this proceeding beginning at 9:00 AM August 3, and extending through August 4, 1988, in the Third Floor Courtroom, John W. McCormack Post Office and Courthouse, Post Office Square, Boston, Massachusetts 02109.

The conference will consider the contentions and issues to be adjudicated with respect to emergency planning for the Seabrook Nuclear Station and the Massachusetts communities lying within the Seabrook plume exposure pathway Emergency Planning Zone. The Board will confer with the parties and participants about simplification and clarification of issues, consolidation of parties, designation of lead intervenors, and the scheduling of prehearing activities.

The Board will also confer with the parties concerning the scheduling of any other aspect of the Seabrook offsite emergency planning proceeding properly before it.

All parties, petitioners to participate as intervening parties and petitioners to participate as interested Massachusetts municipalities, or their respective representatives, are required to attend and to participate.

Bethesda, Maryland, July 20, 1988.

For The Atomic Safety And Licensing Board.

Ivan W. Smith,

Chairman, Administrative Law Judge.

[FR Doc. 88–16776 Filed 7–25–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 30–20594, License No. 35–12120–02 EA 88–103]

Radiology and Nuclear Medicine, Inc., Tulsa, OK; Order Revoking License (Effective Immediately)

I

Radiology and Nuclear Medicine, Inc. (the licensee) is the holder of a specific Byproduct Material License No. 35–12120–02, issued by the Nuclear Regulatory Commission (Commission/NRC) pursuant to 10 CFR Part 35. The license, which was issued November 30, 1983, and is due to expire on November 30, 1988, authorizes the licensee to (a) conduct specified diagnostic procedures, (b) use iodine 131 for the treatment of hyperthyroidism and cardiac dysfunction, and (c) use a dose calibrator reference standard.

II

On February 1, 1988, NRC received an allegation concerning improper activities being conducted by the licensee. On March 24, 1988, a NRC inspector inspected the licensee' facility. During the inspection, the following apparent violations and deviation were discovered: Failure to equip personnel (e.g., Dr. Forsythe) with dosimetry (a repeat violation); failure to maintain personnel dosimetry records; failure to conduct annual accuracy tests, quarterly linearity tests, and daily constancy checks on the dose calibrator (a repeat violation); failure to calibrate the survey meter (a repeat violation); failure to have certain documents posted (a repeat violation); failure to conduct leak testing on a sealed course (a repeat violation); failure to perform quarterly inventory for the calibration source (a repeat violation); failure to conduct surveys of unrestricted areas; failure to perform activity measurements of radioisotopes administered to patients; and failure to replace the dose calibrator during the period, April 14 through August 28, 1986 when it was inoperable. Several of the violations were discovered during an April 1986 inspection remained uncorrected. A Confirmation of Action Letter was issued on April 1, 1988, to confirm, among other things, the licensee's agreement to suspend nuclear medicine activities until NRC concurred in the resumption of the licensee's operations.

Following the issuance of the Confirmation Action Letter five attempts were made to reach Dr. Forsythe by telephone to discuss the status of licensed activities. Messages left with the licensee's secretary or message recorder were not returned. On April 24, 1988, a certified letter (receipt requested) was sent inviting the licensee to an enforcement conference scheduled for May 5, 1988. The licensee received that letter on May 2, 1988. The letter also requested the licensee to contact the Region IV office by 12:00 noon, May 4, 1988, to confirm its attendance at the enforcement conference or to arrange for a different mutual acceptable time. In addition, the letter informed the licensee that in the absence of attendance at the enforcement conference or contacting the NRC to arrange a different mutually acceptable time and date, NRC would proceed to issue the applicable enforcement action,

which might involve the formal suspension of the license. The licensee did not respond by the May 4, 1988, deadline. The NRC again attempted to contact Dr. Forsythe by telephone on May 5, 1988, to confirm the licensee's attendance at the enforcement conference. Dr. Forsythe neither responded to the telephone message to call the NRC nor attended the enforcement conference on May 5, 1988.

On May 10, 1988, the NRC issued an Order Suspending the License and an Order to Show Cause Why the License Should Not Be Revoked (Effective Immediately); in accordance with 10 CFR 2.202(b) the Order offered the licensee an opportunity to request a hearing. On June 2, 1988, the NRC received a letter dated May 27, 1988, from Mr. Leon Williams, Jr., a nuclear medicine technologist employed by Radiology and Nuclear Medicine, Inc. This letter was interpreted by NRC to be a request to terminate the license. On June 9, 1988, NRC contacted Dr. Forsythe by telephone and discussed Mr. Williams' letter concerning the termination of the license. Dr. Forsythe confirmed that the licensee possessed no byproduct materials, that all nuclear medicine activities had ceased, and that he sought termination of his license. No information to show cause why the license should not be revoked was provided. By letter dated June 10, 1988, the licensee forwarded an NRC Form 314 "Certificate of Disposition of Materials" indicating all materials had been transferred and a close-out survey indicating no removable contamination at the facility. No request for hearing, either in the letters dated May 27, 1988 and June 10, 1988, or during the June 9, 1988 call, was made by or in behalf of the licensee.

III

The licensee has failed to respond to the Order to Show Cause dated May 10, 1988, and has not requested a hearing as provided therein. Moreover, by letter dated May 27, 1988, and confirmed by subsequent telephone call the licensee is not objecting to termination of its license. The Order of May 10, 1988, provided the notice and opportunity for hearing required by 10 CFR 2.201 and 2.202.

IV

In view of the foregoing and pursuant to sections 81, 161b, 161i, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Section 2.202 and 10 CFR Part 35, *It Is Hereby Ordered, Effective Immediately, That:*

Byproduct Material License No. 35–12120–02 is revoked.

This Order is effective upon issuance.

Dated at Rockville, Maryland, this 19th day of July 1988.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

[FR Doc. 88–16791 Filed 7–25–88; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Lessa Martin, (202) 632–0728.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on June 28, 1988 (53 FR 23386). Individual authorities established or revoked under Schedule A, B, or C between June 1, 1988, and June 30, 1988, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

No Schedule A authorities were established or revoked during June.

Schedule B

No Schedule B authorities were established or revoked during June.

Schedule C

Department of Agriculture

One Confidential Assistant to the Administrator for Agricultural Stabilization and Conservation Service. Effective June 27, 1988.

Department of the Air Force

One Secretary (Stenography) to the Assistant to the Vice President for National Security Affairs. Effective June 22, 1988.

Department of the Army

One Secretary (Typing) to the Assistant Secretary of the Army for Financial Management. Effective June 29, 1988.

Department of Commerce

One Special Assistant to the Secretary of Commerce. Effective June 1, 1988.

One Confidential Assistant to the Deputy Secretary. Effective June 6, 1988.

One Special Assistant to the Assistant Secretary for Communications and Information. Effective June 8, 1988.

One Special Assistant to the Director for Office of Public Affairs. Effective June 16, 1988.

One Confidential Assistant to the Deputy Assistant Secretary for Domestic Operations. Effective June 16, 1988.

One Confidential Assistant to the Deputy Secretary. Effective June 24, 1988.

One Congressional Liaison Assistant to the Deputy Director for Congressional Affairs. Effective June 29, 1988.

Department of Education

One Special Assistant to the Assistant Secretary for Legislation. Effective June 6, 1988.

One Special Assistant to the General Counsel. Effective June 16, 1988.

One Confidential Assistant to the Commissioner for Rehabilitation Services Administration. Effective June 16, 1988.

One Special Assistant to the Director for Intergovernmental Affairs. Effective June 22, 1988.

One Director, Interagency Operations Staff to the Deputy Under Secretary for the Office of Intergovernmental and Interagency Affairs. Effective June 27, 1988.

One Confidential Assistant to the Chief of Staff/Counselor to the Secretary. Effective June 29, 1988.

Department of Health and Human Services

One Staff Assistant to the Associate Commissioner for Office of Governmental Affairs. Effective June 8, 1988.

One Special Assistant to the Commissioner of Social Security. Effective June 15, 1988.

One Confidential Assistant to the Administrator for Health Care Financing Administration. Effective June 15, 1988.

One Associate Administrator, Office of Communications to the Administrator for Family Support Administration. Effective June 27, 1988.

Department of Housing and Urban Development

One Associate Deputy Assistant Secretary for Program Policy Development and Evaluation to the General Deputy Assistant Secretary for Community Planning and Development. Effective June 6, 1988.

One Executive Assistant to the Assistant Secretary for Policy Development and Research. Effective June 24, 1988.

Department of the Interior

One Special Assistant to the Director for the Office of Surface Mining Reclamation and Enforcement. Effective June 6, 1988.

One Special Assistant to the Director for the Bureau of Land Management. Effective June 10, 1988.

One Confidential Assistant to the Deputy Assistant Secretary for Policy and Analysis. Effective June 24, 1988.

Department of Justice

One Special Assistant to the Director for the Office of Public Affairs. Effective June 6, 1988.

One Special Assistant to the Deputy Assistant Attorney General for the Office of Justice Programs. Effective June 16, 1988.

One Confidential Assistant to the Assistant Attorney General. Effective June 22, 1988.

One Public Affairs Specialist to the Director for the Office of Public Affairs. Effective June 24, 1988.

Department of Labor

One Special Assistant to the Assistant Secretary for Employment and Training. Effective June 24, 1988.

One Executive Assistant to the Assistant Secretary for Policy. Effective June 28, 1988.

One Secretary's Representative to the Associate Deputy Assistant Secretary for Public and Intergovernmental Affairs. Effective June 30, 1988.

Department of the Navy

One Staff Assistant to the Secretary of the Navy. Effective June 1, 1988.

Department of State

One Protocol Officer (Visits) to the Protocol Specialist (Ceremonials). Effective June 6, 1988.

One Foreign Affairs Officer to the Assistant Secretary for the Bureau of International Organization Affairs. Effective June 16, 1988.

Department of Transportation

One Special Assistant to the Assistant Secretary for Budget and Programs. Effective June 10, 1988.

One Congressional Liaison Officer to the Director of Congressional Affairs. Effective June 10, 1988.

One Special Assistant to the Director of External Affairs. Effective June 15, 1988.

One Special Assistant to the Administrator for the National Highway Traffic Safety Administration. Effective June 15, 1988.

One Deputy Director (Consumer Affairs) to the Director for the Office of Intergovernmental and Consumer Affairs. Effective June 22, 1988.

One Staff Assistant to the Deputy Administrator for Federal Aviation Administration. Effective June 27, 1988.

Commission on Civil Rights

One Special Assistant to the Commissioner. Effective June 1, 1988.

Export-Import Bank of the United States

One Administrative Assistant to the Director. Effective June 6, 1988.

Federal Home Loan Bank Board

One Deputy to the Executive Director of the Federal Savings and Loan Insurance Corporation for the Southwest Plan. Effective June 1, 1988.

Federal Trade Commission

One Associate Director for Media Relations to the Director of Public Affairs. Effective June 24, 1988.

General Services Administration

One Confidential Assistant to the Regional Administrator for National Capital Region. Effective June 22, 1988.

International Trade Commission

One Staff Assistant (Legal) to a Commissioner. Effective June 6, 1988.

Interstate Commerce Commission

One Staff Advisor (Management) to the Commissioner. Effective June 28, 1988.

National Credit Union Administration

One Staff Assistant to a Board Member. Effective June 16, 1988.

National Labor Relations Board

One Attorney-Advisor (Labor) to the Executive Assistant to the Chairman. Effective June 17, 1988.

Office of Management and Budget

One Confidential Assistant to the Executive Assistant to the Director. Effective June 21, 1988.

President's Commission on Executive Exchange

One Staff Assistant (Typing) to the Executive Director. Effective June 20, 1988.

One Information Receptionist to the Executive Director. Effective June 24, 1988.

Small Business Administration

One Special Assistant to the Associate Administrator for Minority Small Business and Capital Ownership Development. Effective June 7, 1988.

United States Information Agency

One Staff Assistant to the Director. Effective June 6, 1988.

United States Tax Court

One Secretary (Confidential Assistant) to a Judge. Effective June 7, 1988.

U.S. Office of Personnel Management.

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P. 218.

Constance Horner,

Director.

[FR Doc. 88–16804 Filed 7–25–88; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–25923; File No. CSE–88–1)

Self-Regulatory Organizations; Cincinnati Stock Exchange, Inc.; Filing of Proposed Plan for Reporting Minor Disciplinary Rule Violations

Pursuant to section 19(d)(1), 15 U.S.C. 78s(d)(1), of the Securities Exchange Act of 1934 ("Act") and Rule 19d–1(c)(2) thereunder 17 CFR 240.19–1(c)(2), notice is hereby given that on March 7, 1988, the Cincinnatti Stock Exchange, Inc. ("CSE" or "Exchange") submitted to the Securities and Exchange Commission ("the Commission") a proposed rule change to establish a minor disciplinary rule violation plan.[1] For covered minor disciplinary rule violations, the proposed plan would relieve the Exchange from the current reporting requirement otherwise imposed by section 19(d)(1) of the Act for "final" disciplinary actions. Amendment No. 1, submitted by the CSE on July 13, 1988, removes three violations from the

[1] *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23838 (June 8, 1984). The Commission adopted amendments to paragraph (c) of Rule 19d–1 to allow self-regulatory organizations ("SROs") to submit, for Commission approval, plans for the abbreviated reporting of minor rule violations. Under the amendments, any disciplinary action taken by the SRO for violation of an SRO Rule that has been designated a minor rule violation pursuant to the plan shall not be considered "final" for purposes of section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies.

original proposal and establishes a reporting system for minor disciplinary rule violations subject to the proposed plan. The CSE filed with the Commission the proposed rule change as described in Items I, II, and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. The Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Proposed Rule Change will authorize the Exchange, in lieu of commencing a disciplinary proceeding before a Hearing Panel, to impose a fine, not to exceed $2,500, on any member, member organization, or registered or non-registered employee of a member organization for any violation of an Exchange Rule which the Exchange determines to be minor in nature. Under the Proposed Rule Change, the Exchange will serve a written statement on the person against whom a fine is imposed, setting forth the Rule violated, the act or omission constituting the violation, the fine imposed, and the date that the determination becomes final and the fine must be paid or that such determination must be contested. If the person against whom a fine is imposed pursuant to the Rule chooses not to contest the matter and pays the fine, he waives his right to a disciplinary proceeding under Rules 8.1 through 8.13 and any review of the mater by an Exchange Committee or the CSE Board of Trustees.

Alternatively, under the Proposed Rule Change, any peson may choose to contest the fine by submitting a written answer, at which point the matter shall become a disciplinary proceeding subject to the provisions of Rules 8.1 through 8.13. Under the Proposed Rule Change, in any such disciplinary proceeding, if the Hearing Panel determines that the person charged is guilty of the Rule violation(s) charged, the Panel shall (1) be free to impose one or more disciplinary sanctions and (2) determine whether the Rule violation(s) is minor in nature. The Proposed Rule Change provides that the Exchange will not publicize any matter in which a fine is imposed under Rule 8.14 or where a person contests a fine imposed under the Rule and is found guilty of a minor violation by the Hearing Panel, except as required by Rule 19d–1 of the Act. If, in a contested case, however, it is determined by the Hearing Panel or the Board that the Rule violation was not minor in nature, there will be full public disclosure by the Exchange. The Exchange specifically provides in paragraph (e) of the Rule that imposition of a fine pursuant to the Rule is not mandatory; in addition, the Exchange has the option, whenever it determines that any violation is not minor is nature, to proceed under Rules 8.1 through 8.13 rather than Rule 8.14.

The Proposed Rule Change also designates certain specified Rule violations as minor Rule Violations which, if uncontested, would not be subject to the provisions of Rule 19d–1(c)(1) under the Act requiring that self-regulatory organization promptly file notice with the SEC of any final disciplinary action taken with respect to any person or organization. The CSA requests that it be relieved of the current reporting requirement regarding such violations, provided it gives notice of such violations to the Commission on a quarterly basis. The CSE will periodically prepare and announce to its members and member organizations a revised list of exchange Rules for violation of which the Exchange may impose fines pursuant to Rule 8.14, as well as the fines that may be imposed for such violation.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the Proposed Rule Change is to adopt new Rule 8.14, which will improve the Exchange's ability to efficiently meet its statutory enforcement responsibilities by establishing a program for the imposition of fines for minor violations of Exchange Rules and by designating certain specified Rule violations as minor Rule violations.

Rule 8.14 is consistent with section 6(b)(1), 6(b)(6) and 19(g)(1)(A) of the Act. Section 6(b)(1) requires that an exchange have the capacity to enforce compliance by its members and associated persons with provisions of the Act, the Rules thereunder and the rules of the exchange. Section 6(b)(6) provides that appropriate disciplinary procedures be established to exact such compliance. Section 19(g)(1)(A) requires each SRO to enforce compliance by its members and associated persons with its rules, as well as Commission rules and regulations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the Proposed Rule Change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received any comments on the Proposed Rule Change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer preiod (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such Proposed Rule Change, or

(B) Institute proceedings to determine whether the Proposed Rule Change should be disapproved.

IV. 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 5th Street NW., Washignton, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 16, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

July 18, 1988.

[FR Doc. 88-16737 Filed 7-25-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25929; File No. SR-DTC-88-10]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Depository Trust Company

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on July 5, 1988, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission a proposed rule change. The proposal establishes new fees relating to the use of DTC's Receiver-Authorized Delivery ("RAD") function.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

DTC's RAD function is designed to give DTC's Same-Day Funds Settlement [2] ("SDFS") participants more control over their SDFS transactions. The RAD function permits SDFS participants receiving securities to review and authorize delivery and payment orders before items are posted to their accounts. The RAD function also enables receiving participants to set a money amount such that if any incoming book-entry delivery exceeds that set amount, the delivery must first be authorized by the participant before its SDFS settlement account is debited. The proposal establishes a new fee schedule (attached as Exhibit A) relating to the use of the RAD function.

DTC represents that the proposed fee schedule, effective June 1, 1988, is based on costs incurred by DTC in providing RAD services. DTC further represents that these fees are the same as fees charged for services similar to RAD. In addition, DTC believes that these fees are consistent with section 17A(b)(3)(D) of the Act in that they provide for the equitable allocation of reasonable dues, fees, and other charges among DTC participants.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views, and arguments concerning the submission within 21 days after the date of publication in the **Federal Register.**

Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. SR-DTC-88-10.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC. Copies of the filing (SR-DTC-88-10) and of any subsequent amendments also will be available for inspection and copying at DTC's principal office.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 20, 1988.

Shirley E. Hollis,

Assistant Secretary.

EXHIBIT A

DTC Service	Fee
Receiver-Authorized Deliveries (RAD)	
A. System-Established Controls:	
1. Possible Substantially Overvalued Deliver Orders/Payment Orders:	
PTS message to deliverer.	$0.06 per message.
PTS message to Receiver.	$0.06 per message.
Receiver Authorization.	$0.06 per item.
Receiver Cancellation.	$4.00 per item chargeable to deliverer.
2. All Delivery Orders/Payment Orders Between 2:00-2:30 PM (except free Deliver Orders and, between 2:00-2:15PM, reclamations not otherwise subject to receiver authorization):	
PTS message to deliverer.	$0.06 per message.
PTS message to Receiver.	$0.06 per message.
Receiver Authorization.	$0.06 per item.
Receiver Cancellation.	$4.00 per item chargeable to deliverer.
3. Dropped Deliver Orders/Payment Orders due to Receiver's failure to authorize or cancel.	$4.00 per item dropped chargeable to receiver.
B. Receiver-Established Controls:	
1. Maintenance of RAD Limits.	No charge.
2. Deliver Orders/Payment Orders Subject to Receiver-Authorization:	
PTS message to deliverer.	$0.06 per message.
PTS message to Receiver.	$0.06 per message.
Receiver Authorization.	$0.06 per item.
Receiver Cancellation.	$4.00 per item chargeable to deliverer.
Dropped Deliver Orders/Payment Orders	
A. Deliverer-Caused:	
1. Deliver Order drop due to insufficient securities position, unless DTC's system shows the drop was caused by notice of potential receive of a delivery from another Participant which subsequently dropped.	$4.00 per item dropped chargeable to deliverer.
2. Deliver Order drop due to insufficient collateral.	$4.00 per item dropped chargeable to deliverer.

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[1] For a more detailed discussion of the RAD function, *see* Securities Exchange Act Release No. 25886 (July 6, 1988), 53 FR 26698, in which the Commission published notice of filing and immediate effectiveness of DTC's proposal establishing RAD.

[2] The SDFS Service provides depository and transaction settlement services for securities that settle in same-day funds. On July 9, 1987, the Commission issued an Order approving implementation of an SDFS Service pilot program on a temporary basis until January 31, 1988. *See* Securities Exchange Act Release No. 24689, 52 FR 26613. On February 4, 1988, the Commission extended that pilot program to June 30, 1988. *See* Securities Exchange Act Release No. 25308, 53 FR 6900. On July 11, 1988, the Commission further extended the SDFS Service pilot until August 31, 1988. *See* Securities Exchange Act Release No. 25870, 53 FR 26124.

EXHIBIT A—Continued

DTC Service	Fee
R. Receiver-Caused	
1. Drop due to insufficient collateral.	$4.00 per item dropped chargeable to receiver.
2. Drop due to insufficient fixed or adjustable net debit cap.	$4.00 per item dropped chargeable to receiver.

[FR Doc. 88-16831 Filed 7-25-88; 8:45 am]
BILLING CODE 8010-01-M

[File No. 500-1]

Cortex International, Ltd., Ram Industries, Inc.; Order of Suspension of Trading

July 21, 1988.

It appears to the Securities and Exchange Commission that there is a lack of adequate current information concerning the securities of Cortez International, Ltd., with executive offices located in Vancouver, British Columbia, Canada; and RAM Industries, Inc., with executive offices located in Dallas, Texas, and that questions have been raised about the adequacy and accuracy of publicly disseminated information concerning, among other things, the financial statements of the companies, the financial condition of the companies, and the value of their assets. The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Cortez International, Ltd. and RAM Industries, Inc.

Therefore, it is ordered, pursuant to section 12(k) of the Exchange Act of 1934, that trading in the Securities of CORTEZ International, Ltd., and RAM Industries, Inc., over-the-counter or otherwise, is suspended for the period from 9:00 a.m. (EDT) on July 21, 1988 through 11:59 p.m. (EDT) on July 30, 1988.

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-16736 Filed 7-25-88; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-16487; 812-7035]

Freedom Investment Trust and Freedom Investment Trust II; Application

July 20, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Freedom Investment Trust ("Freedom") and Freedom Investment Trust II ("Freedom II").

Relevant 1940 Act Sections: Order requested under section 6(c) for an exemption from sections 2(a)(32), 2(a)(35), 22(c), 22(d) and Rule 22c-1 thereunder, and approval under section 11(a).

Summary of Application: Applicants seek an order, under sections 6(c) and 11(a) of the 1940 Act, to amend existing orders [Investment Company Act Release Nos. 15118 (May 28, 1986), 15455 (December 4, 1986) and 15745/15745A (May 19 and June 2, 1987) ("Existing Orders")]. The amended order would allow Applicants' existing series and any future series whose shares are sold on substantially the same basis as the existing series (collectively referred to as "Applicants"): (a) To impose a new schedule of contingent deferred sales loads ("CDSL") on certain redemptions of shares; (b) to waive the CDSL for an additional class of shares; and (c) to continue to permit certain offers of exchange and deferral of the CDSL thereon.

Filing Date: The application was filed on May 11, 1988, and amended on July 7, 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 August 12, 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 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 5th Street, NW., Washington, DC 20549. Applicants, One Beacon Street, Third Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney, at (202) 272-3026 or Curtis R. Hilliard, Special Counsel, at (202) 272-3030 (Division of Investment Management, 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 who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Applicants, each registered under the 1940 Act as an open-end, management investment company, are "series companies" whose shares are offered for sale to the public through broker-dealers pursuant to distribution agreements with Tucker, Anthony & R. L. Day, Inc. and Freedom Distributors Corporation (the "Distributors"). Applicants' investment manager is Tucker Anthony Management Corporation. Each of the series of Freedom and Freedom II, except for the Freedom Money Market Fund series of Freedom, currently finances its own distribution expenses under a Plan of Distribution adopted in accordance with Rule 12b-1 under the 1940 Act. The Freedom Money Market Fund series is a no-load fund with no sales commission of any kind and no Rule 12b-1 distribution fee.

2. Under the Existing Orders, Freedom is permitted to impose a CDSL on certain redemptions of shares of its Gold & Government Trust, Regional Bank Fund, Government Plus Fund, Equity Value Fund and Managed Tax Exempt Fund series. Freedom II is permitted to impose a CDSL on certain redemptions of shares of its Global Fund and Global Income Plus Fund series. The Existing Orders also apply to any future series of Freedom and Freedom II which is sold on substantially the same basis as the series noted above. In determining the applicability of the CDSL to each redemption, shares of a series of Applicants are redeemed in a manner designed to result in the lowest possible charge. Accordingly, redemptions are effected from the following categories of shares on which no CDSL is imposed: (1) Shares of a series, if any, on which an investor previously paid a front-end sales charge; (2) shares representing the amount of the increase, if any, in the net asset value of the investor's shares above the amount of the total payments for the purchase of shares within the last three years and (3) shares representing the amount of the net asset value of the investor's shares, if any, purchased more than three years prior to the redemption and/or shares purchased through reinvestment of dividends or distributions. Shares redeemed to satisfy any redemption request in an amount which exceeds the net asset value of the shares on which no CDSL is imposed are subject to the CDSL. The amount of the CDSL (if any)

is calculated by determining the date on which the purchase payment that is the source of the redemption was made and applying the appropriate percentage to the amount of the redemption subject to the charge.

3. Under the Existing Orders, the current CDSL imposed is three percent during the first year following the purchase and decreases one percent per year through the third year with no charge imposed in the fourth and subsequent years. For purposes of determining the number of years from time of any payment for the purchase of shares, all payments during a month are aggregated and deemed to have been made on the last day of the month. In determining the rate of any applicable CDSL, it is assumed that a redemption is made of shares held by the investor for the longest period of time within the applicable three year period. This results in the CDSL being imposed at the lowest possible rate.

4. Applicants propose that a new CDSL be imposed on new shares purchased in any existing or future series of Applicants after Applicants receive the amended order requested herein, and after the Applicants' prospectuses are supplemented to describe the proposed CDSL. Shares of any series of the Applicants purchased prior to the date the proposed CDSL becomes effective will remain subject to the current CDSL, and Applicants' prospectuses will be supplemented clearly to indicate this. The calculation and application of the proposed CDSL will be identical to the current CDSL already approved by the Existing Orders except that the proposed CDSL will be calculated and will extend over five years (as compared with the current three year schedule) with an additional 1.0% redemption charge in years four and five. Applicants have extended the CDSL schedule in order to assure adequate recovery by the Distributors of the new, increased sales commissions they will pay to expand the distribution network of broker-dealers selling Applicants' shares. Except for the new five year schedule, the proposed CDSL to be imposed with respect to Applicants' shares will be identical to the current CDSL already approved by the Existing Orders.

5. Under the Existing Orders, Applicants are permitted to waive the CDSL on certain redemptions. Applicants propose that the CDSL also be waived in the case of a redemption by a bank or trust company acting as trustee that has purchased $1 million or more of any series of Applicants.

6. Under the Existing Orders, shares of any series of Applicants may be exchanged for shares of each other without the imposition of the current CDSL at the time of the exchange. Such shares, upon subsequent redemption, are subject to the CDSL of the series in which the shares are being redeemed, calculated by reference to the date of initial purchase of the first series' shares, unless such shares are of a class for which a waiver is permitted. In the case when a shareholder exchanges shares of any series of Applicants subject to the current CDSL into the Freedom Money Fund, the period of time during which the shareholder holds such Freedom Money Market Fund shares will not be included for purposes of calculating the series' current CDSL (i.e., the CDSL period is tolled). In the case when a shareholder initially purchases shares of the Freedom Money Market Fund, then exchanges such shares for shares of another series of Applicants, the shareholder is subject to the CDSL of such series and the CDSL is calculated from the date of such exchange. Prior to receiving the Existing Orders and implementing the current CDSL, certain series of shares of Applicants were distributed with a front-end sales load. The current CDSL is not imposed on redemptions of such shares, and the Existing Orders permit the shareholder to exchange such shares for any other sries of Applicants and redeem the shares without the imposition of the current CDSL. No exchange fee or other administrative fee is charged for any of the exchanges between the series of Applicants.

7. The application was filed to clarify that the Applicants may continue to offer the exchange privilege between their series of shares, as described above, after implementation of the proposed CDSL schedule. Since the implementation of the proposed CDSL will be prospective in operation (i.e., it will apply only to shares of Applicants purchased after Applicants receive an amended order from the SEC as requested herein), the Applicants' exchange privilege will continue to operate generally as described above and as follows:

(1) An investor who purchased shares of a series of Applicants subject to the current CDSL and thereafter exchanges such shares for another series after the effectiveness of the proposed CDSL and redeems such shares will remain subject to the current CDSL;

(2) An investor who purchased shares of a series of Applicants with a front-end sales load prior to the effectiveness of the current and proposed CDSL and thereafter exchanges such shares for another series after the effectiveness of the proposed CDSL and redeems such shares will not be subject to the current or proposed CDSL;

(3) An investor who purchased shares of Freedom Money Market Fund prior to the effectiveness of the proposed CDSL and thereafter exchanges such shares for another series after the effectiveness of the proposed CDSL and redeems such shares will be subject to the proposed CDSL; and

(4) In the case where an investor with shares subject either to the current CDSL or the proposed CDSL exchanges those shares for shares of the Freedom Money Market Fund, the period of time during which the investor holds shares in the Freedom Money Market Fund will not be included for purposes of calculating the appropriate CDSL (i.e., the CDSL period is tolled).

8. Applicants have been informed by their transfer agent that the transfer agency will be able to monitor, track and effectuate all aspects of the proposed CDSL schedule and the exchange privilege described above, including the requisite holding periods for the current and proposed CDSL. In connection with such exchanges, there will be no financial incentive for the Distributors or account executives or other sales persons designed specifically to encourage initiation of exchange transactions. Applicants will not specifically solicit or promote exchange offers (by telephone or otherwise) and will establish internal monitoring and review procedures with the Distributors to ensure that such exchanges are made at the request of the investor and not for the personal gain of the Distributors or any sales representative. Applicants further agree to comply with all applicable federal and state laws and rules, as well as the rules and regulations of all agencies having jurisdiction. Applicants will set forth clearly in their prospectuses and/or statements of additional information the different CDSL schedules, holding periods and exchange privileges. Also, the Board of Trustees of each Applicant in the periodic review of each Applicant's Plan of Distribution adopted in accordance with Rule 12b–1 under the 1940 Act will consider the effect on the Distributors of the current and proposed CDSL and the use thereof.

Applicants' Legal Conclusions

1. Applicants submit that the proposed CDSL, the proposed waiver thereof and the exchange privilege are appropriate and in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. The proposed CDSL is fair,

equitable and in the best interests of shareholders because they will have the advantage of greater investment dollars working for them from the time of their purchase of Applicants' shares than with the traditional front-end sales charge. With respect to the additional waiver of the CDSL, such waiver will comply with the requirements of Rule 22d–1 under the 1940 Act which permits scheduled variations in, or elimination of, front-end sales loads. Also, the new CDSL schedule and proposed waiver will not adversely impact Applicants and their existing shareholders. Applicants also believe that the tolling of the proposed CDSL period while an investment is made in the Freedom Money Market Fund is necessary and appropriate in the public interest and consistent with the protection of investors because the Freedom Money Market Fund has no CDSL or other sales load or Rule 12b–1 distribution fee.

2. The Applicants believe that the fact that their shares will be subject to two different CDSLs for a period of time does not raise concerns under section 18 of the 1940 Act regarding the creation of a "senior security." Shares of each of the series of Applicants will have identical voting rights, dividend, liquidation and other rights and will share pro rata in all income and expenses of the series. Each series of shares of the Applicants will continue to have only one net asset value per share. The implementation of the proposed CDSL will not dilute a series' assets and reserves. The only differences between shares of the Applicants subject to the current and the proposed CDSL schedule will relate to the redemption amount received by the shareholders due to the differing CDSL schedules, the holding periods for the CDSLs and the exchange privileges between series of the Applicants as described above and more fully in the application.

Applicants' Conditions

If the requested order is granted, Applicants agree to the following conditions:

1. Applicants will comply with the provisions of Rule 12b–1 under the 1940 Act both currently and as that Rule may be modified by the SEC in the future.

2. Applicants will comply with the provisions of Rule 22d–1 under the 1940 Act.

3. Applicants will comply with the provisions of proposed Rule 11a–3 under the 1940 Act if and when it is adopted.

4. Any subsequent similar series of Applicants will undertake to limit any future offers of exchange to the terms and conditions described in the application, the Existing Orders, and in the applications thereto (unless subsequently superseded).

5. Shareholders of Applicants will be notified by means of the Applicants' prospectuses of the fact that Applicants reserve the right to modify or terminate the exchange privilege.

6. In connection with sales literature and advertising that refer to the Applicants' exchange privilege, the Applicants will consider the desirability of disclosing that they reserve the right to modify or terminate the exchange privilege.

7. Shareholders will be notified in writing at least 60 days prior to any modification or termination of the Applicants' exchange privilege; provided, however, that the temporary cessation of the sale of Applicants' shares under extraordinary circumstances such as when the Applicants are unable to effectively invest amounts in accordance with applicable investment objectives, policies and restrictions, or the suspension of the redemption of Applicants' shares pursuant to section 22(e) of the 1940 Act and the rules and regulations thereunder shall not be considered a modification or termination of the Applicants' exchange privilege.

8. Applicants undertake to obtain an amended order from the SEC prior to any modification (i.e., manner, frequency, or basis) of the Applicants' exchange privilege in a manner not described in the application, the Existing Orders, and the applications thereto; provided, however, that an amended order is not required in order to terminate the Applicants' exchange privilege.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88–16829 Filed 7–25–88; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1070]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

SUMMARY: The Department of State is responsible for determining that adequate educational opportunities exist at Foreign Service posts for dependents of U.S. Government personnel stationed abroad, and for assisting American-sponsored overseas schools demonstrate U.S. educational philosophy and practice. The information gathered enables the Department to advise on conditions and make judgments regarding assistance to schools for the improvement of educational opportunities. The following summarizes the information collection proposals submitted to OMB:

1. *Type of request*—Extension.
   Originating office—Office of Overseas Schools.
   Title of information collection—Overseas Schools Questionnaire.
   Form number—FS–573, A and B.
   Frequency—Annual.
   Respondents—American sponsored schools abroad.
   Estimated number of respondents—175.
   Average hours per response—1.
   Total estimated burden hours—175.
2. *Type of request*—Extension.
   Originating office—Office of Overseas Schools.
   Title of information collection—Request for Assistance.
   Form number—FS–574.
   Frequency—Annual.
   Respondents—American sponsored schools abroad.
   Estimated number of respondents—175.
   Average hours per response—.5.
   Total estimated burden hours—87.5.
3. *Type of request*—Extension.
   Originating office—Office of Overseas Schools.
   Title of information collection—Approval of Funding to Support Educational Projects.
   Form number—JF–45.
   Frequency—Annual.
   Respondents—American sponsored schools abroad.
   Estimated number of respondents—175.
   Average hours per response—.25.
   Total estimated burden hours—43.75.
4. *Type of request*—Extension.
   Originating office—Office of Overseas Schools.
   Title of information collection—Grant Status Report.
   Form number—JF–61.
   Frequency—Quarterly.
   Respondents—American sponsored schools abroad.
   Estimated number of respondents—175.
   Average hours per response—.25.

Total estimated burden hours—218.75.

Section 3504(h) of Pub. L. 96–511 does not apply.

Additional Information or Comments: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 674–3538. Comments and questions should be directed to (OMB) Francine Picoult (202) 395–7340.

Date: July 11, 1988.

Richard C. Faulk,

Acting Assistant Secretary for Administration.

[FR Doc. 88–16718 Filed 7–25–88; 8:45 am]

BILLING CODE 4710–24–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–61]

Unfair Trade Practices; Brazil's Lack of Adequate Intellectual Property Protection for Pharmaceuticals and Fine Chemicals

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of public hearings and request for public comments on possible U.S. actions in response to certain Brazilian unfair trade practices.

SUMMARY: The Trade Policy Staff Committee (TPSC) will conduct a public hearing on possible U.S. actions following the President's determination that Brazil's denial of adequate intellectual property protection for pharamaceuticals and fine chemicals is unreasonble and a burden or restriction on U.S. commerce. The President's determination follows from a section 301 investigation.

SUPPLEMENTARY INFORMATION: On July 23, 1987, the U.S. Trade Representative initiated an investigation under section 302 of the Trade Act of 1974, as amended (the "Act"), concerning Brazil's lack of patent protection for pharmaceuticals and fine chemicals (52 FR 28223). Initiation of the investigation was in response to a petition filed by the Pharmaceutical Manufacturers Association (PMA) under section 302(a) of the "Act" on June 11, 1987. The petition was filed by PMA following unsuccessful consultations between the Government of the United States and the Government of Brazil concerning Brazil's lack of product and process patent protection for pharmaceuticals and fine chemicals.

Following the initiation of the investigation, the United States Government again held consultations with the Government of Brazil in an attempt to find a mutually satisfactory solution to our concerns. The Government of Brazil is not prepared to modify its law sufficiently to provide adequate intellectual property protection for pharmaceuticals and fine chemicals.

Therefore, on July 21, 1988, the President determined under section 301 of the "Act" that the Government of Brazil has engaged in acts, policies and practices with respect to the denial of patent protection for pharmaceuticals and fine chemicals that are unreasonable and burden or restrict U.S. commerce. The President also determined that he intends to take appropriate and feasible action in response to the Government of Brazil's policies and practices and is, therefore, considering increasing customs duties or otherwise restricting the importation of products from Brazil. In this regard, the President directed the U.S. Trade Representative to hold public hearings on a list of products accounting for about $200 million worth of exports to the United States from Brazil. From this list, appropriate products will be chosen for increased duties or other import restrictions.

Legal Authority

Under section 301 of the "Act," the President is authorized to take all appropriate and feasible action within his power to obtain the elimination of an act, policy or practice of a foreign government or instrumentality that denies the U.S. benefits under, or is inconsistent with, a trade agreement, or is othewise unjustifiable, unreasonble or discriminatory and a burden or restriction on U.S. commerce. Section 301(b)(2) expressly authorizes the President to impose duties or other import restrictions on the goods of a foreign country or instrumentality for such time as he deems appropriate. Measures under section 301 may be taken on a discriminatory or nondiscriminatory basis, at the discretion of the President.

Public Hearing

In response to the President's directive to the U.S. Trade Representative, the TPSC will hold public hearings on a list of products accounting for about $200 million worth of exports from Brazil to the United States. From this list, appropriate items will be chosen for increased duties or other import restrictions. With respect to increasing customs duties, the Administration is generally considering an increase to a rate of 100 percent *ad valorem*. The attached annex contains those products of Brazil that are being considered.

Public hearings will be held on September 8 (and 9 if necessary), 1988, at 9:30 a.m. regarding the products of Brazil listed in the attached annex that may be subject to increased U.S. customs duties or other import restrictions for the reasons explained above. The comments submitted will be considered in recommending any action under section 301 to the U.S. Trade Representative for his recommendation to the President.

Comments are sought on: (1) The appropriateness of the products being considered for possible retaliation; (2) the levels at which U.S. customs duties or other import restrictions should be set; and (3) the degree to which increased duties or other import restrictions might have an adverse effect on U.S. consumers of the products concerned.

The hearings will be held in Court Room A, Room 100, in the U.S. International Trade Commission, 500 E Street, SW., Washington, DC, 20436. Interested persons wishing to testify orally must provide written notice of their intention by noon on August 24, 1988, to Ms. Carolyn Frank, Secretary of the TPSC, Office of the U.S. Trade Representative, Room 523, 600 17th Street, NW., Washington, DC, 20506. In addition, they must provide the following information: (1) their names, addresses and telephone numbers; and, (2) a summary of their presentation, including the products, with Tariff Schedules of the United States (TSUS) item numbers, to be discussed.

In addition, persons presenting oral testimony must submit a complete written statement in 20 copies, in English, by noon, August 29, 1988, to Ms. Carolyn Frank at the address listed above. Remarks at the hearing will be limited to 5 minutes.

Persons not wishing to participate in the public hearing may submit written comments, in 20 copies, by noon, August 29, 1988, to Ms. Carolyn Frank at the address listed above. All written comments must be filed in accordance with 15 CFR 2006.8.

The Harmonized System Tariff Nomenclature

A supplemental notice will be published as soon as possible which will list the items contained in the annex to this notice in terms of the Harmonized System tariff nomenclature (HS). The HS-based list will represent the best possible conversion of the current TSUS-based annex cited in this notice. However, because the conversion may

not be exact due to differences in tariff nomenclature, some differences in precise product coverage may occur. Therefore, comments will be sought on any product coverage discrepancies that may arise. Submission of comments and requests to appear at the public hearing on the HS-based supplemental notice is required on the same dates as listed above.

FOR FURTHER INFORMATION CONTACT: Questions about products under consideration for increased duties or other import restrictions should be directed to Mr. Patrick Hughes, International Economist, Office of Industrial Trade, U.S. Department of Commerce, (202) 377–3703. Questions concerning the legal status of this case should be referred to Ms. Catherine Field, Associate General Counsel, Office of the U.S. Trade Representative, (202) 395–3432. Questions concerning the policy issues involved in this case, as well as any other questions, should be referred to Mr. Jon Huenemann, Director of Brazil and Southern Cone Affairs, Office of the U.S. Trade Representative, (202) 395–5190.

Sandra J. Kristoff,

Chairwoman, Trade Policy Staff Committee.

BILLING CODE 3190-01-M

ANNEX

TSUS or TSUSA 1/ item no.	Article
	[The bracketed language in this list has been included only to clarify the scope of the numbered items which are being considered, and such language is not itself intended to describe articles which are under consideration.]
	Wood moldings, and wood carvings and ornaments suitable for architectural or furniture decoration, whether or not drilled or treated:
	Standard wood moldings, not drilled or treated:
202.62	Pine (Pinus spp.)
202.64	Other
202.66	Other
206.30	Wood doors with or without their hardware
	Wood pulp; rag pulp; and other pulps derived from cellulosic fibrous materials and suitable for paper making:
	Chemical wood pulp, except screenings:
	Sulphate or soda:
	Bleached:
	[Special alpha and dissolving grades]
	Other:
250.0281	Softwood
251.05 thru 254.95	Paper and paperboard, in rolls and sheets, not cut to size or shape, provided for in subpart B of part 4, schedule 2, of the TSUS
256.05 thru 256.67	Paper and paperboard cut to size or shape; articles of paper or paperboard; all the foregoing provided for in subpart C of part 4, schedule 2, of the TSUS
256.70 thru 256.95	Articles not specially provided for of pulp, of papier-mache, of paper, or of paperboard, provided for in subpart D of part 4, schedule 2, of the TSUS

1/ Tariff Schedules of the United States (19 U.S.C. 1202).

ANNEX (con.)
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TSUS or TSUSA 1/ item no.	Article
	Products obtained, derived, or manufactured in whole or in part from any product provided for in subpart A or B of part 1, schedule 4, of the TSUS:
	Pesticides:
	Not artificially mixed:
	[Fungicides; herbicides (including plant growth regulators)]
	Insecticides:
	[Articles provided for in item 408.24].
408.27	Other
	Other:
	[1,2-Benzisothiazolin-3-one]
408.32	Other
408.37	Other
	Plastics materials:
408.44	Concentrated dispersions of pigments in plastics materials
	Products suitable for medicinal use, and drugs:
	Obtained, derived, or manufactured in whole or in part from any product provided for in subpart A or B of part 1, schedule 4, of the TSUS:
410.68 thru 412.71	Drugs
	Drugs, from whatever source obtained, produced, or manufactured:
412.72	Guaiacol and its derivatives
417.10 thru 423.96	Inorganic chemical compounds, provided for in subpart C of part 2, schedule 4, of the TSUS
	Nitrogenous compounds:
425.30	Monosodium glutamate
	Halogenated hydrocarbons:
429.22	Carbon tetrachloride

1/ Tariff Schedules of the United States (19 U.S.C. 1202).

ANNEX (con.)
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TSUS or TSUSA 1/ item no.	Article
	Chemical mixtures not specially provided for:
	[Mixtures that are in whole or in part of hydrocarbons derived in whole or in part from petroleum, shale oil, or natural gas]
	Other:
432.15	Pesticides
437.00 thru 438.02	Alkaloids, antibiotics, barbiturates, hormones, vitamins, and other drugs and related products, provided for in subpart B of part 3, schedule 4, of the TSUS
439.10 thru 440.00	Other drugs not provided for in subpart A or B but provided for in subpart C of part 3, schedule 4, of the TSUS
	Air-conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity of air, and parts thereof:
	Window or wall-type air-conditioners:
661.2003	Under 10,000 BTU per hour
661.2006	10,000 to 16,999 BTU per hour
661.2009	17,000 BTU per hour and over
	Elevators, hoists, winches, cranes, jacks, pulley tackle, belt conveyors, and other lifting, handling, loading, or unloading machinery, and conveyors, all the foregoing and parts thereof not provided for in item 664.06, 664.07 or 664.08:
	[Industrial robots]
	Other:
664.1059	Winches

1/ Tariff Schedules of the United States (19 U.S.C. 1202).

ANNEX (con.)
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TSUS or TSUSA 1/ item no.	Article
	Machine tools:
	Metal-working machine tools:
	[Machine tools for cutting or hobbing gears; boring, drilling, and milling machines, including vertical turret lathes]
	Other:
	Metal-forming machine tools:
	[Used or rebuilt; other, valued under $2,500 each]
	Other:
	[Shearing machines, punching machines, and combination shearing and punching machines; bending, folding, straightening or flattening machines]
	Other metal-forming machine tools:
	[With numerical controls or facings for numerical controls]
	Other:
	Presses:
674.3594	Mechanical
	Electric instantaneous or storage water heaters and immersion heaters; electric soil heating apparatus, and electric space heating apparatus; electric hair dryers, hair curlers, and other electric hair dressing appliances; electric flatirons; electro-thermic kitchen and household appliances; electric heating resistors other than those of carbon; all the foregoing and parts thereof:
	[Flatirons]
684.20	Toasters, waffle irons, skillets, ovens, stoves, coffee makers and other portable electro-thermic kitchen and household appliances
	Other:
	Cooking stoves and ranges, and parts thereof:
684.25	Microwave ovens

1/ Tariff Schedules of the United States (19 U.S.C. 1202).

ANNEX (con.)
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TSUS or TSUSA 1/ item no.	Article
684.70	Microphones; loudspeakers; head phones; audio-frequency electric amplifiers; electric sound amplifier sets comprised of the foregoing components; and parts of the foregoing articles (including microphone stands)
	Radiotelegraphic and radiotelephonic transmission and reception apparatus; radiobroadcasting and television transmission and reception apparatus, and television cameras; record players, phonographs, tape recorders, dictation recording and transcribing machines, record changers, and tone arms; all of the foregoing, and any combination thereof, whether or not incorporating clocks or other timing apparatus, and parts thereof:
684.90	Television cameras, and parts thereof
	Radiotelegraphic and radiotelephonic transmission and reception apparatus; radiobroadcasting and television transmission and reception apparatus, and parts thereof:
	Television apparatus, and parts thereof:
	Television receivers and parts thereof:
	Having a picture tube:
684.92	Complete television receivers
	Assemblies (including kits containing all parts necessary for assembly into complete receivers):
684.94	Monochrome
684.96	Color
	[Radio-phonograph combinations]
	Record players, phonographs, record changers, turntables, and tone arms, and parts of the foregoing:
	[Tone arms and parts thereof]
685.38	Other
685.39	Telephone answering machines, and parts thereof
685.40	Tape recorders and dictation recording and transcribing machines (other than telephone answering machines), and parts thereof

1/ Tariff Schedules of the United States (19 U.S.C. 1202).

ANNEX (con.)
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TSUS or TSUSA 1/ item no.	Article
	Radiotelegraphic and radiotelephonic, etc. (con.):
	Other:
685.42	Radio-television-phonograph combinations
	Other:
	[Articles designed for connection to telegraphic or telephonic apparatus or instruments or to telegraphic or telephonic networks]
685.49	Other
	Electrical switches, relays, fuses, lightning arresters, plugs, receptacles, lamp sockets, terminals, terminal strips, junction boxes and other electrical apparatus for making or breaking electrical circuits, for the protection of electrical circuits, or for making connections to or in electrical circuits; switchboards (except telephone switchboards) and control panels; all the foregoing and parts thereof:
	Electrical switches and relays:
	Containing an automatic overload or tripping mechanism (circuit breakers):
685.9002	Molded case
	Other:
	Relays:
685.9034	With contacts rated at less than 10 A
685.9036	With contacts rated at 10 A and over

1/ Tariff Schedules of the United States (19 U.S.C. 1202).

ANNEX (con.)
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TSUS or TSUSA 1/ item no.	Article
	Chassis, bodies (including cabs), and parts of the foregoing motor vehicles provided for in items 692.02 thru 692.16:
	[Bodies (including cabs) and chassis]
	Other:
	[Cast-iron (except malleable cast-iron) parts, not alloyed and not advanced beyond cleaning, and machined only for the removal of fins, gates, sprues, and risers or to permit location in finishing machinery]
	Other:
	[Automobile truck tractors, if imported without their trailers]
	Other:
	Brakes and parts thereof:
692.3262	Brake drums and rotors (dises)
	Footwear, of leather (except footwear with uppers of fibers):
	[Huaraches; McKay-sewed footwear; moccasins; turn or turned footwear; welt footwear; footwear with molded soles laced to uppers; slippers]
	Other:
	For men, youths and boys:
	Soled "moccasins":
700.3530	For men
700.3535	For youths and boys

1/ Tariff Schedules of the United States (19 U.S.C. 1202).

ANNEX (con.)
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TSUS or TSUSA 1/ item no.	Article
	Furniture, and parts thereof, not specially provided for:
	Of wood:
	[Bent-wood furniture, and parts thereof]
	Other:
	Furniture other than chairs:
	[Convertible sofas, sofa beds, and similar dual-purpose furniture; desks and desk extensions; dining tables; other tables]
	Other:
	[Bedroom furniture]
	Other:
727.3560	Shelving
	Pistols, revolvers, rifles, shotguns, and combination shotguns and rifles, all the foregoing which are firearms designed to fire shot, pellets, or bullets (except firearms provided for in item 730.10):
	Pistols and revolvers:
730.15	Valued not over $4 each
730.17	Valued over $4 but not over $8 each
730.19	Valued over $8 each
	Jewelry and other objects of personal adornment, and small articles ordinarily carried in the pocket, in the handbag, or on the person for mere personal convenience, all the foregoing, and parts thereof, of precious metal (including rolled precious metal), of precious stones, of natural pearls, of precious metal (including rolled precious metal) set with semiprecious stones, cameos, intaglios, amber, or coral, or of any combination of the foregoing:
	[Of silver (including rolled silver) and valued not over $18 per dozen pieces or parts]
	Other:
	Of precious metals:
	Necklaces and neck chains, almost wholly of gold:
740.11	Rope
740.12	Mixed link
740.13	Other
740.14	Other
740.15	Other

1/ Tariff Schedules of the United States (19 U.S.C. 1202).

[FR Doc. 88-16919 Filed 7-22-88; 2:22 pm]
BILLING CODE 3190-01-C

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1954, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954). The list is the same as the prior quarterly list published in the **Federal Register**.

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954).

Bahrain
Iraq
Jordan
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Arab Republic
Yemen, Peoples Democratic Republic of

Dated: July 20, 1988.

O. Donaldson Chapoton,

Assistant Secretary for Tax Policy.

[FR Doc. 88-16810 Filed 7-25-88; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 143
Tuesday, July 26, 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).

FEDERAL ENERGY REGULATORY COMMISSION

July 20, 1988.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94-409), 5 U.S.C. 552B:

TIME AND DATE: July 27, 1988, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Acting Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda, 882nd Meeting—July 27, 1988, Regular Meeting (10:00 a.m.)

CAP-1.
Project Nos. 8377-002 and 003, Central Hydroelectric Corporation
CAP-2.
Project No. 4376-003, High Country Resources
CAP-3.
Project No. 2785-005, Wolverine Power Corporation
CAP-4.
Docket No. EL86-001 and Project No. 553-011, The City of Seattle, Washington Department of Lighting
CAP-5.
Docket No. UL 88-27-001, Consolidated Hydro, Inc.
CAP-6.
Docket No. HB20-85-1-000, Public Service Company of Indiana, Louisville Gas and Electric Company, Ohio Power Company, City of Vanceburg/City of Hamilton, Kanawha Valley Company, Elkem Metals Company and Kentucky Utilities Company
CAP-7.
Project No. 9690-003, Orange and Rockland Utilities, Inc.
Project No. 9754-002, Rio Hydroelectric Associates, Inc.
CAP-8.
Project No. 5251-002, City of Fort Smith, Arkansas
CAP-9.
Project Nos. 6568-003, 006 and 008, Delmar Wagner
CAP-10.
Project No. 8203-001, Falls Hydro Associates
CAP-11.
Project No. 9711-000, Inghams Corporation
CAP-12.
Project No. 9712-000, Beardelee Corporation
CAP-13.
Docket No. ER88-123-000, Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Power Company
CAP-14.
Docket Nos. ER88-447-000 and ER88-57-001, Vermont Electric Power Company, Inc.
CAP-15.
Docket Nos. ER80-259-011, ER80-793-000, ER80-355-000, ER80-356-000 and ER80-357-000, Kansas Gas and Electric Company
CAP-16.
Docket No. EL87-11-003, North Carolina Municipal Power Agency No. 1 v. Duke Power Company
Docket No. EL87-18-003, Piedmont Municipal Power Agency v. Duke Power Company
Docket No. EL87-20-003, North Carolina Electric Membership Corporation v. Duke Power Company
CAP-17.
Docket No. EL83-24-006, Seminole Electric Cooperative, Inc.
Docket No. ER84-379-006, Florida Power and Light Company
CAP-18.
Docket No. QF88-158-002, Petrolia Power Company
CAP-19.
Docket Nos. ER78-338-004, ER79-478-005 and ER80-313-005, Public Service Company of New Mexico
CAP-20.
Docket Nos. ER84-571-001, ER85-486-001 and ER86-300-001, (Phase II), Utah Power & Light Company
CAP-21.
Docket No. ER86-704-001, Canal Electric Company

Consent Miscellaneous Agenda

CAM-1.
Docket No. RM88-25-000, Generic Determination of Rate of Return on Common Equity for Public Utilities
CAM-2.
Docket No. FA85-71-001, Central Illinois Public Service Company
CAM-3.
Docket No. RM87-5-001, Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines
CAM-4.
Docket No. RM87-17-001, Natural Gas Data Collection System
CAM-5.
Docket No. GP88-14-000, Kentucky Public Service Commission
CAM-6.
Docket No. GP88-13-000, Oklahoma Corporation Commission
CAM-7.
Docket No. GP88-4-000, Barnhart Company
CAM-8.
Docket No. GP87-10-000, Union Texas Products Corporation
CAM-9.
Docket No. RO86-13-000, Merit Petroleum, Inc.
CAM-10.
Docket No. RO88-3-000, Intercoastal Operating Company, IOC Production, Inc., John c. O'Leary, W.R. Dean, J.H. Gilley, Jr., L.E. Lewis and Joe N. Pratt

Consent Gas Agenda

CAG-1.
Docket No. RP88-204-000, Transcontinental Gas Pipe Line Corporation
CAG-2.
Omitted
CAG-3.
Docket No. RP88-206-000, Tarpon Transmission Company
CAG-4.
Docket No. RP88-209-000, Natural Gas Pipeline Company of America
CAG-5.
Docket No. RP88-211-000, CNG Transmission Corporation
CAG-6.
Docket Nos. RP85-13-020 and CP86-578-015, Northwest Pipeline Corporation
CAG-7.
Docket No. RP88-201-000, East Tennessee Natural Gas Company
CAG-8.
Docket No. RP88-203-000, Panhandle Eastern Pipe Line Company
CAG-9.
Docket No. RP88-205-000, Alabama-Tennessee Natural Gas Company
CAG-10.
Docket Nos. RP88-207-000 and RP87-55-003, Columbia Gas Transmission Corporation
CAG-11.
Docket No. RP88-210-000, Southern Natural Gas Company
CAG-12.
Docket Nos. TA88-5-29-000 and 001, Transcontinental Gas Pipe Line Corporation
CAG-13.
Docket No. TA88-4-49-000, Williston Basin Interstate Pipeline Company
CAG-14.
Docket Nos. TQ88-2-17-000 and TM88-1-17-000, Texas Eastern Transmission Corporation
CAG-15.

Docket Nos. CP87-309-002 and RP88-208-000, Paiute Pipeline Company
CAG-16.
Omitted
CAG-17.
Docket No. RP85-165-000, Distrigas of Massachusetts Corporation
CAG-18.
Docket No. RP88-190-000, North Penn Gas Company
CAG-19.
Docket No. RP88-68-004, Transcontinental Gas Pipe Line Corporation
CAG-20.
Docket Nos. TA88-4-12-002 and RP88-194-000, Distrigas Corporation and Distrigas of Massachusetts Corporation
CAG-21.
Docket Nos. RP82-71-022, 023, CP85-636-005, CP85-775-000 and CP86-633-000, Northern Natural Gas Company
CAG-22.
Docket No. RP88-199-000, Northwest Pipeline Corporation
CAG-23.
Docket No. TA88-4-37-000, 001 and 002, Northwest Pipeline Corporation
CAG-24.
Docket Nos. RP88-125-001, TQ88-1-22-001 and TA87-3-22-004, CNG Transmission Corporation
CAG-25.
Docket Nos. RP88-151-001 and TQ88-1-27-001, North Penn Gas Company
CAG-26.
Docket No. RP88-65-001, Panhandle Eastern Pipe Line Company
CAG-27.
Docket No. RP88-106-001, Northern Natural Gas Company, Division of Enron Corp.
CAG-28.
Docket No. RP88-128-001, National Fuel Gas Supply Corporation
CAG-29.
Docket Nos. RP88-146-001 and TA88-3-25-001, Mississippi River Transmission Corporation
CAG-30.
Docket Nos. RP88-47-003 and RP88-47-005, Northwest Pipeline Corporation
CAG-31.
Docket Nos. RP88-96-002 and RP88-96-003, Southern Natural Gas Company
CAG-32.
Docket No. RP88-115-001, Texas Gas Transmission Corporation
CAG-33.
Docket Nos. RP88-129-001 and TQ88-1-16-001, National Fuel Gas Supply Corporation
CAG-34.
Docket Nos. RP88-119-001 and TQ88-1-21-001, Columbia Gas Transmission Corporation
CAG-35.
Docket No. RP88-17-012, Southern Natural Gas Company
CAG-36.
Docket Nos. ST86-2102-001, ST86-2307-001, ST86-2802-001, ST86-2803-001, ST87-6-001, ST87-1425-001, ST87-2279-001, ST87-2365-001, ST87-2366-001, ST87-2367-001, ST87-2663-001, ST87-3539-001, ST87-3973-001, ST87-3974-001 and ST88-1369-001, Enogex Inc. (formerly Mustang Fuel Corporation)
CAG-37.
Docket No. TA86-3-59-008, Northern Natural Gas Company, Division of Enron Corp.
CAG-38.
Docket Nos. TA88-1-27-002, RP88-57-001 and RP88-110-001, North Penn Gas Company
Docket No. RP88-109-000, Corning Natural Gas Corporation v. North Penn Gas Company
CAG-39.
Docket No. RP88-131-002, Carnegie Natural Gas Company
CAG-40.
Docket No. RP87-61-002, Eastern Shore Natural Gas Company
CAG-41.
Docket No. RP86-143-001, Columbia Gas Transmission Corporation
CAG-42.
Docket Nos. RP86-45-018 and 019, El Paso Natural Gas Company
CAG-43.
(A) Docket Nos. RP86-119-008, TA84-2-9-010 and TA85-1-9-007, Tennessee Gas Pipeline Company
(B) Docket Nos. RP86-119-007, TA84-2-9-009 and TA85-1-9-006, Tennessee Gas Pipeline Company
CAG-44.
Docket Nos. CP88-99-001, CP88-100-000 and CP88-143-000, Transwestern Pipeline Company
CAG-45.
Docket Nos. RP87-62-000 and RP86-148-000 (Phase II), Pacific Gas Transmission Company
CAG-46.
Docket Nos. RP88-1-000 and 001, Bayou Interstate Pipeline System
CAG-47.
Docket No. RP88-62-000, Equitable Gas Company
CAG-48.
Docket Nos. RP87-62-001 and RP86-148-003, Pacific Gas Transmission Company
CAG-49.
Docket Nos. RP87-7-020 and RP86-48-000 (Minimum Bill), Transcontinental Gas Pipe Line Corporation
CAG-50.
Docket No. ST88-2859-000, Sandy Hook Pipeline Inc.
CAG-51.
Docket No. ST88-2553-000, Wintershall Pipeline Corporation and Hogan Pipeline Corporation
CAG-52.
Docket No. ST88-2547-000, Red River Pipeline Corporation
CAG-53.
Docket Nos. ST88-2555-000, ST88-2905-000 and ST88-3337-000, Louisiana Intrastate Gas Corporation
CAG-54.
Docket No. TA82-1-21-027, Columbia Gas Transmission Corporation
Docket No. CI64-26-028, Chevron U.S.A. Inc.
CAG-55.
Docket No. GP84-55-002, CI88-119-001 and CI88-140-001, Sunterra Gas Gathering Company
CAG-56.
Docket No. CI87-290-001, El Paso Production Company
Docket No. CP87-553-001, El Paso Natural Gas Company
CAG-57.
Docket No. CI87-764-002, BHP Gas Marketing Company
CAG-58.
Docket No. CI88-313-000, El Paso Natural Gas Company
CAG-59.
Docket No. CP85-447-006, Colorado Interstate Gas Company
CAG-60.
Docket No. CP87-238-001, Ozark Gas Transmission System
CAG-61.
Docket No. CP88-202-001, Columbia Gas Transmission Corporation
CAG-62.
Docket No. CP88-106-002, Transcontinental Gas Pipe Line Corporation
CAG-63.
Docket Nos. CP84-441-028, CP80-65-062 and CP82-358-003, Tennessee Gas Pipeline Company
CAG-64.
Docket No. CP86-627-002, Tri-Energy Pipeline Company
CAG-65.
Omitted
CAG-66.
Docket No. CP87-309-001, Southwest Gas Corporation and Paiute Pipeline Company
CAG-67.
Docket No. CP85-437-007, Mojave Pipeline Company
Docket No. CP85-522-002, Kern River Gas Transmission Company
Docket No. CP85-625-001, Northwest Pipeline Corporation
Docket Nos. CP88-197-002 and CP86-197-003, El Paso Natural Gas Company
Docket No. CP86-212-001, Transwestern Pipeline Company
Docket Nos. CP87-479-001 and CP87-480-000, (Phase II), Wyoming-California Pipeline Company
CAG-68.
Docket No. CP88-570-000, Mobil Bay Pipeline Projects
CAG-69.
Docket No. CP86-215-000, Questar Pipeline Company
Docket No. CP86-245-000, Williams Natural Gas Company and Northwest Pipeline Corporation
Docket No. CP86-280-000, Northwest Pipeline Corporation
Docket No. CP86-286-000, Williams Natural Gas Company
Docket No. CP86-606-000, Pacific Gas Transmission Company
CAG-70.
Docket No. CP87-534-000, Bayou Interstate Pipeline System and Pelican Interstate Gas System
CAG-71.
Docket Nos. CP87-548-000, CP87-552-000 and CP88-65-000, United Gas Pipe Line Company
CAG-72.
Docket No. CP88-324-000, Greeley Gas Company and Commerical Pipeline Company, Inc.
CAG-73.

Docket No. CP88–152–000, Southern Natural Gas Company
CAG–74.
Omitted
CAG–75.
Docket No. CP87–286–000, Williston Basin Interstate Pipeline Company
CAG–76.
Docket No. CP88–554–000, United Gas Pipe Line Company
CAG–77.
Omitted
CAG–78.
Docket No. CP88–464–000, Michigan Consolidated Gas Company
CAG–79.
Docket No. CP87–19–000, Pacific Gas Transmission Company
CAG–80.
Docket Nos. CP86–636–003, CP86–735–001, CP87–10–001, CP87–66–001, CP87–67–001, CP87–84–001 and CP87–21–002, Pacific Gas Transmission Company
CAG–81.
Docket No. CP88–532–000, ANR Pipeline Company
CAG–82.
Docket Nos. CP86–589–005, RP86–104–006 and RP87–30–012, Colorado Interstate Gas Company
CAG–83.
Docket No. GP88–21–000, Texas Utilities Fuel Company

I. Licensed Project Matters

P–1. Reserved

II. Electric Rate Matters

ER–1.
Docket No. ER88–478–000, Ocean State Power. Order concerning rate change amendments.
ER–2.
Docket No. ER83–726–000, Boston Edison Company. Opinion on initial decision determining just and reasonable rates for transmission services.
ER3.
Docket No. ER84–348–001, American Electric Power Service Corporation. Opinion on initial decision concerning equalization of extra-high voltage transmission costs.

Miscellaneous Agenda

M–1.
Docket No. RM88–17–000, Regulations Governing the Public Utility Regulatory Policies Act of 1978. Notice of proposed rulemaking.
M–2.
Reserved

I. Pipeline Rate Matters

RP–1.
Docket Nos. ST85–559–000, ST85–789–000, ST85–630–000, ST81–260–005, ST81–260–004 and ST81–260–003, Enogex, Inc. (formerly Mustang Fuel Corp.). Order concerning rate design for Enogex's Section 311 transportation rates.
RP–2.
Docket No. ST83–429–003, Lear Petroleum Corporation. Order concerning rate design for Lear's Section 311 transportation rates.
RP–3.
Docket Nos. CP88–291–000 and CP87–484–000, Natural Gas Pipeline Company of America. Order concerning gas inventory charge settlement.
RP–4.
Docket Nos. TA84–1–28–002 and TA84–2–28–002, Panhandle Eastern Pipe Line Company. Opinion on initial decision concerning purchasing practices.
RP–5.
Omitted
RP–6.
Docket Nos. TA85–1–16–004 and TA85–2–16–002, National Fuel Gas Supply Corporation. Opinion on initial decision concerning purchasing practices.
RP–7.
Docket Nos. TA84–2–43–001 and TA85–1–43–000, Northwest Central Pipeline Corporation. Opinion on initial decision concerning prudence of purchasing practices.
RP–8.
Docket Nos. GP84–56–007 and RP83–42–006, Midwest Gas Users Association. Order on remand.

II. Producer Matters

CI–1.
Reserved

III. Pipeline Certificate Matters

CP–1.
Docket No. CP87–451–006, Northeast U.S. Pipeline Projects. Order establishing guidelines and the format of environmental data.
CP–2.
Docket No. CP87–451–008, Northeast U.S. Pipeline Projects
Docket Nos. CP88–198–000 and CP86–524–000, Iroquois Gas Transmission System
Docket Nos. CP88–168–000 and CP88–169–000, Champlain Pipeline Company
Docket No. CP88–177–000, Transcontinental Gas Pipe Line Corporation
Docket No. CP88–194–000, National Fuel Gas Supply Corporation and Penn-York Energy Corporation
Docket No. CP88–174–000, Tennessee Gas Pipeline Company
Docket No. CP88–175–000, Northeastern Gas Transmission Company
Docket No. CP88–176–000, Tennessee Gas Pipeline Company
Docket No. CP88–173–000, Tennessee Gas Pipeline Corporation
Docket No. CP88–182–000, PennEast Gas Service Company, CNG Transmission Corporation and Texas Eastern Transmission Corporation
Docket No. CP88–189–000, Algonquin Gas Transmission Company
Docket No. CP88–195–000, PennEast Gas Service Company, CNG Tranmsmission Corporation and Texas Eastern Transmission Corporation
Docket No. CP88–197–000, PennEast Gas Service Company
Docket No. CP88–186–000, Algonquin Gas Transmission Company
Docket No. CP88–187–000, Algonquin Gas Transmission Company
Docket No. CP88–188–000, Algonquin Gas Transmission Company
Docket No. CP87–312–000, PennEast Gas Service Company and Texas Eastern Transmission Corporation
Docket Nos. CP87–92–000, CP87–92–001 and CP87–92–002, PennEast Gas Service Company and Texas Eastern Transmission Corporation
Docket Nos. CP88–190–000 and CP88–191–000, Greater Northeast Pipeline Corporation
Docket No. CP88–192–000, Algonquin Gas Transmission Company
Docket No. CP88–180–000, Texas Eastern Transmission Corporation
Docket Nos. CP88–181–000, CP88–195–000 and CP88–197–000, PennEast Gas Service Company
Docket Nos. CP87–312–000, CP87–92–000, CP87–92–001 and CP87–92–002, PennEast Gas Service Company and Texas Eastern Transmission Corporation
Docket No. CP88–183–000, PennEast Gas Service Company and CNG Transmission Corporation
Docket No. CP88–194–000, National Fuel Gas Supply Corporation and Penn-York Energy Corporation
Docket No. CP87–5–000, CNG Transmission Corporation
Docket No. CP87–312–000, PennEast Gas Service Company and Texas Eastern Transmission Corporation
Docket No. CP87–313–000 and CP87–314–000, CNG Transmission Corporation
Docket No. CP87–554–000, Algonquin Gas Transmission Company
Docket No. CP87–380–000, Texas Eastern Transmission Corporation and Algonquin Gas Transmission Company
Docket Nos. CP86–43–001 and CP88–179–000, Texas Eastern Transmission Corporation
Docket No. CP88–388–000, PennEast Gas Service Company
Docket No. CP88–185–000, Algonquin Gas Transmission Company
Docket No. CP88–193–000, Eastern American States Transmission Company. Order on consolidation of open-season projects.
CP–3.
Docket No. CP87–339–000, Columbia Gas Transmission Corporation. Application to abandon and construct replacement facilities in Orange and Rockland Counties, New York and increase sales entitlements.
CP–4.
Docket Nos. CP87–4–000, CP87–4–001 and CP87–4–002, PennEast Gas Services Company and Texas Eastern Transmission Corporation
Docket Nos. CP87—28–000 and CP87–28–002, Texas Eastern Transmission Corporation
Docket No. CP87–5–000, CNG Transmission Corporation (Formally Consolidated Gas Transmission Corporation). Application to provide long-term firm sales, transportation and storage to distributors in New York and New Jersey.
CP–5.
Docket No. CP86–344–000 and CP86–344–001, Consolidated Gas Transmission Corporation. Application to construct

and operate pipeline facilities to serve the increased requirements of Niagara Mohawk.

CP–6.

Docket No. CP87–447–000, CNG Transmission Corporation. Application to render firm storage service for Tennessee Gas Pipeline Company.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–16903 Filed 7–22–88; 12:09 pm]

BILLING CODE 6717–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 25, August 1, 8, and 15, 1988

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of July 25

No Commission meetings scheduled for Week of July 25.

Week of August 1—Tentative

Wednesday, August 3

2:00 p.m.

Annual Briefing by NUMARC (Public Meeting).

Thursday, August 4

2:00 p.m.

Briefing on the Status of Sequoyah I (Public Meeting).

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed).

Friday, August 5

10:00 a.m.

Briefing on Status of Efforts to Enhance Safety of Users of BY-Product Materials (Public Meeting).

2:00 p.m.

Briefing on Individual Plant Examinations Generic Letter (Public Meeting) (postponed from July 21).

Week of August 8—Tentative

Tuesday, August 9

10:00 a.m.

Briefing on Status of Agreements with OSHA, EPA and FEMA Concerning Jurisdiction Over Non-Radiological Hazards (Public Meeting).

2:00 p.m.

Briefing on Key Licensing Issues Associated with DOE Sponsored Advanced Reactor Designs (Public Meeting).

Wednesday, August 10

10:00 a.m.

Briefing on Current Status on Nuclear Materials Transportation (Public Meeting).

Thursday, August 11

10:00 a.m.

Briefing on Status, Results, and Implementation of B&W Reassessment (Public Meeting).

2:00 p.m.

Follow on Birefing on Implementation of Severe Accident Policy (Public Meeting).

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed).

Week of August 15—Tentative

Monday, August 15

2:00 p.m.

Briefing on Center for Nuclear Waste Regulatory Analysis (CNWRA) (Public Meeting).

Tuesday, August 16

2:00 p.m.

Briefing on Maintenance Workshop (Public Meeting).

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed).

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

William M. Hill, Jr.

Office of the Secretary.

July 21, 1988.

[FR Doc. 88–16921 Filed 7–22–88; 3:47 pm]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 53, No. 143
Tuesday, July 26, 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 HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 8

[Docket No. R-88-528; FR-770]

Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development

Correction

In rule document 88-12141 beginning on page 20216 in the issue of Thursday, June 2, 1988, make the following corrections:

1. On page 20216, in the first column, under **FOR FURTHER INFORMATION CONTACT**, in the fourth and fifth lines, remove "Department of Housing and Equal Opportunity, Room 5230,".

2. On the same page, in the third column, in the first complete paragraph, in the ninth line, "41" should read "42".

3. On the same page, in the same column, in the second complete paragraph, in the 10th line, "other" should read "otherwise".

4. On page 20219, in the second column, in the fourth complete paragraph, in the third line, "Rehabilitation" was misspelled; also, in the fourth line, "708(8)" should read "706(8)".

5. On page 20220, in the second column, in the first complete paragraph, in the eighth line, "desparate" should read "disparate".

6. On the same page, in the third column, in the second complete paragraph, in the 26th line, "from" should read "for".

7. On page 20222, in the first column, in the first complete paragraph, in the 15th line, "§ 814" should read "§ 8.14".

8. On page 20224, in the first column, in the second complete paragraph, in the 9th line and in the 16th line, and in the third paragraph, in the 3rd line and in the 16th line, "25 units/75 percent" should read "25 unit/75 percent".

9. On the same page, in the second column, in the first line, make the same correction.

10. On the same page, in the third column, in the fifth line, make the same correction.

11. On the same page, in the same column, in the third line from the bottom, "necessary" should read "necessarily"; also, in the last line, "an" should read "and".

12. On page 20228, in the second column, in the first line, "511.10(1)" should read "511.10(l)".

§ 8.4 [Corrected]

13. On page 20236, in the first column, in § 8.4(b)(1)(v), in the sixth line, "and" should read "aid".

§ 8.21 [Corrected]

14. On page 20238, in the second column, in § 8.21(c)(1)(iii), in the third line, "of" should read "or".

§ 8.24 [Corrected]

15. On page 20239, in the second column, in § 8.24(b), in the 20th line, "requirements" was misspelled.

§ 8.30 [Corrected]

16. On page 20241, in the first column, in § 8.30, in the fourth line, "511.10(1)" should read "511.10(l)".

§ 8.56 [Corrected]

17. On page 20243, in the second column, in § 8.56(c)(6), in the first line "*Amendments*" was misspelled.

18. On the same page, in the third column, in § 8.56(g), in the ninth line, "receipt" was misspelled.

19. On the same page, in the same column, in § 8.56(g)(2), in the second line, "believed" was misspelled.

20. On page 20244, in the first column, in § 8.56(h)(1), in the third line, "officials" should read "official".

21. On the same page, in the same column, in § 8.56(j)(1), in the 11th line, "rights" was misspelled.

22. On the same page, in the same column, in § 8.56(j)(2), in the 11th line, "violation" was misspelled.

§ 8.57 [Corrected]

23. On the same page, in the second column, in § 8.57(a) introductory text, in the 11th line, after "but" insert "are".

§ 8.67 [Corrected]

24. On page 20249, in the second column, in § 8.67(o), in the 12th line, after "copy" insert "of".

§ 8.70 [Corrected]

25. On page 20250, in the second column, in § 8.70(c), in the 12th line "proceeding The" should read "proceeding. The".

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 511

[Docket No. R-88-1401; FR 2472]

Rental Rehabilitation Grants

Correction

In rule document 88-15146 beginning on page 25462 in the issue of Wednesday, July 6, 1988, make the following correction:

§ 511.10 [Corrected]

On page 25467, in the second column, in § 511.10(e)(2)(i)(D), in the first line, "$8,000" should read "$8,500".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Forest Service

Transfer of Administrative Jurisdiction; Lucky Peak Lake Project, ID

Correction

In notice document 88-14365 beginning on page 24112 in the issue of Monday, June 27, 1988, make the following correction:

On page 24113, in the first column, in the land description, T. 3 N., R. 4 E., in the first line, after "Meridian" insert ", Boise".

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Tuesday,
July 26, 1988

Part II

Environmental Protection Agency

40 CFR Parts 124, 144, 146, and 148
Underground Injection Control Program; Hazardous Waste Disposal Injection Restrictions and Requirements for Class I Wells; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 124, 144, 146, and 148

[FRL-3382-7]

Underground Injection Control Program: Hazardous Waste Disposal Injection Restrictions; Amendments to Technical Requirements for Class I Hazardous Waste Injection Wells; and Additional Monitoring Requirements Applicable to all Class I Wells

AGENCY: Environmental Protection Agency.

ACTION: Final Rule.

SUMMARY: The Environmental Protection Agency (EPA) is today promulgating its approach to implementing the statutorily mandated prohibitions on the underground injection of hazardous waste. This action is being taken in response to amendments to the Resource Conservation And Recovery Act (RCRA) enacted through the Hazardous and Solid Waste Amendments of 1984 (HSWA). In addition, the Agency is promulgating amendments to the existing Underground Injection Control (UIC) Regulations as they pertain to hazardous waste injection.

Today's notice codifies at 40 CFR Part 148, for those hazardous wastes that are disposed in Class I hazardous waste injection wells, the directly applicable sections of Part 268, the Agency's regulatory framework for implementing the land disposal restrictions (51 *FR* 40572 *et seq.* November 7, 1986).

Part 148 also specifies the effective date of the restrictions on injection of specific hazardous wastes. Today's rule includes effective dates for the restrictions on injection of solvent wastes and of dioxin-containing wastes. A recent proposal has specified effective dates for "California list" wastes (as defined by section 3004(d) of RCRA and at 52 *FR* 25760, July 8, 1987) and for certain wastes prohibited under section 3004(g) of RCRA (53 *FR* 14892 *et seq.*, April 26, 1988). Further proposals will specify effective dates for the remaining section 3004(g) wastes. Finally, Part 148 defines the two circumstances under which a waste otherwise prohibited from injection may be injected: (1) when the waste has been treated in accordance with the requirements of Part 268 pursuant to section 3004(m) of RCRA; or (2) when an applicant has demonstrated to the satisfaction of the Administrator that there will be no migration of hazardous constituents from the injection zone for as long as the wastes remain hazardous. Under this rule, an applicant may submit a petition to the Administrator containing the demonstration. An applicant may make a demonstration of "no migration" based on either: (1) an absence of fluid movement out of the injection zone; or (2) an active process of waste reduction, transformation, or immobilization within the injection zone. Upon a successful demonstration, the applicant will be granted an exemption from the prohibition.

Today's promulgation also contains changes to 40 CFR Parts 124, 144 and 146, the Class I injection well regulations. These amendments apply to owners and operators of all Class I hazardous waste well, including: those injecting wastes not yet subject to a prohibition, those injecting wastes which meet the treatment standards promulgated pursuant to § 3004(m) of RCRA, and those whose wastes have been banned and who have received an exemption under Part 148. The changes to § 124.10 and § 146.13 pertain to all owners and operators of Class I wells.

DATES: New Part 148, is effective July 26, 1988. All other amendments are effective August 25, 1988.

ADDRESSES: The official record for this rulemaking is located in Room 1013C East Tower, Office of Drinking Water (WH-550), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding legal holidays. The public must make an appointment to review docket materials by calling Eric Callisto at (202) 382-5508 for appointments.

FOR FURTHER INFORMATION CONTACT: John Atcheson, Office of Drinking Water (WH-550), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-5508.

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I. Background

A. Statutory Authority

The Hazardous and Solid Waste Amendments of 1984 (HSWA), enacted on November 8, 1984, impose substantial new responsibilities on those who handle hazardous waste.

The amendments prohibit the continued land disposal of untreated hazardous waste beyond specified dates, unless the Administrator determines that the prohibition is not required in order to protect human health and the environment for as long as the wastes remain hazardous (RCRA sections 3004 (d)(1), (e)(1), (f)(2), (g)(5)). Congress established a separate schedule in section 3004(f) for making determinations regarding the disposal of dioxins and solvents and the list of wastes specified in section 3004(d)(2), termed the California list, in injection wells.

Wastes that meet the treatment standards set by EPA under section 3004(m) of RCRA are no longer prohibited and may be land disposed. The statute requires EPA to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized" (RCRA section 3004(m)(1)).

Land disposal prohibitions are effective immediately upon promulgation unless the Agency sets another effective date based on the earliest date that adequate alternative treatment, recovery, or disposal capacity which is protective of human health and the environment will be available (RCRA sections 3004(h) (1) and (2)). However, these effective date variances may not exceed 2 years beyond the otherwise applicable effective date. In addition, two 1-year case-by-case extensions of the effective date may be granted under certain circumstances (RCRA section 3004(h)(3)).

For the purposes of the land disposal restrictions program, the statute specifically defines land disposal to include, but not be limited to, any placement of hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome or salt bed formation, or underground mine or cave (RCRA section 3004(k)). The legislation also sets forth a series of deadlines for Agency action. For a full explanation of the statutory framework the reader is referred to the preamble for the regulations that EPA has already proposed or promulgated under the statute, particularly 51 *FR* 1602 *et seq.*, January 14, 1986; 51 *FR* 19300 *et seq.*, May 28, 1986; 51 *FR* 40572 *et seq.*, November 7, 1986; 51 *FR* 44714, *et seq.*, December 11, 1986; 52 *FR* 21010 *et seq.*, June 4, 1987; 52 *FR* 22356 *et seq.*, June 11, 1987; 52 *FR* 25760 *et seq.*, July 8, 1987; 52 *FR* 32446 *et seq.*, August 27, 1987; 53 *FR* 11742 *et seq.*, April 8, 1988; 53 *FR* 14892 *et seq.*, April 26, 1988; and 53 *FR* 17578 *et seq.*, May 17, 1988. The following discussion describes more specifically the statutory framework for injection wells.

1. Section 3004(f)

Section 3004(f)(addresses the disposal by injection of solvents, dioxins, and California list wastes. Specifically, this section requires the Administrator to promulgate rules prohibiting the disposal of such wastes into wells if it may "reasonably be determined that such disposal may not be protective of human health and the environment for as long as the waste remain hazardous * * *". If EPA does not determine those instances where disposal would meet this standard, the injection of these wastes is prohibited under section 3004(f)(3).

2. Section 3004(g)

Section 3004(g) of RCRA applies the same standards and procedures to all methods of land disposal. It requires the Agency to set a schedule for making land disposal restriction decisions for all hazardous wastes listed or identified in 40 CFR Part 261 under RCRA section 3001(c) as of November 8, 1984, other than the wastes referred to in sections 3004 (d) and (e). EPA submitted this schedule to Congress on May 28, 1986 (51 *FR* 19300 *et seq.*).

Section 3004(g)(5) provides that the regulation promulgated by the Administrator must prohibit methods of land disposal except for methods "which the Administrator determines will be protective of human health and the environment for as long as the waste remains hazardous * * *".

Further, the section provides that, except for wastes which comply with the standards promulgated pursuant to section 3004(m), a method of land disposal may not be determined to be protective of human health and the environment, "unless, upon application by an interested person, it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous."

RCRA section 3004(g)(6) provides that if EPA fails to take action under section 3004(g)(5) by the statutory deadlines for any hazardous waste according to the schedule, such hazardous waste may be disposed of in landfills or surface impoundments only if such disposal units are in compliance with the minimum technological requirements set forth in RCRA section 3004(o) for new facilities. In this situation, placement of such wastes in other types of land disposal units (e.g., deep injection wells) would not be precluded by section 3004(g)(6). See 130, Cong. Rec. S9192 (daily ed., July 25, 1984). If EPA fails to set treatment standards, grant a petition or grant a variance under section 3004(h) for any of the scheduled listed wastes by May 8, 1990, then the particular wastes involved will be prohibited from land disposal.

The land disposal prohibitions apply to all hazardous wastes identified or listed under RCRA section 3001 as of November 8, 1984, the date of enactment of HSWA. For any hazardous waste identified or listed under RCRA section 3001 after November 8, 1984, EPA is required to make land disposal restriction determinations (i.e., establish treatment standards) within 6 months of

the date of identification or listing (RCRA section 3004(g)(4)). However, the statute does not impose an automatic prohibition on land disposal if EPA misses a deadline for any newly listed or identified waste.

B. Summary of the Land Disposal Restrictions Framework

The Agency has promulgated in 40 CFR Part 268 the regulatory framework for implementing the land disposal restrictions. (51 *FR* 40572 *et seq.*, Nov. 7, 1986). Corrections to the November 7, 1986, final rule were included in a June 4, 1987, **Federal Register** notice (52 *FR* 21010) to clarify the Agency's approach to regulating restricted wastes. Some changes to the framework were also made in the July 8, 1987, rulemaking on the California list wastes (52 *FR* 25760). Part 148 codifies the sections of Part 268 that are directly applicable to injection wells. In addition, today's rule specifies effective dates for restrictions on certain injected hazardous wastes. Part 148 also provides the standard and procedures by which petitions to dispose of an otherwise prohibited waste by injection will be reviewed and exemptions pursuant to these petitions will be granted or denied.

Part 148 is similar in approach to Part 268. The Agency believes, however, that it is useful to the regulated community and to the State regulators to have requirements regarding injection wells located in the same portion of the Code of Federal Regulations as are other requirements pertaining to these wells. Hazardous waste injection wells are regulated under the authority of both the Safe Drinking Water Act (SDWA) and RCRA. These regulations have been codified along with other regulations under the SDWA in Parts 124, 144, 145, 146 and 147 of the Code of Federal Regulations.

We expect that eventually the Part 148 standards will be implemented by the same State agencies that currently have primacy for the UIC program.

The framework which the Agency has promulgated to implement the land disposal restrictions for surface disposal facilities is as follows: For each waste that the Agency prohibits from land disposal, the Agency intends to promulgate treatment standards under Part 268, Subpart D that meet the requirements of section 3004(m) of RCRA. Once the standards are effective, restricted wastes may be land disposed of in a RCRA Subtitle C facility (e.g., a UIC Class I hazardous waste well) if they meet the treatment standard.

Upon the effective dates of the prohibitions, wastes that do not comply with the applicable treatment standards, or are not subject to a national capacity variance, or that do not have a case-by-case extension under § 268.5 are prohibited from placement in land disposal units unless an exemption has been granted by the Administrator under § 268.6 pursuant to a petition demonstrating that such disposal units will not allow migration of hazardous constituents for as long as the wastes remain hazardous.

For injection wells, EPA has adopted the same treatment standards that have been promulgated in Part 268 Subpart D for injected wastes, as provided in Part 148 Subpart B. After the effective date of a prohibition in Part 148 Subpart B, untreated wastes can only be injected if an exemption has been granted by the Administrator pursuant to a petition under Part 148 Subpart C, or, on a case-by-case basis, an extension to the effective date has been granted according to the procedures outlined in § 268.5. An extension may not exceed one year, and the Administrator may not renew it more than once.

C. Effect on State UIC Primacy

The requirements being promulgated today could affect the status of States with primary enforcement authority for the UIC program. Specifically, a State will have to amend its program to conform with the new regulations at Parts 124, 144, and 146 by April 24, 1989 (section 1422(b)(1) of the SDWA). Of course, a State which now prohibits Class I wells in general or injection of hazardous waste would not be required to make such a demonstration, since such a program would be more stringent than either existing or new UIC requirements.

The Agency notes that the new requirements will remove the existing "shield" for hazardous waste well permits. That is, under the previous regulations, permits could not be modified, revoked, or reissued to require compliance with new regulations unless the permittee requested or agreed. Under today's amendment to Part 144, new regulations would be grounds for initiating permit modification. These changes to Parts 124 and 144—unlike the effect of the land disposal restrictions which are immediately effective—will not take effect in primacy states until EPA approves the modification of the State program.

The Agency expects that part of a State's demonstration that its program conforms with the amended regulations would be an amendment to the Memorandum of Agreement where the state would agree on a schedule to modify existing permits, if necessary, to incorporate the new regulations.

States need not seek authorization to administer Part 148 to maintain UIC primacy. However, the Agency also expects that State agencies which have primacy for the UIC program will wish to implement Part 148, and receive authorization to grant exemptions from land disposal restrictions. However, before such authorization can be granted the State would have to demonstrate that it has authorization to implement §§ 3004 (f), (g), and (h) of RCRA. A thorough discussion of the conditions under which such authorization can take place can be found in 50 *FR* 28728 *et seq.*, July 15, 1985. In addition, where jurisdiction for UIC and RCRA do not reside in the same State Agency, EPA will require a Memorandum of Understanding between the two entities, clearly outlining responsibility for granting exemptions.

II. Summary of Today's Rulemaking: Response to Comments; Part 148

A. Proposed Standard for Demonstrating Protection of Human Health and the Environment

As noted in the proposal, sections 3004 (f) and (g) both require a demonstration that injection is protective of human health and the environment. Under section 3004(g) it is clear that such a demonstration must include a showing of "no migration" of hazardous constituents from the injection zone for as long as the wastes remains hazardous. EPA believes that the "no migration" standard of section 3004(g) helps define what is protective of human health and the environment under section 3004(f). Section 3004(g), by its terms, restricts the injection of certain hazardous wastes into injection wells. In the proposal, EPA noted that the wastes covered under section 3004(f) are just as hazardous to human health and the environment as those under section 3004(g), and concluded that injection of either set of wastes should be subject to the same standard. Thus, the Agency proposed that the demonstration should be similar for all injection wells regardless of the type of injected waste and that the "no migration" standard should apply to all. For this reason, the Agency is using a petition process and standard that is the same for all prohibited hazardous wastes that are injected, whether they fall under subsection (f) or (g).

Several commenters supported this interpretation of the law. Other commenters stated that the "application and demonstration" clause of sections 3004 (d)(1) and (g)(5) of RCRA would not

necessarily require procedures as rigorous or time consuming as EPA's proposed petition process. Moreover, these latter commenters point out that section 3004(f) simply does not contain the application and demonstration clause and could, therefore, differ in procedural approach.

1. Alternative Procedures for Implementing Sections 3004 (f) and (g)

Several commenters suggested an alternative approach whereby the Agency could make a determination that injection of wastes in accordance with the substantive standards of § 148.20 will be protective of human health and the environment. The Agency could then promulgate rules prohibiting injection which is not in compliance with these standards. Such action, the commenters maintained, would satisfy the Agency's mandate under sections 3004 (f) and (g).

EPA believes that RCRA provides significant latitude in the procedural approaches to determinations under sections 3004(d), (e), (f), and (g) of RCRA. Under any of these approaches EPA would need to support determinations under section 3004(g)(5) that there is "no migration of hazardous constituents while the waste remains hazardous" with sufficient technical basis, whether part or all of that basis is generic to the practice of hazardous waste injection. Under section 3004(f), EPA would need to support the finding that hazardous waste injection is "protective of human health and the environment". As a matter of policy, and not statutory mandate, EPA is approaching the standards for injection wells under sections 3004 (f) and (g) identically and is choosing the petition process in this final rule to make appropriate findings under both sections. The suggested alternatives which rely on more generic findings that the method of underground injection meets the standard along with facility certifications would not be as reliable as determinations based on site-specific demonstrations. To the extent that geology varies areally, the difficulty of modeling and characterizing the geology increases; the degree of uncertainty associated with a demonstration increases also.

2. Generic Petition Demonstrations

In the proposal, the Agency requested comment on a number of alternate approaches for satisfying the requirements of section 3004(f) of RCRA. These approaches were proposed in light of the Agency's ability to process "no migration" petitions in the period between promulgation of this regulation and the "hard hammer" deadline of August 8, 1988, for § 3004(f) wastes. One proposed approach was the submittal of generic petitions. Under this scenario, operators injecting the same waste into a single formation could submit one petition seeking an exemption from the ban, provided that the sites shared similar regional and basic site-specific geologies. Similarly, it was proposed that a single State could petition for a waiver from the ban for injection facilities within that State. These approaches received extensive comment, both pro and con. Commenters who disagreed with these approaches did so on the basis of what they perceived as petitioners' inability to submit information on geologies and waste streams that would be general enough to describe more than one facility, yet specific enough to insure "no migration" at every site.

The Agency understands this position, and realizes that successful petitions of this nature will be difficult to develop. This option is certainly within the legal parameters of a RCRA "no migration" demonstration, however, and as such, it will be a permissible petitioning alternative for the regulated community. The Agency has no intention of lowering the standards being promulgated today in allowing the use of generic petitions. Such petitions will have to adequately meet all of the regulatory requirements of Part 148 that insure protection of human health and the environment.

3. Scope of the "No Migration" Petition Demonstrations

Several commenters contended that exemptions granted pursuant to a "no migration" demonstration were intended by Congress to be limited in number. They inferred from the Agency's proposal that a sizable portion of the injection facilities might pass the demonstration and stated that this somehow violated the statute.

The Agency would like to note that until petitions are received and processed, EPA has no clear idea of the number of demonstrations which might be successful. Some very preliminary worst-case modeling performed by EPA did indicate that the demonstration was achievable by some. The Agency believes that Congress was setting a very stringent performance standard, not creating an arbitrary quota. Moreover, there is evidence that Congress recognized that some UIC wells could meet this standard (see S. Rept. 284 98th Cong. 1st Sess. at 14 and Cong. Record S. 9153, July 25, 1984). The exact number or percent of petitions which are deemed successful must be determined by whether facilities have the hydrogeologic or geochemical characteristics capable of meeting the standard, not on some predetermined number of sites which ought to be allowed to meet the standard.

4. Statutory and Regulatory Definition of Injection Zone

Several commenters sought to limit the statutory and regulatory term "injection zone" in a manner which, in EPA's view, (1) is not mandated by RCRA or the SDWA, (2) is not consistent with current regulations, (3) is irrational for the purposes of RCRA sections 3004 (f) and (g), and (4) would provide no benefits to environmental protection. At the heart of their argument is the concept that an injection zone may not contain confining material. Fluid penetration into such material, they would argue, is necessarily migration from an injection zone. EPA rejects these arguments.

The term injection zone under RCRA sections 3004 (f) and (g) and in the UIC program must have a functional meaning as the unit which must contain the waste. Containment can only occur within the relatively less permeable confining material. The legislative history of the 1984 HSWA amendments states that "[i]n determining appropriate confinement from which migration shall not be allowed to occur the terms disposal unit or injection zone should be construed . . . in terms of overall integrity of the disposal practice, keeping in mind, in particular the potential for contamination of groundwater or surface water resources" (S. Rept. 284 98th Cong. 1st Sess. at 15). Essentially, the UIC program permits the use of certain geologic formations or parts of formations in the inaccessible subterranean environment for waste disposal so long as this disposal is sufficiently removed from groundwater or surface water resources. There is no provision in the legislative history or RCRA sections 3004 (f) and (g) which states or implies that confining material is a resource which must not be used for disposal or cannot be part of an injection zone.

The legislative history of the 1984 HSWA amendments further indicates that the statutory term "injection zone" should match the regulatory definition in 40 CFR 146.3. That provision defines an injection zone as "a geologic formation, group of formations, or part of a formation receiving fluids through a well". Clearly under this definition permit writers must use their expertise and knowledge of local hydrogeology to determine the size and characteristics of injection zones. The current regulations

place other limitations on permit writers' discretion. First, under 40 CFR 144.3 and 146.3, hazardous waste injection must only take place below the lowermost formation containing within one-quarter mile of a well bore an Underground Source of Drinking Water (USDW). There must also be a confining zone which is "capable of limiting fluid movement above an injection zone" (40 CFR 146.3). The function of a confining zone is to oppose the upward pressures of injection and prevent fracturing of the geologic system. Nothing in this definition, however, states that an injection zone may not contain confining material or even that a confining zone may not include part of an injection zone. Only the functional ability to oppose upward migration is necessary.

Apparently, these commenters believe that there is always a discrete boundary where permeable material meets impermeable material and injection fluid would seemingly bounce off this barrier, with no penetration of the impermeable material. However, this notion does not conform with physical reality. First, within a formation or group of formations, there is often not a line where a large permeable strata meets relatively less permeable strata. Geologic formations, such as the ones encountered in the Gulf Coast Basin, for example, are often several hundred feet thick (Refs. 1, 2, and 3). Over such thickness, variations in lithology such as the interfingering of sands and shales often occur. Accompanying the lithological changes are variations in permeability, porosity, and hydraulic conductivities (Refs. 4, 5, and 6). Second, confining material might not actually repel fluids; they oppose upward movement, and where adequate, stop it. Thus, some amount of penetration into confining material within the injection zone can occur, but should not be considered migration for the purposes of RCRA sections 3004 (f) and (g), provided the penetration occurs within the injection zone.

Prior to the 1984 HSWA amendments, permit writers did not fully consider the extent of fluid penetration of confining material since that penetration was always well below the formation containing a USDW. The Agency's proposal made clear that the injection zone itself must be appropriate to contain hazardous fluids. These commenters' statement that this approach is unlawful is not well founded. Moreover these commenters offer no credible alternative. Accordingly, EPA maintains in this final rule the interpretation outlined in the proposal.

5. Hazardous Levels at the Unit Boundary

In the proposal, a petition under RCRA §§ 3004 (f) and (g) would satisfy the statutory standard if it showed that before injected fluid crossed the top of an injection zone or a point of discharge, the fluid was no longer hazardous. In its proposal, EPA suggested using health-based limits which have undergone peer review by the Agency and are used in RCRA delisting decisions and for clean closure demonstrations. In the absence of such standards, EPA proposed that the Agency require petitioners to demonstrate that concentrations had been reduced to three orders of magnitude below detection levels.

Although commenters generally expressed support for the use of health-based values to define hazardous levels, some objected to any use of health-based levels. These commenters believe that the statutory phrase in RCRA sections 3004 (e), (d), and (g) that there be "no migration of hazardous constituents while the waste remains hazardous" means that EPA may not allow a single molecule of a constituent listed in 40 CFR Part 261 Appendix VIII to leave an injection zone. The Agency specifically interprets the statutory phrase as requiring consideration of the fate of Appendix VIII constituents which are either injected or derived from injected waste.

EPA, however, believes that Congress, in the use of the term "hazardous" and the phrase "while the waste remains hazardous", was concerned that injected fluid which leaves the injection zone not be hazardous and thereby not contain Appendix VIII constituents at hazardous levels.

This interpretation is consistent with the language in the 1984 amendments which expressly direct the Agency to "tak[e] into account" the "persistence, toxicity, mobility, and propensity to bioaccumulate of . . ." hazardous wastes and their hazardous constituents in making determination with respect to deep well injections. *See* RCRA sections 3004 (f)(2), (g)(5), and (d)(1)(C). To take toxicity and propensity to bioaccumulate into account the Agency must necessarily consider concentration levels. This interpretation is further consistent with the Senate Report which states that the "no migration of hazardous constituents . . ." for as long as the wastes remain hazardous standard can be satisfied if the Administrator finds "that migration of the wastes will not occur while the wastes still retain their hazardous characteristics in such a way that [sic] would present any threat to human health and the environment." (S. Rep. No. 98-284 at 15.)

The emphasis on concentration levels, as opposed to single molecules, is deeply established in EPA's regulations. Ordinarily the term "hazardous constituents" has no regulatory effect unless concentrations are also considered. Thus, the use of the term "hazardous constituents" under EPA's interpretation of RCRA sections 3004 (d), (e), and (g) is consistent with EPA's rules and policies for listing and delisting hazardous waste as well as cleanup standards. The listing procedures, in effect prior to 1984, state clearly that solid waste containing any of the constituents listed in 40 CFR Part 261 Appendix VIII might be termed hazardous considering, among other factors, the concentrations of the constituents in the waste (40 CFR 261.11). (See also the delisting rule at 40 CFR 260.22; the clean closure rule (52 *FR* 8704, March 19, 1987); and the groundwater cleanup rules at 40 CFR 264.94(a) (2) and (3).)

It should be noted that wastes can be rendered nonhazardous in the sense of concentration (see proposal at 52 *FR* 32453), but there is no chemical reaction that will completely eliminate all molecules of some Appendix VIII constituents. Thus a standard based on single molecules would not reflect the reality of chemical transformations. Moreover, wastes may be rendered nonhazardous by means of chemical transformation, adsorption of heavy metals or some organics, as well as by several other mechanisms. Immobilization of heavy metals in the injection zone is obviously a desired result. Accordingly, the Agency believes the most logical standard under RCRA sections 3004 (d), (e), (f), and (g) consistent with the environmental concern is whether hazardous fluids ever leave the disposal units and not whether hazardous levels of constituents remain in the unit. Thus, the phrase "while the waste remains hazardous" should not reflect wastes which stay in the unit.

For mobile constituents, the distinction between migrating fluids and fluids still in the injection zone would make little difference under the 10,000 year containment approach in § 148.20 discussed below. After 10,000 years of containment constituents would either be immobilized or otherwise be at nonhazardous levels throughout the injection zone.

The stringent reading that no molecules may leave an injection zone is inconsistent with EPA's regulatory approach to what is and is not

hazardous for regulatory concerns. Commenters have not shown that EPA's approach violates RCRA and have not offered any other credible approach. Accordingly, EPA maintains in this final rule the approach proposed.

A few commenters objected to the use of MCLs as health-based limits on the theory that MCLs factor in elements of cost, and are therefore not truly health-based limits.

The Agency, in a recent rulemaking, determined that MCLs are, in fact, protective of human health (see 52 *FR* 25700–25701, July 8, 1987). Basically, MCLs are conditioned by the feasibility of treatment. As the discussion in the preamble to the rule cited above indicates, MCLs have been found to be protective of health, not withstanding consideration of this factor.

Several commenters objected to the proposal which would have required the petitioner to demonstrate that concentrations had been reduced to three orders of magnitude below detection limits in the absence of established health-based levels. In objecting, some noted that there was no relationship between our ability to detect a constituent and its potential health effects. Others noted that there is no fixed level which represents the detection limit. They contended that the technology used to detect constituents is rapidly evolving, and varies from lab to lab. Finally, some maintained that three orders of magnitude below detection levels was excessively stringent and would establish levels far below any which might arise from known health-based levels. Many of these commenters suggested that the petitioner identify levels of concern in the absence of established limits and demonstrate to the Agency that the limits selected are protective.

The Agency, after consideration, remains convinced that there must be a surrogate for health-based limits in cases where no such limits have been or can be expeditiously established. Further, EPA believes that detection limits form an appropriate basis for this surrogate. However, EPA agrees that three orders of magnitude may be excessive. Only in very rare cases does a waste pose a health threat at such low levels. The Agency considered the option of having the petitioner demonstrate a level which would not have a potential to threaten health, but rejected it. While we are not allowing petitioners to define health-based levels, we will use data supplied by them to allow the Agency to specify a level of concern. Several mechanisms exist which allow the Agency to formulate interim levels of concern on a very rapid basis where data exists, and the Agency would use these when more formal levels had not been established. Only in cases where very little data exists would EPA rely on a surrogate.

The final approach being specified today uses detection limits as the appropriate level when no health-based limit exists or can be developed expeditiously by the Agency. This is generally consistent with the approach for listing, delisting, and clean closure described above. Three orders of magnitude below detection might cause inconsistent results since sampling of injected fluid in the injection zone would not even pick up constituents below detection levels.

B. Applicability—Section 148.1

As proposed, § 148.1 identifies the regulated community and broadly indicates the situations under which a facility may receive a variance, exemption, or extension from the RCRA Land Ban. One commenter believed that there should be no withdrawal required for wastes injected prior to final EPA approval or denial of actual petitions. The commenter was responding to the statement in the proposal that "the Agency has determined that the restrictions limit the injection of wastes after the restriction deadlines, but do not apply to wastes injected prior to the applicable dates." (52 FR 32449)

The commenter is in part correct. The prohibitions do not apply retroactively, and therefore wastes injected prior to the effective date do not have to be withdrawn. However, the commenter's contention that the effective date of the restriction is keyed to the time of the Agency's decision on a petition, is incorrect. The effective dates for a given waste are those specified by the statute in section 3004(f) or promulgated pursuant to section 3004(g). Thus, waste withdrawn from the formation after the effective date of an applicable ban is subject to the requirements of RCRA section 3004 except in the case where withdrawal is soil or debris resulting from a cleanup activity under CERCLA or RCRA, in which case the waste is not subject to the "land ban" provisions until November of 1988 (see section 3004(e)(3)).

There may be situations (e.g., salt domes) where an injection technology is not identical to the technology addressed in this rulemaking. In such cases, EPA will accept petitions under the statutory standards and apply the technical standards from Part 148 which are relevant and appropriate, along with other standards necessary to meet the statutory requirements of sections 3004 (f) and (g).

C. Definitions—Section 148.2

In the proposal the Agency defined two new terms at § 148.2: "injection interval" and "transmissive fault or fracture". Some commenters believed that the new definitions were both warranted and adequately explicit. Others felt the new terms were warranted, but indicated that some needed further clarification or modification. Still others felt that the Agency needed to define additional terms or redefine already established terms in addition to those proposed on August 27.

Most of the comments received pertained to injection interval. Some organizations felt that this new definition led to a liberal interpretation of the injection zone, and presumably a less protective injection scenario. Others felt that the well screen itself could be defined as the injection interval under this definition, thereby creating an artificially small receiving formation. The Agency believes that the injection interval is a necessary delineation in light of the § 148.20 "no migration" demonstration. An essential part of the § 148.20 modeling requirements is the modeled distance the waste travels within the injection zone. This distance must be measured from a defineable point or area that is distinguished as that place in the injection zone in which the well is screened, or in which the waste is otherwise directly emplaced. That defineable point or area is the injection interval, and EPA today promulgates that definition as proposed.

The term "transmissive fault or fracture" received only positive comments, and is today promulgated as proposed.

Various commenters suggested the adoption of new or redefined terms. The Agency considered these suggestions and believes that, with the inclusion of today's two new definitions and those promulgated in Part 146, all terms required to define and regulate injection of hazardous wastes have been promulgated.

D. Dilution Prohibition—Section 148.3

In the proposal, the Agency adopted the prohibition on dilution by reference to § 268.3. This section prohibits dilution of restricted wastes as a substitute for treatment to achieve compliance with either a treatment standard or, in the case of the California List, to bring the waste below the applicable restriction level. The Agency received comments supporting this approach. Two commenters, however, requested

clarification on the point at which dilution would be established, with one suggesting the inclusion of preamble language from the July 8, 1987 (52 *FR* 25778) final rule which amended the Land Ban framework. The basis of the § 268.3 regulation was outlined in that final rule and applies to both injection wells and surface facilities. We are adopting the approach in that preamble.

Legitimate aggregation of waste streams to facilitate centralized treatment is not considered impermissible dilution. However, artificial aggregation of wastes to avoid a land disposal prohibition standard, or mixing substances that do not either themselves need to be treated or which do not aid in treatment, would be considered impermissible. Thus, § 148.3 is intended to prohibit dilution as a means of circumventing the requirements imposed by the land disposal prohibitions. The Agency does not intend to prohibit dilution which is necessary to facilitate treatment.

E. Case-by-Case Extensions—Section 148.4

In the proposal, the Agency incorporated by reference § 268.5 as § 148.4. Section 148.4 will permit the owner or operator of a hazasrdous waste injection well to submit an application to the Administrator demonstrating that a binding contract has been enetered into to construct or otherwise provide alternative capacity that cannot reasonably be made available by the applicable effective date due to circumstances beyond that applicant's control. Two commenters felt that such an extension should be applicable to owners or operators who have submitted "no migration" petitions and are waiting approval.

Variances, extensions, and exemptions from the UIC Land Ban exist in five forms: (1) an exemption as a result of a successful "no migration" petition pursuant to the requirements of Subpart C of Part 148; (2) a statutory exemption until November 8, 1988, if the waste has been determined to be contaminated soil or debris resulting from a response action taken under section 104 or 106 of CERCLA or a corrective action required under RCRA; (3) a variance if the wastes cannot be treated to the level (or by the method) specified by the treatment standard established in section 268, pursuant to § 268.44; (4) a variance granted for lack of alternative capacity pursuant to section 3004(h)(2) or RCRA; and (5) a case-by-case extension pursuant to section 3004(h)(3). Unlike the variances and extensions noted above, there is no statutory authority to allow for a case-by-case extension of the ban date for owners or operators who have submitted "no migration" petitions and are awaiting approval. In the case of a treatment facility under construction, an applicant can assure with some confidence that at some time treatment will be available. No such assurance can be made on the outcome of a petition; it may be approved or denied.

The Agency believes, moreover, that it was Congress' intent, when setting the so-called "hard hammer", to move the Agency and industry towards a swift and effective national hazardous waste management program that is protective of human health and the environment. Reviewing and acting on "no migration" petitions in a timely fashion is part of this program. As a practical matter, the promulgated and proposed treatment capacity variances should in most cases provide the Agency time to process the "no migration" petitions before the regulatory hammer falls; the Agency's inability to process a petition is not and cannot be the basis of an extension granted under section 3004(h)(3), however.

Another commenter supported the adoption of the case-by-case provision, but believed that it should be interpreted to include extensions for facilities which have contracted for raw materials that will render their final product non-hazardous, but which are currently unavailable. Although other factors must be considered (see § 268.5), the Agency believes that this is an appropriate interpretation of the statute, to the extent that the addition of such raw materials constitutes alternative treatment or recovery, since section 3004(h)(3) allows the Administrator to grant such an extension for the purpose of constructing *or otherwise* providing such alternative capacity.

F. Waste Specific Prohibitions—Sections 148.10 and 148.11

1. F001 through F005 Solvent Wastes

Section 148.10 sets effective dates for the restriction of injected solvent wastes. In addition, this section outlines the situations under which such effective dates do not apply. Comments were received on various provisions and standards adopted or proposed at this section.

Many organizations commented on the Agency's adoption of § 268.41 treatment standards for injected solvents. Under the authority of section 3004(m) of RCRA, the Agency identified in the November 7, 1986, rule, treatment standards applicable to the following spent solvent wastes (including solvent mixtures) F001, F002, F003, F004, and F005 based on the levels of treatment that could be achieved by Best Demonstrated Available Technologies (BDAT) for these solvents (51 *FR* 40573 *et seq.*):

Acetone
n-Butyl alcohol
Carbon disulfide
Carbon tetrachloride
Chlorobenzene
Cresols (and cresylic acid)
Cyclohexanone
1, 2-Dichlorobenzene
Ethyl Acetate
Ethylbenzene
Ethyl ether
Isobutanol
Methanol
Methylene chloride
Methylene chloride (from the pharmaceutical industry)
Methyl ethyl ketone
Methyl isobutyl ketone
Nitrobenzene
Pyridine
Tetrachloroethylene
Toluene
1, 1, 1-Trichloroethane
1, 1, 2-Trichloro-1, 1, 2-trifluoroethane
Trichloroethylene
Trichlorofluoromethane
Xylene.

The Agency proposed applying those treatment standards for solvent wastes that are currently injected. Some commenters felt that the BDAT established in § 268.41 is inappropriate for the large-volume, low-grade wastes bring injected. Others supported the adoption. According to the best data available to the Agency at this time, solvent wastes that are surface disposed differ from those that are deep-well injected only by amount, not by type. Accordingly, the Agency is today adopting the standards in § 268.41 as BDAT for injected solvent wastes.

The Agency has recently completed the National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities (the TSDR Survey) (Ref. 7). This comprehensive database consists of the best information available to the Agency at this time. The TSDR Survey indicates that approximately 40 million gallons of low concentration (less than one percent), surface disposed sovlent wastes will require some form of alternative treatment. The TSDR Survey also shows approximately 317 million gallons of deep well injected solvent wastes. The Agency is attempting to determine the concentration of these injected solvents, but current information shows at least 260 million gallons to be below 1%. The appropriate

treatment for these dilute solvents is wastewater treatment (steam stripping, carbon adsorption, biological treatment and wet air oxidation) followed by solidification/stabilization and combustion. The TSDR Survey indicates that only 75 million gallons of such capacity exists.

In addition, and as noted in the proposal, the Agency expects that wastes resulting from both corrective action activities mandated by section 3004(u) of RCRA, and CERCLA removal and remedial actions, will place substantially increased demands on available treatment capacity. Preliminary studies indiate that approximately 2.8 to 5.6 *billion* gallons of ground water containing solvents may be extracted from such sites between 1988 and 1990 (Ref. 8). Again, the concentrations of these wastes have not been determined; the Agency expects the additional quantity of wastes resulting from these actions to occupy any increased treatment capacity that might become available as facilities meet the minimum technology requirements of section 3004(o) of RCRA, as well as tank or other on-site capacity which might be developed over the next few years. Based on these data, EPA is promulgating the variance proposed on August 27, granting a two-year national variance for injected spent solvent wastes containing less than one percent total F001–F005 solvent constituents at the point of initial generation (i.e., when the wastes first meet the listing description) which are disposed of by injection in Class I wells. Today's rule does not establish effective dates for the commercial chemical products, manufacturing chemical intermediates, and off-specification commercial chemical products (P and U wastes) listed at § 261.33 that correspond to the F001–F005 spent solvent wastes. These wastes will be addressed in a later rule. This rule also does not cover the four newly listed solvents in the F001–F005 listing which were added after the date of enactment of the 1984 amendments to RCRA: benzene, 2-ethoxyethanol, 2-nitropropane, and 1, 1, 2-trichloroethane (51 *FR* 6538). The Agency is currently gathering data to characterize and evaluate these wastes.

One commenter indicated that wastes which naturally meet treatment standards should not require treatment, nor be banned. This was explicitly proposed at § 148.10(c)(1) and § 148.11(b)(1), and remains a part of today's promulgation.

One commenter noted that the Agency had failed to include in the prohibitions at § 148.10 the provision for wastes receiving a variance from the treatment standard obtained under 40 CFR 268.44. Section 268.44 was promulgated on November 7, 1986. It applies to situations where a particular waste stream cannot be treated to the level (or by the method) specified as the treatment standard. The Agency envisions that wastes may be subject to a treatability variance in cases where the treatment standard for a particular stream cannot be met because the waste differs significantly from the type of wastes EPA considered when establishing treatment standards. A particular waste may be significantly different from the wastes considered in establishing treatability groups, for example, if the waste contains a more complex matrix which makes it more difficult to treat. For instance, complex mixtures may be formed when a restricted waste is mixed with other waste streams by spills or other forms of inadvertent mixing. As a result, the treatability of the restricted waste may be altered such that it cannot meet the applicable treatment standard. In such a case, generators or owners/operators may petition the Agency for an alternative treatment standard. While the Agency does not presently have any information indicating that promulgated treatment standards are not applicable to injected hazardous wastes, it is conceivable that such a situation may arise. Consequently the Agency is adding language to § 148.10 that adopts a procedure to evaluate petitions for a variance from the treatment standard as promulgated at § 268.44.

At this time, EPA has limited information indicating concentrations for the remaining solvent-containing wastes which are injected. Therefore, the Agency may reexamine whether a variance for these wastes is warranted when more data becomes available. At this time, however, the Agency is setting an effective date of August 8, 1988, for the restrictions on F001–F005 wastes in concentrations equal to or greater than 1% at the point of initial generation (i.e., when the wastes first meet the listing description).

2. Dioxins

Many of the comments on § 148.11, the section setting an effective date for the restriction of underground injection of dioxins, mirror those received on § 148.10. Several commenters did not believe that § 268.41 treatment standards were applicable, while others supported the proposed section. The Agency identified in the November 7, 1986, rule, treatment standards applicable to dioxin wastes identified by the hazardous waste codes F020, F021, F022, F023, F026, F027, and F028. The Agency has granted a two-year variance to the effective date of the restrictions for these wastes which are surface disposed, based on lack of capacity. Utilizing the same rationale as explained above for § 148.10, the Agency is adopting § 268.41 treatment standards for injected dioxin-containing wastes. Current data available to the Agency show that no dioxin-containing wastes are presently being injected. Restricting the injection of these wastes would have a negligible effect on availability of treatment capacity. Therefore, as proposed, EPA is not granting a national variance to the effective date of the ban for injection of these wastes. The effective date of the restrictions is August 8, 1988. The § 268.44 alternative treatment variance is being adopted for dioxin wastes as it was for solvents at § 148.10.

3. Other Proposed Prohibitions

Many commenters, in addition to supporting variances for both solvents and dioxins, also supported variances for injected "California list" wastes (as defined in RCRA section 3004(d) and the July 8, 1987, rule (52 *FR* 25760)) as well as wastes classified under section 3004(g) of RCRA. The April 26, 1988, notice (53 *FR* 14892 *et seq.*) contained effective dates for the California list wastes and a portion of the section 3004(g) wastes. Further notices will propose effective dates for the remaining section 3004(g) wastes.

G. Petition Standards—Section 148.20

This section outlined the specific standards the Agency proposed to apply to petition demonstrations. In summary, EPA proposed that the demonstration could be made on the basis of either waste transformation or fluid flow. Either demonstration would rely on the use of models as well as Agency-recommended health-based limits to define concentrations of waste constituents which would be considered hazardous. These levels, which have undergone peer review by the Agency, are used in delisting decisions and for clean closure demonstrations (See 52 *FR* 8704, March 19, 1987).

The Agency proposed that a demonstration based on fluid flow would have to show that the waste did not reach a point of discharge for a period of 10,000 years. In addition, EPA maintained that molecular diffusion was not a significant source of solute transport and therefore proposed that diffusion not be considered as part of a demonstration. A successful showing

would also have required the petitioner to comply with certain amended provisions of Part 146. As an additional safeguard, a petitioner would have to show that the confining zone was four times thicker than the vertical distance which the waste was expected to move in the injection zone, and that the injection zone was separated from the lowermost USDW by ten times that distance.

The Agency received extensive comment on this framework. In general, commenters were supportive of much of the proposal and indicated that it was consistent with statutory standards in sections 3004(f) and (g). A summary of the comments, the Agency's responses, and the final approach for each of these requirements follows.

1. Basing Determinations on 10,000 Years

The proposal specified that when modeling flow, the petitioner demonstrate that the waste would not reach a point of discharge, either vertically or horizontally, for a period of 10,000 years. As noted in the proposal, the Agency specified the 10,000 year time frame not because migration after that time was of no concern, but because it believed a site which could meet a 10,000 year time period would both provide containment for a substantially longer time frame, and allow time for geochemical transformations which would render the waste nonhazardous or immobile (Refs. 9, 10, 11, 12, 13, 14, and 15).

There was considerable comment on this provision. Some believed the time period to be far too long. Their suggested alternatives ranged from 100 to 1000 years. In support of these shorter time frames, these commenters pointed to language in House Report No. 198 (Pt. 1, 98th Cong., 1st Sess. at 33) which talks in terms of hundreds of years. Several also suggested that it is difficult to model accurately over such long time periods.

Others indicated that a 10,000 year time frame did not provide the "reasonable degree of certainty" required by the statute that hazardous waste would not migrate out of the injection zone.

The Agency has reviewed these comments and after careful consideration believes the 10,000 year demonstration stikes an appropriate balance between the need to demonstrate "no migration" with a reasonable degree of certainty and the limits of the technological means of making that demonstration. It should be noted, that EPA's standard does not imply that leakage will occur at some time after 10,000 years; rather, it is a showing that leakage will not occur in that time frame. As noted in the proposal, there is a considerable body of evidence suggesting that waste will either degrade to nonhazardous constituents or otherwise be attenuated well within a 10,000 year time frame.

One commenter cited one of the documents referenced in the proposal and noted that while organonitriles and nitrate were converted to CO_2 and N_2, sodium thiocyanate showed relatively less reduction in concentration (Ref. 14). The commenter concluded that this somehow invalidated EPA's selection of 10,000 years for the term of a demonstration. In this study, residence time of the waste in the injection zone was less than 70 *hours*. While observation of waste degradation in such a short time does affirm that waste will degrade in very long time frames, lack of total destruction in hours says nothing about the fate of waste in 10,000 years. Thus, EPA rejects the notion that the proposed standard is "* * * refuted by our own cited references."

Concerning those commenters who questioned the accuracy of modeling over a 10,000 year time frame, the EPA would like to note that many of these same commenters had correctly pointed out elsewhere in their comments that modeling need not locate the exact point where the waste would be at that time; determining where it would not be is sufficient. This level of precision is achievable.

2. Molecular Diffusion

In the proposal, the Agency suggested that movement of contaminants by molecular diffusion would not result in migration of hazardous constituents outside the injection zone at hazardous levels. As a result, EPA proposed that the petitioner need not consider diffusion in the demonstration required in § 148.20.

The Agency received extensive comment on this approach, with some expressing strong support, and others objecting to it. Some commenters offered technical information supporting the Agency's proposed approach. Of particular interest to all commenters was a study conducted by EPA (Ref. 16). Several commenters did not appear to understand that this study represented an extreme worst case anaylsis designed to determine the absolute upward limits of movement at hypothetical sites which could occur as a result of diffusion. Others noted the coefficients used were more representative of coarse sediments than those found in strata capable of confining fluids. One commenter stated that modeling movement due to diffusion was straightforward, and that sharply defined upward limits could be easily and accurately identified. As a result, this commenter contended that movement due to diffusion should not be subject to any additional safeguards if it is considered in a demonstration.

The Agency has reviewed the comments submitted, the new data provided, and refined its own analysis, and remains convinced that in most cases diffusion does not represent a significant source of solute transport that would result in vertical movement of hazardous levels of constituents (Ref. 17). However, the Agency does believe that this might not be true in all cases; thus, the determination of whether diffusion is a significant source of movement must be made on a case-by-case basis. Accordingly, EPA, in this rule, will require that any movement due to diffusion be accounted for in the demonstration. The Agency notes that diffusion is accounted for in most models used to simulate flow in deep, mineralized systems. Consequently, we do not believe there is any significant burden associated with requiring consideration of diffusion.

3. Use of Models

The proposed framework was based on predictions of waste location and fate over the very long term, and as such relied on modeling flow or waste degradation or attenuation. Commenters were generally supportive of this approach, but several expressed concern over the accuracy of modeling over time frames of up to 10,000 years. The concerns over modeling for very long time periods have already been discussed. Moreover, the issue of defining an appropriate maximum time frame for modeling has been addressed by the Science Advisory Board (SAB) and they endorsed periods up to 10,000 years (Ref. 18).

Some commenters, however, objected strenuously to the use of models in demonstrations and contended that there was neither a sound technical basis nor the legal authority to do so.

The Agency disagrees with both of these propositions. Nothing in sections 3004 (f) or (g) of RCRA or the legislative history forbids the use of models to form the basis for a "no migration" petition. The final approach relies upon conservative modeling techniques to evaluate the potential for migration of hazardous constituents from the injection zone. Fluid flow modeling is a well-developed and mature science and has been used for many years in the petroleum industry. More recently, fluid

flow models have been further developed for the Department of Energy nuclear waste isolation program.

Specifically, a wide range of models exists that provide the capability to analyze pressure build up, lateral waste migration, vertical fluid permeation into overlying confining material, and leakage through defects in overlying aquitards (Refs. 15, 19, 20, 21, 22, and 23). Models make it possible to predict tendencies or trends of events that have not yet occurred or that may not be directly observable. Under the "no migration" standard, a demonstration need not show exactly what will occur, but rather what conditions will not occur. Conservative modeling can be used to "bound the problem" and can legitimately form the basis for the petition demonstrations.

Specific hydrogeologic data and operational data are necessary to make a demonstration, and EPA will carefully analyze modeling assumptions. Where some uncertainty exists about the data, the demonstrator may conduct sensitivity analyses to determine the range of error this uncertainty could introduce into a demonstration.

There will be, moreover, an opportunity for public comment on the appropriateness of the simulator selected, the data used, and the assumptions made in any demonstration.

Finally, the commenters who are contesting, as a general matter, the validity of modeling have offered no technical basis for their objections, nor have they provided specific suggestions to improve the data or analytic approaches.

General statements such as these do not provide useful or credible alternatives for EPA to implement sections 3004 (f) or (g). Therefore, since (1) nothing legally prohibits the use of models, (2) appropriate modeling has a sound technical basis, and (3) commenters have offered no indication that there are any specific pitfalls to this approach, EPA does not in this final rule prohibit the use of modeling to form the basis of a petition demonstration for underground injection wells.

4. Use of a Safety Factor

In the proposal, the Agency stated that demonstrations would be based on modeling and that direct verification of the absence of migration would be problematic due to the difficulty of effectively monitoring the location of a fluid front at depths ranging from 1500 to 5000 or more feet. In addition, during the regulatory negotiations which helped in the formation of the proposal for this rule, some representatives wanted to limit the permit writers' discretion by requiring that injection zones have vertical limitations. To deal with these concerns, EPA proposed that the confining zone be four times thicker than the total vertical distance that fluid was expected to move within the injection zone and that the injection zone be separated from the lowermost USDW by ten times that calculated distance (4x/10x).

As noted in the proposal, a further purpose of this provision was to deal with the uncertainties which some members of the regulatory negotiation committee felt were inherent in demonstrations based on modeling. In addition, this provision was seen as providing some additional protection against the likelihood that permeable faults or fractures might transect the confining zone.

The Agency received extensive comment on this requirement. Most stated that they believed the requirement to be excessive and unnecessary, and some believed it to be arbitrary. Several commenters noted that EPA had intentionally rejected the use of rigid numerical standards elsewhere in the proposal, noting that qualitative considerations were often important in making decisions regarding siting (52 *FR* 32458) and waste migration. One commenter objected to the proposal, but suggested it could be workable if an alternative to the "4x/10x" requirement was available.

A few expressed limited support for the concept, but indicated that if the Agency were to restrict the definition of injection zone, such a provision would be unnecessary.

One commenter wanted to reinstate a "containment zone," which is a concept introduced during the regulatory negotiation.

Finally, some requested clarification of how this distance should be measured. Commenters suggested that if the Agency were to adopt this approach, the appropriate point of measurement should not be the screened interval, but some larger area which is defined by the geology of the site.

After careful consideration, the Agency has determined that the requirement is unnecessary and may not be appropriate for several reasons. One of the key difficulties in implementing a "4x/10x" provision is the lack of proportionality between the initial fluid penetration into confining material and the additional safety provided by a multiple of that initial penetration. There is not necessarily a relationship between the quality of confining material in the injection zone and material some distance above. Thus, the requirement of further distance proportional to "x" is somewhat arbitrary.

Moreover, as mentioned above on the discussion of injection zones, there may be no discrete line to begin the measurement of "x" because of the interfingering of permeable and relatively less permeable material. Trying to determine with any consistency a point beyond the area of active emplacement into permeable material would be extremely difficult. This approach would also tend to encourage placement of well perforations nearer to confining material, which is not necessarily a desirable result in most geologic settings.

Further, the Agency's own analysis has shown that the "4x/10x" provision may not always afford the level of protection EPA was seeking. For example, modeling has shown that the "x" value may be quite small, in some geologic settings yielding values less than 10 feet (Ref. 15). Such low figures would not, under most circumstances, provide protection against transmissive faults or fractures.

Second, the Agency believes that any uncertainties resulting from the quality or extent of geologic data available are better addressed by assuring that conservative values are used, and that sensitivity analyses are conducted where appropriate, to enable the reviewer to assess the amount of variation in performance which might result from a given assumption.

Third, with regard to uncertainties associated with verification, the Agency would like to note that monitoring of pressure decay rates when the well is shut-in, provide effective means of determining whether the waste is behaving as a model predicted it would (Ref. 22).

Fourth, the Agency rejects the contention that modeling inherently introduces uncertainty into the demonstration; modeling has been used extensively in oil field exploration and enhancement with very good results (Ref. 23). Such applications involve the analysis of multiple points of injection and withdrawal and often involve two-phase flow—an application of considerably greater complexity than that required for "no migration" petitions submitted pursuant to § 148.20. Moreover, within the last few years, fluid flow models have been further developed for the Department of Energy nuclear waste isolation program (Refs. 24 and 25). Beyond this, EPA would like to note that models need not identify the precise point to which a plume may

move. Rather, the model can be used to bound the problem, showing a point to which the plume cannot move.

Finally, the Agency would like to point out that requirements currently in place and others being promulgated today in § 146.62 in Subpart G apply substantial safeguards to siting of injection wells. To the extent that such requirements apply to areas outside the injection zone, and address endangerment of USDWs and not prevention of migration, EPA believes that Part 146 is the appropriate regulation in which to promulgate these rules. Nevertheless, the requirements still serve to limit the regulatory agency's discretion, and provide additional safeguards addressing the concerns which the "4x/10x" requirement sought to address.

As a practical matter, the Agency believes that the petition reviewer will be sufficiently constrained by requirements in § 148.21 as it is being promulgated today. The final rule specifies more clearly that assumptions must be reasonably conservative, and that sensitivity analyses must accommodate any significant uncertainty in the geologic characterization or other aspects of the demonstration.

5. Requiring Compliance With Certain Part 146 Requirements

The Agency proposed that as part of the petition demonstration, the applicant certify compliance with the proposed Area of Review (AOR) and Corrective Action requirements from Part 146, as well as submit the results of a pressure test and a radioactive tracer survey (RTS) conducted within six months prior to a petition submission.

Commenters were generally supportive of the proposed approach, although some requested clarification on whether the UIC permit needed to be revised. Several commenters suggested that EPA's proposal to require that a well pass a mechanical integrity test within 6 months prior to petition submittal was too restrictive. They argued that such tests were unnecessary because they are currently required in the UIC permits, the six-month time period was counter-productive and could discourage submission of petitions in a timely manner, or that other tests could adequately serve to make the requested demonstration. Finally, some commenters contended that all or some expanded set of the amended UIC requirements should be met as a prerequisite to petitioning.

a. Permit Modification. The Agency did not envision requiring UIC permits to be modified as part of complying with amended Area of Review, Corrective Action or mechanical integrity requirements. It was the Agency's intent that the operator *certify* compliance with AOR and Corrective Action requirements, and that the operator submit results of a recent pressure test and RTS test. This is the approach being promulgated today in the final rule.

b. Timing of Mechanical Integrity Tests. EPA agrees that requiring operators to conduct a pressure and RTS test within 6 months prior to submitting a petition is too restrictive. As noted by some commenters, this requirement could have the effect of discouraging submission of petitions in a timely manner. The Agency's primary concern was that the well have a recent demonstration of integrity prior to approving or denying a petition. Since EPA can envision circumstances in which petition reviews may take considerably longer than 6 months, the final rule requires the owner or operator to submit the results of a pressure test and a RTS test with a petition. The tests must be conducted within one year prior to submittal of a petition. If the petition has not been approved or denied within one year after the MIT test was performed, the Director may require the owner or operator to perform another and submit the results.

c. Requiring Compliance with Other Part 146 Standards. One commenter suggested that at a minimum, the siting provisions in § 146.62 should be an integral part of the petition demonstration. Other commenters suggested that the Agency require compliance with all the provisions of proposed requirements in Subpart G of Part 146 prior to approving a petition.

First, the Agency would like to note that the siting requirements of § 146.62 with regards to injected waste are either subsumed in the standard set in § 148.20 or are rendered unnecessary by a successful demonstration. Moreover, the § 148.20 requirements are more stringent than the § 146.62 requirements. By definition, compliance with § 148.20 would demonstrate "no migration" whereas compliance with § 146.62 would demonstrate no endangerment, a considerably lesser requirement with regards to hazardous waste. Thus, imposing the requirements in § 146.62 as part of a petition demonstration would, at best, be redundant. The Agency believes the Part 146 requirements are necessary to effectively regulate hazardous waste injection which has not been banned and is therefore not subject to Part 148 requirements, and to assure that USDWs are not endangered from formation fluids.

Second, the 1984 HSWA amendments do not require a general overhaul of existing technical UIC regulations for hazardous waste injection and EPA does not believe there is an acute need for amendments to these regulations. The normal process of program review and the regulatory negotiation process did lead to the development of several useful proposals for clarifying, updating, or expanding existing regulatory requirements. Many of these standards are currently part of the UIC regulatory structure but are simply not stated in descriptive detail. EPA believes that adherence to current EPA technical permitting standards along with the new area of review and mechanical integrity requirements provides operational integrity of the delivery system to a reasonable degree of certainty. The Agency's additional findings under the petition process will fully satisfy the statutory standards under RCRA sections 3004 (f) and (g).

The commenter's proposal that new Part 146 standards must be in place before petition approval, is unworkable and unnecessary. Because sections 3004 (f) and (g) are HSWA requirements, that approach would essentially require EPA to run an entirely new UIC permitting scheme on top of those run by UIC primacy states. The petition review and permitting process are not identical under the statutes. This dual and redundant permitting and enforcement scheme would run until UIC primacy states had obtained HSWA authorization and would essentially require federal repermitting of every UIC facility. EPA does not believe Congress, in RCRA sections 3004 (f) and (g), mandated or envisioned such a sweeping and disruptive approach in permitting. While the Agency obviously favors today's revisions to the permitting program, and may in the future seek further changes, it does not believe such changes are intrinsically linked to decisions under RCRA sections 3004 (f) and (g). Moreover, commenters have not shown that any particular aspect of the UIC regulations are so critically inadequate that adherence to them in lieu of the new standards would necessarily fail the statutory mandates of RCRA.

H. Information To Be Submitted in Support of Petitions—Section 148.21

Section 148.21 of the proposal specified criteria which the information submitted in support of a petition must meet. In addition, §§ 148.21 (b) and (c) listed certain site-specific information that should be part of a petition. A few commenters noted that no single

modeling method or proprietary model should be required for all submitting sites. The Agency agrees with this position, and believes the proposed language at § 148.21(a)(3) allows flexibility in the choice of models, provided that the model has been validated, verified, and calibrated to assure that it is suited to the site to which it is applied.

Some commenters felt that the requirement for a sensitivity analysis in § 148.21(a)(6) was not clearly stated. The Agency's intent in proposing this section was to require the petitioner to: (1) Identify areas where the geologic characterization (or other phenomena) contained significant uncertainty; (2) determine a likely range over which values might vary; and (3) perform sensitivity analyses which would determine the magnitude of the fluctuations in performance which might result from these variations. The Agency agrees with those commenters who believed the rule was unclear and is promulgating more specific language in this section.

One commenter requested the inclusion of justification in § 148.21(a)(5) for the use of reasonably conservative values whenever values taken from the literature or estimated on the basis of known information are used instead of site-specific measurements. The commenter apparently believed that data from the literature is not always inferior to site-specific data. For example, in areas of extensive drilling and extensive, homogeneous sedimentation, data from off-site may provide a high degree of certainty in the characterization of local geology. The Agency agrees that information from the literature can provide certitude. Section 148.21(a)(5) should be viewed in the total context of § 148.21; when the geology can be accurately described and the bounds of uncertainty established, the sensitivity analyses may be more sharply defined; when there is some doubt concerning the geologic description, these analyses must be more broadly defined. Thus, the definition of what constitutes "reasonably conservative values" in § 148.21(a)(5) would be defined by the degree of certainty which results from the use of information from the literature or estimated values. The Agency believes that reasonably conservative values are those which result in models and subsequent operations that are protective of human health and the environment. It is difficult to codify such values, however, in light of the varied wastes, geologies, and operating circumstances that are covered under deepwell injection. The Agency believes that specific, suitably conservative values can be established by the reviewer during the course of petition evaluation.

One commenter believed that § 148.21(b)(2) should include the "layer of protection" required in 146.62(d)(1). As noted in Section (II)(G)(5)(c) of this preamble, the siting requirements of Part 148 are more stringent than those of Part 146, and would subsume such Part 146 requirements. Any petition that satisfies §§ 148.20 and 148.21 requirements automatically meets the requirements of § 146.62, with respect to injected wastes.

One commenter noted that, in regards to the geologic information requirements of § 148.21(b), "* * * Unless the proposed well is located in an area of dense drilling, the geologic data necessary for mapping [of the injection site] is likely unavailable." Most hazardous waste injection wells are sited in the Gulf Coast and Great Lakes regions, areas with long histories of drilling practices, and subsequent extensive geologic mapping. It is true that some facilities exist in areas where little or no previous drilling has occurred. Again, the amount and density of specific points needed to characterize geology is a function of the degree of isotropy and homogeneity exhibited by the sedimentary basin. The Agency believes that in many cases the owners or operators of sites may need to gather additional geologic data on their sites before a successful petition can be developed. The Agency believes that detailed geologic mapping is a reasonable request in the context of this regulation. A "no migration" demonstration cannot be established without it.

One commenter believed that existing and anticipated post-operational vertical fluid density gradients as well as vertical hydraulic gradients should be considered in evaluating the potential for vertical movement. The Agency agrees, but would like to note that a "no migration" demonstration under § 148.20 cannot be made without such factors being considered.

Several commenters objected to the requirement that, "All waste and environmental sampling, test and analysis data shall be accurate and reproducible and performed in accordance with quality assurance standards." They noted that in many cases, petitions will be based on information gathered during the drilling of the well—information which cannot be reproduced in accordance with procedures specified long after the drilling occurred. These commenters also noted that much of the data relied upon for characterizing the regional geology will be obtained from operations which are conducted by entities other than the petitioner. These commenters believed that the net effect of this requirement would be to prohibit the use of vast amounts of data. The geologic descriptions would therefore be less accurate, they contended.

The Agency agrees. Excluding historical data or information which might have been gathered off-site by methods not consistent with certain prescribed procedures may be counterproductive. The purpose of §§ 148.21(a) (5) and (6) should be to allow the use of such data, but assure that its limitations are accounted for in a petition review. Accordingly, EPA will require that only measurements pertaining to the waste or that result from testing performed to gather data for the petition demonstration comply with prescribed procedures. The Agency believes, however, that the concerns about the accuracy of geologic data are addressed more appropriately by requiring that the demonstration identify and account for limits on data quality rather than by excluding data from consideration. Again, § 148.21(b), as revised, requires precisely such consideration. Therefore, the demonstration in § 148.20 as promulgated, will allow the use of existing data.

I. Procedures for Petition Submission, Review, and Approval or Denial—Section 148.22

Some commenters stated that the petition review process in the proposal would not provide an adequate opportunity for public oversight. Commenters suggested a 45-day period for review, and an opportunity for public hearings due to the complex nature of the demonstrations. Other commenters believed that the proposed petition process is unworkable and would, due to the amount of time necessary to process petitions, result in sound hazardous waste management practices being outlawed by procedural difficulties. These commenters suggest a generic determination for injection wells and a minor modification approach to changes required in permits.

The Agency is doing everything it can to inform and coordinate with the regulated community on petitions, including several outreach meetings and close coordination with States and Regional offices. The "hammers" in the 1984 HSWA Amendments do create resource and timing problems, but as explained above, EPA favors the

petition process as a way of examining the specific hydrogeologic setting for determinations under sections 3004 (f) and (g). We further agree that the petition information is complex and the procedures would benefit from a 45-day comment period and the opportunity for public hearings. We incorporate such provisions in the final rule. In addition, we clarify here that the more extensive public notice provisions in 40 CFR 124.10 which apply to RCRA permits will apply to the Part 148 petition process.

In order to minimize the duplication of administrative procedures, we are providing that the Director may make certain related permit modifications to the UIC permit contemporaneously with the petition process through the procedures in § 148.22. These modifications include identification of an injection zone or an injection interval, redetermination of a well's area of review under § 148.20(a)(2)(i), application of a protocol for location of abandoned wells under § 148.20(a)(2)(ii), submission of a corrective action plan under § 148.20(a)(2)(iii), and performance of a radioactive tracer survey under § 148.20(a)(2)(iv). These items will then be enforceable both as permit conditions and as conditions of the petition. This approach will streamline the process and focus Federal administrative resources in an efficient manner.

State primacy programs will, of course, follow their own permit modification procedures. We will try and coordinate as closely as possible with primacy states. As discussed above in Section (II)(G)(5) of this preamble, nothing in this final rule requires permit modifications to satisfy the conditions of § 148.20. However, we believe a coordinated approach would prevent needless duplication of procedures.

J. Review and Termination of Exemptions—Sections 148.23 and 148.24

The Agency proposed in § 148.23 that petition demonstrations be reviewed at the time of permit renewals. Under the proposal, the Director could require a new demonstration if new information showed that the basis of the demonstration were no longer valid. This section also provided the Director the authority to require a new demonstration at any time information indicated that the basis of the showing was not valid or was no longer valid. Section 148.24 listed reasons for which the Director could terminate exemptions, including, in § 148.24(b), mandatory causes for terminating exemptions. Section 148.24(b) did afford the Director some discretion regarding termination of exemptions when the source of a release was a faulty well in the area of review, or a mechanical problem in the injection well itself. Finally, § 148.24(c) specified procedures which the Director must follow when terminating exemptions granted under § 148.20.

One commenter, supported by several others, noted that if EPA were to adopt alternative procedures for approving petitions (see comments in Section (II)(A)(1) of this preamble) any violation of the demonstration would constitute violation of the regulations and would, therefore, be enforceable within the context of these regulations. The commenter concluded that this section was, under the suggested alternative approach, unnecessary.

The commenter went on to say that under any approach, § 148.24(b) is unnecessary and should not be promulgated. According to this commenter, releases from the well or from an abandoned borehole can be fixed by relatively simple remedial action, and therefore should not be grounds for closing a well. Other commenters contended that any failure of the system should be grounds for automatic termination of the exemption whether or not these failures represented simple transient events that did not permanently compromise the system. Finally, some commenters objected to the procedural requirements associated with withdrawing an exemption, contending that it takes too long.

The EPA agrees that if the suggested alternative approach for implementing sections 3004 (f) and (g) were to be adopted, the requirements in §§ 148.23 and 148.24 could be addressed through enforcement. For the reasons outlined in Section (II)(A)(1) of this preamble, however, the Agency is not adopting any of these alternative approaches.

With regards to the grounds for termination, EPA believes that both comemnts have merit. Specifically, there are undoubtably circumstances when a simple failure of a well plug in an abandoned well or a well component in an injection well should not initiate closure or a redemonstration under § 148.20. On the other hand, the Agency believes that the Director should have the authority to cancel an exemption due to well failure or an improperly abandoned well in the area of review, in some cases. For example, instances of repeated well failures, or numerous problems with wells in the area of review, could indicate that the corrective action for wells in the area of review has been inadequate, or that the well is not functioning adequately to assure delivery of the waste to the injection zone. Under such circumstances, the Director should have the authority to revoke exemptions. Accordingly, the Agency believes the Director should have the authority to revoke exemptions for the above reasons, but should not be required to do so in all situations. Of course, in cases where the injection zone itself has allowed a release, or where the petitioner has willfully withheld information, the exemption must be terminated. The proposed rule provided this level of flexibility, and EPA is therefore promulgating the rule as proposed.

Finally, the Agency rejects the contention that the procedural requirements of § 124.5 are too slow when revocation is considered. The issues should be fewer than for petition approval, but will nonetheless benefit from full opportunity for public review and comment.

III. Summary of Today's Rulemaking: Response to Comments; Part 146, Subpart G

As outlined in the proposed rule, the Agency is establishing a new Supbart G applicable to owners or operators of hazardous waste injection wells. This section applies to all wells injecting hazardous waste, including those injecting wastes which are not yet prohibited, those which meet treatment standards promulgated under section 3004(m) of RCRA, and those whose waste has been banned under section 3004 (f) or (g) of RCRA and who have obtained an exemption pursuant to Part 148.

In the proposal, the Agency established a discrete section, Subpart G, which contained all Part 146 requirements applicable to injectors of hazardous waste. As indicated, much of Subpart G is merely a reorganization of requirements which were originally promulgated in June of 1980 (45 *FR* 42473 *et seq.*). It was not EPA's intent to solicit comment on requirements which existed by virtue of earlier rulemaking; rather, the Agency intended to simply recodify these existing requirements and solicit comment on the new requirements being proposed. The Agency nevertheless received comments on both the new and existing regulations. To the extent that these commenters sought substantive changes to the existing rules, the Agency has evaluated them, but, as explained in the proposal, does not believe we are under any obligation to make any changes. In all cases, the Agency will retain them and evaluate them in the context of any changes which it may

contemplate in the future, but the Agency does not believe it is under any obligation to address comments on existing regulations concurrent with decisions on this rule.

A. General Comments on Part 146

1. Stringency of the Regulations

Several commenters expressed general support for the reorganization of Part 146 requirements and the establishment of Subpart G. Many of these same commenters, however, believed that the existing Part 146 requirements were generally adequate to protect USDWs, and were not in need of substantial changes. These commenters suggested that added specificity, clarifications, updates, and some expansions were all that was warranted. In support of this, they noted that contamination of USDWs by injection wells has been rare, and has not occurred in a facility which is in compliance with existing UIC regulations.

Other commenters were supportive of the changes to Part 146, but opined that the changes did not go far enough. One commenter submitted instances of alleged contamination from injection wells in support of his belief that more stringent regulation of injection wells was required (Ref. 1).

The Agency has examined this report, two other reports conducted by contractors (Refs. 2 and 3), and analyzed the Agency's own Report to Congress performed pursuant to section 701 of the Hazardous and Solid Waste Amendments of 1984 (Ref. 4). Based on this analysis, the Agency cannot point to a body of instances which suggest that the existing regulations, and particularly as amended today, are not sufficiently stringent to protect USDWs. On the other hand, the Agency's experience in implementing the UIC regulations, as well as experience and knowledge gained from overseeing State implemented programs, together with information gathered during the section 701 survey, has enabled EPA to identify several important ways to improve the protectiveness of the original regulations. Many of these amendments are being made to address specific problems identified in one or more of the studies cited above. With these amendments, EPA has attempted to develop a set of regulations which provides a level of protection appropriate to wells injecting hazardous waste, yet one which is not unnecessarily burdensome.

2. Application of Part 146 to § 3004(b)(1)

In the preamble to Part 148 the Agency proposed to apply the amended Part 146 regulations to satisfy the requirements of section 3004(b)(1). This section prohibits the disposal of noncontainerized or bulk liquid hazardous waste in any salt dome, salt bed formation, underground mine or cave until: (1) The Administrator has determined, after notice of opportunity for hearings in the record in the affected areas, that such placement is protective of human health and the environment (section 3004(b)(1)(A)); (2) The Administrator has promulgated performance and permitting standards for such facilities (section 3004(b)(1)(B)); and (3) a permit has been issued under section 3005(c).

The Agency proposed that the amended Part 146 requirements could constitute performance and permitting standards for such facilities. The Agency also stated that a UIC permit, which qualifies as a RCRA permit-by-rule under § 270.60, would satisfy the permit requirement. Finally, EPA suggested that the hearing on the petition conducted pursuant to an exemption request under Part 148, could be held jointly with the hearing required under section 3004(b)(1)(A).

One commenter expressed strong support for this approach, but noted that for certain types of injection the UIC regulations either may not be appropriate or may need to be applied in a flexible manner. Specifically, injection of non-liquid fluids could require rules specifically tailored to the problems inherent to such injection. This commenter proposed specific changes to the UIC regulations which would make them suitable for regulating non-liquid fluids injected into salt domes. Another commenter expressed strong opposition to such an approach, stating that liquids dissolve salts, and thus salt formations are unstable and unsuitable for containment of wastes.

The Agency has historically regulated fluid injection into salt domes and salt beds under the UIC program. Under this scheme, a UIC permit issued under 40 CFR Part 144, Subpart D, would constitute part of a RCRA permit-by-rule under 40 CFR 270.60(b). For injection of liquid hazardous wastes, the EPA believes the framework outlined in the proposal is appropriate, and will largely follow those procedures when permitting injection of liquid hazardous waste into salt domes and salt beds.

A recent final rule, Subpart X of RCRA (52 *FR* 49946 *et seq.*, December 10, 1987), addresses regulation of certain unconventional disposal practices, including, under some circumstances, injection of non-liquid hazardous fluids. This rule also outlines in detail the relationship between Subpart X requirements and the UIC permitting. Briefly, Subpart X provides the Agency a flexible permitting scheme that may be applied to hazardous waste disposal when existing standards are inapplicable. It is premature to discuss specific features which would make the application of Part 146 standards inappropriate. Such determinations will be made in the context of a facility's permit application.

On the technical point concerning the solubility of salt formations, it is common knowledge that salt dissolves in water. However, salt will not further dissolve once the water is saturated. In such situations hollowed out salt domes have an excellent combination of high plasticity and low permeability to seal against the migration of hazardous wastes. Thus, EPA believes such disposal technology to be promising. The acceptablity of a facility, of course, must be evaluated on a site-specific basis.

The Agency has decided that rather than amending the UIC requirements to suit non-conventional underground emplacement of waste as the one commenter suggested, it will rely on the authority in new Subpart X to develop an appropriate set of requirements in the permit. As noted in the preamble to Subpart X, the decision on whether to regulate unconventional injection operations under the UIC program and/or Subpart X is a case-by-case determination (52 *FR* 49953). A more complete discussion of the relationship between the UIC program and the Subpart X requirements is provided in that rulemaking.

B. Applicability—Section 146.61

Section 146.61 proposed, in part, new definitions applicable to Class I hazardous waste injection. A number of commenters addressed this section.

One Commenter favored codifying in Part 146 the term "injection interval", also codified today at § 148.2. The Agency believes that this term is most applicable to facilities petitioning for an exemption under Part 148, but believes that the term has utility in the context of certain Part 146 requirements. Consequently, EPA is today codifying the term "injection interval" at §§ 148.2 and 146.61(b).

A number of commenters were concerned with the new term "cone of influence". This definition, and its relationship to the new Area of Review

requirements, has been addressed in Section (III)(D) of this preamble.

Finally, there were many comments received on the redefinition of the term "existing well", as it applies to hazardous waste injection. It was the Agency's intention, in redefining this term, to insure that the owner or operator of an existing authorized well not be subject to those requirements at § 146.65 which are applicable only to new wells not yet constructed. Two commenters wanted this definition changed to include wells already authorized to receive non-hazardous fluids, noting that such non-hazardous fluids could eventually be classified as hazardous.

Provided that an already authorized, non-hazardous injection well can safely inject hazardous waste, the Agency agrees with the contention that such wells should not be classified as "new wells" in the context of this regulation merely because the definition of the waste they are injecting changes. EPA can foresee a situation where a permitted Class II or III well would become a hazardous waste injection well by virtue of changes in the definition of "hazardous". If such a well is able to meet all other applicable 146 and 148 requirements, it should be classified as an "existing well". Today's promulgation of the term "existing well" allows such a situation.

Another commenter wanted this term to include any Class I well "permitted, authorized, or constructed" prior to the effective date of this rule, whereas the proposed definition included only "authorized". Per §144.11, any well which is permitted is automatically authorized. Consequently, there is no reason to include the word "permitted" in today's redefinition of "existing well". Section 144.11 states that, "The construction of any well required to have a permit is prohibited until the permit has been issued." Class I hazardous waste injection is a permitted activity, consequently any proposed hazardous waste injection well must receive a permit before well construction begins. The situation indicated by the commenter above proposes to include constructed, but unauthorized, wells in the spectrum of "existing wells". The Agency's legal position is that such a well is illegal under the terms of the UIC regulations, § 144.11.

Two other commenters wanted "existing well" redefined to include wells not yet completed whose permit applications have been submitted and are under review, or existing wells whose permits are on appeal. Existing wells whose permits are under review automatically receive an authorization by rule, pursuant to §§ 144.21 or 144.22. Section 124.16 states that, for a new facility or new injection well, "* * * the applicant shall be without a permit for the proposed new facility * * * [or] * * * injection well . . . pending final Agency action." In this instance, the well will not have been constructed yet. Under these circumstances, EPA strongly urges the applicant and—in the case of primacy states where the amended requirements have not been adopted—the Director, to construct or require the well to be constructed according to the standards applicable to new wells.

C. Siting Requirements—Section 146.62

In the proposal, the Agency stated more explicitly requirements which had been stated very broadly in the existing regulations. In the proposal, criteria which had previously been framed as factors which the Director had to "consider", were expressed as specific requirements which the owner or operator had to meet. Several new, substantive requirements were also added.

In the proposal, the regulations at § 146.62(a) restated existing language which required that all Class I wells be sited beneath the lowermost USDW; § 146.62(b) restricted siting to areas that are geologically suitable, and defined criteria describing such areas; § 146.62(c) specified performance standards for the confining and injection zones; § 146.62(d) outlined additional requirements which would provide an additional degree of assurance that the waste would be adequately contained or that the site would not otherwise endanger USDWs.

1. Need for Additional Siting Requirements

Nearly all commenters supported the clarification of existing siting requirements, but several maintained there was no need to add more explicit siting requirements or standards. These commenters believed that absence of contamination incidences suggested no changes were necessary.

The Agency disagrees. The EPA identified several important criteria which it believes significantly improve the protectiveness of the siting requirements. The UIC program as mandated by the SDWA is preventative in nature, and to the degree that these improvements do not impose unnecessary new burdens on the owner or operator, EPA believes it appropriate to promulgate them.

2. Consideration of Seismicity in Local Geology

Two commenters suggested that § 146.62(b)(2), which lists parameters to be considered when evaluating local geology, include consideration of the seismic history of the site. The proposed rules, at § 146.62(b)(1), required consideration of seismicity on a *regional*, not local basis. The Agency intends to retain the requirement as proposed for several reasons. First, the United States Geologic Survey (USGS) at the request of EPA, recently completed a study on potential earthquake hazards associated with injection wells (Ref. 5). That report recommended *regional* evaluations of tectonic stress as a critical part of site evaluations. The Agency believes that concerns of a more local nature, if any, are better addressed by a monitoring program. A more comprehensive discussion of the USGS report and the role of seismicity in siting and operating injection wells is provided in Section (III)(I)(6) of this preamble.

3. Geologic Criteria

Several commenters objected to the requirement in § 146.62(b)(3) which required that the site be capable of being modeled accurately. These commenters noted that precise predictions of the location of a plume or a pressure front are not necessary; rather, the modeling must be capable of bounding the problem.

EPA agrees. The intent in this section was to be sure that the geology of the site was not so complex that modeling would not provide meaningful results. The Agency was concerned that the complexity of the site not outstrip the technology available to model it. Accordingly, the language is being revised to address this specific concern.

4. Standards Applicable to the Injection and Confining Zone

Section 146.62(c) of the proposal contained performance standards which the confining zone would have to meet. This section required that the confining zone be laterally extensive and free of transmissive transecting faults over an area sufficient to prevent movement of fluids into a USDW. In addition, this section would have required that the confining zone contain at least one formation of sufficient thickness and with lithologic and stress characteristics capable of preventing vertical propogation of fractures.

There was extensive comment on this provision. Most objected to the requirements as stated, maintaining that the two provisions were redundant. On

the other hand, one commenter, supported by several others, contended that the presence of any fault should preclude siting an injection well, regardless of whether that fault had the capacity to transmit fluid to overlying zones. They suggested that such faults made accurate modeling impossible. These same commenters suggested that EPA should specify a minimum thickness and permeability which the confining zone must meet and further, that these parameters be measured only in the formation directly adjacent to the injection zone.

The Agency agrees that §§ 146.62(c)(2)(i) and (ii) address similar concerns, but does not believe this suggests that one or the other requirement be deleted, as the commenter maintains. It is a common practice in engineering to build safeguards into systems, particularly where uncertainty may exist, or where the consequences of error are significant. Thus, EPA does not believe that the logical consequence of finding that these requirements overlap is to delete one or the other of them. Rather, the Agency believes these requirements to be complementary; together providing a level of assurance consistent with the mandate of the SDWA and RCRA.

Pertaining to the commenter who suggested specific numerical requirements applicable to the confining zone, EPA would like to note that precisely that option was examined during the course of regulatory negotiations. As outlined in the preamble to the proposal (52 *FR* 32458), the factors which define an acceptable site are often qualitative. Specifying a set of quantitative values outside the context of the myriad other factors that must be considered in siting decisions would not be effective. To be workable in all cases, these values would have to be so restrictive that safe sites would be prohibited, or the rule would have to provide the option of allowing the Director the authority to waive them when not necessary or appropriate. The Agency believes that it is better to allow consideration of qualitative factors such as the plasticity of the rock, the type and amount of clay in the confining zone, the relative difference in permeability between the injection and confining zone, the seismicity of the area, the characteristics of the injected and formation fluids, the relative pore pressures, the depth of the injection zone, and a host of other factors as they relate to defining adequate siting in the first instance.

Finally, one commenter apparently believed the Agency was somehow trying to restrict the orientation of any fractures developed during well stimulation. This commenter pointed out that below certain depths fractures form on a vertical axis. In response, EPA would like to note that § 146.62(c)(2)(ii) pertains to the confining zone, not the injection zone. Moreover, this section is meant to deal with the vertical *propagation* of fractures, not their vertical orientation. The existing rules allow fracturing of the injection zone during well stimulation, and EPA recognizes that these fractures, below certain depths, will be oriented (but not propagated) vertically. Nothing in today's rule alters or attempts to alter the physical fact of a fracture's orientation, or the operator's right to stimulate the well. The purpose of § 146.62(c)(2)(ii) is to be sure that at least one formation has the right mix of thickness and plasticity to prevent a fracture from moving up (that is vertically propagating) through the stratigraphic column.

5. Additional Safeguards

Section 146.62(d) outlined four safeguards, one of which the owner or operator would have to demonstrate to the satisfaction of the Director that his site shared. They included (1) a showing that a "buffer" aquifer/aquiclude system was present between the confining zone and the base of the lowermost USDW or (2) a showing that within the area of review the piezometric surface of the fluid in the injection zone was lower than the piezometric surface of the lowermost USDW or (3) a demonstration that there was no USDW present or (4) that the geology, nature of the waste, or other considerations would not allow an undiscovered conduit to endanger a USDW.

As stated in the proposal, the goal of § 146.62(d) was to deal with the uncertainties which some members of the regulatory negotiation committee believed were inherent in characterizing geologic conditions in the subsurface. These requirements were intended to either eliminate the uncertainty involved in characterizing subsurface geology, or the consequences of failing to identify a breach in the confining zone, be it a man-made conduit or a natural transmissive fault or fracture.

Several commenters objected to the requirement for additional safeguards in general, and the need for a "buffer" aquifer/aquiclude system between the top of the confining zone and the base of the lowermost USDW in particular. They noted that the existing siting requirements, particularly when considered with those proposed in § 146.62(c), in conjunction with the Area of Review requirements and Corrective Action requirements in §§ 146.63 and 146.64 respectively, adequately addressed concerns about abandoned boreholes or improperly completed wells. One commenter suggested that since § 148.20 required the presence of an arresting layer within the injection zone, and § 146.62(c)(2) specified minimum standards for a confining zone, this provision effectively applied a third layer of redundant protection to the siting requirements. The commenter believed this level of regulation to be excessive.

The Agency agrees that the AOR and Corrective Action requirements being promulgated today address any conceivable set of concerns which might arise with respect to abandoned or improperly completed wells within the area of review. However, the EPA would like to note that the requirements in § 146.62(d) were meant to address more than just abandoned boreholes; they were also meant to address concerns relating to the geology of the site such as fractures or faults. While EPA does not believe that uncertainty is "inherent" in characterizing geology—given the improvements in remote sensing, techniques of stratigraphic correlations, and borehole logging—the Agency does believe that additional safeguards are appropriate. These safeguards address not only problems which might arise from an undiscovered fault, but also problems which could arise from improper operation. Finally, EPA would like to reiterate that overlapping safeguards are a sound and frequently applied principle of good engineering. The fact that one set of requirements addresses a particular concern does not and should not preclude application of other rules which also address the concern.

The commenter who thought that EPA was applying a "third layer of protection" beyond those required in Part 148 and § 146.62(c), apparently did not understand the relationship between Part 148 and Part 146. First, Subpart C of Part 148 does not apply to all hazardous waste injection wells. Wells which inject waste which meets, or has been treated to meet, levels specified in 40 CFR Part 268, are not subject to the "no migration" provisions in § 148.20.

Second, and more important, the two rules apply complementary, but different standards. Part 148 applies a "no migration" standard, while Part 146 is designed to assure no endangerment of USDWs. The standards in § 148.20 were developed to assure that no *injected waste could leave the injection zone.* Part 146 is meant to assure that there will be no endangerment of USDWs,

either from injected fluid *or formation fluids*. With respect to injected fluids, the standards in 148 are certainly more stringent since they prohibit migration of any injected waste at hazardous levels out of the injection zone. However, endangerment encompasses a broader set of concerns and therefore warrants a broader set of regulatory controls. For example, the area in which *formation fluid* could endanger USDWs is described by the pressure front induced by injection; the area in which *injected fluid* could move out of the injection zone, on the other hand, is described by the size of the waste plume. The pressure front is always larger—usually much more so—than the waste plume.

Accordingly, EPA believes it is a mistake to construe that the requirements of § 148.20 are equivalent to those being applied in § 146.62. They do not address the same universe of wells, nor do they address the same concerns. The Agency, therefore, rejects the notion that the two rules are redundant and result in an unnecessary third level of protection.

A number of commenters objected to the provision in § 146.62(d)(4) which provides the Director the authority to approve a site which lacked one of the specific safeguards outlined in section (d) (1), (2), or (3), but which otherwise could show a comparable level of safety. Most commenters, however, expressed strong support for the provision. In criticizing the safeguards outlined in the previous three paragraphs, commenters frequently pointed out scenarios in which the certainty of characterizing the site accurately was extremely high, and therefore the need for redundant safeguards low or non-existent. These commenters noted that in some areas, drilling or other exploration has been extensive enough to provide extremely accurate pictures of the geology of the area and regulatory controls have been in place and adequately assure that abandoned boreholes have been located and plugged. It was such circumstances the Agency sought to address when proposing § 146.62(d)(4).

Commenters who objected to this provision seemed to believe that EPA was subjecting operators to a lesser standard in § 146.62(d)(4) than in the other three sections. As one such commenter expressed it, "EPA has proposed a broad exception to the siting criteria * * *". These commenters are apparently confusing the need for a safeguard, where doubt exists, with the standard itself. This section is not an exception to the siting standard. It provides another means by which the standard may be met, another way in which uncertainty may be resolved.

At the heart of this comment appears to be the contention that any and all attempts to describe geology are inherently flawed. The Agency rejects this contention, and accordingly will promulgate this section as proposed.

Finally, some commenters were concerned that this latitude might be abused by those implementing the UIC program. The EPA notes that all permit decisions are subject to rigorous public participation requirements. If, in an individual case, a State Director exercises the discretion afforded him too broadly, the public will have ample opportunity to comment, and, if necessary, challenge his decision. If such an abuse is systematic, EPA will take appropriate action as part of the Agency's oversight responsibilities.

D. Area of Review—Section 146.63

One of the key changes proposed for the Class I regulations was the expansion of the area of review (AOR). The AOR pertains to the area within which the owner or operator must identify all wells penetrating the confining zone and the injection zone and determine whether they have been properly completed or plugged and abandoned. In existing UIC regulations it is defined either by a fixed radius of ¼-mile from the well bore or by a calculated "zone of endangering influence." As a result of the information gathered during the § 701 survey of hazardous waste injection wells, concerns raised by the regulatory negotiation committee, and information developed from recent research on well failures, EPA proposed to amend the area of review requirements for hazardous waste injection wells by extending the area to be examined for abandoned or improperly completed wells to an area with a radius of 2½ miles from the injection well bore or, in some circumstances, the calculated "cone of influence" of the well.

The "cone of influence" defines the area of review as the area described by the incremental increase in pressure caused by the injection well. The Agency believes that the pressure of concern should be the increment over background, static pressure conditions since that is the pressure resulting from the regulated activity.

1. Increase in the Size of the Area of Review

The Agency received many comments on the proposal to increase the size of the area of review.

Several commenters indicated that the 2½-mile area of review was unnecessarily large and would require the well operators to conduct lengthy record searches that are time-consuming and costly, possibly even precluding the drilling of Class I injection wells in the very cases where geologic data was most reliable. In addition, other commenters stated that the proposed area of review was totally arbitary with no technical basis and that using a calculated cone of influence for the well was adequate, especially if the calculated area was substantially less than the 2½-mile minimum requirement.

In reply, the Agency notes that recent studies on the consequences of well failures suggest that the single most significant potential source of contamination from injection wells would be an unplugged borehole within the area of review where there exists a pressure sufficient to drive fluids up the borehole (Refs. 6 and 7). EPA also notes that the State of Texas which specifies a 2½-mile AOR, and the State of Louisiana, which specifies a 2-mile AOR, currently regulate over 60 percent of the wells injecting hazardous waste. These States do not give exceptions to their area of review requirements, therefore enlarging the area of review does not significantly increase the burden for the majority of operators. Even where there is an increase in burden, the Agency believes that the special characteristics of hazardous waste injection warrant a margin of safety more stringent than for other wastes. The Agency believes that a larger fixed radius is not capricious or without some technical basis, as our research in abandoned well studies indicates (Ref. 6 and 7). Also, during the course of regulatory negotiation, State regulators noted that an area of review between 2 and 2½ miles represented an appropriate maximum radius based on their field observations of hundreds of injection wells. However, the Agency believes the intent of the enlarged area of review can be met adequately with a 2 mile minimum, rather than a 2½-mile area of review. The 2-mile area of review has the advantage of not disrupting existing state programs of substantial size. Under today's rule, the Director will have the authority to enlarge the area of review beyond two miles if he has reason to believe that a larger area of review is necessary.

2. Calculation of the Area of Review

Many comments were received concerning the calculation of the area of review. One commenter believed that the area of review should be fixed at the 2½-mile radius value for all wells and not calculated as there appears to be too

much confusion on how to calculate an area of review. In contrast, another proposed that the area of review should have a 10-mile fixed minimum radius from the injection well and expressed a lack of confidence in a well operator's ability to either model or calculate the cone of influence. Accordingly, they believed the 2½-mile minimum requirement was not restrictive enough.

The Agency has confidence in the mathematical calculations for the cone of influence. Pressure buildup is well understood, and the effects of injection can be accurately identified. There may very well be sites where a calculated area of review in excess of 2 miles is indicated. For such sites, today's rule would provide the Director with the authority to require an AOR in excess of 2 miles. However, a 10-mile radius minimum area of review is extremely large and to prescribe for every injection well such an AOR would place an unnecessary burden on both the well operator and the regulatory agencies conducting the review, without adding further protection to the environment.

One commenter suggested that the area of review should only be tied to waste plume migration rather than calculated from reservoir pressure.

EPA would like to note that the primary concern which § 146.63 addresses is the endangerment of USDWs, regardless of whether that endangerment would result from highly mineralized brines in the injection or intervening formations, or from the injected waste stream. In all cases, an area of review based on the waste plume would be significantly smaller than one based on the pressure increase during the operational life of the well, and would therefore not prevent endangerment. Moreover, the long term concerns associated with plume movement after the well is plugged, are addresed in the modeling performed under § 148.20. Accordingly, EPA will continue to base AOR on pressure buildup.

A few commenters indicated that the language proposed by the Agency for the determination of the area of review was unclear and suggested that the Agency provide one method of calculating the area of review to serve as a guidance for all affected states. Finally, some commenters were concerned that one interpretation of the regulation could require a calculated area of review which extends indefinitely in order to satisfy the reviewing regulatory agency. These commenters suggested that such a calculated infinite area of review should be spatially limited by the Agency to avoid this potential problem.

The Agency believes that a guidance may be necessary to clarify the methods appropriate for establishing area of review, but does not believe that a single calculation, or a set of calculations, describes the universe of acceptable methods for determining area of review. Moreover, prescribing by regulation the appropriate method could preclude permittees from using more sophisticated methods which might become available at some future point. Therefore, the Agency is not specifying particular methods of calculating an area of review in this rule.

The Agency also recognizes that calculations may result in an asymptote, or that in some physical settings the formation pressure will contribute to an AOR that extends over great distances. Under current State and Federally-implemented rules, the problem of infinite asymptotes has been addressed by setting cut-off points when the slope of the pressure curve flattens. It is not EPA's intent that operators "chase asymptotes" when no real potential endangerment resulting from the well exists. The physical settings which might result in calculated AORs in excess of 2 miles involve highly overpressurized formations. As noted in the proposal, overpressurization can be evidence that the formation is effectively a closed system. Where natural or man-made points of discharge exist, pressure will begin to equilibrate, and the excess pressure will tend to "bleed off". Absent such leaks, the system will retain excess pressure. Moreover, such systems are more likely to be static, resulting in very little or no flow over time. Accordingly, EPA still believes the appropriate AOR is described by the pressure from the well injection, and further believes that in the vast majority of cases, that this area is described by a 2-mile area of review.

Accordingly, the Agency is now specifying in today's rule, a fixed 2-mile minimum area of review. But in recognition that in some circumstances an area of review may be greater than 2 miles, the Director has the discretion to require a larger area of review. One such reason may be the cone of influence, which must still be calculated and provided by the owner or operator to the Director for his determination of whether corrective action would be required for abandoned or improperly completed wells.

E. Corrective Action for Wells in the Area of Review—Section 146.64

The Agency proposed additional corrective action requirements and proposed reorganization and consolidation of the current regulations as §§ 146.64 and 146.70 in Subpart G. In general, as proposed, § 146.64 states the requirements for corrective action and § 146.70 outlines the information required to show compliance with them. The following response concerns comments received for corrective action requirements in § 146.64.

1. Application of the Area of Review

Under existing regulations, the owner or operator must submit a plan concerning the steps taken to address improperly completed or abandoned wells within the area of review, but he is not required to submit a protocol for identifying all wells within the area of review. The Agency proposed to require that an owner or operator submit such a protocol to the Director outlining how he intends to identify all wells within the area of review, and how he intends to determine whether these wells have been adequately completed or plugged. The Director would be required to review the plan, determine whether it is adequate, and either approve it, modify it, or deny the application.

An approximately equal number of commenters supported and opposed this proposed amendment. Several commenters specifically indicated that corrective action should be limited to only the wells within the cone of influence, not the proposed 2½ mile radius area of review. Some commenters also cited the problems, both legal and logistic, associated with wells located on property not owned by the applicant as a reason to limit the scope of corrective action. The Agency will not, however, require corrective action on wells within the area of review if it can be effectively demonstrated that there is no potential to move fluids through a conduit. In response to the first concern, it is EPA's intent to assure that all wells within the area of review are identified and evaluated. EPA would like to note that in some cases, some wells outside of the cone of influence may have to be evaluated in a petition demonstration under part 148; for example, where the formations are naturally overpressured and where there is significant flow.

One commenter also contended that corrective action requirements were not feasible in many cases because the operators could not compel other owners of wells off their property to fix wells. The existing rules allow the applicant an alternative to fixing these off-property wells. If the cone of influence is very large or if the applicant cannot access improperly plugged or abandoned wells outside of his property, he may seek from the Director permission to reduce the area within

which wells must be fixed by reducing pressure and thereby satisfying corrective action requirements. This provision is merely a restatement of existing requirements. As such, the Agency is neither seeking comment, nor anticipating making any changes, such as allowing pressure limitations at the discretion of the operator, as one commenter seeks. EPA believes that the issue of when pressure limits may be used in order to satisfy corrective action should be at the Director's discretion. The Director may choose to limit its use, for example, in a case where the operator has violated pressure limitations in the past. Pressure limitations, however, are not the preferred means of meeting corrective action and EPA will limit its uses to cases where the Director deems it appropriate.

2. Abandoned Well Protocol

The greatest number of comments received concerning corrective action addressed the information and substance required in the protocol for identifying wells in the area of review. Several commenters were of the opinion that the Agency should indicate the necessary steps to establish such a protocol, the information to be contained in a protocol, and the specific requirements concerning the search methods for abandoned wells. Some commenters felt that the specific methods of abandoned well searches should be indicated while at least one commenter argued that, except in unusual cases, it was inappropriate for an applicant to use any methods other than a search of public records provided by local, state, and federal agencies. In any case, one commenter also felt that once wells were identified, the evaluation of wells merely penetrating into the confining zone was unnecessary and such evaluation for corrective action was unwarranted.

In general response to these comments, the Agency believes that a technical guidance may be necessary to further explain protocol requirements. However, the Agency also believes, particularly in cases where public well records are poor or non-existent, that just a cursory search of well records is inadequate where hazardous waste injection is concerned. Furthermore, EPA also believes that the time to evaluate well search methodology is prior to the initiation of the search and not after. The Agency plans to issue a UIC guidance on this protocol in the near future.

Finally, EPA believes that it is necessary to look at all wells penetrating the confining zone in order to determine if a problem could develop by the reduction of thickness of the confining material caused by such penetration. The evaluation of these wells does not compel corrective action unless the integrity of the confining zone is compromised. Therefore the review necessitated by this possibility is exactly what the Agency is requiring in the regulations and the regulations will be promulgated as initially proposed.

F. Construction Requirements—Section 146.65

The amendments for construction requirements reflect the Agency's attempt to achieve an appropriate balance between specific design standards and more general performance standards. Current regulations describe a very broadly structured performance standard and list specific factors that the Director must consider when evaluating the construction of a well. As a result of the Agency's consideration of historical well construction practices within states, the section 701 report to Congress, and the need for a more clearly defined set of standards, the Agency is increasing the specificity of the construction requirements and adding some new requirements.

The changes in construction requirements outlined in § 146.65 include: additional criteria in overall performance standards; more explicit compatibility requirements; and certain requirements for owners and operators injecting through a well equipped with fluid seals. In addition, § 146.65(c)(1), which addresses requirements for new wells, contains a more specific articulation of the performance standards outlined in § 146.65(a)(1).

1. General Construction Concerns

There appeared to be general support for the requirements outlined in § 146.65(a). One commenter indicated support for requiring wells to be constructed to allow the use of appropriate testing devices and workover tools. Another commenter indicated that in § 146.65(a)(3), injection "tube" should be changed to injection tubing. The Agency has made the correction.

One commenter, supported by several others, objected to the requirement that new wells be constructed in a manner that allowed the use of appropriate logging and testing devices. This commenter contended that the best means of preventing a future leak was to assure proper construction of the well in the first place. The commenter went on to suggest that allowing the design and construction to be dictated by testing requirements could be counterproductive.

The Agency rejects this argument. The commenter apparently assumes there are instances when the considerations pertaining to proper construction and those associated with the ability to adequately test the well are mutually exclusive. The Agency is stating that both goals, proper construction and the ability to adequately test the well, are legitimate and complementary aims that must be considered during the construction of a new well.

2. Well Materials and Compatibility Requirements

For the section concerning well compatibility requirements, a number of commenters indicated that a published standard for the materials used in well construction, and their compatibility with the wastes, may not exist. Also, they were of the opinion that a well operator should not be deemed in violation of a permit based on material standards since these standards are usually developed for new materials and generally do not apply once the material is placed in service in a well. The Agency has indicated in this regulation that in cases where an operator chooses to use an exotic well material for which no published or recognized standards exist, comparable standards acceptable to the Director would need to be developed. Therefore, the owner or operator does have this provision as an option to a bonafide American Petroleum Institute (API) or American Society of Testing Methods (ASTM) or other published standard. The Agency is also cognizant that well materials may deteriorate with use and time, but notes that published standards generally specify limits which are acceptable during the service life of the material, not merely upon installation.

3. Casing and Cementing

There were several comments pertaining to the casing and cementing of new wells. One commenter suggested deletion of the requirement that surface casing must extend below the lowest formation containing a USDW. EPA rejects this suggestion. The Agency has determined that having two strings of cemented casing, the surface and long string casing, affords significantly greater protection to USDWs than a single string of cemented casing.

Another commenter sought a specific prescribed depth of penetration by the surface casing into the confining bed below the lowest formation containing a USDW. This is a site-specific issue and should be established in the context of

permitting. One commenter also informed us that in the arctic, the section of the annulus through the permafrost must be filled with a non-freezing fluid to prevent collapse of the long string casing. Circulation of cement to the surface upon setting the casing is therefore precluded in these cases. The Agency acknowledges this problem and notes that § 144.16 allows the Director discretion in approving alternative cementing programs where no USDW exists, as is the case with the commenter's well. Moreover, § 146.65 allows the Director to approve alternatives even where a USDW is present.

The Agency also requested, in the proposed rule, comments pertaining to the 120% of calculated volume of cement required to be circulated to the surface when setting casing. In particular, EPA sought comment on whether more than 120% of the calculated volume should be required. Most of the commenters responding to our request for information replied that the 120% cement volume figure was sufficient, although some believed it to be inadequate, and others excessive. In consideration of this response, the Agency believes that this minimum amount of recirculation is adequate in most cases. However, EPA has incorporated new language in today's rule which would allow the Director to require more, not less, than 120% cement in excess of calculated hole volume if he determines that geologic and construction conditions warrant such an increase.

4. Mechanical Packers and Fluid Seals

The last section of § 146.65 concerns tubing, packer, and fluid seals. The greatest number of commenters in this section sought a change in the proposed language of the requirement that the packer be placed above the injection zone. The Agency agrees that in many cases it is indeed preferable to set the packer either at the top of, or within, an injection zone, and also that some flexibility in the placement of the packer during the life of the well is needed. Therefore, EPA has included new language in this section which will allow the packer to be located as approved by the Director.

A few commenters were of the opinion that the design standard which proposed that testing and monitoring requirements for fluid seals be as stringent as those for wells constructed with tubing and packer was excessive. The Agency disagrees and believes that these requirements are justified in light of the complexity of the application and maintenance of fluid seals in general. The Agency continues to be of the opinion that the simplicity of the mechanical packer is preferable in most cases. However, § 146.65(d)(3) would allow the owner or operator to install a fluid seal provided he demonstrates to the Director that the fluid seal will provide a level of protection equal to or exceeding that which a packer-equipped well would provide. Many commenters supported our allowance of fluid seals, and contended that such seals could provide protection superior to packers.

G. Logging, Sampling, and Testing—Section 146.66

The requirements pertaining to logging, testing, and sampling have been consolidated into § 146.66 in today's rule from existing §§ 146.12(d) and 146.14(b). In addition, the Agency is changing the requirements in several important ways. As indicated in the August 27, 1987, proposed rule, these requirements apply only to new hazardous waste wells.

The first change in the regulations defines the goals of this section. The establishment of baseline data prior to injecting against which future logging and testing can be reassessed is an important new use of data. The Agency believes this to be an important concept: the future utility of many logs is dependent on having base logs against which to compare. Therefore, the operator's ability to demonstrate compliance at some future time may depend on what logs he ran when the well was first constructed. EPA believes that detailed logging prior to injecting can be of benefit to both the regulator and the permittee.

Another change proposed involved the tests required both before the casting is set and after it is in place. The wording in existing § 146.12(d)(2) was unclear in regard to whether all of the tests outlined were mandatory or only one subset was needed. The language in today's § 146.66 clearly indicates that all of the listed tests must be conducted. This regulation also reflects the concern of some members of the regulatory negotiation committee that the technologies used to test wells were rapidly evolving and that by allowing the Director to approve an equivalent alternative, improved tests would not be eliminated from consideration. Thus the language in this regulation allows the Director to approve an alternative or additional test when he deems it appropriate. The Agency is also effectively changing the mechanical integrity requirements in § 146.68(d). Now an initial demonstration of mechanical integrity for new wells must be made as indicated in current § 146.66(a)(3). A more detailed discussion outlining the Agency's rationale for more stringent MIT requirements is found in the section of this preamble which addresses § 146.68, Testing and Monitoring Requirements.

Although pre-existing regulations in § 146.12(a)(15) require the Director to evaluate an operator's coring program prior to the granting of a permit, this provision did not place a burden on the Director to require coring, or on the operator to conduct it. Also, EPA wanted to provide the Director the authority to require coring of formations other than the injection and confining zones. The Agency maintains that the relatively inexpensive task of coring is justifiable in view of the information it provides. Today's rule states the coring requirement more prescriptively and affords the Director the authority to require cores from other formations. The Agency believes, however, that the situations in which the Director would want to require coring of formations other than the injection or confining zones should be relatively rare.

Another change now requires the owner or operator to conduct pump or injectivity tests to identify the hydrogeologic properties of the injection zone through an empirical method. These tests have the advantage of yielding an aggregate figure which represents an entire stratum or several strata. The original regulations required the Director to "consider" the owner or operator's formation testing program, therefore the Agency does not see this restated requirement as a substantive change.

In § 146.66(f), the Agency proposed language which would assure that the Director has the opportunity to witness logging or testing procedures by requiring the permittee to submit a schedule of testing activities at least 30 days prior to conducting the specified tests.

1. Coring

The greatest number of comments pertaining to the § 146.66 requirements concerned coring. Many commenters indicated that coring was prohibitively expensive to the owner or operator. Some were concerned that sidewall or continuous cores could not always be retrieved from certain formations in the well bore. Other commenters indicated that the information sought from cores could be obtained from adjacent well cores if it could be demonstrated that the zones of interest were correlative in each well. The remaining comments on coring challenged the Director's authority for requiring coring from formations other than the injection or

confining zones. As we have already stated, the Agency believes that the information obtained from coring justifies the expense. Also, EPA is not requiring coring in existing wells, only in newly drilled wells. The Agency agrees that continuous core retrieval is not always possible, but sidewall cores are usually recoverable and are acceptable.

As noted in the proposal, if EPA were to limit its ability to collect relevant data, the Agency might be placed in the position of having to turn down an otherwise approvable site simply because adequate data wasn't available. In particular, flexibility in siting requirements is dependent on the extent of data available. Today's rule will contain language which would allow the Director discretion in accepting core information from nearby wells in the few cases where core retrieval was impossible in a newly drilled well.

With regard to requiring cores and other logs from formations other than the injection and confining zone, EPA disagrees with commenters who maintain that it is unnecessary. Section 1422 of The Safe Drinking Water Act is preventative in nature. The UIC regulations are designed to prevent endangerment of USDWs regardless of whether that endangerment results from highly mineralized formation fluids, or from injected wastes. Thus, the Agency can envision circumstances when it will be necessary to obtain data on strata lying between the lowermost USDW and the confining zone to assure that such endangerment is not occurring.

2. Data Collection Requirements

There were numerous comments to the proposed rule pertaining to the requirements for individual logs and other data collection procedures. Several commenters believed that information collection requirements relating to this section of the regulations should not be arbitrarily applied to zones other than the injection and confining zone. As EPA indicated in the earlier proposal and mentioned in the comment response to coring operations, the Agency believes that it is not being arbitrary in requiring certain types of information from other formations penetrated by the well. EPA believes that the statute and regulations require that such information be considered. The regulations now contain a provision which would necessitate information gathering on the formation immediately below the lowermost USDW. For these reasons, EPA believes it necessary to have the authority to require information on the formations found in the wellbore, including logging, coring, testing, and formation fluid sampling, other than the injection and confining zones alone. Therefore, we are promulgating this requirement as proposed.

3. Logging Tool Concerns

One commenter indicated that the language in the proposed regulation concerning deviation checks should be rephrased to indicate that this type of procedure was performed during and not after the drilling of the well. The Agency agrees and an appropriate language changes has been made to eliminate any confusion on this procedure. Several commenters questioned the utility of the Fracture Finder Log and also indicated that the language in the proposed regulation could be interpreted as indicating that this log was to be run after and not before setting a casing string. The Agency believes that a Fracture Finder Log is very useful in determining the presence or absence of fractures in close proximity to the well bore and is an essential part of ensuring that all necessary data regarding fractures in the injection, confining, or other relevant formations has been collected. This log also helps establish strike and dip, which can be invaluable in characterizing stratigraphy. Therefore, the Agency will continue to require this log for all newly constructed wells. However, the Agency has rephrased § 146.66(a)(2)(ii)(B) to clearly indicate that this log should be run prior to setting casing. The language also allows the Director the discretion to waive this log requirement where he determines that other information would suffice, or where the application of this log, such as in unconsolidated sediments, has proven to be ineffective.

Several commenters pointed out that there could be some confusion by owners or operators in the terminology of "density log" as used in § 146.66(a)(2)(i)(B) and § 146.66(a)(2)(ii)(C). The Agency is aware that the required log is not an open-hole formation evaluation density log, but rather a variable density log run in conjunction with a cement bond log or other cement evalution log. The appropriate terminology has been inserted in today's rule.

One commenter indicated that the proposed rule in § 146.66(d) requires only a calculation of the fracture pressure of the injection and confining zones. The commenter maintained that such calculations were subject to uncertainties of 10% or even more. In view of this, they suggested that only a direct measurement should be accepted. The Agency's study pertaining to earthquake hazards and seismicity (Ref. 5) indicates that the most reliable method of making such measurements is by direct methods, such as hydraulic fracturing. However, the Agency believes that in some cases, the Director should have the discretion to accept equivalent methods or calculations, or to rely on existing data. For example, in many cases there exists a substantial body of historical information which will enable fracture pressures to be calculated with great precision. In such instances, EPA believes that the Director should have the discretion to accept such calculations, and is therefore promulgating the rule as proposed.

4. Witnessing of Logging and Testing Procedures

Finally, several comments were received concerning § 146.66(f), which gives the Director the opportunity to witness all required logging and testing. All of these comments stated that the 30-day notification by an operator to the Director prior to the first test or log was too long, and that a 24-hour, or at most a few-day prior notification period was adequate. They indicated that often last minute changes occur which could render the schedule maeaningless. The Agency is simply requiring that the Director be provided with a schedule of planned logging, coring, or testing activities 30 days before these operations take place. Any changes in the anticipated time of logging, testing, or other activity can be communicated to the Director as agreed upon by the concerned parties. The schedule is needed in order for the Director to determine whether these activities need to be witnessed.

H. Operating Requirements—Section 146.67

Proposed § 146.67 outlined operating requirements applicable to hazardous waste well owners/operators. Extensive comments were received on this section.

1. Annulus Pressure Requirements

Many commenters addressed § 146.67(c), which requires, under most circumstances, the maintainance of an annulus pressure that exceeds the operating pressure. This amendment was included to insure that a leak in the tubing would result in annulus fluid moving into the tubing, not in waste moving into the annulus. Some commenters supported this amendment. The majority of commenters on this section felt that Director discretion was necessary in the application of this requirement when the mechanical integrity of the well might be adversely

affected by the pressure differential. Others said that in certain situations, leak detection can be more effectively carried out when injection pressures exceed annulus pressures. One commenter requested that this requirement be waived if no USDWs are within the Area of Review. The Agency believes that the proposed language, "* * * unless such a requirement might harm the integrity of the well * * *" provides Director discretion and adequate permitting flexibility for instances when a positive hydrostatic balance across the injection tubing could lead to loss of mechanical integrity. No examples of superior leak detection in situations where injection pressures exceed annulus pressures were provided by any commenter.

Generally, EPA does not believe that lack of a USDW within the Area of Review is an adequate reason to stay this requirement for wells injecting hazardous waste. However, the existing UIC regulations at § 144.16 do allow the Director the authority to waive certain construction and other permit requirements. The Agency intends that this authority be limited in application for wells injecting hazardous waste, but does recognize that specific circumstances may warrant application of this exemption. The Agency believes that § 146.67(c) contains considerable flexibility and is therefore promulgating it as proposed.

2. Continous Recording and Alarm Requirements

The Agency proposed, in § 146.67(f), to require an operator to continuously monitor the injected fluid. In addition, EPA proposed to require the owner or operator to install either automatic shutoff systems or, in cases where the owner would verify that an operator was on site at all times, automatic alarms. These systems would sound an alarm or shut-in the system whenever pressures or flow rates exceeded a range or gradient specified in the permit.

The Agency received extensive comment on this provision, much of it supporting the requirement, but objecting to the specific parameters outlined in the proposal. Most commenters suggested that the appropriate value to monitor was the injection pressure and/or the annulus pressure. A few commenters were concerned that requiring such devices could result in the facility being shut down by "false alarms". These commenters noted that operating parameters frequently vary within an acceptable range as a result of changes in temperature, density, or other physical changes. These changes, according to the commenters, frequently fall well within permit standards.

The Agency agrees with these comments. Effective automatic shutoff or alarm systems may be designed to react to a combination of several key parameters, including those specified in the proposal. Accordingly, the final rule will afford the Director more discretion in deciding which parameters to include in the permit. With regard to the commenters concerned about "false alarms", EPA notes that the range of values which can be acceptable (i.e. those which would not trigger an alarm or shutoff system) is defined in the permit, and can be designed so that the parameters may vary within specified limits which may be both protective and sufficiently flexible to avoid unnecessary shut-ins.

A few commenters questioned the need to monitor continuously for one or the other of the temperature, flow rate, volume or injection pressure. Others suggested that the list be expanded to include other parameters such as density.

The Agency is seeking to identify information in this section which helps characterize operational characteristics of the well. Changes in any of the parameters outlined could affect the way the well operates or obscure the interpretation of reported values (for example, increases in temperature result in increased annulus pressures). The very flexibility which these commenters sought in the application of this requirement can be allowed only when the Director has access to the parameters outlined.

Requiring additional parameters to be reported is not necessary. The Agency is not seeking to define the physical and chemical properties of the waste in this requirement. That is being required in § 146.68(a)(1).

3. Fault and Fracture Propagation

A few commenters addressed § 146.67(a), which concerns the initiation and propagation of undesired faults and fractures. One wanted this section changed to allow for a "bulb" around the well bore within which horizontal fracturing of the injection zone would be permitted. The Agency believes that the integrity of an injection zone is in part contingent upon the existence of few or no vertical fractures within the injection zone. In the context of well stimulation, both vertical and horizontal fracturing are permissible when they will assist in the creation of additional safe, disposal area within the injection interval, but will not allow fracturing of the confining zone. All other pressure-induced fracturing within the injection zone is impermissible.

Another commenter felt that § 146.67(a) was unspecific in its requirements concerning allowable injection pressure, allowable fracturing during stimulation, and margins of safety. The Agency has promulgated Part 146 as a regulatory framework for both Primacy and Federally implemented states. As such, Part 146 specifies broad minimum standards which define acceptable State programs. The additional precision which the commenter requested can be found in the individual State programs in primacy States, or in Part 147 for Federally-administered programs. Part 146 was never intended to detail to the letter permit requirements. Rather it sets broad parameters within which permits are to be issued. The Agency believes the operating requirements proposed at Part 146.67(a) are appropriate for minimum standards, since there is a great deal of disparity in fracture gradients from State to State and even within a single State.

I. Testing and Monitoring Requirements—Section 146.68

The requirements for testing and monitoring are addressed in § 146.68. The Agency indicated in the August 27, 1987, proposed regulation that this section restates existing requirements more explicitly, changes some substantively, and adds new requirements. This section also adds a requirement for a waste analysis plan, establishes more precise standards for hydrogeologic compatibility determinations, specifies the requirements for the compatibility of well materials and monitoring, revises and strengthens mechanical integrity testing, and establishes more specific ambient monitoring requirements.

1. Waste Analysis Plan

The written waste analysis plan requires a description of how the waste will be analyzed and sampled and how the analysis will assure that the samples will be representative. The approach adopted by the Agency follows § 264.13(b) of the RCRA regulations and the Agency believes this to be a sensible approach. Most hazardous waste injection well operators will have surface units subject to RCRA and will have a plan already developed. One comment received for the waste analysis plan suggested that a guidance was needed for specifying the detailed chemical and physical analysis needed for this requirement. The Agency believes that a guidance is necessary,

and will issue it as soon as possible. Indeed, this guidance is under development in response to similar concerns regarding § 264.13(b). It will be issued as expeditiously as possible.

2. Hydrogeologic Compatibility

The approach to addressing hydrogeologic compatibility requires the operator to submit a plan which identifies anticipated reaction products and demonstrates to the Director's satisfaction that neither the waste nor the reaction products would adversely affect the injection or confining zone. In other words, both the injection and confining zones must continue to satisfy siting requirements in § 146.62. This amendment clarifies and adds some specificity to existing regulations in §§ 146.12 and 146.14, but does not substantially alter them.

Several concerns were indicated regarding hydrogeologic compatibility requirements. One commenter maintained that this requirement was already addressed in the § 148.20 petition process. The petition process, however, does not cover all hazardous waste injection. Moreover, for the foreseeable future, EPA will be implementing the petition process, while in many cases, States are implementing Part 146 requirements. Thus, the data may not be available for States to determine compliance.

Another commenter expressed the opinion that compatibility should only be required for the arresting layers of the injection zone and not the confining zone. The Agency disagrees and believes that in order to meet the siting requirements in § 146.62, an assessment of hydrogeologic compatibility of the confining layer must be made.

One commenter sought a change in the language addressing cases in which the waste stream in an existing well changes. The commenter believed that such a change should require the Director to take into account what the formation is like at the time of the change for the assessment of hydrogeologic compatibility. The Agency believes that this concern is addressed in the existing requirement. The owner or operator must provide information acceptable to the Director that the relevant protection characteristics of the confining and injection zones are not compromised.

3. Compatibility with Well Materials

Section 146.68(c) requires that the owner or operator of the hazardous waste well provide assurance that the materials in the well are compatible with the injected fluid. Corrosion monitoring, generally accomplished by exposing well components or coupons to the waste stream, provide the necessary data for addressing well material compatibility. Several commenters contended that continuous corrosion monitoring was usually unnecessary particularly when a non-corrosive waste stream is injected. Others suggested that such monitoring should be required in all cases, regardless of whether the waste may be corrosive nor not.

The Agency believes that in many cases, the rates of corrosion can be accurately predicted, particularly in wells with a long operating history and with a waste stream of a consistent composition. The Agency has therefore afforded the Director some latitude in requiring monitoring, as indicated in § 146.68(c)(1); the owner or operator needs only to demonstrate to the Director that the waste stream will be compatible with well materials in contact with the wastes. However, the Agency will require continuous corrosion monitoring of the well construction materials used in the well for wells injecting corrosive wastes. The Director is given the discretion to require such monitoring for other wastes, but alternative methods may be approved by the Director.

4. Mechanical Integrity Testing

Current mechanical integrity tests (MITs) require the operator to check for fluid movement behind the casing (including movement of formation fluids through cement channels adjacent to the well bore) and for leaks in the tubing, casing, or packer. These tests are to be run at least once every five years. The frequency of testing was especially controversial when the UIC regulations were initially proposed and promulgated (see 45 *FR* 42500 *et seq.*, June 24, 1980), and for this reason, in part, EPA included § 146.15 which specified that the EPA would review the adequacy of certain requirements, including MIT tests. After analyzing annual and quarterly reports and reviewing the results of the section report, the Agency has concluded that the frequency of certain tests is inadequate and that certain other tests not specified in existing regulations should be added. In several instances, problems developed and evolved within a five-year time period. While these problems were detected by routine monitoring, it suggestes that the MIT testing frequency needs to be increased.

In view of these concerns, EPA is now requiring annual pressure tests and is also requiring the operator to conduct an annual radioactive tracer survey (RTS) for wells injecting hazardous waste. This test is required in many State programs and has been approved by EPA for use in federally-implemented programs. Moreover, RTS tests are effective for locating leaks in the bottom hole cement and they can be utilized for leak detection of a well's tubular goods, and in some instances fluid flow behind casing. In addition, the Agency is now requiring the use of a tool to evaluate the casing prior to operating the well for new wells, and at least once every five years thereafter for all wells. This tool, which uses electromagnetic flux to measure the thickness of the casing, has the advantage of being predictive. It not only indicates the presence of a leak in the well casing, but also shows developing weaknesses. The language affords the Director some discretion in using this tool since it is not effective with some casing materials.

The majority of comments pertaining to this section of the proposed regulations opposed the increase in stringency of mechanical integrity testing. Many commenters were of the opinion that the mechanical integrity testing requirements were excessive even in the current regulations. They objected particularly to the casing evaluation tool, maintaining either that it should not be required in addition to existing MIT requirements or that it should only be run if a well were worked over, but in no case every five years. As previously mentioned, the Agency has determined that the predictive ability of this tool warrants its use, and the propensity for problems to develop in a well within a five year time period justifies the frequency of use, particularly with wells injecting hazardous wastes. Such wastes are often corrosive. Numerous commenters objected strongly to the prospect of pulling the tubing and packer at specific intervals in order to assess mechanical integrity and suggested that such testing be limited to periods of well workovers. They contended that pulling tubing could damage the well. The Agency disagrees. Mechanical integrity tests such as the temperature log and the noise log are currently required to be run every five years by existing regulations. These test are most sensitive when run with the tubing pulled; thus, in most cases, the tubing is being pulled every five years anyway. The casing tool, which is run with the tubing pulled, is to be run every five years as well and should not significantly contribute to the "down time" of a well as some commenters argue. Moreover, a demonstration of mechanical integrity is already required after every workover and the regulations state that the Director may

schedule the required tests to coincide with workovers whenever possible.

Several commenters also questioned the need for annual RTS testing as they also believed it was excessive and that the bottom hole cement never degrades. The Agency believes that an annual RTS test is justified in that it assures the operator that the waste stream is being emplaced in the injection zone and that the bottom hole cement is intact. In addition, use of the RTS does not require tubing to be pulled for assessing bottom hole cement and, in some cases, potential leaks in casing, tubing, or packer. Finally, in response to one comment, the Agency does not believe that visual inspection of pulled tubing is a viable alternative for a pressure test or an accurate assessment of the tubing's mechanical integrity.

5. Ambient Monitoring

The ambient monitoring requirements are specified in § 146.13 and apply to owners and operators of all Class I wells, not just those who inject hazardous waste (see Section (IV) of today's preamble). Section 146.68(e) restates these requirements as applicable to Class I hazardous waste wells in order to facilitate easy reference for the regulated community. The Agency has been investigating methods of ambient monitoring which might be useful and will continue to do so. With one exception, there appears to be no single technique which could provide meaningful data at all sites. The question of what might prove effective at a given site depends on the hydrogeologic setting and the characteristics of the operation.

Many commenters urged the deletion of the one technique that the Agency believes has the broadest application; the monitoring of the pressure decay or pressure fall-off testing of the injection zone when the well is not injecting and assessing whether the pressure decay curve tracks predictions. Commenters believed that this was not always effective, and could be inaccurate. Predicted pressure decay curves are made for siting and area of review calculations and are based on hydrogeologic data and operating parameters such as injection pressure, fluid density, and volume injected. If the geology has been accurately portrayed, then the pressure decay should generally match predictions. If an unexpected fault or fracture is transmitting fluid it will decline at a faster rate, or conversely, if a boundary condition is present then the decay curve will be slower than anticipated. The Agency agrees that no ambient monitoring system is foolproof, and agrees that false readings could occur. Nevertheless, EPA has determined this to be the most universally applicable monitoring method and has evidence showing it to be accurate in most instances. Therefore, EPA is requiring pressure decay monitoring of the injection zone annually.

There were several commenters who requested a language change in this section that would allow the Director more discretion to conduct ambient monitoring. Other commenters sought to require monitoring in the injection zone, the first aquifer above the injection zone, and the lowermost USDW. Still other commenters indicated that ambient monitoring should be strictly a site-specific requirement. The Agency agrees that ambient monitoring requirements should be site-specific and has indicated this in the proposed rule (see 52 *FR* 32463 and 32464) and today's final rule, and gives the Director discretion in determining an acceptable program.

6. Seismic Monitoring

As noted in Section (III)(C)(2) of this preamble, the Agency believes that seismicity monitoring may be necessary under certain circumstances. A 1987 USGS report indicated several key factors in determining when an injection site might be the cause of increased seismic activity: (1) a large difference between the maximum and minimum compressive stress of an area, (2) the preexistence of faults or fractures of sufficient size and orientation to facilitate induced seismic activity, (3) relatively high injection pressures, (4) clusters of wells within a relatively small area, and (5) an injection zone of low permeability. As noted in the USGS report, such conditions and the resulting earthquakes are rare, and are associated almost exclusively with water-flooding operations for the purpose of secondary recovery of oil, a Class II injection activity. Such Class II activity is often characterized by large arrays of wells injecting at high pressures into small, confined reservoirs with low permeabilities. In contrast, waste disposal wells typically inject at lower pressures into large, porous aquifers of high permeability. Only one waste well has ever been conclusively linked with seismic activity of any significant amount.

EPA believes that the potential for Class I hazardous waste injection to induce tectonic activity is minimized by a number of requirements being promulgated today. Section 146.62(b)(1) prohibits the siting of a Class I well unless the director has considered regional seismicity in his evaluation of the geologic suitability of the proposed site. Section 146.62(c)(2)(i) requires a confining zone that is laterally continuous and free of transecting faults or fractures, a requirement which improves the confining zone's ability to prevent increased seismic activity.

The Agency can foresee, however, limited circumstances where local seismic monitoring may be necessary. Seismic stations are neither expensive nor burdensome in the time required for their installation and operation. Today's final rule at § 146.68(f) will provide the Director the authority to require seismic monitoring on a case-by-case basis. The results of any monitoring required under this section will be reported under § 146.69(a)(7).

J. Reporting Requirements—Section 146.69

Section 146.69 of the proposal detailed the minimum reporting requirements for owners and operators of Class I hazardous waste injection wells. A variety of comments were submitted concerning this section.

1. Injectivity Index

The Agency received several comments on § 146.69(a)(2), which required the owner or operator to report changes in the ratio between injection pressure and flow rate. In the proposal, the Agency tied this reporting requirement to the gradients established in § 146.67(f) which are used to trigger automatic alarms or shutoff devices.

As several commenters correctly pointed out, the ratio between injection pressure and flow rate—commonly termed the injectivity index—is best used to evaluate the long term performance of the injection formation. Thus, tying the requirement to the provisions in § 146.67(f) makes little sense, and the Agency is changing this requirement in the final rule to reflect the more appropriate application of this requirement.

Some commenters suggested that there was no legitimate need to require operators to report information on injectivity indexes. They contended that the primary purpose was to tell the operator when it may be necessary to stimulate the formation or conduct other routine maintenance. If the only result of such observations were to note an orderly increase in pressure while flow remained relatively stable, this commenter would be correct. The obvious conclusion to be made from this observation would be that the formation or well screen was becoming clogged—an operational inconvenience, but in most instances not an environmental

concern. However, other outcomes may be observed. For example, a decrease in pressure with flow remaining constant or increasing, could indicate that the formation is fracturing or that a point of discharge has been reached. Similarly, an increase in flow while pressure remained constant could provide evidence that there were problems with the formation or the geologic description. Accordingly, the Agency rejects the contention that reporting the injectivity index has no legitimate regulatory purpose, and retains the requirement with the change outlined above.

2. Shutdown Requirements

Section 146.69(a)(3), the new alarm, shutdown, and resulting response requirements, received many comments. Of particular concern to some was discrepancy between this section and § 146.67. In the preamble of the proposal, EPA addressed false alarms or shutdowns, stating that, "The Agency is not interested in receiving a report any time such an event occurs; nor would it want the operator to shut in the well under these circumstances." This position, while reflected in § 146.67, was not clearly stated in the reporting requirements at § 146.69(a)(3). The Agency believes that there is no immediate need to report false alarms or shutdowns. Such requirements place unnecessary burden on both operator and regulator. Today's final rule at § 146.69(a)(3) requires immediate Director notification only if a loss of mechanical integrity is expected. Other routine occurrences would be reported with quarterly reports.

3. Annular Fluid Loss or Gain

Two commenters believed that § 146.69(a)(5) should require the reporting of not only annular fluid lost, if any, but also annular fluid gained, if any. They noted that this would serve a dual purpose: 1) the indication of leaks in the well tubing; and 2) the indication of situations where, contrary to the new § 146.67(c) requirements, injection pressure exceeds annular pressure. The Agency believes that this comment has validity, and today's promulgation of § 146.69(a)(5) reflects this new requirement.

K. Information to be Evaluated by the Director—Section 146.70

Section 146.70 sets forth the information which must be evaluated by the Director in authorizing Class I hazardous waste wells. This section essentially restates the information required in § 146.14 of the existing regulations. As such, the Agency believes it is under no obligation to address comments which are targeted at the already promulgated standards of § 146.14 and simply recodified at § 146.70 for the benefit of the injection community. Substantive comments relevant to proposed additions or changes, however, are addressed below.

One commenter requested that the location of any penetrations of the additional confining zone required by § 146.62(d)(1) be submitted to the Director as a § 146.70 requirement. Another commenter believed that the time at which closure/post-closure plans are to be submitted should be included in § 146.70. The requirement for information in § 146.70 on wells which penetrate the confining or injection zone was duplicative, according to one commenter. One group believed that this section omitted the regional seismicity information required in § 146.62. Prior to the issuance of a permit, one commenter believed that the chemical and physical characteristics of the fluid to be injected should be evaluated by the Director. Finally, one commenter believed that the requirement for a program to reduce the volume or quantity and toxicity of the waste produced at a facility should be approved by the Director.

1. Confining Zone Penetrations

One commenter requested that the added second confining stratum provided by § 146.62(d)(1) be deleted, stating that "it will create far more problems than it is intended to solve . . .". This same commenter went on to suggest that EPA request the location of any penetrations of this stratum as well as an evaluation of the potential for further migration through this stratum. The Agency notes that the location of these wells will be required under § 146.70(a)(2). However, EPA believes that this stratum, while adding an additional measure of protection to an injection site, does not need to be part of the corrective action plan.

One commenter requested the inclusion, in § 146.70, of deadlines for the submission of post-closure plans. These plans are required as part of the permitting process. As the commenter noted, these plans must be submitted with the initial permit application. The Agency sees no need to further regulate this action, as similar plans for plugging and abandonment have been handled in a timely manner to this point.

Another commenter wanted to delete the phrase "injection zone" from §§ 146.70 (a)(3), (a)(4), and (a)(15) as well as other areas. He indicated that "The proposed regulations request information on wells which 'penetrate the injection zone or the confining zone' * * * All wells which penetrate the confining zone is sufficient. If a well penetrates the injection zone it will have penetrated the confining zone." In requiring the owner or operator to consider penetrations of the confining zone, the EPA was seeking to address partial penetrations of that zone, not to reopen the existing requirements relative to injection zones.

Therefore, today's promulgation remains unchanged from the proposal, in this regard.

2. Regional Seismicity

One group noted that the regional seismicity siting requirement of § 146.62(b)(1) was not included in § 146.70 as information to be evaluated by the Director. Pursuant to § 146.70(a)(2), the applicant must show the location of known or suspected faults. Section 146.70(a)(6) requires an analysis of the regional geologic structure, and § 146.70(a)(9) requires a formation testing program. Together, these information requirements provide the data which allows the owner or operator and the Director to assure that the requirements of §146.62(b)(1) have been met. The issue of seismicity monitoring is addressed in section (III)(I)(6) of the preamble.

3. Waste Stream Analysis

One commenter believed that the Director should evaluate chemical and physical characteristics of the fluid to be injected before issuing a permit. The Agency believes that the waste stream analysis required by § 146.68(a), combined with the compatibility requirements of §§ 146.68 (b) and (c), and § 146.70(b)(6) adequately address this issue. The same commenter requested that specific gravity be included as one of the waste stream analysis requirements. Specific gravity analysis is an implicit requirement of §146.68(a) and does not need to be codified at § 146.70.

One commenter felt that the Director should approve the § 146.70(d)(1) certification that the generator of hazardous wastes (at a site which disposes of its own hazardous waste) is implementing a waste minimization program that is protective of human health and the environment. The Agency notes that the regulatory language tracks the statutory language in § 3005(h), which merely requires a certification. Accordingly, the Agency believes that the proposed language is most consistent with the legislative mandate and today promulgates the language as proposed.

L. Closure—Section 146.71

The Agency reorganized and consolidated existing requirements for closure in the proposed rule. To the extent that these represent a restatement of existing requirements, the Agency is neither seeking comment nor making any changes. However, EPA has addressed concerns regarding any new requirements proposed.

Three new requirements for closure include: (1) Requiring the owner or operator to observe and record pressure decay for a time specified by the Director, (2) requiring the demonstration of mechanical integrity prior to plugging, and (3) clarifying that both the owner or operator as well as a third party, if different, must certify that the facility was closed in accordance with the closure plan.

1. Pressure Decay Data

Most of the commenters objected to the proposed provision requiring the owner or operator to observe and record pressure decay over a time period specified by the Director. While there was some support for this part of the closure plan, several commenters indicated that it was either not essential or should not be an automatic requirement.

The Agency believes that pressure decay data helps define the appropriate period of regulatory concern. Specifically, when injection induced pressures in the formation decay, there is usually no force which will lift the fluid to overlaying strata, and thus there is no environmental threat. In overpressurized formations, this lifting force may remain but observation of plugged wells over a thirty year time period provides sufficient assurance that the wells are plugged in a satisfactory manner, and will continue to provide containment for the long term. Accordingly, this requirement will remain as proposed.

2. Cementing and MIT Requirements

Several commenters were of the opinion that tests to ensure mechanical integrity of the long string casing and cement left in the ground before plugging was not necessary and should not be an automatic requirement.

The Agency disagrees and further notes that the EPA presently requires this demonstration of mechanical integrity in permits in all federally-administered programs. Obviously, a well with casing leaks should not be plugged as it can eventually become a source of contamination during the post-closure period.

One commenter noted that just the placement of cement plugs in casing prior to closure will not prevent fluid movement into USDWs. EPA agrees, and it is for precisely this reason that EPA requires MIT tests prior to plugging. Moveover, the rule specifies that the plugging must be done in a manner that will not allow movement of fluids into or between USDWs, and requires certain actions such as perforating the casing where leaks may develop, or placing cement behind casing prior to setting a plug. The actions are designed to assure that the performance standards are met.

3. Authority to Temporarily Cease Injection

One commenter expressed the concern that the Agency's rewarding of the current § 144.28 language created some uncertainty as to when an operator must seek authorization to temporarily cease injection.

It is the intent of this rule that the owner or operator notify the Director immediately upon deciding to temporarily cease injection. The Agency did not intend, however, to require an owner or operator to report well shut-ins associated with routine maintenance or testing activities. Rather, the notification should be initiated by the decision to take the well out of service. In the proposed rule, the Agency intended that the owner or operator seek the permission of the Director in writing, outlining the technical steps being taken to assure continued non-endangerment of USDWs.

4. "Closure"

Another commenter questioned the use of "plugging and abandonment" in the proposed regulations whereas RCRA uses "closure" in referring to this procedure.

"Plugging and abandonment" has been a term used in injection well closure for years. It refers specifically to the closure of a well. The term "closure", which is used in RCRA, pertains to the technical procedures appropriate to shutting-in a surface impoundment, landfill, or other surface land disposal, treatment, or generator facility. In using "plugging and abandonment" versus "closure" there is no difference in the protectiveness of the standard being applied, there is merely a difference in the types of units that the term refers to.

One commenter has suggested that the time requirement for closure report submission is unreasonable as the submission of the report may be required in as little as 15 days if a quarterly report is also due.

The Agency promulgated this requirement on May 11, 1984. It was proposed on September 2, 1983 (see 49 FR 20185 and 48 FR 40098 *et seq.* respectively). This rule was litigated and a settlement was reached. The Agency was not intending to seek comment, nor was it reproposing the requirement; it was merely recodifying the requirement. Accordingly, EPA sees no reason to amend a requirement which has been in effect for nearly 5 years, and which apparently has caused no great hardship to the regulated community.

Finally, some commenters maintained that existing closure requirements were adequate and that these proposed requirements were excessive. The Agency would like to note that, in general, today's rule merely restates what has been existing practice, either as part of permitting (as in the case of required mechanical integrity tests) or as part of earlier rulemaking. In the few instances where the Agency has specified additional or more specific requirements, it has done so primarily to make the closure requirements for wells injecting hazardous waste comparable to closure requirements for other facilities managing hazardous waste.

Several commenters requested clarification on how closure and post closure requirements would be applied. This is outlined in the section which follows.

M. Post-Closure Care and Financial Responsibility for Post-Closure Care—Sections 146.72 and 146.73

The Agency is now applying post-closure care requirements and associated financial responsibility requirements to hazardous waste injection wells. The Agency believes that even though a properly chosen site should contain the waste indefinitely under natural conditions, future injection activities, oil and gas drilling activities, and other man-induced forces that may affect containment must be taken into account. The Agency believes that the special problems associated with hazardous waste warrant these new requirements.

1. Post-closure Care

Comments received by the Agency pertaining to post-closure care were generally supportive of the new requirements. However, several concerns were voiced by commenters on various issues.

The regulations, as proposed, stipulated the appropriate time-frames for groundwater monitoring, retention of well records, and notification to State and local agencies having authority over

drilling activities. The rule would also require the owner of the surface or subsurface property on or in which a hazardous waste well is located to record certain information on the deed or other property instrument that would, in perpetuity, provide notice to any subsequent purchaser of the property.

A few commenters were unclear as to when the post-closure period ends. As indicated in the proposal, the duration of the post-closure care period is defined by the length of time the increased pressure from the injection well would create the potential to "lift" fluids from the injection zone. As the injection pressure decreases to a point where the induced lift from the well is dissipated, post-closure requirements would become unnecessary.

In response to concerns about the clarity of the rule, the Agency is changing the manner in which it applies both closure and post-closure care requirements. As promulgated today, the owner or operator would have to submit a plan for the Director's approval which outlined the closure and post-closure care procedures. The requirements of this plan would survive permit termination. Any changes which might be required in the plan could be made using the procedures of § 124.5.

One commenter suggested that the notation on the deed required by § 146.72(c) pertain to any property located over the projected position of the waste plume. The Agency does not believe it is necessary, or legally possible to impose such a requirement. It is generally unnecessary because waste in deep formations moves at exceedingly slow rates; thus in many cases it is unlikely that the waste plume will move appreciably over very long time frames. Moreover, area of review and corrective action requirements will have addressed any concern associated with abandoned wells. As noted, these requirements are based on the pressure front from the well, which exceeds the plume by a considerable distance. Thus, there is built-in protection for plume travel in these requirements.

More importantly, the Agency derives its authority by imposing permit requirements on the regulated entity. No such vehicle exists for surrounding landowners. Therefore, the Agency sees neither the technical necessity nor the legal authority for such a request. Accordingly, EPA will retain the requirement as proposed.

Several commenters noted that required groundwater monitoring should only be conducted until pressure in the injection zone decays to the point that there is no longer any risk of vertical migration into USDWs. The Agency agrees and although preamble language in the proposed rule indicated that such monitoring must be conducted until pressure in the injection zone reaches background levels, language in § 146.72 stipulates that groundwater monitoring must take place until pressure in the injection zone decays to the point that the well's cone of influence no longer intersects the base of the lowermost USDW. The Director may extend the period of post-closure monitoring if he determines that the well may still endanger a USDW.

One commenter believed that groundwater monitoring should be limited only to the lowermost USDW. As noted in the discussion of § 146.68 in this preamble, the Agency has determined that monitoring requirements must be applied in a flexible manner to address site specific concerns. Therefore, EPA continues to believe that the specific monitoring required by the permit is still essential and will continue to be applied if the pressure from the injection poses a threat to a USDW.

Another commenter indicated that the permittee, not the Director, should estimate the proposed cost of the post-closure plan. The Agency clearly stated in the proposal that the permittee is required to provide this cost estimate, and further believes that he is in the best position to accurately do so. The Director, in reviewing the estimate, will have the opportunity to reject it if he deems it unrealistic.

One commenter explained that the original formation pressure may not have been obtained for many existing wells and that it is not possible to meet the § 146.72(a)(3) requirement in these cases. The Agency agrees, but notes that regulations contain enough flexibility to allow existing wells which have not conducted tests verifying background pressures prior to injection to use reasonable estimates based on available data acceptable to the Director.

2. Financial Responsibility

The Agency proposed that the owner or operator should demonstrate and maintain financial responsibility for post-closure care. Only a few comments were received pertaining to this requirement.

Two commenters believed that financial responsibility should be limited only to the time period when induced pressures in the injection zone remain sufficiently elevated to pose a risk of vertical migration into USDWs, and not until injection zone pressures decay to background levels. Another commenter also felt that the financial responsibility for post-closure groundwater monitoring should be required only if the permit requires such monitoring.

The Agency agrees with these commenters and articulated this position in the proposed rule. Therefore, EPA is not revising this requirement and will retain it as proposed.

One commenter believed that permittees should be responsible for third party liability costs and that they should demonstrate up-front financial responsibility for cleanup in the event that the waste does contaminate a USDW. The Agency does not believe that in the context of injection wells, such requirements are warranted or justified. Generally, once the formation has stabilized, there is little or no possibility that waste will move vertically.

Finally, one commenter recommended that the Agency use the RCRA post-closure financial responsibility instruments.

The rule proposed to use the requirements of subpart F of Part 144. A careful analysis of this subpart will show that these requirements mirror exactly the requirements outlined in sections 265 and 264 of the RCRA regulations.

IV. Summary of Today's Rulemaking: Response to Comments; Section 146.13, Ambient Monitoring for all Class I Wells

As proposed, § 146.13 addressed the requirements for owners or operators of *all* Class I wells to develop an ambient monitoring program. This part of the rule would also satisfy the mandate of section 1426 of the Safe Drinking Water Act. These requirements differ from other requirements made today in that they are not restricted solely to Class I hazardous waste wells, but rather they are applicable to all Class I wells.

At a minimum the proposed rules required a monitoring of the pressure buildup in the injection zone. This would require an annual shut down of the well for a period of time sufficient to conduct a valid observation of the pressure fall-off curve.

At the Director's discretion, it was proposed that one or more of the following site-specific monitoring techniques may also be required in order to prevent the contamination of USDWs:

1. Continuous monitoring for pressure changes in the first aquifer overlying the confining zone;

2. The use of indirect, geophysical techniques to determine pertinent characteristics of the formation and injected fluids;

3. Periodic monitoring of the ground water quality in the lowermost USDW; or

4. Any other technique which the Director deems necessary to protect USDWs.

Further details concerning ambient monitoring and the response to several comments can be found in the preamble language in Testing and Monitoring, § 146.68(e) of today's rule.

As many commenters indicated, the question of what might prove effective at a given site depends on the hydrogeologic setting and the characteristics of the operation. Many commenters urged the deletion of the one technique that the Agency believes has the best application; the monitoring of a pressure decay or pressure fall-off testing of the injection zone when the well is not injecting, and assessing whether the decay curve tracks predictions. Commenters believed that this was not always effective, was too costly, and could be inaccurate. Although some of these concerns may be valid, EPA has determined that this is the most universally applicable monitoring technique and has evidence showing it to be accurate in most cases. Therefore, the Agency will require pressure decay monitoring of the injection zone annually.

Some commenters were of the opinion that ambient monitoring was too costly and should be optional. The Agency does not believe that this type of monitoring is particularly expensive when compared to the information received. Still other commenters believed that certain site-specific monitoring techniques that may also be required by the Director were either inappropriate or flawed in preventing the contamination of USDWs. In response, the Agency agrees that ambient monitoring requirements should be site-specific and has indicated this in the proposal and today's rule, and has therefore given the Director discretion in determining an acceptable ambient monitoring program.

V. Summary of Today's Rulemaking: Response to Comments; Amendments to Parts 124 and 144

A. Part 124

The Agency proposed to amend Part 124 to require that State and local agencies which regulate oil and gas activities, and state agencies that regulate mineral exploration be notified, by operators, of permit activities for all Class I wells. This practice could help agencies coordinate their programs and apply specific requirements when appropriate. One commenter supported this idea, but felt it should work both ways, i.e., that State and local agencies regulating oil, gas, or mineral exploration and recovery should give notice of their permit activities to the agency regulating Class I facilities. The EPA believes that such coordination would be beneficial to all involved parties, but also realizes that its authority to require such notification from State regulatory bodies is questionable. The EPA intends to take all necessary measures to insure that federal, State, and local regulatory bodies are notified of all federally implemented injection activities.

Two commenters believed that the new requirement to notify agencies of permit activities was burdensome. The Agency believes that such a requirement is not unreasonable in the context of other § 124.10 notification requirements. On the contrary, EPA believes that such notification is appropriate, given the special concerns associated with hazardous waste injection.

B. Part 144

The proposal contained two amendments to Part 144. Section 144.31(h) was proposed to assure that plugging and abandonment, closure, and post-closure requirements are met. As outlined in Section (III)(M)(1) of this preamble, the Agency is changing the approach. Under the new approach, the plan will be submitted as part of a permit application or modification, but will survive the permit as a directly enforceable requirement until the end of the post closure period.

The Agency is also amending § 144.52(a) ("Establishing Permit Requirements") to ensure that all Subpart G requirements can be administered through a permit, consistent with the framework established for the UIC program.

Amendments to §§ 144.39 (a) and (b) would broaden the reasons for which permits may be modified or revoked and reissued. Specifically, this section would require permit modification either when regulations change, or when the waste is changed or reclassified. The intent of this change is to give the Director the discretion to revise or reissue a permit when the waste becomes or is determined to be hazardous as defined in Part 261.

Many commenters objected to the removal of the "shield" provision. This provision currently prevents the modification, revocation, or reissuance of a permit to require compliance with new regulations unless the permittee requests or agrees to such action. They argue that the Part 146 requirements have, to this point, proved protective of human health and the environment. The HSWA Amendments impose new, higher levels of concern on hazardous waste facilities. Recently proposed rules to amend the regulations governing the disposal of hazardous waste in surface facilities would broaden the Director's authority to revise permits when conditions warrant such revisions, and the Agency believes that rules applicable to injection of hazardous wastes should mirror this new approach.

A number of commenters believed that Part 144 should contain a section that would grant interim permit status to wells with approved petitions. It is their opinion that such approved petitions are similar in kind to a valid permit, and that administrative procedures associated with the repermitting process may delay the continued operation or startup of their facilities.

In response, EPA would like to note that an approved permit and an approved petition are similar in certain aspects, but they do not address identical concerns. The Part 148 petition process does not contain provisions pertaining to the movement of formation fluids. The SDWA, however, requires the Agency to regulate endangerment of USDWs, regardless of whether that endangerment were to occur from injected wastes or formation fluids. The movement of formation fluids is regulated through an approved permit.

Review and approval of both a permit and a petition are required to insure protection of human health and the environment, and non-endangerment of USDWs. It should be noted that the Agency will attempt to run concurrent petition and permit review processes whenever possible.

One commenter addressed § 144.36 and the duration of permits. No change was proposed to this section, and consequently we are not addressing it.

VI. Regulatory Requirements

A. Regulatory Impact Analysis

Executive Order 12291 requires EPA to assess the effect of contemplated Agency actions during the development of regulations. Such an assessment consists of a quantification of the potential benefits and costs of the rule, as well as a description of any benefical or adverse effects that cannot be quantified in monetary terms. In addition, Executive Order 12291 requires that regulatory agencies prepare an analysis of the regulatory impact of major rules. Major rules are defined as those likely to result in:

1. An annual cost to the economy of $100 million or more; or

2. A major increase in costs or prices for consumers or individual industries; or

3. Significant adverse effects on competition, employment, investment, innovation or international trade.

At the request of the Office of Management and Budget, the Agency has reexamined this final rule in light of the changes made since the proposal, and their effect on its status as a minor rule. This economic analysis indicates that the changes made will have no appreciable effect on the compliance costs estimated for the rule proposed on August 27, 1987. Total annualized compliance costs of the regulation are estimated to total $63 million. Total capital costs are estimated to total $15 million and one-time petition costs are estimated to be $3 million. These costs indicate that the rule does not constitute a major rule under Executive Order 12291 and EPA has not prepared a formal regulatory impact analysis of today's promulgation. The Agency has, however, prepared an assessment of the cost and potential economic effects of the rule.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Analysis Act, 5 U.S.C. 601 *et seq.*, whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have significant economic effect on a substantial number of small entities.

Owners and operators of hazardous waste injection wells are generally major chemical, petrochemical and other manufacturing companies. The Agency is not aware of any small entities that would be directly affected by this rule. Part 148.1(c)(3) of this rule exempts any small quantity generator, as defined in § 261.5, from the underground injection prohibitions outlined in this rule. The Administrator certifies that this rule will not have significant economic effects on a substantial number of small businesses. As a result of this finding EPA has not prepared a formal Regulatory Flexibility Analysis.

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The Agency has amended the Information Collection Request document to address concerns raised by OMB. A copy of this document (ICR No. 0370) may be obtained from Eric Strassler, Information Policy Branch; EPA; 401 M St., SW. (PM–223); Washington, DC 20460 or by calling (202) 382–2738.

D. Administrative Procedures Act

As a petition may grant a variance from a prohibition, EPA may make Part 148 immediately effective pursuant to the Administrative Procedures Act (see 5 U.S.C. 553(d)(1)). The Agency is choosing to do so as the statutory deadline establishing prohibitions is effective August 8, 1988. Except to the extent incorporated in Part 148, the amendments to Parts 124, 144 and 146 become effective 30 days after publication in the **Federal Register.**

VII. References

A. Reference List for Part 148

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18. Report on the review of proposed environmental standards for the management and disposal of spent nuclear fuel, high level and transuranic radioactive wastes (40 CFR 191), High-Level Radioactive Waste Subcommittee, Science Advisory Board, U.S. EPA January 1984.

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B. Reference List for Part 146

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3. Class I Hazardous Waste Injection Wells Evaluation of Non-Compliance Incidents, 1986, Engineering Enterprises, Inc. report prepared for U.S. EPA, Office of Drinking Water, UIC Contract No. 68–01–7011, 295 pages.
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List of Subjects

40 CFR Part 124

Administrative practice and procedure, Hazardous materials, Waste treatment and disposal, Water pollution control, Water supply.

40 CFR Part 144

Administrative practice and procedure, Hazardous materials, Reporting and recordkeeping requirements, Confidential business information, Waste treatment and disposal, Water supply.

40 CFR Part 146

Administrative practice and procedure, Hazardous materials, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply.

40 CFR Part 148

Administrative practice and procedures, Confidential business information, Hazardous materials, Intergovernmental relations, Waste treatment and disposal, Water pollution control, Water supply.

Date: July 15, 1988.

Lee M. Thomas,

Administrator.

Therefore Chapter I of Title 40 is amended as follows:

PART 124—PROCEDURES FOR DECISION MAKING

1. The authority citation for Part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; and Clean Air Act, 42 U.S.C. 1857 *et seq.*

2. Section 124.10 is amended by redesignating paragraphs (c)(1)(viii) and (IX) as paragraphs (c)(1)(ix) and (x) and adding a new paragraph (c)(1)(viii) to read as follows:

§ 124.10 Public notice of permit actions and public comment period.

* * * * *

(c) * * *

(1) * * *

(viii) For Class I injection well UIC permits only, state and local oil and gas regulatory agencies and state agencies regulating mineral exploration and recovery;

* * * * *

PART 144—UNDERGROUND INJECTION CONTROL PROGRAM

1. The authority citation for Part 144 is revised to read as follows:

Authority: Pub. L. 93–523, as amended by Pub. L. 95–190, Pub. L. 96–63, and Pub. L. 96–502, 42 U.S.C. 300f *et seq.* and 6901 *et seq.*

2. Section 144.1 is amended by adding new paragraph (f)(1)(vi) to read as follows:

§ 144.1 Purpose and scope of Part 144.

* * * * *

(f) * * *

(1) * * *

(vi) Subpart F sets forth the financial responsibility requirements for owners and operators of all existing and new Class I hazardous waste injection wells.

* * * * *

3. Section 144.39 is amended by revising the introductory texts of paragraphs (a) and (a)(3), and by adding a new paragraph (b)(3) to read as follows:

§ 144.39 Modification or revocation and reissuance of permits.

* * * * *

(a) *Causes for modification.* The following are causes for modification. For Class I hazardous waste injection wells, Class II, or Class III wells the following may be causes for revocation and reissuance as well as modification; and for all other wells the following may be cause for revocation or reissuance as well as modification when the permittee requests or agrees.

* * * * *

(3) *New regulations.* The standards or regulations on which the permit was based have been changed by promulgation of new or amended standards or regulations or by judicial decision after the permit was issued. Permits other than for Class I hazardous waste injection wells, Class II, or Class III wells may be modified during their terms for this cause only as follows:

* * * * *

(b) * * *

(3) A determination that the waste being injected is a hazardous waste as defined in § 261.3 either because the definition has been revised, or because a previous determination has been changed.

* * * * *

4. Section 144.51 is amended by revising paragraph (j)(2)(ii) to read as follows:

§ 144.51 Conditions applicable to all permits.

* * * * *

(j) * * *

(2) * * *

(ii) The nature and composition of all injected fluids until three years after the completion of any plugging and abandonment procedures specified under § 144.52(a)(6), or under Part 146 Subpart G as appropriate. The Director may require the owner or operator to deliver the records to the Director at the conclusion of the retention period. For EPA administered programs, the owner or operator shall continue to retain the records after the three year retention period unless he delivers the records to the Regional Administrator or obtains written approval from the Regional Administrator to discard the records.

* * * * *

5. Section 144.52 is amended by revising paragraph (a) introductory text, to read as follows:

§ 144.52 Establishing permit conditions.

(a) In addition to conditions required in § 144.51, the Director shall establish conditions, as required on a case-by-case basis under § 144.36 (duration of permits), § 144.53(a) (schedules of compliance), §144.54 (monitoring), and for EPA permits only § 144.53(b) (alternate schedules of compliance), and § 144.4 (considerations under Federal law). Permits for owners or operators of hazardous waste injection wells shall

include conditions meeting the requirements of § 144.14 (requirements for wells injecting hazardous waste), §§ 144.52(a)(7) and (a)(9), and subpart G of Part 146. Permits for other wells shall contain the following requirements, when applicable.

* * * * *

PART 146—UNDERGROUND INJECTION CONTROL PROGRAM: CRITERIA AND STANDARDS

1. The authority citation for Part 146 is revised to read as follows:

Authority: Pub. L. 93–523, as amended by Pub. L. 95–190, Pub. L. 96–63, and Pub. L. 96–502, 42 U.S.C. 300 f *et seq.*, as amended—Subpart G also issued under 52 U.S.C. 6901 *et seq.*, as amended.

2. Section 146.11 is revised to read as follows:

§ 146.11 Criteria and standards applicable to Class I nonhazardous wells.

This subpart establishes criteria and standards for underground injection control programs to regulate Class I nonhazardous wells.

3. Section 146.13 is amended by adding a new paragraph (d) to read as follows:

§ 146.13 Operating monitoring and reporting requirements.

* * * * *

(d) *Ambient monitoring.* (1) Based on a site-specific assessment of the potential for fluid movement from the well or injection zone and on the potential value of monitoring wells to detect such movement, the Director shall require the owner or operator to develop a monitoring program. At a minimum, the Director shall require monitoring of the pressure buildup in the injection zone annually, including at a minimum, a shut down of the well for a time sufficient to conduct a valid observation of the pressure fall-off curve.

(2) When prescribing a monitoring system the Director may also require:

(i) Continuous monitoring for pressure changes in the first aquifer overlying the confining zone. When such a well is installed, the owner or operator shall, on a quarterly basis, sample the aquifer and analyze for constituents specified by the Director;

(ii) The use of indirect, geophysical techniques to determine the position of the waste front, the water quality in a formation designated by the Director, or to provide other site specific data;

(iii) Periodic monitoring of the ground water quality in the first aquifer overlying the injection zone;

(iv) Periodic monitoring of the ground water quality in the lowermost USDW; and

(v) Any additional monitoring necessary to determine whether fluids are moving into or between USDWs.

3. A new Subpart G is added to read as follows:

Subpart G—Criteria and Standards Applicable to Class I Hazardous Waste Injection Wells

Sec.

146.61 Applicability.
146.62 Minimum criteria for siting.
146.63 Area of review.
146.64 Corrective action for wells in the area of review.
146.65 Construction requirements.
146.66 Logging, sampling, and testing prior to new well operation.
146.67 Operating requirements.
146.68 Testing and monitoring requirements.
146.69 Reporting requirements.
146.70 Information to be evaluated by the Director.
146.71 Closure.
146.72 Post-closure care.
146.73 Financial responsibility for post-closure care.

Subpart G—Criteria and Standards Applicable to Class I Hazardous Waste Injection Wells

§ 146.61 Applicability.

(a) This subpart establishes criteria and standards for underground injection control programs to regulate Class I hazardous waste injection wells. Unless otherwise noted this Subpart supplements the requirements of Subpart A and applies instead of Subpart B to Class I hazardous waste injection wells.

(b) *Definitions.*

Cone of influence means that area around the well within which increased injection zone pressures caused by injection into the hazardous waste injection well would be sufficient to drive fluids into an underground source of drinking water (USDW).

Existing well means a Class I well which was authorized prior to August 25, 1988 by an approved State program, or an EPA-administered program or a well which has become a Class I well as a result of a change in the definition of the injected waste which would render the waste hazardous under § 261.3 of this Part.

Injection interval means that part of the injection zone in which the well is screened, or in which the waste is otherwise directly emplaced.

New well means any Class I hazardous waste injection well which is not an existing well.

Transmissive fault or fracture is a fault or fracture that has sufficient permeability and vertical extent to allow fluids to move between formations.

§ 146.62 Minimum criteria for siting.

(a) All Class I hazardous waste injection wells shall be sited such that they inject into a formation that is beneath the lowermost formation containing within one quarter mile of the well bore an underground source of drinking water.

(b) The siting of Class I hazardous waste injection wells shall be limited to areas that are geologically suitable. The Director shall determine geologic suitability based upon:

(1) An analysis of the structural and stratigraphic geology, the hydrogeology, and the seismicity of the region;

(2) An analysis of the local geology and hydrogeology of the well site, including, at a minimum, detailed information regarding stratigraphy, structure and rock properties, aquifer hydrodynamics and mineral resources; and

(3) A determination that the geology of the area can be described confidently and that limits of waste fate and transport can be accurately predicted through the use of models.

(c) Class I hazardous waste injection wells shall be sited such that:

(1) The injection zone has sufficient permeability, porosity, thickness and areal extent to prevent migration of fluids into USDWs.

(2) The confining zone:

(i) Is laterally continuous and free of transecting, transmissive faults or fractures over an area sufficient to prevent the movement of fluids into a USDW; and

(ii) Contains at least one formation of sufficient thickness and with lithologic and stress characteristics capable of preventing vertical propagation of fractures.

(d) The owner or operator shall demonstrate to the satisfaction of the Director that:

(1) The confining zone is separated from the base of the lowermost USDW by at least one sequence of permeable and less permeable strata that will provide an added layer of protection for the USDW in the event of fluid movement in an unlocated borehole or transmissive fault; or

(2) Within the area of review, the piezometric surface of the fluid in the injection zone is less than the piezometric surface of the lowermost USDW, considering density effects, injection pressures and any significant pumping in the overlying USDW; or

(3) There is no USDW present.

(4) The Director may approve a site which does not meet the requirements in paragraphs (d) (1), (2), or (3) of this section if the owner or operator can demonstrate to the Director that because of the geology, nature of the waste, or other considerations, abandoned boreholes or other conduits would not cause endangerment of USDWs.

§ 146.63 Area of review.

For the purposes of Class I hazardous waste wells, this section shall apply to the exclusion of § 146.6. The area of review for Class I hazardous waste injection wells shall be a 2-mile radius around the well bore. The Director may specify a larger area of review based on the calculated cone of influence of the well.

§ 146.64 Corrective action for wells in the area of review.

For the purposes of Class I hazardous waste wells, this section shall apply to the exclusion of § 144.55 and § 146.07.

(a) The owner or operator of a Class I hazardous waste well shall as part of the permit application submit a plan to the Director outlining the protocol used to:

(1) Identify all wells penetrating the confining zone or injection zone within the area of review; and

(2) Determine whether wells are adequately completed or plugged.

(b) The owner or operator of a Class I hazardous waste well shall identify the location of all wells within the area of review that penetrate the injection zone or the confining zone and shall submit as required in § 146.70(a):

(1) A tabulation of all wells within the area of review that penetrate the injection zone or the confining zone; and

(2) A description of each well or type of well and any records of its plugging or completion.

(c) For wells that the Director determines are improperly plugged, completed, or abandoned, or for which plugging or completion information is unavailable, the applicant shall also submit a plan consisting of such steps or modification as are necessary to prevent movement of fluids into or between USDWs. Where the plan is adequate, the Director shall incorporate it into the permit as a condition. Where the Director's review of an application indicates that the permittee's plan is inadequate (based at a minimum on the factors in paragraph (e) of this section), the Director shall:

(1) Require the applicant to revise the plan;

(2) Prescribe a plan for corrective action as a condition of the permit; or

(3) Deny the application.

(d) Requirements:

(1) Existing injection wells. Any permit issued for an existing Class I hazardous waste injection well requiring corrective action other than pressure limitations shall include a compliance schedule requiring any corrective action accepted or prescribed under paragraph (c) of this section. Any such compliance schedule shall provide for compliance no later than 2 years following issuance of the permit and shall require observance of appropriate pressure limitations under paragraph (d)(3) until all other corrective action measures have been implemented.

(2) New injection wells. No owner or operator of a new Class I hazardous waste injection well may begin injection until all corrective actions required under this section have been taken.

(3) The Director may require pressure limitations in lieu of plugging. If pressure limitations are used in lieu of plugging, the Director shall require as a permit condition that injection pressure be so limited that pressure in the injection zone at the site of any improperly completed or abandoned well within the area of review would not be sufficient to drive fluids into or between USDWs. This pressure limitation shall satisfy the corrective action requirement. Alternatively, such injection pressure limitation may be made part of a compliance schedule and may be required to be maintained until all other required corrective actions have been implemented.

(e) In determining the adequacy of corrective action proposed by the applicant under paragraph (c) of this section and in determining the additional steps needed to prevent fluid movement into and between USDWs, the following criteria and factors shall be considered by the Director:

(1) Nature and volume of injected fluid;

(2) Nature of native fluids or byproducts of injection;

(3) Geology;

(4) Hydrology;

(5) History of the injection operation;

(6) Completion and plugging records;

(7) Closure procedures in effect at the time the well was closed;

(8) Hydraulic connections with USDWs;

(9) Reliability of the procedures used to identify abandoned wells; and

(10) Any other factors which might affect the movement of fluids into or between USDWs.

§ 146.65 Construction requirements.

(a) *General.* All existing and new Class I hazardous waste injection wells shall be constructed and completed to:

(1) Prevent the movement of fluids into or between USDWs or into any unauthorized zones;

(2) Permit the use of appropriate testing devices and workover tools; and

(3) Permit continuous monitoring of injection tubing and long string casing as required pursuant to §146.67(f).

(b) *Compatibility.* All well materials must be compatible with fluids with which the materials may be expected to come into contact. A well shall be deemed to have compatibility as long as the materials used in the construction of the well meet or exceed standards developed for such materials by the American Petroleum Institute, The American Society for Testing Materials, or comparable standards acceptable to the Director.

(c) *Casing and Cementing of New Wells.* (1) Casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well, including the post-closure care period. The casing and cementing program shall be designed to prevent the movement of fluids into or between USDWs, and to prevent potential leaks of fluids from the well. In determining and specifying casing and cementing requirements, the Director shall consider the following information as required by § 146.70:

(i) Depth to the injection zone;

(ii) Injection pressure, external pressure, internal pressure and axial loading;

(iii) Hole size;

(iv) Size and grade of all casing strings (well thickness, diameter, nominal weight, length, joint specification and construction material);

(v) Corrosiveness of injected fluid, formation fluids and temperature;

(vi) Lithology of injection and confining zones;

(vii) Type or grade of cement; and

(viii) Quantity and chemical composition of the injected fluid.

(2) One surface casing string shall, at a minimum, extend into the confining bed below the lowest formation that contains a USDW and be cemented by circulating cement from the base of the casing to the surface, using a minimum of 120% of the calculated annual volume. The Director may require more than 120% when the geology or other circumstances warrant it.

(3) At least one long string casing, using a sufficient number of centralizers, shall extend to the injection zone and

shall be cemented by circulating cement to the surface in one or more stages:

(i) Of sufficient quantity and quality to withstand the maximum operating pressure; and

(ii) In a quantity no less than 120% of the calculated volume necessary to fill the annular space. The Director may require more than 120% when the geology or other circumstances warrant it.

(4) Circulation of cement may be accomplished by staging. The Director may approve an alternative method of cementing in cases where the cement cannot be recirculated to the surface, provided the owner or operator can demonstrate by using logs that the cement is continuous and does not allow fluid movement behind the well bore.

(5) Casings, including any casing connections, must be rated to have sufficient structural strength to withstand, for the design life of the well:

(i) The maximum burst and collapse pressures which may be experienced during the construction, operation and closure of the well; and

(ii) The maximum tensile stress which may be experienced at any point along the length of the casing during the construction, operation, and closure of the well.

(6) At a minimum, cement and cement additivies must be of sufficient quality and quantity to maintain integrity over the design life of the well.

(d) *Tubing and packer.* (1) All Class I hazardous waste injection wells shall inject fluids through tubing with a packer set at a point specified by the Director.

(2) In determining and specifying requirements for tubing and packer, the following factors shall be considered:

(i) Depth of setting;

(ii) Characteristics of injection fluid (chemical content, corrosiveness, temperature and density);

(iii) Injection pressure;

(iv) Annular pressure;

(v) Rate (intermittent or continuous), temperature and volume of injected fluid;

(vi) Size of casing; and

(vii) Tubing tensile, burst, and collapse strengths.

(3) The Director may approve the use of a fluid seal if he determines that the following conditions are met:

(i) The operator demonstrates that the seal will provide a level of protection comparable to a packer;

(ii) The operator demonstrates that the staff is, and will remain, adequately trained to operate and maintain the well and to identify and interpret variations in parameters of concern;

(iii) The permit contains specific limitations on variations in annular pressure and loss of annular fluid;

(iv) The design and construction of the well allows continuous monitoring of the annular pressure and mass balance of annular fluid; and

(v) A secondary system is used to monitor the interface between the annulus fluid and the injection fluid and the permit contains requirements for testing the system every three months and recording the results.

§ 146.66 Logging, sampling, and testing prior to new well operation.

(a) During the drilling and construction of a new Class I hazardous waste injection well, appropriate logs and tests shall be run to determine or verify the depth, thickness, porosity, permeability, and rock type of, and the salinity of any entrained fluids in, all relevant geologic units to assure conformance with performance standards in § 146.65, and to establish accurate baseline data against which future measurements may be compared. A descriptive report interpreting results of such logs and tests shall be prepared by a knowledgeable log analyst and submitted to the Director. At a minimum, such logs and tests shall include:

(1) Deviation checks during drilling on all holes constructed by drilling a pilot hole which are enlarged by reaming or another method. Such checks shall be at sufficiently frequent intervals to determine the location of the borehole and to assure that vertical avenues for fluid movement in the form of diverging holes are not created during drilling; and

(2) Such other logs and tests as may be needed after taking into account the availability of similar data in the area of the drilling site, the construction plan, and the need for additional information that may arise from time to time as the construction of the well progresses. At a minimum, the following logs shall be required in the following situations:

(i) Upon installation of the surface casing:

(A) Resistivity, spontaneous potential, and caliper logs before the casing is installed; and

(B) A cement bond and variable density log, and a temperature log after the casing is set and cemented.

(ii) Upon installation of the long string casing:

(A) Resistivity, spontaneous potential, porosity, caliper, gamma ray, and fracture finder logs before the casing is installed; and

(B) A cement bond and variable density log, and a temperature log after the casing is set and cemented.

(iii) The Director may allow the use of an alternative to the above logs when an alternative will provide equivalent or better information; and

(3) A mechanical integrity test consisting of:

(i) A pressure test with liquid or gas;

(ii) A radioactive tracer survey;

(iii) A temperature or noise log;

(iv) A casing inspection log, if required by the Director; and

(v) Any other test required by the Director.

(b) Whole cores or sidewall cores of the confining and injection zones and formation fluid samples from the injection zone shall be taken. The Director may accept cores from nearby wells if the owner or operator can demonstrate that core retrieval is not possible and that such cores are representative of conditions at the well. The Director may require the owner or operator to core other formations in the borehole.

(c) The fluid temperature, pH, conductivity, pressure and the static fluid level of the injection zone must be recorded.

(d) At a minimum, the following information concerning the injection and confining zones shall be determined or calculated for Class I hazardous waste injection wells:

(1) Fracture pressure;

(2) Other physical and chemical characteristics of the injection and confining zones; and

(3) Physical and chemical characteristics of the formation fluids in the injection zone.

(e) Upon completion, but prior to operation, the owner or operator shall conduct the following tests to verify hydrogeologic characteristics of the injection zone:

(1) A pump test; or

(2) Injectivity tests.

(f) The Director shall have the opportunity to witness all logging and testing by this Subpart. The owner or operator shall submit a schedule of such activities to the Director 30 days prior to conducting the first test.

§ 146.67 Operating requirements.

(a) Except during stimulation, the owner or operator shall assure that injection pressure at the wellhead does not exceed a maximum which shall be calculated so as to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone. The owner or operator shall assure that the injection pressure does not initiate fractures or propagate existing fractures in the confining zone.

nor cause the movement of injection or formation fluids into a USDW.

(b) Injection between the outermost casing protecting USDWs and the well bore is prohibited.

(c) The owner or operator shall maintain an annulus pressure that exceeds the operating injection pressure, unless the Director determines that such a requirement might harm the integrity of the well. The fluid in the annulus shall be noncorrosive, or shall contain a corrosion inhibitor.

(d) The owner or operator shall maintain mechanical integrity of the injection well at all times.

(e) Permit requirements for owners or operators of hazardous waste wells which inject wastes which have the potential to react with the injection formation to generate gases shall include:

(1) Conditions limiting the temperature, pH or acidity of the injected waste; and

(2) Procedures necessary to assure that pressure imbalances which might cause a backflow or blowout do not occur.

(f) The owner or operator shall install and use continuous recording devices to monitor: the injection pressure; the flow rate, volume, and temperature of injected fluids; and the pressure on the annulus between the tubing and the long string casing, and shall install and use:

(1) Automatic alarm and automatic shut-off systems, designed to sound and shut-in the well when pressures and flow rates or other parameters approved by the Director exceed a range and/or gradient specified in the permit; or

(2) Automatic alarms, designed to sound when the pressures and flow rates or other parameters approved by the Director exceed a rate and/or gradient specified in the permit, in cases where the owner or operator certifies that a trained operator will be on-site at all times when the well is operating.

(g) If an automatic alarm or shutdown is triggered, the owner or operator shall immediately investigate and identify as expeditiously as possible the cause of the alarm or shutoff. If, upon such investigation, the well appears to be lacking mechanical integrity, or if monitoring required under paragraph (f) of this section otherwise indicates that the well may be lacking mechanical integrity, the owner or operator shall:

(1) Cease injection of waste fluids unless authorized by the Director to continue or resume injection.

(2) Take all necessary steps to determine the presence or absence of a leak; and

(3) Notify the Director within 24 hours after the alarm or shutdown.

(h) If a loss of mechanical integrity is discovered pursuant to paragraph (g) of this section or during periodic mechanical integrity testing, the owner or operator shall:

(1) Immediately cease injection of waste fluids;

(2) Take all steps reasonably necessary to determine whether there may have been a release of hazardous wastes or hazardous waste constituents into any unauthorized zone;

(3) Notify the Director within 24 hours after loss of mechanical integrity is discovered;

(4) Notify the Director when injection can be expected to resume; and

(5) Restore and demonstrate mechanical integrity to the satisfaction of the Director prior to resuming injection of waste fluids.

(i) Whenever the owner or operator obtains evidence that there may have been a release of injected wastes into an unauthorized zone:

(1) The owner or operator shall immediately case injection of waste fluids, and:

(i) Notify the Director within 24 hours of obtaining such evidence;

(ii) Take all necessary steps to identify and characterize the extent of any release;

(iii) Comply with any remediation plan specified by the Director;

(iv) Implement any remediation plan approved by the Director; and

(v) Where such release is into a USDW currently serving as a water supply, place a notice in a newspaper of general circulation.

(2) The Director may allow the operator to resume injection prior to completing cleanup action if the owner or operator demonstrates that the injection operation will not endanger USDWs.

(j) The owner or operator shall notify the Director and obtain his approval prior to conducting any well workover.

§ 146.68 Testing and monitoring requirements.

Testing and monitoring requirements shall at a minimum include:

(a) Monitoring of the injected wastes. (1) The owner or operator shall develop and follow an approved written waste analysis plan that describes the procedures to be carried out to obtain a detailed chemical and physical analysis of a representative sample of the waste, including the quality assurance procedures used. At a minimum, the plan shall specify:

(i) The paramenters for which the waste will be analyzed and the rationale for the selection of these parameters;

(ii) The test methods that will be used to test for these parameters; and

(iii) The sampling method that will be used to obtain a representative sample of the waste to be analyzed.

(2) The owner or operator shall repeat the analysis of the injected wastes as described in the waste analysis plan at frequencies specified in the waste analysis plan and when process or operating changes occur that may significantly alter the characteristics of the waste stream.

(3) The owner or operator shall conduct continuous or periodic monitoring of selected parameters as required by the Director.

(4) The owner or operator shall assure that the plan remains accurate and the analyses remain representative.

(b) Hydrogeologic compatibility determination. The owner or operator shall submit information demonstrating to the satisfaction of the Director that the waste stream and its anticipated reaction products will not alter the permeability, thickness or other relevant characteristics of the confining or injection zones such that they would no longer meet the requirements specified in § 146.62.

(c) Compatibility of well materials. (1) The owner or operator shall demonstrate that the waste stream will be compatible with the well materials with which the waste is expected to come into contact, and submit to the Director a description of the methodology used to make that determination. Compatibility for purposes of this requirement is established if contact with injected fluids will not cause the well materials to fail to satisfy any design requirement imposed under § 146.65(b).

(2) The Director shall require continuous corrosion monitoring of the construction materials used in the well for wells injecting corrosive waste, and may require such monitoring for other waste, by:

(i) Placing coupons of the well construction materials in contact with the waste stream; or

(ii) Routing the waste stream through a loop constructed with the material used in the well; or

(iii) Using an alternative method approved by the Director.

(3) If a corrosion monitoring program is required:

(i) The test shall use materials identical to those used in the construction of the well, and such materials must be continuously exposed to the operating pressures and temperatures (measured at the well

head) and flow rates of the injection operation; and

(ii) The owner or operator shall monitor the materials for loss of mass, thickness, cracking, pitting and other signs of corrosion on a quarterly basis to ensure that the well components meet the minimum standards for material strength and performance set forth in § 146.65(b).

(d) *Periodic mechanical integrity testing.* In fulfilling the requirements of § 146.8, the owner or operator of a Class I hazardous waste injection well shall conduct the mechanical integrity testing as follows:

(1) The long string casing, injection tube, and annular seal shall be tested by means of an approved pressure test with a liquid or gas annually and whenever there has been a well workover;

(2) The bottom-hole cement shall be tested by means of an approved radioactive tracer survey annually;

(3) An approved temperature, noise, or other approved log shall be run at least once every five years to test for movement of fluid along the borehole. The Director may require such tests whenever the well is worked over;

(4) Casing inspection logs shall be run at least once every five years unless the Director waives this requirement due to well construction or other factors which limit the test's reliability; and

(5) Any other test approved by the Director in accordance with the procedures in § 146.8(d) may also be used.

(e) Ambient monitoring. (1) Based on a site-specific assessment of the potential for fluid movement from the well or injection zone, and on the potential value of monitoring wells to detect such movement, the Director shall require the owner or operator to develop a monitoring program. At a minimum, the Director shall require monitoring of the pressure buildup in the injection zone annually, including at a minimum, a shut down of the well for a time sufficient to conduct a valid observation of the pressure fall-off curve.

(2) When prescribing a monitoring system the Director may also require:

(i) Continuous monitoring for pressure changes in the first aquifer overlying the confining zone. When such a well is installed, the owner or operator shall, on a quarterly basis, sample the aquifer and analyze for constituents specified by the Director;

(ii) The use of indirect, geophysical techniques to determine the position of the waste front, the water quality in a formation designated by the Director, or to provide other site specific data;

(iii) Periodic monitoring of the ground water quality in the first aquifer overlying the injection zone;

(iv) Periodic monitoring of the ground water quality in the lowermost USDW; and

(v) Any additional monitoring necessary to determine whether fluids are moving into or between USDWs.

(f) The Director may require seismicity monitoring when he has reason to believe that the injection activity may have the capacity to cause seismic distrubances.

§ 146.69 Reporting requirements.

Reporting requirements shall, at a minimum, include:

(a) Quarterly reports to the Director containing:

(1) The maximum injection pressure;

(2) A description of any event that exceeds operating parameters for annulus pressure or injection pressure as specified in the permit;

(3) A description of any event which triggers an alarm or shutdown device required pursuant to § 146.67(f) and the response taken;

(4) The total volume of fluid injected;

(5) Any change in the annular fluid volume;

(6) The physical, chemical and other relevant characteristics of injected fluids; and

(7) The results of monitoring prescribed under § 146.68.

(b) Reporting, within 30 days or with the next quarterly report whichever comes later, the results of:

(1) Periodic tests of mechanical integrity;

(2) Any other test of the injection well conducted by the permittee if required by the Director; and

(3) Any well workover.

§ 146.70 Information to be evaluated by the Director.

This section sets forth the information which must be evaluated by the Director in authorizing Class I hazardous waste injection wells. For a new Class I hazardous waste injection well, the owner or operator shall submit all the information listed below as part of the permit application. For an existing or converted Class I hazardous waste injection well, the owner or operator shall submit all information listed below as part of the permit application except for those items of information which are current, accurate, and available in the existing permit file. For both existing and new Class I hazardous waste injection wells, certain maps, cross-sections, tabulations of wells within the area of review and other data may be included in the application by reference provided they are current and readily available to the Director (for example, in the permitting agency's files) and sufficiently identifiable to be retrieved. In cases where EPA issues the permit, all the information in this section must be submitted to the Administrator or his designee.

(a) Prior to the issuance of a permit for an existing Class I hazardous waste injection well to operate or the construction or conversion of a new Class I hazardous waste injection well, the Director shall review the following to assure that the requirements of this Part and Part 144 are met:

(1) Information required in § 144.31;

(2) A map showing the injection well for which a permit is sought and the applicable area of review. Within the area of review, the map must show the number or name and location of all producing wells, injection wells, abandoned wells, dry holes, surface bodies of water, springs, mines (surface and subsurface), quarries, water wells and other pertinent surface features, including residences and roads. The map should also show faults, if known or suspected;

(3) A tabulation of all wells within the area of review which penetrate the proposed injection zone or confining zone. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging and/or completion and any additional information the Director may require;

(4) The protocol followed to identify, locate and ascertain the condition of abandoned wells within the area of review which penetrate the injection or the confining zones;

(5) Maps and cross-sections indicating the general vertical and lateral limits of all underground sources of drinking water within the area of review, their position relative to the injection formation and the direction of water movement, where known, in each underground source of drinking water which may be affected by the proposed injection;

(6) Maps and cross-sections detailing the geologic structure of the local area;

(7) Maps and cross-sections illustrating the regional geologic setting;

(8) Proposed operating data;

(i) Average and maximum daily rate and volume of the fluid to be injected; and

(ii) Average and maximum injection pressure;

(9) Proposed formation testing program to obtain an analysis of the chemical, physical and radiological characteristics of and other information

on the injection formation and the confining zone;

(10) Proposed stimulation program;

(11) Proposed injection procedure;

(12) Schematic or other appropriate drawings of the surface and subsurface construction details of the well;

(13) Contingency plans to cope with all shut-ins or well failures so as to prevent migration of fluids into any USDW;

(14) Plans (including maps) for meeting monitoring requirements of § 146.68;

(15) For wells within the area of review which penetrate the injection zone or the confining zone but are not properly completed or plugged, the corrective action to be taken under § 146.64;

(16) Construction procedures including a cementing and casing program, well materials specifications and their life expectancy, logging procedures, deviation checks, and a drilling, testing and coring program; and

(17) A demonstration pursuant to Part 144, Subpart F, that the applicant has the resources necessary to close, plug or abandon the well and for post-closure care.

(b) Prior to the Director's granting approval for the operation of a Class I hazardous waste injection well, the owner or operator shall submit and the Director shall review the following information, which shall be included in the completion report:

(1) All available logging and testing program data on the well;

(2) A demonstration of mechanical integrity pursuant to § 146.68;

(3) The anticipated maximum pressure and flow rate at which the permittee will operate;

(4) The results of the injection zone and confining zone testing program as required in § 146.70(a)(9);

(5) The actual injection procedure;

(6) The compatibility of injected waste with fluids in the injection zone and minerals in both the injection zone and the confining zone and with the materials used to construct the well;

(7) The calculated area of review based on data obtained during logging and testing of the well and the formation, and where necessary revisions to the information submitted under § 146.70(a) (2) and (3).

(8) The status of corrective action on wells identified in § 146.70(a)(15).

(c) Prior to granting approval for the plugging and abandonment (i.e., closure) of a Class I hazardous waste injection well, the Director shall review the information required in §§ 146.71(a)(4) and 146.72(a).

(d) Any permit issued for a Class I hazardous waste injection well for disposal on the premises where the waste is generated shall contain a certification by the owner or operator that:

(1) The generator of the hazardous waste has a program to reduce the volume or quantity and toxicity of such waste to the degree determined by the generator to be economically practicable; and

(2) Injection of the waste is that practicable method of disposal currently available to the generator which minimizes the present and future threat to human health and the environment.

§ 146.71 Closure

(a) *Closure Plan.* The owner or operator of a Class I hazardous waste injection well shall prepare, maintain, and comply with a plan for closure of the well that meets the requirements of paragraph (d) of this section and is acceptable to the Director. The obligation to implement the closure plan survives the termination of a permit or the cessation of injection activities. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit.

(1) The owner or operator shall submit the plan as a part of the permit application and, upon approval by the Director, such plan shall be a condition of any permit issued.

(2) The owner or operator shall submit any proposed significant revision to the method of closure reflected in the plan for approval by the Director no later than the date on which notice of closure is required to be submitted to the Director under paragraph (b) of this section.

(3) The plan shall assure financial responsibility as required in § 144.52(a)(7).

(4) The plan shall include the following information:

(i) The type and number of plugs to be used;

(ii) The placement of each plug including the elevation of the top and bottom of each plug;

(iii) The type and grade and quantity of material to be used in plugging;

(iv) The method of placement of the plugs;

(v) Any proposed test or measure to be made;

(vi) The amount, size, and location (by depth) of casing and any other materials to be left in the well;

(vii) The method and location where casing is to be parted, if applicable;

(viii) The procedure to be used to meet the requirements of paragraph (d)(5) of this section;

(ix) The estimated cost of closure; and

(x) Any proposed test or measure to be made.

(5) The Director may modify a closure plan following the procedures of § 124.5.

(6) An owner or operator of a Class I hazardous waste injection well who ceases injection temporarily, may keep the well open provided he:

(i) Has received authorization from the Director; and

(ii) Has described actions or procedures, satisfactory to the Director, that the owner or operator will take to ensure that the well will not endanger USDWs during the period of temporary disuse. These actions and procedures shall include compliance with the technical requirements applicable to active injection wells unless waived by the Director.

(7) The owner or operator of a well that has ceased operations for more than two years shall notify the Director 30 days prior to resuming operation of the well.

(b) *Notice of intent to close.* The owner or operator shall notify the Director at least 60 days before closure of a well. At the discretion of the Director, a shorter notice period may be allowed.

(c) *Closure report.* Within 60 days after closure or at the time of the next quarterly report (whichever is less) the owner or operator shall submit a closure report to the Director. If the quarterly report is due less than 15 days after completion of closure, then the report shall be submitted within 60 days after closure. The report shall be certified as accurate by the owner or operator and by the person who performed the closure operation (if other than the owner or operator). Such report shall consist of either: (1) A statement that the well was closed in accordance with the closure plan previously submitted and approved by the Director; or

(2) Where actual closure differed from the plan previously submitted, a written statement specifying the differences between the previous plan and the actual closure.

(d) *Standards for well closure.* (1) Prior to closing the well, the owner or operator shall observe and record the pressure decay for a time specified by the Director. The Director shall analyze the pressure decay and the transient pressure observations conducted pursuant to § 146.68(e)(1)(i) and determine whether the injection activity has conformed with predicted values.

(2) Prior to well closure, appropriate mechanical integrity testing shall be conducted to ensure the integrity of that portion of the long string casing and cement that will be left in the ground after closure. Testing methods may include:

(i) Pressure tests with liquid or gas;

(ii) Radioactive tracer surveys;

(iii) Noise, temperature, pipe evaluation, or cement bond logs; and

(iv) Any other test required by the Director.

(3) Prior to well closure, the well shall be flushed with a buffer fluid.

(4) Upon closure, a Class I hazardous waste well shall be plugged with cement in a manner that will not allow the movement of fluids into or between USDWs.

(5) Placement of the cement plugs shall be accomplished by one of the following:

(i) The Balance Method;

(ii) The Dump Bailer Method;

(iii) The Two-Plug Method; or

(iv) An alternate method, approved by the Director, that will reliably provide a comparable level of protection.

(6) Each plug used shall be appropriately tagged and tested for seal and stability before closure is completed.

(7) The well to be closed shall be in a state of static equilibrium with the mud weight equalized top to bottom, either by circulating the mud in the well at least once or by a comparable method prescribed by the Director, prior to the placement of the cement plug(s).

§ 146.72 Post-closure care.

(a) The owner or operator of a Class I hazardous waste well shall prepare, maintain, and comply with a plan for post-closure care that meets the requirements of paragraph (b) of this section and is acceptable to the Director. The obligation to implement the post-closure plan survives the termination of a permit or the cessation of injection activities. The requirement to maintain an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit.

(1) The owner or operator shall submit the plan as a part of the permit application and, upon approval by the Director, such plan shall be a condition of any permit issued.

(2) The owner or operator shall submit any proposed significant revision to the plan as appropriate over the life of the well, but no later than the date of the closure report required under § 146.71(c).

(3) The plan shall assure financial responsibility as required in § 146.73.

(4) The plan shall include the following information:

(i) The pressure in the injection zone before injection began;

(ii) The anticipated pressure in the injection zone at the time of closure;

(iii) The predicted time until pressure in the injection zone decays to the point that the well's cone of influence no longer intersects the base of the lowermost USDW;

(iv) Predicted position of the waste front at closure;

(v) The status of any cleanups required under § 146.64; and

(vi) The estimated cost of proposed post-closure care.

(5) At the request of the owner or operator, or on his own initiative, the Director may modify the post-closure plan after submission of the closure report following the procedures in § 124.5.

(b) The owner or operator shall:

(1) Continue and complete any cleanup action required under § 146.64, if applicable;

(2) Continue to conduct any groundwater monitoring required under the permit until pressure in the injection zone decays to the point that the well's cone of influence no longer intersects the base of the lowermost USDW. The Director may extend the period of post-closure monitoring if he determines that the well may endanger a USDW.

(3) Submit a survey plat to the local zoning authority designated by the Director. The plat shall indicate the location of the well relative to permanently surveyed benchmarks. A copy of the plat shall be submitted to the Regional Administrator of the appropriate EPA Regional Office.

(4) Provide appropriate notification and information to such State and local authorities as have cognizance over drilling activities to enable such State and local authorities to impose appropriate conditions on subsequent drilling activities that may penetrate the well's confining or injection zone.

(5) Retain, for a period of three years following well closure, records reflecting the nature, composition and volume of all injected fluids. The Director shall require the owner or operator to deliver the records to the Director at the conclusion of the retention period, and the records shall thereafter be retained at a location designated by the Director for that purpose.

(c) Each owner of a Class I hazardous waste injection well, and the owner of the surface or subsurface property on or in which a Class I hazardous waste injection well is located, must record a notation on the deed to the facility property or on some other instrument which is normally examined during title search that will in perpetuity provide any potential purchaser of the property the following information:

(1) The fact that land has been used to manage hazardous waste;

(2) The name of the State agency or local authority with which the plat was filed, as well as the address of the Regional Environmental Protection Agency Office to which it was submitted;

(3) The type and volume of waste injected, the injection interval or intervals into which it was injected, and the period over which injection occurred.

§ 146.73 Financial responsibility for post-closure care.

The owner or operator shall demonstrate and maintain financial responsibility for post-closure by using a trust fund, surety bond, letter of credit, financial test, insurance or corporate guarantee that meets the specifications for the mechanisms and instruments revised as appropriate to cover closure and post-closure care in 40 CFR Part 144, Subpart F. The amount of the funds available shall be no less than the amount identified in § 146.72(a)(4)(vi). The obligation to maintain financial responsibility for post-closure care survives the termination of a permit or the cessation of injection. The requirement to maintain financial responsibility is enforceable regardless of whether the requirement is a condition of the permit.

Part 148 is added to read as follows:

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

Subpart A—General

Sec.

148.1 Purpose, scope and applicability.
148.2 Definitions.
148.3 Dilution prohibited as a substitute for treatment.
148.4 Procedures for case-by-case extensions to an effective date.
148.5 Waste analysis.

Subpart B—Prohibitions on Injection

148.10 Waste specific prohibitions—solvent wastes.
148.11 Waste specific prohibitions—dioxin-containing wastes.

Subpart C—Petition Standards and Procedures

148.20 Petitions to allow injection of a waste prohibited under Subpart B.
148.21 Information to be submitted in support of petitions.
148.22 Requirements for petition submission, review and approval or denial.
148.23 Review of exemptions granted pursuant to a petition.
148.24 Termination of approved petition.

Authority: Secs. 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

Subpart A—General

§ 148.1 Purpose, scope and applicability.

(a) This part identifies hazardous wastes that are restricted from disposal into Class I hazardous waste injection wells and defines those circumstances under which a waste, otherwise prohibited from injection, may be injected.

(b) The requirements of this part apply to owners or operators of Class I hazardous waste injection wells used to inject hazardous waste.

(c) Wastes otherwise prohibited from injection may continue to be injected:

(1) If an extension from the effective date of a prohibition has been granted pursuant to § 148.4 with respect to such wastes; or

(2) If an exemption from a prohibition has been granted in response to a petition filed under § 148.20 to allow injection of restricted wastes with respect to those wastes and wells covered by the exemption; or

(3) If the waste is generated by a conditionally exempt small quantity generator, as defined in § 261.5; or

(4) Until November 8, 1988, if the waste has been determined to be contaminated soil or debris resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 or a corrective action required under the Resource Conservation and Recovery Act.

§ 148.2 Definitions.

Injection interval means that part of the injection zone in which the well is screened, or in which the waste is otherwise directly emplaced.

Transmissive fault or fracture is a fault or fracture that has sufficient permeability and vertical extent to allow fluids to move between formations.

§ 148.3 Dilution prohibited as a substitute for treatment.

The prohibition of § 268.3 shall apply to owners or operators of Class I hazardous waste injection wells.

§ 148.4 Procedures for case-by-case extensions to an effective date.

The owner or operator of a Class I hazardous waste injection well may submit an application to the Administrator for an extension of the effective date of any applicable prohibition established under Subpart B of this Part according to the procedures of § 268.5.

§ 148.5 Waste analysis.

Generators of hazardous wastes that are disposed of into Class I injection wells must comply with the applicable requirements of § 268.7 (a) and (b). Owners or operators of Class I hazardous waste injection wells must comply with the applicable requirements of § 268.7(c).

Subpart B—Prohibitions on Injection

§ 148.10 Waste specific prohibitions—solvent wastes.

(a) Effective August 8, 1988, the spent solvent wastes specified in § 261.31 as EPA Hazardous Waste Nos. F001, F002, F003, F004, and F005 are prohibited from underground injection unless the solvent waste is a solvent-water mixture or solvent-containing sludge containing less than 1 percent total F001–F005 solvent constituents listed in Table A of this section.

(b) Effective August 8, 1990, all spent F001–F005 solvent wastes containing less than 1 percent total F001–F005 solvent constituents listed in Table A of this section are prohibited from injection.

(c) The requirements of paragraphs (a) and (b) of this section do not apply:

(1) If the wastes meet or are treated to meet the standards of § 268.41; or

(2) If an exemption from a prohibition has been granted in response to a petition under Subpart C of this Part; or

(3) During the period of extension of the applicable effective date if an extension has been granted under § 148.4 of this Part; or

(4) During the period the waste has been granted a treatability variance under § 268.44.

Table A

Acetone
n-Butyl alcohol
Carbon disulfide
Carbon tetrachloride
Chlorobenzene
Cresols and cresylic acid
Cyclohexanone
1,2-dichlorobenzene
Ethyl acetate
Ethyl benzene
Ethyl ether
Isobutanol
Methanol
Methylene chloride
Methylene chloride (from the pharmaceutical industry)
Methyl ethyl ketone
Methyl isobutyl ketone
Nitrobenzene
Pyridine
Tetrachloroethylene
Toluene
1,1,1-Trichloroethane
1,2,2-Trichloro-1,2,2 trifluoroethane
Trichloroethylene
Trichlofluoromethane
Xylene

§ 148.11 Waste specific prohibitions—dioxin-containing wastes.

(a) Effective August 8, 1988, the dioxin-containing wastes specified in § 261.31 as EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, F027, and F028, and prohibited from underground injection.

(b) The requirements of paragraph (a) of this section do not apply:

(1) If the wastes meet or are treated to meet the standards of § 268.41; or

(2) If an exemption from a prohibition has been granted in response to a petition under Subpart C of this Part; or

(3) During the period of extension of the applicable effective date of an extension has been granted under § 148.4 of this Part; or

(4) During the period the waste has been granted a treatability variance under § 268.44.

Subpart C—Petition Standards and Procedures

§ 148.20 Petitions to allow injection of a waste prohibited under Subpart B.

(a) Any person seeking an exemption from a prohibition under Subpart B of this part for the injection of a restricted hazardous waste into an injection well or wells shall submit a petition to the Director demonstrating that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This demonstration requires a showing that:

(1) The hydrogeological and geochemical conditions at the sites and the physiochemical nature of the waste stream(s) are such that reliable predictions can be made that:

(i) Fluid movement conditions are such that the injected fluids will not migrate within 10,000 years:

(A) Vertically upward out of the injection zone; or

(B) Laterally within the injection zone to a point of discharge or interface with an Underground Source of Drinking Water (USDW) as defined in 40 CFR Part 146; or

(ii) Before the injected fluids migrate out of the injection zone or to a point of discharge or interface with USDW, the fluid will no longer be hazardous because of attenuation, transformation, or immobilization of hazardous constituents within the injection zone by hydrolysis, chemical interactions or other means; and

(2) For each well the petition has:

(i) Demonstrated that the injection well's area of review complies with the substantive requirements of § 146.63;

(ii) Located, identified, and ascertained the condition of all wells within the injection well's area of review (as specified in § 146.63) that penetrate the injection zone or the confining zone by use of a protocol acceptable to the Director that meets the substantive requirements of § 146.64;

(iii) Submitted a corrective action plan that meets the substantive requirements of § 146.64, the implementation of which shall become a condition of petition approval; and

(iv) Submitted the results of pressure and radioactive tracer tests performed within one year prior to submission of the petition demonstrating the mechanical integrity of the well's long string casing, injection tube, annular seal, and bottom hole cement. In cases where the petition has not been approved or denied within one year after the initial demonstration of mechanical integrity, the Director may require the owner or operator to perform the tests again and submit the results of the new tests.

Note.—The requirements of § 148.20(a)(2) need not be incorporated in a permit at the time of petition approval.

(b) A demonstration under § 148.20(a)(1)(i) shall identify the strata within the injection zone which will confine fluid movement above the injection interval and include a showing that this strata is free of known transmissive faults of fractures and that there is a confining zone above the injection zone.

(c) A demonstration under § 148.20(a)(1)(ii) shall identify the strata within the injection zone where waste transformation will be accomplished and include a showing that this strata is free of known transmissive faults or fractures and that there is a confining zone above the injection zone.

(d) A demonstration may include a showing that:

(1) Treatment methods, the implementation of which shall become a condition of petition approval, will be utilized that reduce the toxicity or mobility of the wastes; or

(2) A monitoring plan, the implementation of which shall become a condition of petition approval, will be utilized to enhance confidence in one or more aspects of the demonstration.

(e) Any person who has been granted an exemption pursuant to this section may submit a petition for reissuance of the exemption to include an additional restricted waste or wastes or to modify any conditions placed on the exemption by the Director. The Director shall reissue the petition if the petitioner complies with the requirements of paragraphs (a), (b) and (c) of this section.

(f) Any person who has been granted an exemption pursuant to this section may submit a petition to modify an exemption to include an additional (hazardous) waste or wastes. The Director may grant the modification if he determines, to a reasonable degree of certainty, that the additional waste or wastes will behave hydraulically and chemically in a manner similar to previously included wastes and that it will not interfere with the containment capability of the injection zone.

§ 148.21 Information to be submitted in support of petitions.

(a) Information submitted in support of § 148.20 must meet the following criteria:

(1) All waste analysis and any new testing performed by the petitioner shall be accurate and reproducible and performed in accordance with quality assurance standards;

(2) Estimation techniques shall be appropriate, and EPA-certified test protocols shall be used where available and appropriate;

(3) Predictive models shall have been verified and validated, shall be appropriate for the specific site, waste streams, and injection conditions of the operation, and shall be calibrated for existing sites where sufficient data are available;

(4) An approved quality assurance and quality control plan shall address all aspects of the demonstration;

(5) Reasonably conservative values shall be used whenever values taken from the literature or estimated on the basis of known information are used instead of site-specific measurements; and

(6) An analysis shall be performed to identify and assess aspects of the demonstration that contribute significantly to uncertainty. The petitioner shall conduct a sensitivity analysis to determine the effect that significant uncertainty may contribute to the demonstration. The demonstration shall then be based on conservative assumptions identified in the analysis.

(b) Any petitioner under § 148.20(a)(1)(i) shall provide sufficient site-specific information to support the demonstration, such as:

(1) Thickness, porosity, permeability and extent of the various strata in the injection zone;

(2) Thickness, porosity, permeability, extent, and continuity of the confining zone;

(3) Hydraulic gradient in the injection zone;

(4) Hydrostatic pressure in the injection zone; and

(5) Geochemical conditions of the site.

(c) In addition to the information in § 148.21(b), any petitioner under § 148.20(a)(1)(ii) shall provide sufficient waste-specific information to ensure reasonably reliant predictions about the waste transformation. The petitioner shall provide the information necessary to support the demonstration, such as:

(1) Description of the chemical processes or other means that will lead to waste transformation; and

(2) Results of laboratory experiments verifying the waste transformation.

§ 148.22 Requirements for petition submission, review and approval or denial.

(a) Any petition submitted to the Director pursuant to § 148.20(a) shall include the following components:

(1) An identification of the specific waste or wastes and the specific injection well or wells for which the demonstration will be made;

(2) A waste analysis to describe fully the chemical and physical characteristics of the subject wastes;

(3) Such additional information as is required by the Director to support the petition under §§148.20 and 148.21; and

(4) This statement signed by the petitioner or an authorized representative:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(b) The Director shall provide public notice and an opportunity for public comment in accordance with the procedures in §124.10 of the intent to approve or deny a petition. The final decision on a petition will be published in the **Federal Register.**

(c) If an exemption is granted it will apply only to the underground injection of the specifice restricted waste or wastes identified in the petition into a Class I hazardous waste injection well or wells specifically identified in the petition (unless the exemption is modified or reissued pursuant to § 148.20(e) or (f).

(d) Upon request by any petitioner who obtains an exemption for a well under this Subpart, the Director shall initiate and reasonably expedite the necessary procedures to issue or reissue a permit or permits for the hazardous waste well or wells covered by the exemption for a term not to exceed ten years.

§ 148.23 Review of exemptions granted pursuant to a petition.

(a) When considering whether to reissue a permit for the operation of a Class I hazardous waste injection well, the Director shall review any petition filed pursuant to § 148.20 and require a new demonstration if information shows that the basis for granting the exemption may no longer be valid.

(b) Whenever the Director determines that the basis for approval of a petition may no longer be valid, the Director shall require a new demonstration in accordance with § 148.20.

§ 148.24 Termination of approved petition.

(a) The Director may terminate an exemption granted under § 148.20 for the following causes:

(1) Noncompliance by the petitioner with any condition of the exemption;

(2) The petitioner's failure in the petition or during the review and approval to disclose fully all relevant facts, or the petitioner's misrepresentation of any relevant facts at any time; or

(3) A determination that new information shows that the basis for approval of the petition is no longer valid.

(b) The Director shall terminate an exemption granted under § 148.20 for the following causes:

(1) The petitioner's willful withholding during the review and approval of the petition of facts directly and materially relevant to the Director's decision on the petition;

(2) A determination that there has been migration from the injection zone or the well that is not in accordance with the terms of the exemption, except that the Director may at his discretion decide not to terminate where:

(i) The migration resulted from a mechanical failure of the well that can be corrected promptly through a repair to the injection well itself or from an undetected well or conduit that can be plugged promptly; and

(ii) The requirements of § 146.67(i) are satisfied.

(c) The Director shall follow the procedures in § 124.5 in terminating any exemption under this section.

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Part III

Environmental Protection Agency

40 CFR Parts 264 and 270

Ground-Water Monitoring at Hazardous Waste Facilities; Proposed Amendment to Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264 and 270

[FRL-3277-2]

Ground-Water Monitoring at Hazardous Waste Facilities

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed amendment to rule.

SUMMARY: On July 26, 1982, EPA promulgated regulations for detecting contamination of ground water at permitted hazardous waste land disposal facilities under Subtitle C of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (RCRA). Several technical aspects of the regulations require improvement; therefore, EPA is today proposing rulemaking to revise the regulations. The amendments proposed in today's rulemaking are designed to foster the early detection of leaks and to better tailor the current ground-water monitoring regulations to site-specific conditions.

DATE: Written comments should be submitted on or before September 26, 1988. The original and two copies of comments on this proposal should be mailed to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket is open from 9:30 to 3:30 Monday through Friday, except for Federal holidays. The docket number for this rule is F-88-AGWP-FFFFF. The public must make an appointment to review docket materials. Call (202) 475-9327 for appointments. The public may copy material from the regulatory docket at a cost of $.15/page.

ADDRESS: The official docket for this regulation including comments received by the Agency is located in Room MLG 100, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For general information contact: RCRA/Superfund Hotline, Office of Solid Waste (WH-563C), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460, telephone (800) 424-9346, or (202) 382-3000. For technical information contact Joseph M. Abe, (202) 382-4654.

SUPPLEMENTARY INFORMATION:

Proposed Outline

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I. Authority

These regulations are issued under the authority of sections 1006, 2002(A), 3001, 3004, 3005, 3006, and 3007 of the Solid Waste Disposal Act as amended, 42 U.S.C. 6705, 6712, 6924, 6925, 6926, and 6927.

II. Background

Subtitle C of RCRA creates a comprehensive program for the safe management of hazardous waste. Section 3004 of RCRA requires EPA to promulgate regulations as "necessary to protect human health and the environment" that are applicable to owners or operators of hazardous waste treatment, storage and disposal facilities. Section 3005 provides for implementation of these regulations under permits issued to owners or operators of facilities by EPA or authorized States. Section 3005 also provides that certain owners or operators of existing facilities that apply for a permit and comply with applicable notice and certification requirements ("interim status" facilities) shall be treated as having been issued a permit for purposes of RCRA and its implementing regulations until a final permit determination is made.

Among the 3004 standards promulgated for permitted facilities in 1982 were standards under 40 CFR Part 264, Subpart F, which establish programs for protecting ground water from releases of hazardous wastes from treatment, storage, and disposal units (47 FR 32274, July 26, 1982). Under these standards, facility owners or operators are required to sample ground water at specified time intervals and determine whether or not hazardous wastes or constituents from the facility are contaminating ground water. If unacceptable contamination is found, the owner or operator must perform corrective action in accordance with § 264.100.

III. Proposed Changes

A. Summary of Major Proposed Changes

The following is a summary of the major changes proposed in today's package. These proposed amendments to the Subpart F regulations arise from several sources. Some are changes stemming from litigation on the July 26, 1982 land disposal regulations. Other changes have been developed in response to recommendations from the Agency's Hazardous Waste Ground Water Task Force (U.S. EPA, 1986) as well as from EPA Program and Regional staff.

(1) The Agency proposes to amend the § 264.90(b)(4) ground-water monitoring variance to require no migration demonstrations to be based upon either site-specific field measurement, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport or upon an adequate margin of safety using predictions that assume maximum contaminant migration and consider all human health and environmental impacts.

(2) The Agency proposes to allow alternate point(s) of compliance for existing units where monitoring well installation in locations specified by § 264.95(a) is extremely difficult due to existing physical obstacles as long as early detection is not compromised.

(3) The Agency is proposing regulatory changes regarding the establishment of waste management areas and clarification of the Regional Administrator's authority to require different ground-water programs (i.e., detection, compliance, or corrective action) for individual waste management areas within the same facility.

(4) The Agency proposes to allow the permittee to continue or resume detection or compliance monitoring, as

appropriate, any time that the permittee is able to demonstrate that concentrations of hazardous constituents no longer show statistically significant increases over background concentrations for a period of time based on site-specific conditions, provided that the Regional Administrator determines that the increase is due to an unregulated source or an error in sampling, analysis, or evaluation.

(5) The Agency is proposing to amend the regulations to allow a modification of the deadlines contained in §§ 264.98(h)(5) and 264.99(i)(2) where a substantive need for such a modification is shown.

(6) The Agency proposes to amend Subpart F to eliminate the requirement that the ground-water flow rate and direction be defined annually as part of the detection and compliance monitoring programs and to institute a requirement that the ground-water flow rate and direction be defined whenever any well exhibits a significant change in water level.

(7) The Agency is proposing to amend the regulations to give the Regional Administrator explicit authority to require the owner or operator to monitor the unsaturated zone as well as any and all zones of saturation in the uppermost aquifer in order to detect early migration of contaminants.

(8) The Agency is proposing to clarify the authority of the Regional Administrator to designate supplemental monitoring wells when complicated site conditions caused by hydrogeology or contaminant characteristics can allow contaminants to move past or away from the point of compliance as defined in § 264.95(a) without being detected.

(9) The Agency is proposing to add quality assurance and quality control requirements such as documentation, operation and maintenance, and procedures for devices and methods used in ground-water measurement, sampling, and analysis.

(10) The Agency is proposing to correct an inconsistency in § 264.99(f) which presently requires the annual monitoring of all constituents contained in Appendix IX even though some of these constituents may have been excluded from the list of hazardous substances specified in the facility permit by the Regional Administrator under § 264.93.

B. Discussion of Specific Part 264 Subpart F Changes

Subpart F contains the requirements for the ground-water monitoring and response programs for permitted hazardous waste units at RCRA treatment, storage and disposal facilities, excluding those units exempted by § 264.90(b). The requirements of this Subpart define a general set of responsibilities that the owner or operator must meet, yet allow considerable flexibility in how the monitoring and response programs may be designed. EPA's objective in today's proposed regulations is to develop an effective monitoring program that will provide reliable information about the effects of these land-based hazardous waste units on ground water in order to ensure protection of human health and the environment.

1. Applicability (§ 264.90).

The requirements of Subpart F apply to new and existing surface impoundments, landfills, waste piles, and land treatment units that manage hazardous waste. Section 264.90 uses the term "regulated unit" in defining that portion of the facility that is subject to the requirements of Subpart F. A regulated unit is any solid waste management unit of the above types that has received hazardous waste after July 26, 1982.

Section 264.90(b)(4) allows the Regional Administrator to issue a waiver from the ground-water protection requirements if the owner or operator can demonstrate that there is no potential for migration of liquid from the regulated unit to the uppermost aquifer during the active life of the regulated unit and, where applicable, during the post-closure care period as well.

The current rule requires that in order to provide an adequate margin of safety in the prediction of potential migration of liquid, the owner or operator must base predictions on assumptions that would maximize the rate of liquid migration (e.g., assume the maximum possible hydraulic head of liquids in a regulated unit). This approach, based on conservative assumptions, did not discuss the submission of actual data (e.g., measurements of hydraulic head) by the owner or operator for use in making predictions.

The Agency proposes to amend § 264.90(b)(4) to require the ground-water monitoring variance to be based upon either: (1) Site-specific field measurement, sampling, and analysis of physical, chemical and biological processes affecting contaminant fate and transport; or (2) an adequate margin of safety in predicting contaminant fate and transport, by basing predictions on assumptions that maximize contaminant migration and consider all impacts to human health and environment.

The first approach is generally the preferred one from the perspective of the RCRA Permit Writer since the demonstration is based on actual site-specific collection and analysis of field data regarding contaminant fate and transport. Site assessment supporting the demonstration should include, at a minimum, the following:

(1) Definition and characterization of hydrogeologic boundaries;

(2) Assessment of the degree of hydraulic communication between the vadose zone, water-table aquifer and deeper aquifers;

(3) Estimation of the temporal and spatial variability of ground-water seepage velocities; and

(4) Collection and analysis of remaining field data that are necessary to assess site-specific physical, chemical, and biological processes affecting contaminant fate and transport.

In addition to these site assessment factors, the RCRA Permit Writer may require actual field demonstrations (i.e., pilot studies). Considering that many of the above requirements should already be fulfilled in obtaining the RCRA Permit, it is probably in the interest of the owner or operator to pursue this first approach.

Field data is often preferred to laboratory data since the latter may give misleading results due to differences between actual field conditions and laboratory conditions. For this reason, site-specific information should be based on field data rather than laboratory measurements. The test method used to obtain field data should be specified in the monitoring variance request.

The second approach is provided to give flexibility to the owner or operator regarding no migration demonstrations. However, demonstrations based on models not supported by proper site characterization may not be accepted by RCRA Permit Writers due to technical limitations and inaccuracies. On the other hand, models may be very useful tools for planning effective and efficient data collection. Considering the volume of data required for no migration demonstrations, an iterative procedure of data collection and modeling may often be the preferred approach (i.e., a combination of both approaches).

Owners or operators are cautioned that very few waivers from the ground-water monitoring requirements have been granted thus far due to insufficient data and analysis submittals and the scarcity of sites that could meet the requirements. In addition, although attempts are sometimes made to

circumvent the site assessment requirements with models, actual site characterization that includes obtaining geologic logs, using geophysical methods, and the sampling, measurement, and analysis of ground water is irreplaceable.

In addition to the above changes to § 264.90(b)(4), the Agency is proposing a minor change to § 264.90(b)(4) that clarifies the performance requirements of units regarding ground-water protection and parallels similar descriptions elsewhere in the regulations. The specific change revises: "The Regional Administrator finds that there is no potential for migration of liquids from a regulated unit to the uppermost aquifer" to read: "The Regional Administrator finds that there is no potential for migration of hazardous waste or hazardous constituents from a regulated unit to the uppermost aquifer." The reasons for this change are: (1) To provide consistency with other sections of this Subpart and elsewhere in Part 264 and (2) address situations where wastes or contaminants are conveyed by nonliquids (i.e., gases) into the surrounding soil and then contaminate ground water by interacting with percolating water.

2. Establishment of Programs

Under the requirements of Subpart F, the Regional Administrator establishes in the facility permit the elements of a monitoring and response program. The purpose of § 264.91 is to inform the owners or operators of regulated units subject to this Subpart that they must institute one of three types of monitoring or response programs set forth in Subpart F—a detection monitoring program, a compliance monitoring program, or a corrective action program, the specifics of which are either governed by other sections of Subpart F or by the facility permit itself. The permit may contain all three programs and specify the conditions under which each will be used at the waste management unit or units at a given facility.

Although the permit may contain all three programs, currently only one program may be instituted at any given time, even if the facility contained more than one regulated unit. This is because, under § 264.95(b)(2), the waste management area where a facility contains more than one unit is described by an imaginary line circumscribing the several regulated units. Because of today's proposal to allow multiple waste management areas in such situations, the Agency is also proposing to allow the Regional Administrator to require multiple programs, to be instituted simultaneously, in a single permit. The following will explain these changes in greater detail.

a. Point of Compliance (§ 264.95) The point of compliance, as described in § 264.95(a), is the point at which the ground-water protection standard must be met and at which monitoring must be conducted. This point is a vertical surface located at the hydraulically downgradient limit of the waste management area that extends down into the uppermost aquifer underlying the regulated unit(s). The waste management area, as defined in § 264.95(b), is the limit projected in the horizontal plane of the area on which waste will be placed during the active life of the regulated unit(s). This area will be specified in the facility permit. The edge of the waste management area is not the outer limit of the waste itself; rather, it includes any horizontal space taken up by liners, dikes, or other barriers designed to contain waste in a regulated unit (§ 264.95(b)(1)). The purpose of this provision is to avoid the implication that monitoring and corrective action wells should be drilled through the structures which are designed to control the waste, clearly a counterproductive effort.

The Agency is proposing and asking for specific comments on two options the Regional Administrator would have for determining the waste management area for facilities with more than one regulated unit. Presently, § 264.95(b)(2) of the regulations provides that if the facility contains more than one regulated unit, the waste management area is described by an imaginary line circumscribing several regulated units. This option would be retained in the proposed regulations. In addition, the Agency is proposing another option that would give the Regional Administrator the authority to require the waste management area be described by a line circumscribing individual units when a facility contains more than one regulated unit. According to this proposal, the Regional Administrator would decide on whether to delineate multi-unit or unit-specific waste management area(s) based on the number, spacing, and orientation of the units; the waste types handled; and the hydrogeologic setting.

This proposal is prompted by several important considerations. If a facility contains more than one regulated unit, and contamination is detected by a multi-unit monitoring system, it is often difficult and time consuming to identify which of the regulated units is responsible for the contamination. The Agency is concerned that the regulatory requirement that the waste management area be described by an imaginary line circumscribing all the regulated units may hinder in certain circumstances the early detection of leakage of hazardous constituents into the ground water. If contamination of ground water beneath a facility goes undetected for a substantial period of time, remediation of this contamination becomes more complex and extensive. Furthermore, in certain situations the cleanup of contaminated ground water may become so burdensome to the owner or operator that the facility can only be remediated with federal assistance (i.e., CERCLA cleanup action).

There are some situations where it may be appropriate to define the compliance point boundary around several regulated units and the Regional Administrator may choose to do so. Situations where there is a dike between two lagoons or a small strip of land separating two landfills are examples of where it may be appropriate to install monitoring systems around groups of units. Another possible situation where multi-unit monitoring may be appropriate is where, if a contaminant leak were to occur, it would be impossible to distinguish which unit is the source of the contamination due to the proximity of units and types of wastes handled.

b. Multiple Programs (§ 264.91) Proposed changes to § 264.95 allows creation of separate waste management areas at facilities that include more than one regulated unit. With this proposed change, the Regional Administrator could require more than one monitoring program to be conducted simultaneously at a single facility. Today's proposed amendment to § 264.91 will make it clear that the Regional Administrator has the authority to require different monitoring programs (i.e., detection, compliance, or corrective action) for the different waste management areas within the same facility. The appropriate monitoring program for each waste management area shall be selected on the basis of the concentration of contaminants detected and the monitoring requirements associated with the concentrations as specified in §§ 264.98, 264.99, and 264.100.

Monitoring requirements defined on the basis of individual waste management areas should promote a ground-water monitoring and corrective action strategy which corresponds to the extent, concentration, and distribution of contamination throughout the RCRA hazardous waste facility. This amendment also eliminates the potential

for one unit which triggers a particular monitoring program to unnecessarily cause all other units to adopt the same monitoring program, regardless of the source and extent of contamination.

3. Return to Detection Monitoring (§ 264.99)

A compliance monitoring program, as described in § 264.99, is required under § 264.91 whenever hazardous constituents exceed the concentration limits at the compliance point as specified in the ground-water protection standard. Currently, a mechanism for remaining in compliance monitoring (rather than entering corrective action) is provided under § 264.99(j). Within the timeframe necessary to establish a corrective action program (e.g., usually 90 days), the owner or operator can demonstrate under § 264.99(j) that entering corrective action is inappropriate. Such demonstrations must show that the exceedance of the ground-water protection standard at any monitoring well is due to either a source other than a regulated unit or an error in sampling, analysis, or evaluation.

However, § 264.99 does not currently provide a mechanism by which the owner or operator can return to detection monitoring from compliance monitoring when he or she has been inappropriately triggered into compliance monitoring due to a source other than a regulated unit or an error in samplying, analysis or evaluation. Adding such a mechanism would avoid unnecessary compliance monitoring for such instances. Today's rule proposes to allow an owner or operator who is required to carry out compliance monitoring as a result of exceeding background levels for the above reasons to return to a detection monitoring program under § 264.98. The owner or operator must demonstrate that concentrations of hazardous constituents no longer show statistically significant increases over background values for a period of time based on site-specific conditions.

We are also amending § 264.96 (Compliance Period) by proposing an alternative time period based upon site-specific data and analysis of contaminant migration potential in addition to the current three-year period. This provision provides flexibility in setting the compliance period and is also consistent with the above change to § 264.99. Key factors to consider in assessing these site-specific conditions are covered in the discussion on § 264.96 amendments.

4. Alternate Point of Compliance at Existing Facilities

For some existing facilities, physical obstacles (e.g., natural geologic features, buildings, highways, or railroads) may prevent the installation of downgradient monitoring wells at the currently defined point of compliance. In order to provide flexibility in specifying compliance point well locations, a provision is being proposed to § 264.95(a) which would allow the point of compliance to be located downgradient from such existing physical barriers as long as the performance standard of early detection is met. However, other drilling techniques (i.e., directional drilling) should be considered where physical barriers are present and the alternate point of compliance should be as close as practical to the downgradient limit of the waste management area while still avoiding any such physical obstacles. This provision would be limited to existing units with existing physical barriers. New units, lateral expansions and replacement units are among those units that would not be eligible for the provision. The presence of physical obstacles which prevent the installation of compliance point wells capable of detecting early leakage at those units, could provide grounds for denial of authorization for new, expansion, or replacement units.

5. Supplemental Monitoring Wells (§ 264.95(a)(2))

There may be certain situations in which monitoring wells installed at the currently defined point of compliance would be unable to detect contaminants due to complicated site conditions caused by hydrogeology or contaminant characteristics. Two examples of such contamination problems include lateral migration of contaminants in the vadose zone and contaminant transport strongly influenced by density gradients.

The first example involves a "step-wise" movement of contaminants caused by discrete low-permeability layers (e.g., perched water tables above clay lenses) that are encountered at various depths in the vadose zone. Under these conditions, contaminants may spread laterally along the top surface of the low-permeability layer, then move downward once they reach the layer's edge. The contaminants, by moving laterally above the water table in this fashion, could escape detection by moving past the point of compliance wells as defined by § 264.95 before entering the uppermost aquifer.

The second example is a dense contaminant plume that moves predominantly downward due to differences between the density of the plume and the surrounding ground water. Lateral movement of such plumes is generally controlled by subsurface structural features (e.g., an inclined bedrock surface), and may be contrary to the prevailing ground-water flow direction. Consequently, as in the previous example, monitoring wells placed only in locations as prescribed by § 264.95 may not detect the release of contaminants.

In the proposed regulatory amendments, the Regional Administrator may require the installation of supplemental wells in the vicinity of the waste management area as necessary for early detection of contaminants. These wells could be equivalent to the currently defined compliance point wells in that the ground-water monitoring requirements could be fully applied at these well locations. We are requesting comments regarding how such supplemental wells would be used for corrective action (e.g., should these wells be used as point of compliance wells for monitoring purposes only, or also for corrective action).

6. Compliance Period (§ 264.96)

The Agency is addressing two issues dealing with § 264.96. First, we propose to allow the compliance period to be based on site-specific conditions in addition to the current requirement that the ground-water protection standard not be exceeded for three years. Second, we propose to clarify that the compliance period will apply to individual waste management areas within the facility which may be regulated under different programs pursuant to today's amendment to § 264.91(b).

When setting the ground-water protection standard in a facility permit, the Regional Administrator must define the time period over which it will apply. In § 264.96, the regulations specify that the compliance period is the number of years equal to the active life of the waste management area, including any waste management activity prior to permitting, and the closure period. The regulations now require that once an owner or operator is engaged in corrective action, the compliance period may be extended beyond the active life of the waste management area until the owner or operator can demonstrate that the ground-water protection standard has not been exceeded for a period of three consecutive years. We are proposing to allow, in addition to the three-year requirement, a time period based upon a site-specific assessment of

contaminant migration potential. Assessment factors that the Agency is considering for compliance period extensions include hydrogeologic characteristics such as the spatial and temporal variations in ground-water seepage velocities and contaminant characteristics such as solubility, specific gravity, adsorptive potential and biodegradability. We are also requesting comments on how such an alternative time period can be determined based on these factors and any other factors that the Agency has not identified.

A compliance period based on such factors could relate the compliance period to site-specific conditions and thus more effectively protect human health and the environment than the three-year timeframe for the compliance period currently in effect. The three-year period may be protective at some sites while providing too little protection at other sites. Using site-specific criteria to define an appropriate compliance period would provide for better agreement between the nature and degree of contamination present at a waste management unit and the length of the compliance period.

As noted earlier, changes to § 264.91(b) would allow individual waste management areas within the same facility to be regulated under different monitoring programs (i.e., detection, compliance or corrective action). Today's proposed amendment to § 264.96 will allow the Regional Administrator to establish, when appropriate, individual compliance periods for each individual waste management area within the facility.

7. General Ground-Water Monitoring Requirements (§ 264.97)

In § 264.97, EPA has set forth a series of general requirements that address such topics as well design and placement, sampling and analysis procedures, analytical methods, measurement of water-level elevations, determination of background and statistical procedures.

a. Monitoring the "Uppermost Aquifer." The existing rules provide the Regional Administrator explicit authority to require monitoring the ground water in the uppermost aquifer. However, some owners and operators have argued that low permeability saturated zones within the uppermost aquifer are not part of the aquifer. They have also argued that perched aquifers and intermittent zones of saturation within the aquifer do not have to be monitored. The Agency believes that, in most cases, contamination reaching any ground water in these saturated zones of the uppermost aquifer will migrate to the principal water bearing zone in the aquifer. Monitoring data from perched aquifers or intermittent zones of saturation can be useful in indicating present or potential threats of contamination in the uppermost aquifer. The Agency believes that low yielding saturated zones in the aquifer (whether saturated permanently or intermittently) should, in many cases, be subject to monitoring requirements.

Accordingly, the Agency is proposing to amend § 264.97(a) to give the Regional Administrator explicit authority to monitor any and all zones of saturation in the uppermost aquifer. We are also requesting comments on the need to further clarify the Regional Administrator's authority to require monitoring of any saturated zone not part of the uppermost aquifer that can act as a contaminant transport pathway under the facility. We would replace the existing language "uppermost aquifer" with "ground water in any saturated zone below the facility that can act as a contaminant transport pathway," wherever this language appears in Subpart F and in § 270.14(c).

b. Unsaturated Zone Monitoring. The Agency is proposing to add a provision to § 264.97(a) that clarifies the Regional Administrator's authority to require the use of unsaturated zone monitoring for determining early migration of contaminants. We envision the use of unsaturated zone monitoring to be especially useful in situations where the facility is located above a hydrogeologic setting where depth to the water table is substantial or where such monitoring improves or assures early detection of released hazardous wastes or constituents. Monitoring options, which could be considered in site conditions prone to lateral contaminant migration through the vadose zone, or where depth to ground water is substantial, might include the following:

(1) Permanent geophysical monitoring stations,
(2) Soil gas measurements,
(3) Nested piezometers, and
(4) Lysimeters.

c. Quality Assurance and Quality Control. The Agency is proposing to add to § 264.97 (c) and (e) requirements for quality assurance and quality control (QA/QC) procedures. Under paragraph (c) the owners or operators would be responsible for: (1) Documenting the design, installation, development and decommission of monitoring wells, piezometers, and other measurement, sampling, and analytical devices; and (2) conducting operation and maintenance procedures for monitoring wells, piezometers, and other measurement, sampling, and analytical devices throughout the life of the monitoring program. These requirements would help to assure that reliable ground-water monitoring data is gathered and submitted to the Agency. Under paragraph (e), the Agency is proposing to add QA/QC requirements for measurement, sampling, and analytical methods.

Standard methods and a comprehensive quality assurance program are necessary for an effective ground-water monitoring program. In implementing the RCRA ground-water monitoring program, the Agency has observed problems with ground-water sampling procedures, well construction and installation, monitoring well network design, laboratory analyses, and data interpretation. A rigorously enforced, comprehensive quality assurance based on sound quality objectives and backed up with an appropriate set of reference methods and procedural guidance would remedy these problems. The owner or operator should refer to "Ground-Water Monitoring: Quality Assurance for RCRA," EPA/600/X–87/035, January 1987, and "Test Methods for Evaluating Solid Waste Physical Chemical Methods," SW–846, September 1986, regarding further information on QA/QC.

8. Detection Monitoring Program (§ 264.98)

The last three sections of Subpart F (i.e., §§ 264.98, 264.99, and 264.100) set forth the specific elements of each type of ground-water monitoring and response program: detection, compliance and corrective action. If hazardous constituents from a regulated unit have not reached ground water at the time of permit consideration, the owner or operator may receive a detection monitoring program permit.

a. Determination of Ground-Water Flow Rate and Direction. Determination of ground-water flow rate and direction is an explicit requirement of the detection and compliance monitoring programs, and implicitly required for the corrective action program. The existing regulations require that flow rate and direction be defined annually (§§ 264.98(e) and 264.99(e)). Today, the Agency is proposing to change this regulation to require that the flow rate and direction be defined whenever any well exhibits a significant change in water level.

The Agency is specifically requesting comments on what constitutes a significant change in water level. One option that the Agency is considering is

to base the determination of significant change on the measurement accuracy of common water level measurement devices (e.g., fiberglass and steel tapes). These measurement devices are currently accurate to 0.01 foot. The Agency is asking whether a numerical standard based on measurement accuracy is appropriate for requiring a determination on ground-water flow rate and direction.

The present requirement that the ground-water flow rate and direction be defined annually may be either too frequent or too infrequent, depending on site-specific conditions. The purpose of this proposed change is to provide flexibility in assessing the ground-water flow rate and direction so that such assessments are commensurate with the temporal variations in site conditions. Consideration of these variations is critical to both monitoring and response programs since neglecting their occurrence may lead to improperly designed and operated monitoring systems as well as to costly, ineffective remediation attempts. Examples of factors influencing the ground-water flow rate and direction include seasonal recharge patterns, tidal influences, river stage changes, and nearby pumping or injection wells. Permit writers should consider the above factors when specifying the time(s) of the year when ground-water monitoring data should be collected. The Agency must be made aware of such shifts so that appropriate modifications to monitoring systems can be made when necessary.

In all cases, ground-water flow rate and direction data should be presented in the form of a flow net. If ground-water surface elevation data indicate that the hydraulic gradient has not changed, the owner or operator can compare new data to the original determination to confirm that the flow rate and direction have not changed.

b. Sampling for Appendix IX Constituents. Section 264.98 (h)(2) currently requires owners or operators, after determining a statistically significant increase in monitoring parameter results, to immediately sample the ground water in all monitoring wells and determine the concentration of all Appendix IX constituents in Part 264 that are present in ground water.

The existing rules do not allow for any flexibility in selecting which compliance point (i.e., downgradient) monitoring wells should be subject to the analysis of all Appendix IX hazardous constituents. That is, regardless of the extent or configuration of the point of compliance, any well along the compliance point would be subject to the full Appendix IX constituent analytical requirements. We are requesting comments on whether to provide more flexibility in deciding which compliance point monitoring wells should be subject to the above requirements. Such flexibility could be based on plume configuration.

c. Submission of Demonstrations Showing Statistical Increases Caused by Error/Other Source. The current rules allow a facility to continue or resume detection or compliance monitoring, as appropriate, after statistically significant increases in monitoring parameters or the concentration of particular constituents have been detected, provided that the owner or operator successfully demonstrates that a source other than a unit within the facility has caused the increase or that an apparent increase resulted from error in sampling, analysis, or evaluation. The provisions described above require demonstrations to be submitted in addition to, or in lieu of, compliance monitoring and corrective action permit modifications, respectively.

Under the existing rules in §§ 264.98(i) and 264.99(j), showings that another source was responsible for an increase or that the increase was due to an error in sampling, analysis, or evaluation must be submitted within 90 days of the determination of the significant increase, to coincide with the time required to submit permit modification applications.

We have evaluated the 90-day requirement for §§ 264.98 (i) and 264.99 (j) and have reconsidered the need to submit the above demonstrations within the same time frame as permit modification applications. For example, errors resulting from seasonal variations in the ground water may not become apparent until well after the 90-day period has passed. A more reasonable approach would be to allow owners or operators to submit such demonstrations at any time during the required monitoring period. The Agency believes that this approach will not jeopardize human health or the environment, but will provide the owner or operator with enough flexibility to demonstrate that significant changes in ground-water quality were not caused by units at the facility. Therefore, §§264.98(i) and 264.99(j) have been amended and will require submission of demonstrations within 90 days or an alternate time period approved by the Regional Administrator. It must be emphasized that the 90-day period would usually apply to the permit modification process unless an alternate time period is approved. A permit modification would be required if a statistically significant increase over background levels or the ground-water protection standard were found.

9. Compliance Monitoring Program (§ 264.99)

Once the owner or operator determines that hazardous constituents from a regulated unit are present in the ground water, he must establish a compliance monitoring or corrective action program at the facility. Many of the requirements of the compliance monitoring program are analogous to those required under the detection monitoring program.

Section 264.99(f) requires the owner or operator to analyze samples from compliance point monitoring wells for all constituents contained in Appendix IX of Part 264 at least annually to determine whether additional hazardous constituents are present. However, § 264.93 (a) and (b) allow the Regional Administrator to exclude an Appendix IX constituent from the list of hazardous constituents specified in the facility permit if the constituent is not reasonably expected to be in or derived from waste contained in the regulated unit and is not likely to pose a substantial present or potential hazard to human health or the environment.

Changes to § 264.99(f) are being proposed to correct this inconsistency. This annual monitoring requirement should not include any constituents which have been excluded by the Regional Administrator under § 264.93(b) from the list of hazardous constituents.

C. Discussion of Specific Part 270 Changes

Part 270 contains requirements for Part B permit applications for hazardous waste treatment, storage, and disposal facilities. The Agency is proposing to change one of the Part B permit application requirements.

Section 270.14(c)(4) currently requires the applicant to provide a description of "any plume" of contamination that has entered the ground water from a waste management unit located within the facility boundary, at the time that the Part B permit application is submitted. Since contamination may not always take the form of a well-defined plume, the Agency proposes to clarify this requirement by deleting "any plume of contamination that has entered the ground-water" and inserting "all contamination that has entered ground water from a regulated unit * * *" The proposed change will require that owners or operators submit the

necessary monitoring data to characterize ground-water quality.

IV. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State (see 40 CFR Part 271 for the standards and requirements for authorization). Following authorization, the Agency retains enforcement authority under sections 3008, 7003 and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program. The Federal requirements no longer applied in the authorized State, and the Agency could not issue permits for any facilities in a State where the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g); new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in non-authorized States. The Agency is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

B. Effects on State Authorization

Today's rule would establish standards that are not effective in authorized States since the requirements are not being imposed pursuant to the Hazardous and Solid Waste Amendments of 1984. Thus, the requirements will be applicable only in those States that do not have final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State law.

40 CFR Part 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes, and must subsequently submit the modification to EPA for approval. The deadline by which the State must modify its program to adopt today's rule is one year (or two years if a State statutory amendment is required) of the date of final promulgation of this regulation. These deadlines can be extended in exceptional cases (40 CFR Part 271.21(e)(3)). Once EPA approves the revision, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's rule. These State requirements have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to carry out these requirements in lieu of the Agency until the State requirements are approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law.

States that submit official applications for final authorization less than 12 months after the effective date of these standards are not required to include standards equivalent to these standards in their application. However, the State must modify its program by the deadline set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of those standards must include standards equivalent to these standards in their application. 40 CFR 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

V. Regulatory Analysis

A. Executive Order 12291: Regulatory Impact Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, thus, subject to the requirement of a Regulatory Impact Analysis. The notice published today is not major because: the rule will not result in an effect on the economy of $100 million or more, will not likely result in net increased costs or prices, will not have significant adverse effects on competition, employment, investment, productivity, innovation, and will not significantly disrupt domestic or export markets. The proposed amendment has been reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order 12291.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 60 *et seq.*, whenever the Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comments a regulatory flexibility analysis which describes the impact of the rule on small businesses (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant impact on a substantial number of small entities.

This amendment will have no adverse economic impact on small entities since the rule will not cause a net change in the amount of information required for RCRA Part B permit applications. Accordingly, I hereby certify that this regulation will not have a significant impact on a substantial number of small entities. This regulation does not require a regulatory flexibility analysis.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in Part 264 have previously been approved by OMB and were assigned OMB control number 2050–0007. The changes being proposed today have been submitted to OMB for review and approval. Comments on the information requirements should be sent to EPA and OMB c/o Desk Officer for RCRA, Office of Management and Budget, Room 3019, 726 Jackson Place NW., Washington, DC 20603.

List of Subjects

40 CFR Part 264

Hazardous waste, Reporting and recordkeeping, Hazardous materials, Ground-water monitoring, Environmental monitoring.

40 CFR Part 270

Administrative practice and procedure, Reporting and recordkeeping requirements, Hazardous materials, Waste treatment and disposal, Waste pollution control, Water supply, Confidential business information.

Dated: July 18, 1988.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, Parts 264 and 270 of Chapter I of Title 40 of the Code of Federal Regulations are proposed to be amended as follows.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for Part 264 continues to read as follows:

Authority: Sections 1006, 2002(a), 3004, and 3005 of the Solid Waste Disposal Act as amended, by the Resource Conservation and Recovery Act of 1976, as amended 42 U.S.C. 6705, 6912(a), 6724, and 6925.

2. In § 264.90 by revising paragraph (b)(4) to read as follows:

§ 264.90 Applicability.

* * * * *

(b) * * *

(4) The Regional Administrator finds that the owner or operator has demonstrated that there is no potential for migration of hazardous waste or hazardous constituents from a regulated unit to the uppermost aquifer during the active life of the regulated unit (including the closure period) and the post-closure care period specified under § 264.117. This no migration demonstration must be certified by a qualified ground-water specialist and based upon:

(i) Site-specific field measurement, sampling, and analysis of physical, chemical and biological processes affecting contaminant fate and transport; or

(ii) An adequate margin of safety in predicting contaminant fate and transport, by basing predictions on assumptions that maximize contaminant migration and consider impacts on human health and the environment.

* * * * *

3. In § 264.91 by revising paragraph (b) to read as follows:

§ 264.91 Required programs.

* * * * *

(b) The Regional Administrator will specify in the facility permit the specific elements of the monitoring and response program. The Regional Administrator may require a combination of monitoring programs (i.e., detection, compliance, or corrective action) for a given waste management area within the facility. If a facility contains more than one waste management area, the Regional Administrator may require different monitoring and response programs or a different combination of programs at the separate waste management areas. The Regional Administrator will specify the circumstances under which each of the programs will be required. In deciding whether to require the owner or operator to institute a particular program, the Regional Administrator will consider the potential adverse effects on human health and the environment that might occur before final administrative action on a permit modification application to incorporate such a program could be taken.

4. In § 264.95 by revising existing paragraph (a), adding paragraphs (a)(1), and (a)(2) (consequently, paragraph (a) is revised), revising paragraph (b)(2), and adding paragraph (b)(3) to read as follows:

§ 264.95 Point of compliance.

(a) The Regional Administrator will specify in the facility permit the points of compliance at which the ground-water protection standard of § 264.92 applies and at which monitoring must be conducted. The point of compliance is a vertical surface located at the hydraulically downgradient limit of the waste management area that extends down into the uppermost aquifer underlying the regulated units.

(1) For existing units, where existing physical obstacles prevent the installation of monitoring wells at the point(s) of compliance, as defined in paragraph (a), of this section, the Regional Administrator may specify an alternate point(s) of compliance that is as close to the waste management area as practical, as long as the performance standard of early detection of contamination is not compromised. Lateral expansion, new, or replacement units are among those units that are not eligible for an alternate point of compliance under this paragraph.

(2) Where complicated site conditions caused by hydrogeology or contaminant characteristics can allow contaminants to move past or away from the point of compliance as defined in § 264.95(a) without being detected, the Regional Administrator can designate supplemental monitoring wells to be used in conjunction with the point of compliance wells.

(b) * * *

(b)(2) If the facility contains more than one regulated unit, the waste management area(s) will be described by the Regional Administrator as either:

(i) An imaginary line circumscribing a number of units, or,

(ii) An imaginary line circumscribing each individual unit.

(b)(3) In determining whether paragraph (b)(2) (i) or (ii) of this section applies, the Regional Administrator will select the waste management area(s), that is protective of human health and the environment, based on the following factors:

(i) Number, spacing, and orientation of units;

(ii) Waste types handled; and

(iii) Hydrogeologic setting.

* * * * *

5. In § 264.96 by revising paragraphs (a) and (c).

§ 264.96 Compliance period.

(a) The Regional Administrator will specify in the facility permit the compliance period during which the ground-water protection standard of § 264.92 applies. The compliance period is the number of years equal to the active life of the waste management area (including any waste management activity prior to permitting and the closure period). If a facility contains more than one waste management area as described by § 264.95(b)(2), the individual waste management area will have an individual compliance period.

* * * * *

(c) If the owner or operator is engaged in a corrective action program at the end of the compliance period specified in paragraph (a) of this section, the compliance period is extended until the owner or operator can demonstrate that the ground-water protection standard of § 264.92 has not been exceeded for a period of three consecutive years or alternate time period based on site-specific conditions.

6. In § 264.97 by revising paragraphs (a)(2), (b), and (e) and by adding paragraphs (a)(3), (c)(1) and (c)(2) to read as follows:

§ 264.97 Ground-water monitoring requirements.

* * * * *

(a) * * *

(2) Represent the quality of ground-water passing the point of compliance. The Regional Administrator shall require ground-water monitoring in the uppermost aquifer, which may include, but is not limited to, low-yielding saturated zones such as perched water tables in order to detect early migration of contaminants.

(3) The Regional Administrator can require unsaturated zone monitoring where monitoring of the unsaturated zone would aid in detecting early migration of contaminants into ground water.

(b) If approved by the Regional Administrator, separate ground-water monitoring systems are not required for each regulated unit when the facility has several regulated units and meets one or both of the conditions under § 264.95(b)(2)(ii) concerning multi-unit monitoring.

(c) * * *

(1) The design, installation, development, and decommission of any

monitoring wells, piezometers and other measurement, sampling, and analytical devices must be documented in the operating record;

(2) The monitoring wells, piezometers, and other measurement, sampling, and analytical devices must be operated and maintained so that they perform to design specifications throughout the life of the monitoring program.

* * * * *

(e) The ground-water monitoring program must include measurement, sampling, and analytical methods that accurately assess ground-water quality and provide early detection of hazardous constitutents entering the uppermost aquifer. The methods must be documented in the operating record and include quality assurance and quality control procedures.

* * * * *

7. In § 264.98 by revising paragraphs (e), (h)(5) introductory text, (i)(2), and (i)(3) to read as follows:

§ 264.98 Detection monitoring program.

* * * * *

(e) The owner or operator must determine the ground-water flow rate and direction in the uppermost aquifer if any well exhibits a significant change in water level.

* * * * *

(h) * * *

(5) Within 180 days, or within an alternate time period approved by the Regional Administrator, submit to the Regional Administrator:

* * * *

(i) * * *

(2) Submit, within 90 days or an alternate time period approved by the Regional Administrator, a report to the Regional Administrator which demonstrates that a source other than a regulated unit caused the increase or that the increase resulted from an error in sampling, analysis, or evaluation;

(3) Within 90 days, or within an alternate time period approved by the Regional Administrator, submit to the Regional Administrator an application for a permit modification to make any appropriate changes to the detection monitoring program at the facility; and

* * * * *

8. In § 264.99 by revising paragraphs (e), and (f), revising paragraphs (j)(2) and (j)(3), and redesignating existing paragraphs (k) and (l) as (l) and (m), and adding new paragraph (k) as follows:

§ 264.99 Compliance monitoring program.

* * * * *

(e) The owner or operator must determine the ground-water flow rate and direction in the uppermost aquifer if any well exhibits a significant change in water level.

(f) The owner or operator must analyze samples from all monitoring wells at the compliance point for constituents identified in Appendix IX of Part 264 of this chapter, unless the Regional Administrator has excluded them under paragraph (b) of § 264.93. Samples must be analyzed at least annually to determine whether additional hazardous constituents are present in the uppermost aquifer. If the owner or operator finds Appendix IX constituents in the ground water that are not identified in the permit as hazardous constituents, the owner or operator must report the concentrations of these constituents to the Regional Administrator within seven days after completion of analysis.

* * * * *

(j) * * *

(2) Submit a report to the Regional Administrator which demonstrates that a source other than a regulated unit caused the standard to be exceeded or that the apparent noncompliance with the standard resulted from error in sampling, analysis, or evaluation;

(3) Within 90 days, or within an alternate time period approved by the Regional Administrator, submit to the Regional Administrator an application for a permit modification to make any appropriate changes to the compliance monitoring program at the facility; and

* * * * *

(k) If at any time during the course of a compliance monitoring program, the owner or operator can demonstrate that concentrations of hazardous constituents no longer exceed background values, using the statistical procedure in § 264.97(h), for a period of time based on site-specific conditions, the Regional Administrator may determine that an unregulated source or an error in sampling, analysis, or evaluation made it appear that the applicable standard had been exceeded. Upon such a demonstration, the Regional Administrator may specify that the owner or operator may return to a detection monitoring program under § 264.98.

* * * * *

PART 270—EPA-ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

9. The authority citation for Part 270 continues to read as follows:

Authority: Sections 1006, 2002, 3005, 3007, and 7004 of the Solid Waste Disposal Act as amended (42 U.S.C. 6905, 6912, 6925, 6927, 6974), unless otherwise noted.

10. In § 270.14 by revising paragraph (c)(4) to read as follows:

§ 270.14 Contents of Part B: General requirements.

* * * * *

(c) * * *

(4) A description of all contamination that has entered the ground water from a regulated unit at the time the application was submitted that:

(i) Delineates the extent of contamination on the topographic map required under paragraph (b)(19) of this section;

(ii) Identifies the concentration of each Appendix IX constituent, of Part 264 of this chapter, throughout the zone of contamination or identifies the maximum concentrations of each Appendix IX constituent within the zone of contamination.

* * * * *

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federal register

Tuesday
July 26, 1988

Part IV

Department of Education

Office of Vocational and Adult Education

Cooperative Demonstration Program; Notice of Proposed Priority and Selection Criteria for Fiscal Years 1988 and 1989

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education

Cooperative Demonstration Program

AGENCY: Department of Education.

ACTION: Notice of Proposed Priority and Selection Criteria for Fiscal Years 1988 and 1989.

SUMMARY: The U.S. Secretary of Education (Secretary) proposes to establish an absolute priority for the fiscal years 1988 and 1989 grant competitions under the Cooperative Demonstration Program. Under the priority, funds would be reserved for exemplary dropout prevention and reentry projects in vocational education that would be coordinated with an in-depth Federal evaluation of this program. The Secretary also proposes to use new selection criteria in evaluating applications submitted for this competition.

DATE: Comments must be received on or before August 25, 1988.

ADDRESS: Comments should be addressed to Kate Holmberg, National Projects Branch, Division of Innovation and Development, Office of Vocational and Adult Education (Room 519, Reporters Building), 400 Maryland Avenue SW., Washington, DC 20202–5516. Telephone (202) 732–2363.

SUPPLEMENTARY INFORMATION:

Program Information

Although some statistics indicate that the overall dropout rate in this country may have leveled off or even decreased slightly in recent years, the dropout rate for some disadvantaged groups has become intolerably high. In addition, there are fewer career opportunities for those who drop out, as often they do not possess even the most basic skills required for most jobs.

The problem of high school dropouts is highlighted in the Senate Report No. 100–189 for Pub. L. 100–202 (Continuing Appropriations for Fiscal Year 1988). In this report, the Congress directed the Department of Education to make available $4,787,000 to support exemplary dropout prevention and reentry programs within vocational education. In addition, the Department is to evaluate the effectiveness of these programs. It is clear that Congress recognizes the serious, negative effects that the dropout problem has on our society and intends that funds be used to ameliorate this problem through the use of vocational education.

Many education program administrators believe that participation in vocational education programs can in itself help to lower dropout rates. Moreover, certain components of vocational training such as job readiness training, work experience, and indivdualized instruction have been found to be very effective in working with potential or actual dropouts. This program will be able to test these theories in order to demonstrate vocational education's role in dropout prevention.

The Secretary, therefore, proposes to award grants under the Cooperative Demonstration Program for model exemplary projects that have proven to be effective in dealing with the problems of potential or actual dropouts. Applicants must be able to provide evidence of program success based on past performance.

In order to assess the effectiveness of the projects funded and to identify which of the exemplary projects have models most suitable for replication, the Department of Education will conduct an independent evaluation under this program.

Priority

In accordance with the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105(c)(3), the Secretary proposes to establish an absolute priority by reserving funds under the Cooperative Demonstration Program in fiscal years 1988 and 1989 to support exemplary models of dropout and reentry projects within vocational education. Projects must exhibit exemplary approaches for encouraging vocational education students to remain in school or for encouraging dropouts to reenter school (or other alternative training programs) through vocational education programs. Exemplary approaches in past successful dropout projects have included such factors as small class size, individualized treatment, recruitment, and thorough assessment and feedback on student progress as a part of their comprehensive programs. In addition, projects should be located in communities with high dropout rates.

Applicants must provide evidence of the success of the approach the project will demonstrate. Results of past performance must include empirical data on the performance of project participants such as improved dropout rates, increased attendance rates, and successful grade progression.

All applicants must agree to participate, if selected, in a Federal evaluation. That evaluation would require the applicants to establish control groups through random assignment of participants to their projects or to establish comparison groups through matched pairs. Applicants that are prohibited by State law from engaging in random assignment will be excused from consideration for this approach but may still be required to participate in the Federal evaluation through a matched pairs design.

Federal Evaluation

The Secretary intends to conduct an independent evaluation of the effectiveness of as many as two-thirds of the dropout prevention and reentry demonstration projects funded under this program. This in-depth evaluation will require detailed collection of data on the project and participants, entailing some additional effort on the part of project staff in recordkeeping. The in-depth evaluation will involve the use of comparison groups developed through:

- Random assignment of potentially eligible participants to the program or the control group, or
- The use of matched pairs—a method that identifies non participants who have characteristics that are similar to those of the program participants.

The appropriate method of selecting a comparison group will be determined, based on program characteristics, by an independent evaluator under contract with the U.S. Department of Education. A project will need more potentially eligible participants than openings to qualify for random assignment. In order to match pairs, there must be a readily identifiable population from which selections can be made.

Random Assignment

Random assignment of potentially eligible participants is the most rigorous method of evaluating program effects. When participants are randomly assigned to a program or to a control group, all independent variables (i.e. ability, motivation, socioeconomic background) are controlled. Individuals in the control group will receive no services from the project funded under this program, but will be free to receive other available services. The use of the random assignment methodology is to test the impact of the program on participants versus the impact of other available services on individuals with similar characteristics.

Matched Pairs

An alternative evaluation design is the selection of a comparison group that is matched with the participant group on various characteristics. While this design is used more frequently than

random assignment, it is less rigorous. It is difficult to match participants, with non-participants on multiple characteristics. As a result, differences in outcome measures between program participants and persons in the matched comparison groups are sometimes not necessarily related to program effects, but rather to factors not matched. For instance, one of the most difficult factors to control for in a matched evaluation design is motivation. Program participants could be expected to be more motivated than non-participants unless program participants are randomly assigned.

The contractor will work closely with each project selected for in-depth evaluation in implementing the evaluation design procedures. In the Spring of 1989, the contractor will visit the selected project sites to observe program characteristics and practices such as problems and successes with program implementation, the employment of program strategies, and staff and participant interactions.

The in-depth evaluation will be implemented beginning in the Fall of 1989. Participants and controls will be assigned by the contractor through random assignment or matched pairing. Data will be collected from program participants and controls on factors such as demographic characteristics, family background, academic history, test scores, educational expectations, and attitudes toward education. Program participants who complete an open exit program or leave the program prior to completion will be followed up on an ongoing basis. Participants and controls will be followed up in the Spring of 1990 and Spring of 1991 to collect information on outcome measures such as attendance, program or school retention, academic progress, vocational training, educational expectations, program completion, and job placement. The evaluation of the effectiveness of dropout prevention and reentry programs in vocational education will be based on a comparison of program participants and controls on these outcome measures.

Applicants should plan and budget for their own independent evaluations in the event they are not selected to participate in the Federal evaluation. The contractor will be available to provide technical assistance to projects not selected for Federal evaluation, including assistance in refining the design of their evaluation, data collection procedures, and survey forms, to facilitate the collection of comparable data by all funded projects. The Secretary will consider that the evaluation requirements on 34 CFR 75.590 are met by a grantee's participation in the in-depth Federal evaluation.

Criteria For Evaluating Applications

The Secretry proposes to use the following selection criteria and to assign points as indicated, for this competition only.

(a) *Need* (15 points)

The Secretary reviews each application to determine the extent to which the project addresses the needs of the targeted population, including—

(1) A clear description of the needs of the proposed target population;

(2) Characteristics of that population, including numbers to be served directly;

(3) The definition of dropout used by the applicant's community and how the dropout rates in the application were computed;

(4) Specific evidence of how the proposed project will meet the needs of the target population;

(5) A description of any ongoing and planned activities in the community relative to the need, including, if appropriate, the relationship to the State Plan for Vocational Education;

(6) A clear statement of what the project seeks to demonstrate.

(b) *Plan of Operation* (20 points)

The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) A management plan that describes the chain of command, how staff will be managed, how coordination among staff will be accomplished, and timelines for each activity;

(2) A clear description of the interrelationship of goals, objectives, and activities;

(3) The way the applicant plans to use he resources and personnel from the grant to achieve each objective; and

(4) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented. These groups may include—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly.

(c) *Program Factors* (25 points)

The Secretary reviews each application to determine the extent to which there is—

(1) A clear description of the model to be used, including services to be provided, who will provide them, and how they will be provided;

(2) Evidence of past successful performance using this model to include empirical data such as lowered droupout rates, successful grade progression, improved attendance, and increased graduation of GED rates;

(3) A complete description of the methodology to be used including some or all of the following components—

(i) A thorough assessment of individual students;

(ii) Flexibility in the structure of the present delivery system, e.g., in classroom hours, use of additional staff, classroom location, and student-teacher ratios;

(iii) Active recruitment activities;

(iv) Small class size;

(v) Thorough assessment and feedback of student progress;

(vi) Individualized treatment;

(vii) Coordination of vocational instruction, academic instruction, and counselling services;

(viii) Inclusion of some relevant work-related experience; and

(ix) Community and business involvement.

(d) *Quality of Key Personnel* (15 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used on the project;

(iii) The time, including justification for the time, that each one of the key personnel, including the project director, will commit to the proposed project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel for this project are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications, the Secretary considers experience and training in fields particularly related to the objectives of the project, as well as other information that the applicant provides.

(e) *Evaluation Plan* (15 points)

The Secretary reviews each application to determine the quality of the project's independent evaluation plan for the project, including the extent to which—

(1) The plan includes activities during the formative stages of the project to help to guide and improve the project, as well as a final evaluation that includes summary data and recommendations; and

(2) The plan includes, at a minimum, a description of the participant data to be collected based on the project objectives; tracking and followup of progress by all project participants throughout the project period, and outcome measures to be used for each objective.

(f) *Budget and Cost-Effectiveness* (5 points)

The Secretary reviews each application to determine the extent to which—

(1) The budget is detailed and tied to the proposed activities;

(2) The budget narrative is explanatory and justifies expenses;

(3) The budget is adequate to support the project; and

(4) Costs are reasonable in relation to the objectives of the project.

(g) *Adequacy of Resources* (5 points)

The Secretary reviews each application to determine the adequacy of the resources, other than those provided by this program, and that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Additional Consideration

The Secretary further proposes that, in selecting applications for funding, the Secretary may consider whether funding a particular application would contribute to the funding of a variety of approaches.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding (a) the proposed priority for dropout prevention and reentry projects including the proposed Federal evaluation and related requirements; and (b) the proposed criteria.

All comments submitted in response to this notice will be available for public inspection during and after the comment period in Room 519, Reporters Building, 300 7th Street SW., Washington, DC, between the hours of 9:30 a.m. and 3:00 p.m., Monday through Friday of each week except Federal holidays.

(Authority: 20 U.S.C. 2411)

Dated: June 10, 1988.

William J. Bennett,

Secretary of Education.

[FR Doc. 88–16731 Filed 7–25–88; 8:45 am]

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federal register

Tuesday
July 26, 1988

Part V

The President

Proclamation 5841—Lyme Disease Awareness Week, 1988

Federal Register
Vol. 53, No. 143
Tuesday, July 26, 1988

Presidential Documents

Title 3—

The President

Proclamation 5841 of July 22, 1988

Lyme Disease Awareness Week, 1988

By the President of the United States of America

A Proclamation

Lyme disease affects a growing number of Americans each year. It has been identified in more than 30 States and has afflicted thousands of people since its first recognition in 1975.

At first a mystery, the cause of Lyme disease was discovered in 1982 by a scientist at the National Institute of Allergy and Infectious Diseases. It is now known that the bite of the tiny deer tick transmits the disease to humans by transferring the causative bacterium to the bloodstream. These ticks are found primarily in wooded areas of the northeastern and midwestern States, but they may also be carried on domestic animals, such as cats and dogs.

Early symptoms of the disease often include a slowly expanding red rash, fatigue, mild headache, pain and stiffness in muscles and joints, a slight fever, or swollen glands. The disease can be easily treated in its early stages with antibiotics, but if the initial symptoms go unnoticed or untreated, more serious manifestations can develop later, including complications affecting the heart, nervous system, and joints.

The best treatment for Lyme disease is prevention. People must know the dangers associated with ticks and take necessary precautions when hiking. They should check regularly for the presence of ticks, know how to remove them, and be alert for the symptoms of Lyme disease.

The National Institutes of Health conducts and supports research to help find better ways to prevent and treat Lyme disease and other tick-borne illnesses. We can be grateful for these and all efforts in the fight against these afflictions.

The Congress, by House Joint Resolution 569, has designated the week of July 24 through July 30, 1988, as "Lyme Disease Awareness Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of July 24 through July 30, 1988, as Lyme Disease Awareness Week. I call upon all government agencies, health organizations, communications media, and the people of the United States to observe this week with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of July, 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 thirteenth.

Ronald Reagan

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