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Wednesday
September 7, 1988

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 931 and 932

Expenses and Assessment Rate for Marketing Order Covering Fresh Bartlett Pears Grown in Oregon and Washington; Increase in Expenses for Marketing Order Covering California Olives

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 931 for the 1988–89 fiscal period established for that order. The rule is needed for the Northwest Fresh Bartlett Pear Marketing Committee established under M.O. 931 to incur operating expenses during the 1988–89 fiscal period and to collect funds during that period to pay those expenses. This will facilitate program operations. The final rule also authorizes an increase in expenditures for the California Olive Committee established under Marketing Order No. 932 for the 1988 fiscal year. This increase is needed to cover liability insurance expenses for the committee's manager, members, alternates, and administrative assistant and to fund an additional production research project. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATES: July 1, 1988, through June 30, 1989, (§ 931.223); January 1, 1988, through December 31, 1989, (§ 932.222).

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–475–3862.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 931 (7 CFR Part 931) regulating the handling of fresh Bartlett pears grown in Oregon and Washington and Marketing Order No. 932 (7 CFR Part 932) regulating the handling of olives grown in California. These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

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

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

There are approximately 78 handlers of fresh Bartlett pears and seven handlers of California olives regulated under their respective marketing orders, and approximately 1,390 olive producers in California and 1,900 Bartlett pear producers in Washington and Oregon. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers of Bartlett pears may be classified as small entities. Most, but not all, of the olive producers and none of the olive handlers may be classified as small entities.

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

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

The Northwest Fresh Bartlett Pear Marketing Committee met July 11, 1988, and unanimously recommended 1988–89 fiscal period expenditures of $53,800 and an assessment rate of $0.15 per western standard pear box of assessable pears shipped under M.O. 931. In comparison, 1987–88 fiscal period budgeted expenditures were $56,656 and the assessment rate was the same as recommended for the 1988–89 fiscal period. These expenditures are primarily for program administration.

Assessment income for the 1988–89 fiscal period is expected to total $41,508, based on the shipment of 2,767,200 packed boxes of pears. Other available funds include a reserve of $51,468 carried into this fiscal period, and $1,500 in miscellaneous income primarily from interest bearing accounts. The reserve is within the limits authorized under the marketing order.

A final rule establishing expenses in the amount of $1,620,350 for the California Olive Committee for the fiscal year ending December 31, 1988, was published in the **Federal Register** on February 2, 1988 (53 FR 2824). That action also fixed an assessment rate of $23.92 per ton of assessable olives

shipped under M.O. 932 to be levied on handlers during the 1988 fiscal year, ending December 31, 1988.

At a meeting held on July 6, 1988, the California Olive Committee voted unanimously to increase its budget of expenses from $1,620,350 to $1,627,482. The increase is needed to cover the premiums for liability insurance for the committee's manager, members, alternates, and administrative assistant, and to fund an additional production research project to be started during the 1988 fiscal period.

No change in the assessment rate was recommended by the committee. Adequate funds are available to cover any increase in expenses resulting from this action.

A proposed rule inviting comments on these actions was published in the **Federal Register** on August 8, 1988 (53 FR 29689). The comment period ended August 18, 1988. No comments were received.

While the expenses and assessment rate under authorized under M.O. 931 and the increase in expenses authorized under M.O. 932 will impose some additional costs on Bartlett pear and olive handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that the budget and assessment rate for the pear program and the budget increase for the olive program are reasonable and will tend to effectuate the declared policy of the Act.

The budget of expenses and assessment rate for M.O. 931 and the increase in expenses for M.O. 932 should be expedited because the committees need to have sufficient funds to pay their expenses, which are incurred on a continuous basis. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after the date of publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects

7 CFR Part 931

Marketing agreements and orders, Bartlett pears, Oregon, Washington.

7 CFR Part 932

Marketing agreements and orders, Olives, California.

For the reasons set forth in the preamble, a new § 931.223 is added and § 932.222 is amended as follows:

Note.—These actions will not be published in the Code of Federal Regulations.

1. The authority citation for 7 CFR Parts 931 and 932 continues to read as follows:

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

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

2. New § 931.223 is added to read as follows:

§ 931.223 Expenses and assessment rate.

Expenses of $53,800 by the Northwest Fresh Bartlett Pear Marketing Committee are authorized, and an assessment rate of $0.015 per western standard pear box of assessable pears is established, for the fiscal period ending June 30, 1989. Unexpended funds from the 1988–89 fiscal period may be carried over as a reserve.

PART 932—OLIVES GROWN IN CALIFORNIA

§ 932.222 [Amended]

3. Section 932.222 is amended to read as follows:

Section 932.222 is amended by changing "$1,620,350" to "$1,627,482".

Dated: September 1, 1988.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–20288 Filed 9–6–88; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 982

Filberts/Hazelnuts Grown in Oregon and Washington; 1988–89 Marketing Year Expenses and Assessment Rate; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; correction.

SUMMARY: This action corrects a typographical error contained in a final rule published in the **Federal Register** on June 9, 1988 (53 FR 21624). This action corrects § 982.333 of Subpart—Budget of Expenses and Rate of Assessment issued under Marketing Agreement and Order No. 982, both as amended, regulating the handling of filberts/hazelnuts grown in Oregon and Washington. This action corrects the assessment rate, incorrectly presented as $0.07 per pound of assessable filberts/hazelnuts, to the correct rate of $0.007 per pound of assessable filberts/hazelnuts.

EFFECTIVE DATE: September 7, 1988.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, Room 2525, South Building, F&V, AMS, USDA, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This action corrects a final rule which authorized expenses and established an assessment rate for filberts/hazelnuts grown in Oregon and Washington for the 1988–89 marketing year ending June 30, 1989.

The error appears in § 982.333 found in the first column on page 21626 of the June 9, 1988, issue of the **Federal Register**. An erroneous assessment rate of $0.07 per pound of assessable filberts/hazelnuts was inadvertently used. This action corrects that assessment rate to $0.007 per pound of filberts/hazelnuts assessable under the marketing order.

List of Subjects in 7 CFR Part 982

Filberts/Hazelnuts, Marketing agreements and orders, Oregon, and Washington.

For the reasons set forth in the preamble, 7 CFR Part 982 is corrected to read as follows:

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR Part 982 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.2.

2. Correct § 982.333 to read as follows:

§ 982.333 Expenses and assessment rate.

Expenses of $424,100 by the Filbert/Hazelnut Marketing Board are authorized, and an assessment rate payable by each handler in accordance with § 982.61 is fixed at $0.007 per pound of assessable filberts/hazelnuts for the 1988–89 marketing year ending June 30, 1989. Unexpended funds may be carried over as a reserve.

Dated: September 1, 1988.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–20223 Filed 9–6–88; 8:45 am]

BILLING CODE 3410–02–M

Cooperative State Research Service

7 CFR Part 3404

Availability of Information; Correction

AGENCY: Cooperative State Research Service, USDA.

ACTION: Final rule; correction.

SUMMARY: This document of the Cooperative State Research Service (CSRS), regarding the availability of information to the public in accordance with the Freedom of Information Act (FOIA), contains an error which is being corrected.

FOR FURTHER INFORMATION CONTACT: Stasia A.M. Hutchison, National FOIA Coordinator, Agricultural Research Service, Room 331B, Building 005, Beltsville Agricultural Research Center, Beltsville, Maryland 20705; (301) 344–3928.

In FR Doc. 88–11161, published in the **Federal Register** on Thursday, May 19, 1988, on page 17914, the Part Numbers 3402 and 3403 are corrected to read 3404 everywhere they appear.

Done at Washington, DC, this 23rd day of August 1988.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 88–20183 Filed 9–6–88; 8:45 am]

BILLING CODE 3410–22–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 790 and 791

Description of Office, Disclosure of Official Records, Availability of Information; Rules of NCUA Board Procedure, Promulgation of NCUA Rules and Regulations, and Public Observation of Board Meetings.

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Final rule; correction.

SUMMARY: NCUA is making two technical corrections to the final amendments to Parts 790 (Description of Office, etc.) and 791 (Rules of Board Procedure, etc.) of its regulations which were published in the **Federal Register** on August 8, 1988 (53 FR 29646). The final amendments did not contain an authority section for Part 791 and did not contain language sufficient to delete Subpart C from Part 790.

EFFECTIVE DATE: August 8, 1988.

FOR FURTHER INFORMATION CONTACT: Julie Tamuleviz at (202) 357–1030.

SUPPLEMENTARY INFORMATION: On August 8, 1988, NCUA published final amendments to Parts 790 and 791 of its regulations (53 FR 29646). Two technical corrections need to be made to the publication. These corrections are contained herein.

By the NCUA Board on August 30, 1988.

Becky Baker,

Secretary, NCUA Board.

The following corrections are made:

On page 29647, third column, nunbered paragraph 5 is redesignated as numbered paragraph 7. Two new paragraphs, designated as numbered paragraphs 5 and 6, are inserted to provide:

5. The authority section for Part 791 is revised to read as follows:

Authority: 12 U.S.C. 1766; 12 U.S.C. 1789; and 5 U.S.C. 552b.

§ 790.40—790.49 [Removed]

6. Subpart C to Part 790 (Sections 790.40–790.49) is removed.

[FR Doc. 88–20255 Filed 9–6–88; 8:45 am]

BILLING CODE 7535–01–M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

20 CFR Part 901

Enrolled Actuaries Under Employee Retirement Income Security Act of 1974

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Final rule.

SUMMARY: This document contains final regulations governing the performance of actuarial services under the Employee Retirement Income Security Act of 1974 (ERISA) by requiring that those enrolled to perform actuarial services under ERISA (enrolled actuaries) renew their enrollment every three years. A condition of eligibility for renewal will be the satisfaction of continuing professional education requirements. All enrolled actuaries will be required to renew their enrollment in the year 1990. Subsequent renewals of enrollment will be required in the year 1993 and every third year thereafter.

EFFECTIVE DATE: September 7, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie S. Shapiro, Executive Director, Joint Board for the Enrollment of Actuaries, c/o Department of the Treasury, Washington, DC 20220, (202) 535–6787.

SUPPLEMENTARY INFORMATION:

Background

The Joint Board for the Enrollment of Actuaries (Joint Board) was formed under authority of section 3041 of ERISA, Title 29, United States Code, Section 1241. The duties of the Joint Board include the enrollment of individuals who wish to perform actuarial services under ERISA. In addition, the Joint Board may, after notice and an opportunity for a hearing, suspend or terminate the enrollment of an individual who has not complied with the requirements of the regulations governing enrolled actuaries.

Consistent with that authorization, the Joint Board promulgated regulations addressing eligibility for enrollment, the standards for the performance of actuarial services under ERISA, bases for disciplinary actions and the procedures to be followed in taking those actions. Those regulations are found at 20 CFR Part 901. Regulations contained in 31 CFR Part 10 govern practice before the Internal Revenue Service. On January 24, 1979, the regulations in 31 CFR Part 10 were amended to authorize enrolled actuaries to practice before the Internal Revenue Service (44 FR 4940). Their eligibility for practice as enrolled actuaries is limited to matters concerning ERISA and the regulations thereunder.

On January 22, 1986, an amendment to 31 CFR Part 10 was adopted as a final rule (51 FR 2875). Such amendment mandated continuing professional education for those enrolled to practice before the Internal Revenue Service (enrolled agents). The regulations contained in the amendment do not apply to enrolled actuaries. It was recognized that a viable continuing professional education program for them, due to the unique nature of actuarial services, should differ from a program for enrolled agents. Further, enrolled actuaries' authorization to practice before the Internal Revenue Service is an adjunct to their eligibility to perform actuarial services under ERISA. It therefore was believed more appropriate for enrolled actuaries' continuing professional education to be addressed by Joint Board regulations.

To help assure the development of a successful continuing professional education program for enrolled actuaries, the Joint Board elicited comments from enrolled actuaries in actuarial publications and entered into dialogues on the subject with enrolled actuaries at meetings and conventions of actuaries. Further, a task force to study the subject was established by the American Academy of Actuaries, the

American Society of Pension Actuaries, the Conference of Actuaries in Public Practice and the Society of Actuaries. A full report was furnished the Joint Board. The suggestions, comments and positions received through these vehicles were fully considered and to great extent are reflected in the regulations.

On January 5, 1988, the Joint Board published in the **Federal Register** (53 FR 147) a proposed rule to amend the regulations governing the performance of actuarial services under ERISA. Approximately fifty comments on the proposed rule were received. After consideration of all comments regarding the proposed rule, it is hereby adopted with modifications as explained below.

Comments

Of the fifty comments on the proposed rule, many supported the proposal in its entirely. Others opposed the program, suggesting it was unnecessary or claiming that authority for its implementation was lacking. In the main, the comments supported the establishment of a continuing professional education program for enrolled actuaries and offered suggestions for the improvement or clarification of some of the proposal's provisions. There were a number of comments expressing concerns about matters of very limited applicability, raising matters unrelated to the proposed rule, and/or discussing administrative matters inappropriate for inclusion in the regulations. Full consideration was given all comments. Certain comments were acted upon favorably, but are not addressed in this discussion. Such favorable actions, none of which is substantive, are reflected in the final rule. The Joint Board made every attempt to balance the effect of the regulations on enrolled actuaries with the need of the public to be assured enrolled actuaries have maintained through structured continuing education the level of knowlegde and skills needed to perform services as enrolled actuaries. The Board sought a rational and comprehensive result which would create an effective continuing professional education program designed to provide the public with the highest possible professional service without unduly burdening the enrolled actuary community.

It should be noted that the final rule does not stand alone. The success of the implementation of the program will depend in large measure on the personal integrity of enrolled actuaries. In this regard, reports submitted by enrolled actuaries to satisfy the professional education requirements should be accurate in all respects. Submitting incorrect information could be deemed to be at variance with the regulations in 20 CFR Part 901, Subpart D, § 901.31(c).

The Joint Board's consideration of certain comments of general interest and/or application is discussed below.

1. The Joint Board has carefully considered the comments opposing the continuing education concept of the proposal. For the reasons stated in the notice of proposed rulemaking, it continues to believe that a formal continuing professional education program is the best and most widely accepted means of enhancing knowledge and keeping abreast of changes in the subject matter, methodology, laws, and state of the art applicable to the actuarial profession. While the Board recognizes that many enrolled actuaries continue their education on a voluntary basis, the measure of assurance to the public that enrolled actuaries have engaged in a viable continuing education program is not available through a voluntary program. Consequently, the Joint Board has not accepted the position of the comments that a mandatory continuing professional education requirement should not be adopted.

2. Some comments questioned the authority of the Board to impose a continuing professional education requirement on enrolled actuaries. The need to maintain current knowledge of developments related to the performance of actuarial services is unquestioned. As indicated above, the Board believes that only through a continuing professional education program can enrolled actuaries assure those who rely on their work that they have maintained and enhanced the skills necessary to function effectively. Congress, in enacting section 3042 of ERISA, made no attempt to set forth absolute standards or measures relative to the enrollment program. Accordingly, the Board promulgated regulations reflecting minimum requirements of eligibility to perform actuarial services under ERISA. The Board finds that those requirements have helped assure the public that enrolled actuaries engaged to represent their interests are qualified. The Board believes it has a continuing duty to the public in this regard. Because of the complexity of the laws and regulations governing issues arising under ERISA and the evolving state of the art relating to the profession, a formal program of continuing professional education for enrolled actuaries is consistent with that duty. It is within the scope of the Joint Board's authority to amend its regulations to effect this and to provide for appropriate disposition when an enrolled actuary has not complied with the requirements of eligibility for renewal of enrollment.

3. It was suggested that the continuing professional education requirement would constitute a major rule under Executive Order 12291. The Board has considered the economic impact of the continuing professional education requirement. It has concluded that such a requirement will neither impact upon the economy so as to be subject to the Exective Order nor result in a substantial cost increase to the public.

4. Concern was expressed that some enrolled actuaries would encounter difficulty or undue expense in pursuing continuing professional education because of their geographic location and/or personal circumstances. The Joint Board is respectful of such conerns. However, they cannot be considered valid reasons for not pursuing continuing professional education. Instead, the rule provides for options which will permit meeting the requirements at modest cost and minimum inconvenience. Those options include home study courses, local study groups, taped programs and teleconferencing. The Board has been assured that such programs will be readily available.

5. Some comments indicated that the standardization of the renewal cycle would be unfair to those whose terms of enrollment would otherwise be valid beyond the first renewal date under the program. The alternative to a uniform cycle would have been to permit some actuaries to continue their services without involvement in the educational program mandated for other enrolled actuaries. The Board believes that placing all enrolled actuaries on a uniform cycle is the fairest and most easily managed program. The benefits of this uniformity extend to the enrolled actuary community, program sponsors, and the public. In reaching this decision, the Board balanced fairness to the enrolled actuary community and others and the administrative needs of the government.

6. Several comments expressed concern about the proposed requirement that a minimum number of continuing educational credits be earned in each year of an enrollment cycle. It was stated that this requirement would arbitrarily restrict the choice of availble programs and detract from the effectiveness of the program. The Board continues to believe in the advisability of spreading educational efforts throughout the enrollment cycle, rather than concentrating them in a shorter

period. However, the Board concurs that retention of the annual requirement could cause undersirable scheduling difficulties, limit the choice of programs and create administrative burdens for all involved. Consequently, the annual minimum requirement of continuing education credit hours has been eliminated.

7. Some of those commenting objected to the start-up renewal period requiring twelve credit hours of continuing education. Those objections appear to have been based upon a comparison with the proposed eight hour minimum annual requirement within the three year enrollment cycles. It also was believed that an initial period longer than one year was necessary to permit enrolled actuaries to become acclimated to the program. The eight hour annual minimum has been eliminated from the program requirements. While the Board believes that the twelve credit hour requirement for the start-up period is reasonable, the number of hours has been reduced to ten hours in order to satisfy the concerns of those commenting. Of the ten hours, at least six must be comprised of core subject matter. In addition, the start-up period has been extended to encompass the period from the date upon which the regulations are filed for publication until December 31, 1989. Upon the satisfaction of the requirements of the regulations, applications for renewal (using the prescribed form) may be filed at any time before March 1, 1990, with renewal effective April 1, 1990. Thereafter, the first enrollment cycle will be January 1, 1990 through December 31, 1992. Subsequent enrollment cycles will embrace every three year period following that. Renewal will be effective April 1, 1993 and on April 1 every third year thereafter.

8. The establishment of the three year enrollment cycle, the placement of all enrolled actuaries in a single cycle and the selection of a calendar year format were all subject to several forms of comment. The use of a calendar year was adopted in response to several comments which suggested that doing so would be more convenient to the enrolled actuary community. Several comments expressed concern that the Board might be unable to administer a program with all enrolled actuaries on the same cycle. The Board considers the uniform cycle to be more convenient since it helps maintain a broad awareness of the renewal requirement in the enrolled actuary community, permits the Board to prepare adequately for the performance of its administrative duties, facilitates the issuance of reminders to enrollees and ensures that all actuaries enjoy the same opportunities to take part in available programs. Some comments objected to the three year cycle, preferring the continuation of a five year cycle. Experience has established that the use of a five year cycle is burdensome to the enrolled actuary community and difficult for the Board to administer. Moreover, it is believed that documentation of educational activities over a five year period would present recordkeeping difficulties and that remedying deficiencies in meeting continuing professional education would prove more demanding for many enrolled actuaries. A three year cycle, based upon calendar years and uniform for all enrolled actuaries, is considered to be easily understood, convenient for compliance and practical for administration.

9. Several comments were concerned with the "core" and "non-core" aspects of the proposal. Some believed that there should be no provision for subject matter not specifically related to ERISA. Others requested greater clarification of "core" and "non-core." The concept of "core" and "non-core" was developed as a result of discussions with enrolled actuaries at their meetings and conventions. It was felt that although the major thrust of continuing professional education should be subject matter directly related to ERISA, other subjects are germane to pension actuarial work. Consequently, a viable continuing professional education program should permit the enhancement of an actuary's skills in those related areas. An enrolled actuary who wishes to pursue his or her continuing education exclusively in "core" areas may do so. The proposal seems clear in this regard. Those whose needs and/or interests extend to related areas are provided flexibility to do so, provided that at least half of their credit hours in an enrollment cycle (with the exception of the start-up cycle) is comprised of "core" subject matter. In order to retain flexibility in the regulations, the Board has determined that there not be a modification to the definitions of "core" and "non-core." The Board will publish clarification or interpretation in this area to the extent it will be helpful to the enrolled actuary community. However, core subject matter has been expanded to include tax treatments of distributions from qualified pension plans and excise taxes related to the funding of qualified pension plans. Risk theory has been added as an example of non-core subject matter.

10. Some comments expressed concern about the types of sponsors eligible for approval. Local study groups and in-house programs held by pension consulting firms for their own employees were used to illustrate that concern. The proposed rule provided for sponsorship status by any program presenter. Consequently, no change is necessary to accommodate study groups or in-house programs, provided they (or any other sponsor) meet all the relevant requirements of the proposal. It is implicit in this discussion that, in order to achieve an effective verification program, members of the Joint Board or their designees may attend any program which is offered to satisfy the requirements of the regulations. The Joint Board is concerned that an adequate number of people participate in a program. To help assure meaningful programs, the final rule therefore includes the requirement that programs must have in attendance a minimum of three participants who perform substantive pension work present, in addition to the course presenter. The Board is aware that the sponsorship of programs may involve unforeseen problems which are not addressed in the final rule. The Board is willing to give consideration to any proposed programs about which there is a question. In addition, it will publish on a periodic basis a listing of those who have been approved as course providers.

11. Some of those commenting questioned how the Joint Board would address the issue of an enrolled actuary's attendance at a program later determined to be at variance with the requirements of the regulations. The Board does not wish an enrolled actuary to lose enrollment status solely by this eventuality. If an enrolled actuary attends such a program believing in good faith that it satisfies the continuing professional education requirements of the final rule, enrollment status of the individual will remain active. Any deficiency in credit hours generally may be made up during the enrollment cycle in which the deficiency is ascertained or within a reasonable time period as determined by the Executive Director of the Joint Board. This will be in addition to the continuing education requirements of the cycle in which a deficiency is satisfied.

12. An issue raised by those commenting was the point in time an enrolled actuary who has been placed in inactive status for not meeting the requirements for renewal of enrollment may be placed back into active enrollment status. The regulations provide that an individual in inactive

status may make up the deficiency within three years from the date renewal would have been effective (April 1). This can be done at *any time* during the three year period. The individual then is responsible for filing an application for renewal with the Executive Director of the Joint Board. Upon receipt and processing of the form, the applicant will be placed on the roster of active enrolled actuaries. Such application for renewal may be filed immediately upon satisfaction of the requirements for renewal.

13. Concern was expressed about the prohibition against repeated taking of the same course of study to satisfy the continuing education requirements of the regulations. The basis for the concern was that while the title of a course of study sometimes may be the same as one already taken, the content may differ. The Joint Board recognizes that this may occur from time to time and is of the view that substance outweighs form. Consequently if the major content of the program differs substantively from a previous one bearing the same title, it may be used to satisfy the requirements of the regulations.

14. The final rule reflects clarification with respect to publications. Such clarification, based on comments received, requires that a publication for which an enrolled actuary wishes credit must be available for acquisition and study by the enrolled actuary community. For example, an in-house newsletter or documents prepared solely for clients will not be recognized for continuing education purposes; articles in trade journals or those prepared for use by actuarial students will be recognized.

15. Some of those commenting suggested that earning credits for less than one credit hour (50 minutes) or multiples thereof should be permitted. The premise of the suggestion was that some programs have sessions which are set at 25 or 75 minutes. The Joint Board recognizes that scheduling programs often is challenging. However, a program of less than one credit hour is not deemed sufficient to provide an in-depth learning experience and/or to provide for dialogue. A one credit hour minimum and multiples thereof therefor remains the basic unit of measurement. However, to accommodate those programs extending beyond the minimum credit hour but for less than a multiple thereof, the final rule has been adjusted to allow credit for the total number of minutes of programs. At continuous programs, each session must encompass a minimum of one credit hour.

To illustrate this modification, an enrolled actuary who attends a program with three 75 minute sessions, will have a total of 225 minutes. This will accord him or her four credit hours. If the same enrolled actuary engages in another program of three 75 minute sessions, an additional 225 minutes would accrue. The enrolled actuary then would have a total of 450 minutes or nine credit hours. The final tally, of course, would be made by the enrolled actuary at the end an enrollment cycle. Enrolled actuaries may not merge credits earned at non-core sessions with core credits. Consequently, the illustration noted above would not be considered nine credit hours if the subject matter at one of the three-session programs was non-core and the other core. Each program (or session) would stand alone.

Special Analyses

This rule relates solely to professional services in connection with government matters and is not expected to have any significant economic consequences. Therefore, it has been determined that this rule is not a major rule as defined in Executive Order 12291 and a regulatory impact analysis is not required. It is hereby certified that this rule is not expected to have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

Major annual meetings of several actuarial organizations are scheduled for early Fall 1988. These meetings include continuing education programs. In order to provide the enrolled actuary community the opportunity to accrue continuing education credits at one or more of these meetings, good cause exists to waive the delayed effective date requirement of 5 U.S.C. 553(d). Consequently, this rule is effective September 7, 1988.

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545-0951. The estimated annual burden per respondent/recordkeeper varies from one to two hours depending on individual circumstances, with an estimated average of one hour and thirty minutes.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to Internal Revenue Service, Washington, DC 20224, Attention: Internal Revenue Service Reports Clearance Officer TR:FP and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Internal Revenue Service.

Drafting Information

The author of these regulations is Mr. Leslie S. Shapiro, Executive Director, Joint Board for the Enrollment of Actuaries. Other personnel in the Treasury Department and the Joint Board participated in the development of the regulations, both as to substance and style.

List of Subjects in 20 CFR Part 901

Administrative rules and procedures, Enrolled actuaries.

Authority: These rules are issued under authority of 88 Stat. 1002; 29 U.S.C. 1241, 1242. See also 5 U.S.C. 301; 31 U.S.C. 330; and 31 U.S.C. 321.

Amendments to Regulations

PART 901—[AMENDED]

Accordingly, 20 CFR Part 901 is amended as follows:

1. The authority citation for Part 901 continues to read as follows:

Authority: Sec. 3042, Subtitle C, title 3, Employee Retirement Income Security Act of 1974 (88 Stat. 1002, 29 U.S.C. 1241, 1242), unless otherwise noted.

§ 901.11 [Amended]

2. Section 901.11 (a) of Subpart B is amended by removing the last two sentences and inserting after the first sentence the following: "Subject to the provisions of Subpart D of this part, an individual must renew his or her enrollment in the manner described in paragraph (d) of this section."

3. Section 901.11 of Subpart B is amended by adding new paragraphs (d) through (n) to read as follows:

§ 901.11 [Amended]

* * * * *

(d) *Renewal of enrollment.* To maintain active enrollment to perform actuarial services under the Employee Retirement Income Security Act of 1974, each enrolled actuary is required to have his/her enrollment renewed as set forth herein. Failure by an individual to receive notification of the renewal requirement from the Joint Board will not be justification for circumvention of such requirement.

(1) All individuals enrolled before January 1, 1990 shall apply for renewal of enrollment on the prescribed form

before March 1, 1990. The effective date of renewal for such individuals is April 1, 1990.

(2) Thereafter, applications for renewal will be required of all enrolled actuaries between October 1, 1992 and March 1, 1993, and between October 1 and March 1 of every third year period subsequent thereto.

(3) The Executive Director of the Joint Board will notify each enrolled actuary of the renewal of enrollment requirement at his/her address of record with the Joint Board.

(4) A reasonable non-refundable fee may be charged for each application for renewal of enrollment filed.

(5) Forms required for renewal may be obtained from the Executive Director, Joint Board for the Enrollment of Actuaries, c/o Department of the Treasury, Washington, DC 20220.

(e) *Condition for renewal: Continuing professional education.* To qualify for renewal of enrollment, an enrolled actuary must certify, on the form prescribed by the Executive Director, that he/she has satisfied the following continuing professional education requirements.

(1) *For renewed enrollment effective April 1, 1990.* (i) A minimum of 10 hours of continuing education credit must be completed between (the effective date of these regulations) and December 31, 1989. Of the 10 hours, at least 6 hours must be comprised of core subject matter; the remainder may be comprised of non-core subject matter.

(ii) An individual who receives initial enrollment between October 1, 1988 and December 31, 1989 is exempt from the continuing education requirement for the enrollment cycle ending December 31, 1989, but is required to file a timely application for renewal of enrollment effective April 1, 1990.

(2) *For renewed enrollment effective April 1, 1993 and every third year thereafter.* (i) A minimum of 36 hours of continuing education credit must be completed between January 1, 1990 and December 31, 1992, and between January 1 and December 31 for each three year period subsequent thereto. Each such three year period is known as an enrollment cycle. Of the 36 hours, at least 18 must be comprised of core subject matter; the remainder may be of a non-core nature.

(ii) An individual who receives initial enrollment during the first or second year of an enrollment cycle must satisfy the following requirements by the end of the enrollment cycle: Those enrolled during the first year of an enrollment cycle must complete 24 hours of continuing education; those enrolled during the second year of an enrollment cycle must complete 12 hours of continuing education. At least one-half of the applicable hours must be comprised of core subject matter; the remainder may be comprised of non-core subject matter. For purposes of this paragraph, credit will be awarded for continuing education completed after January 1 of the year in which initial enrollment was received.

(iii) An individual who receives initial enrollment during the third year of an enrollment cycle is exempt from the continuing education requirements until the next enrollment cycle, but must file a timely application for renewal.

(3) Enrolled actuaries whose enrollment status would have expired under previous regulations during the five year period from October 1, 1988 are not subject to compliance with such previous regulations addressing renewal of enrollment. Their enrollment status will not be adversely affected provided they comply with requirements on this part.

(f) *Qualifying continuing education*—(1) *In general.* To qualify for continuing education credit consistent with the requirements of the above subsections, a course of learning must be a qualifying program comprised of core and/or non-core subject matter conducted by a qualifying sponsor.

(i) Core subject matter is program content designed to enhance the knowledge of an enrolled actuary with respect to matters directly related to the performance of pension actuarial services under ERISA or the Internal Revenue Code. Such core subject matter includes the characteristics of actuarial cost methods under ERISA, actuarial assumptions, minimum funding standards, Title IV of ERISA, requirements with respect to the valuation of plan assets, requirements for qualification of pension plans, maximum deductible contributions, tax treatments of distributions from qualified pension plans, excise taxes related to the funding of qualified pension plans and standards of performance for actuarial services.

(ii) Non-core subject matter is program content designed to enhance the knowledge of an enrolled actuary in matters related to the performance of pension actuarial services. Examples include economics, computer programs, pension accounting, investment and finance, risk theory, communication skills and business and general tax law.

(iii) The Joint Board may publish other topics or approve other topics which may be included in a qualifying program as core or non-core subject matter.

(iv) Repeated taking of the same course of study cannot be used to satisfy the continuing education requirements of the regulations. If the major content of a program or session differs substantively from a previous one bearing the same or similar title, it may be used to satisfy such requirements.

(2) *Qualifying Programs*—(i) *Formal programs.* Formal programs qualify as continuing education programs if they:

(A) Require attendance by at least three individuals engaged in substantive pension service in addition to the instructor, discussion leader or speaker;

(B) Require that the program be conducted by a qualified instructor, discussion leader or speaker, i.e. a person whose background, training, education and/or experience is appropriate for instructing or leading a discussion on the subject matter of the particular program; and

(C) Require a written outline and/or textbook and certificate of attendance provided by the sponsor, all of which must be retained by the enrolled actuary for a three year period following the end of the enrollment cycle.

(ii) *Correspondence or individual study programs (including audio and/or video taped programs).* Qualifying continuing education programs include correspondence or individual study programs completed on an individual basis by the enrolled actuary and conducted by qualifying sponsors. The allowable credit hours for such programs will be measured on a basis comparable to the measurement of a seminar or course for credit in an accredited educational institution. Such programs qualify as continuing education programs if they:

(A) Require registration of the participants by the sponsor;

(B) Provide a means for measuring completion by the participants (e.g., written examination); and

(C) Require a written outline and/or textbook and certificate of completion provided by the sponsor. Such certificate must be retained by the participant for a three year period following the end of an enrollment cycle.

(iii) *Teleconferencing.* Programs utilizing teleconferencing or other communications technologies qualify for continuing education purposes if they either:

(A) Meet all the requirements of formal programs, except that they may include a sign-on/sign-off capacity or similar technique in lieu of the physical attendance of participants; or

(B) Meet all the requirements of correspondence or individual study programs.

(iv) *Serving as an instructor, discussion leader or speaker.* (A) Four

hours of continuing education credit will be awarded for each contact hour completed as an instructor, discussion leader or speaker at an educational program which meets the continuing education requirements of this section, in recognition of both presentation and preparation time.

(B) The credit for instruction and preparation may not exceed 50% of the continuing education requirement for an enrollment cycle.

(C) Presentation of the same material as an instructor, discussion leader or speaker more than one time in any 36 month period will not qualify for continuing education credit. A program will not be considered to consist of the same material if a substantial portion of the content has been revised to reflect changes in the law or in the state of the art relative to the performance of pension actuarial service.

(D) Credit as an instructor, discussion leader or speaker will not be awarded to panelists, moderators or others whose contribution does not constitute a substantial portion of the program. However, such individuals may be awarded credit for attendance, provided the other provisions of this section are met.

(E) The nature of the subject matter will determine if credit will be of a core or non-core nature.

(v) *Credit for published articles, books, films, audio and video tapes, etc.* (A) Continuing education credit will be awarded for the creation of materials for publication or distribution with respect to matters directly related to the continuing professional education requirements of this section.

(B) The credit allowed will be on the basis of one hour credit for each hour of preparation time of the material. It will be the responsibility of the person claiming the credit to maintain records to verify preparation time.

(C) Publication or distribution may utilize any available technology for the dissemination of written, visual or auditory materials.

(D) The materials must be available on reasonable terms for acquisition and use by all enrolled actuaries.

(E) The credit for the creation of materials may not exceed 25% of the continuing education requirement of any enrollment cycle.

(F) The nature of the subject matter will determine if credit will be of a core or non-core nature.

(G) Publication of the same material more than one time will not qualify for continuing education credit. A publication will not be considered to consist of the same material if a substantial portion has been revised to reflect changes in the law or in the state of the art relating to the performance of pension actuarial service.

(vi) *Service on Joint Board advisory committee(s).* Continuing education credit may be awarded by the Joint Board for service on (any of) its advisory committee(s), to the extent that the Board considers warranted by the service rendered.

(vii) *Preparation of Joint Board examinations.* Continuing educational credit may be awarded by the Joint Board for participation in drafting questions for use on Joint Board examinations or in pretesting its examinations, to the extent the Board determines suitable. Such credit may not exceed 50% of the continuing professional education requirement for the applicable enrollment cycle.

(viii) *Society examinations.* Individuals may earn continuing professional education credit for achieving a passing grade on proctored examinations sponsored by a professional organization or society recognized by the Joint Board. Such credit is limited to the number of hours scheduled for each examination and may be applied only as non-core credit provided the content of the examination is non-core.

(ix) *Pension law examination.* Individuals may establish eligibility for renewal of enrollment for any enrollment cycle by:

(A) Achieving a passing score on the pension law actuarial examination offered by the Joint Board and administered under this part during the applicable enrollment cycle; and

(B) Completing a minimum of 12 hours of qualifying continuing education in core subject matter during the same applicable enrollment cycle.

(C) This option of satisfying the continuing professional education requirements is not available to those who receive initial enrollment during the enrollment cycle.

(g) *Sponsors.* (1) Sponsors are those responsible for presenting programs.

(2) To qualify as a sponsor, a program presenter must:

(i) Be an accredited educational institution;

(ii) Be recognized for continuing education purposes by the licensing body of any State, possession, territory, Commonwealth, or the District of Columbia responsible for the issuance of a license in the field of actuarial science, insurance, accounting or law;

(iii) Be recognized by the Executive Director of the Joint Board as a professional organization or society whose programs include offering continuing professional education opportunities in subject matter within the scope of this section; or

(iv) File a sponsor agreement with the Executive Director of the Joint Board to obtain approval of the program as a qualifying continuing education program.

(3) Professional organizations or societies and others wishing to be considered as qualifying sponsors shall request such status of the Executive Director of the Joint Board and furnish information in support of the request together with any further information deemed necessary by the Executive Director.

(4) A qualifying sponsor must ensure the program complies with the following requirements:

(i) Programs must be developed by individual(s) qualified in the subject matter.

(ii) Program subject matter must be current.

(iii) Instructors, discussion leaders, and speakers must be qualified with respect to program content.

(iv) Programs must include some means for evaluation of technical content and presentation.

(v) Certificates of completion must be provided those who have successfully completed the program.

(vi) Records must be maintained by the sponsor to verify satisfaction of the requirements of this section. Such records must be retained for a period of three years following the end of the enrollment cycle in which the program is held. In the case of programs of more than one session, records must be maintained to verify completion of the program and attendance by each participant at each session of the program.

(5) Sponsor agreements and qualified professional organization or society sponsors approved by the Executive Director will remain in effect for one enrollment cycle. The names of such sponsors will be published on a periodic basis.

(h) *Measurement of continuing education course work.* (1) All continuing education programs will be measured in terms of credit hours. The shortest recognized program will be one credit hour.

(2) A credit hour is 50 minutes of continuous participation in a program. Each session in a program must be at least one full credit hour, i.e. 50 minutes. For example, a single-session program lasting 100 minutes will count as two credit hours, and a program comprised of three 75 minute sessions (225 minutes) constitutes four credit hours. However, at the end of an enrollment cycle, an

individual may total the number of minutes of sessions of at least one credit hour in duration attended during the cycle and divide by fifty. For example, attending three 75 minute segments at two separate programs will accord an individual nine credit hours (450 minutes divided by 50) toward fulfilling the minimum number of continuing professional education hours. It will not be permissible to merge non-core hours with core hours. For university or college courses, each "semester" hour credit will equal 15 credit hours and each "quarter" hour credit will equal 10 credit hours. Measurements of other formats of university or college courses will be handled on a comparable basis.

(i) *Record keeping requirements.* (1) Each individual applying for renewal shall retain for a period of three years following the end of an enrollment cycle the information required with regard to qualifying continuing professional education credit hours. Such information shall include:

(i) The name of the sponsoring organization;

(ii) The location of the program;

(iii) The title of the program and description of its content, e.g., course syllabus and/or textbook;

(iv) The dates attended;

(v) The credit hours claimed and whether core or non-core subject matter;

(vi) The name(s) of the instructor(s), discussion leader(s), or speaker(s), if appropriate;

(vii) The certificate of completion and/or signed statement of the hours of attendance obtained from the sponsor; and

(viii) The total core and non-core credit.

(2) To receive continuing education credit for service completed as an instructor, discussion leader, or speaker, the following information must be maintained for a period of three years following the end of the applicable enrollment cycle.

(i) The name of the sponsoring organization;

(ii) The location of the program;

(iii) The title of the program and description of its content;

(iv) The dates of the program; and

(v) The credit hours claimed and whether core or non-core subject matter.

(3) To receive continuing education credit for a publication, the following information must be maintained for a period of three years following the end of the applicable enrollment cycle.

(i) The publisher;

(ii) The title of the publication;

(iii) A copy of the publication;

(iv) The date of publication;

(v) The credit hours claimed;

(vi) Whether core or non-core subject matter; and

(vii) The availability and distribution of the publications to enrolled actuaries.

(j) *Waivers.* (1) Waiver from the continuing education requirements for a given period may be granted by the Executive Director of the Joint Board for the following reasons:

(i) Physical incapacity, which prevented compliance with the continuing education requirements;

(ii) Extended active military duty;

(iii) Absence from the individual's country of residence for an extended period of time due to employment or other reasons, provided the individual does not perform services as an enrolled actuary during such absence; and

(iv) Other compelling reasons, which will be considered on a case-by-case basis.

(2) A request for waiver must be accompanied by appropriate documentation. The individual will be required to furnish any additional documentation or explanation deemed necessary by the Executive Director of the Joint Board. Examples of appropriate documentation could be a medical certificate, military orders, etc.

(3) A request for waiver must be filed no later than the last day of the renewal application period.

(4) If a request for waiver is not approved, the individual will be so notified by the Executive Director of the Joint Board and placed on a roster of inactive enrolled individuals.

(5) If a request for waiver is approved, the individual will be so notified.

(6) Those who are granted waivers are required to file timely applications for renewal of enrollment.

(k) *Failure to comply.* (1) Compliance by an individual with the requirements of this part shall be determined by the Executive Director of the Joint Board. An individual who applies for renewal of enrollment but who fails to meet the requirements of eligibility for renewal will be notified by the Executive Director at his/her last known address by first class mail. The notice will state the basis for the non-compliance and will provide the individual an opportunity to furnish in writing, within 60 days of the date of the notice, information relating to the matter. Such information will be considered by the Executive Director in making a final determination as to eligibility for renewal of enrollment.

(2) The Executive Director of the Joint Board may require any individual, by first class mail sent to his/her mailing address of record with the Joint Board, to provide copies of any records required to be maintained under this section. The Executive Director may disallow any continuing professional education hours claimed if the individual concerned fails to comply with such requirements.

(3) An individual whose application for renewal is not approved may seek review of the matter by the Joint Board. A request for review and the reasons in support of the request must be filed with the Joint board within 30 days of the date of the non-approved notice.

(4) An individual who has not filed a timely application for renewal of enrollment, who has not made a timely response to the notice of non-compliance with the renewal requirements, or who has not satisfied the requirements of eligibility for renewal will be placed on a roster of inactive enrolled actuaries for a period of three years from the date renewal would have been effective. During this time, the individual will be ineligible to perform services as an enrolled actuary and to practice before the Internal Revenue Service.

(5) During inactive enrollment status or at any other time an individual is ineligible to perform services as an enrolled actuary and to practice before the Internal Revenue Service, the individual shall not in any manner, directly or indirectly, indicate he or she is so enrolled, or use the term "enrolled actuary," the designation "E.A.," or other form of reference to eligibility to perform services as an enrolled actuary.

(6) An individual placed in an inactive status must file an application for renewal of enrollment and satisfy the requirements for renewal as set forth in this section within three years from the date renewal would have been effective. The name of such individual otherwise will be removed from the inactive enrollment roster and his/her enrollment will terminate. Eligibility for enrollment must then be reestablished by the individual as provided in this part.

(7) An individual placed in an inactive status may satisfy the requirements for renewal of enrollment at any time during his/her period of inactive enrollment. If such satisfaction includes completing the continuing education requirement, the application for renewal may be filed immediately upon such completion. Continuing education credit under this subsection may not be used to satisfy the requirements of the enrollment cycle in which the individual has been placed back on the active roster.

(8) An individual in inactive status remains subject to the jurisdiction of the Joint Board and/or the Department of

the Treasury with respect to disciplinary matters.

(9) An individual who is in good faith has certified that he/she has satisfied the continuing professional education requirements of this section will not be considered to be in non-compliance with such requirements on the basis of a program he/she has attended being found inadequate or not in compliance with the requirements for renewal. Such individual will be granted renewal, but the Executive Director may require such individual to remedy the resulting shortfall by earning replacement credit during the cycle in which renewal was granted or within a reasonable time period as determined by the Executive Director. For example, if six of the credit hours claimed were disallowed, the individual may be required to present 42 credit hours instead of the minimum 36 credit hours to qualify for renewal related to the next cycle.

(l) *Inactive retirement status.* An individual who no longer performs services as an enrolled actuary may request placement in an inactive retirement status at any time and such individual will be placed in such status. The individual will be ineligible to perform services as an enrolled actuary. Such individual must file a timely application for renewal of enrollment at each applicable renewal cycle as provided in this part. An individual who is placed in an inactive retirement status may be reinstated to active enrollment status upon filing an application for renewal of enrollment and providing evidence of the completion of the required continuing professional education hours for the applicable enrollment cycle. An individual in inactive retirement status remains subject to the jurisdiction of the Joint Board and/or the Department of the Treasury with respect to disciplinary matters.

(m) *Renewal while under suspension or disbarment.* An individual who is ineligible to perform actuarial services and/or to practice before the Internal Revenue Service by virtue of disciplinary action is required to meet the requirements for renewal of enrollment during the period of such ineligibility.

(n) *Verification.* The Executive Director of the Joint Board or his/her designee may review the continuing education records of an enrolled actuary and/or qualified sponsor, including attending programs, in a manner deemed appropriate to determine compliance with the requirements and standards for the renewal of enrollment as provided in this section.

Date: August 25, 1988.

John F. Wade,

Chairman, Joint Board for the Enrollment of Actuaries.

Approved:

Jennifer A. Sour,

Acting Executive Secretary, Department of the Treasury.

Morton Klevan,

Director, Policy Development and Evaluation, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 88-20136 Filed 9-6-88; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8225]

Partnership Statements and Nominee Reporting of Partnership Information

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to partnership returns. The temporary regulations require a partnership to furnish certain information to its partners, and require persons who hold interests in a partnership as nominees on behalf of other persons to furnish certain information to such other persons and to the partnership. Changes to the applicable law were made by the Tax Equity and Fiscal Responsibility Act of 1982 and the Tax Reform Act of 1986. The regulations provide guidance for determining what information a partnership must furnish to its partners, what information a nominee must furnish to persons on whose behalf it holds interests in the partnership, and what information a nominee must furnish to the partnership. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

DATE: Except as otherwise provided therein, § 1.6031 (b)–1T is effective for partnership taxable years beginning after September 3, 1982. Except as otherwise provided therein, § 1.6031 (c)–1T is effective for partnership taxable years beginning after October 22, 1986.

FOR FURTHER INFORMATION CONTACT: Stuart G. Wessler of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) (202–566–3297, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545–0099. The estimated average burden associated with the collection of information in this regulation varies from .02 to .627 hours, depending on individual circumstances, with an estimated average of .06 hours.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending on their particular circumstances.

For further information concerning this collection of information, and where to submit comments on this collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

Background

This document contains temporary Income Tax Regulations (26 CFR Part 1) under section 6031 (b) and (c) of the Internal Revenue Code of 1986. Section 6031(b) was added to the Code by section 403 of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 669) and was subsequently amended by sections 1501(c)(16) and 1811(b)(1)(A)(i) of the Tax Reform Act of 1986 (100 Stat. 2740, 2832). Section 6031(c) was added to the Code by section 1811(b)(1)(A)(ii) of the Tax Reform Act of 1986 (100 Stat. 2832).

On January 23, 1986, the **Federal Register** published a notice of proposed rulemaking (51 FR 3075) containing proposed amendments to the Income Tax Regulations under section 6031 (a) and (b) of the Code. These amendments were proposed to conform the regulations to sections 403 and 404 of the Tax Equity and Fiscal Responsibility Act of 1982. Several comments on the

proposed regulations were received. No public hearing was held because none was requested.

The temporary regulations are consistent with proposed § 1.6031–1(b) contained in the notice of proposed rulemaking published on January 23, 1986, (51 FR 3075), but amend those proposed regulations to conform the regulations to the changes made to section 6031(b) of the Code by the Tax Reform Act of 1986. The temporary regulations have no other impact on that notice. Therefore, except as otherwise provided in these temporary regulations, those proposed regulations will be finalized in due course with any changes that may be made as a result of the comments received.

In Notice 87–10, 87–3 I.R.B. 13, the Service announced that it would issue temporary regulations under section 6031(c) and established interim nominee reporting requirements pending the issuance of such regulations. Section 1.6031(c)–1T is consistent with and expands upon the reporting requirements contained in that notice.

Information To Be Furnished to Partners

Before the enactment of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), a partnership required under section 6031 to file a partnership return was not required by statute to furnish information to its partners, although the instructions to the Form 1065 clearly contained such a requirement. As a result of amendments to section 6031(b) made by TEFRA and the Tax Reform Act of 1986 (TRA), a partnership required to file a return for a partnership taxable year must, to the extent required by regulations, furnish to every person who was a partner in the partnership or who held an interest in the partnership as a nominee for another person at any time during that partnership taxable year a copy of the information required to be shown on the partnership return.

The regulations generally require the partnership to give each partner a statement showing that partner's distributive share of partnership income, gain, loss deduction, or credit required to be shown on the partnership return and, to the extent required under the instructions for the partnership return, any additional information that is necessary to enable the partner to determine the correct income tax treatment of an item related to the partnership.

Under the regulations, for partnership taxable years beginning after October 22, 1986, a partnership must provide the statement required pursuant to section 6031(b) to a person who holds an interest in the partnership as a nominee on behalf of another person (and not to such other person) if (1) such nominee does not furnish to the partnership the statement required under § 1.6031(c)–1T(a) for such other person, (2) such nominee holds legal title to such interest in its own name or is identified in a statement provided to the partnership by another nominee as the person on whose behalf such other nominee holds the partnership interest, and (3) such nominee is not a clearing agency registered pursuant to the provisions of section 17A of the Securities Exchange Act of 1934.

The partnership must furnish the written statement required pursuant to section 6031(b) to each partner or nominee on or before the due date of the partnership return for the taxable year (determined with regard to extensions).

Information To Be Furnished by Nominees

Before the enactment of the TRA, a person who held an interest in a partnership as a nominee on behalf of another person was not required by statute to furnish any information concerning that person to the partnership. In addition, the nominee was not required by statute to provide such other person with the information furnished to it by the partnership. The TRA added section 6031(c) to the Code to address this problem.

Under section 6031(c)(1), any person who holds an interest in a partnership as a nominee on behalf of another person is required to furnish to the partnership the name and address of such other person and any other information required by form or regulations.

The regulations specify the additional information that the nominee is required to furnish to the partnership. Generally, the information that the nominee is required to furnish to the partnership is similar to that required by Notice 87–10. This information includes the name, address, taxpayer identification number of the nominee and such other person, and a description of any interest in the partnership that the nominee holds, acquires, or transfers on behalf of such other person during the partnership taxable year.

The regulations also require the nominee to provide the partnership with certain additional information for partnership taxable years beginning after December 31, 1988. First, the nominee must specify whether the person on whose behalf it holds a partnership interest is a tax-exempt entity or a foreign person or entity. This information may be needed by a partnership to determine whether personal or real property leased to or otherwise owned by the partnership will be treated as tax-exempt use property under section 168(h). Second, in connection with any transfer by a nominee of a partnership interest that it holds on behalf of another person, the nominee must state the net proceeds received by such other person in connection with such transfer. This information is needed by partnerships that furnish information to their partners regarding the amount of ordinary income recognized by a partner under section 751(a) upon the sale or exchange of a partnership interest. Finally, the nominee must furnish to the partnership certain information regarding the method of acquisition and the acquisition cost of the partnership interest. This information should enable a partnership that has made a section 754 election to determine the amount of the adjustment, if any, to the basis of partnership property that a partner is entitled to under section 743(b) upon the acquisition of a partnership interest.

The regulations provide an exception to the additional reporting requirements concerning acquisitions and transfers of partnership interests in the case of partnerships that do not need the information. Under this exception, a nominee will not be required to provide this additional information if the partnership informs the nominee, in writing, that the nominee need not furnish such information to the partnership. This exception is, however, inapplicable to the additional reporting requirements concerning acquisitions of partnership interests if the partnership has a section 754 election in effect for the partnership taxable year. The exception to the additional reporting requirements concerning acquisitions and transfers of partnership interests is designed to relieve nominees of the reporting requirements where the partnership does not need the information; it is not intended to preclude the nominee from furnishing such information if, for administrative convenience or for any other reason, it decides to do so despite the fact that the exception to the reporting requirements is applicable.

The Service solicits comment on the appropriateness of the additional reporting requirements that are applicable to partnership taxable years beginning after December 31, 1988.

Any statement required from a nominee under section 6031(c)(1) and these regulations may be furnished annually, quarterly, monthly, or on any other basis. All such statements must

however, be furnished to the partnership no later than the end of the first month following the close of the partnership taxable year. The Service is concerned that partnerships may find it difficult to satisfy their tax reporting obligations to their partners in a timely manner if the statements required under section 6031(c) are not received more often than annually. Accordingly, the Service solicits comment on the frequency with which nominees should be required to furnish these statements.

Section 6031(c)(2) provides that any person who holds an interest in a partnership as a nominee on behalf of another person must furnish to such other person, in the manner prescribed by the Secretary, the information provided by the partnership to the nominee under section 6031(b). The regulations require that (1) if the nominee does not provide the partnership with the written statement required under section 6031(c)(1) and § 1.6031(c)–1T(a) with respect to any interest in such partnership that it holds on behalf of another person, and (2) the nominee receives from such partnership a written statement described in § 1.6031(b)–1T(a) with respect to such interest, then the nominee must furnish to such other person a written statement showing the distributive share of the items of income, gain, loss, deduction, or credit that the partnership is required to show on its return that is allocable to such interest, and any additional information that may be required to apply particular provisions of subtitle A of the Code to the beneficial owner of such interest in connection with items related to the partnership.

The regulations provide an exception to the nominee reporting requirements for clearing agencies registered pursuant to the provisions of section 17A of the Securities Exchange Act of 1934. Interests in certain partnerships (generally, partnerships whose interests are traded on an established securities market) are typically registered on the books of the partnership in the name of such clearing agencies or their nominees. These clearing agencies cannot identify the beneficial owners of the partnership interests; they only have information as to the identity of their participants (generally brokers and financial institutions), who may hold such interests for their own account, as nominees for customers who are beneficial owners, or as nominees for customers who themselves are nominees for beneficial owners. In connection with this exception, if during a partnership taxable year beginning after December 31, 1988, a broker or financial institution holds an interest in such partnership indirectly through an excepted clearing agency, the regulations require such broker or financial institution to provide the partnership with a statement containing certain information with respect to any interest held for its own account. This information is necessary to provide the partnership with complete and accurate ownership information since the partnership will not receive any information from clearing agencies excepted from these reporting requirements regarding changes in the ownership of partnership interests held by such agencies as nominees. The Service solicits comment on the appropriateness of this reporting requirement.

Treatment of Short Sales of Partnership Interests

The Service is actively studying issues relating to the tax treatment of short sales of partnership interests and solicits comment on the appropriate treatment of short sales of partnership interests for tax purposes generally as well as for nominee reporting purposes.

Treatment of REMICs

Under section 860F(e), a real estate mortgage investment conduit ("REMIC") is treated as a partnership for purposes of subtitle F of the Internal Revenue Code, which includes section 6031. The provisions of these regulations, however, do not apply to a REMIC. Under these regulations, the application of section 6031 to a REMIC is reserved. The Service intends to address the particular requirements of REMICs in future regulations under section 6031 (b) and (c) and solicits comment on the appropriate scope of those regulations.

Inapplicability of Executive Order 12291

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and no regulatory flexibility analysis is required for this rule. The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis therefore is not required.

Drafting Information

The principal author of these temporary regulations is Stuart G. Wessler of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.6001–1–1.6109–2

Income taxes, Administration and procedure, Filing requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of amendments to the regulations

Accordingly, 26 CFR Parts 1 and 602 are amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citations:

Authority: 26 U.S.C. 7805. * * * Section 1.6031(b)–1T also issued under 26 U.S.C. 6031(b). Section 1.6031(c)–1T also issued under 26 U.S.C. 6031(c) (1) and (2).

Par. 2. New §§ 1.6031(b)–1T and 1.6031(c)–1T are added and §§ 1.6031(b)–2T and 1.6031(c)–2T are added and reserved in the appropriate places to read as follows:

§ 1.6031(b)–1T Statements to partners (temporary).

(a) *Statement required to be furnished to partners*—(1) *In general.* Except as provided in this paragraph (a)(1) and paragraph (a)(2)(ii) of this section, any partnership required under section 6031(a) and the regulations thereunder to file a partnership return for a taxable year shall furnish to every person who was a partner (within the meaning of section 7701(a)(2)) at any time during the taxable year a written statement containing the information described in paragraph (a)(3) of this section. This section shall not apply to a real estate mortgage investment conduit (REMIC) treated as a partnership under subtitle F of the Code by reason of section 860F(e). For the reporting requirements applicable to REMICs see § 1.6031(b)–2T.

(2) *Special rules applicable to partnership interests held by nominees*—(i) *Statements furnished to nominees.* For any partnership taxable year beginning after October 22, 1986, a partnership shall provide a person that holds (directly or indirectly) an interest in such partnership as a nominee on behalf of another person at any time during such year with a statement under paragraph (a)(1) of this section with respect to such interest if—

(A) Such nominee has not furnished the statement required under § 1.6031(c)–1T(a)(1)(i) to the partnership with respect to such other person;

(B) Such nominee either holds legal title to such partnership interest in its own name or is identified in a statement provided to the partnership pursuant to § 1.6031(c)–1T(a)(1)(i) by another nominee as the person on whose behalf such other nominee holds such interest; and

(C) Such nominee is not a person described in § 1.6031(c)–1T(a)(2) (relating to the special rule for clearing agencies).

In such case, the partnership shall assume, for purposes of this section, that the nominee is the beneficial owner of the partnership interest.

(ii) *Statements not required to be furnished to partners holding partnership interests through nominees.* A partnership shall not be required to furnish a statement under paragraph (a)(1) of this section to a partner with respect to any portion of such partner's interest in the partnership that is owned through a nominee if—

(A) Such nominee has not furnished (or is not required to furnish under § 1.6031(c)–1T(a)(2)), a statement to the partnership under § 1.6031(c)–1T(a)(1)(i) with respect to such partner; and

(B) Such partner has not furnished (or is not required to furnish) a statement to the partnership under § 1.6031(c)–1T(a)(3), with respect to such interest in the partnership.

(3) *Contents of statement.* The statement required under paragraph (a)(1) of this section shall include the following information:

(i) The partner's distributive share of partnership income, gain, loss, deduction, or credit required to be shown on the partnership return (or, for taxable years beginning before January 1, 1987, the partner's distributive share of partnership income, gain, loss, deduction, or credit shown on the partnership return); and

(ii) To the extent provided by form or the accompanying instructions, any additional information that may be required to apply particular provisions of subtitle A of the Code to the partner with respect to items related to the partnership.

(b) *Time for furnishing statement.* The statement required to be furnished by the partnership under paragraph (a)(1) of this section shall be furnished on or before the day on which the partnership return for that taxable year is required to be filed (determined with regard to extensions). For partnership returns the due date for which (determined without regard to extensions) is before January 1, 1987, the statement required to be furnished by the partnership under paragraph (a)(1) of this section shall be furnished on or before the day on which the partnership return is filed.

(c) *Statement may be provided to agent.* If a partner designates another person, such as an attorney or an investment advisor, as the partner's (or nominee's) agent in dealing with the partnership, the partnership may provide the statement required under paragraph (a)(1) of this section with respect to such partner to such other person instead of the partner.

(d) *Penalties.* For penalties for failure to comply with the requirements of section 6031(b) and paragraph (a) of this section, see section 6722(a).

(e) *Effective date.* Except as otherwise provided in this section, the provisions of this section apply to partnership taxable years beginning after September 3, 1982.

§ 1.6031(b)–2T REMIC reporting requirements (temporary). [Reserved]

§ 1.6031(c)–1T Nominee reporting of partnership information (temporary).

(a) *Statements required to be furnished to partnership*—(1) *Statement from nominee*—(i) *In general.* Except as otherwise provided in this section, any person who holds, directly or indirectly, an interest in a partnership (required under section 6031(a) and the regulations thereunder to file a partnership return for a taxable year) as a nominee on behalf of another person at any time during the partnership taxable year shall furnish to the partnership a written statement (or statements) for that taxable year with respect to such other person containing the information described in paragraph(a)(1)(ii) of this section.

(ii) *Contents of statement.* The statement required under paragraph (a)(1)(i) of this section shall, except as otherwise provided in paragraph (a)(4) of this section, include the following information:

(A) The name, address, and taxpayer identification number of the nominee;

(B) The name, address, and taxpayer identification number of such other person;

(C) Whether such other person is—

(*1*) A person that is not a United States person;

(*2*) A foreign government, an international organization, or any wholly-owned agency or instrumentality of either of the foregoing; or

(*3*) A tax-exempt entity (within the meaning of section 168(h)(2));

(D) A description of any interest in the partnership held by the nominee on behalf of such other person at the beginning of the partnership taxable year;

(E) A description of any interest in the partnership that the nominee acquires (within the meaning of paragraph (g)(1) of this section) on behalf of such other person during the partnership taxable year, the method of acquisition (e.g., purchase, exchange, acquisition at death, gift, or commencement of nominee relationship) and acquisition cost (within the meaning of paragraph (g)(2) of this section) of such interest, and the date of the acquisition of such interest; and

(F) A description of any interest in the partnership that the nominee transfers (within the meaning of paragraph (g)(5) of this section) on behalf of such other person during the partnership taxable year, the net proceeds from the transfer (within the meaning of paragraph (g)(6) of this section) of such interest, and the date of the transfer of such interest.

A description of a partnership interest must include sufficient detail to enable the partnership to furnish to such other person the statement required under § 1.6031(b)–1T (a).

(2) *Special rule for clearing agencies.* A clearing agency registered pursuant to the provisions of section 17A of the Securities Exchange Act of 1934 (or its nominee) that holds an interest in a partnership as a nominee on behalf of another person shall not be required to furnish any statement described in paragraph (a)(1)(i) of this section with respect to such interest.

(3) *Special rule for brokers and financial institutions*—(i) *Additional statement required.* Any broker (within the meaning of paragraph (g)(3) of this section) or financial institution (within the meaning of paragraph (g)(4) of this section) that holds an interest in a partnership indirectly through a nominee described in paragraph (a)(2) of this section at any time during a partnership taxable year shall furnish (in addition to any statement (or statements) required under paragraph (a)(1)(i) of this section) to the partnership a written statement (or statements) containing the information described in paragraph (a)(3)(ii) of this section with respect to any interest in such partnership that it holds (directly or indirectly) for its own account at any time during such partnership taxable year.

(ii) *Contents of statement.* The statement required under paragraph (a)(3)(i) of this section shall, except as otherwise provided in paragraph (a)(4)

of this section, include the following information:

(A) The name, address, and taxpayer identification number of the broker or financial institution;

(B) Whether such broker of financial institution is a person that is not a United States person;

(C) A description of any interest in the partnership held by the broker or financial institution for its own account at the beginning of the partnership taxable year;

(D) A description of any interest in the partnership that the broker or financial institution acquires for its own account during the partnership taxable year, the method of acquisition and acquisition cost of such interest, and the date of the acquisition of such interest; and

(E) A description of any interest in the partnership that the broker or financial institution transfers for its own account during the partnership taxable year, the net proceeds from the transfer of such interest, and the date of the transfer of such interest.

A description of a partnership interest held by a broker or financial institution for its own account must include sufficient detail to enable the partnership to furnish to the broker or financial institution the statement required under § 1.6031(b)–1T (a).

(4) *Exception*—(i) *In general.* Except as otherwise provided in this paragraph (a)(4), any statement required under paragraph (a) (1)(i) or (3)(i) of this section for a taxable year is not required to include—

(A) That part of the information described in paragraph (a) (1)(ii)(E) and (3)(ii)(D) of this section regarding the method of acquisition and acquisition cost; or

(B) That part of the information described in paragraph (a)(1)(ii)(F) and (3)(ii)(E) of this section regarding the net proceeds from the transfer;

to the extent that, prior to the beginning of the partnership taxable year, the partnership has provided the nominee with a written statement that the nominee need not provide such information to the partnership, and the partnership has not modified or revoked such statement. For purposes of the preceding sentence, the modification or revocation of a statement furnished to a nominee is effective for a partnership taxable year if and only if the partnership notifies the nominee of such modification or revocation by a written statement more than 60 days before the beginning of the partnership taxable year. The nominee shall retain a copy of any statement that is furnished to it by the partnership under this paragraph (a)(4) in the nominee's records so long as the contents thereof may become material in the administration of any internal revenue law.

(ii) *Effect of election under section 754.* Paragraph (a)(4)(i)(A) of this section shall not apply to a partnership taxable year if—

(A) The partnership has an election in effect under section 754 (relating to optional adjustment to basis of partnership property) for such taxable year; and

(B) The nominee knows or has reason to know of such election more than 60 days before the beginning of such taxable year.

(5) *Examples.* The following examples illustrate the application of this paragraph (a):

Example (1). B, a broker, holds 50 units of interest in Partnership P, a calendar year partnership, in street name for customer A, the beneficial owner. B holds the units on behalf of A at all times during 1989. B must furnish a statement to P for calendar year 1989 under paragraph (a)(1)(i) of this section that includes the information required under paragraph (a)(1)(ii) (A) through (D) of this section. The description of the partnership interest held by B on A's behalf on January 1, 1989, must identify the number of units of P held by B on A's behalf at that time (50), and the class of the partnership interest (including the Committee on Uniform Security Identification Procedures (CUSIP) number of the partnership interest, if known).

Example (2). The facts are the same as in example (1), except that pursuant to A's instructions, B sells 25 of A's units of interest in P on August 1, 1989, receiving net proceeds from the transfer of $500. In addition to the information described in example (1), the statement that B must furnish to P must include the class of the partnership interest transferred (including the CUSIP number of the partnerhsip interest, if known), the number of units transferred (25), the net proceeds from the transfer ($500), and the date of the transfer (August 1, 1989.)

Example (3). The facts are the same as in example (1), except that A is not the beneficial owner, but rather holds the units as a nominee on behalf of C, the beneficial owner, at all times during 1989. In addition to the statement that B must furnish to P (as described in Example (1) of this paragraph (a)(5)), A must furnish a statement to P for calendar year 1989 under paragraph (a)(1)(i) of this section that includes the information required under paragraph (a)(1)(ii) (A) through (D) of this section. If both A and B provide P with the statement required under paragraph (a)(1)(i) of this section, P must provide C with the statement required under § 1.6031 (b)-1T (a)(1).

(b) *Time for furnishing statements.* A nominee may furnish to the partnership any statement required under paragraph (a) of this section annually, quarterly, monthly, or on any other basis, provided that all statements required to be furnished under paragraph (a) of this section for a partnership taxable year shall be furnished on or before the last day of the first month following the close of such partnership taxable year.

(c) *Use of magnetic media.* A nominee required to furnish a written statement under paragraph (a) of this section, may, in lieu of furnishing such written statement, furnish the required information on magnetic tape or by other media if the partnership and the nominee so agree.

(d) *Use of single document.* Any person who holds interests in a partnership as a nominee on behalf of more than one other person during the partnership taxable year, may, in lieu of furnishing to the partnership a separate statement for each such other person, furnish to the partnership a single document which includes, for each such other person, the information described in paragraph (a)(1)(ii) of this section. To the extent that a single document is used, references in this section to the statement required under paragraph (a)(1)(i) of this section shall be deemed to refer also to the information included in a single document under this paragraph (d).

(e) *Retention of information.* The nominee shall retain a copy of any statement that is furnished to the partnership under this section in the nominee's records so long as the contents thereof may become material in the administration of any internal revenue law.

(f) *Use of agent.* If a partnership has designated another person, such as a clearing organization, as the partnership's agent for purposes of receiving the statements required under paragraph (a) of this section, such statements may be furnished to that other person instead of the partnership. If a nominee has designated another person as its agent for purposes of furnishing to the partnership (or its agent) the statements required under paragraph (a) of this section, that other person may furnish such statements to the partnership (or its agent) on behalf of the nominee.

(g) *Meaning of terms.* For purposes of this section, the following terms have the meanings set forth below:

(1) The term "acquires" means—

(i) A purchase or other acquisition of a partnership interest; or

(ii) The commencement of a nominee relationship, including the substitution of one nominee for another.

(2) The term "acquisition cost" means the sum of any money paid and the fair market value of any property (other than money) transferred to acquire a

partnership interest increased by any expenses paid or incurred with respect to the acquisition (such as broker's fees or commissions).

(3) The term "broker" shall have the meaning set forth in paragraph (a)(1) of § 1.6045–1.

(4) The term "financial institution" means a financial institution such as a bank, mutual savings bank, savings and loan association, building and loan association, cooperative bank, homestead association, credit union, industrial loan association or bank or other similar organization.

(5) The term "transfer" means—

(i) A sale, exchange, or other disposition of a partnership interest; or

(ii) The termination of a nominee relationship, including the substitution of one nominee for another.

(6) The term "net proceeds from the transfer" means the sum of any money and the fair market value of any property (other than money) received in connection with a transfer of a partnership interest reduced by any expenses paid or incurred with respect to the transfer (such as broker's fees or commissions).

(7) The term "person" includes the United States, a State, the District of Columbia, a foreign government, a political subdivision of a State or foreign government, or an international organization.

(h) *Statement required by nominees that do not comply with § 1.6031 (c)–1T (a)*—(1) *In general.* Any person that—

(i) Holds an interest in a partnership as a nominee (other than a nominee described in paragraph (a)(3) of this section) on behalf of another person at any time during the partnership taxable year;

(ii) Does not furnish to such partnership the statement required under paragraph (a)(1)(i) of this section for such other person with respect to such interest in the partnership; and

(iii) Receives from such partnership the statement described in paragraph (a)(1) of § 1.6031(b)–1T with respect to such interest in the partnership;

shall furnish to such other person a written statement containing the information described in paragraph (h)(2) of this section with respect to such interest in the partnership.

(2) *Contents of statement.* The statement required under paragraph (h)(1) of this section shall contain the following information:

(i) The distributive share of partnership income, gain, loss, deduction or credit required to be shown on the partnership return that is allocable to such interest in the partnership; and

(ii) Any additional information that may be required to apply particular provisions of subtitle A of the Code to the beneficial owner of such interest in the partnership in connection with items related to the partnership.

(3) *Time for furnishing statements.* A nominee shall furnish the statement required under paragraph (h)(1) of this section within 30 days after receiving the statement described in paragraph (a) of § 1.6031(b)–1T.

(i) *REMICs.* This section shall not apply with respect to any interest in a real estate mortgage investment conduit (REMIC) treated as a partnership under subtitle F of the Code by reason of section 860F(e). For the nominee reporting requirements with respect to REMICs see § 1.6031(c)–2T.

(j) *Penalties.* [Reserved].

(k) *Effective date*—(1) *In general.* Except as otherwise provided in paragraph (k)(2) of this section, the provisions of this section shall apply to partnership taxable years beginning after October 22, 1986.

(2) *Transitional rule for taxable years beginning before January 1, 1989.* For partnership taxable years beginning before January 1, 1989, —

(i) Any statement that a nominee is required to furnish to a partnership under paragraph (a)(1) of this section shall not be required to include the following information:

(A) The information described in paragraph (a)(1)(ii)(C) of this section;

(B) That part of the information described in paragraph (a)(1)(ii)(E) of this section regarding the method of acquisition and acquisition cost of a partnership interest; or

(C) That part of the information described in paragraph (a)(1)(ii)(F) of this section regarding the net proceeds from the transfer of a partnership interest.

(ii) A broker or financial institution shall not be required to furnish the additional statement described in paragraph (a)(3)(i) of this section.

§ 1.6031 (c)–2T Nominee reporting of REMIC information (temporary).

[Reserved]

PART 602—[AMENDED]

Par. 3. The authority for 26 CFR Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. Section 602.101(c) is amended by inserting the following items in the appropriate place in the table:

§ 1.6031(b)–1T	1545–0099.
§ 1.6031(c)–1T	1545–0099.

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved:

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

August 15, 1988.

[FR Doc. 88–20266 Filed 9–6–88; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; List of Safety and Pollution Prevention Equipment in Inventory

AGENCY: Minerals Management Service, Interior.

ACTION: Waiver of time to submit list required under 30 CFR 250.126.

SUMMARY: Regulations governing oil and gas and sulphur operations in the Outer Continental Shelf (OCS) (30 CFR 250.126) require that each lessee submit a list of the safety and pollution prevention equipment (SPPE) in its inventory on April 1, 1988, by August 29, 1988. Numerous inquiries have been received requesting additional time to prepare and submit the prescribed list. This Notice extends until December 1, 1988, the deadline for lessees to prepare and submit the required list.

DATES: The list of SPPE must be submitted by December 1, 1988.

ADDRESS: The list must be submitted to: Deputy Associate Director for Offshore Operations; Minerals Management Service; Mail Stop 647; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

FOR FURTHER INFORMATION CONTACT: M.L. Courtois; Chief, Offshore Inspection and Enforcement Division; Minerals Management Service; Mail Stop 647, 12203 Sunrise Valley Drive; Reston, Virginia 22091; (703) 648–7750.

SUPPLEMENTARY INFORMATION: The Consolidated Offshore Operating Rules published in the **Federal Register** on April 1, 1988 (53 FR 10596), include a provision in 30 CFR 250.126 which requires each lessee to submit a list of

SPPE in the lessee's inventory as of April 1, 1988, and allows for the continued installation of either certified equipment or uncertified equipment identified as in the lessee's inventory as of April 1, 1988. Section 250.126 specifies that the lessee's lists are to be submitted by August 29, 1988.

The lists being assembled by lessees are, in some cases, lengthy and are taking lessees more elapsed time to assemble than had been anticipated by MMS when it drafted the final rule. As a result, several lessees have requested and have been granted additional time beyond August 29, 1988, within which to prepare and submit the required lists.

The MMS believes that providing additional time to submit the required information results in lessee submissions which contain fewer errors or omissions. In addition, providing an extension of time to all lessees through the publication of a **Federal Register** Notice eliminates the need for MMS to process and respond to the individual lessees who submit a request for additional time. Therefore, by publication of this Notice, OCS oil and gas lessees are being allowed until December 1, 1988, to submit the SPPE lists described in paragraph (b)(1) of 30 CFR 250.126.

It should be noted that the additional time for preparation and submission of lessees' SPPE lists neither changes the SPPE items to be listed nor changes any of the other requirements contained in the regulations that became effective May 31, 1988. The lessee's SPPE list is to contain the SPPE items in the lessee's inventory on April 1, 1988.

Date: August 30, 1988.

Bruce G. Weetman,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 88-20314 Filed 9-6-88; 8:45 am]

BILLING CODE 4310-MR-M

VETERANS ADMINISTRATION

DEPARTMENT OF DEFENSE

38 CFR Part 21

Veterans Education; Amendments to VEAP Required by the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986

AGENCY: Veterans Administration and Department of Defense.

ACTION: Final regulations.

SUMMARY: The Veterans' Benefits Improvement and Health-Care Authorization Act of 1986 contains several provisions which affect the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP). The most important changes include provision of apprenticeship and other on-job training in this program; extension of the veteran's period of eligibility if he or she is disabled during the eligibility period; and closing of VEAP to new enrollments. This regulation informs the public how the Veterans Administration (VA) intends to administer the new provisions of law.

EFFECTIVE DATE: October 28, 1986.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Education Policy and Program Administration (225), Vocational Rehabilitation and Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2092.

SUPPLEMENTARY INFORMATION: On pages 4186 through 4192 of the **Federal Register** of February 12, 1988, there was proposed amendments to 38 CFR Part 21 which are designed to implement those provisions of the veterans' Benefits Improvement and Health-Care Authorization Act of 1986 (Pub. L. 99-576). Interested people were given 31 days to submit comments, suggestions or objections. The VA and the Department of Defense received one letter from a university official containing a comment.

The official objected to the regulations because they do not provide for the pursuit of cooperative courses under VEAP. She suggested that the regulations be reviewed to see if benefits could be paid to veterans who are eligible to receive benefits under VEAP and who are pursuing cooperative courses.

The VA and the Department of Defense have carefully considered this matter, and have concluded that the law does not permit payments under VEAP for cooperative courses. Title 38, United States Code, 6141(a) contains a list of the sections of 38 U.S.C., chapter 34 (the chapter governing the Vietnam Era GI Bill) which apply to VEAP. Authority to include cooperative training in the Vietnam Era GI Bill is found in 38 U.S.C. 1682(a). That section is not listed in 38 U.S.C. 1641(a) as applying to VEAP. Accordingly, benefits may not be paid under VEAP for cooperative training. The VA and the Department of Defense are adopting the regulations as proposed.

The VA and the Department of Defense find that good cause exists for making these regulations, like the sections of the law they implement, retroactively effective on October 28, 1986. To achieve the maximum benefit of this legislation for the affected individuals, it is necessary to implement these provisions of law as soon as possible. A delayed effective date would be contrary to statutory design; would complicate administration of these provisions of law; and might result in denial of a benefit to a veteran who is entitled by law to it.

The information collection contained in § 21.5200 of the final rule has been asppproved by the Office of Management and Budget and assigned OMB number 2900-0178. The public reporting burden for this collection of information is estimated to average less than 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to VA Liaison Officer (732), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The VA and the Department of Defense have determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no 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 Administrator of Veterans Affairs and the Department of Defense have certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 610-612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604. This certification was made only after carefully considering several factors.

The amendment to § 21.5200 in effect requires the application of § 21.4203(f)(3) to VEAP. That section requires training establishments to certify monthly to the VA the attendance of those veterans in apprenticeship and other on-job

training. The amendment to § 21.5250 requires the application of §§ 21.4261 and 21.4262 to the administration of VEAP. Those sections require training establishments which wish to train veterans to apply for approval of the training program to the appropriate State approving agency.

On March 31, 1988, there were 130 veterans receiving benefits under VEAP for apprenticeship or other on-job training. The VA does not solicit information to determine if training establishments qualify as small entities. Consequently, the Agency is unable to state the precise number of small entities which have been affected by the introduction of apprenticeship or other on-job training into VEAP. However, a reasonable estimate would be that the number of small entities is approximately 25 percent. Hence, there are approximately 32 small entities affected this year. The number affected in future years should be reduced as the number of veterans training under VEAP is reduced. This is not a substantial number.

Even if the number of small entities is larger than estimated, the VA and the Department of Defense do not think that the regulations will have a significant economic impact on them. Firms providing apprenticeship and other on-job training normally keep records of hours worked by trainees for the purpose of paying them their wages. Writing these figures on a monthly certification form should take but a few minutes. The amendment to § 21.5200 would not have a substantial economic impact.

Applying for approval for an apprenticeship and other on-job training will take time. If the average employee responsible for applying for approval is paid $10 per hour, it would not be unreasonable for each application to cost $100. However, it should be remembered that approval is a one-time action. The approvals already in effect for chapter 34 training are valid for VEAP training as well. Hence, there will not be many new applications for training programs for VEAP recipients per year. The total cost of the amendment to § 21.5250 will be a few thousand dollars per year. When this is averaged over the number of small entities involved, this cost is not substantial.

The remainder of the regulations will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by these regulations is 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: June 30, 1988.

Thomas K. Turnage,

Administrator.

Approved: August 1, 1988.

A. Lukeman,

Lieutenant General, USMC, Deputy Assistant Secretary (Military Manpower & Personnel Policy).

PART 21—[AMENDED]

38 CFR Part 21, Vocational Rehabilitation and Education, is amended as follows:

1. In § 21.5021, paragraphs (e)(5), (j)(4), (p), and (q) are added as follows:

§ 21.5021 Definitions

* * * * *

(e) * * *

(5) Those individuals who have contributed to the "fund" and—

(i) Have been automatically disenrolled as provided in § 21.5060(b)(3) of this part,

(ii) Whose funds have been transferred to the Treasury Department as provided in § 21.5064(b)(4)(iii) of this part, and

(iii) Who are found to have qualified for an extended period of eligibility as provided in § 21.5042 of this part.

(Authority: 38 U.S.C. 1632;, Pub. L. 99-576)

* * * * *

(j) * * *

(4) For apprenticeship and other on-job training that period of time from the beginning date of training or the date last certified on the monthly certification of training to—

(i) The end of the month to be certified;

(ii) The last date of the veteran's delimiting period;

(iii) The date on which the veteran's entitlement is exhausted, whichever occurs first.

(Authority: 38 U.S.C. 1631; Pub. L. 99-576)

* * * * *

(p) *"Training establishment"*—means any establishment providing apprentice or other training on-the-job, including those under the supervision of a college or university or any State department of education, or any State apprenticeship agency, or any State board of vocational education, or any joint apprenticeship committee, or the Bureau of Apprenticeship and Training established in accordance with 29 U.S.C. Chapter 4C, or any agency of the Federal Government authorized to supervise such training.

(Authority: 38 U.S.C. 1602(5), 1652(e); Pub. L. 99-576)

(q) *"Program of education"*—means—

(1) Any curriculum or combination of subjects or unit courses pursued at a school which is generally accepted as necessary to meet requirements for a predetermined and identified educational, professional or vocational objective;

(2) Subjects or unit courses which fulfill requirements for more than one predetermined and identified objective if all objectives pursued are generally recognized as being related to a single career field;

(3) Any unit course or subject or combination of courses or subjects, pursued by an individual at an educational institution, required by the Administrator of the Small Business Administration as a condition to obtaining financial assistance under the provisions of 15 U.S.C. 636; or

(4) A full-time program of apprenticeship or other on-job training approved as provided in §§ 21.4261 or 21.4262 of this part as appropriate.

(Authority: 38 U.S.C. 1602(2), 1652(b); Pub. L. 99-576)

2. In § 21.5022, paragraph (a) is revised to read as follows:

§ 21.5022 Eligibility under more than one program.

(a) *Concurrent benefits under more than one program.* An individual eligible to receive educational assistance under 38 U.S.C. ch. 32 and provisions of the § 21.5000 series of VA Regulations is not eligible to receive educational assistance allowance under 38 U.S.C. Ch. 34. An individual may not receive educational assistance under 38 U.S.C. Ch. 32 concurrently with benefits under any of the following provisions of law.

(Authority: 38 U.S.C. 1781; Pub. L. 99-576)

* * * * *

3. In § 21.5030, paragraph (c)(3) is revised to read as follows:

§ 21.5030 Applications, claims, informal claims and time limits.

* * * * *

(c) * * *

(3) Section 21.1032—Time Limits

(Authority: 38 U.S.C. 1632, 1641, 1671; Pub. L. 94-502, Pub. L. 99-576)

4. In § 21.5040, paragraphs (b)(1)(i) and (f)(1) are revised to read as follows:

§ 21.5040 Basic eligibility.

* * * * *

(b) * * *

(1) * * *

(i) Must have entered the military service after December 31, 1976, and before July 1, 1985;

(Authority: 38 U.S.C. 1602, Pub. L. 99-576)

* * * * *

(f) * * *

(1) Must have entered into military service after December 31, 1976, and before July 1, 1985.

(Authority: 38 U.S.C. 1602, Pub. L. 96-466, Pub. L. 99-576)

* * * * *

5. Section 21.5041 is revised to read as follows:

§ 21.5041 Periods of entitlement.

(a) *Ten-year delimiting period.* Except as provided in § 21.5042 no educational assistance shall be afforded an eligible individual under chapter 32 beyond the date of 10 years after his or her last discharge or release from active duty.

(Authority: 38 U.S.C. 1632, Pub. L. 94-502, Pub. L. 99-576)

(b) *Use of entitlement.* The individual—

(1) May use his or her entitlement at anytime during the 10-year period after the last discharge or release from active duty or other period as provided pursuant to § 21.5042 of this part;

(2) Is not required to use his or her entitlement in consecutive months.

(Authority: 38 U.S.C. 1632, Pub. L. 94-502, Pub. L. 99-576)

6. Section 21.5042 is added to read as follows:

§ 21.5042. Extended period of eligibility.

(a) *General.* A veteran shall be granted an extension of the applicable delimiting period, as otherwise determined by § 21.5041 of this part provided—

(1) The veteran applies for an extension.

(2) The veteran was prevented from initiating or completing the chosen program of education within the otherwise applicable delimiting period because of a physical or mental disability that did not result from the willful misconduct of the veteran.

(b) *Application.* The veteran must apply for the extended period of eligibility in time for the VA to receive the application by the later of the following dates:

(1) One year from the last date of the delimiting period otherwise applicable to the veteran under § 21.5401 of this part, or

(2) One year from the termination date of the period of the veteran's mental or physical disability.

(Authority: 38 U.S.C. 1632, Pub. L. 99-576)

(c) *Qualifying period of disability.* A veteran's extended period of eligibility shall be based on the period of time that the veteran himself or herself was prevented by reason of physical or mental disability, not the result of the veteran's willful misconduct, from initiating or completing his or her chosen program of education.

(1) Evidence must be presented which clearly establishes that the veteran's disability made pursuit of his or her program medically infeasible during the veteran's original period of eligibility as determined by § 21.5041 of this part. A period of disability following the end of the original disability period will not be a basis for extension.

(2) The VA will not consider a veteran who is disabled for a period of 30 days or less as having been prevented from enrolling or reenrolling in the chosen program of education or was forced to discontinue attendance, because of the short disability.

(Authority: 38 U.S.C. 1632, Pub. L. 99-576)

(d) *Commencing date.* The veteran shall elect the commencing date of an extended period of eligibility. The date chosen—

(1) Must be on or after the original date of expiration of eligibility as determined by § 21.5041 of this part, and

(2) Must be on or before the 90th day following the date on which the veteran's application for an extension was approved by the VA, if the veteran is training during the extended period of eligibility in a course not organized on a term, quarter or semester basis, or

(3) Must be on or before the first day of the first ordinary term, quarter or semester following the 90th day after the veteran's application for an extension was approved by the VA if the veteran is training during the extended period of eligibility in a course organized on a term, quarter or semester basis.

(Authority: 38 U.S.C. 1632; Pub. L. 99-576)

(e) *Determining the length of extended periods of eligibility.* A veteran's extended period of eligibility shall be based upon the qualifying period of disability, and determined as follows:

(1) If the veteran is in training in a course organized on a term, quarter or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the veteran's original delimiting period that his or her training became medically infeasible to the earliest of the following dates:

(i) The commencing date of the ordinary term, quarter or semester following the day the veteran's training became medically feasible,

(ii) The veteran's delimiting date as determined by § 21.5041 of this part, or

(iii) The date the veteran resumed training.

(2) If the veteran is training in a course not organized on a term, quarter or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the veteran's original delimiting period that his or her training became medically infeasible to the earlier of the following dates:

(i) The date the veteran's training became medically feasible, or

(ii) The veteran's delimiting date as determined by § 21.5041 of this part.

(Authority: 38 U.S.C. 1632; Pub. L. 99-576)

(f) *Discontinuance.* If the veteran is pursuing a course on the date an extended period of eligibility expires (as determined under this section), the VA will discontinue the educational assistance allowance effective the day before the end of the extended period of eligibility.

(Authority: 38 U.S.C. 1632; Pub. L. 99-576)

7. In § 21.5052, paragraph (f)(3)(i) is revised to read as follows:

§ 21.5052 Contribution requirements.

* * * * *

(f) * * *

(3) * * *

(i) May make a lump-sum contribution to cover any period of his or her active duty. This may entail a retroactive period, including one which—

(A) Begins after December 31, 1976, and before October 1, 1980, or

(B) Although made after October 27, 1986, includes all or part of the period beginning on July 1, 1985, and ending on October 27, 1986.

(Authority: Pub. L. 99-576, sec. 309(c))

* * * * *

8. In § 21.5054, paragraph (b) is revised to read as follows:

§ 21.5054 Dates of participation.

* * * * *

(b) *Termination of right to begin participation.* (1) Except as provided in paragraph (b)(3) of this section, no individual on active duty in the Armed Forces may initially enroll after June 30, 1985.

(2) An initial enrollment occurs when a serviceperson who has never contributed to the fund—

(i) First makes a lump-sum payment to the fund, or

(ii) First authorizes an allotment to the VA for deposit in the fund. See 32 CFR 59.3(b)(10).

(3) Notwithstanding the provisions of paragraph (b)(1) of this section, any individual on active duty in the Armed Forces who was eligible to enroll on June 30, 1985, may enroll at any time during the period beginning on October 28, 1986, and ending on March 31, 1987.

(Authority: 38 U.S.C. 1621(a), Pub. L. 99-576, sec. 309(c); Pub. L. 99-576)

9. In § 21.5064, paragraph (b)(4)(iii) is revised to read as follows:

§ 21.5064 Refunds upon disenrollment.

* * * * *

(b) * * *

(4) * * *

(iii) If the VA does not receive a request within 1 year from the date that the individual is notified of his or her entitlement to a refund, the VA will presume that the individual's whereabouts is unknown. The funds on deposit for that individual will be transferred in accordance with the provisions of section 1322(a), Title 31, United States Code.

(Authority: 38 U.S.C. 101, 1623, 1632; Pub. L. 94-502, Pub. L. 99-576)

10. In § 21.5072, paragraph (d) is added to read as follows:

§ 21.5072 Entitlement changes.

* * * * *

(d) *Apprenticeship or other on-job training.* (1) The VA will determine the entitlement charge for a veteran in apprenticeship or other on-job training as stated in this paragraph.

(2) The entitlement charge will be—

(i) 75 percent of a month for those months for which the veteran's monthly payment is based upon 75 percent of the monthly benefit otherwise payable to him or her;

(ii) 55 percent of a month for those months for which the veteran's monthly payment is based upon 55 percent of the monthly benefit otherwise payable to him or her; and

(iii) 35 percent of a month for those months for which the veteran's monthly payment is based upon 35 percent of the monthly benefit otherwise payable to him or her.

(3) The charge against the veteran's entitlement will be prorated if

(i) The veteran enrollment period ends in the middle of a month,

(ii) The veteran's monthly rate is reduced in the middle of a month, or

(iii) The veteran's monthly payment is reduced because he or she worked less than 120 hours during the month. In this instance the number of hours worked will be rounded to the nearest multiple of eight, and the entitlement charge will be reduced proportionately.

(Authority: 38 U.S.C. 1633(c); Pub. L. 99-576)

11. In § 21.5100, paragraphs (b), (c), and (d) are revised to read as follows:

§ 21.5100 Counseling.

* * * * *

(b) *Availability of counseling.* Conseling assistance in available for—

(1) Identifying and removing reasons for academic difficulties which may result in interruption or discontinuance of training, or

(2) In considering changes in career plans, and making sound decisions about the changes.

(Authority: 38 U.S.C. 1641, 1663; Pub. L. 96-466, Pub. L. 99-576)

(c) *Optional counseling.* The VA shall provide counseling as needed for the purposes identified in paragraphs (a) and (b) of this section upon request of the individual. The VA shall take appropriate steps (including individual notification where feasible) to acquaint all participants with the availability and advantages of counseling services.

(Authority: 38 U.S.C. 1663; Pub. L. 99-466, Pub. L. 99-576)

(d) *Required counseling.* (1) In any case in which the VA has rated the veteran as being incompetent, the VA must provide counseling as described in 38 U.S.C. 1663 prior to selection of a program of education or training. The counseling will follow the veteran's request for counseling, the veteran's initial application for benefits or any communication from the veteran or guardian indicating that the veteran wishes to change his or her program. This requirement that counseling be provided is met when—

(i) The veteran has had one or more personal interviews with the counselor;

(ii) The counselor has jointly developed with the veteran recommendations for selecting a program;

(iii) These recommendations have been reviewed with the veteran.

(2) The veteran may follow the recommendations developed in the course of counseling, but is not required to do so.

(3) The VA will take no further action on a veteran's application for assistance under 38 U.S.C. Ch. 32 unless he or she—

(i) Reports for counseling;

(ii) Cooperates in the counseling process; and

(iii) Completes counseling to the extent required under paragraph (d)(1) of this section.

(Authority: 38 U.S.C. 1641, 1633)

12. Section 21.5103 is revised to read as follows:

§ 21.5103 Travel expenses.

(a) *Travel for individuals.* Except as provided in paragraph (a)(2) of this section, the VA shall determine and pay the necessary cost of travel to and from the place of counseling for individuals who are required to receive counseling if—

(1) The VA determines that the individual is unable to defray the cost based upon his or her annual declaration and certification; or

(2) The individual has a compensable service-connected disability.

(Authority: 38 U.S.C. 111)

(b) *Travel for attendants.* (1) The VA will authorize payment of travel expenses for an attendant while the individual is traveling when—

(i) The individual, because of a severe disability, requires the services of an attendant when traveling, and

(ii) The VA is paying the necessary cost of the individual's travel on the basis of the criteria stated in paragraph (a) of this section.

(2) The VA will not pay the attendant a fee for travel expenses if he or she is a relative as defined in § 21.374 of this part.

(Authority: 38 U.S.C. 111)

(c) *Payment of travel expenses prohibited for most veterans.* The VA shall not pay for any costs of travel to and from the place of counseling for any individual who is not required to receive counseling under chapter 32 prior to selection of a program of education.

(Authority: 38 U.S.C. 111)

Cross-Reference: § 21.374, Authorization for travel of attendants.

13. In § 21.5131, the introductory text and paragraphs (b) (1) and (2) are revised to read as follows:

§ 21.5131 Educational assistance allowance.

The VA will pay educational assistance allowance at the rate specified in §§ 21.5136 and 21.5138 of this part while the individual is pursuing a program of education. The VA may withhold final payment until it receives proof of the individual's continued enrollment and adjusts the individual's account.

(Authority: 38 U.S.C. 1641; Pub. L. 94-502, 99-576)

* * * * *

(b) * * *

(1) The ending date of the individual's course or period of enrollment as

certified by the school or training establishments;

(2) The ending date of the individual's eligibility as determined under §§ 21.5041 or 21.5042 of this part;

(Authority: 38 U.S.C. 1641; Pub. L. 99-576)

* * * * *

14. In § 21.5132, paragraph (a) is revised to read as follows:

§ 21.5132 Criteria used in determining benefit payments.

(a) *Training time.* The amount of benefit payment to an individual in all types of training except correspondence training and apprenticeship and other on-job training depends on whether the VA determines that the individual is a full-time student, three-quarter-time student, half-time student or one-quarter-time student.

(Authority: 38 U.S.C. 1641, 1788; Pub. L. 99-576)

* * * * *

15. In § 21.5138, paragraph (b)(12) is revised and paragraphs (a)(3), (b)(13) and (b)(14) are added to read as follows:

§ 21.5138 Computation of benefit payments and monthly rates.

* * * * *

(a) * * *

(3) For apprenticeship and other on-job training the VA will compute the entitlement factor as follows:

(i) Enter the number of full days in the applicable benefit period. (Enter 30 if the benefit period is a full month.)

(1) _____

(ii) Divide line 1 by 30. Enter the quotient:

(2) _____

(iii) Multiply line 2 by .75 if the veteran is in the first six months of training; by .55 if the veteran is in the second six months of training; by .35 if the veteran is in a subsequent month of training; and by a pro-rated fraction if one of the veteran's first two six-month periods of training ends during the benefit period. Enter the result.

(3) _____

(This is the entitlement factor.)

(Authority: 38 U.S.C. 1631, 1633; Pub. L. 96-466, Pub. L. 97-306, Pub. L. 99-576)

(b) * * *

(12) If the veteran is in an apprenticeship or other on-job training and fails to complete 120 hours of training in a month, reduce the amount on line 14 proportionately. In this computation round the number of hours worked to the nearest multiple of eight. Enter the result.

(15) _____

(13) If the veteran is pursuing certain courses which do not lead to a standard college degree and has excessive absences, reduce the amount on line 14 sufficiently to avoid paying for any excessive absence. Enter the result.

(16) _____

(14) The benefit payment is either—

(i) The amount shown on line 14 unless the veteran is in apprenticeship or other on-job training and has failed to complete 120 hours of training in a month during the benefit period in which case the benefit payment is the amount shown on line 15, or the veteran is pursuing certain courses which do not lead to a standard college degree in which case the benefit payment is the amount shown on line 16, or

(Authority: 38 U.S.C. 1633; Pub. L. 99-576)

(ii) The total amount of the remaining contributions in the fund made by the individual and the VA and the Secretary of Defense on behalf of the individual, whichever is less.

(Authority: 38 U.S.C. 1631; Pub. L. 94-502)

* * * * *

16. Section 21.5145 is added to read as follows:

§ 21.5145 Veteran-student services.

(a) *Eligibility.* Veterans pursuring full-time programs of education or training under chapter 32 are eligible to receive a work-study allowance.

(Authority: 38 U.S.C. 1641, 1685; Pub. L. 99-576)

(b) *Selection criteria.* Whenever feasible the VA will give priority in selection for this allowance to veterans with service-connected disabilities rated at 30 percent or more. The VA shall consider the following additional selection criteria:

(1) Need of the veteran to augment his or her educational assistance allowance;

(2) Availability to the veteran of transportation to the place where his or her services are to be performed;

(3) Motivation of the veteran; and

(4) Compatibility of the work assignment to the veteran's physical conditions.

(Authority: 38 U.S.C. 1641, 1685; Pub. L. 99-576)

(c) *Utilization.* Veteran-student services may be utilized in connection with—

(1) Outreach services programs as carried out under the supervision of a VA employee;

(2) Preparation and processing of necessary papers and other documents at educational institutions or regional offices or facilities of the VA;

(3) Hospital and domiciliary care and medical treatment at VA facilities; and

(4) Any other appropriate activity of the VA.

(Authority: 38 U.S.C. 1641, 1685; Pub. L. 99-576)

(d) *Rate of prepayment.* (1) In return for the veteran's agreement to perform services for the VA totaling 250 hours during an enrollment period, the VA will pay an allowance in an amount equal to the higher of—

(i) The hourly minimum wage in effect under section 6(a) of the Fair Labor Standards Act of 1938 times 250, or

(ii) $625.

(2) The VA will pay proportionately less to veterans who agree to perform a lesser number of hours of services.

(Authority: 38 U.S.C. 1641, 1685; Pub. L. 99-576)

(e) *Payment in advance.* The VA will pay in advance an amount equal to 40 percent of the total amount payable under the contract.

(Authority: 38 U.S.C. 1641, 1685; Pub. L. 99-576)

(f) *Veteran reduces rate of training.* In the event the veteran ceases to be a full-time student before completing an agreement, the veteran, with the approval of the Director of the VA field station, or designee, may be permitted to complete the portions of an agreement in the same or immediately following term, quarter or semester in which the veteran ceases to be a full-time student.

(Authority: 38 U.S.C. 1641, 1685; Pub. L. 99-576)

(g) *Veteran terminates training.* (1) If the veteran terminates all training before completing an agreement, the Director of the VA field station or designee—

(i) May permit him or her to complete the portion of the agreement represented by the money the VA has advanced the veteran for which he or she has performed no service, but

(ii) Will not permit him or her to complete that portion of an agreement for which no advance has been made.

(2) The veteran must complete the portion of an agreement in the same or immediately following term, quarter or semester in which the veteran terminates training.

(Authority: 38 U.S.C. 1641, 1685; Pub. L. 99-576)

(h) *Indebtedness for unperformed service.* (1) If the veteran has received an advance for hours of unperformed service, and the VA has evidence that he or she does not intend to perform that service, the advance—

(i) Will be a debt due the United States, and

(ii) Will be subject to recovery the same as any other debt due the United States.

(2) The amount of indebtedness for each hour of unperformed service shall equal the hourly wage that formed the basis for the contract.

(Authority: 38 U.S.C. 1641, 1685; Pub. L. 99-576)

(i) *Survey.* The VA will conduct an annual survey of its regional offices to determine the number of veterans whose services can be utilized effectively.

(Authority: 38 U.S.C. 1641, 1685; Pub. L. 99-576)

17. In § 21.5150, paragraph (a) is revised to read as follows:

§ 21.5150 State approving agencies.

* * * * *

(a) Section 21.4150—Designation.

(Authority: 38 U.S.C. 1641, 1772(c); Pub. L. 99-576)

* * * * *

18. In § 21.5200, paragraphs (a), (d), and (j) are revised and an OMB control number is added at the end of the section to read as follows:

§ 21.5200 Schools.

* * * * *

(a) Section 21.4200—Definitions.

(Authority: 38 U.S.C. 1641; Pub. L. 94-502, Pub. L. 99-576)

* * * * *

(d) Section 21.4203—Reports by schools—Requirements.

(Authority: 38 U.S.C. 1641, 1784; Pub. L. 94-502, Pub. L. 99-576)

* * * * *

(j) Section 21.4209—Examination of records.

(Authority: 38 U.S.C. 1641, 1790; Pub. L. 94-502, Pub. L. 99-576)

(Approved by Office of Management and Budget under control number 2900-0178.

19. Section 21.5230 is revised to read as follows:

§ 21.5230 Programs of education.

In the administration of benefits payable under chapter 32, title 38 United States Code, the VA will apply § 21.4230—Requirements (except paragraphs (a)(1), (d)(2), (e) and (f)), in the same manner as it is applied in the administration of chapters 34 and 36.

(Authority: 38 U.S.C. 1641; Pub. L. 94-502; Pub. L. 99-576)

20. In § 21.5250, paragraphs (a), (k), (l), and (m) are revised and paragraph (n) is added to read as follows:

§ 21.5250 Courses.

* * * * *

(a) Section 21.4250 (except paragraph (c)(1))—Approval of courses.

(Authority: 38 U.S.C. 1641, 1772; Pub. L. 94-502, Pub. L. 99-576)

* * * * *

(k) Section 21.4261—Apprentice courses.

(Authority: 38 U.S.C. 1641, 1685; Pub. L. 99-576)

(l) Section 21.4262—Other training on-the-job courses.

(Authority: 38 U.S.C. 1641, 1685; Pub. L. 99-576)

(m) Section 21.4265 (except paragraph (g))—Practical training approved as institutional training.

(Authority: 38 U.S.C. 1641, 1772; Pub. L. 94-502)

(n) Section 21.4266—Courses offered at subsidiary branches or extensions.

(Authority: 38 U.S.C. 1641, 1772, 1789(c); Pub. L. 94-502)

21. In § 21.5270, paragraph (a) is revised to read as follows:

§ 21.5270 Assessment and pursuit of course.

* * * * *

(a) Section 21.4270 (except those portions of the paragraph and footnotes dealing with cooperative and farm cooperative training—Measurement of courses. For the purposes of benefits payable under chapter 32 that training identified in § 21.4270 as less than one-half and more than one-quarter time will be treated as one-quarter-time training.

(Authority: 38 U.S.C. 1641, 1788; Pub. L. 94-502, Pub. L. 99-576)

* * * * *

22. In § 21.5292, paragraph (e)(2) is revised to read as follows:

§ 21.5292 Reduced monthly contributions for certain individuals.

* * * * *

(e) * * *

(2) Except as amended in paragraph (e)(1) of this section §§ 21.5001 through 21.5041 and §§ 21.5050 through 21.5300 apply without change to this portion of the pilot program. See § 21.5296.

(Authority: Pub. L., 96-342, sec. 903; 38 U.S.C. 1632, 1798(a)(2); Pub. L. 97-35, Pub. L. 99-576)

23. In § 21.5294, paragraphs (c)(3)(i), (d)(1), and (d)(2)(iii) are revised to read as follows:

§ 21.5294 Transfer of entitlement.

* * * * *

(c) * * *

(3) * * *

(i) The ending date of the spouse's or child's course or period of enrollment as certified by the school or training establishment;

(Authority: 38 U.S.C. 1633; Pub. L. 99-576)

* * * * *

(d) *Application of VA regulations to this portion of the pilot program.*

(1) Sections 21.5030 (a) and (b), 21.5040, 21.5041 and 21.5050 through 21.5067 and § 21.5145 apply to the individual who is participating in this portion of the pilot program, but they do not apply to the individual's spouse or child, per se.

(Authority: Pub. L. 96-342, sec. 903; Pub. L. 99-576)

(2) * * *

(iii) In § 21.5100 the individual's spouse or child may request counseling, but an incompetent spouse or child is not required to be counseled before selecting a program of education.

(Authority: Pub. L. 96-342, sec. 903, Pub. L. 97-306, Pub. L. 99-576)

* * * * *

24. Section 21.5296 is added to read as follows:

§ 21.5296 Extended period of eligibility.

(a) *General.* A veteran shall be granted an extension of the applicable delimiting period, as otherwise determined by § 21.5041 provided—

(1) The veteran applies for an extension.

(2) The veteran was prevented from initiating or completing the chosen program of education within the otherwise applicable delimiting period because of a physical or metal disability that did not result from the willful misconduct of the veteran.

(Authority: 38 U.S.C. 1632; Pub. L. 99-576)

(b) *Application.* (1) Only the veteran may apply for an extended period of eligibility pursuant to this section. A spouse or child to whom entitlement may be or has been transferred may not apply for, nor receive, an extension based upon disability of either the veteran or the spouse or child.

(2) The veteran must apply for the extended period of eligibility in time for the VA to receive the application by the later of the following dates:

(i) One year from the last date of the delimiting period otherwise applicable to the veteran under § 21.5041, or

(ii) One year from the termination date of the period of the veteran's mental or physical disability.

(3) No application for an extended period of eligibility should be submitted and none will be processed during any period when the veteran has transferred entitlement to a spouse or child, since eligibility cannot be fully determined as provided in paragraph (c)(4)(ii) of this section.

(Authority: 38 U.S.C. 1632; Pub. L. 99-576)

(c) *Qualifying period of disability.* A veteran's extended period of eligibility

shall be based on the period of time that the veteran himself or herself was prevented by reason of physical or mental disability, not the result of the veteran's willful misconduct, from initiating or completing his or her chosen program of education.

(1) Evidence must be presented which clearly establishes that the veteran's disability made pursuant of his or her program medically infeasible during the veteran's original period of eligibility as determined by § 21.5041. A period of disability following the end of the original disability period will not be a basis for extension.

(2) The VA will not consider a veteran who is disabled for a period of 30 days or less as having been prevented from enrolling or reenrolling in the chosen program of education or was forced to discontinue attendance, because of the short disability.

(3) Except as provided in paragraph (c)(4) of this section, a veteran's transfer of entitlement to a spouse or child during a period for which the veteran's disability prevented his or her pursuit of a program of education will not affect the veteran's entitlement to an extension of eligibility under this section.

(4) Since the act of entitlement transfer to a spouse or child indicates that the veteran did not intend to personally use his or her educational assistance during the specified transfer period, a veteran who becomes disabled after transferring entitlement will not be entitled to an extended period of eligibility based on any period of the disability which coincides with the specified transfer period unless—

(i) The transferee or transferees did not use any entitlement during this period, and

(ii) The veteran can clearly demonstrate that, notwithstanding his or her decision to transfer entitlement, the veteran would have used the entitlement during all or part of the transfer period and was prevented from doing so solely by reason of his or her disability.

(Authority: 38 U.S.C. 1632; Pub. L. 99–576)

(d) *Commencing date.* The veteran shall elect the commencing date of an extended period of eligibility. The date chosen—

(1) Must be on or after the original date of expiration of eligibility as determined by § 21.5041 of this part, and

(2) Must be on or before the 90th day following the date on which the veteran's application for an extension was approved by the VA, if the veteran is training during the extended period of eligibility in a course not organized on a term, quarter or semester basis, or

(3) Must be on or before the first day of the first ordinary term, quarter or semester following the 90th day after the veteran's application for an extension was approved by the VA if the veteran is training during the extended period of eligibility in a course organized on a term, quarter or semester basis.

(Authority: 38 U.S.C. 1632; Pub. L. 99–576)

(e) *Determining the length of extended periods of eligibility.* A veteran's extended period of eligibility shall be based on the qualifying period of disability, and determined as follows:

(1) If the veteran is in training in a course organized on a term, quarter or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the veteran's original delimiting period that his or her training became medically infeasible to the earliest of the following dates:

(i) The commencing date of the ordinary term, quarter or semester following the day the veteran's training became medically feasible,

(ii) The veteran's delimiting date as determined by § 21.5041 of this part, or

(iii) The date the veteran resumed training.

(2) If the veteran is training in a course not organized on a term, quarter or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the veteran's original delimiting period that his or her training became medically infeasible to the earlier of the following dates:

(i) The date the veteran's training became medically feasible, or

(ii) The veteran's delimiting date as determined by § 21.5041 of this part.

(Authority: 38 U.S.C. 1632; Pub. L. 99–576)

(f) *Discontinuance.* If the veteran is pursuing a course on the date an extended period of eligibility expires (as determined under this section), the VA will discontinue the educational assistance allowance effective the day before the end of the extended period of eligibility.

(Authority: 38 U.S.C. 1632; Pub. L. 99–576)

(g) *No transfer of entitlement for use during the extended period of eligibility.* (1) The veteran may only transfer entitlement to a spouse or child for use during the original period of eligibility as determined by § 21.5041 of this part.

(2) If the veteran has established an extended period of eligibility with the VA, only the veteran may use remaining entitlement during that period.

(3) If the veteran transfers his or her entitlement after having received an extension of eligibility, but before the last day of the delimiting period as determined by § 21.5041 of this part, the eligibility of the spouse or child to use entitlement ends on the veteran's otherwise applicable delimiting date as determined by § 21.5041 of this part.

(Authority: 38 U.S.C. 1632; Pub. L. 99–576)

[FR Doc. 88–20115 Filed 9–6–88; 8:45 am]
BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AD–FRL–3442–1]

Air Programs; Approval and Promulgation of Implementation Plans Compliance With the Statutory Provisions of Part D and Section 110 of the Clean Air Act

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

ACTION: Notice of State Implementation Plan (SIP) Inadequacy and call for SIP revision—Information notice.

SUMMARY: The EPA hereby gives notice that it has formally (1) notified the Governors of those States listed in Tables A and B that their SIP's for certain areas are substantially inadequate to assure attainment and maintenance of the primary national ambient air quality standards (NAAQS) for ozone and/or carbon monoxide (CO) and (2) called upon those States to submit to EPA SIP revisions for approval under the Clean Air Act (Act).

DATES: The EPA has called on each affected State to submit to the appropriate EPA Regional Office within 60 days of receipt of the formal notification, a schedule setting forth the time periods and interim steps needed to complete all actions defined in the SIP call. The EPA believes that the maximum period for satisfaction of these plan deficiency elements should generally be 1 year from the end of the 60-day response period.

ADDRESSES: Copies of the SIP deficiency letters (both letters to the Governors and companion letters to the State Air Directors), technical support documents supporting the determinations of SIP inadequacy referred to in today's notice, and the guidance documents to be used in responding to these calls for plan revisions, including the July 22, 1988 memorandum on emissions inventories, "Preparation of Emission Inventories for Areas Receiving Post-1987 Ozone/Carbon Monoxide (CO) State Implementation Plan (SIP) Calls," the

June 7, 1988 memorandum on inspection/maintenance, "I/M Programs and the 1988 Corrective SIP Calls;" and "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations" (May 25, 1988) are located in Docket No. A-88-26, EPA Central Docket Section, South Conference Center, Room 4, U.S. Environmental Protection Agency, 401 M Street SW, DC 20460. The docket may be examined between 8:00 a.m. and 4:00 p.m. on weekdays. A reasonable fee may be charged for copying. A duplicate copy of the docket for each affected area is located in the EPA Regional Office of the Region in which the area is located.

FOR FURTHER INFORMATION CONTACT: Inquiries relating to overall policy may be addressed to G. T. Helms, Office of Air Quality Planning and Standards (MD-15), Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (919-541-5527, FTS 629-5527). For questions relating to specific areas, please contact the appropriate EPA Regional Office:

John Hanisch, Chief, Air Branch, EPA Region I, JFK Federal Bldg., Boston, MA, 02203-2211 (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont) 617-565-3245

William Baker, Chief, Air Branch, EPA Region II, 26 Federal Plaza, New York, NY, 10278 (New York, New Jersey, Puerto Rico, Virgin Islands) 212-264-2517

Jessie Baskerville, Chief, Air Branch, EPA Region III, 841 Chestnut Bldg., Philadelphia, PA, 19107 (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia) 215-597-9075

Bruce Miller, Chief, Air Branch, EPA Region IV, 345 Courtland St., NE., Atlanta, GA, 30365 (Alabama, Georgia, Florida, Kentucky, Mississippi, North Carolina, Tennessee, South Carolina) 404-374-2864

Steve Rothblatt, Chief, Air Branch, EPA Region V, 230 South Dearborn St., Chicago, IL, 60604 (Indiana, Illinois, Michigan, Minnesota, Ohio, Wisconsin) 312-353-2211

Gerald Fontenot, Chief, Air Branch, EPA Region VI, First Interstate Bank Tower, 1445 Ross Avenue, Dallas, TX 75202-2733 (Arkansas, Louisiana, Oklahoma, New Mexico, Texas) 214-655-7204

Carl Walter, Chief, Air Branch, EPA Region VII, 726 Minnesota Avenue, Kansas City, KS, 66101 (Nebraska, Iowa, Kansas, Missouri) 913-236-2893

Doug Skie, Chief, Air Branch, EPA Region VIII, 999 18th Street, Denver Place-Suite 500, Denver, CO 80202-2405 (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming) 303-293-1751

Dave Calkins, Chief, Air Branch, EPA Region IX, 215 Fremont Street, San Francisco, CA 94105 (Arizona, California, Hawaii, Nevada, American Samoa, Northern Mariana Islands) 415-974-8058

George Abel, Chief, Air Branch, EPA Region X, 1200 Sixth Avenue, Seattle, WA 98101 (Alaska, Idaho, Oregon, Washington) 206-442-1275.

SUPPLEMENTARY INFORMATION:

I. Background

The 1970 Clean Air Act Amendments required States to adopt SIP's providing for attainment of the NAAQS within certain periods. In many areas of the country, the first SIP's failed to bring about timely attainment.

In 1977 Congress amended the Act to address the problem of continuing nonattainment of the NAAQS. Section 107(d) was added which required each State to submit to EPA for approval a list of all areas to be designated as either attaining the NAAQS, not attaining the NAAQS, or unclassifiable for lack of data. Section 110(a)(2)(I) required each State to revise its SIP to prohibit major stationary source construction or modification after July 1, 1979 in any nonattainment area whose SIP did not meet the requirements of Part D of the amended Act, sections 171-178(42 U.S.C. section 7501-7508). Section 172(a)(1) required each nonattainment area SIP to "provide for" NAAQS attainment as soon as practicable, but no later than December 31 1982. Areas that demonstrated that it would be impossible to attain either the ozone or CO NAAQS by that date despite the use of all reasonably available control measures could obtain attainment date extensions until December 31, 1987. The 1977 Amendments retained as an additional remedial mechanism the Administrator's authority in section 110(a)(2)(H) to find a SIP "substantially inadequate" and thereby call for SIP revisions.

In 52 FR 45044 (November 24, 1987), EPA proposed a policy to set up a new planning process for areas that would not attain the NAAQS for ozone and CO by December 31, 1987. That notice announced EPA's intent to make section 110(a)(2)(H) findings for areas still not attaining those standards and thereby to call for revision of the SIP's for those areas.

II. Calls for SIP Revisions.

The EPA believes that, even before the issuance of EPA's final post-1987 policy, the States should initiate certain fundamental activities necessary to continue to make progress in attaining the ozone or CO NAAQS. Then, upon publication of the final post-1987 policy, EPA will direct all areas affected by SIP calls to begin the process of fully implementing all other elements of the final post-1988 policy.

In early May 1988, EPA released the latest data on the degree to which areas throughout the nation have attained or failed to attain the ozone and CO NAAQS. The data indicate that the areas listed in Tables A and B have failed to attain the ambient standard(s), despite the passage of the December 31, 1987 attainment date in the Act. On June 6, 1988, EPA proposed to designate all of these same areas as nonattainment pursuant to the Mitchell-Conte Amendment (contained in the Budget Reconciliation Act of 1987, Pub. L. 100-202).

A. Two-Phased SIP Response

On May 26, 1988, EPA began issuing notices of SIP inadequacy under section 110(a)(2)(H) through letters to the Governors of the affected States.[1] These letters or SIP calls were issued for areas which measure a violation, or which contribute to a violation of the ozone or CO NAAQS. Such a SIP call will apply to the expanded planning area described in EPA's post-1987 policy proposal. The letters to the Governors and State Air Directors further stated that the States should respond to the SIP calls in two phases. During the first phase, they are to upgrade their existing plans: (1) To correct discrepancies between EPA's existing Part D guidance [related to control of volatile organic compounds (VOC) and CO emissions] and the measures currently contained in their Part D SIP's; (2) to satisfy any unimplemented commitments in the Part D SIP by adopting any missing control measures; and (3) to begin updating the base year emissions inventory for the expanded planning area. In addition, EPA is calling on some areas to commit to a schedule of monitoring for nonmethane organic compounds (NMOC's).

The complete response to the SIP call, or second phase of the response, will await promulgation of EPA's final policy on post-1987 ozone/CO nonattainment. At that time, States will be expected to complete development of a SIP that will lead to attainment and maintenance of

[1] For those areas with SIP's currently undergoing EPA review, the finding is only provisional pending completion of rulemaking on the SIP

the NAAQS throughout the expanded nonattainment planning area.

B. Geographic Coverage of the SIP Call

In most areas for which a SIP call was made, the call will apply to an area larger than that of previous Part D SIP's. In the November 24, 1987 notice, EPA proposed that, for future ozone and CO planning purposes, the air quality planning area be expanded to include the entire metropolitan statistical area (MSA) or, where applicable, the consolidated metropolitan statistical area (CMSA). These proposals explained that, by definition, an MSA/CMSA consists of a large urban center and adjacent communities that have a high degree of social and economic integration with that population center. Counties included within an MSA/CMSA have similar population densities and percentages of commuters to the urban core and, hence, significant transportation activity and associated vehicular and area source emissions. Given the areawide nature of the ozone problem, as well as the likelihood that vehicles from suburban areas contribute to CO concentrations in urbanized areas, it is logical to conclude that a SIP revision must account adequately for emissions throughout the MSA/CMSA to formulate an adequate solution to a metropolitan area's ozone and CO problems. Consequently, the findings of SIP inadequacy apply to the SIP for the counties in the MSA or CMSA.

Where a measured violation of the CO NAAQS is located within an MSA/CMSA, the entire MSA/CMSA is subject to a SIP call. The EPA acknowledges that in certain of these areas the ambient CO concentrations may be attributable to localized traffic problems or other hotspot situations. In such cases, EPA will allow the planning area to be reduced to an area consistent with the scope of the nonattainment problem, in accordance with modeling requirements described in section III of the November 24, 1987 proposed policy. This reduction of the nonattainment area would only occur after a review of the technical evidence and after mutual agreement by EPA and the State and local agencies involved.

C. SIP Call Schedule

Within 60 days of receipt of the SIP call, each affected State should submit a schedule to the appropriate EPA Regional Office setting forth the time periods and interim steps needed to complete all actions defined in the SIP call. The EPA believes that the maximum period for satisfaction of these SIP call requirements should generally be 1 year. Adjustments to this timeframe may be necessary to obtain certain emission inventory components; these adjustments will be made on a case-by-case basis.

TABLE A.—CALLS FOR SIP REVISIONS OZONE

State and area	EPA region
Alabama:	
Birmingham	IV
Blount Co.	
Jefferson Co.	
St. Clair Co.	
Shelby Co.	
Walker Co.	
Montgomery:	
Autauga Co.	
Elmore Co.	
Montgomery Co.	
Arizona:	
Phoenix	IX
Maricopa Co.	
Arkansas:	
Memphis	VI
Crittenden Co.	
California:	
Bakersfield	IX
Kern Co.	
Fresno:	
Fresno Co.	
Kings Co.	
Los Angeles-Anaheim-Riverside:	
Los Angeles Co.	
Orange Co.	
Riverside Co.	
San Bernardino Co.	
Ventura Co.	
Modesto:	
Stanislaus Co.	
Sacramento:	
El Dorado Co.**	
Placer Co.**	
Sacramento Co.	
Yolo Co.	
San Diego:	
San Diego Co.	
San Francisco-Oakland-San Jose:***	
Alameda Co.	
Contra Costa Co.	
Marin Co.	
Napa Co.	
San Francisco Co.	
San Mateo Co.	
Santa Clara Co.	
Solano Co.	
Sonoma Co.	
Santa Barbara-Santa Maria-Lompoc:	
Santa Barbara Co.	
Stockton:	
San Joaquin Co.	
Visalia-Tulare-Porterville:	
Tulare Co.	
Connecticut:	
Entire State	I
Hartford-New Britain-Middletown	
New York-Northern New Jersey-Long Island	
New Haven-Meriden	
New London-Norwich	
Waterbury	
Non-MSA Areas (In Previous Planning Areas Which Includes Remainder of State)*	
Delaware:	
Philadelphis-Wilmington-Trenton	III
New Castle Co.	
Kent Co.*	
District of Columbia:	
Entire District	III
Washington	
Florida:	
Jacksonville	IV
Clay Co.	
Duval Co.	
Nassau Co.	
St. Johns Co.	
Miami-Fort Lauderdale:	
W. Palm Beach-Boca Raton-Delray Beach	
Broward Co.	
Dade Co.	
Palm Beach Co.*	
Tampa-St. Petersburg-Clearwater:	
Hernando Co.	
Hillsborough Co.	
Pasco Co.	
Pinellas Co.	
Georgia:	
Atlanta	IV
Barrow Co.	
Butts Co.	
Cherokee Co.	
Clayton Co.	
Cobb Co.	
Coweta Co.	
De Kalb Co.	
Douglas Co.	
Fayette Co.	
Forsyth Co.	
Fulton Co.	
Gwinnett Co.	
Henry Co.	
Newton Co.	
Paulding Co.	
Rockdale Co.	
Spalding Co.	
Walton Co.	
Illinois:	
Chicago-Gary-Lake County	V
Cook Co.	
Du Page Co.	
Grundy Co.	
Kane Co.	
Kendall Co.	
Lake Co.	
McHenry Co.	
Will Co.	
St. Louis:	
Clinton Co.	
Jersey Co.	
Madison Co.	
Monroe Co.	
St. Clair Co.	
Indiana:	
Chicago-Gary-Lake County	V
Lake Co.	
Porter Co.	
Cincinnati-Hamilton:	
Dearborn Co.	
Indianapolis:	
Boone Co.	
Hamilton Co.	
Hancock Co.	
Hendricks Co.	
Johnson Co.	
Marion Co.	
Morgan Co.	
Shelby Co.	
Louisville:	
Clark Co.	
Floyd Co.	
Harrison Co.	
Kentucky:	
Cincinnati-Hamilton	IV

TABLE A.—CALLS FOR SIP REVISIONS
OZONE—Continued

State and area	EPA region
Boone Co.	
Campbell Co.	
Kenton Co.	
Huntington-Ashland:	
Boyd Co.	
Carter Co.	
Greenup Co.	
Lexington-Fayette:	
Bourbon Co.	
Clark Co.	
Fayette Co.	
Jessamine Co.	
Scott Co.	
Woodford Co.	
Louisville:	
Bullitt Co.	
Jefferson Co.	
Oldham Co.	
Shelby Co.	
Louisiana:	
Baton Rouge	VI
Ascension Par.	
E. Baton Rouge Par.	
Livingston Par.	
W. Baton Rouge Par.	
Iberville Par.*	
St. James Par.*	
Pointe Coupee Par.*	
Maine:	
Portland	I
Cumberland Co.	
York Co. (All Except):	
Berwick town	
Eliot Town	
Kittery town	
N. Berwick town	
Ogunquit town	
S. Berwick town	
Wells town	
York town	
Portsmouth-Dover-Rochester:	
York Co. (Part):	
Berwick town	
Eliot town	
Kittery town	
N. Berwick town	
Ogunquit town	
S. Berwick town	
Wells town	
York town	
Non MSA's:	
Hancock Co.	
Kennebec Co.	
Knox Co.	
Lincoln Co.	
Sagadahoc Co.***	
Maryland:	
Baltimore	III
Anne Arundel Co.	
Baltimore Co.	
Carroll Co.	
Harford Co.	
Howard Co.	
Baltimore Co.	
Queen Annes Co.	
Philadelphia-Wilmington-Trenton:	
Cecil Co.	
Washington:	
Calvert Co.	
Charles Co.	
Frederick Co.	
Montgomery Co.	
Prince Georges Co.	
Massachusetts:	
Entire State	I

TABLE A.—CALLS FOR SIP REVISIONS
OZONE—Continued

State and area	EPA region
Boston-Lawrence-Salem	
Fitchburg-Leominster	
New Bedford	
Pittsfield	
Springfield	
Worcester	
Providence-Pawtucket-Fall River	
Non-MSA Areas (In Previous Planning Areas Which Includes Remainder of Commonwealth)*	
Michigan:	
Detroit-Ann Arbor	V
Lapeer	
Livingston Co.	
Macomb Co.	
Monroe Co.	
Oakland Co.	
St. Clair Co.	
Washtenaw Co.	
Wayne Co.	
Grand Rapids	
Kent Co.	
Ottawa Co.	
Muskegon:	
Muskegon Co.	
Mississippi:	
Memphis	IV
De Soto Co.	
Missouri:	
St. Louis	VII
Franklin Co.	
Jefferson Co.	
St. Charles Co.	
St. Louis Co.	
St. Louis	
New Hampshire:	
Portsmouth-Dover-Rochester	I
Rockingham Co. (Part):	
Exeter town	
Greenland town	
Hampton town	
New Castle town	
Newfields town	
Newington town	
Newmarket town	
North Hampton town	
Portsmouth city	
Rye town	
Stratham town	
Kensington town****	
South Hampton town****	
Hampton Falls town****	
Strafford Co. (Part):	
Barrington town	
Gover city	
Durham town	
Farmington town	
Lee town	
Madbury town	
Milton town	
Rochester city	
Rollinsford town	
Somersworth city	
Boston-Lawrence-Salem:	
Rockingham Co. (Part):	

TABLE A.—CALLS FOR SIP REVISIONS
OZONE—Continued

State and area	EPA region
Atkinson town	
Brentwood town	
Danville town	
Derry town	
E. Kingston town	
Hampstead town	
Kingston town	
Newton town	
Plaistow town	
Salem town	
Sandown town	
Seabrook town	
Windham town	
Londonderry town	
Hillsborough Co. (Part):	
Pelham town	
Amherst town	
Brookline town	
Hollis town	
Hudson town	
Litchfield town	
Merrimack town	
Milford town	
Mont Vernon town	
Nashua city	
Wilton town	
New Jersey:	
Allentown-Bethlehem	II
Warren Co.	
Atlantic City:	
Atlantic Co.	
Cape May Co.	
New York-Northern New Jersey-Long Island:	
Bergen Co.	
Essex Co.	
Hudson Co.	
Hunterdon Co.	
Middlesex Co.	
Monmouth Co.	
Morris Co.	
Ocean Co.	
Passaic Co.	
Somerset Co.	
Sussex Co.	
Union Co.	
Philadelphia-Wilmington-Trenton:	
Burlington Co.	
Camden Co.	
Cumberland Co.	
Gloucester Co.	
Mercer Co.	
Salem Co.	
New York:	
New York-Northern New Jersey-Long Island:	II
Bronx Co.	
Kings Co.	
Nassau Co.	
New York Co. (Manhattan)	
Orange Co.	
Putnam Co.	
Queens Co.	
Richmond Co.	
Rockland Co.	
Suffolk Co.	
Westchester Co.	
Jefferson Co.	
North Carolina:	
Charlotte-Gastonia-Rock Hill	IV

TABLE A.—CALLS FOR SIP REVISIONS
OZONE—Continued

State and area	EPA region
Cabarrus Co.	
Gaston Co.	
Lincoln Co.	
Mecklenburg Co.	
Rowan Co.	
Union Co.	
Raleigh-Durham:	
Durham Co.	
Franklin Co.	
Orange Co.	
Wake Co.	
Granville Co.*	
Ohio:	
Cincinnati-Hamilton	V
Butler Co.	
Clermont Co.	
Hamilton Co.	
Warren Co.	
Cleveland-Akron-Lorain:	
Cuyahoga Co.	
Geauga Co.	
Lake Co.	
Lorain Co.	
Medina Co.	
Portage Co.	
Summit Co.	
Huntington-Ashland:	
Lawrence Co.	
Parkersburg-Marietta:	
Washington Co.	
Oklahoma:	
Tulsa	VI
Creek Co.	
Osage Co.	
Rogers Co.	
Tulsa Co.	
Wagoner Co.	
Oregon:	
Portland-Vancouver	X
Clackamas Co.	
Multnomah Co.	
Washington Co.	
Yamhill Co.	
Pennsylvania:	
Allentown-Bethlehem	III
Carbon Co.	
Lehigh Co.	
Northampton Co.	
Philadelphia-Wilmington-Trenton:	
Bucks Co.	
Chester Co.	
Delaware Co.	
Montgomery Co.	
Philadelphia Co.	
Pittsburgh-Beaver Valley:	
Allegheny Co.	
Beaver Co.	
Fayette Co.	
Washington Co.	
Westmoreland Co.	
Butler Co.*	
Armstrong Co.*	
Rhode Island:	
Entire State	I
Providence-Pawtucket-Fall River	
New London-Norwich	
Non-MSA Areas (In Previous Planning Areas Which Includes Remainder of State)*	
South Carolina:	
Charlotte-Gastonia-Rock Hill	IV
York Co.	
Tennessee:	
Nashville	IV

TABLE A.—CALLS FOR SIP REVISIONS
OZONE—Continued

State and area	EPA region
Cheatham Co.	
Davidson Co.	
Dickson Co.	
Robertson Co.	
Rutherford Co.	
Sumner Co.	
Williamson Co.	
Wilson Co.	
Memphis:	
Shelby Co.	
Tipton Co.	
Texas:	
Beaumont-Port Arthur	VI
Hardin Co.	
Jefferson Co.	
Orange Co.	
Dallas-Ft. Worth:	
Collin Co.	
Dallas Co.	
Denton Co.	
Ellis Co.	
Johnson Co.	
Kaufman Co.	
Parker Co.	
Rockwall Co.	
Tarrant Co.	
El Paso:	
El Paso Co.	
Houston-Galveston-Brazoria:	
Brazoria Co.	
Fort Bend Co.	
Galveston Co.	
Harris Co.	
Liberty Co.	
Montgomery Co.	
Waller Co.	
Chambers Co.*	
Utah:	
Salt Lake City-Ogden	VIII
Davis Co.	
Salt Lake Co.	
Weber Co.	
Virginia:	
Norfolk-Virginia Beach-Newport News	IV
Gloucester Co.	
James City Co.	
York Co.	
Chesapeake	
Hampton	
Newport News	
Norfolk	
Poquoson	
Portsmouth	
Suffolk	
Virginia Beach	
Williamsburg	
Richmond-Petersburg:	
Charles City Co.	
Chesterfield Co.	
Dinwiddie Co.	
Goochland Co.	
Hanover Co.	
Henrico Co.	
New Kent Co.	
Powhatan Co.	

TABLE A.—CALLS FOR SIP REVISIONS
OZONE—Continued

State and area	EPA region
Prince George Co.	
Colonial Heights	
Hopewell	
Petersburg	
Richmond	
Washington:	
Arlington Co.	
Fairfax Co.	
Loudoun Co.	
Prince William Co.	
Stafford Co.	
Alexandria	
Fairfax	
Falls Church	
Manassas	
Manassas Park	
Washington:	
Portland-Vancouver	X
Clark Co.	
West Virginia:	
Huntington-Ashland	III
Cabell Co.	
Wayne Co.	
Parkersburg-Marietta:	
Wood Co.	
Wisconsin:	
Chicago-Gary-Lake County	V
Kenosha Co.	
Milwaukee-Racine:	
Milwaukee Co.	
Ozaukee Co.	
Racine Co.	
Washington Co.	
Waukesha Co.	
Walworth Co.*	
Sheboygan:	
Sheboygan Co.	
Manitowoc Co.*	
Kewaunee Co.	

NOTES:

*The counties (or cities or townships) are either (a) part of the previous planning area but not part of the CMSA (or MSA) or (b) counties adjacent to the CMSA (or MSA) and measuring violations.

**The Lake Tahoe, CA area is excluded from the SIP call because it is physically separated from the Sacramento area by a mountain range. A full description of the Lake Tahoe area appears in 40 CFR 81.275.

***Santa Cruz Co., CA was not included because it is physically separated from the Bay Area by a mountain range.

****No air quality data are yet available; however, because it is physically surrounded by nonattainment areas, it is receiving a SIP call.

TABLE B.—CALLS FOR SIP REVISIONS
CARBON MONOXIDE

State and Area	EPA region
Alaska:	
Anchorage	X
Anchorage Borough	
Fairbanks	
North Star Borough (Fairbanks)	
Arizona:	
Phoenix	IX
Maricopa Co.	
Arkansas:	
Memphis	VI
Crittenden Co.	
California:	
Chico.	IX

TABLE B.—CALLS FOR SIP REVISIONS CARBON MONOXIDE—Continued

State and Area	EPA region
Butte Co.	
Fresno	
Fresno Co.	
Los Angeles-Anaheim-Riverside*	
Los Angeles Co.	
Orange Co.	
Riverside Co.	
San Bernardino Co.	
Modesto	
Stanislaus Co.	
Sacramento	
El Dorado Co.	
Placer Co.	
Sacramento Co.	
Yolo Co.	
San Francisco-Oakland-San Jose**	
Alameda Co.	
Contra Costa Co.	
Marin Co.	
Napa Co.	
San Francisco Co.	
San Mateo Co.	
Santa Clara Co.	
Solano Co.	
Sonoma Co.	
Colorado:	
Colorado Springs	VIII
El Paso Co.	
Denver-Boulder	
Adams Co.	
Arapahoe Co.	
Boulder Co.	
Denver Co.	
Douglas Co.	
Jefferson Co.	
Fort Collins-Loveland	
Larimer Co.	
Greeley	
Weld Co.	
Connecticut:	
New York-Northern New Jersey-Long Island.	I
Fairfield Co.	
New Haven Co. (Part)	
Ansonia city	
Beacon Falls town	
Derby city	
Milford city	
Oxford town	
Seymour town	
Litchfield Co. (Part)	
Bridgewater town	
New Milford town	
Hartford-New Britain-Middletown	
Hartford Co. (Part)	
Bristol city	
Burlington town	
Avon town	
Bloomfield town	
Canton town	
E. Granby town	
E. Hartford town	
E. Windsor town	
Enfield town	
Farmington town	

TABLE B.—CALLS FOR SIP REVISIONS CARBON MONOXIDE—Continued

State and Area	EPA region
Glastonbury town	
Granby town	
Hartford city	
Manchester town	
Marlborough town	
Newington town	
Rocky Hill town	
Simsbury town	
S. Windsor town	
Suffield town	
W. Hartford town	
Wethersfield town	
Windsor town	
Windsor Locks town	
Berlin town	
New Britain city	
Plainville town	
Southington town	
Litchfield Co. (Part)	
Plymouth town	
Barkhamsted town	
New Hartford town	
New London Co. (Part)	
Colchester town	
Tolland Co. (Part)	
Andover town	
Bolton town	
Columbia town	
Coventry town	
Ellington town	
Hebron town	
Somers town	
Stafford town	
Tolland town	
Vernon town	
Willington town	
Middlesex Co. (Part)	
Cromwell town	
Durham town	
E. Hampton town	
Haddam town	
Middlefield town	
Middleton city	
Portland town	
E. Haddam town	
Non-CMSA Portion of Hartford (Part of Previous Planning Area AQCR 42)***	
Litchfield Co. (Part)	
Bethlehem town	
Thomaston town	
Watertown town	
Woodbury town	
New Haven Co. (Part)	
Bethany town	
Branford town	
Cheshire town	
E. Haven town	
Guilford town	
Hamden town	
Madison town	
Meriden city	
Middlebury town	
Naugatuck town	
New Haven city	
N. Bradford town	
N. Haven town	
Orange town	
Prospect town	
Southbury town	
Wallingford town	
Waterbury city	
W. Haven city	
Wolcott town	
Woodbridge town	
District of Columbia:	
Entire District	III

TABLE B.—CALLS FOR SIP REVISIONS CARBON MONOXIDE—Continued

State and Area	EPA region
Washington	
Idaho:	
Boise City	X
Ada Co.	
Illinois:	
St. Louis	V
Clinton Co.	
Jersey Co.	
Madison Co.	
Monroe Co.	
St. Clair Co.	
Maryland:	
Baltimore	III
Anne Arundel Co.	
Baltimore Co.	
Carrol Co.	
Harford Co.	
Howard Co.	
Baltimore	
Queen Annes Co.	
Washington	
Calvert Co.	
Charles Co.	
Frederick Co.	
Montgomery Co.	
Prince Georges Co.	
Massachusetts:	
Boston-Lawrence-Salem	I
New Bedford	
Non-CMSA/MSA (Previous Planning Areas)***	
Above Areas Include:	
Essex Co.	
Middlesex Co.	
Plymouth Co.	
Suffolk Co.	
Barnstable Co.	
Dukes Co.	
Nantucket Co.	
Norfolk Co.	
Bristol Co.	
Worcester Co. (Part)	
Berlin town	
Bolton town	
Harvard town	
Hopedale town	
Lancaster town	
Mendon town	
Milford town	
Southborough town	
Upton town	
Springfield	
Pittsfield	
Non-MSA (Previous Planning Areas)***	
Above Areas Include:	
Hampden Co.	
Hampshire Co.	
Franklin Co.	
Berkshire Co.	
Michigan:	
Detroit-Ann Arbor	V
Lapeer Co.	
Livingston Co.	
Macomb Co.	
Monroe Co.	
Oakland Co.	
St. Clair Co.	
Washtenaw Co.	
Wayne Co.	
Minnesota:	
Duluth	V

TABLE B.—CALLS FOR SIP REVISIONS CARBON MONOXIDE—Continued

State and Area	EPA region
St. Louis Co.	
Minneapolis-St. Paul	
Anoka Co.	
Carver Co.	
Chisago Co.	
Dakota Co.	
Hennepin Co.	
Isanti Co.	
Ramsey Co.	
Scott Co.	
Washington Co.	
Wright Co.	
St. Cloud	
Benton Co.	
Sherburne Co.	
Stearns Co.	
Mississippi:	
Memphis	IV
De Soto Co.	
Missouri:	
Springfield	VII
Christian Co.	
Greene Co.	
St. Louis	
Franklin Co.	
Jefferson Co.	
St. Charles Co.	
St. Louis Co.	
St. Louis	
Montana:	
Great Falls	VIII
Cascade Co.	
Missoula Co.	
Nevada:	
Las Vegas	IX
Clark Co.	
Reno	
Washoe Co.	
New Hampshire:	
Boston-Lawrence-Salem	I
Rockingham Co. (Part)	
Atkinson town	
Brentwood town	
Danville town	
E. Kingston town	
Hampstead town	
Kingston town	
Newton town	
Plaistow town	
Sandown town	
Seabrook town	
Derry town	
Salem town	
Windham town	
Londonderry town	
Hillsborough Co. (Part)	
Pelham town	
Amherst town	
Hollis town	
Hudson town	
Litchfield town	
Merrimack town	
Milford town	
Nashua city	
Brookline town	

TABLE B.—CALLS FOR SIP REVISIONS CARBON MONOXIDE—Continued

State and Area	EPA region
Mont Vernon town	
Wilton town	
Manchester	
Hillsborough Co. (Part)	
Bedford town	
Goffstown town	
Manchester city	
Merrimack Co. (Part)	
Allenstown town	
Hooksett town	
Rockingham Co. (Part)	
Auburn town	
Candia town	
New Jersey:	
New York-Northern New Jersey-Long Island.	II
Bergen Co.	
Essex Co.	
Hudson Co.	
Hunterdon Co.	
Middlesex Co.	
Monmouth Co.	
Morris Co.	
Ocean Co.	
Passaic Co.	
Somerset Co.	
Sussex Co.	
Union Co.	
New Mexico:	
Albuquerque	VI
Bernalillo Co.	
New York:	
New York-Northern New Jersey-Long Island.	II
Bronx Co.	
Kings Co.	
Nassau Co.	
New York Co. (Manhattan)	
Orange Co.	
Putnam Co.	
Queens Co.	
Richmond Co.	
Rockland Co.	
Suffolk Co.	
Westchester Co.	
Syracuse	
Madison Co.	
Onondaga Co.	
Oswego Co.	
North Carolina:	
Raleigh-Durham	IV
Durham Co.	
Franklin Co.	
Orange Co.	
Wake Co.	
Ohio:	
Cleveland-Akron-Lorain	V
Cuyahoga Co.	
Geauga Co.	
Lake Co.	
Lorain Co.	
Medina Co.	
Portage Co.	
Summit Co.	
Steubenville-Weirton	
Jefferson Co.	
Oklahoma:	
Oklahoma City	VI
Canadian Co.	
Cleveland Co.	
Logan Co.	
McClain Co.	
Oklahoma Co.	
Pottawatomie Co.	
Oregon:	
Medford	X

TABLE B.—CALLS FOR SIP REVISIONS CARBON MONOXIDE—Continued

State and Area	EPA region
Jackson Co.	
Portland-Vancouver	
Clackamus Co.	
Multnomah Co.	
Washington Co.	
Yamhill Co.	
Pennsylvania:	
Pittsburgh-Beaver Valley	III
Allegheny Co.	
Beaver Co.	
Fayette Co.	
Washington Co.	
Westmoreland Co.	
Tennessee:	
Memphis	IV
Shelby Co.	
Tipton Co.	
Nashville	
Cheatham Co.	
Davidson Co.	
Dickson Co.	
Robertson Co.	
Rutherford Co.	
Sumner Co.	
Williamson Co.	
Wilson Co.	
Texas:	
El Paso	VI
El Paso Co.	
Houston-Galveston-Brazoria	
Brazoria Co.	
Fort Bend Co.	
Galveston Co.	
Harris Co.	
Liberty Co.	
Montgomery Co.	
Waller Co.	
Utah:	
Provo-Orem	VIII
Utah Co.	
Salt Lake City-Ogden	
Davis Co.	
Salt Lake Co.	
Weber Co.	
Virginia:	
Washington	III
Arlington Co.	
Fairfax Co.	
Loudon Co.	
Prince Williams Co.	
Stafford Co.	
Alexandria Co.	
Fairfax	
Falls Church	
Manassas	
Manassas Park	
Washington:	
Portland-Vancouver	X
Clark Co.	
Seattle-Tacoma	
King Co.	
Pierce Co.	
Snohomish Co.	
Spokane	
Spokane Co.	
Yakima	
Yakima Co.	
West Virginia:	
Steubenville-Weirton	III
Brooke Co.	
Hancock Co.	
Wisconsin:	
Duluth	V

TABLE B.—CALLS FOR SIP REVISIONS CARBON MONOXIDE—Continued

State and Area	EPA region
Douglas Co.	
Minneapolis-St. Paul	
St. Croix Co.	

NOTES:
* Ventura Co., CA was not included because it is physically separated from the South Coast Air Basin by a mountain range.
** Santa Cruz Co., CA was not included because it is physically separated from the Bay Area by a mountain range.
*** The counties (or cities or townships) are part of the previous planning area but not part of the CMSA or MSA.

III. Guidance on the Necessary Revisions

A. Stationary Source VOC Regulations

The EPA has compiled a guidance document entitled "Issues Relating to VOC Regulations, Cutpoints, Deficiencies, and Deviations" to provide additional clarification of those deficiencies described in Appendix D of the November 24, 1987 post-1987 policy proposal. This document addresses existing State VOC regulations contained in SIP's that have not been fully adopted or implemented in a nationally consistent way. This clarification does not expand or modify existing regulatory requirements, but merely enhances Appendix D by recompiling existing guidance and providing more specific and detailed clarifications. Further, this document addresses many of the problems found during EPA's review of State regulations following the April 1987 letter [2] from the EPA Administrator to the Governors. Corrections of the deficiencies described in the document will assure that all of the existing Part D plans meet the minimum emission reduction requirements that EPA initially interpreted the Act to apply under Part D. They will also provide for a greater degree of equity and national consistency among all States and localities that develop and implement revised plans to deal with the continuing ozone problem.

B. Emission Inventories

The base year emission inventories for the areas receiving SIP calls are to be conducted or updated over the next year to reflect 1987 actual emissions. Projection of emission inventories and attainment inventories reflecting selected control strategies will not be required until after the final post-1987 ozone/CO policy is published. The inventories for ozone areas shall include actual emissions of VOC, oxides of nitrogen (NO_x) and CO.[3] Inventories for CO areas will include only emissions of CO.

The specifications for development and submittal of emission inventories for ozone SIP's are contained in the draft document "Emission Inventory Requirements for Post-1987 Ozone SIP's." The EPA is presently updating area and mobile source portions of this guidance and will reissue it by October 1988. This revision to the guidance document will describe inventory requirements for CO SIP's as well as ozone. More specific information on methodologies for preparing VOC emission inventories is contained in "Procedures For The Preparation Of VOC Emission Inventories," which is also being revised and will be reissued by October. Also, EPA is currently working with State and local air pollution control agencies to determine the adequacy of other existing VOC and CO emission inventory guidance.

C. Additional Information For Ozone Modeling

Achieving the NAAQS for ozone requires controlling one or both of the precursors of ozone, VOC and NO_x. The extent to which VOC must be controlled is determined by photochemical modeling. While the preferred model is Urban Airshed, in previous planning efforts, the technique most frequently used is the Empirical Kinetic Modeling Approach (EKMA). If EKMA is chosen, one or more NMOC monitoring stations should be in place to obtain needed data during the ozone season. Multiple sites are recommended and should be considered since use of multiple sites will decrease the uncertainty in the $NMOC/NO_x$ ratio and therefore the VOC control requirement. States may obtain further information about NMOC monitoring and modeling from the appropriate EPA Regional Office.

IV. Final Actions

The EPA considers this notice to be informational only and to have no regulatory effect. It serves to inform the public of calls for SIP revisions already made by EPA pursuant to section 110(a)(2)(H) of the Act, 42 U.S.C. 7410(a)(2)(H). Any final definition of what would be an inadequate response to these SIP calls and any further EPA action that would result from such an inadequate State response in the future will be effective only after notice-and-comment rulemaking.

V. Miscellaneous

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Nitrogen dioxide, Carbon monoxide, and Volatile organic compounds.

Authority: Sections 101, 107, 110, 116, 171–178, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7401, 7407, 7410, 7416, 7501–08, and 7601(a); Section 129(a) of the Clean Air Act Amendments of 1977 (Pub. L. No. 95–95, 91 Stat. 685 (August 7, 1977).

Date: August 30, 1988.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 88–20238 Filed 9–6–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 81

[FRL–3442–3; TN–033]

Designation of Areas for Air Quality Planning Purposes; Tennessee; Redesignation of Roane County for Sulfur Dioxide

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On July 7, 1986, the State of Tennessee requested redesignation of Roane County from unclassified to attainment for sulfur dioxide. On September 4, 1986, the State submitted additional support information. Today EPA is approving the change in attainment status, which was proposed on March 7, 1988 (53 FR 7213).

This redesignation is not affected by the January 22, 1988, stack height remand. Roane County only has two major sulfur dioxide sources, the Tennessee Valley Authority Kingston Steam Plant and the Clinch River Corporation (formerly Harriman Paperboard Company). The Kingston Steam Plant is specifically exempted from section 123(a) of the Clean Air Act and the Clinch River Corporation, which is not in operation, has a 100-foot stack, a fact which exempts it from EPA's stack height regulations.

DATE: This action is effective October 7, 1988.

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

[2] In April 1987, EPA wrote to 42 State Governors advising them that EPA was undertaking a review of the adequacy of their respective SIP's, both with respect to content and to implementation.

[3] An accounting of CO emissions is now needed because new ozone modeling techniques to be used in post-1987 SIP planning account for the effect of CO emissions on ozone formation.

Environmental Protection Agency, Region IV Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365
Division of Air Pollution Control, Tennessee Department of Health and Environment, Customs House, 4th Floor, 701 Broadway, Nashville, Tennessee 37219–5403

FOR FURTHER INFORMATION CONTACT: Rosalyn Hughes, EPA Region IV, Air Programs Branch, at the address listed above, and phone (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On March 7, 1988 (53 FR 7213), EPA proposed the redesignation of Roane County from unclassified to attainment for sulfur dioxide. No comments were received on EPA's proposed action. EPA policy allows such redesignations if the previous eight quarters of air quality monitoring data show no violations of the National Ambient Air Quality Standards (NAAQS) and if air quality dispersion modeling predicts attainment of the NAAQS.

It was determined by Tennessee that Roane County had only two major sulfur dioxide sources, Clinch River Corporation (formerly Harriman Paperboard Company) and the Kingston Steam Plant of the Tennessee Valley Authority (TVA). In reviewing the monitoring data, no violations were found since 1980. Three violations occurred before 1980 and all had been either justified or remedied. One of these violations was due to terrain-induced air flow disturbances around TVA's short stacks. Strong northwesterly winds created a turbulent wake which brought emissions to ground level around the monitoring site. TVA constructed taller stacks which reduced the terrain effects and alleviated the downwash. Another violation was recorded near Harriman Paperboard; this was remedied by restricting Harriman's boilers to natural gas instead of #6 fuel oil. The last violation in the area was near the TVA steam plant. However, TVA was not at fault this time. A review of the records showed that fluoride emissions from the Department of Energy's Gaseous Diffusion Plant at Oak Ridge interfered with the monitors. The monitor in question used a bromide reagent which was affected by the fluorides. This problem should not happen again, since the Gaseous Diffusion Plant has all but closed.

Section 123(a) of the Clean Air Act specifically exempts the stack at TVA's Kingston Steam Plant from stack height requirements. However, the modeling which was performed in 1977 to establish the present limit used the "good engineering practice" (GEP) stack height for the source. The conservative results from this analysis were reviewed as part of the redesignation process and found to be acceptable.

Final Action

Based on the foregoing, EPA hereby redesignates Roane County from unclassified to attainment for sulfur dioxide. This action is effective October 7, 1988.

For further information on EPA's analysis the reader may consult a Technical Support Document which contains a detailed review of the technical justification, including modeling analysis, and the ambient monitoring review. This is available at the EPA Region IV address given above.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 7, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

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

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: August 24, 1988.

Lee M. Thomas,

Administrator.

Part 81 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 81—[AMENDED]

Subpart C—Section 107 Attainment Status Designations

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 740–7642.

2. Section 81.343 is amended by amending the attainment status designation table for SO_2 by revising the entries for Rhea County, Roane County, and Robertson County to read as follows:

§81.343 Tennessee.

* * * * *

TENNESSEE—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
*	*	*	*	*
Rhea County				X
Roane County				X
Robertson County				X
*	*	*	*	*

[FR Doc. 88–20239 Filed 9–6–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[OPP–300190A; FRL 3441–1]

Aluminum Isopropoxide and Aluminum Secondary Butoxide; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule exempts the pesticide chemicals aluminum isopropoxide (CAS Reg. No. 555–31–7) and aluminim secondary butoxide (CAS Reg. No. 2269–22–9) from the requirement of a tolerance when used as stabilizers in formulations of the insecticide amitraz applied to growing crops or animals. This regulation was requested by the Nor-Am Chemical Co.

EFFECTIVE DATE: September 7, 1988.

ADDRESS: Written objections, identified by the document control number [OPP–300190A], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kerry Leifer, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–7700.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of July 13, 1988 (53 FR 26450), which announced that the Nor-Am Chemical Co., 3509 Silverside Rd., P.O. Box 7495, Wilmington, DE 19803 had requested that 40 CFR Part 180 be amended by establishing an exemption from the requirement of a tolerance for

aluminum isopropoxide (CAS Reg. No. 555–31–7) and aluminum secondary butoxide (CAS Reg. No. 2269–22–9) when used in formulations of the insecticide amitraz (*N'*-(2,4-dimethylphenyl)-*N*-[[(2,4-dimethylphenyl)imino]methyl]-*N*-methylmethanimidamide) applied to growing crops or animals.

Inert ingredients are ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting and spreading agents; and propellants in aerosol dispensers and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

EPA has initiated new review procedures for tolerance exemptions for inert ingredients. Under these procedures the Agency conducts a review of the data base supporting any prior clearances, the data available in the scientific literature, and any other relevant data. Based on a review of such data, the Agency has determined that no additional test will be required to support this regulation.

Based on the above information and review of their use, it has been found that when used in accordance with good agricultural practices these ingredients are useful and do not pose a hazard to humans or the environment. In conclusion, the Agency has determined that the amendment to 40 CFR Part 180 will protect the public health. Therefore, the regulation is being established as set forth below.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the grounds for the objections. A hearing will be granted if the provisions of the regulation deemed objectionable and the objections are supported by grounds legally sufficient to justify the relief sought.

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 180

Administrative practice and procedure, Agricultural commodities, Pesticides and Pests.

Dated: August 24, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. In Subpart D, new § 180.1091 is added, to read as follows:

§ 180.1091 Aluminum isopropoxide and aluminum secondary butoxide; exemption from the requirement of a tolerance.

Aluminum isopropoxide (CAS Reg. No. 555–31–7) and aluminum secondary butoxide (CAS Reg. No. 2269–22–9) are exempted from the requirement of a tolerance when used in accordance with good agricultural practices as stabilizers in formulations of the insecticide amitraz [*N'*(2,4-dimethylphenyl)-*N*-[[(2,4-dimethylphenyl)imino]methyl]-*N*-methylmethanimidamide] applied to growing crops or animals.

[FR Doc. 88–20117 Filed 9–6–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 180

[PP 6E3424/R980; FRL–3441–3]

Pesticide Tolerances for Glyphosate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the herbicide glyphosate and its metabolite in or on the raw agricultural commodities atemoya, carambola, and sugar apple. The Interregional Research Project No. 4 (IR–4) petitioned for these tolerances.

EFFECTIVE DATE: September 7, 1988.

ADDRESS: Written objections, identified by the document control number, [PP 6E3424/R980], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (TS–767C), Registration Division (TS–767C), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557–2310.

SUPPLEMENTARY INFORMATION: EPA issues a proposed rule, published in the **Federal Register** of July 13, 1988 (53 FR 26452), in which it was announced that the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 6E3424 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the Agricultural Experiment Station of Florida.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for residues of the herbicide glyphosate (*N*-(phosphonomethyl)glycine) and its metabolite aminomethylphosphonic acid (AMPA) in or on the raw agricultural commodities atemoya, carambola, and sugar apple at 0.2 part per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule. However, as an update to the information provided in the proposed rule regarding the requirement for a repeat mouse oncogenicity study, the Agency has decided to request the mouse study in male mice only. A larger number of animals for each dose level is needed to increase the statistical power of the bioassay. In addition, the due date for the mouse study has been extended to 1992 to provide sufficient time to complete the study.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the

requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981, (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 26, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.364(a) is amended by adding and alphabetically inserting listings for the following raw agricultural commodities, to read as follows:

§ 180.364 Glyphosate; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Atemoya	0.2
* * * * *	
Carambola	0.2
* * * * *	
Sugar apple	0.2
* * * * *	

[FR Doc. 88–20119 Filed 9–6–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 4E3143, 4E3144/R979; FRL–3441–4]

Pesticide Tolerances for Methomyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the insecticide methomyl in or on the raw agricultural commodities of the crop group *Brassica* (cole) leafy vegetables and leeks. The Interregional Research Project No. 4 (IR–4) petitioned for these tolerances.

EFFECTIVE DATE: September 7, 1988.

ADDRESS: Written objections, identified by the document control, number, [PP 4E3143, 4E3144/R979], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (TS–767C), Registration Division (TS–767C), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557–2310.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of July 13, 1988 (53 FR 26453), in which it was announced that the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petitions 4E3143 and 4E3144 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the Agricultural Experiment Stations of California and Florida

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for the residues of the insecticide methomyl (S-methyl-N-[methylcarbamoyl) oxy]thioacetimidate) in or on *Brassica* (cole) leafy vegetables at 6.0 parts per million (ppm) and in or on leeks at 3.0 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or etablishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 26, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.253(a) is amended by adding and alphabetically inserting the listings for the raw agricultural commodities *Brassica* (cole) leafy vegetables and leeks, to read as follows:

§ 180.253 Methomyl; tolerances for residues.

* * * * *

(a) * * *

Commodities	Parts per million
* * * * *	
Brassica (cole) leafy vegetables	6.0
* * * * *	
Leeks	3.0
* * * * *	

[FR Doc. 88–20120 Filed 9–6–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[OPP-300077A; FRL-3441-7]

[2-Methyl-4-Isothiazolin-3-One, 5-Chloro-2-Methyl-4-Isothiazolin-3-One, and Magnesium Nitrate; Exemptions From Tolerances]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes exemptions from the requirement of a tolerance for 2-methyl-4-isothiazolin-3-one, 5-chloro-2-methyl-4-isothiazolin-3-one, and magnesium nitrate when used as inert ingredients (preservatives) in pesticide formulations applied to growing crops only. These regulations were requested by Rohm and Haas Co.

EFFECTIVE DATE: September 7, 1988.

ADDRESS: Written objections, identified by the document control number, [OPP-300077A], may be submitted to the: Hearing Clerk (A-110), Rm. 3708, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

Kerry B. Leifer, Registration Support and Emergency Response Branch, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M. Street, SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-7700.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of September 21, 1983 (48 FR 43054), to amend 40 CFR 180.1001(d) by establishing exemptions from the requirement of a tolerance for 2-methyl-4-isothiazolin-3-one, 5-chloro-2-methyl-4-isothiazolin-3-one, and magnesium nitrate as in-container preservatives for surfactants and adjuvants used in pesticide formulations for growing crops only. A request for these exemptions was submitted by the Rohm and Haas Co., Independence Mall West, Philadelphia, PA.

Inert ingredients are ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carageenan and modified cellulose; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The bases for granting the exemptions from tolerance given in the proposal are listed below:

1. The calcium salts of 2-methyl-4-isothiazolin-3-one, and 5-chloro-2-methyl-4-isothiazolin-3-one, are cleared as indirect food additives under 21 CFR 176.300 (slimicides in paper products in contact with food). Residues, if any, are not of sufficient magnitude (ca. 18 parts per billion (ppb) theoretical maximum) to warrant toxicological concern. The rat teratology study no-observed-effect level (NOEL) is equal to 100 milligrams per kilogram of body weight per day (mg/kg/day) for fetotoxic and teratogenic effects, highest level administered.

2. Magnesium nitrate is being exempted under 40 CFR 180.1001(d) because it is considered safe based on current clearances of sodium nitrate and magnesium chloride in § 180.1001(d) and on theoretical maximum residues less than 0.5 ppm in crops. Nitrosamine theoretical maximum residues are less than 4 ppb in the formulation.

The Dow Chemical Co. commented on the proposal, objecting to the exemption and seeking clarification of the Agency's "Bases for Approval."

The Agency has reviewed the objection and concludes that it does not contain a sufficient scientific basis to support a denial of the Rohm and Haas request for exemption of 2-methyl-4-isothiazolin-3-one, 5-chloro-2-methyl-4-isothiazolin-3-one, and magnesium nitrate as inert ingredient preservatives in pesticide formulations. Therefore, the Agency concludes that issuance of this exemption from the requirement of a tolerance for these materials under 40 CFR 180.1001(d), application to growing crops only, is safe and will protect the public health. A description of the Dow comments and the Agency's responses follows.

1. Dow said the Agency's value of 18 parts per billion (ppb) maximum calculated residues in raw agricultural commodities is too low. Dow calculated that residues should occur at approximately 14 parts per million (ppm).

EPA notes that the proposal erroneously states that 2-methyl-4-isothiazolin-3-one and 5-chloro-2-methyl-4-isothiazolin-3-one may be used in combination at 1.5 percent of the (pesticide) formulation. In fact, the two ingredients constitute 1.5 percent of the preservative formulation, but are limited to a final concentration of 2.25 ppm when incorporated into the pesticide formulation. The Agency's calculated maximum expected residue is based upon a concentration of 2-methyl-4-isothiazolin-3-one and 5-chloro-2-methyl-4-isothiazolin-3-one of 2.25 ppm and the "worst case" values of 2 gallons (18 pounds) of pesticide formulation per acre and a crop yield of 2,200 pounds per acre, resulting in the 18 ppb residue figure. The Dow calculation was based upon a limit of 2-methyl-4-isothiazolin-3-one and 5-chloro-2-methyl-4-isothiazolin-3-one incorrectly given in the proposal as 1.5 percent of the pesticide formulation.

2. Dow expressed concern about the Agency's use of the sentence, "Residues, if any, are not of sufficient magnitude (ca. 18 ppb, theoretical maximum) to warrant toxicological concern." Dow said that it implies zero residues, which in fact is virtually impossible to demonstrate.

To avoid confusion, the Agency is revising this sentence to read, "Residues are not of sufficient magnitude (ca. 18 ppb, theoretical maximum) to warrant toxicological concern."

3. Dow said that in the rat teratology study it is unclear whether the no-observed-effect level (NOEL) of 100 mg/kg/day refers to the level of active ingredient only or whether the NOEL refers to the entire product.

The NOEL referred to in the proposal is based on the level of the entire product, i.e., an isothiazolinone solution containing 15.5 percent active ingredient (2-methyl-4-isothiazolin-3-one and 5-chloro-2-methyl-4-isothiazolin-3-one) and is expressed as such.

4. Dow said that the rat teratology study also contained evidence of maternal toxicity and that this effect should be considered when setting the NOEL.

The purpose of a teratology study is to determine the potential of a test substance to induce structural and/or other abnormalities in the fetus by exposure of the mother during pregnancy. The maternal toxicity in a teratology study is noted and a maternal NOEL is often reported. However, the NOEL for fetal effects is based solely upon effects on the fetus. In this particular study, no effects on the fetus were noted despite maternal toxicity. Therefore, the NOEL for fetotoxicity/teratology corresponds to the highest dose tested.

5. Dow submitted a published article on the *in vitro* mutagenic activity of 2-methyl-4-isothiazolin-3-one and 5-chloro-2-methyl-4-isothiazolin-3-one (Wright, *et al., Mutation Research*, 119:35-43, 1983).

The Agency reviewed the Wright, *et al.*, study and concluded that, although it was conducted in an acceptable scientific manner, bacterial test systems are not appropriate for assessing the mutagenic potential of microbiocides in mammalian systems. The test compound has been clearly demonstrated to be a potent microbiocide. Therefore, mammalian systems capable of utilizing natural pathways of activation and detoxification appear to be the appropriate systems for detecting the mutagenicity of 2-methyl-4-isothiazolin-3-one and 5-chloro-2-methyl-4-isothiazolin-3-one.

After the proposed rule was published, EPA initiated new review procedures for tolerance exemptions for inert ingredients. Under these procedures the Agency conducted another review of the data supporting the exemptions-from-tolerance of these ingredients.

Additional data were considered as part of the Agency's "bases for approval" but were not noted in the initial proposal. These data include two subchronic studies using a technical isothiazolinone material containing 56 percent active ingredient. The results from these studies indicate a NOEL in the 90-day rat dietary study of 800 ppm (highest dietary concentration tested) and a NOEL in the 90-day dog dietary study of 1,500 ppm (highest dietary concentration tested). Based on a review of these data, the Agency has determined that no additional test data will be required to support these regulations.

Since 2-methyl-4-isothiazolin-3-one and 5-chloro-2-methyl-4-isothiazolin-3-one are present as active ingredients in some EPA-registered antimicrobial products, certain data requirements have been applied to these products which must be fulfilled in order to maintain the existing registrations. This tiered testing approach will require additional toxicity testing on 2-methyl-4-isothiazolin-3-one and 5-chloro-2-methyl-4-isothiazolin-3-one. The results of this testing will be considered in future decisions regarding the exemptions from tolerance for these chemicals as inert ingredients.

Based on the above information and review of its use, it has been found that when used in accordance with good agricultural practices these ingredients are useful and do not pose a hazard to humans or the environment. In conclusion, the Agency has determined that the amendment to 40 CFR Part 180 will protect the public health. Therefore, the regulation is established as set forth above.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: August 26, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1001(d) is amended by adding and alphabetically inserting the inert ingredients, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
5-Chloro-2-methyl-4-isothiazolin-3-one (in combination with 2-methyl-4-isothiazolin-3-one)	0.00022% (or 2.25 ppm) in the formulation	Preservative.
* * * * * * *		
Magnesium nitrate (in combination with 2-methyl-4-isothiazolin-3-one and 5-chloro-2-methyl-4-isothiazolin-3-one).	None	Preservative.
* * * * * * *		
2-Methyl-4-isothiazolin-3-one (in combination with 5-chloro-2-methyl-4-isothiazolin-3-one)	0.00022% (or 2.25 ppm) in the formulation	Preservative.
* * * * * * *		

[FR Doc. 88-20122 Filed 9-6-88; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[PP 8E3605/R981; FRL-3441-2]

Pesticide Tolerance for Metalaxyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the fungicide metalaxyl and its metabolites in or on the raw agricultural commodity papaya. The Interregional Research Project No. 4 (IR-4) petitioned for this tolerance.

EFFECTIVE DATE: September 7, 1988.

ADDRESS: Written objections, identified by the document control number [PP 8E3605/R981], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (TS-767C), Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, Cm #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of July 20, 1988 (53 FR 27370), in which it was announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 8E3605 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Station of California.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and

Cosmetic Act, propose the establishment of a tolerance for the combined residues of the fungicide metalaxyl, [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety, and *N*-hydroxy methyl-6-methyl)-*N*-(methoxyacetyl)-alanine methylester, each expressed as metalaxyl, in or on the raw agricultural commodity papaya at 0.1 part per million (ppm).

The petitioner proposed that use of metalaxyl on papaya be limited to Hawaii based on the geographical representation of the reside data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions for tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 26, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.408 is amended by adding new paragraph (c), to read as follows:

§ 180.408 Metalaxyl; tolerances for residues.

* * * * *

(c) Tolerances with regional registration (refer to § 180.1(n)) are established for the combined residues of the fungicide metalaxyl [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety, and *N*-(2-hydroxy methyl-6-methyl)-*N*-(methoxyacetyl)-alanine methylester, each expressed as metalaxyl, in or on the following raw agricultural commodity:

Commodity	Parts per million
Papaya	0.1

[FR Doc. 88–20121 Filed 9–6–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 186

[FAP 5H5449/982; FRL–3441–5]

Pesticide Tolerance For Fluzilazol

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a feed additive regulation, to permit the combined residues of the fungicide fluzilazol, bis(4-fluorophenyl) methyl (1H–1,2,4-triazol-1-ylmethyl)silane, in or on apple pomace at 3.0 parts per million (ppm). This regulation to establish a maximum permissible level for combined residues of fluzilazol was requested by the E.I. Du Pont de Nemours & Co. to permit marketing of feed commodities resulting from experimental use of the fungicide on apples. This temporary tolerance expires on October 9, 1989.

EFFECTIVE DATE: August 24, 1988.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail:

Lois A. Rossi, Product Manager (PM) 21, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–1900.

SUPPLEMENTARY INFORMATION: On October 15, 1984, E.I. Du Pont de Nemours & Co., Inc., Walker's Mill, Barley Mill Plaza, Wilmington, DE 19898, submitted a feed additive petition (FAP 5H5449) proposing to establish feed additive regulations for residues of the fungicide fluzilazol in or on apple pomace at 1.5 part per million (ppm). EPA issued a notice of the petition in the **Federal Register** of March 19, 1986 (51 FR 9514). Subsequently, the petitioner amended its petition by increasing the proposal for the feed additive regulation for residues of fluzilazol in or on apple pomace to 3.0 ppm.

The Agency previously established temporary tolerances for fluzilazol on October 9, 1986, for the raw agricultural commodities (RAC) apples at 0.2 (subsequently increased to 0.3) parts per million (ppm), milk at 0.01 ppm, liver of cattle, goats, hogs, horses, and sheep at 0.10 ppm and meat and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.01 ppm. These temporary tolerances were renewed on April 5, 1988, and will expire on October 9, 1989.

This feed additive regulation is being established to permit processing of apples that have been treated in connection with EPA Experimental Use Permit No. 352–EUP–123.

The scientific data reported and other relevant material have been evaluated. The toxicological data considered in support of this regulation include:

(1) A 1-year dog feeding study with a systemic no-observable effect level (NOEL) of 0.2 mg/kg body weight/day (mg/kg/day);

(2) A 2-year rat feeding/oncogenic study with a systemic NOEL of 0.46 mg/kg/day;

(3) A 2-year mouse feeding/oncogenic study with systemic NOEL of 3.4 mg/kg/day;

(4) In a two-generation rat reproduction study, the parental NOEL was 3.5 mg/kg/day. Decreased body weight and weight gain occurred in parental males during the 90-day feeding study at 19 mg/kg/day. The reproductive NOEL and LEL could not

be determined due to inadequate study protocol. The developmental NOEL was shown to be less than 0.85 mg/kg/day, with hydronephrosis noted at weaning of F2b pups at the low dose tested of 0.85 mg/kg/day;

(5) In a rat teratology study, the maternal NOEL was 10 mg/kg/day. There was increased mortality after the 23rd day of gestation, prolonged gestation, decreased food consumption and weight gain with increased relative and absolute liver weights at 100 mg/kg/day. The developmental NOEL (both pre and post-natal) was shown to be 2 mg/kg/day with increased incidence of dilated renal pelvis and decreased pup survival at 10 mg/kg/day;

(6) In a rabbit teratology study, the maternal NOEL was 12 mg/kg/day with decreased food consumption and decreased final body weight at 35 mg/kg/day. The developmental NOEL was 12 mg/kg/day with increased resorptions, abortions, and decreased fetal weights observed at 35 mg/kg/day.

Both the rat and mouse oncogenicity studies were negative; however, the Toxicology Branch Peer Review Committee determined that these studies need to be repeated at higher dose levels due to the lack of sufficient toxicity at the highest dose. A battery of mutagenicity studies, including gene mutation (mammalian and bacterial), chromosonal aberration, and DNA damage and repair were all negative. Metabolism in laboratory animals is adequately understood.

Based on the chronic dog feeding study with a NOEL of 0.2 mg/kg/day and using a 300-fold safety factor, the provisional acceptable daily intake (PADI) is .0007 mg/kg/day. This tolerance plus the previously established temporary tolerances result in a theoretical maximum residue contribution (TMRC) for the U.S. population of 0.000370 mg/kg/day. This TMRC represents 52.8 percent of the PADI.

The nature of the residues is adequately understood, and an adequate analytical method, gas-liquid chromatography using nitrogen/phosphorus and electron capture detectors, is available for enforcement purposes.

Based on the information considered, the Agency concludes that the pesticides can be safely used in the prescribed manner when such use is in accordance with the label and labeling accepted in connection with the experimental use permit issued pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (86 Stat. 973, 7 U.S.C. 136 *et seq.*). Therefore, the regulation is established as set forth below. This regulation will expire on October 9, 1989.

Any person adversely affected by this regulation may, within 30 days after publication in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new food and feed additive levels, or conditions for safe use of additives, or raising such food and feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945).

List of Subjects in 40 CFR Part 186

Animal feeds, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 24, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 186 is amended as follows:

1. In Part 186:

PART 186—[AMENDED]

a. The authority citation for Part 186 reads as follows:

Authority: 21 U.S.C. 348.

b. By adding new § 186.3415, to read as follows:

§ 186.3415 Fluzilazol.

A feed additive regulation is established to permit residues of the fungicide fluzilazol, bis(4-fluorophenyl)methyl (1H-1,2,4-triazol-1-ylmethyl) silane, in or on the following processed feed when present therein as a result of application to apples in connection with an experimental use program that expires October 9, 1989:

Feeds	Parts per million	Expiration date
Apple pomace	3.0	October 9, 1989.

[FR Doc. 88–20118 Filed 9–6–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Parts 795 and 799

[OPTS–42073A; FRL 3441–8]

2-Mercaptobenzothiazole; Final Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a final test rule, under section 4 of the Toxic Substances Control Act (TSCA), requiring manufacturers and processors of 2-mercaptobenzothiazole (MBT, CAS No. 149–30–4) to perform testing for persistence and mobility, chronic aquatic toxicity, developmental toxicity, reproductive toxicity, neurotoxicity, and mutagenic effects in the dominant lethal assay.

DATE: In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern daylight time on September 21, 1988. These regulations shall become effective October 21, 1988.

FOR FURTHER INFORMATION CONTACT: Michael Stahl, Acting Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Rm. EB–44, 401 M Street SW., Washington, DC 20460, (202) 554–1404. TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: EPA is issuing a final test rule under section 4(a) of TSCA to require health effects, chemical fate and environmental effects testing of MBT.

Public reporting burden for this collection of information is estimated to average 535 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street, Washington, DC 20460; and to the Office of Information

and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Introduction

A. Test Rule Development Under TSCA

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

Under section 4(a)(1) of TSCA, EPA must require testing of a chemical to develop health or environmental data if the Administrator makes certain findings as described in TSCA under section 4(a)(1) (A) or (B).

Detailed discussions of the statutory section 4 findings are provided in the Agency's first and second proposed test rules, which were published in the **Federal Register** of July 18, 1980 (45 FR 48510) and June 5, 1981 (46 FR 30300).

B. Regulatory History

The Interagency Testing Committee (ITC) designated MBT for priority testing consideration in its 15th Report, published in the **Federal Register** on November 29, 1984 (49 FR 46931). The ITC recommended that MBT be considered for chemical fate testing, including dissociation constant, persistence in water and soil, and leaching and migration; and environmental effects testing, including acute and chronic toxicity to fish, aquatic invertebrates and plants, and terrestrial plants.

EPA responded to the ITC's recommendations for MBT by issuing a proposed rule, published in the **Federal Register** of November 6, 1985 (50 FR 46121), which would require that MBT be tested for oral and dermal pharmacokinetics, developmental toxicity, reproductive toxicity, neurotoxicity, mutagenic effects (chromosomal aberrations), aerobic aquatic biodegradation, indirect photolysis screening level test, chemical mobility, fish chronic toxicity, and daphnid chronic toxicity.

The proposed rule contained a chemical profile of MBT, a discussion of EPA's TSCA section 4(a) findings, and the proposed test standards.

II. Response to Public Comments

The Agency received written comments on the MBT proposed rule from the Rubber Manufacturers Association (RMA), Dow Chemical Company, and the Rubber Additives Program Panel (RAPP) of the Chemical Manufacturers Association (CMA). A public meeting was also requested by CMA and held on April 14, 1986. The comments received by the Agency in response to the MBT proposed rule are discussed below.

A. Justification for the Substantial Exposure (Section 4(a)(1)(B)) Finding

1. *Production/use.* RMA provided the Agency with comments and additional information, including results of a survey, regarding exposure to and current use of MBT. The presented survey results indicate that consumption of MBT as a vulcanization accelerator is 850,000 pounds per year and that MBT is not typically used in high volume products such as tires, or in consumer products. Based on this survey, the RMA questioned "* * * whether exposure to MBT is sufficiently widespread and substantial to support issuance of a test rule."

The RAPP survey confirms EPA's findings that MBT is now used as an accelerator primarily in certain specialty products. However, the survey fails to indicate that the major use of MBT is in the manufacture of several other rubber accelerators, e.g., NaMBT, ZnMBT, 2,2-dithio-bisbenzothiazole (MBTS), *N-tert*-butyl-2-benzothiazolesulfenamide (BBTS), *N*-cyclohexyl-2-benzothiazolesulfenamide (CBS), and *N*-oxydiethylene-2-benzothiazolesulfenamide (OBTS) (Ref. 1). The total amount of MBT consumed in production of these derivatives will greatly exceed the amount of MBT the RMA indicates will be consumed in production of specialty rubber products, or the 1983 sales volume of 5,958,000 pounds (Ref. 2). Considering the large volumes of MBT used widely in both chemical manufacture and as a specialty rubber accelerator, the Agency maintains that potential for substantial exposure to MBT may exist in the workplace, in consumer goods, and in receiving environments. Furthermore, the MBT-derived rubber accelerators have a strong tendency to decompose in the vulcanization procedure and can form MBT (Ref. 3), which may carry over into end-products and waste effluents. Also, introduction of the MBT salts into the environment can lead to the presence of MBT by simple hydrolysis. Thus, the Agency maintains that when the total pattern of MBT usage is considered, sufficient potential for substantial exposure to MBT exists to support testing requirements under section 4(a)(1)(B) of TSCA.

2. *Exposure data/monitoring.* RAPP also maintained that its survey of national surface waters (18 sites, predominantly in the middle and eastern United States) shows that MBT is not a widespread aquatic contaminant because no MBT was detected at a stated limit of detection of 10 ppb.

EPA continues to believe that this study was limited by several experimental deficiencies, such that meaningful interpretation of the results is difficult. The principal shortcoming of the study was the wide variation in recovery of MBT from field-spiked samples. Compounding this analytical deficiency is the choice of sampling locations, which generally were very large bodies of water (such as the Great Lakes), far removed from sites that manufacture or process MBT. In addition, although some sample sites were in areas of heavy industry (i.e., Mississippi River at Memphis, TN, and Alton, IL; Missouri River at St. Louis, MO; and eastern Lake Erie near Erie, PA), these sites had zero percent recoveries of MBT in field-spiked samples, suggesting that any MBT present in study samples would also have not been detected by the procedures used. In contrast to the above data, that has been detected in several sites associated with the production/processing of MBT (Refs. 26 through 28).

3. *Exposure data/tire dust.* RAPP also commented that the Agency may have overestimated the release of MBT to the environment via leaching from tire dust created by the wear of tires made with MBT. Among the reasons given were: (1) MBT accounts for less than 10 percent of accelerator used in tires; (2) most MBT is bound in the rubber matrix and leaches slowly, if at all, from tire dust contacting water; (3) current tire wear is much longer than when the original EPA estimate was made; and (4) "* * * MBT is too unstable on the terrestrial soil to remain as MBT for long * * *."

While the Agency agrees that the EPA estimate of 12 million pounds of vulcanization accelerators (including MBT) released annually to the environment (primarily soils near highways) via deposition of tire dust containing accelerators may be an overestimate due to the greater life of current tires, the Agency maintains that sufficient questions remain about the other reasons cited by RAPP that this scenario should remain as a cause for exposure concern.

First, the original EPA estimate does not state that all tires are made with MBT. The major use of MBT is in the manufacture of other rubber accelerators, which have a strong tendency to decompose in the vulcanization process, and can form MBT and carry over into end products and waste effluents, considerably broadening the scope of potential

exposure (Ref. 1). Second, insufficient data exist to conclude that all MBT is tightly bound in the rubber matrix. The study cited by the RAPP to demonstrate only a limited leaching of MBT from tire rubber may actually suggest that MBT leaching can be significant when consideration is given to the experimental design—a simple static water/tire system. In this system, a rapid equilibrium level of MBT in the water was achieved. If the rubber had been exposed periodically to fresh aqueous media, much more MBT could potentially have been leached from the rubber. Finally, there are no data from which to conclude that MBT will not persist in roadside soils following deposition via tire dust. Furthermore, consideration must be given to the possibility that MBT entering soils by this mechanism may reach drainage systems via runoff and subsequently reach nearby surface waters.

4. *Exposure data/occupational and consumer.* RAPP has indicated that EPA lacks evidence of substantial worker exposure to MBT, citing the estimate of the National Occupational Exposure Survey (NOES; Ref. 4) of 2,398 exposed workers, and the use of protective equipment and good hygiene to limit exposure, particularly because of the allergenic properties and disagreeable odor of MBT.

While the Agency agrees that the warning properties of MBT encourage the limitation of work exposure, EPA does not believe that a disagreeable odor and voluntary use of protective equipment will necessarily limit exposure in all occupational scenarios, nor does EPA consider the NOES estimate of 2,398 exposed workers to constitute an insubstantial number. Also, this number may be an underestimate, because the NOES covered only those products containing the chemical name on the product label, not trade name products where substantial worker exposure could occur.

RAPP also commented that MBT use in Spandex-containing clothing has been discontinued. EPA was aware of this at the time the proposed rule was issued (Ref. 1).

5. *Exposure data/chemical fate.* RAPP commented that chemical fate testing, particularly indirect photolysis, of MBT is unwarranted based on lack of substantial environmental occurrence. EPA finds this conclusion to be unjustified, as discussed in Unit II.A.2. of this preamble, due to the deficiencies of the RAPP monitoring study. Chemical fate and persistence data for MBT is necessary to support an Agency risk assessment of MBT.

B. Justification for Hazard Potential: Environmental Effects

RAPP maintains that by applying a 1,000-fold safety factor to acute toxicity data, sufficient environmental effects data exist to predict that chronic toxicity to sensitive aquatic species to MBT at predicted environmental concentrations will not occur. RAPP notes that its environmental monitoring data and "worst case" modeling indicate that environmental water concentrations will not exceed 1 ppb, nearly three orders of magnitude less than the lowest documented acute effects level for fish (670 ppb). RAPP also noted that a previous EPA proposed rule for phenylenediamines (PDAs) allows use of a 100-fold safety factor over predicted environmental concentration to assess the need for chronic effects testing, provided that acute effects data are available for at least three species (51 FR 472; January 6, 1986).

The Agency considers the cited environmental monitoring data, however, to be inadequate as discussed in Unit II.A.2. of this preamble. The "worst case" predicted concentration cited by RAPP of less than 1 ppb is based on uniform dispersal of released MBT to all United States surface waters. In contrast, the Agency has estimated that MBT surface water concentrations near manufacturing sites could range from 2.96 to 385 ppb (Ref. 5), using confidential production and release data submitted by the manufacturers.

Acute toxicity data are available for three fish species (Refs. 6 through 8), an invertebrate (Refs. 9 and 10), and an alga (Refs. 11 and 12). The trout data were obtained under flow-through conditions, with the MBT concentrations periodically measured. All other studies adhered to standard static screening protocols, with no measurement of test material concentrations.

With regard to the need for chronic toxicity testing, EPA, in the Notice of Proposed Rulemaking (NPR) (51 FR 472; January 6, 1986) for PDA's, proposed that fish early life stage tests or daphnid life-cycle tests (chronic toxicity tests) should be conducted if any LC50 or EC50 was less than or equal to 100 times the predicted environmental concentration (PEC). All of the MBT EC50 or LC50 values are less than 100 times the median or maximum PEC. The algal EC50 value is less than 100 times the minimum PEC. In the 2,6-di-*tert*-butyl phenol NPR (52 FR 23862, June 25, 1987), the Agency proposed an additional decision criteria for determining whether chronic toxicity tests should be conducted, *viz.*, EC50 or LC50 less than 1 mg/L. The MBT 96-hr LC50 values for rainbow trout are both less than 1 mg/L.

In the tributyl phosphate NPR (52 FR 43346, November 12, 1987), the Agency proposed that chronic toxicity tests should also be conducted if the ratio of the 24-hr to 96-hr LC50 (for 4-day acute tests) or the 24-hr to 48-hr LC50 (for 2-day acute tests) was greater than or equal to 2 and if the EC50 or LC50 was less than or equal to 150 mg/L. For MBT, the bluegill 96-hr LC50 is less than 100 mg/L and the 24-hr to 96-hr LC50 ratio is greater than 2. Thus, MBT satisfies the criteria originally proposed as well as those subsequently proposed for other chemical substances for conducting chronic toxicity tests. These decision criteria were proposed in the reproposed PDAs NPR (53 FR 913, January 14, 1988).

C. Health Effects

1. *Need for testing/testing scheme.* RAPP noted that the ITC in its initial review of MBT did not recommend health effects testing. It also suggested that it would be prudent to wait for the evaluation of the results of ongoing (pharmacokinetic) and completed (bioassay) tests prior to initiating further health effects studies, and that any further testing considered necessary should be conducted using a tiered approach. A tiered scheme was proposed by RAPP.

In response to these comments, EPA notes that the report prepared by the ITC was a preliminary assessment of the potential need for further testing of MBT. EPA's proposed requirements for health effects testing of MBT were a consequence of a tiered approach to evaluate the need for testing of existing chemicals. This does not imply any inconsistency with the ITC recommendation but rather the evolution of a testing strategy as more information has become available. The Agency has considered the NTP chronic study in the development of the test rule for MBT, and is not requiring further chronic and oncogenicity testing. The design of the particular chronic bioassay performed by NTP, however, is not adequate to answer all toxicological questions of concern.

2. *Developmental toxicity testing.* RAPP maintains that there is insufficient evidence to justify the proposed requirement for testing MBT for teratogenic potential in two species, because a study by Hardin et al. (Ref. 13) showed no indication that MBT was a teratogen when tested in rats by intraperitoneal injection at the maximum tolerated dose; it was the conclusion of these authors that there was no need for further testing of MBT

In addition, RAPP is trying to locate a Japanese teratogenicity study. In consideration of the existing data, RAPP urges that the Agency limit the developmental toxicity testing to only one species.

As stated in the proposed rule (50 FR 46121), the Agency has reviewed several teratology and reproduction studies (Refs. 13 through 17) and has found them to be inadequate to reasonably predict the developmental and reproductive toxicity of MBT. Several of these studies were designed as screening studies; others were abstracted from Russian literature and details necessary for a thorough review were not available. The Hardin et al. study is of limited value because it was designed as a screening study, and the group sizes used were too small. It has been a longstanding OTS policy to require testing in at least two mammalian species in order to *adequately* assess the potential developmental toxicity of an agent. For these reasons, EPA believes that existing data are insufficient for evaluating the teratogenic risk potential of MBT, and that testing in two species is necessary for the development of adequate data.

3. *Reproductive toxicity testing.* RAPP states that the multigeneration reproductive study cannot be justified by the available data, and points out that, in the proposed test rule for cumene (50 FR 46104; November 6, 1985), the Agency states that a multigeneration reproductive test will not be required for cumene in the absence of evidence of reproductive organ toxicity in a subchronic test. RAPP has reviewed the 90-day subchronic study conducted for NTP (Ref. 18) and submitted in 1985 by Mobay Chemical Corp. No evidence of significant lesions in any of the reproductive organs of rats or mice were reported in that study. RAPP suggests that the Agency postpone a decision on a multigeneration study until after the results of the NTP 2-year chronic bioassay are reviewed and the results of the required dominant lethal assay are available.

When section 4 findings are based on the potential for substantial exposure, as for MBT, EPA requires testing for reproductive effects unless sufficient data adequately describing reproductive effects are available. With regard to the NTP 90-day subchronic study referred to by RAPP, the type of 90-day subchronic study conducted with MBT is not the same as that conducted with cumene. The subchronic study proposed by the Agency for cumene contained specific requirements for extensive evaluation of the reproductive organs of both male and female animals. The subchronic study of MBT conducted for NTP did not contain such an extensive evaluation of reproductive organs since the purpose of this study was to define the appropriate dose levels for a chronic bioassay. Furthermore, histopathology of the reproductive organs will not provide the needed information regarding the integrity of the functioning of the reproductive system. In cases of substantial exposure to an agent, as with MBT, EPA requires data both on morphology and on physiology in the form of a two-generation reproductive effects study. The design of a dominant lethal assay in which only male animals are exposed and only for a relatively short period prior to mating does not provide enough information to adequately describe the effects on reproduction of long-term exposure to a compound. Furthermore, in a dominant lethal study only the male animal is exposed to the test agent and the end points that are assessed are only a small fraction of what is needed to adequately evaluate the potential reproductive toxicity of an agent.

4. *Neurotoxicity testing.* RAPP contends that there is no indication that MBT is a potential neurotoxic agent, and that this is supported by the lack of any histologically observed nervous system damage in the NTP subchronic study, and the lack of structural similarity between MBT and any known neurotoxic solvents. RAPP also believes that no laboratories in this country are available to perform the test, and that the lack of experience with this test would make assessing the results regarding human health difficult. RAPP suggests that if neurotoxicity tests are required, the functional observational battery and neuropathology studies should be conducted in sequence on the same animals.

The NTP bioassay was designed to assess carcinogenicity, and not neurotoxicity. As stated in the proposed rule, no data on the neurotoxic effects of MBT have been found in the literature. Because EPA finds that there is a potential for substantial exposure to MBT, EPA is requiring that adequate neurotoxicity data be developed. With regard to laboratories available to perform the test, EPA points out that the required test protocol is in current use in the research community and on the C_9 aromatic hydrocarbon fraction (50 FR 20675; May 17, 1985), and that industry has conducted such neurotoxicity studies on acrylamide. In addition, EPA has reviewed the availability of contract laboratory facilities to conduct the neurotoxicity testing requirements (Ref. 29) and believes that facilities will be made available for conducting these tests. The Agency does agree that the neuropathology study could be combined with other neurological test protocols without adversely affecting the quality of either study, if the provisions of both guidelines are followed.

5. *Mutagenicity testing.* CMA agrees that the dominant lethal study conducted by Aleksandrov (Ref. 15) is inadequate and that the dominant lethal effect should be further examined by performing a second assay, but states that proceeding directly to the dominant lethal test should preclude the necessity of lower tier testing.

The Agency agrees that the necessity of lower-tier testing for chromosomal aberrations is precluded by industry's agreement to conduct a dominant lethal assay, and by the fact that a 2-year chronic bioassay has already been completed by NTP. Therefore, lower-tier mutagenicity testing will not be required in this rule.

D. New Information

Results of five pharmacokinetic studies (Refs. 21 through 25), comparing the kinetics and metabolism of the oral and dermal routes of exposure, were voluntarily submitted to EPA by CMA. EPA has reviewed these studies and finds them to be well-designed and well-performed. Further pharmacokinetic testing is not being required for MBT at this time; however, additional pharmacokinetic testing may be required at a later date, pending review of the data generated as a result of this final rule.

E. Persons Required to Test

CMA commented that "any testing to be mandated through a test rule should include among those responsible for the testing program persons who import rubber articles containing MBT." CMA pointed out that MBT is manufactured abroad and imported to the United States both as a pure chemical and in mixtures, and as a constituent of articles.

The Agency agrees with this comment, and has clarified in Unit III. E. of this preamble that the term "manufacturers" includes not only importers of MBT itself, but also importers of rubber articles that contain MBT. EPA believes that use and disposal of these articles contribute to human and/or environmental exposures that are part of the basis for the Agency's finding that testing is warranted and necessary.

Manufacturers are defined by TSCA section 3(7) to include those who "import into the customs territory of the United States." In other TSCA actions under sections 6 and 8, and in discussions of authority under sections 5 and 13, EPA has determined that importation, whether it be in the form of imports of pure chemical substances, mixtures or articles, is included within the TSCA definition of "manufacture."

III. Findings

A. Environmental Effects and Chemical Fate

EPA is basing its final environmental effects and chemical fate testing requirements for MBT on the authority of sections 4(a)(1) (A) and (B) of TSCA. In addition to the information presented in this final rule, the TSCA sections 4(a)(1) (A) and (B) findings are also supported by additional information discussed in the preamble to the proposed test rule for MBT and which is contained in the rulemaking record for this action.

Under TSCA section 4(a)(1)(B)(i), EPA finds that MBT is produced in substantial quantities. This finding takes into account TSCA section 8(a) information that was submitted by the manufacturers of MBT, the indirect production of MBT as a result of the breakdown of MBT-derived accelerators during vulcanization (Ref. 3), and the 1983 sales volume of MBT, which was reported by the U.S. International Trade Commission to be 5,958,000 pounds (Ref. 2).

EPA also finds that there may be substantial quantities of MBT entering the environment. This finding considers TSCA section 8(a) release data submitted by the manufacturers of MBT, releases from processing, disposal, and coolants, and EPA's estimate that over 1 million pounds of MBT may be lost to the environment annually through both direct and indirect discharges. MBT release is also expected to occur as a result of the breakdown of MBT-derived accelerators in discarded rubber products.

Under TSCA section 4(a)(1)(A)(i), EPA finds that the manufacture, processing, use, and disposal of MBT may present an unreasonable risk of injury to organisms in the aquatic environment. EPA is basing this finding on EC50 or LC50 values that are less than 100 times the minimum, median, or maximum predicted environmental concentration (PEC) values, two LC50 values that are less than 1 mg/L, and for an LC50 value greater than 1 mg/L but less than 100 mg/L, the 24-hr to 96-hr LC50 ratio is greater than 2. EPA believes that chronic effects may occur at anticipated environmental concentrations.

EPA has found no data on the chronic effects of MBT on fish and aquatic invertebrates. EPA also concludes that data are insufficient to reasonably predict the biodegradation, indirect photolysis, and chemical mobility of MBT once it is released into the environment. Therefore, under TSCA sections 4(a)(1)(A)(ii) and 4(a)(1)(B)(ii), EPA concludes that available data are insufficient to reasonably determine or predict the chronic effects on fish and aquatic invertebrates from the manufacture, processing, use, and disposal of MBT, or the persistence and mobility of MBT released from such activities. EPA finds that testing of MBT is necessary to develop such data, and believes that data resulting from environmental effects and chemical fate testing will be relevant to a determination as to whether the manufacture, processing, use, or disposal of MBT does or does not present an unreasonable risk of injury to the environment.

The Agency finds that sufficient data are available in the published literature to satisfy the ITC's recommendation that the dissociation constant be determined. Two experimentally-derived values have been found in the literature indicating that the dissociation constant is 6.93 (Ref. 19).

After reviewing and evaluating the existing aquatic toxicity data for MBT, EPA has determined that there are sufficient data available to reasonably predict the acute toxicity of MBT to fish, aquatic invertebrates, and plants. MBT has been shown to exert a high acute toxicity in rainbow trout (Ref. 6) with a 96-hour LC_{50} of 0.75 mg/L. *Daphnia magna* has been shown to have a 48-hour LC_{50} value of 4.1 mg/L (Ref. 9), and *Selenastrum capricornutum* has a 96-hour EC_{50} of 0.23 mg/L (Ref. 11). Therefore, EPA is not requiring any additional acute toxicity tests at this time. Should the existing data and the chronic testing required in this rule provide results indicating a high priority for control of aquatic concentrations of MBT under the Clean Water Act, EPA may at that time propose additional acute and/or chronic testing to establish water quality criteria pursuant to section 304(a)(1) of the Clean Water Act.

The Agency has no evidence of substantial exposure of terrestrial plants along the roadside to MBT from tire dust; therefore, the Agency did not propose, and at this time is not requiring, any acute or chronic toxicity testing for terrestrial plants, as had been recommended by the ITC.

B. Human Health Effects

EPA is basing its final health effects testing requirements for MBT on the authority of TSCA section 4(a)(1)(B). EPA finds that MBT is produced in substantial quantities (See Unit III.A. of this preamble). EPA also finds that there may be substantial human exposure to MBT. The National Occupational Hazard Survey (NOHS), conducted from 1972 to 1974 (Ref. 20), estimates that as many as 558,893 people in the chemical industry may be exposed to MBT. The National Occupational Exposure Survey (NOES) data base (Ref. 4) estimates that 2,398 workers (of whom 119 are female) are exposed to MBT as a result of its presence in finished rubber products.

EPA finds that there are sufficient data availably to reasonable determine or predict the pharmacokinetics, acute effects, chronic effects, oncogenic effects, and gene mutation effects of exposure to MBT at this time. Under TSCA section 4(A)(1)(B)(ii), EPA finds that there are insufficient data available to reasonably determine or predict the effects of the manufacture, processing, use, and disposal of MBT in the areas of developmental toxicity, reproductive toxicity, chromosomal aberrations, and neurotoxicity. EPA finds that testing of MBT is necessary to develop such data, and believes that data resulting from health effects testing will be relevant to a determination as to whether the manufacture, processing, use, or disposal of MBT does or does not present an unreasonable risk of injury to human health.

C. Required Testing and Test Standards

On the basis of these findings, EPA is requiring that chemical fate, environmental effects, and health effects testing be conducted for MBT in accordance with specific test guidelines set forth in 40 CFR Parts 796, 797, and 798. The tests are to be conducted in accordance with EPA's TSCA Good Laboratory Practice Standards in 40 CFR Part 792.

On the basis of the findings presented above for chemical fate testing, the Agency is requiring that MBT be tested for: (1) Biodegradation using the test guideline specified in 40 CFR 796.3100; (2) indirect photolysis screening using the test guideline specified in 40 CFR 795.70,[1] promulgated with this final rule;

[1] § 795.70 *Indirect photolysis screening test: Sunlight photolysis in waters containing dissolved humic substances*, was proposed as § 796.3765 in 51 FR 472; January 6, 1986.

and (3) chemical mobility using the test guideline specified in 40 CFR 796.2750.

On the basis of the findings presented in Unit III.A. for environmental effects testing, the Agency is requiring that chronic toxicity testing of MBT be conducted on (1) rainbow trout (*Salmo gairdneri*) using the test guideline specified in 40 CFR 797.1600; and (2) *Daphnia magna* using the test guidelines specified in 40 CFR 797.1330.

On the basis of the findings presented in Unit III.B. of this preamble for health effects testing, the Agency is requiring that MBT be tested for: (1) Developmental toxicity in two mammalian species using the test guideline specified in 40 CFR 798.4900; (2) reproductive toxicity using the test guideline specified in 40 CFR 798.4700; (3) neurotoxicity using the test guidelines specified in 40 CFR 798.6050, 798.6200 and 798.6400; and (4) mutagenicity (dominant-lethal assay) using the guidelines specified in 40 CFR 798.5450. A positive result in the dominant-lethal assay may, after a public program review, trigger a heritable translocation assay using the procedure specified in 40 CFR 798.5460. If the dominant-lethal assay is negative, no further chromosomal aberration testing shall be required for MBT.

If the results of the dominant-lethal assay are positive, EPA will hold a public program review prior to requiring the initiation of the heritable translocation assay. Public participation in this program review will be in the form of written comments or a public meeting. Request for public comments or notification of a public meeting will be published in the **Federal Register**. Should EPA determine, from the available weight of evidence, that proceeding to the heritable translocation test is no longer warranted, the Agency would propose to repeal that test requirement and, after public comment, issue a final amendment to rescind the requirement.

EPA is requiring that the TSCA Chemical Fate, Environmental Effects, and Health Effects Test Guidelines referenced in Unit III.C. of this preamble, and revisions, shall be the test standards for the purposes of the required tests for MBT. The TSCA test guidelines for chemical fate, aquatic toxicity, and health effects testing specify generally accepted minimum conditions for determining chemical fate, aquatic organism toxicities, and health effects for substances such as MBT to which humans and the environment are expected to be exposed. The Agency believes that these test methods reflect the current state of the science for testing chemicals such as MBT for the specified end points. The guidelines for rainbow trout and *Daphnia magna* chronic toxicity have been modified in this rule, due to concern over the stability of MBT in water.

D. Test Substance

EPA is requiring that MBT of at least 98 percent purity shall be used as the test substance. MBT of such purity is commercially available.

E. Persons Required to Test

Section 4(b)(3)(B) specifies that the activities for which the Agency makes section 4(a) findings (manufacture, processing, distribution in commerce, use, and/or disposal) determine who bears the responsibility for testing a chemical. Manufacturers and persons who intend to manufacture the chemical are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import," and in this case includes importers of rubber articles that contain MBT). "Manufacture" also includes byproduct manufacture, and while EPA has not identified any byproduct manufacturers of MBT, such persons are subject to the requirements of this test rule. Processors and persons who intend to process the chemical are required to test if the findings are based on processing. Manufacturers and processors and persons who intend to manufacture or process the chemical are required to test if the exposures giving rise to the potential risk occur during distribution in commerce, use, or disposal of the chemical.

Because EPA has found that manufacturing, processing, use, and disposal of MBT results in exposure that may lead to an unreasonable risk, EPA is requiring that persons who manufacture or process, or who intend to manufacture or process, MBT, other than as an impurity, at any time from the effective date of the final test rule to the end of the reimbursement period are subject to the testing requirements contained in this final rule. The end of the reimbursement period will be 5 years after the last final report is submitted or an amount of time equal to that which was required to develop data, whichever is later.

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

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

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

EPA is not requiring the submission of equivalence data as a condition for exemption from the required testing for MBT. EPA is interested in evaluating the effects attributable to MBT and has specified a relatively pure substance for testing (See Unit III.D. of this preamble).

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

F. Reporting Requirements

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

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

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. Final testing requirements, test standards, and reporting requirements for this MBT test rule are summarized in the following Table.

REQUIRED TESTING, TEST STANDARDS, AND REPORTING REQUIREMENTS FOR MBT

Test	Test standard (40 CFR citation) (section)	Reporting deadline for final report [1]	Interim (6 month) reports required
Chemical fate:			
1. Aerobic aquatic biodegradation	796.3100	12	1
2. Indirect photolysis—screening	795.70	12	1
3. Sediment and soil adsorption isotherm	796.2750	12	1
Environmental effects:			
1. Fish early life stage toxicity (rainbow trout)	797.1600	12	1
2. Daphnid chronic toxicity	797.1330	12	1
Health effects:			
1. Developmental toxicity (oral)	798.4900	12	1
2. Reproduction and fertility effects (oral)	798.4700	29	4
3. Functional observational battery (oral)	798.6050	12	1
4. Motor activity (oral)	798.6200	12	1
5. Neuropathology (oral)	798.6400	12	1
6. Dominant lethal assay	798.5450	12	1
7. Heritable translocation assay	798.5460	24 [2]	3

[1] Number of months after the effective date of the final rule, except as indicated.

[2] Figure indicates the reporting deadline, in months, calculated from the date of notification of the test sponsor by certified letter or **Federal Register** notice that, following public program review of all the then existing data for MBT, the Agency has determined that the required testing must be performed.

1. The biodegradation, photolysis, chemical mobility, developmental toxicity, neurotoxicity, and chronic aquatic vertebrate and invertebrate toxicity tests shall be completed and the final results submitted to the Agency within 12 months of the effective date of this final test rule. An interim progress report shall be provided to the Agency 6 months after the effective date of this rule.

2. The reproductive toxicity testing shall be completed and the final results submitted to the Agency within 29 months of the effective date of this final test rule. Interim progress reports shall be provided to the Agency at 6 month intervals after the effective date of this rule, until the final report is submitted to EPA.

3. The dominant-lethal assay and heritable translocation tests for MBT shall be completed and the final results submitted to the Agency after the effective date of this final test rule as follows: Dominant-lethal assay, 12 months; heritable translocation assay, 24 months after notification that testing shall be initiated. There will be a public program review before the heritable translocation test is conducted. Interim progress reports shall be provided to the Agency at 6 month intervals after the effective date of this rule, until the final report is submitted to EPA.

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

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

G. Enforcement Provisions

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

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by TSCA section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce * * *." EPA considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory inspections and data audits will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by designated representatives of the EPA for the purpose of determining compliance with the final rule for MBT. These inspections may be conducted for purposes which include verification that testing has begun, schedules are being met, and reports accurately reflect the underlying raw data, interpretations, and evaluation, and to determine compliance with TSCA GLP standards and the test standards established in this rule.

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

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

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

Individuals as well as corporations could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report

false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

IV. Economic Analysis of Final Rule

To assess the potential economic impact of this rule, EPA has prepared an economic analysis (contained in the public record for this rule) that evaluates the potential for significant economic impact on the industry as a result of the required testing. The economic analysis estimates the costs of conducting the required testing and evaluates the potential for significant adverse economic impact as a result of these test costs by examining four market characteristics of MBT: (1) Price sensitivity of demand, (2) market expectations, (3) industry cost characteristics, and (4) industry structure.

Total testing costs for the required testing for MBT are estimated to range from $434,970 to $583,730. In order to predict the financial decision-making practice of manufacturing firms, these costs have been annualized. Annualized costs are compared with annual revenue as an indication of potential impact. The annualized costs represent equivalent constant costs which would have to be recouped each year of the payback period in order to finance the testing expenditure in the first year.

The annualized test costs (using a 7 percent cost of capital over a period of 15 years) range from $47,758 to $64,088. Based on 1984 production of 47.3 million pounds, the unit test costs range from 0.10 to 0.14 dollar per pound. These costs are equivalent to 0.09 to 0.11 percent of price of the current price of 1.25 dollar per pound.

EPA believes that the potential for adverse economic impact resulting from the costs of testing is low. This conclusion is based on the following observations:

1. The annualized cost of testing is very low, at approximately 0.11 percent of product price in the upper-bound case.

2. Demand for MBT does not appear to be sensitive to a price increase in this range.

Refer to the economic analysis contained in the public record for this rulemaking for a complete discussion of test cost estimation and potential for economic impact resulting from these costs.

V. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "* * * the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules. Copies of the study, Chemical Testing Industry: Profile of Toxicological Testing, can be obtained through the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 (PB 82-140773). On the basis of this study, EPA believes that there will be available test facilities and personnel to perform the testing specified in this rule.

EPA has reviewed the availability of contract laboratory facilities to conduct the neurotoxicity testing requirements (Ref. 29) and believes that facilities will be made available for conducting these tests. The laboratory review indicates that few laboratories are currently conducting these tests according to TSCA test guidelines and TSCA GLP standards. However, the barriers faced by testing laboratories to gear up for these tests are not formidable. Laboratories will need to invest in testing equipment and personnel training, but EPA believes that these investments will be recovered as the neurotoxicity testing program under TSCA section 4 continues. EPA's expectations of laboratory availability were borne out under the testing requirements of C_9 aromatic hydrocarbon fraction test rule (50 FR 20675; May 17, 1985). Pursuant to that rule, the manufacturers were able to contract with a laboratory to conduct the testing according to TSCA test quidelines and TSCA GLP standards.

VI. Rulemaking Record

EPA has established a record for this rulemaking proceeding [docket number OPTS-42073A]. This record includes:

A. Supporting Documentation

(1) **Federal Register** notices pertaining to this rule consisting of:

(a) Notice containing the ITC designation of MBT to the Priority List and comments on MBT received in response to that notice. (49 FR 46931; November 29, 1984).

(b) Rules requiring TSCA section 8(a) and 8(d) reporting on MBT (49 FR 46739 and 46741; November 28, 1984) .

(c) Notice of EPA's proposed test rule on MBT (50 FR 46121; November 6, 1985).

(d) TSCA test guidelines cited as test standards for this rule (40 CFR Parts 796, 797, and 798).

(e) Notice of final rulemaking on data reimbursement (48 FR 31786; July 11, 1983).

(f) Notice of interim final rule on single-phase test rule development and exemption procedures (50 FR 20652; May 17, 1985).

(g) TSCA GLP standards (48 FR 53992; November 29, 1983).

(2) Economic impact analysis of final test rule for MBT.

(3) Communications consisting of:

(a) Written public comments.

(b) Transcript of public meeting.

(c) Summaries of phone conversations.

(4) Reports published and unpublished factual materials, including: Chemical Testing Industry: Profile of Toxicological Testing (October, 1981).

B. References

(1) Bosch, S.J., Williams, R.T., Appleton, H.T., Howard, P.H., Santodonato, J. Technical Support Documents: 2-Mercaptobenzothiazole. SRC-TR-85-104. Syracuse Research Corp., Syracuse, NY. (1985).

(2) USITC (U.S. International Trade Commission). Synthetic Organic Chemicals, United States Production and Sales. Washington, DC: U.S. Government Printing Office. Pub. No. 1588. (1984).

(3) Monsanto Co. Letter to M. Grief, TSCA Interagency Testing Committee, 401 M St. SW., Washington, DC 20460. (July 16, 1982).

(4) NIOSH (National Institute for Occupational Safety and Health). National occupational exposure survey. U.S. Department of Health, Education, and Welfare. Cincinnati, OH. (1980).

(5) U.S. Environmental Protection Agency (USEPA). Release of mercaptobenzothiazole. Memorandum from EPA-OTS-Design and Development Branch, Office of Toxic Substances (OTS), to Test Rules Development Branch, OTS. (1985).

(6) SRI International. Time-independent toxicity study on Thiotax using rainbow trout as the test organism. SRI Project LSC-1741. Submitted to Monsanto Industrial Chemical Co. (1981).

(7) Monsanto Co. TSCA section 8(d) submission 878215051. Acute (96-hr) toxicity of Thiotax to rainbow trout and bluegill. 1976. USEPA. Office of Toxic Substances. (1985).

(8) Analytical Bio Chemistry Laboratories. Acute toxicity of Thiotax (AB-79-1384365-1a) to fathead minnows (*Pimephales promelas*). Submitted to Monsanto Chemical Co. (August 27, 1979).

(9) Analytical Bio Chemistry Laboratories. Acute toxicity of Thiotax (AB-79-1384365-1d) to *Daphnia magna*. Submitted to Monsanto Chemical Co. (May 31, 1979).

(10) Analytical Bio Chemistry Laboratories. Acute toxicity of NaMBT 50 percent (AB-78-1384320-3a) to *Daphnia magna*. Submitted to Monsanto Chemical Co. (September 30, 1978).

(11) EG&G Bionomics. Toxicity of Thiotax (BN-79-1384365-1e) to the freshwater alga *Selenastrum capricornutum*. Project Number 1497-500. Submitted to Monsanto Chemical Co. (July, 1979).

(12) EG&G Bionomics. Acute toxicity of NaMBT 50 percent (BN-78-1384320) to the

freshwater alga *Selenastrum capricornutum*. Project Number H74–500. Submitted to Monsanto Chemical Co. (September, 1978).

(13) Hardin, B.D., Bond, G.P., Sikov, M.R. "Testing of selected work chemicals for teratogenic potential." *Scandanavian Journal of Work, Environment and Health.* (Finland) 7 (Suppl. 4):66–75. (1981).

(14) Bionetics Research Labs. Evaluation of carcinogenic, teratogenic and mutagenic activities of selected pesticides and industrial chemicals. Vol. 2. Teratogenic study in mice and rats. Prepared by BRL Inc. for NCI. NTIS Publication No. 223–160. (1968).

(15) Aleksandrov, S.E. "Effect of vulcanization accelerators on embryonic mortality in rats." *Bulletin of Experimental Biology and Medicine.* 93:87–88. (1982).

(16) Korhonen, A., Hemminki, K., Vaino, H. "Embryotoxicity of benzothiazoles, benzenesulfohydrazide and dithiodimorpholine to the chicken embryo." *Archives of Environmental Contamination and Toxicology.* 11:735–759. (1983).

(17) Korhonen, A., Hemminki, K., Vaino, H. "Toxicity of rubber chemicals toward 3-day chicken embryos." *Scandinavian Journal of Work, Environment and Health.* 9:115–119. (1983).

(18) Physiological Research Laboratories. Subchronic Test Report for Mercaptobenzothiazole. Basic Ordering Agreement 78–60–106002. Performed for the National Toxicology Program. (1981).

(19) Danehy, J.P., Parameswaran, K.N. Acidic dissociation constants of thiols. *Journal of Chemical and Engineering Data.* 13:386–398. (1983).

(20) NIOSH. National occupational hazard survey. U.S. Department of Health, Education, and Welfare. Cincinnati, OH. (1980).

(21) Chemical Manufacturers Association (CMA). "Disposition of 2-mercaptobenzothiazole-ring-UL-^{14}C and 2-mercaptobenzothiazole disulfide-ring-UL-^{14}C in Fischer 344 male and female rats dosed orally." (July 23, 1986).

(22) CMA. "Disposition of 2-mercaptobenzothiazole-ring-UL-^{14}C and 2-mercaptobenzothiazole disulfide-ring-UL-^{14}C in Fischer 344 male and female rats dosed intravenously." (October 21, 1986).

(23) CMA. "Disposition of 2-mercaptobenzothiazole-ring-UL-^{14}C in Fischer 344 male and female rats dosed orally after repeated dosing with the unlabeled compound." (March 20, 1987).

(24) CMA. "Washing efficacy in removal of 2-mercaptobenzothiazole-ring-UL-^{14}C and 2-mercaptobenzothiazole disulfide-ring-UL-^{14}C in Fischer 344 male and female rats and female guinea pigs dosed topically." (March 20, 1987).

(25) CMA. "Absorption and disposition of 2-mercaptobenzothiazole-ring-UL-^{14}C and 2-mercaptobenzothiazole disulfide-ring-UL-^{14}C in Fischer 344 male and female rats dosed topically." (June 16, 1987).

(26) Jungclaus, G.A., Games, L.M. and Hites, R.A. "Identification of trace organic compounds in tire manfacturing plant wastewater." *Analytical Chemistry* 48:1894–1896. (1976).

(27) USEPA. "Industrial Process Profiles for Environmental Use." Chapter 9. The Synthetic Rubber Industry. Cincinnati, OH. EPA 600/2–77–0231. (1977).

(28) Repkina, V.P., Ptitsyna, V.V., and Latysheva, L.M. "Oxidation of 2-mercaptobenzothiazole by hydrogen peroxide in dilute aqueous solutions." *Journal of Applied Chemistry* (USSR) 57:180–181. (1984).

(29) Mathtech, Inc. "Evaluation of TSCA guidelines for neurotoxicity testing: Impact of increased testing requirements." Prepared for Regulatory Impacts Branch, Office of Toxic Substances, USEPA. (April 14, 1987).

Confidential Business Information (CBI), while part of the record, is not available for public view. A public version of the record, from which CBI has been deleted, is available for inspection in the TSCA Public Docket Office, Rm. NE–G004, 401 M Street SW., Washington, DC, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

VII. Other Regulatory Requirements

A. Executive Order 12291

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

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

B. Regulatory Flexibility Act

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

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2070–0033.

Public reporting burden for this collection of information is estimated to average 535 hours per response, including time for reviewing instructions, search existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Parts 795 and 799

Chemicals, Environmental protection, Hazardous substances, Testing, Laboratories, Reporting and recordkeeping requirements.

Dated: August 26, 1988.

Susan F. Vogt,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR, Chapter I, Subchapter R, is amended as follows:

PART 795—[AMENDED]

1. In Part 795:

a. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603.

b. Section 795.70 is added to Subpart B, to read as follows:

§ 795.70 Indirect photolysis screening test: Sunlight photolysis in waters containing dissolved humic substances.

(a) *Introduction.* (1) Chemicals dissolved in natural waters are subject to two types of photoreaction. In the first case, the chemical of interest absorbs sunlight directly and is transformed to products when unstable excited states of the molecule decompose. In the second case, reaction of dissolved chemical is the result of chemical or electronic excitation transfer from light-absorbing humic species in the natural water. In contrast to direct photolysis, this photoreaction is governed initially by the spectroscopic properties of the natural water.

(2) In general, both indirect and direct processes can proceed simultaneously. Under favorable conditions the measurement of a photoreaction rate

constant in sunlight (K_{pE}) in a natural water body will yield a net value that is the sum of two first-order reaction rate constants for the direct (k_{DE}) and indirect (k_{IE}) pathways which can be expressed by the relationship

Equation 1

$$k_{pE}=k_{DE}+k_{IE}.$$

This relationship is obtained when the reaction volume is optically thin so that a negligible fraction of the incident light is absorbed and is sufficiently dilute in test chemical; thus the direct and indirect photoreaction processes become first-order.

(3) In pure water only, direct photoreaction is possible, although hydrolysis, biotransformation, sorption, and volatilization also can decrease the concentraton of a test chemical. By measuring k_{pE} in a natural water and k_{DE} in pure water, k_{IE} can be calculated.

(4) Two protocols have been written that measure k_{DE} in sunlight or predict k_{DE} in sunlight from laboratory measurements with monochromatic light (USEPA (1984) under paragraph (f)(14) and (15) of this section; Mill et al. (1981) under paragraph (f)(9) of this section; Mill et al. (1982) under paragraph (f)(10) of this section; Mill et al. (1983) under paragraphs (f)(11) of this section). As a preface to the use of the present protocol, it is not necessary to know k_{DE}; it will be determined under conditions that definitively establish whether k_{IE} is significant with respect to k_{DE}.

(5) This protocol provides a cost effective test method for measuring k_{IE} for test chemicals in a natural water (synthetic humic water, SHW) derived from commercial humic material. It describes the preparation and standardization of SHW. To implement the method, a test chemical is exposed to sunlight in round tubes containing SHW and tubes containing pure water for defined periods of time based on a screening test.

(6) To correct for variations in solar irradiance during the reaction period, an actinometer is simultaneously insolated. From these data, an indirect photoreaction rate constant is calculated that is applicable to clear-sky, near-surface, conditions in fresh water bodies.

(7) In contrast to k_{DE}, which, once measured, can be calculated for different seasons and latitudes, k_{IE} only applies to the season and latitude for which it is determined. This condition exists because the solar action spectrum for indirect photoreaction in humic-containing waters is not generally known and would be expected to change for different test chemicals. For this reason, k_{pE}, which contains k_{IE}, is likewise valid only for the experimental data and latitude.

(8) The value of k_{pE} represents an atypical quantity because k_{IE} will change somewhat from water body to water body as the amount and quality of dissolved aquatic humic substances change. Studies have shown, however, that for optically-matched natural waters, these differences are usually within a factor of two (Zepp et al. (1981) under paragraph (f)(17) of this section).

(9) This protocol consists of three separate phases that should be completed in the following order: In Phase 1, SHW is prepared and adjusted; in Phase 2, the test chemical is irradiated in SHW and pure water (PW) to obtain approximate sunlight photoreaction rate constants and to determine whether direct and indirect photoprocesses are important; in Phase 3, the test chemical is again irradiated in PW and SHW. To correct for photobleaching of SHW and also solar irradiance variations, tubes containing SHW and actinometer solutions are exposed simultaneously. From these data k_{pE} is calculated that is the sum of k_{IE} and k_{DE} (Equation 1) (Winterle and Mill (1985) under paragraph (f)(12) of this section).

(b) *Phase 1—Preparation and standardization of synthetic natural water*—(1) *Approach.* (i) Recent studies have demonstrated that natural waters can promote the indirect (or sensitized) photoreaction of dissolved organic chemicals. This reactivity is imparted by dissolved organic material (DOM) in the form of humic substances. These materials absorb sunlight and produce reactive intermediates that include singlet oxygen ($^1O_2$) (Zepp et al. (1977) under paragraph (f)(20) of this section, Zepp et al. (1981) under paragraph (f)(17) of this section, Zepp et al. (1981) under paragraph (f)(18) of this section, Wolff et al. (1981) under paragraph (f)(16) of this section, Haag et al. (1984) under paragraph (f)(6) of this section, Haag et al. (1984) under paragraph (f)(7) of this section); peroxy radicals ($RO_2\cdot$) (Mill et al. (1981) under paragraph (f)(9) of this section; Mill et al. (1983) under paragraph (f)(8) of this section); hydroxyl radicals ($HO\cdot$) (Mill et al. (1981) under paragraph (f)(9) of this section, Draper and Crosby (1981, 1984) under paragraphs (f)(3) and (4) of this section); superoxide anion ($O_2^{-}\cdot$) and hydroperoxy radicals ($HO\cdot$). (Cooper and Zika (1983) under paragraph (f)(1) of this section, Draper and Crosby (1983) under paragraph (f)(2) of this section); and triplet excited states of the humic substances (Zepp et al. (1981) under paragraph (f)(17) of this section, Zepp et al. (1985) under paragraph (f)(21) of this section). Synthetic humic waters, prepared by extracting commercial humic or fulvic materials with water, photoreact similarly to natural waters when optically matched (Zepp et al. (1981) under paragraphs (f)(17) and (18) of this section).

(ii) The indirect photoreactivity of a chemical in a natural water will depend on its response to these reactive intermediates, and possibly others yet unknown, as well as the ability of the water to generate such species. This latter feature will vary from water-to-water in an unpredictable way, judged by the complexity of the situation.

(iii) The approach to standardizing a test for indirect photoreactivity is to use a synthetic humic water (SHW) prepared by water-extracting commercial humic material. This material is inexpensive, and available to any laboratory, in contrast to a specific natural water. The SHW can be diluted to a dissolved organic carbon (DOC) content and uv-visible absorbance typical of most surface fresh waters.

(iv) In recent studies it has been found that the reactivity of SHW mixtures depends on pH, and also the history of sunlight exposure (Mill et al. (1983) under paragraph (f)(11) of this section). The SHW solutions initially photobleach with a time-dependent rate constant. As such, an SHW test system has been designed that is buffered to maintain pH and is pre-aged in sunlight to produce, subsequently, a predictable bleaching behavior.

(v) The purpose of Phase 1 is to prepare, pre-age, and dilute SHW to a standard mixture under defined, reproducible conditions.

(2) *Procedure.* (i) Twenty grams of Aldrich humic acid are added to a clean 2-liter Pyrex Erlenmeyer flask. The flask is filled with 2 liters of 0.1 percent NaOH solution. A stir bar is added to the flask, the flask is capped, and the solution is stirred for 1 hour at room temperature. At the end of this time the dark brown supernatant is decanted off and either filtered through coarse filter paper or centrifuged and then filtered through 0.4)m microfilter. The pH is adjusted to 7.0 with dilute H_2SO_4 and filter sterilized through a 0.2)m filter into a rigorously cleaned 2-liter Erlenmeyer flask. This mixture contains roughly 60 ppm DOC and the absorbance (in a 1 cm path length cell) is approximately 1.7 at 313 nm and 0.7 at 370 nm.

(ii) Pre-aging is accomplished by exposing the concentrated solution in the 2-liter flask to direct sunlight for 4 days in early spring or late fall; 3 days in

late spring, summer, or early fall. At this time the absorbance of the solution is measured at 370 nm, and a dilution factor is calculated to decrease the absorbance to 0.50 in a 1 cm path length cell. If necessary, the pH is re-adjusted to 7.0. Finally, the mixture is brought to exact dilution with a precalculated volume of reagent-grade water to give a final absorbance of 0.500 in a 1-cm path length cell at 370 nm. It is tightly capped and refrigerated.

(iii) This mixture is SHW stock solution. Before use it is diluted 10-fold with 0.010 M phosphate buffer to produce a pH 7.0 mixture with an absorbance of 5.00×10^{-2} at 370 nm, and a dissolved organic carbon of about 5 ppm. Such values are characteristic of many surface fresh waters.

(3) *Rationale.* The foregoing procedure is designed to produce a standard humic-containing solution that is pH controlled, and sufficiently aged that its photobleaching first-order rate constant is not time dependent. It has been demonstrated that after 7 days of winter sunlight exposure, SHW solutions photobleached with a nearly constant rate constant (Mill et al. (1983) under paragraph (f)(11) of this section).

(c) *Phase 2—Screening test*—(1) *Introduction and purpose.* (i) Phase 2 measurements provide approximate solar photolysis rate constants and half-lives of test chemicals in PW and SHW. If the photoreaction rate in SHW is significantly larger than in PW (factor of $> 2X$) then the test chemical is subject to indirect photoreaction and Phase 3 is necessary. Phase 2 data are needed for more accurate Phase 3 measurements, which require parallel solar irradiation of actinometer and test chemical solutions. The actinometer composition is adjusted according to the results of Phase 2 for each chemical, to equalize as much as possible photoreaction rate constants of chemical in SHW and actinometer.

(ii) In Phase 2, sunlight photoreaction rate constants are measured in round tubes containing SHW and then mathematically corrected to a flat water surface geometry. These rate constants are not corrected to clear-sky conditions.

(2) *Procedure.* (i) Solutions of test chemicals should be prepared using sterile, air-saturated, 0.010 M, pH 7.0 phosphate buffer and reagent-grade (or purer) chemicals.[1] Reaction mixtures should be prepared with chemicals at concentrations at less than one-half their solubility in pure water and at concentrations such that, at any wavelengths above 290 nm, the absorbance in a standard quartz sample cell with a 1-cm path length is less than 0.05. If the chemicals are too insoluble in water to permit reasonable handling or analytical procedures, 1-volume percent acetonitrile may be added to the buffer as a cosolvent.

(ii) This solution should be mixed 9.00:1.00 by volume with PW or SHW stock solution to provide working solutions. In the case of SHW, it gives a ten-fold dilution of SHW stock solution. Six mL aliquots of each working solution should then be transferred to separate 12×100 mm quartz tubes with screw tops and tightly sealed with Mininert valves.[2] Twenty four tubes are required for each chemical solution (12 samples and 12 dark controls), to give a total of 48 tubes.

(iii) The sample tubes are mounted in a photolysis rack with the tops facing geographically north and inclined 30° from the horizontal. The rack should be placed outdoors over a black background in a location free of shadows and excessive reflection.

(iv) Reaction progress should be measured with an analytical technique that provides a precision of at least ±5 percent. High pressure liquid chromatography (HPLC) or gas chromatograph (GC) have proven to be the most general and precise analytical techniques.

(v) Sample and control solution concentrations are calculated by averaging analytical measurements for each solution. Control solutions should be analyzed at least twice at zero time and at other times to determine whether any loss of chemical in controls or samples has occurred by some adventitious process during the experiment.

(vi) Whenever possible the following procedures should be completed in clear, warm, weather so that solutions will photolyze more quickly and not freeze.

(A) Starting at noon on day zero, expose to sunlight 24 sample tubes mounted on the rack described above. Tape 24 foil-wrapped controls to the bottom of the rack.

(B) Analyze two sample tubes and two unexposed controls in PW and SHW for chemical at 24 hours. Calculate the round tube photolysis rate constants $(k_p)_{SHW}$ and $(k_p)_W$ if the percent conversions are J 20 percent but F 80 percent. The rate constants $(k_p)_{SHW}$ and $(k_p)_W$ are calculated, respectively, from Equations 2 and 3:

Equation 2

$$(k_p)_{SHW} = (1/t)Pn(C_o/C_t)_{SHW} \text{ (in } d^{-1})$$

Equation 3

$$(k_p)_W = (1/t)Pn(C_o/C_t)_W \text{ (in } d^{-1}),$$

where the subscript identifies a reaction in SHW or PW; t is the photolysis time in calendar days; C_o is the initial molar concentration; and C_t is the molar concentration in the irradiated tube at t. In this case t=1 day.

(C) If less than 20 percent conversion occurs in SHW in 1 day, repeat the procedure for SHW and PW at 2 days, 4 days, 8 days, or 16 days, or until 20 percent conversion is reached. Do not extend the experiment past 16 days. If less than 20 percent photoreaction occurs in SHW at the end of 16 days the chemical is "photoinert". Phase 3 is not applicable.

(D) If more than 80 percent photoreaction occurs at the end of day 1 in SHW, repeat the experiment with eight each of the remaining foil-wrapped PW and SHW controls. Divide these sets into four sample tubes each, leaving four foil-wrapped controls taped to the bottom of the rack.

(*1*) Expose tubes of chemical in SHW and PW to sunlight starting at 0900 hours and remove one tube and one control at 1, 2, 4, and 8 hours. Analyze all tubes the next day.

(*2*) Estimate $(k_p)_{SHW}$ for the first tube in which photoreaction is J 20 percent but F 80 percent. If more than 80 percent conversion occurs in the first SHW tube, report: "The half-life is less than one hour" and end all testing. The chemical is "photolabile." Phase 3 is not applicable.

(*3*) The rate constants $(k_p)_{SHW}$ and $(k_p)_W$ are calculated from equations 2 and 3 but the time of irradiation must be adjusted to reflect the fact that day-averaged rate constants are approximately one-third of rate constants averaged over only 8 daylight hours. For 1 hour of insolation enter t=0.125 day into equation 2. For reaction times of 2, 4, and 8 hours enter 0.25, 0.50 and 1.0 days, respectively. Proceed to Phase 3 testing.

(*4*) Once $(k_p)_{SHW}$ and $(k_p)_W$ are measured, determine the ratio R from equation 4:

Equation 4

$$R = (k_p)_{SHW}/(k_p)_W.$$

The coefficient R, defined by Equation 4, is equal to $[(k_1+k_D)/k_D]$. If R is in the

[1] The water should be ASTM Type IIA, or an equivalent grade.

[2] Mininert Teflon sampling vials are available from Alltech Associates, Inc., 202 Campus Dr., Arlington Heights, IL 60004.

range 0 to 1, the photoreaction is inhibited by the synthetic humic water and Phase 3 does not apply. If R is in the range 1 to 2, the test chemical is marginally susceptable to indirect photolysis. In this case, Phase 3 studies are optional. If R is greater than 2, Phase 3 measurements are necessary to measure k_{pE} and to evaluate k_{IE}.

(vii) Since the rate of photolysis in tubes is faster than the rate in natural water bodies, values of near-surface photolysis rate constants in natural and pure water bodies, k_{pE} and k_{DE}, respectively, can be obtained from $(k_p)_{SHW}$ and $(k_p)_W$ from Equations 5 and 6:

Equation 5

$$k_{pE}=0.45(k_p)_{SHW}$$

Equation 6

$$k_{DE}=0.45(k_p)_W.$$

The factor 0.45 is an approximate geometric correction for scattered light in tubes versus horizontal surfaces. A rough value of k_{IE}, the rate constant for indirect photolysis in natural waters or SHW, can be estimated from the difference between k_{pE} and k_{DE} using Equation 7:

Equation 7

$$k_{IE}=k_{pE}-k_{DE}.$$

(3) *Criteria for Phase 2.* (i) If no loss of chemical is found in dark control solutions compared with the analysis in tubes at zero time (within experimental error), any loss of chemical in sunlight is assumed to be due to photolysis, and the procedure provides a valid estimate of k_{pE} and k_{DE}. Any loss of chemical in the dark-control solutions may indicate the intervention of some other loss process such as hydrolysis, microbial degradation, or volatilization. In this case, more detailed experiments are needed to trace the problem and if possible eliminate or minimize the source of loss.

(ii) Rate constants determined by the Phase 2 protocol depend upon latitude, season, and weather conditions. Note that $(k_p)_{SHW}$ and k_D values apply to round tubes and k_{pE} and k_{DE} values apply to a natural water body. Because both $(k_p)_{SHW}$ and k_D are measured under the same conditions the ratio $((k_p)_{SHW}/k_D)$ is a valid measure of the susceptibility of a chemical to indirect photolysis. However, since SHW is subject to photobleaching, $(k_p)_{SHW}$ will decrease with time because the indirect rate will diminish. Therefore, $R \leq 2$ is considered to be a conservative limit because $(k_p)_{SHW}$ will become systematically smaller with time.

(4) *Rationale.* The Phase 2 protocol is a simple procedure for evaluating direct and indirect sunlight photolysis rate constants of a chemical at a specific time of year and latitude. It provides a rough rate constant for the chemical in SHW that is necessary for Phase 3 testing. By comparison with the direct photoreaction rate constant, it can be seen whether the chemical is subject to indirect photoreaction and whether Phase 3 tests are necessary.

(5) *Scope and limitations.* (i) Phase 2 testing separates test chemicals into three convenient categories: "Photolabile", "photoinert", and those chemicals having sunlight half-lives in round tubes in the range of 1 hour to 50 days. Chemicals in the first two categories fall outside the practical limits of the test, and cannot be used in Phase 3. All other chemicals are suitable for Phase 3 testing.

(ii) The test procedure is simple and inexpensive, but does require that the chemical dissolve in water at sufficient concentrations to be measured by some analytical technique but not have appreciable absorbance in the range 290 to 825 nm. Phase 2 tests should be done during a clear-sky period to obtain the best results. Testing will be less accurate for chemicals with half-lives of less than 1 day because dramatic fluctuations in sunlight intensity can arise from transient weather conditions and the difficulty of assigning equivalent reaction times. Normal diurnal variations also affect the photolysis rate constant. Phase 3 tests should be started as soon as possible after the Phase 2 tests to ensure that the $(k_p)_{SHW}$ estimate remains valid.

(6) *Illustrative Example.* (i) Chemical A was dissolved in 0.010 M pH 7.0 buffer. The solution was filtered through a 0.2)m filter, air saturated, and analyzed. It contained 1.7×10^{-5} M A, five-fold less than its water solubility of 8.5×10^{-5} M at 25°C. A uv spectrum (1-cm path length) versus buffer blank showed no absorbance greater than 0.05 in the wavelength interval 290 to 825 nm, a condition required for the Phase 2 protocol. The 180 mL mixture was diluted by the addition of 20 mL of SHW stock solution.

(ii) The SHW solution of A was photolyzed in sealed quartz tubes (12×100 mm) in the fall season starting on October 1. At the end of 1 and 2 days, respectively, the concentration of A was found to be 1.13×10^{-5} M and 0.92×10^{-5} M compared to unchanged dark controls (1.53×10^{-5} M).

(iii) The tube photolysis rate constant of chemical A was calculated from Equation 2 under paragraph (c)(2)(vi)(B) of this section. The first time point at day 1 was used because the fraction of A remaining was in the range 20 to 80 percent:

$$(k_p)_{SHW}=(1/1d)Pn(1.53\times10^{-5}/1.13\times10^{-5})$$
$$(k_p)_{SHW}=0.30\ d^{-1}.$$

(iv) From this value, k_{pE} was found to be $0.14\ d^{-1}$ using equation 5 under paragraph (c)(2)(vii) of this section:

$$k_{pE}=0.45(0.30\ d^{-1})=0.14d^{-1}.$$

(v) From measurements in pure water, k_D for chemical A was found to be $0.085\ d^{-1}$. Because the ratio of $(k_p)_{SHW}/k_D$ (=3.5) is greater than 2, Phase 3 experiments were started.

(d) *Phase 3—Indirect photoreaction with actinometer: Calculation of* k_{IE} *and* k_{pE}—(1) *Introduction and purpose.*

(i) The purpose of Phase 3 is to measure k_{Io}, the indirect photolysis rate constant in tubes, and then to calculate k_{pE} for the test chemical in a natural water. If the approximate $(k_p)_{SHW}$ determined in Phase 2 is not significantly greater than k_D measured for the experiment date of Phase 2, then Phase 3 is unnecessary because the test chemical is not subject to indirect photoreaction.

(ii) In the case $(k_p)_{SHW}$ is significantly larger than k_D, Phase 3 is necessary. The rate constant $(k_p)_{SHW}$ is used to choose an actinometer composition that matches the actinometer rate to the test chemical rate. Test chemical solutions in SHW and in pure water buffer are then irradiated in sunlight in parallel with actinometer solutions, all in tubes.

(iii) The actinometer used is the *p*-nitroacetophenone-pyridine (PNAP/PYR) system developed by Dulin and Mill (1982) under paragraph (f)(5) of this section and is used in two EPA test guidelines (USEPA (1984) under paragraphs (f) (14) and (15) of this section). By varying the pyridine concentration, the PNAP photolysis half-life can be adjusted over a range of several hours to several weeks. The starting PNAP concentration is held constant.

(iv) SHW is subject to photobleaching that decreases its ability to promote indirect photolysis based on its ability to absorb sunlight. This effect will be significant when the test period exceeds a few days. To correct for photobleaching, tubes containing SHW are irradiated in action to the other tubes above.

(v) At any time, the loss of test chemical is given by Equation 8 assuming actinometric correctio ı to constant light flux:

Equation 8

$$-(d[C]/dt)=k_I[C]+k_D[C].$$

(vi) The indirect photolysis rate constant, k_I, is actually time dependent because SHW photobleaches; the rate constant k_I, after pre-aging, obeys the formula:

Equation 9

$$k_I = k_{Io} \exp(-kt),$$

in which k_{Io} is the initial indirect photoreaction rate constant and k is the SHW photobleaching rate constant. After substituting equation 9 for k_I in Equation 8 under paragraph (d)(1)(v) of this section, and rearranging, one obtains

$$-(d[C]/[C] = k_{Io}[\exp(-kt)]dt + k_D dt.$$

This expression is integrated to give Equation 10:

Equation 10

$$Pn(C_o/C)_{SHW} = (k_{Io}/k)[1-\exp)-kt)] + k_D t.$$

The term (k_{Io}/k) can now be evaluated. Since in pure water, $Pn(C_o/C)_W = k_D t$, then subtracting this equation from Equation 10 gives

Equation 11

$$Pn(C_o/C)_{SHW} - Pn(c_o/C)_W = (k_{Io}/k)[1-\exp(-kt)].$$

The photobleaching fraction, [1-exp(-kt)], is equivalent to the expression $[1-(A_{370}/A^{\circ}_{370})]$, where A°_{370} and A_{370} are the absorbances at 370 nm, and are proportional to humic sensitizer content at times zero and t. Therefore, (k_{Io}/k) is derived from the slope of a linear regression using $[Pn(C_o/C)_{SHW} - Pn(C_o/C)_W]$ as the dependent variable and $[1-(A_{370}/A^{\circ}_{370})_{SHW}]$ as the independent variable.

(vii) To evaluate k_{Io}, the parameter k has to be evaluated under standard sunlight conditions. Therefore, the photolysis rate constant for the PNAP/PYR actinometer (k_A) is used to evaluate k by linear regression on Equation 12:

Equation 12

$$Pn(A^{\circ}_{370}/A_{370}) = (k/k_A)Pn(C_o/C)_{PNAP},$$

where the slope is (k/k_A) and the value of k_A is calculated from the concentration of pyridine and the absorption of light by PNAP: $k_A = 2.2(0.0169)[PYR]k_a$. Values of k_a are listed in the following Table 1.

TABLE 1.—DAY AVERAGED RATE CONSTANT (k_a) [1] FOR SUNLIGHT ABSORPTION BY PNAP AS A FUNCTION OF SEASON AND DECADIC LATITUDE [2]

Latitude	Season			
	Spring	Summer	Fall	Winter
20°N	515	551	409	327
30°N	483	551	333	232
40°N	431	532	245	139
50°N	362	496	154	64

[1] $k_a = @\ e_{za} L_a$ in the units of day $^{-1}$, (Mill et al. (1982) under paragraph (f)(10) of this section).
[2] For use in Equation 15 under paragraph (d)(2)(i) of this section.

The value of k_{Io} is then given by Equation 13:

Equation 13

$$k_{Io} = (k_{Io}/k)(k/k_A)k_A.$$

(viii) To obtain k_D, determine the ratio (k_D/k_A) from a linear regression of $Pn(C_o/C)_W$ versus $Pn(C_o/C)_{PNAP}$ according to Equation 13a:

Equation 13a

$$Pn(C_o/C)_W = (k_D/k_A)Pn(C_o/C)_{PNAP}.$$

The slope is (k_D/k_A), and k_D is obtained by multiplication of this slope with the known value of k_A: i.e., $k_D = (k_D/k_A)k_A$.

(ix) Then, $(k_p)_{SHW}$ values in SHW are determined by summing k_D and K_{Io} as follows:

Equation 14

$$(k_p)_{SHW} = k_{Io} + k_D.$$

(x) Finally, k_{pE} is calculated from the precise relationship, Equation 5a:

Equation 5a

$$k_{pE} = 0.455(k_p)_{SHW}.$$

(2) *Procedure.* (i) Using the test chemical photoreaction rate constant in round tubes, $(k_p)_{SHW}$ determined in Phase 2 under paragraph (c) of this section, and the absorption rate constant, k_a found in Table 1, under paragraph (d)(1)(vii) of this section, calculate the molar pyridine concentration required by the PNAP/PYR actinometer using Equation 15:

Equation 15

$$[PYR]/M = 26.9[(k_p)_{SHW}/k_a].$$

This pyridine concentration makes the actinometer rate constant match the test chemical rate constant.

(A) The variable k_a $(= @\ e_{za} L_a)$ is equal to the day-averaged rate constant for sunlight absorption by PNAP (USEPA (1984) under paragraph (f)(14) of this section; Mill et al. (1982) under paragraph (f)(10) of this section, Zepp and Cline (1977) under paragraph (f)(19) of this section) which changes with season and latitude.

(B) The variable k_a is selected from Table 1 under paragraph (d)(1)(vii) of this section for the season nearest the mid-experiment date of Phase 2 studies and the decadic latitude nearest the experimental site.

(ii) Once [PYR] is determined, an actinometer solution is prepared by adding 1.00 mL of 1.0×10^{-2} M (0.165 gms/100 mL) PNAP stock solution (in CH_3CN solvent) and the required volume, V, of PYR to a 1 liter volumetric flask. The flask is then filled with distilled water to give 1 liter of solution. The volume V can be calculated from Equation 16:

Equation 16

$$V/mL = [PYR]/0.0124.$$

The PNAP/PYR solutions should be wrapped with aluminum foil and kept out of bright light after preparation.

(iii) The following solutions should be prepared and individually added in 6.000 mL aliquots to 12/100 mm quartz sample tubes; 8 tubes should be filled with each solution:

(A) PNAP/PYR actinometer solution.

(B) Test chemical in pH 7.0, 0.010 M phosphate buffer.

(C) Test chemcial in pH 7.0, 0.010 M phosphate buffer/SHW.

(D) pH 7.0, 0.010 M phosphate buffer/SHW. Four tubes of each set are wrapped in foil and used as controls.

(iv) The tubes are placed in the photolysis rack (Phase 2, Procedure) at 0900 hours on day zero, with the controls taped to the bottom of the rack. One tube of each composition is removed, along with their respective controls, according to a schedule found in Table 2, which categorizes sampling times on the basis of $(k_p)_{SHW}$ determined in Phase 1.

TABLE 2.—CATEGORY AND SAMPLING PROCEDURE FOR TEST AND ACTINOMETRY SOLUTIONS

Category	k_p (d^{-1})$_{SHW}$	Sampling procedure
A	5.5 J K_p J 0.69	Sample at 0, 1, 2, 4, and 8h.
B	0.69<k_p J 0.017	Sample at 0, 1, 2, 4, and 8d.
C	0.17<k_p J 0.043	Sample at 0, 4, 8, 16, and 32d.

(v) The tubes containing PNAP, test chemical, and their controls are analyzed for residual concentrations soon after the end of the experiment. PNAP is conveniently analyzed by HPLC, using a 30 cm C_{18} reverse column and a uv detector set at 280 nm. The

mobile phase is 2 percent acetic acid, 50 percent acetonitrile and 48 percent water (2 mL/min flow rate). Tubes containing only SHW (solution D) should be analyzed by absorption spectroscopy at 370 nm after storage at 4°C in the dark. The absorbance range to be measured is 0.05 to 0.01 AU (1 cm).

(vi) If controls are well-behaved and show no significant loss of chemical or absorbance change, then k_t can be calculated. In tabular form (see Table 4 under paragraph (d)(6)(iii)(A) of this section) arrange the quantities $Pn(C_o/C_t)_{SHW}$, $Pn(C_o/C_t)_W$, $[1-(A_{370}/A^o_{370})]$, $Pn(A^o_{370}/A_{370})$, and $Pn(C_o/C)_{PNAP}$ in order of increasing time. According to Equation 11 under paragraph (d)(1)(vi) of this section in the form of Equation 17,

Equation 17

$$Pn(C_o/C)_{SHW} - Pn(C_o/C)_W = (k_{Io}/k)[1-(A_{370}/A^o_{370})],$$

plot the quantities $[Pn(C_o/C_t)_{SHW} - Pn(C_o/C_t)_W]$ versus the independent variable $[1-(A_{370}/A^o_{370})]$. Obtain the slope (S1) by least square linear regression. Under the assumptions of the protocol, $S1=(k_{Io}/k)$.

(vii) According to Equation 12 under paragraph (d)(1)(vii) of this section, plot the quantities $Pn(A^o_{370}/A_{370})$ versus the independent variable $Pn(C_o/C_t)_{PNAP}$. Obtain the slope (S2) by least squares linear regression on Equation 12 under paragraph (d)(1)(vii) of this section. Under the assumptions of the protocol, $S2=(k/k_A)$.

(viii) Then, using Equation 13a under paragraph (d)(1)(vii) of this section, determine the slope (S3) by least squares linear regression. Under the assumptions of the protocol, S3 is equal to (k_D/k_A).

(ix) From Equation 18

Equation 18

$$k_A = 0.0372[PYR]k_a,$$

calculate k_A using k_a values found in Table 1 under paragraph (d)(1)(vii) of this section. The value of k_a chosen must correspond to the date closest to the mid-experiment date and latitude closest to that of the experimental site.

(x) The indirect photoreaction rate constant, k_{Io}, is determined using Equation 19,

Equation 19

$$k_{Io} = (S1)(k_A)(S2),$$

by incorporating the quantities k_A, S1, and S2 determined as described in paragraphs (d)(2) (ix), (vi), and (vii) of this section, respectively.

(xi) The rate constant k_D is calculated from Equation 20,

Equation 20

$$k_D = (S3)(k_A),$$

using the quantities S3 and k_A determined as described above.

(xii) Then, $(k_p)_{SHW}$ is obtained by summing k_D and k_{Io}, as described by Equation 14 in paragraph (d)(1)(ix) of this section:

Equation 14

$$(k_c)_{SHW} = k_{Io} + k_D.$$

(xiii) Finally, k_{pE} is obtained by multiplying $(k_p)_{SNW}$ by the factor 0.455, as described by Equation 5a in paragraph (d)(1)(x) of this section:

Equation 5a

$$k_{pE} = 0.455\ (k_p)_{SHW}$$

As determined, k_{pE} is the net environmental photoreaction rate constant. It applies to clear sky conditions and is valid for predicting surface photoreaction rates in an average humic containing freshwater body. It is strictly valid only for the experimental latitude and season.

(3) *Criteria for Phase 3.* As in Phase 2, Phase 3 tests are assumed valid if the dark controls are well behaved and show no significant loss of chemical. In such a case, loss of test chemical in irradiated samples is due to photoreaction.

(4) *Rationale.* Simultaneous irradiation of a test chemical and actinometer provide a means of evaluating sunlight intensities during the reaction period. Parallel irradiation of SHW solutions allows evaluation of the extent of photobleaching and loss of sensitizing ability of the natural water.

(5) *Scope and limitations of Phase 3 protocol.* Test chemicals that are classified as having half-lives in SHW in the range of 1 hour to 50 days in Phase 2 listing are suitable for use in Phase 3 testing. Such chemicals have photoreaction half-lives in a range accommodated by the PNAP/PYR actinometry in sunlight and also accommodate the persistence of SHW in sunlight.

(6) *Illustrative example.* (i) From Phase 2 testing, under paragraph (c)(6)(iii) of this section, chemical A was found to have a photolysis rate constant, $(k_p)_{SHW}$, of 0.30 d^{-1} in fall in round tubes at latitude 33°N. Using Table 1 under paragraph (d)(1)(vii) of this section for 30°N, the nearest decadic latitude, a fall value of k_a equal to 333 d^{-1} is found for PNAP. Substitution of $(k_p)_{SHW}$ and k_a into Equation 15 under paragraph (d)(2)(i) of this section gives [PYR] = 0.0242 M. This is the concentration of pyridine that gives an actinometer rate constant of 0.30 d^{-1} in round tubes in fall at this latitude.

(ii) The actinometer solution was made up by adding a volume of pyridine (1.95 mL) calculated from equation 16 under paragraph (d)(2)(ii) of this section to a 1 liter volumetric flask containing 1.00 mL of 1.00×10^{-2} M PNAP in acetonitrile. The flask was filled to the mark with distilled water to give final concentrations of [PYR] = 0.0242 M and [PNAP] = 1.00×10^{-5} M. Ten tubes of each of the following solutions were placed in the photolysis rack at 1,200 hours on day zero:

(A) Chemical A (1.53×10^{-5}M) in standard SHW (0.010 M, pH 7 phosphate buffer).

(B) Chemical A (1.53×10^{-5}), in 0.010 M, pH 7 phosphate buffer.

(C) SHW standard solution diluted with water 0.90 to 1.00 to match solution A.

(D) PNAP/PYR actinometer solution. Ten additional foil-wrapped controls of each mixture were taped to the bottom of the rack.

(iii) The test chemical had been placed in category B, Table 2 under the paragraph (d)(2)(iv) of this section, on the basis of its Phase 2 rate constant under paragraph (c) of this section. Accordingly, two tubes of each irradiated solution and two tubes of each blank solution were removed at 0, 1, 2, 4, and 8 days at 1,200 hours. The averaged analytical results obtained at the end of the experiment are shown in the following Table 3.

TABLE 3.—CHEMICAL ANALYTICAL RESULTS FOR ILLUSTRATIVE EXAMPLE, PHASE 3

Day	$10^6[C]^{SHW}$, M	$10^6[C]^W$, M	A^{SHW}_{370}	10^5 [PNAP], M
0	1.53	1.53	0.0500	1.00
1	1.03	1.40	0.0470	0.810
2	0.760	1.30	0.0440	0.690
4	0.300	1.01	0.0370	0.380
8	0.130	0.800	0.0320	0.220

Data for solutions A through D are given in column 2 through 5, respectively. No significant chemical loss was found in the dark controls.

(A) From these items the functions $Pn(C_o/C)_{SNW}$' $Pn(C_o/C)_W$' $[1-(A_{370}/A°_{370})_{SNW}]$, $Pn[A°_{370}/A_{370}]$, and $Pn[C_o/C]_{PNAP}$ were calculated, as shown in the following Table 4 which was derived from Table 3 under paragraph (d)(6)(iii) of this section:

TABLE 4.—PHOTOREACTION FUNCTION FOR ILLUSTRATIVE EXAMPLES, PHASE 3, DERIVED FROM TABLE 3

Day	$Pn(C_o/C)_{SHW}$	$Pn(C_o/C)_W$	$1-(A_{370}/A°_{370})$	$Pn(A°_{370}/A_{370})$	$Pn(C_o/C)_{PNAP}$
0	0	0	0	0	0
1	0.396	0.0888	0.0600	0.0618	0.211
2	0.700	0.163	0.120	0.128	0.371
4	1.629	0.415	0.260	0.301	0.968
8	2.465	0.648	0.360	0.446	1.514

(B) Slope $S1=(k_{1o}/k)$ was calculated according to Equation 17 under paragraph (d)(2)(vi) of this section and was found to be 4.96 by a least squares regression with a correlation coefficient equal to 0.9980. The following Figure 1 shows a plot of Equation 17 under paragraph (d)(2)(vi) of this section and its best-fit line.

(C) Slope $S2=(k/k_a)$ was also derived from Table 4 under paragraph (d)(6)(iii)(A) of this section by a fit of $Pn(A_{o370}/A_{370})_{SHW}$ and $Pn(C_o/C)_{PNAP}$ to Equation 12 under paragraph (d)(1)(vii) of this section. This plot is displayed in the following Figure 2; the slope S2 was found to be 0.295 and the correlation coefficient was equal to 0.9986.

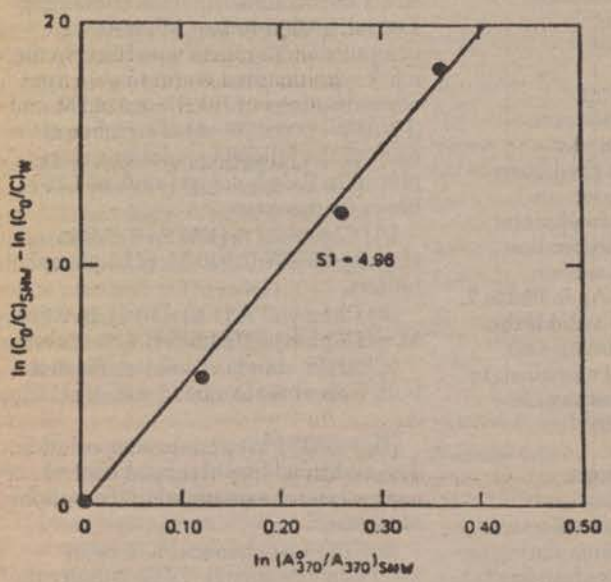

Figure 1.—Graphic determination of $S1=(k_{1o}/k)$ based on Equation 17 under paragraph (d)(2)(vi) of this section.

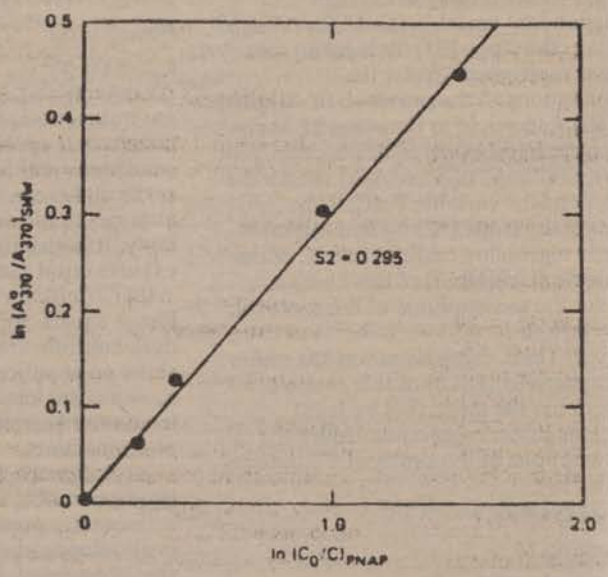

Figure 2.—Graphic determination of $S2=(k/k_A)$ based on Equation 12 under paragraph (d)(1)(vii) of this section.

(D) Using the data in columns 3 and 6 in Table 4 under paragraph (d)(6)(iii)(A) of this section, slope S3 was calculated by regression from Equation 13a under paragraph (d)(1)(viii) of this section and was found to be 0.428 with correlation coefficient euqal to 0.99997.

(E) Using Equation 18 under paragraph (d)(2)(ix) of this section, k_A was found to be $=0.300\ d^{-1}$.

(F) The values of S1, S2, and k_A were then combined in Equation 19 under paragraph (d)(2)(x) of this section to give k_{1o} as follows:

Equation 19

$$k_{1o}=(4.96)(0.300)(0.295)=0.439\ d^{-1}.$$

(G) The rate constant k_D was calculated from the product of S3 and k_A as expressed in Equation 20 under paragraph (d)(2)(xi) of this section as follows:

Equation 20

$$k_D=(0.428)(0.300)=0.128 d^{-1}.$$

(H) The sum of k_D and k_{1o} was multiplied by 0.455 to obtain k_{pE} as follows:

Equation 21

$$k_{pE}=(0.455)(0.439+0.128)d^{-1}=0.258 d^{-1}.$$

(I) Since k_{pE} is a first-order rate constant, the half-life, $t_{1/2E}$, is given by Equation 22:

Equation 22

$$t_{1/2E}=0.693/k_{pE}.$$

Substituting the value of k_{pE} from Equation 21 under paragraph (d)(6)(iii)(H) of this section in Equation 22 yielded

Equation 23

$$t_{1/2E}=0.693/0.258 d^{-1}=2.7 d.$$

(e) *Data and reporting*—(1) *Test conditions*—(i) *Specific analytical and recovery procedures.* (A) Provide a detailed description or reference for the analytical procedures used, including the calibration data and precision.

(B) If extraction methods were used to separate the solute from the aqueous solution, provide a description of the extraction method as well as the recovery data.

(ii) *Other test conditions.* (A) Report the site and latitude where the photolysis experiments were carried out.

(B) Report the dates of photolysis, weather conditions, times of exposure, and the duration of exposure.

(C) If acetonitrile was used to solubilize the test chemical, report the volume percent.

(D) If a significant loss of test chemical occurred in the control solutions for pure water and SHW, indicate the causes and how they were eliminated or minimized.

(2) *Test data report*—(i) Phase 2 Screening Test under paragraph (c) of this section. (A) Report the initial molar concentration of test chemical, C_o, in pure water and SHW for each replicate and the mean value.

(B) Report the molar concentration of test chemical, C_t, in pure water and SHW for each replicate and the mean value for each time point t.

(C) Report the molar concentration of test chemical for each replicate control sample and the mean value for each time point.

(D) Report the values of $(k_p)_{SHW}$ and $(k_p)_W$ for the time point t in which the fraction of test chemical photoreacted is in the range 20 to 80 percent.

(E) If small losses of test chemical were observed in SHW and pure water, report a first-order rate constant loss, $(k_p)_{loss}$. Calculate and report $(k_p)_{obs}$ for SHW and/or pure water. Calculate and report the corrected first-order rate constant for SHW and/or pure water using the relationship expressed in Equation 24:

Equation 24

$$k_p=(k_p)_{obs}-(k_p)_{loss}.$$

(F) Report the value of R calculated from Equation 4 under paragraph (c)(2)(vi)(D)(*4*) of this section.

(G) Report the values of k_{pE} and k_{DE} obtained from Equations 5 and 6, respectively under paragraph (c)(2)(vii) of this section; report the corresponding half-life calculated from Equation 22 under paragraph (d)(6)(iii)(I) of this section.

(ii) Phase 3—Indirect photoreaction with actino-meter. (A) Report the initial molar concentration of test chemical, C_o, in pure water and in SHW for each replicate and the mean value.

(B) Report the initial absorbance A^o_{370} of the SNW solution.

(C) Report the initial molar concentration of PNAP of each replicate and the mean value in the actinometer. Report the concentration of phyridine used in the actinometer which was obtained from Equation 15 under paragraph (d)(2)(i) of this section.

(D) Report the time and date the photolysis experiments were started, the time and date the experiments were completed, and the elapsed photolysis time in days.

(E) For each time point t, report the separate values of the absorbance of the SHW solution, and the mean values.

(F) For each time point for the controls, report the separate values of the molar concentrations of test chemical in pure water and SHW, and the absorbance of the SHW solution, and the mean values.

(G) Tabulate and report the following date: t, $[C]^{SHW}$, $[C]^W$, $A^{SNW}{}_{370}$, [PNAP].

(H) From the data in (G), tabulate and report the following data: t, $Pn(C_o/C)_{SNW}$, $Pn(C_o/C)_W$, $[1-(A_{370}/A^o_{370})SNW]$, $Pn(A^o_{370}/A_{370})$, $Pn(C_o/C)_{PNAP}$.

(I) From the linear regression analysis of the appropriate date in step (H) in Equation 17 under paragraph (d)(2)(vi) of this section, report the slope S1 and the correlation coefficient.

(J) From the linear regression analysis of the appropriate date in step (H) in Equation 12 under paragraph (d)(1)(vii) of this section, report the slope S2 and the correlation coefficient.

(K) From the linear regression analysis of the appropriate data in step (H) in Equation 13a under paragraph (d)(1)(viii) of this section, report the slope S3 and the correlation coefficient.

(L) If loss of chemical was observed during photolysis in pure water and SHW, then report the data $Pn(C_o/C)_{corr}$, $Pn(C_o/C)_{obs}$, $Pn(C_o/C)_{loss}$ as described in paragraph (e)(2)(E) of this section. Repeat steps (H), (I), (J), (K) where applicable and report S1, S2, S3 and the corresponding correlation coefficients.

(M) Report the value of the actinometer rate constant obtained from Equation 18 under paragraph (d)(2)(ix) of this section.

(N) Report the value of k_{1o} obtained from Equation 19 under paragraph (d)(2)(x) of this section.

(O) Report the value of k_D obtained from Equation 20 under paragraph (d)(2)(xi) of this section.

(P) Report the value of $(k_{pE})_{SHW}$, obtained from Equation 14 under paragraph (d)(1)(ix) of this section, and the value of k_{pE} obtained from Equation 5a under paragraph (d)(1)(x) of this section.

(Q) Report the half-life, $t_{1/2E}$, obtained from Equation 22 under paragraph (d)(6)(iii)(I) of this section.

(f) *References.* For additional background information on this test guideline the following references should be consulted.

(1) Cooper W.J., Zika R.G. "Photochemical formation of hydrogen peroxide in surface and ground waters

exposed to sunlight." *Science*, 220:711. (1983).

(2) Draper W.M., Crosby D.G. "The photochemical generation of hydrogen peroxide in natural waters." *Archives of Environmental Contamination and Toxicology*, 12:121. (1983).

(3) Draper, W.M. and Crosby D.G. "Solar photooxidation of pesticides in dilute hydrogen peroxide." *Journal of Agricultural and Food Chemistry*, 32:231. (1984).

(4) Draper W.M., Crosby D.G. "Hydrogen peroxide and hydroxyl radical: Intermediates in indirect photolysis reactions in water." *Journal of Agricultural and Food Chemistry*, 29:699. (1981).

(5) Dulin D., Mill T. "Development and evaluation of sunlight actinometers." *Environmental Science and Technology*, 6:815. (1982).

(6) Haag H.R., Hoigne J., Gassman E., Braun A.M. "Singlet oxygen in surface waters—Part I; Furfuryl alcohol as a trapping agent." *Chemosphere*, 13:631. (1984).

(7) Haag W.R., Hoigne J., Gassman E., Braun A.M. "Singlet oxygen in surface waters—Part II: Quantum yields of its production by some natural humic materials as a function of wavelength." *Chemosphere*, 13:641. (1984).

(8) Mill T., Winterle J.S., Fischer A., Tse D., Mabey W.R., Drossman H., Liu A., Davenport J.E. Toxic substances process data generation and protocol development. Work assignment 12, test standard development. "Section 3. Indirect photolysis." Draft final report. EPA Contract No. 68–03–2981. Environmental Research Laboratory, Office of Research and Development, EPA, Athens, GA, and Office of Toxic Substances, EPA, Washington, DC. (1984).

(9) Mill T., Mabey W.R., Bomberger D.C., Chou T.W., Hendry D.G., Smith J.H. "Laboratory protocols for evaluating the fate of organic chemicals in air and water. Chapter 3. Photolysis in water. Chapter 4. Oxidation in water." EPA 600/3–82–022. Environmental Research Laboratory, Office of Research and Development, EPA, Athens, GA. (1981).

(10) Mill T., Mabey W.R., Winterle J.S., Davenport J.E., Barich V.P., Dulin D.E., Tse D.S., Lee G. "Design and validation of screening and detailed methods for environmental processes. Apendix C. Lower-tier direct photolysis protocol." Draft final report. EPA Contract No. 68–01–6325. Office of Toxic Substances, EPA, Washington, DC. (1982).

(11) Mill T., Davenport J.E., Winterle J.S., Mabey W.R., Dossman H., Tse D., Liu A. Toxic substances process data generation and protocol development. Work assignment 12. "Appendix B. Upper-tier protocol for direct photolysis in water." Draft final report. EPA Contract No. 68–03–2981. Environmental Research Laboratory, Office of Research and Development, EPA, Athens, GA, and Office of Toxic Substances, EPA, Washington, DC. (July 1983).

(12) Winterle J.S., Mill T. Toxic substances process data generation and protocol development. Work assignment 18. "Indirect photoreaction protocol." Draft EPA special report. EPA Contract No. 68–03–2981. Environmental Research Laboratory, Office of Research and Development, EPA, Athens, GA and Office of Toxic Substances, EPA, Washington, DC. (1985).

(13) Mill T., Hendry D.G., Richardson H. "Free radical oxidants in natural waters." *Science*, 207:886. (1980).

(14) U.S. Environmental Protection Agency (USEPA), Office of Toxic Substances (OTS). "Chemical fate test guidelines. Test guideline (CG, CS–6000). Photolysis in aqueous solution." EPA–560/6–84–003. NTIS publication PB–84–233287. (1984).

(15) USEPA, OTS. "Chemical fate test guidelines. Test guildeline (CG, CS–6010). Laboratory determination of the direct photolysis reaction quantum yield in aqueous solution and sunlight photolysis." EPA–560/6–84–003. NTIS publication PB–84–233287. (1984).

(16) Wolff C.J.M., Halmans M.T.H., Van der Heijde H.B. "The formation of singlet oxygen in surface waters." *Chemosphere*, 10:59. (1981).

(17) Zepp R.G., Baughman G.L., Schlotzhauer P.F. "Comparison of photochemical behavior of various humic substances in water: I. Sunlight induced reactions of aquatic pollutants photosensitized by humic substances." *Chemosphere*, 10:109. (1981).

(18) Zepp R.G., Baughman G.L., Schlozhauer P.F. "Comparison of photochemical behavior of various humic substances in water: II. Photosensitized oxygenations." *Chemosphere*, 10:119. (1981).

(19) Zepp R.G., Cline D.M. "Rates of direct photolysis in aquatic environments." *Environmental Science and Technology*, 11:359. (1977).

(20) Zepp, R.G., Wolfe N.L., Baughman G.L., Hollis R.C. "Singlet oxygen in natural waters." *Nature*, 267:421. (1977).

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2. In Part 799:

PART 799—[AMENDED]

a. The authority citation continues to read as follows:

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

b. Section 799.2475 is added, to read as follows:

§ 799.2475 2-Mercaptobenzothiazole.

(a) *Identification of test substance.* (1) 2-Mercaptobenzothiazole (MBT, CAS No. 149–30–4) shall be tested in accordance with this section.

(2) MBT of at least 98 percent purity shall be used as the test substance.

(b) *Persons required to submit study plans, conduct tests, and submit data.* All persons who manufacture (including byproduct manufacture, and import of MBT and MBT-containing articles) or process or intend to manufacture or process MBT, other than as an impurity, after October 21, 1988, to the end of the reimbursement period shall submit letters of intent to conduct testing, submit study plans, conduct tests, and submit data, or submit exemption applications as specified in this section, Subpart A of this Part, and Parts 790 and 792 of this chapter for single-phase rulemaking.

(c) *Chemical fate*—(1) *Aerobic aquatic biodegradation*—(i) *Required testing.* Aerobic aquatic biodegradation testing shall be conducted with MBT in accordance with § 796.3100 of this chapter.

(ii) *Reporting requirements.* (A) The aerobic aquatic biodegradation test shall be completed and the final report submitted to EPA within 12 months of the effective date of the final rule.

(B) An interim progress report shall be submitted to EPA 6 months after the effective date of the final rule.

(2) *Indirect photolysis-screening level test*—(i) *Required testing.* Indirect photolysis testing shall be conducted with MBT in accordance with § 795.70 of this chapter.

(ii) *Reporting requirements.* (A) The indirect photolysis test shall be completed and the final report submitted to EPA within 12 months of the effective date of the final rule.

(B) An interim progress report shall be submitted to EPA 6 months after the effective date of the final rule.

(3) *Chemical mobility*—(i) *Required testing.* Chemical mobility testing shall be conducted with MBT in accordance with § 796.2750 of this chapter.

(ii) *Reporting requirements.* (A) The chemical mobility test shall be completed and the final report submitted to EPA within 12 months of the effective date of the final rule.

(B) An interim progress report shall be submitted to EPA 6 months after the effective date of this final rule

(d) *Environmental effects*—(1) *Fish chronic toxicity*—(i) *Required testing.* (A) Chronic toxicity testing of MBT shall be conducted using rainbow trout (*Salmo gairdneri*) according to § 797.1600 of this chapter except for the provisions in paragraph (c)(6)(iv)(A) of § 797.1600.

(B) For the purpose of this section, the following provisions also apply:

(*1*) *Test substance measurement.* Prior to addition of the test substance to the dilution water, it is recommended that the test substance stock solution be analyzed to verify the concentration. After addition of the test substance, the concentration of test substance shall be measured in the test substance delivery chamber prior to beginning, and during, the test. The concentration of test substance should also be measured at the beginning of the test in each test concentration (including both replicates) and control(s), and at least once a week thereafter. Equal aliquots of test solution may be removed from each replicate chamber and pooled for analysis. If a malfunction in the delivery system is discovered, water samples shall be taken from the affected test chambers immediately and analyzed.

(*2*) *pH.* It is recommended that a pH of 7 be maintained in the test chambers.

(*3*) *Reporting.* An analysis of the stability of the stock solution for the duration of the test shall be reported.

(ii) *Reporting requirements.* (A) The fish chronic toxicity test shall be completed and the final report submitted to EPA within 12 months of the effective date of the final rule.

(B) An interim progress report shall be submitted to EPA 6 months after the effective date of the final rule.

(2) *Daphnid chronic toxicity*—(i) *Required testing.* (A) Daphnid chronic toxicity testing shall be conducted with MBT using *Daphnia magna* according to § 797.1330 of this chapter.

(B) For the purposes of this section, the following provisions also apply:

(*1*) *Test substance measurement.* Test substance concentration shall be measured in the test substance delivery chamber prior to beginning, and during, the test.

(*2*) *pH.* It is recommended that a pH of 7 be maintained in the test chambers.

(*3*) *Reporting.* An analysis of the stability of the stock solution for the duration of the test shall be reported.

(ii) *Reporting requirements.* (A) The daphnid chronic toxicity test shall be completed and the final report submitted to EPA within 12 months of the effective date of the final rule.

(B) An interim progress report shall be submitted to EPA 6 months after the effective date of the final rule.

(e) *Health effects*—(1) *Developmental toxicity testing*—(i) *Required testing.* Developmental toxicity testing shall be conducted in two mammalian species with MBT in accordance with § 798.4900 of this chapter, using the oral route of administration.

(ii) *Reporting requirements.* (A) The developmental toxicity test shall be completed and the final report submitted to EPA within 12 months of the effective date of the final rule.

(B) An interim progress report shall be submitted to EPA 6 months after the effective date of the final rule.

(2) *Reproductive toxicity*—(i) *Required testing.* Reproductive toxicity testing shall be conducted with MBT in accordance with § 798.4700 of this chapter, using the oral route of administration.

(ii) *Reporting requirements.* (A) The reproductive test shall be completed and the final report submitted to EPA within 29 months of the effective date of the final rule.

(B) Progress reports shall be submitted to EPA at 6-month intervals beginning 6 months after the effective date of the final rule until submission of the final report.

(3) *Neurotoxicity*—(i) *Required testing.* (A)(*1*) An acute and subchronic functional observation battery shall be conducted with MBT in accordance with § 798.6050 of this chapter except for the provisions in paragraphs (d)(5) and (6) of § 798.6050.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Duration and frequency of exposure.* For acute study, animals shall be administered MBT over a period not to exceed 24 hours. For subchronic study, animals shall be dosed daily for at least 90 days.

(*ii*) *Route of exposure.* Animals shall be exposed to MBT orally.

(B)(*1*) An acute and subchronic motor activity test shall be conducted with MBT in accordance with § 798.6200 of this chapter except for the provisions in paragraphs (d)(5) and (6) of § 798.6200.

(*2*) For the purpose of this section the following provisions also apply:

(*i*) *Duration and frequency of exposure.* For acute study, animals shall be administered over a period not to exceed 24 hours. For subchronic study, animals shall be dosed daily for at least 90 days.

(*ii*) *Route of exposure.* Animals shall be exposed to MBT orally.

(C)(*1*) A subchronic neuropathology test shall be conducted with MBT in accordance with § 798.6400 of this chapter except for the provisions in paragraphs (d)(5) and (6) of § 798.6400.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Duration and frequency of exposure.* Animals shall be dosed daily for at least 90 days.

(*ii*) *Route of exposure.* Animals shall be exposed to MBT orally.

(*ii*) *Reporting requirements.* (A) The functional observation battery, motor activity, and neuropathology tests shall be completed and the final reports for each test submitted to EPA within 12 months of the effective date of the final rule.

(B) A progress report shall be submitted to EPA for the functional observation battery, motor activity, and neuropathology tests, respectively, 6 months after the effective date of the final rule.

(4) *Mutagenic effects—Chromosomal aberrations*—(i) *Required testing.* (A) A dominant lethal assay shall be conducted with MBT in accordance with § 798.5450 of this chapter, using the oral of administration.

(B) A heritable translocation assay shall be conducted with MBT in accordance with the test guideline specified in § 798.5460 of this chapter if MBT produces a positive result in the dominant lethal assay conducted pursuant to paragraph (e)(4)(i)(A) of this section and if, after a public program review, EPA issues a **Federal Register** notice or sends a certified letter to the test sponsor specifying that the testing shall be initiated.

(ii) *Reporting requirements.* (A) Mutagenic effects—Chromosomal aberration testing of MBT shall be completed and the final report submitted to EPA as follows: Dominant lethal assay, within 12 months after the effective date of this rule; heritable translocation assay, within 24 months after notification under paragraph (e)(4)(i)(B) of this section that the testing shall be initiated.

(B) For the dominant lethal assay, an interim progress report shall be submitted to EPA 6 months after the effective date of the final rule; for the heritable translocation assay, progress reports shall be submitted to EPA at 6-month intervals beginning 6 months after the date of EPA's notification of the test sponsor that testing shall be initiated until submission of the final report.

(f) *Effective date.* (1) The effective date of this final rule is October 21, 1988.

(2) The guidelines and other test methods cited in this section are referenced here as they exist on October 21, 1988.

[Information collection requirements have been approved by the Office of Management and Budget under Control Number 2070–0033].

[FR Doc. 88–20124 Filed 9–6–88; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 1, 2, 4, 6, 30, 31, 32, 35, 42, 46, 50, 67, 69, 70, 71, 90, 91, 93, 98, 107, 110, 150, 151, 153, 154, 154a, 159, 160, 161, 162, 164, 170, 171, 172, 188, 189, and 401

[CGD 88–070]

Editorial Changes Reflecting Recent Coast Guard Reorganization

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This document corrects titles, telephone numbers and addresses of various Coast Guard offices and units and makes minor editorial changes. This action is necessary to reflect recent restructuring of Coast Guard headquarters offices and field organizations. These changes will make it easier for those persons affected by the regulations to contact the appropriate Coast Guard officials.

EFFECTIVE DATE: September 7, 1988.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Don M. Wrye, Office of Chief Counsel, (202) 267–1534.

SUPPLEMENTARY INFORMATION: Recently the Coast Guard undertook a major restructuring of its internal organization. This reorganization caused the disestablishment of certain headquarters offices, the establishment of others, and the transfer of selected responsibilities between certain offices. Additionally, the Third and Twelfth Coast Guard Districts have been disestablished and their respective responsibilities absorbed by other Districts. Because of these changes, many titles, telephone numbers and addresses in existing regulations need to be updated. The purpose of this document is to update those titles, telephone numbers, and addresses and to make other minor editorial changes. In accordance with 5 U.S.C. 553(b), a notice of proposed rulemaking was not published for these regulations. This rule merely updates Coast Guard office titles, telephone numbers, and addresses and deletes references to certain disestablished units contained in Title 46 CFR. Therefore, the Coast Guard finds that notice and opportunity for public comment is unnecessary. Further, since the organizational changes have already been implemented, good cause exists under 5 U.S.C. 553(d) for making these regulations effective upon publication.

Regulatory Evaluation

This final rule is considered to be non-major under Executive Order 12291 and non-significant under the DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. This rulemaking merely updates Coast Guard office titles, telephone numbers, and addresses. There is no substantive change to current Coast Guard regulations. Accordingly, the Coast Guard certifies that this final rule will have no significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rulemaking contains no new information collection or recordkeeping requirements.

Environmental Assessment

The Coast Guard has considered the environmental impact of this rulemaking and concluded that, under section 2.B.2.C of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

46 CFR Part 1

Administrative practice and procedure, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

46 CFR Part 2

Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 4

Administrative practice and procedure, Alcohol abuse, Drug abuse, Investigations, Marine Safety, Nuclear vessels, Radiation protection, Reporting and recordkeeping requirements.

46 CFR Part 6

Navigation (water), Reporting and recordkeeping requirements, Vessels.

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 31

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 32

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Seamen.

46 CFR Part 35

Cargo vessels, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 42

Penalties, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 46

Passenger vessels, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 50

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 67

Vessels.

46 CFR Part 69

Measurement standards, reporting and recordkeeping requirements, Vessels.

46 CFR Part 70

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 71

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 90

Cargo Vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 91

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 93

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 98

Cargo vessels, Hazardous materials, Marine safety, Water pollution control.

46 CFR Part 107

Marine safety, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 110

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 150

Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 151

Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 153

Administrative practice and procedure, Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 154

Cargo vessels, Gases, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 154a

Cargo vessels, Gases, Harbors, Hazardous materials transportation, Marine safety.

46 CFR Part 159

Business and industry, Laboratories, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 160

Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 161

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 162

Fire prevention, Marine safety, Oil pollution, Reporting and recordkeeping requirements.

46 CFR Part 164

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 170

Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 171

Marine safety, Passenger vessels.

46 CFR Part 172

Cargo vessels, Hazardous materials transportation, Marine safety.

46 CFR Part 188

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

46 CFR Part 189

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

46 CFR Part 401

Administrative practice and procedure, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

This document is issued under the authority of 14 U.S.C. 633.

In consideration of the foregoing, the Coast Guard amends Title 46 of the Code of Federal Regulations as set forth below.

PART 1—[AMENDED]

§ 1.01 [Amended]

1. In § 1.01(b)(2), the words "Office of Operations" and "Recreational Boating Safety Division" are removed, and the words "Office of Navigation Safety and Waterway Services" and "Auxiliary, Boating and Consumer Affairs Division", respectively, are added in their place.

§ 1.05 [Amended]

2. In § 1.05(a) (1) and (2), the words "Operations Division" are removed, and the words "Boating Safety Division" are added in their place.

PART 2—[AMENDED]

Subpart 2.45—[Amended]

3. In § 2.45–20(a), the word "(M)" and zip code "20226" are removed, and the word "(G–MVI)" and zip code "20593–0001", respectively, are added in their place.

Subpart 2.75—[Amended]

4. In § 2.75–1(c) the words "Merchant Marine Safety" are removed, and the words "Marine Safety, Security and Environmental Protection" are added in their place.

5. In § 2.75–1(d), the word "(G–M)" is removed, and the word "(G–MVI)" is added in its place.

6. In § 2.75–5(a), the words "Merchant Marine Safety" are removed, and the words "Marine Safety, Security and Environmental Protection" are added in their place.

7. In § 2.75–10(b), the word "(G–M)" amd zip code "20593" are removed, and the word "(G–MVI)" and zip code "20593–0001", respectively, are added in their place.

8. In § 2.75–15(a), the word "(G–M)" is removed, and the word "(G–MVI)" is added in its place.

9. In § 2.75–17(d)(1), the word "(G–M)" and zip code "20593" are removed, and the word "(G–MVI)" and zip code "20593–0001", respectively, are added in their place.

PART 4—[AMENDED]

Subpart 4.05—[Amended]

10. In § 4.05–20, the word "lightship" is removed.

PART 6—[AMENDED]

§ 6.06 [Amended]

11. In the heading and in paragraph (a), the introductory text of paragraph (b), and paragraph (d) of § 6.06, the words "Sea Transportation Service" are removed, and the words "Sealift Command" are added in their place.

12. In the introductory text of paragraph (b) of § 6.06, the words "Commandant, U.S. Coast Guard, Washington, D.C." are removed, and the words "Commandant (G–MVI), U.S. Coast Guard, Washington, DC 20593–0001" are added in their place.

13. In paragraph (d) of § 6.06, the word "(MVI)" is removed, and the word "(G–MVI)" are added in their place.

PART 30—[AMENDED]

Subpart 30.10—[Amended]

14. In § 30.10–35, the zip code, "20591" is removed, and the zip code "20593–0001" is added in its place.

PART 31—[AMENDED]

Subpart 31.10—[Amended]

15. In § 31.10–1(b), the words, "45 Broad Street, New York, N.Y. 10004" and "Commandant (M), U.S. Coast Guard, Washington, D.C. 20591" are removed and the words "45 Eisenhower Drive, Paramus, NJ 07654" and "Commandant (G–M), U.S. Coast Guard, Washington, DC 20593–0001", respectively, are added in their place.

16. In § 31.10–33(a)(2), the zip code "20593" is removed, and the zip code "20593–0001" is added in its place.

PART 32—[AMENDED]

Subpart 32.53—[Amended]

17 In paragraphs (a), (d), and (e) of § 32.53–3, the words "Chief, Office of Merchant Marine Safety" are removed, and the words "Chief, Office of Marine Safety, Security and Environmental Protection" are added in their place.

18. In paragraph (b) of § 32.53–3, the zip code "20593" is removed, and the zip code "20593–0001" is added in its place.

PART 35—[AMENDED]

Subpart 35.20—[Amended]

19. In § 35.20–1(c), the numbers "3d," and "12th" are removed.

PART 42—[AMENDED]

Subpart 42.05—[Amended]

20. In § 42.05–20, the words "Department of Transportation" are removed; the zip code "20591" is removed, and the zip code "20593–0001" is added in its place.

PART 46—[AMENDED]

Subpart 46.10—[Amended]

21. In § 46.10–10(d), the words "Commandant, U.S. Coast Guard, Washington, D.C. 20591" are removed, and the words "Commandant (G–M), U.S. Coast Guard, Washington, DC 20593–0001" are added in their place.

22. In § 46.10–20(a), the zip code "20591" is removed, and the zip code "20593–0001" is added in its place.

23. In § 46.10–30(a), the words "Washington, DC 20591," are removed.

PART 50—[AMENDED]

Subpart 50.10—[Amended]

24. In § 50.10–20, the zip code "20591" is removed, and the zip code "20593–0001" is added in its place.

Subpart 50.15—[Amended]

25. In § 50.15–60(b), the words "Merchant Marine" are removed, and the words "Marine Safety" are added in their place.

Subpart 50.20—[Amended]

26. In § 50.20–5(c), the zip code "20593" is removed, and the zip code "20593–0001" is added in its place.

PART 69—[AMENDED]

Subpart 69.01—[Amended]

27. In § 69.01–11(b), the words "All vessels measured under the Optional Simplified Measurement Method after May 1, 1987, and all" are removed; the words "Commandant (C–MVI–5/SM), U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593–0001 (202) 267–1105" are removed, and the words, "Commandant (G–MVI), U.S. Coast Guard, Washington DC 20593–0001" are added in their place.

28. In § 69.01–17(b), the word "(C–MVI)" is removed, and the word "(G–MVI)" is added in its place.

PART 70—[AMENDED]

Subpart 70.35—[Amended]

29. In § 70.35–5, the words "45 Broad Street, New York, N.Y., 10004" and the zip code "20591" are removed, and the words "45 Eisenhower Drive, Paramus, NJ 07654" and the zip code "20593–0001", respectively, are added in their place.

PART 71—[AMENDED]

Subpart 71.65—[Amended]

30. In § 71.65–15(a)(2), the zip code "20593" is removed, and the zip code "20593–0001" is added in its place.

PART 90—[AMENDED]

Subpart 90.10—[Amended]

31. In § 90.10–14, the words "Department of Transportation" are removed; the zip code "20591" is removed, and the zip code "20593–0001" is added in its place.

Subpart 90.35—[Amended]

32. In § 90.35–5, the words "45 Broad Street, New York, N.Y., 10004", the word "(M)", and the zip code "20591" are removed, and the words "45 Eisenhower Drive, Paramus, NJ 07654", the word "(G–M)", and the zip code "20593–0001", respectively, are added in their place.

PART 91—[AMENDED]

Subpart 91.55—[Amended]

33. In § 91.55–15(a)(2), the zip code "20593" is removed, and the zip code "20593–0001" is added in its place.

PART 93—[AMENDED]

Subpart 93.20—[Amended]

34. In § 93.20–05(a), the words "Commandant (G–M/82), U.S. Coast Guard, 400 Seventh Street, SW., Washington, D.C. 20590" are removed, and the words "Commandant (G–M), U.S. Coast Guard, Washington, DC 20593–0001" are added in their place.

PART 98—[AMENDED]

Subpart 98.35—[Amended]

35. In § 98.35–7(a), the zip code "20593" is removed, and the zip code "20593–0001" is added in its place.

36. In § 98.35–7(b), the words "field technical offices" are removed, and the words "Commanding Officer, U.S. Coast Guard, Marine Safety Center, Washington, DC 20593–0100" are added in their place. Paragraphs (b)(1), (b)(2), and (b)(3) in § 98.35–7 are removed.

PART 107—[AMENDED]

Subpart A—[Amended]

37. In § 107.111, in the definition of "Headquarters", the zip code "20590" is removed, and the zip code "20593–0001" is added in its place.

38. In § 107.115(b)(1), the words "45 Broad Street New York, New York 10004" are removed, and the words "45 Eisenhower Drive, Paramus, NJ 07654" are added in their place.

39. In § 107.117(a), the word "(G–MVI/83)" and zip code "20590" are removed, and the word "(G–MVI)" and zip code "20593–0001", respectively, are added in their place.

40. In § 107.117(b), the zip code "20593" is removed, and the zip code "20593–0001" is added in its place.

PART 110—[AMENDED]

Subpart 110.25—[Amended]

41. In § 110.25–3(a)(1), the words "2100 Second Street, S.W., Washington, D.C. 20593" are removed, and the words "Washington, DC 20593–0100" are added in their place.

42. In § 110.25–3(a)(3), the words "2100 Second Street, S.W., Washington, D.C. 20593" are removed, and the words "Washington, DC 20593–0001" are added in their place.

PART 150—[AMENDED]

Subpart A—[Amended]

43. In footnote 1 to Table I, the words "2100 Second Street, SW.," are removed.

44. In footnote 1 to Table II, the words "2100 Second Street, SW.," are removed.

45. In Step 3 of Appendix III, the words "2100 Second Street, SW., Washington, D.C. 20593" are removed, and the words "Washington, DC 20593–0001" are added in their place.

PART 151—[AMENDED]

Subpart 151.03—[Amended]

46. In § 151.03–31, the zip code "20593" is removed, and the zip code "20593–0001" is added in its place.

PART 153—[AMENDED]

Subpart A—[Amended]

47. In § 153.2, in the definition of "Commandant", the zip code "20593" is removed, and the zip code "20593–0001" is added in its place.

48. In § 153.9, in the introductory text of paragraphs (a) and (b), and in paragraph (c)(1), the words "Commandant (G–MTH)" are removed, and the words "Commanding Officer, U.S. Coast Guard, Marine Safety Center, Washington, DC 20593–0001" are added in their place.

PART 154—[AMENDED]

Subpart A—[Amended]

49. In § 154.1(a), the words "the U.S. Coast Guard, Marine Technical and Hazardous Materials Division," are removed, and the words "Commandant (G–MTH), U.S. Coast Guard," are added in their place.

50. In § 154.22(a), the words "Commandant (G–MTH), U.S. Coast Guard, Washington, DC 20593–0001" are removed, and the words "Commanding Officer, U.S. Coast Guard, Marine Safety Center, Washington, DC 20593–0100" are added in their place.

PART 154a—[AMENDED]

Annex A—[Amended]

51. In paragraph 2 of Annex A, the zip code "20593" is removed, and the zip code "20593–0001" is added in its place.

PART 159—[AMENDED]

Subpart 159.001—[Amended]

52. In § 159.001–5, the zip code "20593" is removed, and the zip code "20593–0001" is added in its place.

PART 160—[AMENDED]

Subpart 160.001—[Amended]

53. In § 160.001–1(d), the words "(G–MMT–3/83)" and zip code "20593" are removed, and the words "(G–MVI)" and zip code "20593–0001", respectively, are added in their place.

54. In § 160.001–3(a), the words ", Washington, D.C. 20590" are removed.

Subpart 160.002—[Amended]

55. In § 160.002–1(c), the word "Commandant" and zip code "20590" are removed, and the word "Commandant (G–MVI)" and zip code "20593–0001", respectively, are added in their place.

56. In § 160.002–7(a), the words ", Washington, D.C. 20590" are removed.

Subpart 160.005—[Amended]

57. In § 160.005–1(c), the words ", Washington, D.C. 20590" are removed.

58. In § 160.005–7(a), the words ", Washington, D.C." are removed.

Subpart 160.013—[Amended]

59. In § 160.013–1(c), the words ", Washington, D.C. 20226" are removed.

Subpart 160.021—[Amended]

60. In § 160.021–9(b), the zip code "20593" is removed, and the zip code "20593–0001" is added in its place.

Subpart 160.022—[Amended]

61. In § 160.022–1(c), the zip code "20593" is removed, and the zip code "20593–0001" is added in its place.

62. In § 160.022–9(b), the zip code "20593" is removed, and the zip code "20593–0001" is added in its place.

Subpart 160.023—[Amended]

63. In § 160.023–9(b), the word "(G–MUI)" and zip code "20593" are removed, and the word "(G–MVI)" and the zip code "20593–0001", respectively, are added in their place.

Subpart 160.024—[Amended]

64. In § 160.024–9(b), the zip code "20593" is removed, and the zip code "20593–0001", is added in its place.

Subpart 160.026—[Amended]

65. In § 160.026–7(a), the words ", Washington, D.C. 20226" are removed.

Subpart 160.028—[Amended]

66. In § 160.028–9(b), the zip code "20593" is removed, and the zip code "20593–0001", is added in its place.

Subpart 160.031—[Amended]

67. In § 160.031–7(b), the zip code "20593" is removed, and the zip code "20593–0001", is added in its place.

Subpart 160.033—[Amended]

68. In § 160.033–1(b), the word "Commandant" and zip code "20226" are removed, and the word "Commandant (G–MVI)" and zip code "20593–0001", respectively, are added in their place.

Subpart 160.034—[Amended]

69. In § 160.034–1(b), the word "Commandant" and zip code "20226" are removed, and the word "Commandant (G–MVI)" and zip code "20593–0001", respectively, are added in their place.

Subpart 160.036—[Amended]

70. In § 160.036–9(b), the zip code "20593" is removed, and the zip code "20593–0001", is added in its place.

Subpart 160.037—[Amended]

71. In § 160.037–1(c), the zip code "20593" is removed, and the zip code "20593–0001", is added in its place.

72. In § 160.037–9(b), the zip code "20593" is removed, and the zip code "20593–0001", is added in its place.

Subpart 160.040—[Amended]

73. In § 160.040–9(b), the zip code "20593" is removed, and the zip code "20593–0001", is added in its place.

Subpart 160.044—[Amended]

74. In § 160.044–6(a), the words ", Washington, D.C., 20226" are removed.

Subpart 160.047—[Amended]

75. In § 160.047–1(c)(1), the word "(G–MTH)" and zip code "20593" are removed, and the word "(G–MVI)" and zip code "20593–0001", respectively, are added in their place.

Subpart 160.049—[Amended]

76. In § 160.049–1(c), the words ", Washington, D.C. 20591" are removed.

Subpart 160.050—[Amended]

77. In § 160.050–1(b), the zip code "20590" is removed, and the zip code "20593–0001", is added in its place.

78. In § 160.050–7(a), the words ", Washington, D.C., 20593" is removed.

Subpart 160.051—[Amended]

79. In § 160.051–9(a), the words ", Washington, D.C. 20593" are removed.

Subpart 160.052—[Amended]

80. In § 160.052–1(c)(1), the word "(G–MTH)" and zip code "20593" are removed, and the word "(G–MVI)" and zip code "20593–0001", respectively, are added in their place.

Subpart 160.053—[Amended]

81. In § 160.053–6(a), the words ", Washington, D.C., 20226" are removed.

Subpart 160.054—[Amended]

82. In § 160.054–1(b), the word "Commandant" and zip code "20226" are removed, and the word "Commandant (G–MVI)" and zip code "20593–0001", respectively, are added in their place.

83. In § 160.054–7(a), the words ", Washington, D.C., 20226" are removed.

Subpart 160.055—[Amended]

84. In § 160.055–1(c), the word "Commandant" and zip code "20590" are removed, and the word "Commandant (G–MVI)" and zip code "20593–0001", respectively, are added in their place.

85. In § 160.055–9(a), the words ", Washington, D.C. 20590" are removed.

Subpart 160.057—[Amended]

86. In § 160.057–1(c), the zip code "20593" is removed, and the zip code "20593–0001" is added in its place.

87. In § 160.057–9(b), the zip code "20593" is removed, and the zip code "20593–0001" is added in its place.

Subpart 160.060—[Amended]

88. In § 160.060–1(c)(1), the word "(G–MTH)" and zip code "20593" are removed, and the word "(G–MVI)" and zip code "20593–0001", respectively, are added in their place.

89. In § 160.060–3(f), the words "(C–MVI)" and "(C–MVI)" are removed, and the words "(G–MVI)" and "(G–MVI)", respectively, are added in their place.

Subpart 160.061—[Amended]

90. In § 160.061–7(a), the words ", Washington, D.C., 20226" are removed.

Subpart 160.062—[Amended]

91. In § 160.062–6(a), the words ", Washington, D.C., 20591" are removed.

Subpart 160.066—[Amended]

92. In § 160.066–18(b), the zip code "20593" is removed, and the zip code "20593–0001" is added in its place.

Subpart 160.072—[Amended]

93. In § 160.072–9(a), the word "(G–BBT/TP42)" is removed, and the word "(G–MVI)" is added in its place.

Subpart 160.073—[Amended]

94. In § 160.073–5(b), the word "(G–MVI–3)" and zip code "20593" are removed, and the word "(G–MVI)" and zip code "20593–0001", respectively, are added in their place.

Subpart 160.077—[Amended]

95. In § 160.077–3, paragraph (a) is revised to read as follows:

§ 160.077–3 Definitions

(a) "Commandant (G–MVI)" means the Chief of the Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security and Environmental Protection, U.S. Coast Guard. Address: Commandant (G–MVI), U.S. Coast Guard, Washington, DC 20593–0001. Telephone: (202) 267–1444.

* * * * *

PART 161—[AMENDED]

Subpart 161.002—[Amended]

96. In § 161.002–1(c), the words "Commandant, U.S. Coast Guard Headquarters, Washington, D.C. 20226" are removed, and the words "Commandant (G–MTH), U.S. Coast Guard, Washington, DC 20593–0001" are added in their place.

Subpart 161.004—[Amended]

97. In § 161.004–1(d), the word "Commandant" and zip code "20226" are removed, and the word "Commandant (G–MTH)" and zip code "20593–0001", respectively, are added in their place.

98. In § 161.004–7(a), the zip code "20593" is removed, and the zip code "20593–0001" is added in its place.

Subpart 161.010—[Amended]

99. In § 161.010–7(a), the word "Commandant" and zip code "20593" are removed, and the word "Commandant (G–MTH)" and zip code "20593–0001", respectively, are added in their place.

100. In § 161.010–7(c), the words "Commandant, U.S. Coast Guard, 1300 E Street NW., Washington, DC 20593" are removed, and the word "Commandant (G–MTH), U.S. Coast Guard, Washington, DC 20593–0001", are added in their place.

Subpart 161.012—[Amended]

101. In § 161.012–5(a), the word "(G–MMT–3/83)" and zip code "20590" are removed, and the word "(G–MVI)" and zip code "20593–0001", respectively, are added in their place.

Subpart 161.013—[Amended]

102. In § 161.013–11(c)(1), the word "(G–BBT/TP42)" and zip code "20591" are removed, and the word "(G–MTH)" and zip code "20593–0001", respectively, are added in their place.

103. In § 161.013–17(a), the word "(G–BBT/TP42)" and zip code "20591" are removed, and the word "(G–MTH)" and zip code "20593–0001", respectively, are added in their place.

PART 162—[AMENDED]

Subpart 162.016—[Amended]

104. In § 162.016–6(a), the word "Commandant" and zip code "20226" are removed, and the word "Commandant (G–MTH)" and zip code "20593–0001", respectively, are added in their place.

Subpart 162.017—[Amended]

105. In § 162.017–6(a), the zip code "20593" is removed, and the zip code "20593–0001" is added in its place.

Subpart 162.018—[Amended]

106. In § 162.018–8(a), the word "(MMT)" and zip code "20591" are removed, and the word "(G–MTH)" and zip code "20593–0001", respectively, are added in their place.

Subpart 162.027—[Amended]

107. In § 162.027–6(a), the words "Commandant, U.S. Coast Guard, Washington, D.C." are removed, and the words "Commandant (G–MVI), U.S. Coast Guard," are added in their place.

Subpart 162.041—[Amended]

108. In § 162.041–7(a), the words "Commandant, U.S. Coast Guard, Washington, D.C. 20226" are removed, and the words "Commandant (G–MTH), U.S. Coast Guard," are added in their place.

Subpart 162.042—[Amended]

109. In §162.042–7(a), the words "Commandant, U.S. Coast Guard, Washington, D.C. 20226" are removed, and the words "Commandant (G–MTH),

U.S. Coast Guard," are added in their place.

Subpart 162.043—[Amended]

110. In § 164.043–7(a), the words "Commandant, U.S. Coast Guard, Washington, D.C. 20226" are removed, and the words "Commandant (G–MTH), U.S. Coast Guard," are added in their place.

Subpart 162.050—[Amended]

111. In § 162.050–7(a), the zip code "20593" is removed, and the zip code "20593–0001" is added in its place.

112. In § 162.050–15, in paragraphs (a) and (h), the zip code "20593" is removed, and the zip code "20593–0001" is added in its place.

PART 164—[AMENDED]

Subpart 164.007—[Amended]

113. In § 164.007(c)(1), the zip code "20593" is removed, and the zip code "20593–001" is added in its place.

Subpart 164.008—[Amended]

114. In § 164.008–1(c)(1), the zip code "20593" is removed, and the zip code "20593–0001" is added in its place.

Subpart 164.009—[Amended]

115. In § 164.009–9(a), the zip code "20593" is removed, and the zip code "20593–0001" is added in its place.

Subpart 164.012—[Amended]

116. In § 164.012–1(b), the words "Commandant, U.S. Coast Guard Headquarters, Washington, D.C. 20226" are removed, and the words "Commandant (G–MVI), U.S. Coast Guard, Washington, DC 20593–0001" are added in their place.

Subpart 164.018—[Amended]

117. In § 164.018–7(a), the zip code "20593" is removed, and the zip code "20593–0001" is added in its place.

PART 170—[AMENDED]

Subpart A—[Amended]

118. In § 170.010, the words "Commander, Merchant Marine Technical Office" are removed, and the words "Commanding Officer, Marine Safety Center" are added in their place.

119. In § 170.015(a), the words "Office of Merchant Marine Safety (G–MTH–5/13), Room 1308, U.S. Coast Guard Headquarters Building, 2100 Second Street SW., Washington, D.C. 20593" are removed, and the words "Marine Safety Center, 2100 Second Street SW., Washington, DC 20593–0100" are added in their place.

Subpart B—[Amended]

120. In § 170.050(a), the words "Commander, Merchant Marine Technical Office (Commander (mmt))" are removed, and the words "Commanding Officer, Marine Safety Center (CO, MSC)" are added in their place.

Subpart C—[Amended]

121. In § 170.080, the words "Commander (mmt)" are removed, and the words "Commanding Officer, Marine Safety Center" are added in their place.

122. In § 170.085, the words "Commander (mmt)" are removed, and the words "Commanding Officer, Marine Safety Center" are added in their place.

123. In § 170.093, the words "Commander (mmt)" are removed, and the words "Commanding Officer, Marine Safety Center" are added in their place.

Subpart D—[Amended]

124. In § 170.110(b), the words "Commander (mmt)" are removed, and the words "Commanding Officer, Marine Safety Center" are added in their place.

Subpart E—[Amended]

125. In § 170.170, in paragraphs (b) and (d), the words "Commander (mmt)" are removed, and the words "Commanding Officer, Marine Safety Center" are added in their place.

Subpart F—[Amended]

126. In § 170.185(b), the words "Commander (mmt)" are removed, and the words "Commanding Officer, Marine Safety Center" are added in their place.

Subpart G—[Amended]

127. In § 170.235(b), the words "Commander (mmt)" are removed, and the words "Commanding Officer, Marine Safety Center" are added in their place.

Subpart H—[Amended]

128. In § 170.275(c), the words "Commander (mmt)" are removed, and the words "Commanding Officer, Marine Safety Center" are added in their place.

PART 171—[AMENDED]

Subpart B—[Amended]

129. In § 171.035(h), the words "Commander (mmt)" are removed, and the words "Commanding Officer, Marine Safety Center" are added in their place.

Subpart C—[Amended]

130. In § 171.066, in the introductory text of paragraph (b), and in paragraphs (b)(4) and (c), the words "Commander (mmt)" are removed, and the words "Commanding Officer, Marine Safety Center" are added in their place.

131. In § 171.068, in the introductory text of paragraph (b), and in paragraph (c), the words "Commander (mmt)" are removed, and the words "Commanding Officer, Marine Safety Center" are added in their place.

132. In § 171.080, in paragraphs (c), (d)(1)(ii), (e)(1)(i), and (e)(3), the words "Commander (mmt)" are removed, and the words "Commanding Officer, Marine Safety Center" are added in their place.

Subpart D—[Amended]

133. In § 171.090(c), the words "Commander (mmt)" are removed, and the words "Commanding Officer, Marine Safety Center" are added in their place.

134. In § 171.015, paragraphs (g)(2) and (h)(1), the words "Commander (mmt)" are removed, and the words "Commanding Officer, Marine Safety Center" are added in their place.

Subpart F—[Amended]

135. In § 171.116(f)(1), the words "Commander (mmt)" are removed, and the words "Commanding Officer, Marine Safety Center" are added in their place.

136. In § 171.118, in paragraphs (a) and (b), the words "Commander (mmt)" are removed, and the words "Commanding Officer, Marine Safety Center" are added in their place.

PART 172—[AMENDED]

Subpart F—[Amended]

137. In § 172.150(b)(2), the words "Commander (mmt)" are removed, and the words "Commanding Officer, Marine Safety Center" are added in their place.

PART 188—[AMENDED]

Subpart 188.10—[Amended]

138. In § 188.10–33, the zip code "20951" is removed, and the zip code "20593–0001" is added in its place.

Subpart 188.35—[Amended]

139. In § 188.35–5(a), the words "45 Broad Street, New York, NY 10004" are removed, and the words "45 Eisenhower Drive, Paramus, N.J. 07654" are added in their place.

140. In § 188.35–5(b), the words "Commandant (M), U.S. Coast Guard, Washington, D.C." are removed, and the words "Commandant (G–MVI), U.S. Coast Guard, Washington, DC 20593–0001" are added in their place.

PART 189—[AMENDED]

Subpart 189.55—[Amended]

141. In § 189.55–15(a)(2), the zip code "20593" is removed, and the zip code "20593–0001" is added in its place.

142. In § 189.55–15(a)(3), the zip code "20593" is removed, and the zip code "20593–0100" is added in its place.

PART 401—[AMENDED]

Subpart A—[Amended]

143. In § 401.110(a)(2), the words "Commandant, U.S. Coast Guard, Department of Transportation, Washington, DC 20590" are removed, and the words "Commandant, U.S. Coast Guard, Washington, DC 20593–0001" are added in their place.

Joseph E. Vorbach,

Rear Admiral, U.S. Coast Guard, Chief Counsel.

August 30, 1988.

[FR Doc. 88–20180 Filed 9–6–88; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

Amendment of the Commission's Environmental Rules; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects the reference in the **Federal Register** publication, 53 FR 28393 (July 28, 1988), to the release date of the full text of the final rule (FCC 88–191), which amends the Commission's environmental rules. In addition, the burden disclosure notice required by 5 CFR 1320.21 was inadvertently omitted from the **Federal Register** publication in this matter.

DATE: The correct release date for the full text of the Order, Amendment of the Commission's Environmental Rules, is August 16, 1988.

FOR FURTHER INFORMATION CONTACT: A. Holly Berland, Federal Communications Commission, Washington, DC 20554 (202) 632–6990.

SUPPLEMENTARY INFORMATION: The following language should have been included in the "**SUPPLEMENTARY INFORMATION**" portion of the final rule: Public reporting burden for this collection of information is estimated to vary from one to 24 hours per response with an average of two hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Federal Communications Commission, Office of the Managing Director, Washington, DC 20554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–20207 Filed 9–6–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–538; RM–5872]

Radio Broadcasting Services; Searles Valley, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document deletes Channel 283A at Searles Valley, Califorina, in response to a request filed on behalf of Debra D. Carrigan, based on its lack of community status, as well as Federal Aviation Administration objections, which render the Class A channel incapable of providing a 70 dBu signal over the area. With this action, the proceeding is terminated.

EFFECTIVE DATE: October 14, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: .This is a summary of the Commission's Report and Order, MM Docket No. 87–538, adopted August 5, 1988, and released August 30, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under California, by removing Searles Valley, Channel 283A.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88–20211 Filed 9–6–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–472; RM–5936]

Radio Broadcasting Services; Cedar Key, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of BayMedia, Inc., allots Channel 274A to Cedar Key, Florida, as the community's first local FM service. Channel 274A can be allotted to Cedar Key in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 29–08–12 and West Longitude 83–02–06. With this action, this proceeding is terminated.

DATES: Effective October 17, 1988. The window period for filing applications will open on October 18, 1988, and close on November 17, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–472, adopted August 1, 1988, and released August 31, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Florida is revised by adding the following entry, Cedar Key, Channel 274A.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88–20204 Filed 9–6–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–596; RM–5975 and RM–6323]

Radio Broadcasting Services; El Dorado and Kingman, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 256C2 for Channel 257A at El Dorado, Kansas, in response to a petition for rule making filed by KIKZ, Inc. It also modifies the license of Station KBUZ(FM), to specify operation on Channel 256C2. The coordinates for Channel 256C2 at El Dorado are 37–48–47 and 96–48–44. In response to a counterproposal filed in this proceeding by Bliss Communications, permittee of Channel 257A at Kingman, Kansas, the Commission also allots Channel 262C2 to Kingman with a site restriction. In accordance with § 1.420(g) of the Rules, the construction permit of Bliss Communications for Channel 257A is modified to specify operation on Channel 262C2. The coordinates for Channel 262C2 at Kingman are 37–36–15 and 98–11–05. It was also noted that Channel 295C2 could have been allotted to Kingman with a site restriction. However, lacking a showing of interest for an additional channel at Kingman, the channel will not be allotted. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 17, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–596, adopted August 5, 1988, and released August 31, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended for Kansas, by removing Channel 257A and adding Channel 256C2 at El Dorado and by removing Channel 257A and adding Channel 262C2 at Kingman.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88–20202 Filed 9–6–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86–386; RM–5449 & RM–5645]

Radio Broadcasting Services; Kalkaska and Cadillac, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 248C2 for Channel 249A at Kalkaska, Michigan, as that community's first wide coverage area broadcast service, in response to a petition filed by Northern Radio of Michigan, Inc. We have authorized the modification of Station WKLT–FM's license to specify Channel 248C2 in lieu of Channel 249A. Concurrence of the Canadian government has been obtained for the allotment of Channel 248C2 at Kalkaska. The coordinates used for Channel 248C2 are 44–53–00 and 85–13–55. A counterproposal was filed in this proceeding by MacDonald Broadcasting Company requesting the substitution of FM Channel 247C2 for Channel 244A at Cadillac, Michigan and modification of the license for Station WEVZ to specify Channel 247C2. The counterproposal violated the Commission's spacing requirements and has been denied. Channel 247C2 at Cadillac was short spaced to Channel 249A and proposed Channel 248C2 at Kalkaska, Michigan. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 14, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–386, adopted August 5, 1988, and released August 30, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. In Section 73.202(b), the Table of FM Allotments is amended under Michigan by removing Channel 249A and adding Channel 248C2 at Kalkaska.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88–20208 Filed 9–6–88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-66; RM-6143; RM-6183]

Radio Broadcasting Services; Malone and Owls Head, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of North Country Broadcast Co., Inc., allots Channel 243A to Malone, New York, as the community's first local FM service. The Commission also denies the request of Timothy D. Martz seeking the allotment of Channel 242A to Owls Head, New York, having found that Owls Head is not a community for allotment purposes. Channel 243A can be allotted to Malone, without a site restriction, in compliance with the Commission's minimum distance separation requirements to all domestic allotments. This allotment is approximately 6 kilometers short-spaced to Station CKOI-FM, Channel 245C1, Verdun, Quebec, and approximately 24 kilometers short-spaced to unused and unapplied for Channel 243C1 at Trois Rivieres, Quebec, Canada. However, Canadian concurrence in the allotment as a specially negotiated short-spaced allotment has been received. The coordinates for this allotment are North Latitude 44-51-00 and West Longitude 74-17-42. With this action, this proceeding is terminated.

DATES: Effective October 17, 1988. The window period for filing applications will open on October 18, 1988, and close on November 17, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-66, adopted August 1, 1988, and released August 31, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for New York is revised by adding the following entry, Malone, Channel 243A.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88-20205 Filed 9-6-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-609; RM-6028]

Television Broadcasting Services; Grenada, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots UHF Television Channel 22+ to Grenada, Mississippi, in response to a petition filed by J. Boyd Ingram. Channel 22+ can be allotted to Grenada consistent with the Commission's spacing requirements provided there is a site restriction 20 kilometers (12.5 miles) northeast of the community. The coordinates for Channel 22+ are 33-54-59 and 89-40-28. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 17, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-609, adopted July 12, 1988, and released August 31, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

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

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

§ 73.606 [Amended]

2. In § 73.606(b), the Television Table of Allotments under Mississippi is amended by adding Channel 22+ at Grenada.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88-20206 Filed 9-6-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-42; RM-6139]

Television Broadcasting Services; Coos Bay, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of KMTR, Inc., allots Channel 23+ to Coos Bay, Oregon, as the community's first local television channel. Channel 23+ can be allotted to Coos Bay in compliance with the Commission's minimum distance separation requirements. However, any application which is filed for this channel which does not specify at least a 175 mile separation to Portland, Oregon, may not be accepted for filing if the Commission's freeze on such applications is still in effect. See *Order*, 52 FR 28346, July 29, 1987. The coordinates for this allotment are North Latitude 43-15-09 and West Longitude 124-15-52. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 17, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-42, adopted August 2, 1988, and released August 31, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

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

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

§ 73.606 [Amended]

2. Section 73.606(b), the Television Table of Allotments for Oregon is amended by adding the following entry, Coos Bay, Channel 23+.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88-20203 Filed 9-6-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-586; RM-6005]

Radio Broadcasting Services; Hutchinson, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 264A to Hutchinson, Kansas, in response to a petition filed by KWHK Broadcasting Co. Inc. Petitioner filed comments reaffirming its interest in the channel. No other comments were received. The coordinates for Channel 264A at Hutchinson are 38-04-54 and 97-55-42. With this action, this proceeding is terminated.

DATES: *Effective* October 14, 1988. The window period for filing applications will open on October 17, 1988, and close on November 16, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-586, adopted August 5, 1988, and released August 30, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kansas is amended by adding Channel 264A at Hutchinson.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88-20209 Filed 9-6-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-144; RM-6167]

Radio Broadcasting Services; Larned, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 295A to Larned, Kansas, in response to a petition filed by Thomas L. Higgins. The allotment could provide Larned with its second FM broadcast service. The coordinates for Channel 295A at Larned are 38-10-48 and 99-06-00. With this action, this proceeding is terminated.

DATES: Effective October 14, 1988. The window period for filing applications will open on October 17, 1988, and close on November 16, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-144, adopted August 5, 1988, and released August 30, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended under Kansas, by adding Channel 295A at Larned.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88-20212 Filed 9-6-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-64; RM-6184]

Radio Broadcasting Services; Bolivar and Ava, Mo

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 290C2 for Channel 292A at Bolivar, Missouri, in response to a petition filed by KYOO Broadcasting Company. We shall also modify the license of Station KYOO-FM to specify operation on Channel 290C2 in lieu of Channel 292A in accordance with § 1.420(g) of the Commission's Rules. The coordinates for Channel 290C2 are 37-25-40 and 93-13-40. To accommodate the substitution of channels at Bolivar, it is necessary to substitute Channel 222A for Channel 290A at Ava, Missouri. Channel 290A was allotted to Ava in MM Docket 84-231 and made available for application in Window Number 30. Corum Industries, Inc. is the applicant for Channel 290A at Ava (870910NI) and has filed a letter in which it agrees to the substitution of Channels, at coordinates 36-55-48 and 92-39-19. In accordance with Commission policy, we will retain applicant's filing protection for Channel 290A when it amends to specify Channel 222A since the class of channels are equivalent. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 26, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-64, adopted June 10, 1988, and released July 12, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments under Missouri is amended by removing Channel 292A and adding Channel 290C2 at Bolivar and by removing Channel 290A and adding Channel 222A at Ava.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division Mass Media Bureau.

Note: Due to an oversight, this action was not previously published. However, the concerned parties were notified of the action upon its release.

[FR Doc. 88-16144 Filed 9-6-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-284; RM-5794]

Radio Broadcasting Services; Reidsville, NC; Marion, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Beasley Broadcasting of Reidsville, North Carolina, Inc., substitutes Channel 271C for Channel 271C1 at Reidsville, North Carolina, and modifies its license for Station WWMO(FM) to specify operation on the higher powered channel. In addition, the Commission modifies the license of Emerald Sound, Inc. for Station WOLD-FM at Marion, Virginia, to specify operation on Channel 273A in lieu of its present Channel 272A. Channel 271C can be allotted to Reidsville in compliance with the Commission's minimum distance separation requirements with a site restriction of 26.4 kilometers (16.4 miles) west to accommodate the site specified in its pending construction permit. The coordinates for this allotment are North Latitude 36-16-30 and West Longitude 79-56-34. Channel 273A can be allotted to Marion in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.4 kilometers (4.6 miles) north northwest to accommodate relocation of Station WOLD-FM to Walker Mountain. The coordinates for this allotment are North Latitude 36-54-05 and West Longitude 81-32-30. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 13, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-284, adopted August 5, 1988, and released August 29, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Reidsville, North Carolina is revised by removing Channel 271C1 and adding Channel 271C. The FM Table of Allotments for Marion, Virginia is amended by removing Channel 272A and adding Channel 273A.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88-20096 Filed 9-6-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket Nos. 87-73; RM-4961, RM-5411, RM-5286, RM-5421, RM-5291, RM-5488, RM-5314, RM-5508, RM-5339, RM-5615, RM-5381, RM-5985, RM-5984, RM-5983, RM-5986, RM-5981 and RM-5980]

Radio Broadcasting Services; Benton, AR, et al.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document is a consolidated notice of rulemaking. The FCC is amending regulations on radio broadcast services in the following locations: Vinita, Oklahoma, Sallisaw, Oklahoma, Kilgore, Texas, Huntsville, Arkansas, Harrison, Arkansas, Benton, Arkansas, El Dorado, Arkansas, Mena, Arkansas, Clarksville, Arkansas, Sherwood, Arkansas, Homer, Louisiana. In taking these actions, it was necessary for the Commission to deny proposed upgrades in channel at Ozark, Arkansas, Hooks, Texas, Dardanelle, Arkansas, Hampton, Arkansas, and El Dorado, Arkansas. With this action, this proceeding is terminated.

DATES: Effective September 23, 1988. The window period for filing applications on Channel 242C1 at Mena, Arkansas, Channel 263A at Clarksville, Arkansas, and Channel 294C2 at Homer, Louisiana, will open on September 26, 1988, and close on October 26, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This document substitutes Channel 241C2 in lieu of Channel 240A at Vinita, Oklahoma and modifies the license of Station KITO, Vinita, Oklahoma, to specify operation on Channel 241C2; substitutes Channel 240C2 in lieu of Channel 240A at Sallisaw, Oklahoma, and modifies the license of Station KKID, Sallisaw, Oklahoma to specify operation on Channel 240C2; substitutes Channel 241C2 in lieu of Channel 240A at Kilgore, Texas, and modifies the license of Station KKTX, Kilgore, Texas, to specify operation on Channel 241C2; substitutes Channel 225A in lieu of Channel 240A at Huntsville, Arkansas, and modifies the license of Station KRRA, Huntsville, Arkansas, to specify operation on Channel 225A; substitutes Channel 241C2 in lieu of Channel 244A at Harrison, Arkansas, and modifies the license of Station KCWD, Harrison, Arkansas, to specify operation on Channel 241C2; substitutes Channel 294C2 in lieu of Channel 296A at Benton, Arkansas, and modifies the license of Station KAKI, Benton, Arkansas, to specify operation on Channel 294C2; and substitutes Channel 241C1 in lieu of Channel 240A at El Dorado, Arkansas, and modifies the license of Station KIXK, El Dorado, Arkansas, to specify operation on Channel 241C1 subject to the outcome of an appeal to the United States Court of Appeals for the District of Columbia Circuit. *See James Reeder v. F.C.C. and USA*, Case No. 86-1045. In addition, this *Report and Order* also allots channel 242C1 to Mena, Arkansas, Channel 263A to Clarksville, Arkansas, Channel 271A to Sherwood, Arkansas, and Channel 294C2 to Homer, Louisiana. In taking these actions, it was necessary for the Commission to deny proposed

upgrades in channel at Station KDYN, Ozark, Arkansas, Station KLLI, Hooks, Texas, Station KWKK, Dardanelle, Arkansas, Station KKOL, Hampton, Arkansas, and Station KLBQ, El Dorado, Arkansas. With this action, this proceeding is terminated.

This is a summary of the Commission's *Report and Order*, MM Docket No. 87–73, adopted July 26, 1988, and released August 4, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303, 316.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Oklahoma by removing Channel 244A and adding Channel 241C2 at Vinita.

3. Section 73.202(b), the Table of FM Allotments, is amended under Oklahoma by removing Channel 240A and adding Channel 240C2 at Sallisaw.

4. Section 73.202(b), the Table of FM Allotments, is amended under Texas by removing Channel 240A and adding Channel 241C2 at Kilgore.

5. Section 73.202(b), the Table of FM Allotments, is amended under Arkansas by removing Channel 240A and adding Channel 241C2 at Harrison.

6. Section 73.202(b), the Table of FM Allotments, is amended under Arkansas by removing Channel 296A and adding Channel 294C2 at Benton.

7. Section 73.202(b), the Table of FM Allotments, is amended under Arkansas by removing Channel 240A and adding Channel 241C1 at El Dorado.

8. Section 73.202(b), the Table of FM Allotments, is amended under Arkansas by adding Channel 242C1 at Mena.

9. Section 73.202(b), the Table of FM Allotments, is amended under Arkansas by adding Channel 263A at Clarksville.

10. Section 73.202(b), the Table of FM Allotments, is amended under Arkansas by adding Channel 271A at Sherwood.

11. Section 73.202(b), the Table of FM Allotments, is amended under Louisiana by adding Channel 294C2 at Homer.

12. Section 73.202(b), the Table of FM Allotments, is amended under Arkansas by removing Channel 240A and adding Channel 225A at Huntsville.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–18484 Filed 9–6–88; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 80482–8082]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

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

ACTION: Notice of reopening.

SUMMARY: NOAA announces the reopening of the ocean recreational salmon fishery within the exclusive economic zone (EEZ) between the U.S.-Canada border and the Queets River, Washington, for 24 hours on September 2, 1988. This fishery had closed at midnight, August 2, 1988 and then reopened for 24 hours on August 19, 1988. Evaluation of landing data following the most recent 1-day opening indicates that sufficient coho and chinook salmon remain to allow an additional day of fishing. The daily bag limit will be two fish of any species with no area restrictions. This action is intended to maximize the harvest of coho and chinook salmon in this subarea without exceeding the ocean share of salmon allocated to the recreational fishery.

EFFECTIVE DATE: Reopening of the EEZ to recreational salmon fishing between the U.S.-Canada border and the Queets River, Washington, is effective from 0001 hours to 2400 hours local time, September 2, 1988. The daily bag limit will be two fish of any species, and no area restrictions will apply. Comments on this action will be received through September 17, 1988.

ADDRESS: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR Part 661 specify at § 661.21(a)(2) that "If a fishery is closed under a quota before the end of a scheduled season based on overestimate of actual catch, the Secretary [of Commerce] will reopen that fishery in as timely a manner as possible for all or part of the remaining original season provided the Secretary finds that a reopening of the fishery is consistent with the management objectives for the affected species and the additional open period is no less than 24 hours."

Management measures for 1988 were effective on May 1, 1988 (53 FR 16002, May 4, 1988). The recreational fishery from the U.S.-Canada border to the Queets River, Washington, was closed at midnight, August 2, 1988, upon the projected attainment of a subarea quota of 20,000 coho salmon (53 FR 29479, August 5, 1988). Subsequent evaluation of landing data indicated that this closure was based on an overestimate of actual catch, and that sufficient coho and chinook salmon remained to allow an additional day of fishing; therefore, this fishery was reopened for 24 hours on August 19, 1988 (53 FR 31872, August 22, 1988).

According to the best available information, recreational catches of coho salmon in the subarea from the U.S.-Canada border to the Queets River, inclusive of the August 19, 1988 fishery, totaled 18,850 fish, leaving 1,150 coho salmon of the subarea quota unharvested. The amounts of available coho and chinook salmon have been determined to be sufficient for an additional open period of 24 hours in this subarea. This action is being taken in as timely a manner as possible for a part of the remaining original season which would have ended no later than September 5, 1988. Reopening of the recreational fishery is consistent with the management objectives for coho and chinook salmon in this subarea.

Therefore, NOAA issues this notice to reopen the recreational fishery in the EEZ between the U.S.-Canada border and the Queets River, Washington, from 0001 hours to 2400 hours local time, September 2, 1988. This notice does not apply to other fisheries in other areas.

The Regional Director consulted with representatives of the Pacific Fishery Management Council and the Washington Department of Fisheries regarding this reopening. The State of Washington also will reopen the recreational fishery in State waters

adjacent to this area of the EEZ in accordance with this Federal action.

Because of the need for immediate action to reopen the recreational fishery, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after the effective date, through September 17, 1988.

Other Matters

This action is authorized by 50 CFR 661.21(a)(2) and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 1, 1988.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-20287 Filed 9-1-88; 4:24 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 173
Wednesday, September 7, 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 ENERGY

Federal Energy Regulatory Commission

18 CFR Part 101

[Docket No. RM88-22-000]

Accounting for Phase-In Plans

Issued August 31, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of inquiry; further extension of time.

SUMMARY: On June 21, 1988, The Commission issued a notice of inquiry into the effects of recent and proposed actions of the Financial Accounting Standards Board (FASB) that would change the way regulated public utilities account for certain transactions in financial statements that they issue to the public. (53 FR 24096, June 27, 1988). On August 31, 1988, a further extension of time was granted at the request of the New York State Department of Public Service for the filing of comments on the notice of inquiry.

DATES: The time for filing comments is extended from August 31, 1988 to September 7, 1988.

ADDRESS: Office of the Secretary, 825 N. Capitol St., NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lois D. Cashell, Acting Secretary, (202) 357-8400.

SUPPLEMENTARY INFORMATION: On August 22, 1988, the New York State Department of Public Service (NYDPS) filed a motion for an extension of time for the filing of comments in response to the Commission's Notice of Inquiry issued June 21, 1988, in the above-docketed proceeding. In its motion, NYDPS states that due to other departmental demands they are unable to submit comments until after the current due date and ask that the Commission grant a short extension for the filing of comments.

Upon consideration, notice is hereby given that an extension of time for the filing of comments is granted to and including September 7, 1988.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-20291 Filed 9-6-88; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-156-86]

Partnership Statements and Nominee Reporting of Partnership Information

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to partnership statements and nominee reporting of partnership information. The text of the temporary regulations serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by November 7, 1988. Except as otherwise provided, the text of § 1.6031 (b)-1T is proposed to be effective for partnership taxable years beginning after September 3, 1986. Except as otherwise provided, the text of § 1.6031(c)-1T is proposed to be effective for partnership taxable years beginning after October 22, 1986.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, 1111 Constitution Avenue NW., Attention: CC:LR:T (LR-156-86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Stuart G. Wessler of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constituion Avenue NW., Washington, DC 20224 (Attention: CC:LR:T LR-1556-86). Telephone 202-566-3297 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, attention: Desk Officer for the Internal Revenue Service, with copies to the Internal Revenue Service at the address previously specified.

The collection of information in this regulation are in §§ 1.6031(b)-1T(a) and 1.6031(c)-1T (a) and (h). This information is required by the Internal Revenue Service pursuant to section 6031. This information will be used to verify that a taxpayer is reporting the correct amount of income or gain or claiming the correct amount of losses, deductions, or credits with respect to that taxpayer's interest in the partnership. The likely respondents are individuals or households, State or local governments, farms, business or other for-profit institutions, non-profit institutions, and small businesses or organizations.

These estimates are an approximation of the average time expected to be necessary for collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending on their particular circumstances.

Estimated total annual reporting and recordkeeping burden: 6,374 hours.

Estimated average annual burden hours per respondent and recordkeeper varies from .02 to .627 hours, depending on individual circumstances, with an estimated average of .06 hours.

Estimated number of respondents and recordkeepers: 105,000.

Estimated annual frequency of response: On occasion.

Background

The temporary regulations (designated by a "T" following the section citation) in the Rules and Regulations section of this issue of the **Federal Register** amend Part 1 of Title 26 of the Code of Federal Regulations to

provide rules under section 6031(b) of the Internal Revenue Code of 1986, as added by section 403 of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 669) and amended by sections 1501(c)(16) and 1811(b)(1)(A)(i) of the Tax Reform Act of 1986 (100 Stat. 2740, 2832), and under section 6031 (c), as added by section 1811(b)(1)(A)(ii) of the Tax Reform Act of 1986 (100 Stat. 2832). This document proposes to adopt those temporary regulations as final regulations; accordingly, the text of the temporary regulations serves as the comment document for this notice of proposed rulemaking. In addition, the preamble to the temporary regulations provides a discussion of the proposed and temporary rules.

For the text of the temporary regulations, see T.D. 8225 published in the Rules and Regulations section of this issue of the **Federal Register**.

Special Analyses

The Commissioner of Internal Revenue has determined that the proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required.

The Secretary of the Treasury has certified that this rule will not have a significant impact on a substantial number of small entities because the number of significantly affected small entities is not substantial. A regulatory flexibility analysis, therefore, is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request of any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Drafting Information

The principal author of these proposed regulations is Stuart G. Wessler of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in

26 CFR 1.60001–1–1.6109–2

Income taxes, Administration and procedure, Filing requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88–20267 Filed 9–6–88; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: Parole Commission, Justice.

ACTION: Proposed rule and request for comments.

SUMMARY: The Parole Commission proposes to extend the parole procedures and policies used for the YCA inmates in the class action litigation of *Watts* v. *Belaski*, Civil Action No. 78–M–495 (D. Colo.) to all offenders who have been sentenced under the repealed Youth Corrections Act (formerly 18 U.S.C. 5005 *et seq.*). The Commission's plan for making parole decisions for *Witts* class members was designed to comply with judicial orders which required the Parole Commission to make a YCA inmate's response to treatment a significant factor in parole decision-making. Due to the abolition of the Youth Corrections Act nearly four years ago and the dwindling number of YCA inmates, the Bureau of Prisons believes it is no longer feasible to have virtually all present YCA inmates housed in one institution (Federal Correctional Institution, Englewood, Colorado). Therefore, the Bureau will be seeking permission from the federal district court in Colorado to transfer YCA inmates (who are predominately parole violators) to federal institutions across the country. The Bureau has requested the Parole Commission to utilize its procedures for the *Watts* class for all YCA inmates, as part of its plan for the housing, classification, and treatment of the remaining YCA population.

DATE: Public comment must be received by October 7, 1988.

ADDRESSES: Comments should be addressed to: Rockne Chickinell, Attorney, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959.

FOR FURTHER INFORMATION CONTACT: Rockne Chickinell, Office of General Counsel, U.S. Parole Commission, telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: As of August 1, 1988, the Bureau of Prisons reported that there were 242 offenders sentenced under the former Youth Corrections Act (pursuant to 18 U.S.C. 5010(b) and (c)) who were incarcerated in Bureau institutions. Of this number, 195 inmates (81%) were members of the class of potitioners in *Watts* v. *Belaski*, Civil Action No. 78–M–495 (D. Colo.), leaving 47 inmates (19%) who were not members of the *Watts* class. Nearly 3 out of 4 YCA inmates presently confined have already been released on parole at least once and been returned for violation of the conditions of supervision. Since the Youth Corrections Act was repealed in October, 1984, the number of YCA inmates has continued to decrease as the sentences expire. The YCA population is rapidly moving to the point where it will be composed solely of parole violators serving the remainder of their section 5010(b) sentences (which normally expire 6 years from the date of conviction) and those inmates serving lengthy sentences imposed under section 5010(c) (which may be for a term up to the maximum sentence authorized for an adult prisoner).

In the class action litigation in *Watts* v. *Belaski*, the Bureau of Prisons has been required in several orders from the Court of Appeals for the Tenth Circuit and the U.S. District Court in Colorado to segregate YCA inmates from adult prisioners and the Parole Commission has been required to make response to treatment a significant factor in parole decision-making for the class members. *See, e.g., Watts* v. *Hadden*, 651 F.2d 1354 (10th Cir. 1981); *Benedict* v. *Rodgers*, 748 F.2d 543 (10th Cir. 1984) (related case); and *Watts* v. *Hadden*, 627 F. Supp. 727 (D. Colo. 1986). In response to these decisions, the Bureau of Prisons has confined almost all YCA inmates at the Federal Correctional Institution, Englewood, Colorado, segregating them from adult prisoners. In recent years, the district court has permitted the Bureau to incarcerate some adult prisoners at FCI, Englewood in order to ensure that the facility is used to its approximate potential. The Parole Commission implemented a decision-making policy which provides for the consideration of an inmate's response to treatment along with the criteria specified at 18 U.S.C. 4206 (*i.e.*, severity of the offense and risk to the public) in determining when a

Watts class member should be released on parole. The Commission did not extend the *Watts* procedures to YCA inmates who were not members of the *Watts* class, since it has prevailed in other courts which considered the issue of the proper criteria for deciding when YCA inmates should be paroled. *E.g., Adams* v. *Keller*, 736 F.2d 320 (6th Cir. 1984) (*en banc*).

Given the continuing decline in the number of YCA inmates, the Bureau of Prisons is developing a plan to transfer a significant number of YCA inmates presently at FCI, Englewood to institutions across the country, preferably an institution near the inmate's residence after release. Such transfers will be made with the permission of the district court in Colorado. As part of this plan, the Bureau recently requested the Parole Commission to consider extending the *Watts* parole policies to YCA inmates who are not members of the *Watts* class. In the Bureau's view, the extension of the *Watts* Procedures to all YCA inmates would facilitate the Bureau's monitoring of the treatment of the remaining inmates wherever they may be confined and would reduce the possibility of any disciplinary problems caused by the use of different parole policies for YCA inmates confined in the same institution. With these factors, the Commission will also be weighing whether it is desirable to voluntarily use a criterion for release (*i.e.*, offender rehabilitation) which has not been demonstrated to be a reliable indicant of future success on parole supervision.

Therefore, the Commission is proposing to adopt a rule which extends its present *Watts* policies to all youth offenders and seeks public comment on this proposed rule. The proposed rule sets forth the Commission's present *Watts* plan and, if adopted as a final rule, will be inserted at 28 CFR 2.65. If the proposed rule is adopted as a final rule by the Commission after receiving and reviewing the public comment, there may be substantial editorial changes made before publication of the final rule.

This proposed rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

PART 2—[AMENDED]

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

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR Part 2 is amended to add § 265 as follows:

§ 2.65 Youth Corrections Act.

(a) *Procedure for Joint Approval of Program Plans.* If the inmate's program plan has not already been approved by the Commission (normally on the record), the examiner panel will be given the inmate's program plan at a hearing for their review and approval. The examiner panel shall indicate their approval or disapproval of the program plan (with relevant comments and recommendations) in the hearing summary. If the examiners consider the plan inadequate, they will discuss their concerns with institutional staff in an attempt to resolve them. If there is still a disagreement on the plan, the case will be referred by the Commission's regional administrator to the Bureau's regional correctional programs administrator with the recommended changes. The Commission will consider the criteria outlined in paragraph (c) of this section (on determining successful response to treatment) in determining whether a particular program plan will effectively reduce the risk to the public welfare presented by the inmate's release. Unresolved disputes concerning the adequacy of the program plan will be decided by the Regional Commissioner and the Regional Director of the Bureau of Prisons. The Regional Commissioner shall render the final decision on approving or disapproving each program plan on behalf of the Commission. Once the Commission has approved the program plan, subsequent approvals are not necessary, unless significant modifications are made by institutional staff.

(b) *Parole Hearings and Progress Reports.* (1) Initial hearings will be conducted in accordance with §§ 2.12 and 2.13. The examiner panel will discuss with the inmate and a staff member who is knowledgeable about the inmate's case the program plan and the importance of good conduct and program participation in setting the release date. The Commission will review and either approve or disapprove the program plan under the procedures noted at paragraph (a) of this section. After the initial hearing, the Commission will follow its normal procedures in setting a presumptive release date, but it will inform the inmate in the notice of action that he will be considered for an advancement in his release date depending on his reponse to treatment programs.

(2) An interim hearing must be scheduled for an inmate every six months. In addition, within 60 days of receipt of any special progress report from the warden recommending parole, the inmate will be scheduled for a special interim hearing, unless the recommendation can be timely considered at a regularly scheduled interim hearing. The primary purpose of the interim hearing will be to discuss with the inmate his institutional conduct and program performance since his last hearing and to evaluate his response to treatment programs. An institutional staff member who has personal knowledge of the inmate's overall conduct and progress will be present at the hearing to assist the examiners in their evaluation.

(3) After any interim hearing or review on the record, the Commission may advance the presumptive release date, it may let the date stand, or it may retard or rescind the date if the offender has committed disciplinary infractions or new criminal conduct.

(4) An inmate will not be given an interim hearing upon the receipt of a progress report if the Commission decides on the record to parole the offender as soon as a release plan is approved (normally within 60 days of the the decision).

(5) The institution will send a progress report to the Commission: (i) No more than 60 days before each interim hearing; (ii) upon determining that an inmate should be recommended for parole; and (iii) before a presumptive parole date to allow for the pre-release record review under § 2.14(b). The warden may forward progress reports to the Commission at other times in his discretion. Progress reports will also be sent to the Commission every six months for inmates who have waived interim hearings so that the Commission can verify that these inmates have satisfied the conditions of securing their release on an alternate parole date granted under the former YCA compliance plan (*i.e.*, completion of the program plan) or the normal presumptive release date (*i.e.*, obedience to institutional rules).

(6) For inmates granted earlier parole dates under former compliance plans: An inmate may waive interim hearings under this plan, in which case he would retain an alternate parole date previously granted to him or a presumptive parole date granted as a result of a finding that the inmate has responded to treatment. An inmate who waives an interim hearing under this plan may, at any time, re-apply for the hearing and be considered under this plan in accordance with the application/waiver provisions at § 2.11. At least

every six months, institutional staff will meet with an inmate who has waived further interim hearings and discuss with the inmate the possibility of applying for parole consideration under this plan and the consequences of his waiver. At each meeting, commencing with the inmate's initial waiver, staff should present the inmate with the information sheet on the YCA plan and have the inmate read and sign the form prior to his execution of another waiver of a parole hearing. The Commission will not review the program plans for inmates who waive interim hearings pursuant to this paragraph, unless the inmate subsequently is scheduled for a hearing to consider new criminal conduct or a rule infraction *and* a modification of the original program plan appears warranted due to the inmate's new criminal offense or infraction.

If the inmate is scheduled for a hearing that may not be waived under Commission procedures (*e.g.*, an interim hearing where there has been an IDC finding of a disciplinary infraction since the last hearing, or any hearing scheduled pursuant to §§ 2.28(b)–(f)), this plan will be applied at the scheduled hearing. Any advancement of the normal presumptive release date set according to the guidelines will then be made in accordane with this plan.

(7) *Warden's Recommendation.* Based on the completion of the program plan by the inmate, and the quality of effort demonstrated by the inmate in completing the plan, the warden will recommend to the Commission a conditional release date for its consideration. This recommendation will be accompanied by a report on the inmate's participation and level of achievement in different aspects of his program. Particular comment will be made on positive or negative accomplishments, including such things as ability to live, work, and study with others (disciplinary record and emotional self-control), cooperation with staff, and maintenance of personal appearance of living area.

(c) *Criteria For Finding Successful Response to Treatment Programs.* (1) In determining whether an inmate has successfully "responded to treatment" the Commission will examine whether the inmate has shown that he has received sufficient corrective training, counseling, education, and therapy that the public would not be endangered by his release. See former 18 U.S.C. 5006(f) (definition of "treatment" under the YCA). The Bureau will assist the Commission in this determination by informing the Commission when the inmate has completed his program plan and by advising the Commission of the quality of effort demonstrated by the inmate in completing the plan.

(2) In determining the extent of an inmate's positive response to treatment, the Commission will necessarily be examining the degree by which the inmate has increased the likelihood that his release would not jeopardize the public welfare through his program performance and conduct record. See 18 U.S.C. 4206(a)(2). Since this latter criterion is initially evaluated, in part, with the inmate's salient factor score and an examination of the inmate's overall background, the starting point for the Commission analysis of an inmate's response to treatment will be the original parole prognosis reached by the use of the score and consideration of the nature of the inmate's prior criminal history and other characteristics of the offender. The nature of the current offense may also be considered in determining the risk to the public welfare presented by the inmate's release. The Commission will then proceed to evaluate whether the inmate's program participation and institutional conduct has improved the original risk prognosis and evidences an alteration of his value system, including an understanding of the wrongfulness of his past criminal conduct. For those offenders who have exhibited serious or violent criminal behavior, the Commission will exercise more caution in making a finding that the inmate has responded to treatment to the degree that he should be released.

(3) With regard to program performance, significant weight will be given to the following factors in the Commission's determination of an inmate's response to treatment. This is not intended as an exhaustive list.

(i) *Vocational Training.* Where the inmate originally had little or no job skills, the acquisition of a marketable job skill through vocational training or an apprenticeship program. (If the inmate already has job skills, vocational training will not usually be a part of the program plan).

(ii) *Education.* Participation in educational programs to acquire an educational level at least the level of a high school graduate.

(iii) *Psychological Counseling and Therapy.* Where the inmate's behavior has shown that he may be affected by personality disorders or a mental illness that has hampered his ability to lead a law-abiding life, or that he may otherwise benefit from such programs, participation in psychological and/or other specialized programs which lead to a judgment by the therapist/counselor that the inmate has significantly improved his ability to obey the law and favorably modified his value system. Participation in these programs will normally be required for a significant advancement of the presumptive release date for an inmate who has either committed or attempted a crime of violence.

(iv) *Drug/Alcohol Abuse Programs.* Where the inmate has a history of drug/alcohol abuse, participation in drug/alcohol abuse program which leads to the judgment by the therapist/counselor that there is a significant likelihood that the inmate will not revert to drug/alcohol abuse and has thereby significantly improved his ability to obey the law.

(v) *Work.* Assuming the inmate is physically and mentally able to do so and is not otherwise engaged in an institutional activity which prevents him from obtaining a job, participation in a job on a regular basis so as to demonstrate a stable life pattern and a favorable modification of his value system.

(5) Prison misconduct (*i.e.*, disobedience to institutional rules, escape) and new criminal conduct in the institution will be considered in the decision as to whether (or to what degree) an inmate has successfully responded to treatment. The rescission guidelines of § 2.36 will be used in retarding or rescinding the original presumptive release date set according to the guidelines and the factors described in 18 U.S.C. 4206. If the original presumptive date has been advanced based on response to treatment, the rescission guidelines may also be used to retard or rescind the new date to maintain institutional discipline, if the misconduct is not deemed serious enough to affect the decision that the inmate has responded to treatment. But misconduct subsequent to the advancement of a release date based on a finding of response to treatment may also result in a reversal of that finding and the cancellation of any advancement of the original presumptive release date.

(d) *Setting The Parole Date (Balancing Section 4206 Factors with Response to Treatment).* At any hearing or review on the record, the presumptive release date may be advanced if it is determined that the inmate has responded to a sufficient degree to his treatment programs. The amount of the advancement should be proportional to the degree of response evidenced by the inmate. In making the advancement, no rule restricting the amount of the

reduction—whether based on the guidelines (§ 2.20) or the rule on superior program achievement (§ 2.60)—will be used. The decision will be the result of a case-by-case evaluation in which response to treatment programs, the seriousness of the offense, and the original parole prognosis are all weighed by the Commission with no one factor capable of excluding all others.

(e) *Parole Violators.* Parole violators returned to an institution following a local revocation hearing will normally be considered for reparole under the plan at a hearing within six months of their arrival at the institution.

(f) *Early Termination from Supervision.* (1) The Commission will conduct a review of a YCA parolee's file at the conclusion of each year of supervision (following receipt of the annual progress report—Form F–3) and six months prior to the expiration of his sentence (after receipt of the terminal report).

(2) A YCA parolee will not be continued on supervision beyond the time periods specified in the early termination guidelines (§ 2.43), unless case-specific factors indicate further supervision is warranted. But the Commission will not routinely follow its guidelines at § 2.43 to *deny* early discharge to a YCA parolee who has yet to complete two (or three) years of clean supervision.

(3) The Commission will consider the facts and circumstances of each YCA parolee's case, focusing on the risk he poses to the public and the benefit he may obtain from further supervision. The nature of the offense and parolee's past criminal record will be taken into account only to evaluate the risk that the parolee may still pose to the public.

(4) In denying early discharge, the Commission will inform the probation office by letter (with a copy to the YCA parolee) of the reasons for continued supervision. The reasons should pertain, whenever possible, to the facts and circumstances of the YCA parolee's case. If there are no case-specific factors which indicate that discharge should be either granted or denied and further supervision appears warranted, the Commission will inform the YCA parolee that he is continued on supervision because of its experience with similarly situated offenders.

Dated: August 26, 1988.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 88–20225 Filed 9–6–88; 8:45 am]

BILLING CODE 4410–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[FRL–3442–4; MS–012]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Mississippi; Total Reduced Sulfur Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On October 30, 1987, the State of Mississippi submitted its plan for the control of total reduced sulfur (TRS) from kraft pulp mills. The plan became effective in the State on November 1, 1987. This plan for TRS from kraft pulp mills was adopted pursuant to the requirements of section 111(d) of the Clean Air Act.

DATE: To be considered, comments must reach us on or before October 7, 1988.

ADDRESSES: Written comments should be addressed to Rosalyn D. Hughes of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the State's submittal are available for review during normal business hours at the following locations:

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

Mississippi Department of Natural Resources, Bureau of Pollution Control, Post Office Box 10385, Jackson, Mississippi 39205.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalyn D. Hughes, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On October 30, 1987, the State of Mississippi submitted to EPA a plan to control total reduced sulfur emissions (TRS) from kraft pulp mills. This plan was developed to meet the requirements of section 111(d) of the Clean Air Act. Under section 111(d), EPA established procedures whereby states submit plans to control existing sources of designated pollutants. Designated pollutants are defined as pollutants which are not included on a list published under section 108(a) (National Ambient Air Quality Standard Pollutants) of the Clean Air Act, but to which a standard of performance for new sources applies under section 111. TRS is such a pollutant. Under section 111(d) emission standards are to be adopted by the states and submitted to EPA for approval. The standards limit the emissions of designated pollutants from existing facilities which, if new would be subject to the new source performance standards (NSPS). Such facilities are called designated facilities.

The procedures under which states submit these plans to control existing sources are defined in Subpart B of 40 CFR Part 60. According to Subpart B, the states are required to develop plans within federal guidelines for the control of designated pollutants. EPA will publish guideline documents for development of state emission standards along with the promulgation of any NSPS for a designated pollutant. These guidelines apply to designated pollutants and include information such as a discussion of the pollutant's effects, description of control techniques and their effectiveness, costs and potential impacts. Also as guidance for the states, recommended emission limits and times for compliance are set forth and control equipment which will achieve these emission limits is identified.

In Subpart B, two types of designated pollutants are discussed. One type of designated pollutant may cause or contribute to the endangerment of public health. It is referred to as a health-related pollutant. The other type of designated pollutant is a welfare-related pollutant, for which adverse effects on public health have not been demonstrated.

For welfare-related pollutants such as TRS, states have the option of balancing emission guidelines, times for compliance, and other information provided in a guideline document against other factors of public concern in the establishment of emission standards, compliance schedules and variances, as long as the guideline document and Subpart B public hearing information are considered and all the other requirements of Subpart B are met. Therefore, states have greater flexibility in establishing plans for the control of TRS. Factors other than technology and costs can be considered in developing a TRS plan.

In Mississippi, four kraft pulp mills are affected by this plan for existing facilities. They are International Paper Company, Moss Point; International Paper Company, Natchez; International Paper Company, Vicksburg; and Georgia-Pacific Corporation, Monticello.

The guidance document, *Kraft Pulping, Control of TRS Emissions from Existing Mills,* EPA–450/2–78–003b, was developed by EPA in March, 1979. This document was used in the development of emission limits for TRS emissions from affected facilities except for TRS

emissions from smelt dissolving tanks and recovery boilers. The emission limit for smelt dissolving tanks was set to correspond to the New Source Performance Standard (NSPS) (40 CFR Part 60, Subpart BB, Kraft Pulp Mills) smelt dissolving tank emission limit because of the inconsistency of having newer plants meet a less restrictive NSPS emission limit than the guidance document emission limit for existing plants. Also, the emission limit for recovery boilers was set higher than the rate recommended in the guidance document for three mills, International Paper's Natchez and Vicksburg mills and Georgia Pacific's Monticello mill. This was based on economic factors. Using economic factors from the guidance documents for an acceptable operating cost for annual tons of pulp produced, the State concluded that for the two International Paper mills and the Georgia Pacific mill, it would be an undue economic burden to meet the EPA recommended emission rate for recovery boilers.

Proposed Action

EPA has reviewed the submitted material and found it to meet the requirements of 40 CFR Part 60, Subpart B. Therefore, EPA is today proposing to approve Mississippi's plan for total reduced sulfur emissions from kraft pulp mills and is soliciting public comment on it.

For further information on EPA's analysis, the reader may consult a Technical Support Document which contains a detailed review of the technical justification, including the economic impact. This is available at the EPA address given above. Interested persons are invited to submit comments on this proposed approval. EPA will consider all comments received within thirty days of the publication of this notice.

Under 5 U.S.C. section 605(b), I certify that this 111(d) plan will not have a significant economic 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 62

Air pollution control, Intergovernmental relations, Paper, paper products industry.

Authority: 42 U.S.C. 7401–7642.

Dated: April 29, 1988.

Lee A. DeHihns III,

Deputy Regional Administrator.

[FR Doc. 88–20241 Filed 9–6–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–3442–6; KY–036]

Approval and Promulgation of Implementation Plans; Jefferson County, Ky; SOCMI Air Fugitive Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to approve a regulation submitted by the Commonwealth of Kentucky pertaining to the Air Pollution Control District of Jefferson County (APCDJC). The regulation 6.39 "Standard of performance for equipment leaks of volatile organic compounds in existing synthetic organic chemical and polymer manufacturing plants", constitutes a revision to Kentucky's ozone State Implementation Plan (SIP) for Jefferson County, and relates to the Group III control techniques guideline (CTG) document for Synthetic Organic Chemical Manufacturing Industry (SOCMI) Equipment leaks. The intent of the regulation is to apply reasonably available control technology (RACT) to reduce volatile organic compound (VOC) emissions from synthetic organic chemical and polymer manufacturing equipment.

The public is invited to sumit written comments on this proposed action.

DATES: To be considered, comments must reach us on or before October 7, 1988.

ADDRESSES: Written comments should be addressed to Jill Perry of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the materials submitted by Kentucky may be examined during normal business hours at the following locations:

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

Commonwealth of Kentucky, Division of Air Pollution Control, Natural Resources and Environmental Protection Cabinet, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Jill Perry, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On August 7, 1984, the Kentucky Division of Air Pollution Control committed to adopt a regulation for sources covered by the Group III CTG document, "Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment" (EPA–450/3–83–006) which was issued by EPA in March 1984. On March 20, 1987, Kentucky submitted a revision to the Jefferson County SIP to add Regulation 6.39.

The regulation adopts the measures of 40 CFR Part 60, Subpart VV, the new source performance standard (NSPS) for SOCMI equipment leaks. Specifically, Regulation 6.39 incorporates by reference the provisions of the federal regulation. Furthermore, the Jefferson County regulation also regulates the production methyl tert-butyl ether, polyethylene, polypropylene, and polystyrene, in addition to the chemicals listed in 40 CFR Part 60, Subpart VV, § 60.489. The regulation applies to sources commenced construction on or before January 5, 1981.

Proposed Action

This regulation is consistent with the requirements specified in the NSPS regulation (40 CFR Part 60, Subpart VV). Therefore, EPA is today proposing to approve Jefferson County, Kentucky's Group III regulation for SOCMI equipment leaks.

The public is invited to participate in this rulemaking by submitting written comments on the proposed actions.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on 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, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Date: September 25, 1987.

Charles H. Sutfin,

Acting Regional Administrator.

[FR Doc. 88–20244 Filed 9–6–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 60

[AD-FRL-3438-5]

Standards of Performance for New Stationary Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The purpose of this proposed rule is to amend Methods 15 and 16 for the determination of total reduced sulfur (TRS) emissions of Appendix A of 40 CFR Part 60 by revising obsolete portions and updating the test methods to reflect current technology.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed rule.

DATE: *Comments.* Comments must be received on or before November 21, 1988.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by September 28, 1988, a public hearing will be held October 24, 1988 beginning at 10:00 a.m. Persons interested in attending the hearing should call the contact mentioned under ADDRESSES to verify that a meeting will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by September 28, 1988.

ADDRESS: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE-131), Attention: Docket Number A-88-01, U.S. Environmental Protection Agency, South Conference Center, Room 4, 401 M Street SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Emission Measurement Laboratory, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Foston Curtis, Emission Measurement Branch (MD-19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-1063.

Docket. Docket No. A-88-01, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, South Conference Center, Room 4, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Foston Curtis or Roger Shigehara, Emission Measurement Branch, Technical Support Division (MD-19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-1063.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

Methods 15 and 16 are similar instrumental methods that are used for the determination of TRS. Since their promulgation with associated source regulations in 1976 and 1978, innovations in equipment and testing have rendered portions of the methods obsolete. Applied Technology Consultants, a major user of Methods 15 and 16, requested that the Agency update the methods to include state-of-the-art equipment and to increase the methods' flexibility. Additional suggestions made by Entropy Environmentalists, Inc. were also included. The resulting revisions will update the methods to reflect currently available equipment and testing needs.

This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard. Rather, this rulemaking amends test procedures to which the affected facilities are already subject.

II. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed rulemaking in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are to: (1) Allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) serve as the record in case of judicial review except for interagency review materials (Section 307(d)(7)(A)).

C. Office of Management and Budget Review

Executive Order 12291 Review. Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This rulemaking would not result in any of the adverse economic effects set forth in section 1 of the order as grounds for finding a "major rule." It will not have an annual effect on the economy of $100 million or more, nor will it result in a major increase in costs or prices. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rulemaking was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

D. Regulatory Flexibility Act Compliance

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this attached rule, if promulgated, will not have any economic impact on small entities because no additional costs will be incurred.

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference, Kraft pulp mills, and Petroleum refineries.

Date: August 23, 1988.

Richard Wilson,

Acting Assistant Administrator for Air and Radiation.

It is proposed that Methods 15 and 16, Appendix A of 40 CFR Part 60 be amended as follows:

PART 60—[AMENDED]

1. The authority for 40 CFR Part 60 continues to read as follows:

Authority: Sections 101, 111, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. In Method 15, sections 3.1, 3.3, 5.1.1, 5.1.2, 5.1.3, 5.2, 5.5.1, 5.5.2, 5.5.3 and 9.2.2 are revised; new sections 3.4, 3.5, 5.1, 5.1.4, 5.1.5, 5.3.4.4, 5.5, 6.6, and 6.7 are added; section 5.5.4 is removed; a sentence is added to the end of the paragraph in sections 7.1.1 and 8.4; and the footnote associated with Section 5.1.2 is removed as follows:

Method 15—Determination of Hydrogen Sulfide, Carbonyl Sulfide, and Carbon Disulfide Emissions From Stationary Sources

* * * * *

3. * * *

3.1 Moisture Condensation. Moisture condensation in the sample delivery system, the analytical column, or the FPD burner block can cause losses or interferences. This potential is eliminated by heating the probe, filter box, and connections, and by maintaining the SO_2 scrubber in an ice water bath. Moisture is removed in the SO_2 scrubber and heating the sample beyond this point is not necessary provided the ambient temperature is above O °C.

* * * * *

3.3 Elemental Sulfur. The condensation of sulfur vapor in the sampling system can lead to blockage of the particulate filter. This problem can be minimized by observing the filter for buildup and changing as needed.

3.4 Sulfur Dioxide (SO_2). SO_2 is not a specific interferent but may be present in such large amounts that it cannot be effectively separated from the other compounds of interest. The SO_2 scrubber described in section 5.1.3 will effectively remove SO_2 from the sample.

3.5 Alkali Mist. Alkali mist in the emissions of some control devices may cause a rapid increase in the SO_2 scrubber pH to give low sample recoveries. Attention to the solution pH or frequent replacement of the SO_2 scrubber will minimize the chances of interference in these cases.

* * * * *

5. * * *

5.1 Sampling.

5.1.1 Probe. The probe shall be made of Teflon or Teflon-lined stainless steel and heated to prevent moisture condensation. It shall be designed to allow calibration gas to enter the probe at or near the sample point entry. Any portion of the probe that contacts the stack gas must be heated to prevent moisture condensation. The probe described in section 2.1.1 of Method 16A having a nozzle directed away from the gas stream is recommended for sources having particulate or mist emissions. Where very high stack temperatures prohibit the use of Teflon probe components, glass or quartz-lined probes may serve as substitutes.

Note: Mention of trade names or specific products does not constitute an endorsement by the Environmental Protection Agency.

5.1.2 Particulate Filter. 50-mm Teflon filter holder and a 1- to 2-micron porosity Teflon filter (available through Savillex Corporation, 5325 Highway 101, Minnetonka, Minnesota 55343). The filter holder must be maintained in a hot box at a temperature of at least 120 °C (248 °F).

5.1.3 SO_2 Scrubber.

5.1.3.1 Three 300-ml Teflon segmented impingers connected in series with flexible, thick-walled, Teflon tubing. (Impinger parts and tubing available through Savillex.) The first two impingers contain 100 ml of citrate buffer, and the third impinger is initially dry. The tip of the tube inserted into the solution should be constricted to less than 3-mm (⅛-in.) ID and should be immersed to a depth of at least 5 cm (2 in.). Immerse the impingers in an ice water bath and maintain near 0 °C. The scrubber solution will normally last for a 3-hour run before needing replacement. This will depend upon the effects of moisture and particulate matter on the solution strength and pH, which should be monitored and kept between 5.4 and 5.6.

5.1.3.2 Connections between the probe, particulate filter, and SO_2 scrubber shall be made of Teflon and as short in length as possible. All portions of the probe, particulate filter, and connections prior to the SO_2 scrubber shall be maintained at a temperature of at least 120 °C (248 °F).

5.1.4 Sample Line. Teflon, no greater than 1.3-cm (½-in.) ID. Alternative materials, such as virgin Nylon, may be used provided the line loss test is acceptable.

5.1.5 Sample Pump. The sample pump shall be a leakless Teflon-coated diaphragm type or equivalent.

5.2 Dilution System. The dilution system must be constructed such that all sample contacts are made of Teflon. It must be capable of approximately a 9:1 dilution of the sample.

5.3 * * *

5.3.4.4 Rotary Gas Valves. Multiport valves made of Teflon and equipped with sample loop. Sample loop volumes shall be chosen to provide the needed analytical range. Teflon tubing and fittings shall be used throughout to present an inert surface for sample gas. The gas chromatograph shall be calibrated with the sample loop used for sample analysis. The effective analytical range of each loop must be documented.

* * * * *

5.5 Calibration System. The calibration system must contain the following components.

5.5.1 Flow System. To measure air flow over permeation tubes at ±2 percent. Each flowmeter shall be calibrated after a complete test series with a west-test meter. If the flow measuring device differs from the wet-test meter by more than 5 percent, the completed test shall be discarded. Alternatively, the tester may elect to use the flow data that will yield the lowest flow measurement. Calibration with a wet-test meter before a test is optional. Flow over the permeation device may also be determined using a soap bubble flowmeter.

5.5.2 Constant Temperature Bath. Device capable of maintaining the permeation tubes at the calibration temperature within 0.1° C.

5.5.3 Temperature Gauge. Thermometer or equivalent to monitor bath temperature within 0.1° C.

* * * * *

6.6 Citrate Buffer. Dissolve 300 g of potassium citrate and 41 g of anhydrous citric acid in 1 liter of water. Alternatively, 284 g of sodium citrate may be substituted for the potassium citrate. Adjust the pH to between 5.4 and 5.6 with potassium citrate or citric acid, as required. Under conditions of high SO_2, moisture, or alkali mist concentrations, the life of the scrubber may be extended by doubling the buffer concentration.

6.7 Sample Line Loss Gas (Optional). As an alternative H_2S cylinder gas may be used for the sample line loss test. The gas shall be NBS-traceable or calibrated against certified permeation devices or by the procedure in Section 7 of Method 16A.

* * * * *

7.1.1 * * * As an alternative to the initial leak-test, the sample line loss test described in Section 10.1 may be performed to verify the integrity of components.

* * * * *

8.4 * * * Alternatively, a least squares equation may be generated from the calibration data using concentration versus the appropriate instrument response units.

* * * * *

9.2.2 Observation for Clogging of Probe or Filter. If reductions in sample concentrations are observed during a sample run that cannot be explained by process conditions, the sampling must be interrupted to determine if the probe or filter is clogged with particulate matter. If either is found to be clogged, the test must be stopped and the results up to that point discarded. Testing may resume after cleaning or replacing the probe and filter. After each run, the probe and filter shall be inspected and, if necessary, replaced.

* * * * *

3. In Method 15, by removing "(approximately 0.05 to 1.0 ppm)" from the first sentence of Section 8.3 and adding in its place, "(approximately 0.5 to 10 ppm for a 1-ml sample)."

4. In Method 15, by removing the word "four" in the first sentence of Section 8.3 and inserting in its place, "three".

5. In Method 15, by revising the seventh sentence in Section 10.1 to read as follows: "Alternatively, cylinders of hydrogen sulfide mixed in air and certified according to Section 6.7 may be used."

6. In Method 15, by removing "(1–B_{wo})" from the denominator of Equation 15–3.

7. In Method 15, by removing "B_{wo}=Fraction of volume of water vapor in the gas stream as determined by Method 4—Determination of Moisture in Stack Gases (36 FR 24887)" from Section 11.3.

8. In Method 15, by removing Section 12 and redesignating Sections 13 through 13.6 as 12 through 12.6.

9. In Method 15, by revising Figure 15–1 as follows:

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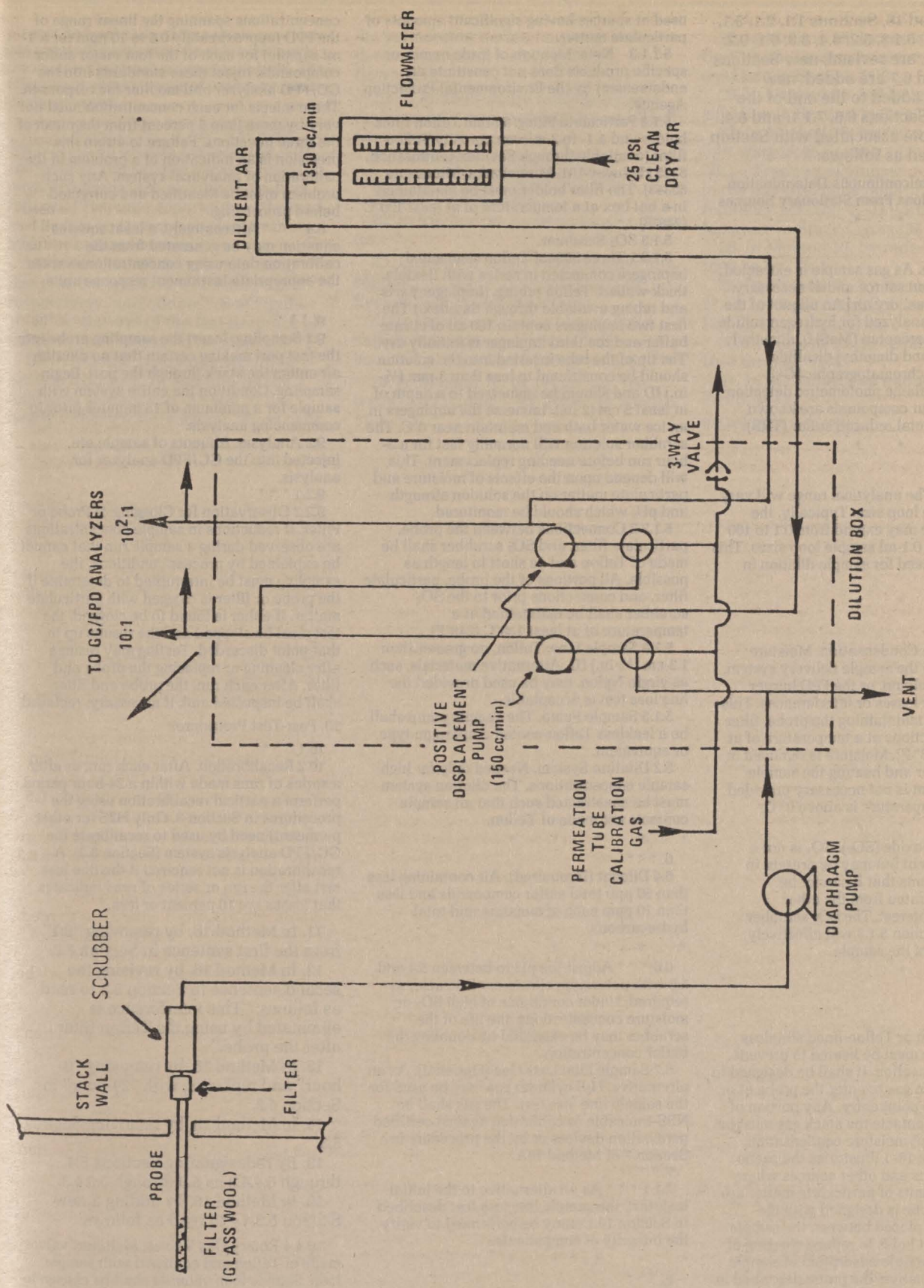

Figure 15-1. Sampling and dilution apparatus.

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10. In Method 16, Sections 1.1, 2.1, 3.1, 3.4, 5.1.1, 5.1.2, 5.1.3, 5.2, 6.4, 8.3, 9.1, 9.2, 9.2.2, and 10.2, are revised; new Sections 5.1.4, 5.1.5, and 6.7 are added; new sentences are added to the end of the paragraph in Sections 6.6, 7.1.1, and 8.4; and the footnote associated with Section 5.1.2 is removed as follows:

Method 16—Semicontinuous Determination of Sulfur Emissions From Stationary Sources

* * * * *

1. * * *

1.1 Principle. As gas sample is extracted from the emission source and, if necessary, diluted with clean, dry air. An aliquot of the sample is then analyzed for hydrogen sulfide (H_2S), methyl mercaptan (MeSH), dimethyl sulfide (DMS), and dimethyl disulfide (DMDS) by gas chromatographic (GC) separation and flame photometric detection (FPD). These four compounds are known collectively as total reduced sulfur (TRS).

* * * * *

2. * * *

2.1 Range. The analytical range will vary with the sample loop size. Typically, the analytical range may extend from 0.1 to 100 ppm using 10 to 0.1-ml sample loop sizes. This eliminates the need for sample dilution in most cases.

* * * * *

3. * * *

3.1 Moisture Condensation. Moisture condensation in the sample delivery system, the analytical column, or the FPD burner block can cause losses or interferences. This is prevented by maintaining the probe, filter box, and connections at a temperature of at least 120° C (248° F). Moisture is removed in the SO_2 scrubber and heating the sample beyond this point is not necessary provided the ambient temperature is above 0° C.

* * * * *

3.4 Sulfur Dioxide (SO_2). SO_2 is not a specific interferent but may be present in such large amounts that it cannot be effectively separated from the other compounds of interest. The SO_2 scrubber described in Section 5.1.3 will effectively remove SO_2 from the sample.

* * * * *

5. * * *

5.1.1 Probe.

5.1.1.1 Teflon or Teflon-lined stainless steel. The probe must be heated to prevent moisture condensation. It shall be designed to allow calibration gas to enter the probe at or near the sample point entry. Any portion of the probe that contacts the stack gas must be heated to prevent moisture condensation.

5.1.1.2 Figure 16–1 illustrates the probe used in lime kilns and other sources where significant amounts of particulate matter are present. The probe is designed with the deflector shield placed between the sample and the gas inlet holes to reduce clogging of the filter and possible adsorption of sample gas. As an alternative, the probe described in Section 2.1.1 of Method 16A having a nozzle directed away from the gas stream may be used at sources having significant amounts of particulate matter.

5.1.1.3 **Note:** Mention of trade names or specific products does not constitute an endorsement by the Environmental Protection Agency.

5.1.2 Particulate Filter. 50-mm Teflon filter holder and a 1- to 2-micron porosity Teflon filter (available through Savillex Corporation, 5325 Highway 101, Minnetonka, Minnesota 55343). The filter holder must be maintained in a hot box at a temperature of at least 120°C (248°F).

5.1.3 SO_2 Scrubber.

5.1.3.1 Three 300-ml Teflon segmented impingers connected in series with flexible, thick-walled, Teflon tubing. (Impinger parts and tubing available through Savillex.) The first two impingers contain 100 ml of citrate buffer and the third impinger is initially dry. The tip of the tube inserted into the solution should be constricted to less than 3-mm (⅛-in.) ID and should be immersed to a depth of at least 5 cm (2 in.). Immerse the impingers in an ice water bath and maintain near 0°C. The scrubber solution will normally last for a 3-hour run before needing replacement. This will depend upon the effects of moisture and particulate matter on the solution strength and pH, which should be monitored.

5.1.3.2 Connections between the probe, particulate filter, and SO_2 scrubber shall be made of Teflon and as short in length as possible. All portions of the probe, particulate filter, and connections prior to the SO_2 scrubber shall be maintained at a temperature of at least 120°C (248°F).

5.1.4 Sample Line. Teflon, no greater than 1.3-cm (½-in.) ID. Alternative materials, such as virgin Nylon, may be used provided the line loss test is acceptable.

5.1.5 Sample Pump. The sample pump shall be a leakless Teflon-coated diaphragm type or equivalent.

5.2 Dilution System. Needed only for high sample concentrations. The dilution system must be constructed such that all sample contacts are made of Teflon.

* * * * *

6. * * *

6.4 Diluent (If required). Air containing less than 50 ppb total sulfur compounds and less than 10 ppm each of moisture and total hydrocarbons.

* * * * *

6.6 * * * Adjust the pH to between 5.4 and 5.6 with potassium citrate or citric acid, as required. Under conditions of high SO_2 or moisture concentrations, the life of the scrubber may be extended by doubling the buffer concentration.

6.7 Sample Line Loss Gas (Optional). As an alternative, H_2S cylinder gas may be used for the sample line loss test. The gas shall be NBS-traceable or calibrated against certified permeation devices or by the procedure in Section 7 of Method 16A.

7. * * *

7.1.1 * * * As an alternative to the initial leak-test, the sample line loss test described in Section 10.1 many be performed to verify the integrity of components.

* * * * *

8. * * *

8.3 Calibration of Analysis System. Generate a series of three or more known concentrations spanning the linear range of the FPD (approximately 0.5 to 10 ppm for a 1-ml sample) for each of the four major sulfur compounds. Inject these standards into the GC/FPD analyzer and monitor the responses. Three injects for each concentration must not vary by more than 5 percent from the mean of the three injections. Failure to attain this precision is an indication of a problem in the calibration or analytical system. Any such problem must be identified and corrected before proceeding.

8.4 * * * Alternatively, a least squares equation may be generated from the calibration data using concentrations versus the appropriate instrument response units.

* * * * *

9. * * *

9.1 Sampling. Insert the sampling probe into the test port making certain that no dilution air enters the stack through the port. Begin sampling. Condition the entire system with sample for a minimum of 15 minutes prior to commencing analysis.

9.2 Analysis. Aliquots of sample are injected into the GC/FPD analyzer for analysis.

9.2.1 * * *

9.2.2 Observation for Clogging of Probe or Filter. If reductions in sample concentrations are observed during a sample run that cannot be explained by process conditions, the sampling must be interrupted to determine if the probe or filter is clogged with particulate matter. If either is found to be clogged, the test must be stopped and the results up to that point discarded. Testing may resume after cleaning or replacing the probe and filter. After each run, the probe and filter shall be inspected and, if necessary, replaced.

10. Post-Test Procedures

10.1 * * *

10.2 Recalibration. After each run, or after a series of runs made within a 24-hour period, perform a partical recalibration using the procedures in Section 8. Only H2S (or other permeant) need by used to recalibrate the GC/FPD analysis system (Section 8.3). A recalibration is not required if the line loss test after the run or series of runs indicates that losses are 10 percent or less.

11. In Method 16, by removing "9:1" from the first sentence in Section 3.2.

12. In Method 16, by revising the second sentence in Section 3.3 to read as follows: "This interference is eliminated by using the Teflon filter after the probe."

13. In Method 16, by removing "8-hour" and replacing with "24-hour" in Section 4.2.

14. In Method 16, by removing Section 5.3.

15. By redesignating Sections 5.4 through 5.4.4.3 as 5.3 through 5.3.4.3.

16. In Method 16, by adding a new Section 5.3.4.4 to read as follows:

5.3.4.4 Rotary Gas Valves. Multiport valves made of Teflon and equipped with sample loop. Sample loop volumes shall be chosen to provide the needed analytical range. Teflon tubing and fittings shall be used throughout to

present an inert surface for sample gas. The gas chromatograph must be calibrated with the sample loop used for sample anlysis. The effective analytical range of each loop must be documented.

17. In Method 16, by redesignating Section 5.5 as 5.4 and revising the third sentence in the second paragraph of the newly redesignated section to read as follows: "Baseline separation is defined as a return to zero ±5 percent in the interval between peaks.

18. In Method 16, by redesignating Sections 5.6 and 5.6.1 as 5.5 and 5.5.1, respectively, and adding "(See Figure 16–2)" to the end of the last sentence of the newly redesignated Section 5.5.

19. In Method 16, by redesignating Section 5.6.2 as 5.5.2 and adding the following sentence to the end of the newly redesignated section: "Flow over the permeation device may also be determined using a soap bubble flowmeter."

20. In Method 16, by redesignating Sections 5.6.3 and 5.6.4 as 5.5.3 and 5.5.4, respectively.

21. In Method 16, by adding "(if applicable)" to the end of the first sentence in Section 8.1.

22. In Method 16, by removing Section 8.5.

23. In Method 16, by removing the fifth sentence in the second paragraph of Section 10.1 to read as follows: "Alternatively, cylinders of hydrogen sulfide mixed in air and certified according to Section 6.7 may be used."

24. In Method 16, by removing "wet basis" and adding "dry basis" in Section 11.2.

25. In Method 16, by removing "(1–B_{wo})" from the denominator of the equation in Section 11.3.

26. In Method 16, by designating the equation in Section 11.3 as "Eq. 16–3."

27. In Method 16, by removing the following from Section 11.3: "B_{wo} = Fraction of volume of water vapor in the gas stream as determined by reference Method 4—Determination of Moisture in Stack Gases (36 FR 24887)."

28. In Method 16, by redesignating Eq. 16–3 as Eq. 16–4.

29. In Method 16, by removing Section 12 and redesignating Sections 13 through 13.6 as 12 through 12.6.

30. In Method 16, by removing Figures 16–2 through 16–5.

31. In Method 16, by adding a new Figure 16–2.

BILLING CODE 6560-50-M

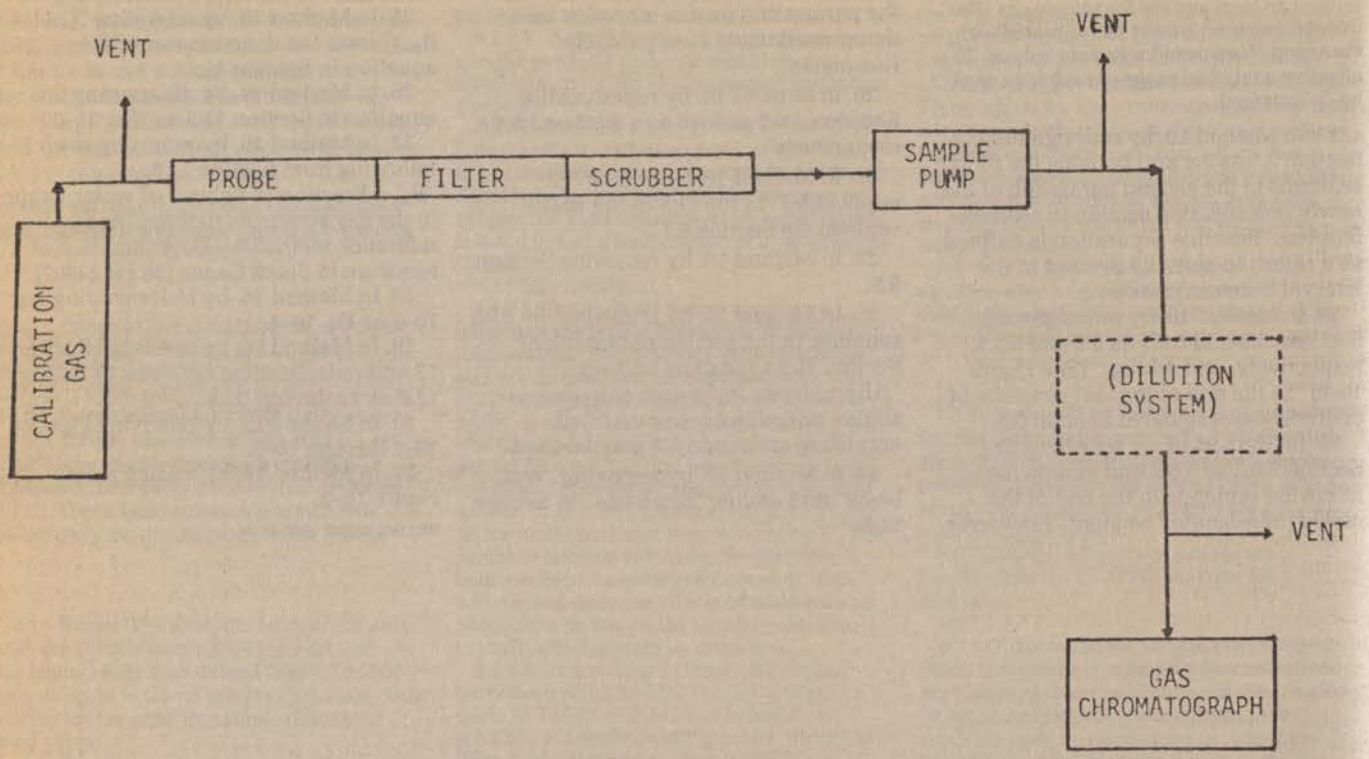

Figure 16-2. Determination of sample line loss.

[FR Doc. 88-19782 Filed 9-6-88; 8:45 am]
BILLING CODE 6560-50-C

40 CFR Part 81

Designation of Areas for Air Quality Planning Purposes; Ohio

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to disapprove the State of Ohio's February 26, 1987, request to redesignate the air quality status of Montgomery County for total suspended particulates (TSP). USEPA has determined that the redesignation was incomplete for Montgomery County because of a lack of sufficient technical support. The purpose of this notice is to discuss the additional data that is needed to satisfy the requirements of UEPA's Redesignation Policy and to solicit comments on USEPA's proposed action. If the State submits the requested data during the public comment period, and USEPA determines it is acceptable, USEPA will withdraw its notice of proposed disapproval and propose to approve the redesignation. However, if the State does not submit the requested data or it is not acceptable, USEPA will take final action to disapprove the request.

DATE: Comments must be received by October 7, 1988.

ADDRESSES: Copies of the redesignation request and supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604.

Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 WaterMark Drive, P.O. Box 1049, Columbus, Ohio 43266–0149.

Written comments should be sent to: Gary Gulezian, Chief Regulatory Analysis Section Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Delores Sieja, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6038.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1977 added section 107(d) to the Clean Air Act (the Act). This section directed each State to submit, to the Administrator of USEPA, a list of the attainment status for all areas within the State. The Administrator was required to promulgate the State lists, with any necessary modifications. The Administrator published these lists in the **Federal Register** on March 3, 1978 (43 FR 8962), and made necessary amendments in the **Federal Register** on October 5, 1978 (43 FR 45993). These area designations are subject to revision whenever sufficient data become available to warrant a redesignation.

The primary TSP NAAQS was violated when, in a year, either: (1) The geometric mean value of TSP concentrations exceeded 75 mircograms per cubic meter of air (75 ug/m^3) (the annual primary standard; or (2) the 24-hour concentration of TSP exceeded 260 ug/m^3 more than once (the 24-hour standard). The secondary TSP NAAQS was violated when, in a year, the 24-hour concentration exceeded 150 ug/m^3 more than once.

USEPA revised the particulate matter standard on July 1, 1987, (52 FR 24634) and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particular matter with nominal diameter of 10 mircrometers or less (PM_{10}). However, USEPA will continue to process redesignations of areas from nonattainment to attainment or unclassifiable for TSP in keeping with past policy because various regulatory provisions such as new source review and prevention of significant deterioration are keyed to the attainment status of areas. The July 1, 1987, notice (p. 24682), column 1) describes USEPA's transition policy regarding TSP redesignations.

USEPA's criteria for supportable redesignation requests, as they pertain to TSP, are discussed most recently in the following memorandum:

• September 30, 1985, from Gerald Emison, Director, Office of Air Quality Planning and Standards (OAQPS), to the Regional Air Division Directors entitled "Total Suspended Particulate (TSP) Redesignations."

USEPA's criteria relevant to TSP redesignations are summarized as follows:

• Eight consecutive quarters of the most recent, quality assured ambient air quality data must indicate no violation of the TSP NAAQS. The monitors must be placed at points of expected maximum TSP impact, and the monitoring network must be extensive enough to produce fully representative data. If monitoring data are not representative, dispersion modeling must be used to determine the impact of a source.

• Improvements in air quality must be attributable to federally enforceable and permanent emission reductions from a fully approved and implemented SIP control strategy. An exception to the requirement for a fully approved and implemented SIP control strategy can be made if the physical circumstances and long-term economic factors are such that the approved and implemented measures have the same weight as a fully approved SIP control strategy for the purpose of demonstrating attainment. For example, the permanent closing of the major emitting sources, road paving to eliminate fugitive emissions, or other irreversible actions can be such measures.

• Emission reductions and the resultant impact on air quality cannot be temporary or the result of an economic downturn. It must be highly unlikely that emission rates will increase at units operating below their allowable emission rates or that any increase will result in a violation of the NAAQS.

• Dispersion techniques cannot be responsible for the improvement in air quality. Sources in the nonattainment area must be reviewed for consistency with the requirements of USEPA's July 8, 1985 (50 FR 27892), revised stack height regulations.

On October 5, 1978 (43 FR 46013) Montgomery County was designated as follows:

Primary Nonattainment

The Cities of Miamisburg and Dayton excluding that portion of Dayton bounded by Patterson Rd., Spaulding Rd., Woodbine Ave., and Smithville Road.

Secondary Nonattainment

That area in Montgomery County south and east of the following: Rte. 440 (U.S. 40) at the Montgomery-Miami County line south to Bridgewater Rd., south to Taylorville Rd., west of Little York Rd., west to Peters Rd., south of Frederick Rd., northwest to Dog Leg Rd., southwest to Westbrook Rd., west to Olive Rd., south to Shiloh Springs Rd., west to Union Rd., south to Little Richmond Rd., west to Snyder Rd., south to Old Dayton Rd., west to Luther's Church Rd., South to Mile Rd., West to Guntle Rd., south Havermale Rd., west to Clayton Rd., south to Chicken Birshle Rd., west to Montgomery-Preble county line. However, there is an *attainment* area within this nonattainment area which is described by the following boundaries: north on S.R. 48 from the Montgomery-Warren county line to Whipp Road, east to Bigger Road, north to Wilmington Pike, northwest to Woodman Dr., north to Vale Dr., east to County Line Rd., north to Patterson Rd., west to Spaulding Rd., north to Woodbine Ave., west to Smithville Rd., south to Dorothy La., west to South

Dixie Dr., southwest to I–75, south to the Montgomery-Warren county line.

Attainment

Remainder of County

On February 26, 1987, the State of Ohio requested that USEPA redesignate Montgomery County to attainment except for the City of Moraine which should remain secondary nonattainment.

To support is request that the primary and secondary nonattainment areas be redesignated to attainment, the State submitted (1) data collected at the 12 monitoring sites in the county for the period 1984–1986, (2) a list of emission reductions due to the installation of air pollution control equipment and permanent plant shutdowns, and (3) a discussion of stack height dispersion techniques. (The last cannot be credited for evaluating this redesignation.) USEPA supplemented these data with, among other things, monitoring data from its Storage and Retrieval of Aerometric Data (SAROAD) from 1976 to 1986.

USEPA's Evaluation of Technical Support Data

USEPA has reviewed the technical support data submitted by the State and has determined that the redesignation is not acceptable primarily due to insufficient federally enforceable emission reductions. In addition, the monitoring network is inadequate in two areas and, where monitoring data are not available, the State must justify why they consider the area attainment given the absence of monitoring data. Each of these issues and the implications of the stack height regulations is discussed below.

Emission Reductions

The State has cited 17 facilities in Montgomery County which had either shutdown or installed air pollution control equipment. For the facilities that have been shutdown, Ohio did not submit evidence that these shutdowns are permanent and federally enforceable. This evidence should be in the form of documentation showing that if these sources were to start-up why they must be treated as new sources under Ohio s new source review permitting requirements. For the facilities tnat have installed air pollution control equipment, Ohio did not verify to USEPA that all the installed air pollution control equipment are federally enforceable, i e., part of the SIP Ohio must verify that the SIP has been fully implemented, in order for USEPA to be able to redesignate the area

While actual emissions have decreased significantly in Montgomery County, Ohio only cites a few federally enforceable reductions. Because many sources are currently operating at levels below those allowed by the SIP, Ohio must demonstrate that air quality would be maintained if such sources were to increase emissions to allowed levels. This is especially important in the Miamisburg area for which Ohio failed to cite any emission reductions, yet requested a redesignation from primary nonattainment to attainment.

To summarize this section, Ohio must provide sufficient federally enforceable emission reductions coupled with a fully implemented SIP to support this redesignation. If reductions in emissions due to the implementation of Ohio's fugitive dust regulations have caused the improvement in air quality, then Ohio must obtain federal approval of their fugitive dust regulations before Montgomery County can be redesignated, or the reductions must be otherwise demonstrated to be permanent.

Monitoring Network

The monitoring network is acceptable for the entire primary and secondary nonattainment area that the State is requesting be redesignated except for Valley street in Dayton (which is discussed in the following section) and for the areas north of the Cities of Dayton and Miamisburg. For these areas no monitors are located near the major sources. North of Dayton are located the Cargill Corn Mill Plant (157 tons per year (TPY) allowable) and the Montgomery County North Reduction Plant (incinerator, 100 TPY 1983 actual emissions). North of Miamisburg are located Ohio Briquetting (101 TPY allowable) and several other smaller sources. For USEPA to redesignate these areas the State must provide modeling, following USEPA guidelines, to demonstrate attainment in these areas.

Monitoring Data

For the most recent eight quarters of air quality monitoring data, there have been no violations of either the primary or secondary TSP NAAQS at the nine monitoring sites currently operating the the County. However, monitor 361660015 (Valley Street, Dayton) was shutdown in 1982 after recording violations of the primary NAAQS from 1976–1981. Thus, two years of violation-free data are not available at this site. The State must specifically discuss the reason it considers this area attainment given the absence of monitoring data in order for USEPA to be able to redesignate the area

Stack Height Regulations

USEPA assessed the impact of the stack height dispersion techniques on the redesignation request. It was determined that the improvements in air quality were not inconsistent with the stack height regulations.

Proposed Action

- Disapproval of the State's February 26, 1987, redesignation request for Montgomery county.

If the State provides the additional technical support discussed above for Montgomery County during the public comment period, and USEPA determines that it is acceptable, then USEPA will withdraw its notice of proposed disapproval and propose to approve the designation. If, however, the State does not provide the additional data, or if it is not acceptable, then USEPA will take final action to disapprove the redesignation request.

All intersted parties are invited to submit comments on this proposed action notice. USEPA will consider all comments received within 30 days of publication of this notice.

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

Under 5 U.S.C. section 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Authority: 42 U.S.C. 7401–7642.

Dated: September 14, 1987.

Valdas V. Adamkus,

Regional Administrator.

Editorial Note: This document was received at the Office of the Federal Register September 1, 1988.

[FR Doc. 88–20242 Filed 9–6–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[Gen. Docket No. 88–387; FCC 88–265]

Amendment of the Commission's Environmental Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is instituting this Notice of Proposed Rulemaking to ensure that it is fully meeting its responsibilities under the Nationa

Environmental Policy Act of 1969 when licensing communication facilities for which pre-construction authorization is not required by the Communications Act or the Commission's rules.

DATES: Comments are due on or before October 3, 1988, and reply comments on or before October 18, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: A. Holly Berland, Federal Communications Commission, Washington, DC 20554, (202) 632–6990.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, adopted July 26, 1988, and released August 16, 1988. The full text of this Commission decision and the rule amendments are available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street NW., Washington, DC. The full text of this decision and the rule amendments may also be purchased from the Commission's contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rulemaking

The Commission is proposing to amend its environmental rules with respect to communications facilities that do not require preconstruction authorization but which may significantly affect the environment. Currently, the Commission's rules provide that environmental processing for such facilities must be completed at the licensing stage and allow applicants to construct facilities at their own risk, without prior environmental review. The Commission is concerned that in some cases irreversible damage to the environment may occur, despite subsequent remedial efforts by the Commission or the applicant. Thus, the Commission is proposing to strengthen its requirements in this area. Specifically, the Commission proposes to require the completion of environmental processing before the construction of any facility that may have a significant environmental impact.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

Appendix

Part 1 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended to read as follows:

1. Section 1.1303 is amended by revising the section to read as follows:

§ 1.1303 Scope.

The provisions of this subpart shall apply to all Commission actions that may or will have a significant impact on the quality of the human environment. To the extent that other provisions of the Commission's rules and regulations are inconsistent with this subpart, the provisions of this subpart shall govern.

2. Section 1.1312 is amended by redesignating the old section as paragraph (a), and revising it; and adding paragraphs (b), (c) and (d) to read as follows:

§ 1.1312 Facilities for which no pre-construction authorization is required.

(a) In the case of facilities for which no Commission authorization prior to construction is required by the Commission's rules and regulations the licensee or applicant shall initially ascertain whether the proposed facility may have a significant environmental impact as defined in § 1.1307, or is categorically excluded from environmental processing under § 1.1306.

(b) If a facility covered by paragraph (a) of this section may have a significant environmental impact, the information required by § 1.1311 shall be submitted by the licensee or applicant and ruled on by the Commission, and environmental processing (if invoked) shall be completed, *see* § 1.1308, prior to the initiation of construction of the facility.

(c) If a facility covered by paragraph (a) of this section is categorically excluded from environmental processing, the licensee or applicant may proceed with construction and operation of the facility in accordance with the applicable licensing rules and procedures.

(d) Paragraphs (a) through (c) of this section shall not apply to the construction of mobile stations.

[FR Doc. 88–20201 Filed 9–6–88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87–405; RM–5886]

Radio Broadcasting Services; Spring Hill, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of petition

SUMMARY: This document denies the request of Paul P. Miller to allot Channel 275A to Spring Hill, Florida, as a first FM service. No suitable transmitter site can be found for Channel 275A at Spring Hill. With this action, this proceeding is terminated.

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

SUPPLEMENTARY INFORMATION: The proposed rule was published on October 13, 1987, at 52 FR 37993. This is a summary of the Commission's Report and Order, MM Docket No. 87–405, adopted August 5, 1988, and released August 30, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW. Suite 140, Washington DC 20037.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88–20210 Filed 9–6–88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88–418, RM–6402]

Radio Broadcasting Services; Hawley, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Jerry C. Paparelli seeking the allotment of Channel 287A to Hawley, Pennsylvania, as the community's first local FM service. Channel 287A can be allotted to Hawley in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.0 kilometers (2.5 miles) north to avoid a short-spacing to the pending application of Station WDAS, Channel 287B1, Philadelphia, Pennsylvania, specifying Class B facilities (ARN–870129IE). Canadian concurrence in the allotment at Hawley is required since the community is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before October 24, 1988, and reply comments on or before November 8, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jerry C. Paparelli, 401

Virginia Avenue, Peckville, Pennsylvania 18452 (Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–418, adopted August 2, 1988, and released August 31, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88–20200 Filed 9–6–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–419, RM–6358]

Radio Broadcasting Services; Amarillo, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by John A. Gay, Jr., proposing the allocation of Channel 289A to Amarillo, Texas, as that community's eighth local FM service. The coordinates for the proposal are 35–12–30 and 101–51–00.

DATES: Comments must be filed on or before October 24, 1988, and reply comments on or before November 8, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Robyn G. Nietert, Esquire, David J. Kaufman, Esquire, Brown, Finn & Nietert, Chartered, 1920 N Street NW., Suite 510, Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–419, adopted August 5, 1988, and released August 31, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88–20199 Filed 9–6–88; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Parts 641 and 644

Change in Solicitation Procedures Regarding Grants, Technology Introduction, and Innovative Techniques and Methods

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice of withdrawal of rulemaking and availability of circular.

SUMMARY: The Urban Mass Transportation Administration (UMTA) withdraws from formal rulemaking the proposed regulation titled "Technology Introduction Program" for section 3(a)(1)(C) grants and the proposed regulation titled "Innovative Techniques and Methods in the Management and Operation of Public Transportation" for section 4(i) grants. Notices of proposed rulemaking (NPRMs) for the two programs have been pending since 1980 and 1981. UMTA has decided that it will no longer conduct open solicitations for grants under sections 3(a)(1)(C) and 4(i) of the Urban Mass Transportation Act of 1964 as amended (UMT Act).

FOR FURTHER INFORMATION CONTACT: Joseph Goodman, (202) 366–0240, or George Izumi, (202) 366–0220, Department of Transportation, Urban Mass Transportation Administration, Office of Technical Assistance and Safety, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY: Sections 3(a)(1)(C) and 4(i) of the UMT Act are companion provisions, enacted to provide financial incentives to States and public agencies. Essentially, they authorize grants to finance the introduction of both innovative techniques and improved products into public transportation service.

For several years there has been a competitive solicitation procedure in place which has yielded over one hundred proposals each year. The funding in the past has been approximately $10 million yearly from the Mass Transit Account of the Highway Trust Fund. In recent fiscal years, the funding has generally been $5 million or less.

UMTA has decided to change the

selection process. A more informal selection process similar to that used for grants under section 6 of the UMT Act will be used. The new process will continue to further the policies of section 3(a)(1)(C) and 4(i) which are the advancement of the state-of-the-art of transportation services and equipment. Inquiries with regard to section 4(i) grants should be directed to Joseph Goodman, Office of Technical Assistance and Safety, (202) 366–0204. Inquiries with regard to section 3(a)(1)(C) grants should be directed to George Izumi, Office of Technical Assistance and Safety, (202) 366–0220.

Since UMTA has decided to change the selection procedure, it will no longer be necessary for applicants to refer to the NPRMs for guidance in proposal preparation, as was the past practice. Formal rulemaking for each program began with the publication of an NPRM for section 4(i) on December 1, 1980 (45 FR 79669) and publication of an NPRM for section 3(a)(1)(C) on January 19, 1981 (46 FR 5832). Both NPRMs prescibed policies and procedures for administering the two grant programs and included lists of projects which had been given favorable consideration in the past. In subsequent **Federal Register** notices, when proposals for the two programs were solicited, the NPRMs were mentioned as guidance for proposal preparation. The new procedure will no longer require such guidance. Therefore, the NPRMs for sections 3(a)(1)(C) and 4(i) of the UMT Act are withdraw from formal rulemaking.

Prospective applicants for sections 3(a)(1)(C) and 4(i) funds should follow the "Application Instructions and Program Management Guidelines for section 3(a)(1)(C), Technology Introduction; Section 4(i) Innovative Techniques and Methods; and section 6, Technical Assistance, Grants and Cooperative Agreements" contained in UMTA Circular 6100.1B. Copies of UMTA Circular 6100.1B may be obtained from: Department of Transportation, Urban Mass Transportation Administration, Office of Administration, Administrative Services Division, 400 Seventh Street SW., Washington, DC 20590, (202) 366–4865.

Issued On: August 30, 1988.

Alfred A. DelliBovi,

Administrator.

[FR Doc. 88–20055 Filed 9–6–88; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal to List the Roanoke Logperch as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list a fish, the Roanoke logperch (*Percina rex*), as an endangered species. Endemic to Virginia, this fish now occurs only in four widely separated populations: In the upper Roanoke River, the Pigg River, the Nottoway River and the Smith River. Each population is vulnerable because of its relatively low density and limited extent. The largest and most vigorous population, in the upper Roanoke River, is subject to the most serious threats: from urbanization, industrial development, water supply and flood control projects, and, in the upper basin, from agricultural runoff. The other three populations are subject to siltation resulting from agricultural activites and to potential chemical spills. The Smith River population is especially vulnerable because of its small size. This proposal, if made final, will implement the protection of the Endangered Species Act of 1973, as amended, for this fish. The Service seeks relevant data and comments from the public.

DATES: Comments from all interested parties must be received by November 7, 1988. Public hearing requests must be received by October 24, 1988.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Annapolis Field Office, U.S. Fish and Wildlife Service, 1825 Virginia Street, Annapolis, Maryland 21401. Comments and materials will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. G. Andrew Moser at the above address (301/269–5448).

SUPPLEMENTARY INFORMATION:

Background

The Roanoke logperch, (*Percina rex*), was discovered in the Roanoke River near Roanoke, Virginia in 1888 and described by Jordan (1889).

A large darter, *P. rex* reaches 14 centimeters (5.5 inches) total length. It is characterized by an elongate, cylindrical to slab-sided body, conical snout and complete lateral line. The back is dark green, the sides are greenish to yellowish and belly is white to yellowish. The upper sides and back have dark scrawlings and numerous small saddles. Bar markings on its sides are prominent, usually separated from the dorsal markings and typically ovoid in shape.

The species commonly lives 5 to 6 years; both sexes probably reach maturity by age four. Spawning occurs in April on May in deep runs over gravel and small cobble (Simonson and Neves 1986). *P. rex* feeds primarly on aquatic insect larvae, especially the larvae of chironomids and caddisflies (Burkhead 1983). During warm months, adults occupy gravel and cobble runs and riffles, while juveniles typically utilize slow runs and pools with clean sand substrates. Winter habitat of all individuals appears to be deep pools, under boulders (Burkhead 1983).

The Roanoke logperch is endemic to two river systems in Virginia—the Roanoke River drainage (including the Pigg and Smith Rivers) and the Nottoway River drainage. Its distribution extends from the Ridge and Valley province through the Blue Ridge to the lower Piedmont. It now occurs in four disjunct populations located in widely separated segments of four rivers: The upper Roanoke River, the Pigg River, the Nottoway River and the Smith River. It is probable that these represent remnants of a single much larger population that once occupied much of the Roanoke drainage upstream of the fall line.

All extant populations of the Roanoke logperch are in Virginia in the river reaches described below. Within the upper Roanoke River, the logperch occurs in Roanoke and Montgomery Counties from within the city limits of Roanoke upstream into the North and South Forks of the Roanoke. It also occurs in Tinker Creek, a tributary of the upper Roanoke in Roanoke County. In the Pigg River system the logperch occurs in a 32-mile reach of the mainstem Pigg River in Pittsylvania and Franklin Counties, and in Big Chestnut Creek, a Franklin County tributary of the Pigg. In the Nottoway River system the species occurs in a 32-mile reach of the mainstem in Sussex County, Virginia, and in Stony Creek, a tributary of the Nottoway in Dinwiddle and Sussex Counties. In the Smith River system, *P. rex* occurs in a 2.5-mile reach in Patrick County upstream of Philpott Reservoir, and in Town Creek, a Smith River tributary in Henry County.

Recent survey date (Simonson and Neves 1986) indicate that the largest population of *P. rex* inhabits the Upper Roanoke River. The Pigg River system is

rather sparsely inhabited by the logperch, while the Nottoway River has even lower population densities of the species. The Smith River logperch population appears to be extremely small.

Threats to the upper Roanoke population of the logperch are posed by a pending Roanoke County water supply project and a proposed U.S.Army Corps of Engineers (Corps) flood control project. Results of the most recent comprehensive survey (Simonson and Neves 1986) indicate that the species has probably already declined in the North Fork of the Roanoke. Chemical spills, which have increased in frequency in the industrialized sections of the river in Salem and Roanoke, present a continuing threat. The Pigg River and North Fork of the Roanoke are heavily impacted by silt washed from agricultural lands in the watersheds.

The Roanoke logperch has been included in three Notices of Review indicating that it was a candidate for Federal listing. These were published in May 13, 1980, **Federal Register** (45 FR 31447), the December 30, 1982, **Federal Register** (47 FR 58454), and the September 18, 1985, **Federal Register** (50 FR 37958). The last of these Notices, the Service's most recent vertebrate Notice of Review, placed the logperch in category 1, indicating that the Service had substantial information on hand to support listing the species as endangered or threatened. The Service was petitioned on September 29, 1983, by Mr. Noel Burkhead to list the Roanoke logperch as a threatened species. In 1985 and 1986 evaluations of this petition the Service found that the action was warranted, but precluded from immediate proposal because of other pending proposals to list, delist or reclassify species. Notice of these findings was published in the **Federal Register** on January 9, 1986 (51 FR 996) and June 30, 1987 (52 FR 24312), respectively.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Roanoke logperch (*Percina rex*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The largest known population of the logperch, in the upper Roanoke River, is under increasing stress from urbanization and industrial development (Jenkins 1979). Urban runoff and other nonpoint-source pollution are increasing problems. Silt, oil, fertilizer and a variety of chemical pollutants in this runoff degrade habitat of the logperch. As urban development expands to the west along the Roanoke River Valley, the river reach degraded by this runoff will increase. Frequent chemical spills have occurred from the industries and transportation corridors along the upper Roanoke River. These have included fuel oil, diesel fuel, sodium cyanide, toluene, gasoline and ethyl benzene-creosote (Burkhead 1983). Many of these spills have resulted in fish kills, several extending over a distance of six miles or more.

Additional threats in the upper Roanoke River habitat could result from the proposed West Roanoke County Water Supply Project, the Corps of Engineers' Upper Roanoke River Flood Control Project and the National Park Service's Roanoke River Parkway proposal. The water supply project is intended to supply projected future water needs of Roanoke County by withdrawal of water from the Roanoke River. As projected, it could result in long periods when a seven-mile reach of the Roanoke River would be drawn down to low flow levels. This river reach provides excellent logperch habitat (Burkhead 1986) that could be adversely affected by such extended low flows. Predicted effects of these low flow periods include exposure of riffles, decreased dissolved oxygen, increased pollution concentrations, and increased water temperatures during the summer and early fall. Certain recent project modifications, however, lessen the expected severity of these effects.

The Corps of Engineers flood control project involves proposed channel modification of the upper Roanoke River within the city limits of Roanoke. Although the Corps has funded studies of the logperch and worked with the Service to reduce project impacts, some adverse effects on the logperch are expected.

The National Park Service's Roanoke River Parkway could adversely affect the logperch if it is constructed adjacent to the upper Roanoke River, but until the proposal goes beyond the conceptual stage, the significance of its impacts, if any, will remain unknown.

The Smith River logperch population is potentially threatened by the Corps of Engineers' Charity Hydropower Project, which would impound the entire reach of this river supporting the logperch. However, the Corps' recent study indicated that the project is not currently economically feasible.

Most of the rivers supporting the logperch are subject to siltation resulting from agricultural activities and other developments in their watersheds. The Pigg River and the North Fork of the Roanoke, in particular, are impacted by silt generated from agriculture. This may partially account for the recently observed decline of the species in the North Fork of the Roanoke (Simonson and Neves 1986).

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

There is no evidence to suggest that overutilization for any of these purposes has contributed to the decline of the logperch. Because of the species' low numbers, overcollection could adversely affect its smaller populations occurring outside the mainstream Roanoke River.

C. Disease or Predation

There is no evidence that disease is a threat to this species. Predation may constitute a significant portion of the mortality of the larval and post larval stages (Burkhead 1983), but this is not considered a significant threat so long as reproductive rates remain normal.

D. The Inadequacy of Existing Regulatory Mechanisms

Virginia state law (Sections 29.1–412 and 29.1–418) requires a permit for the scientific collection of freshwater fishes, but does not protect the species' habitat from the potential impacts of Federal projects. Federal listing would provide protection for the species under the Endangered Species Act by requiring Federal agencies to consult with the Service when projects they fund, authorize or carry out may affect the species.

E. Other Natural or Manmade Factors Affecting its Continued Existence

The logperch is vulnerable to vandalism, particularly the smaller populations found at locations other than the mainstem Roanoke River.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Roanoke

logperch as endangered. Each of the four relatively small and widely separated populations of the logperch is susceptible to extirpation through continued adverse habitat modification. Several imminent threats are now present in the upper Roanoke River drainage, which supports the species' largest population. Furthermore, the most recent comprehensive survey for the species (Simonson and Neves 1986) indicates a sharp decline in the North Fork Roanoke population and low population densities for all populations of the fish. Although three other populations of the species are extant, two of these populations (in the Nottoway River and the Smith River) are highly vulnerable to threats because of their small size; the third, in the Pigg River, is threatened by siltation. In view of the serious problems faced by the logperch, threatened status is not appropriate.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. As outlined above under Factors "B" and "E", the species is vulnerable to overcollection and vandalism. The Service finds that designation of critical habitat is not prudent for the Roanoke logperch. No benefit to the species has been identified that would outweigh the potential threats of collection or vandalism, which would be exacerbated by publication of a detailed critical habitat description. The Corps of Engineers has conducted studies of the upper Roanoke River population of the logperch and is familiar with the species's total distribution. It is the agency that would be involved with most projects or permits affecting the species' habitat. Several other Federal agencies have also been notified of the Roanoke logperch's distribution and requested to provide data on proposed Federal projects that might adversely affect the species. The involved Federal agencies thus already have the species' distributional data needed to determine if the species may be impacted by their action.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act including recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered and with respect to its critical habitat, if any is being designed. Regulations implementing this interagency cooperation provision of the Act are found at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action my affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal activities that could impact the Roanoke logperch include, but are not limited to, the following: Issuance of permits for stream alterations, reservoir construction, wastewater facility development, flood control projects, and road and bridge construction on the river reaches supporting the logperch. Four specific proposed actions with Federal involvement that may affect the logperch are the West Roanoke County Water Supply Project, the Upper Roanoke River Flood Control Project, the Charity Hydropower Project and the Roanoke River Parkway. These projects and potential impacts on the species are described above. Modifications of these planned activities may be necessary to protect the Roanoke logperch. It has been the experience of the Service that nearly all section 7 consultations are resolved so that the species is protected and the project objectives are met.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered fish or wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned government agencies, the scentific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

The final decision on this proposed rule will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of publication of the proposal. Such requests must be made in writing (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the

authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Burkhead, N. M. 1983. Ecological studies of two potentially threatened fishes (the orangefin madtom, *Noturus gilberti*, and the Roanoke logperch, *Percina rex*) endemic to the Roanoke River drainage. Report to Wilmington District Corps of Engineers, Wilmington, North Carolina. 155 pp.

Burkhead, N. M. 1986. Potential impact of hte West County Reservoir Project on two endemic rare fish and the aquatic biota of the upper Roanoke River, Roanoke County, Virginia. Report to Roanoke County Public Facilities Dept., Roanoke, Virginia. 15 pp.

Jenkins, R. E. 1979. Freshwater and Marine Fishes. *In* D. W. Linzey (ed.), Endangered and Threatened Plants and Animals of Virginia. Virg. Poly. Inst. and State Univ., Blacksburg, Virginia. pp. 319–373.

Jordan, D. S. 1889. Description of fourteen species of freshwater fishes collected by the United States Fish Commission in the summer of 1888. Proc. U.S. Natl. Mus. 11:351–362.

Simonson, T. D. and R. J. Neves. 1986. A status survey of the orangefin madtom (*Noturus gilberti*) and Roanoke logperch (*Percina rex*). Report for the Virginia Commission of Game and Inland Fisheries, Richmond, Virginia. 103 pp.

Author

The primary author of this proposed rule is G. Andrew Moser, Annapolis Field Office, U.S. Fish and Wildlife Service, 1825 Virginia Street, Annapolis, Maryland 21401 (301/269–5448).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 97 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under "Fishes," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Fishes:							
*	*	*	*	*		*	
Logperch, Roanoke	*Percina rex*	U.S.A.(VA)	Entire	e		NA	NA
*	*	*	*	*		*	

Dated: August 11, 1988.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–20296 Filed 9–6–88; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 53, No. 173
Wednesday, September 7, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Review of the United States Sugar Import Quota System

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice announces the determination of the Secretary of Agriculture that continued operation of the U.S. sugar import quota system established by Presidential Proclamation 4941 of May 5, 1982 (47 FR 19661) is necessary to provide due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade (GATT).

FOR FURTHER INFORMATION CONTACT: John Nuttall, Foreign Agricultural Service, Department of Agriculture, Washington, DC 20250, Telephone: (202) 447–2916.

SUPPLEMENTARY INFORMATION: In accordance with paragraph (f) of headnote 3, subpart A, part 10, schedule 1 of the Tariff Schedules of the United States (TSUS), the Secretary of Agriculture has consulted with the U.S. Trade Representative, the Department of State, and other concerned agencies on the operation of the sugar import quota system established under the authority of headnotes 2 and 3 of subpart A, part 10, schedule 1 of the TSUS, the now-expired International Sugar Agreement, 1977, Implementation Act, and Section 201 of the Trade Expansion Act of 1962. After such consultation, the Secretary of Agriculture has determined that this quota system should be continued in effect in order to give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the GATT. The rationale for this decision is based on the following analysis.

A. Current World and U.S. Sugar Market Situation

World sugar consumption for 1987/88 is expected to exceed production for only the second time since 1980/81, with the first such excesss in the 1980's occurring in 1985/86. As a result, the world sugar market recovered somewhat over the past year, with world raw cane sugar prices exceeding 15 cents per pound for the first time since 1981. World production in 1987/88 is estimated at 103.8 million metric tons, raw value, while consumption is estimated at 104.3 million metric tons, raw value, and ending stocks are projected to decline by nearly 900,000 metric tons. World market speculation concerning this development led to a rise in world prices in sugar.

It cannot be concluded that world market prices will continue to rise during the coming year. Although the world price (f.o.b.s., Caribbean, No. 11 spot contract as published by the New York Coffee, Sugar & Coca Exchange) reached a peak of 15.83 cents per pound, raw value, on July 14, 1988, it has since retreated sharply toward 10 cents per pound, raw value. Futures delivery contracts for October 1989 are now trading at less than 9.5 cents per pound, raw value. The recent sharp retreat in world prices likely indicates world market expectations that the recent relatively high level of world prices may have tempered world consumption demand and stimulated world production for the coming year.

U.S. centrifugal sugar production for 1987/88 is estimated at about 7.1 million short tons, raw value (6.5 million metric tons, raw value), and domestic utilization is expected to be about 8.2 million short tons, raw value (7.4 million metric tons, raw value). During the period January 1, 1988 through July 31, 1988, 425,604 short tons, raw value of sugar were charged against the quotas for the 39 countries which have quota allocations totalling 1,054,675 short tons, raw value. The comestic prices of raw cane sugar (c.i.f., cut and fee paid, No. 14 nearby futures contract, as quoted by the New York Coffee, Sugar & Coca Exchange) on June 28, 1988 surpassed 23 cents per pound, raw value, reaching the highest level since 1981, and stayed above 23 cents per pound, raw vlaue, for 18 straight market days during June 28–July 27, 1988. This price subsequentyly retreated to the vicinity of 21.85 cents per pound, raw value.

B. Outlook for World and U.S. Sugar Market

It is difficult to accurately predict future trends in world centrifugal sugar production and consumption. However, production during 1988/89 is expected to be above the level for 1987/88 and the reaction of world consumption to the recent, relatively high prices could be bearish. Such factors likely have already contributed to the recent sharp retreat in world futures delivery contracts. As already indicated, those contracts due to mature in October 1989 have declined from over 15 cents per pound, raw value, in June 1988, to under 9.5 cents per pound, raw value, as of August 1988. Domestic futures contracts for the same period have stabilized at about 22 cents per pound, raw value.

For these reasons, it has been determined world prices will remain at such levels that, without a continuation of the current sugar import quota system, would make it impossible to achieve conditions in the United States sugar market that give due consideration to the interests of domestic producers and materially affected contracting parties to the GATT.

Notice

In accordance with paragraph (f) of headnote 3, subpart A, part 10, schedule 1 of the TSUS, I have determined that the continued operation of paragraphs (b), (c), (d) and (e) of headnote 3 gives due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the GATT, and that paragraph (g) of that headnote, which would allow entry of sugar into the United States of not to exceed 6.90 million short tons, would not give due consideration to such interests.

Signed at Washington, DC, on September 1, 1988.

Roland R. Vautour,

Acting, Secretary of Agriculture.

[FR Doc. 88–20237 Filed 9–1–88; 1:13 pm]

BILLING CODE 3410–10–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-351-606]

Amended Final Determination of Sales at Less than Fair Value and Amended Antidumping Duty Order; Tubeless Steel Disc Wheels From Brazil

ACTION: Notice.

SUMMARY: The Commerce Department, pursuant to a remand of the United States Court of International Trade, amends its final affirmative antidumping duty determination and order on tubeless steel disc wheels from Brazil to recalculate the antidumping margin and to correct certain clerical, calculation, and transcription errors.

EFFECTIVE DATE: September 7, 1988.

FOR FURTHER INFORMATION CONTACT: Charles E. Wilson, (202) 377–5288, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On June 15, 1988, the United States Court of International Trade at the Department's request remanded, in part, the *Final Affirmative Antidumping Duty Determination and Order on Tubeless Steel Disc Wheels from Brazil*, 52 FR 8947 (Mar. 20, 1987), as amended, 52 FR 19903 (May 28, 1987). The Court remanded this determination and order with instructions to recalculate the antidumping duty margin and to correct all clerical, calculation and transcription errors. *Borlem, S.A. Empreedimentos Industrias v. United States*, No. 87–06–00692, slip op. 88–77 (June 15, 1988).

Circumstances of Sale Adjustment

In this investigation, in order to capture the effects of Brazil's hyperinflation, we constructed foreign market value for six different one-month periods by using replacement costs for the month of shipment. We then converted the foreign market value into United States currency using the exchange rate in effect for the date of sale in accordance with § 353.56(a)(1) of our regulations.

While the above actions are consistent with the Act and our regulations, they have, in combination, led to an anomalous result that distorts economic reality and violates the basic purpose of the Act. To remedy this situation, the Department has made a circumstance of sale adjustment to reflect fully the effect of the devaluation of the Brazilian currency during the period of investigation.

The unique circumstances of this investigation are fully documented in the *Final Determination of Sales at Less Than Fair Value; Tubeless Steel Disc Wheels from Brazil*, 52 FR 8947 (1987). The pertinent facts, however, are repeated here to enable all parties to understand fully the reasons for the Department's determination to make a circumstance of sale adjustment.

In this investigation, we properly used constructed value as the basis for calculating foreign market value for FNV and for some sales of Borlem. There were either no sales of such or similar merchandise in the home market or to third countries, or there were insufficient sales above the cost of production for certain months. Our usual methodology dictates that we calculate a single constructed value for the period of investigation, but when a country's economy is hyperinflationary, as is Brazil's, we calculate foreign market value on a monthly basis. *E.g., Frozen Concentrated Orange Juice from Brazil*, 52 FR 8324, 8327 (1987); *Fuel Ethanol from Brazil*, 51 FR 5572, 5573 (1986); *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina*, 49 FR 48588, 48590 (1984). Foreign market value constructed for six different one-month periods thus allows us to account for, in part, the dramatic changes that occur to price and cost variables because of inflation over the six-month period of investigation.

We also calculate constructed value under our usual methodology by using a company's historic costs. However, when a country's economy experiences hyperinflation, we use replacement costs. *E.g., Paint Filters and Strainers from Brazil*, 52 FR 19181, 19184 (1987); *Iron Construction Castings from Brazil*, 51 FR 9477, 9483 (1986); *Oil Country Tubular Goods from Argentina*, 50 FR 12595, 12596 (1985). This practice allows the Department to view costs and prices contemporaneously in order to avoid distortions caused by hyperinflation and achieve a fairer comparison. Foreign market value thus was calculated, in part, by using replacement value for raw materials based on actual purchases in a month, or, if actual purchases were not made, on the price list provided by respondents. 52 FR 8947, 8948.

Once we calculated individual constructed values based on replacement costs for each of the six months of the period of investigation, the next step was to compare these foreign market values to individual U.S. sales. In this investigation, Commerce verified that there were long time periods between the reported dates of sale and the reported dates of shipment for the tubeless steel disc wheels. As explained below, this lag time between date of sale and date of shipment in conjunction with Brazil's hyperinflation gave rise to the problem which we now, through a circumstance of sale adjustment, seek to remedy.

Section 773(e)(1)(A) of the Act directs that foreign market value shall be constructed as of the date of exportation. 19 U.S.C. 1677b(e)(1)(A). Thus, in this investigation, Commerce property calculated monthly constructed values based on replacement costs for the month of shipment. At the same time, however, § 353.56(a)(1) of our regulations requires that currency conversions for "purchase price" transactions be made using the exchange rate in effect on the date of the U.S. sale. Thus, in this investigation, we applied the exchange rate that existed on an earlier date of sale to convert constructed value, calculated in the month of shipment, to dollars.

When the date of sale and the date of shipment occur in the same month, use of the date of sale exchange rate to convert foreign market value to dollars makes sense notwithstanding Brazil's hyperinflation. In this instance, foreign market value and the U.S. price are being compared at the same point in time. When date of sale occurs in a month preceding the date of shipment, however, application of the earlier date of sale exchange rate results in a non-contemporaneous comparison. In effect, the comparison suffers because all the nominal increases in cost between date of sale and date of shipment due to hyperinflation are accounted for by the method in which we constructed foreign market value while the decreased value of the currency in which those costs are expressed is not. The circumstance of sale adjustment defined below eliminates the artificial distortion of value caused by the rapid depreciation of Brazil's currency and thus more accurately provides a measure of whether dumping is occurring. We consider this adjustment as being applicable only in cases where the foreign market value is based upon monthly constructed values because of hyperinflation during the period of investigation and the date of sale occurs in a calendar month preceding the date of exportation.

The formula for this circumstance of sale adjustment is as follows:

$$\text{Adjustment} = ((e(0) \times e(1)^{-1}) - 1) \times CV(1)$$

where:

e(0) = cruzeiro/dollar exchange rate date of sale

e(1)=cruzeiro/dollar exchange rate date of shipment
CV(1)=constructed value in the month of shipment as expressed in cruzeiros

As demonstrated by the special rules under § 353.56(b) of our regulations, the Department has long recognized that the special circumstances of a particular case may require us to compensate for the otherwise strict rules for currency conversion found under § 353.56(a) to arrive at a fair comparison. As explained above, we find such special circumstances in this case. Although § 353.56(b) addresses situations other than the one present here, the same concern to achieve a fair comparison which caused § 353.56(b) to be promulgated, compels us to make a circumstance of sale adjustment pursuant to section 773(a)(4)(B) of the Act in order to arrive at a fair comparison.

Correction of Clerical, Calculation, and Transcription Errors

The Department also pursuant to this remand corrected the following clerical, calculation, and transcription errors:

(1) Errors were made when information from Borlem, S.A., Empreedimentos Industriais' (Borlem) verified response was transcribed to determine Borem's net U.S. price as regards the following sales: (a) Product 2705XY, sale date 12/13/85, deduction for ocean freight; (b) product 2705XJ, sale date 12/31/85, deduction for port charge; (c) product 2835XY, sale date 12/4/85, deduction for inland freight and port charge; (d) product 2835XJ, sale date 12/31/85, deduction for port charge; (e) product 2705Z, sale date 2/18/86, deduction for port charge; and (f) product 2835Z, sale date 2/18/86, deduction for port charge. These transcription errors led to calculation errors in determining Borlem's net U.S. price for the specific sales.

(2) Errors were made in totaling Borlem's net U.S. price for the January 29, 198, sale of product 2835XY and the February 27, 1986, sale of product 2835RY.

(3) Invoice dates were used rather than bill-of-lading dates to represent the date of shipment for the calculation of Borlem's antidumping duty margins.

(4) FNV Veiculos E Equipamentos, S.A.'s (FNV), December 1985 G&A ratio was used for the entire period of investigation rather than three separate G&A ratios for the periods December 1985, January–February 1986, and March–May 1986.

Interested Party Comments

Comment 1

Petitioner argues that Commerce's circumstance of sale adjustment is heretofore unknown and contrary to the plain language and history of the antidumping statute. Specifically, the statute limits circumstance of sale adjustments to directly related selling expenses and foreign market value only. The equation by which the Department performs the circumstance of sale adjustment in this case reveals that the date of sale exchange rate is the item being adjusted; therefore, such an adjustment is contrary to law.

Respondents argue that petitioner's assertion that the circumstance of sale provision of section 773(a)(4)(B) is limited to "directly related selling expenses and foreign market value" is not supported by the statute or Commerce regulations. That is, the specific statutory provision refers to "other differences in circumstances of sale," not to other differences in selling expenses, and allows adjustments for any differences in circumstances of sale which affect price comparability. Also, general Department practice does not limit adjustments to selling expenses but reflects a variety of factors in determining price comparability. Finally, § 353.56(b) of the Department's regulations recognizes that exchange rate fluctuations can affect price comparability. That Commerce did not anticipate the facts of this investigation when it drafted its regulations does not negate the necessity for applying the logic and philosophy inherent in this regulation to the remand determination.

DOC Position

We disagree with petitioner that the circumstances of sale adjustment is contrary to the language and history of the Act. Section 773(a)(4)(B) permits an adjustment to foreign market value for "other circumstances of sale" without limiting the adjustment to directly related selling expenses. Similarly, § 353.15(a) of our regulations permit an adjustment for "bona fide differences in the circumstances of sales compared."

While petitioner is correct that the Department typically uses circumstances of sale adjustments to adjust for different selling expenses incurred in the two markets, we are not precluded from using this provision to achieve a result that reflects economic reality and is consistent with the basic purpose of the Act. In this regard, in order to fairly compare foreign market value and United States price on an equivalent basis, "[b]oth values are subject to adjustment in an attempt to reconstruct the price at a specific, 'common' point in the chain of commerce." *Smith-Corona Group v. United States*, 713 F.2d 1568, 1571–72 (Fed. Cir. 1983), *cert. denied*, 465 U.S. 1022 (1984).

Lacking a circumstance of sale adjustment, Commerce's original final determination failed to achieve this goal. Specifically, the circumstances under which Commerce constructed foreign market value failed to adjust for, and thus reconstruct, a reference point whereby these values are being compared with the U.S. price at the same point in time, as explained above in the Supplemental Information section of this notice. *See generally Southwest Florida Winter Vegetable Growers Association v. United States*, 584 F. Supp. 10 (1984) (Commerce took account of differences in ripeness of the merchandise and time of day of sale, a concept similar to the rapid devaluation resulting from a hyperinflationary economy, in order to achieve a fair comparison).

Finally, as also explained under our Supplemental Information section, our regulations have long recognized that special circumstances may require us to compensate where a strict application of our currency rules leads to an incorrect result. Application of a circumstance of sale adjustment in these special situations achieves the correct and fair result.

Comment 2

In its arguments before the Court, petitioner opposed the proposition that Commerce possessed inherent authority to disregard regulations requiring use of the exchange rate in effect on the date of sale. According to petitioner, the Department agreed with this viewpoint and concluded that its original calculation of foreign market value was proper. The remand determination, however, adjusts the exchange rate dictated by 19 CFR 353.56(a) to "net-out" the effects of devaluation, whereas the regulation requires that the date of sale exchange rate be used without modification. This remand determination, then, is in direct contravention with § 353.56(a) and the position advanced by the Department before the U.S. Court of International Trade.

DOC Position

This remand determination is consistent with § 353.56(a) of our regulations and the position advanced by the Department before the U.S. Court of International Trade. First, Commerce argued before the Court that we

properly calculated constructed value in accordance with 19 U.S.C. 1677b(e)(1)(A) by using the replacement costs for the month of shipment. As shown in our section on Supplemental Information, we continue to maintain that this method is an accurate calculation of constructed value. Second, Commerce argued before the Court that our decision to use an exchange rate in effect as of the date of sale (or purchase) was in accordance with 19 CFR 353.56(a)(1). We continue to apply this section of our regulations in this remand determination for purposes of currency conversion.

Commerce, however, also argued before the Court that the above methdologies produced a result which did not reflect a fair comparison of the foreign market value with the U.S. price. Consequently, Commerce requested the Court to remand the investigation to us because, as we stated on page 19 of our brief, "Commerce did not adjust the constructed values to account for inflation occurring between the date of sale and the date of shipment." Defendent's Memorandum Concerning Plaintiff's Motion for Judgment Upon the Agency Record (March 14, 1988).

> The rampant inflation in Brazil had the effect of depreciating the value of the Brazilian currency in relation to United States currency during the time period between the date of sale and the date of shipment of the merchandise. Consequently, Brazilian cruzeiros were worth less per dollar at the date of shipment than they were at the date of sale. Since Commerce calculated constructed values as of the date of shipment, it should have made some adjustment to these values to reflect the additional amount of cruzeiros required to purchase dollars as a consequence of the inflation which occurred after the date of sale. After making an appropriate adjustment, Commerce could have then converted the constructed value from Brazilian currency to United States currency as of the date of sale in accordance with 19 CFR 353.56(a)(1).
>
> *Id.* 20.

The methodology set forth in this remand determination allows us to make the necessary adjustment to foreign market value in a manner that is in accordance with law. As such, it is consistent with the position advanced by the Department before the U.S. Court of International Trade and § 353.56(a) of our regulations.

Comment 3

Petitioner suggests that Commerce could achieve a fair result if it used a value 30 days preceding the date of export shipment, rather than the value in the month of shipment, to calculate constructed value. That is, the standard production period for tubeless steel disc wheels is 30 days. The statute requires that foreign market value be ascertained as of a date preceding the date of export by a sufficient period to permit production of the exported merchandise in the ordinary course of business. Thus, Commerce should recalculate foreign market value using a 30-day lag, and, to the extent that the margins were artificial because a statutory lag period was not included, that artificiality will have been addressed. The suggested methodology would be consistent with the statute and reduce the time period between the date of sale to the United States and the date on which constructed value was determined.

DOC Position

The methodology suggested by petitioner appears to be subject to the same fault that was present in the Department's original final determination. The circumstances in which foreign market value would be constructed under petitioner's methodology would fail to adjust for, and thus reconstruct, a reference point whereby these values are being compared with the U.S. price at the same point in time. Specifically, it would fail to adjust fully for the hyperinflation that occurred during the long time periods between the reported dates of sale and the reported dates of shipment for tubeless disc wheels.

Comment 4

Petitioner states that the Department's remand determination ignores the fact that respondents have absolute control over both the date of sale and the date of shipment. It is within respondents' power to control both dates, and Commerce has no authority to alter those dates or render them irrelevant.

Respondents consider petitioner's comment irrelevant for the following reasons: Both the date of sale and the date of shipment are established and have been used by Commerce in the context of this investigation. The implication that the Department, through its methodology, has altered these dates is wrong. Commerce's remand determination has recognized the effect of these dates on the return to the manufacturer/exporter and has attempted to make a fair comparison in light of this effect.

DOC Position

We disagree with petitioner's statement that respondents have absolute contol over dates of sale and shipment for two reasons: First, in order for a sale to occur, both the seller and buyer must reach an agreement. In this respect, shipment date will frequently be one of the terms of the sales agreement.

Second, even if we assume a seller's alleged control of these dates, such control has no impact upon the circumstance of sale adjustment we have made in this case. The adjustment merely reflects the interrelationship of domestic inflation in Brazil and the depreciation of its currency against the dollar. That is, a seller's decision to delay shipping the product may lead to a larger adjustment being made to foreign market value, but because costs are continuing to increase, the foreign market value calculated would counterbalance the increased adjustment since it would be higher as well.

Comment 5

Respondents state that Commerce's remand determination stops short of granting them a full fair comparison between United States price and foreign market value by creating arbitrary criteria to qualify for the circumstance of sale adjustment. The normal practice of the Department is to make all currency conversions based on the quarterly exchange rate in effect at the time of purchase unless there has been a five percent variance from the quarterly rate, in which case the daily rate is used. Commerce has never applied different exchange rates based on whether or not the United States price is compared with a foreign market value in the same or a different month. There is also no basis to distinguish between application of the adjustment to transactions which were sold and shipped in the same month and those which were sold and shipped in different months.

Petitioner argues that respondents' request for further refinement of the Department's methodology should be rejected because the cost data relied upon are average monthly data which also ignore daily changes induced by inflation. That is, the cruzado is not devalued because respondents experience inflation; rather, devaluation is caused by inflation generally in Brazil. Since Commerce is measuring only the average effect on inflation month by month, it is appropriate to measure inflation based devaluation on an equivalent basis.

DOC Position

We agree with petitioner that the further refinement sought by respondents is inappropriate because it would necessitate calculation of "daily" foreign market values.

Comment 6

Respondents assert that Commerce's application of the circumstance of sale adjustment only when the date of sale and the date of shipment occur in different months is not supported by the facts on record. While the replacement costs within any given month seldom vary significantly prior to the implementation of the Cruzado plan at the end of February 1986, currency devaluations took place on almost a daily basis. Where the return to the manufacturer/exporter may be as much as 15 percent higher if the shipment is on the last day of the month as opposed to the first day of the month, to draw a line between the sale and shipment at the end of a month is at best arbitrary.

DOC Position

We typically calculate monthly foreign market values in hyperinflationary cases to compensate for the distortions that would arise from using a single, six-month average foreign market value. We recognize that price and cost variation within a single month may introduce similar distortions but on a smaller scale. We have determined that price/cost variations within one month are not so great as to warrant calculating foreign market value on a daily basis. See also our response to Comment 5.

Comment 7

Respondents argue that when Commerce decided to use replacement costs in the month of shipment as the basis for constructed value, rather than actual costs, we also should have used either replacement costs on the date of purchase and applied § 353.56(a)(1) of our regulations or disregarded § 353.56(a)(1) and applied the exchange rate on the date of shipment. Any other methodology results in a serious distortion of the price-to-cost and price-to-constructed value comparisons because it only reflects the inflation of costs and not the fact that the currency devaluation offsets the effects of the cost of inflation. The return to the manufacturer/exporter is not adversely affected between sale and shipment even when replacements costs are used if the devaluation is equal to or exceeds inflation.

Petitioner argues that the antidumping statute is not designed to evaluate the comparative rate of return on home market and U.S. sales. Rather, the statute is designed to compare prices at equivalent levels of trade to determine whether imported merchandise is being sold at a lower price than is charged in home or third country markets. The constructed value provision of the Act expects Commerce to determine the cost of the exported merchandise plus profit and then compare that value with the U.S. price as of the date the price was set. The statute does not require this comparison to occur on a single day. Rather, the statute requires that the selling price of the merchandise be compared with its costs irrespective of when price is set in relation to when costs are incurred.

DOC Position

We disagree with respondents for the following reasons: First, as explained in our response to Comment 2, Commerce calculates constructed value, in part, by adding the cost of materials and of fabrication as of the date of exportation of the merchandise. 19 U.S.C. 1677b(e)(1)(A). Therefore, Commerce is required by statute to determine constructed value at the date of shipment and cannot, as respondents suggest, ignore the Act and calculate replacement costs as of the date of sale (purchase).

Second, our regulations require that any necessary conversion of a foreign currency into its equivalent in United States currency shall be made as of the date of purchase or agreement to purchase if the purchase price is an element of the comparison. 19 CFR 353.56(a)(1). The only instance in which we could disregard this regulation is where it conflicts with the underlying statute. *See Red Raspberries from Canada; Final Determination of Sales at Less Than Fair Value*, 50 FR 19768, 19771 (1985), *sustained, Washington Red Raspberries Commission v. United States*, 657 F. Supp. 537, 544–45 (CIT 1987). That is not the case here. Therefore, Commerce is required by regulation to use the exchange rate in effect as of the date of sale.

We also disagree with petitioner's concluding remark that the statute requires a comparison of price and cost regardless of when prices are set relative to when costs are incurred. Our practice of calculating monthly foreign market values in hyperinflationary economies, to which petitioner does not object, is an example of making comparisons on a relatively contemporaneous basis. Our use of replacement costs to measure foreign market values in hyperinflationary economies, to which petitioner does not object, is also an example of making comparisons on a relatively contemporaneous basis.

Amendment to Final Determination and Antidumping Duty Order

The final determination and antidumping duty order on tubeless disc wheels from Brazil are hereby amended to incorporate the above changes. The results of this amended determination are as follows:

Manufacturer/producer/exporter	Margin percentage
Borlem, S.A., Empreedimentos Industriais	10.84
FNV Veiculos E Equipamentos, S.A. (*de minimis*)	0.04
All others	10.84

Suspension of Liquidation—Borlem, All Others

In accordance with sections 736 and 751 of the Act, the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties for Borlem and all other manufacturers, producers, and exporters, on or after the date of the publication of this notice, equal to the amount by which the foreign market value of their merchandise exceeds the United States price for entries of tubeless steel disc wheels from Brazil.

Termination of Suspension of Liquidation—FNV

The Department considers any rate less than 0.5 percent to be *de minimis*. 19 CFR 353.24. In accordance with section 735(c)(2)(A) of the Act, we are directing the United States Customs Service to terminate the suspension of liquidation for all entries of tubeless steel disc wheels from Brazil by FNV that were entered, or withdrawn from warehouse, for consumption on or after April 29, 1987. All estimated antidumping duties deposited should be refunded.

Jan W. Mares,

Assistant Secretary for Import Administration.

August 31, 1988.

[FR Doc. 88–20272 Filed 9–6–88; 8:45 am]

BILLING CODE 3510-DS-M

[C-508-802, C-559-803 and C-580-802]

Postponement of Preliminary Countervailing Duty Determinations: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from Israel, Singapore and South Korea

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of petitioner, the Gates Rubber Company, the Department of Commerce (the Department) is postponing its preliminary determinations in the countervailing duty investigations of industrial belts and components and parts thereof, whether cured or uncured, from Israel, Singapore and South Korea. The preliminary determinations will be made on or before November 28, 1988.

EFFECTIVE DATE: September 7, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman or Rick Herring, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-2438 or 377-0167.

SUPPLEMENTARY INFORMATION: On July 20, 1988 the Department initiated countervailing duty investigations on industrial belts and components and parts thereof, whether cured or uncured, for Israel, Singapore and South Korea. In our notices of initiation we stated that we would issue our preliminary determinations on or before September 23, 1988 (53 FR 28042-28047, July 26, 1988).

On August 26, 1988, the petitioner filed a request that the preliminary determinations in these investigations be postponed for 65 days.

Section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), provides that a preliminary determination in a countervailing duty investigation may be postponed where the petitioner has made a timely request for such a postponement. Pursuant to this provision, and the timely request by petitioner in these investigations, the Department is postponing its preliminary determinations until no later than November 28, 1988.

This notice is published pursuant to section 703(c)(2) of the Act.

August 31, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-20271 Filed 9-6-88; 8:45 am]

BILLING CODE 3510-DS-M

The Johns Hopkins University et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

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 No.: 88-142. *Applicant:* National Institutes of Environmental Health Sciences, Research Triangle Park, NC 27709. *Intended Use:* See notice at 53 FR 15100, April 27, 1988.

Docket No.: 88-168. *Applicant:* University of California, San Francisco, CA 94143. *Intended Use:* See notice at 53 FR 18329, May 23, 1988.

Docket No.: 88-177. *Applicant:* The Johns Hopkins University, Baltimore, MD 21205. *Intended Use:* See notice at 53 FR 20153, June 2, 1988. *Instrument:* Quench-Flow Rapid Kinetics Apparatus, Model PQ-53.

Manufacturer: Hi-Tech Scientific, Inc., United Kingdom.

Reasons for this decision: The foreign instrument provides pneumatic drives and event markers to permit precise aging times down to a millisecond. *Advice Submitted by:* The National Institutes of Health, July 21, 1988.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The National Institutes of Health advises that (1) the capabilities of the foreign instrument are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of the instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to the foreign instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-20268 Filed 9-6-88; 8:45 am]

BILLING CODE 3510-DS-M

The University of Texas Health Science Center at San Antonio et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

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 No.: 88-108. *Applicant:* The University of Texas Health Science Center at San Antonio, San Antonio, TX 78284. *Instrument:* Combined SFM-3, Three Syringe Stopped-Flow Module and QFM-5 Five Syringe Quenched Flow Module. *Manufacturer:* Biologic, France. *Intended Use:* See notice at 53 FR 15101, April 27, 1988.

Docket No.: 88-171. *Applicant:* Vanderbilt University, Nashville, TN 37235. *Instrument:* Spectrofluophotometer and Rapid-Mixing and Rapid-Quench Apparatus. *Manufacturer:* Biologic, Co., France. *Intended Use:* See notice at 53 FR 18330, May 23, 1988.

Reasons for this Decision: The foreign instruments provide: (1) Three independently movable syringes, (2) programmable mixing ratios (up to 100 to 1), and (3) multiple quench capability. *Advice Submitted by:* The national Institutes of Health, July 21, 1988.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments, for such purposes as each is intended to be used, is being manufactured in the United States. The National Institutes of Health advises that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended

purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-20269 Filed 9-6-88; 8:45 am]

BILLING CODE 3510-DS-M

University of Nevada—Reno; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made 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 No. 88-020. *Applicant:* University of Nevada, Reno, NV 89557-0047. *Instrument:* Machine Test Bed and Control Console. *Manufacturer:* Lloyd Instruments, PLC., United Kingdom. *Intended Use:* See notice at 52 FR 46640, December 9, 1987.

Comments: None received.

Decisons: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign apparatus enables the teaching of automated mine plant design from pumping and drainage to operational characteristics of pneumatic and hydraulic transport, conveyors, hoisting, etc.

Mine Safety and Health Administration of Bureau of Mines has advised us that (1) this capability is pertinent to the applicant's intended purposes and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-20270 Filed 9-6-88; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Chevron U.S.A., Inc. from Objections by the California Coastal Commission

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal and request for comments.

On July 5, 1988, the Secretary of Commerce received a notice of appeal from Chevron U.S.A., Inc. (Chevron). Chevron is appealing to the Secretary under section 307(c)(3)(B) of the Coastal Zone Management Act (CZMA) and the Department's implementing regulations, 15 CFR Part 930, Subpart H. The appeal is taken from objections by the California Coastal Commission (Commission) to Chevron's consistency certifications for its proposed Plan of Exploration (POE) and an individual National Pollutant Discharge Elimination System (NPDES) permit for OCS Lease P-0525. OCS Lease P-0525 is located approximately twelve miles south of the City of Santa Barbara and fifteen miles west of the City of Ventura.

The CZMA provides that a timely objection by a state to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary of Commerce finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(c)(3)(B). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122.

Chevron requests that the Secretary override the Commission's consistency objections based on Grounds I and II. To make the determination that proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that (1) the proposed activity furthers one or more of the national objectives or purposes contained in sections 302 or 303 of the CZMA; (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest; (3) the proposed activity will not violate the Clean Air Act or the Federal Water Pollution Control Act; and (4) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with California's coastal management program. *See* 15 CFR 930.121. To make the determination that the proposed activity is "necessary in the interest of national security," the Secretary must find that a national defense or other national security interest would be significantly impaired if the proposed activity is not permitted to go forward as proposed. 15 CFR 930.122 (1987).

In a procedural ruling issued on August 19, 1988, the objection to the individual NPDES permit was found to be invalid. Therefore, only the proposed POE is the subject of this appeal. Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121 and 930.122. Comments are due within thirty days of the publication of this notice and should be sent to Katherine A. Pease, Assistant General Counsel for Ocean Services, Office of General Counsel, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235. Copies of comments should also be sent to Carolyn Small, Esquire, California Coastal Commission, 631 Howard Street, San Francisco, CA 94105 and Richard J. Harris, Esquire, Chevron U.S.A., Inc., P.O. Box 5050, San Ramon, CA 94583-0905.

All nonconfidential documents submitted or received in this appeal are available for public inspection during business hours at the offices of the California Coastal Commission, Chevron U.S.A., Inc. and the Office of the Assistant General Counsel for Ocean Services, NOAA.

FOR ADDITIONAL INFORMATION CONTACT: Katherine Pease, Assistant General Counsel for Ocean Services, Office of General Counsel, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673-5200.

[Federal Domestic Assistant Catalog No. 11.419 Coastal Zone Management Program Assistance]

Date: August 31, 1988.

William E. Evans,

Under Secretary for Oceans and Atmosphere.

[FR Doc. 88-20261 Filed 9-6-88; 8:45 am]

BILLING CODE 3510-08-M

Coastal Zone Management; Federal Consistency Appeal by Conoco, Inc. From Objections by the California Coastal Commission

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal and request for comments.

On July 5, 1988, the Secretary of Commerce received a notice of appeal from Conoco, Inc. (Conoco). Conoco is appealing to the Secretary under section 307(c)(3)(B) of the Coastal Zone Management Act (CZMA) and the Department's implementing regulations, 15 CFR Part 930, Subpart H. The appeal is taken from objections by the California Coastal Commission (Commission) to Conoco's consistency certifications for its proposed Plan of Exploration (POE) and an individual National Pollutant Discharge Elimination System (NPDES) permit for OCS Lease P–0522. OCS Lease P–0522 is located approximately nine miles south of the City of Santa Barbara.

The CZMZ provides that a timely objection by a state to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary of Commerce finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(c)(3)(B). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122.

Conoco requests that the Secretary override the Commission's consistency objections based on Grounds I and II. To make the determination that proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that (1) the proposed activity furthers one or more of the national objectives or purposes contained in section 302 or 303 of the CZMA; (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest; (3) the proposed activity will not violate the Clean Air Act or the Federal Water Pollution Control Act; and (4) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with California's coastal management program. *See* 15 CFR 930.121. To make the determination that the proposed activity is "necessary in the interest of national security," the Secretary must find that a national defense or other national security interest would be significantly impaired if the proposed activity is not permitted to go forward as proposed. 15 CFR 930.122 (1987).

In a procedural ruling issued on August 19, 1988, the objection to the individual NPDES permit was found to be invalid. Therefore, only the proposed POE is the subject of this appeal. Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121 and 930.122. Comments are due within thirty days of the publication of this notice and should be sent to Katherine A. Pease, Assistant General Counsel for Ocean Services, Office of General Counsel, National Oceanic and Atomospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235. Copies of comments should also be sent to Carolyn Small, Esquire, California Coastal Commission, 631 Howard Street, San Francisco, CA 94105; John R. Eldridge, Esquire, Conoco, Inc., P.O. Box 2197, Houston, TX 77252–2197; and Shelby Moore, Esquire, 827 State Street, Suite 8, Santa Barbara, CA 93101.

All nonconfidential documents submitted or received in this appeal are available for public inspection during business hours at the offices of the California Coastal Commission, Conoco, Inc. and the Office of the Assistant General Counsel for Ocean Services, NOAA.

FOR ADDITIONAL INFORMATION CONTACT: Katherine A. Pease, Assistant General Counsel for Ocean Services, Office of General Counsel, National Oceanic and Atomospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673–5200.

[Federal Domestic Assistant Catalog No. 11.419 Coastal Zone Management Program Assistance]

Date: August 31, 1988.

William E. Evans,

Under Secretary for Oceans and Atomsphere.

[FR Doc. 88–20262 Filed 9–6–88; 8:45 am]

BILLING CODE 3510–08–M

Deep Seabed Mining; Provisional Impact Reference Area

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Receipt of Proposal from Ocean Mining Associates (OMA) Identifying a Provisional Impact Reference Area Within Deep Seabed Hard Mineral Resources Exploration License USA–3.

SUMMARY: On May 19, 1988, Ocean Mining Associates (OMA) submitted to the National Oceanic and Atmospheric Administration (NOAA) a proposal identifying the interim impact reference area alluded to in the May 16, 1988, **Federal Register** notice (53 FR 17237) which designated an environmental reference area in OMA's license area. The proposal was clarified in a letter from OMA dated August 7, 1988. This newly identified area is characterized by OMA as representative of the environmental characteristic of the entire license area. In addition, portions of it have been tentatively scheduled by OMA to be mained early in the permit term. Accordingly, it is proposed to be used for the monitoring of benthic impact during further mining operations. It is further proposed that the area be selected provisionally prior to application for a commercial recovery permit and called a provisional impact reference area (PIRA).

Coordinates for the 4,629 km² PIRA, which is located centrally within OMA's operational area, are as follows:

Turning points	Latitude (North)	Longitude (West)
1	15°05'	126°40'
2	15°05'	125°55'
3	14°40'	125°55'
4	14°40'	125°20'
5	15°05'	125°20'
6	15°05'	125°10'
7	14°30'	125°10'
8	14°30'	126°05'
9	14°55'	126°05'
10	14°55'	126°40'

Selection of this area is further enhanced by impingement and/or proximity of subareas upon NOAA's Deep Ocean Mining Study (DOMES) "Site C", at least one other potential OMA early mining site, and a previously monitored OMA test site. Additionally, the configuration of the area lends itself to the potential ease of tracking the suspended sediment plume created by mining activity and transported by currents from verying directions. During the term of its exploration license, OMA has agreed to make available to NOAA all biological data and samples germane to the impact area.

The early designation of "preservational" and "impact" areas against which the extent of commercial mining's impact on the benthic community can be compared, will provide predictability to both industry and Federal programs. NOAA is considering the OMA proposal, and will provide notice when a determination is made on the proposal.

FOR FURTHER INFORMATION CONTACT: James P. Lawless or John W. Padan, Ocean Minerals and Energy Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., Suite 710, Washington, DC 20235, (202) 673–5117.

Dated: August 30, 1988.

Thomas J. Maginnis,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 88-20292 Filed 9-6-88; 8:45 am]

BILLING CODE 3510-12-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of a New Export Visa Arrangement for Certain Textiles and Textile Products Produced or Manufactured in Sri Lanka

September 1, 1988.

AGENCY: Committee for the Implementation of Textile agreements (CITA).

ACTION: Issuing a directive to the Commisioner of Customs establishing a new export visa arrangement.

EFFECTIVE DATE: September 12, 1988.

AUTHORITY: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4312.

SUPPLEMENTARY INFORMATION: During recent negotiations, the Governments of the United States and Sri Lanka agreed to establish a new export visa arrangement.

A copy of the visa arrangement is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647-1998.

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 Schedues of the United States Annotated (see **Federal Register** notice 52 FR 47745, published December 16, 1987). Also see 44 FR 36221, published on June 21, 1979; and 53 FR 20158, published on June 2, 1988.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee For The Implementation of Textile Agreements

September 1, 1988.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive cancels and supersedes, the directive issued to you on June 15, 1979, as amended, by the Chairman, Committee for the Implementation of Textile Agreements, establishing an export visa arrangement for certain cotton, wool and man-made fiber textile products from Sri Lanka.

Effective on September 12, 1988, you are directed to prohibit entry into the Customs territory of the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of textiles and textile products of cotton, wool and man-made fibers, other vegetable fibers, blends of any of the foregoing fibers and blends containing silk, but this restriction does not include garments which contain 70 percent or more silk by weight (unless they also contain over 17 percent by weight wool), or products other than garments which contain 85 percent or more silk by weright, in Categories 200-239, 300-369, 400-469, 600-670 and 831-859, including part and merged categories (see enclosures A and B), produced or manufactured in Sri Lanka and exported on or after June 1, 1988 from Sri Lanka for which the Government of Sri Lanka has not issued an appropriate visa fully described below. Should additional categories, merged categories or part categories be added to the bilateral agreement or become subject to import quotas, the entire category or categories shall be automatically included in the coverage of the visa arrangement. Merchandise exported on or after the date the category(s) is added to the agreement or becomes subject to import quotas shall require a visa. Notification will be provided when additions or changes are made.

A visa must accompany each commercial shipment of the aforementioned textiles and textile products. A circular stamped marking in blue ink will appear on the front of the original commercial invoice (formerly Special Customs Invoice form 5515) or its successor document. The original visa shall not be stamped on duplicate copies of the Special Customs Invoice. The original of the Special Customs Invoice form with the original visa stamp will be required to enter the shipment into the United States. Duplicates of the invoice and/or visa may not be used for this purpose.

Each visa stamp shall include the following information:

1. The visa number. The visa number shall be the standard nine digit visa number, beginning with one numerical digit for the last digit of the calendar year of export, followed by the two character alpha country code specified by the International Organization for Standardization (ISO), and six digit numerical serial number identifying the shipment; e.g., 8LK123456).

2. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

3. The signature of the issuing official.

4. The correct category(s), merged category(s), part category(s), quantity(s) and unit(s) of quantity provided for in the U.S. Department of Commerce CORRELATION and in the U.S. Tariff Schedules of the United States Annotated (TSUSA) (e.g., "Cat. 340-510 DZ").

Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment (e.g., quota Categories 347/348 may be visaed as 347/348, or if the shipment consists solely of Category 347 merchandise, the shipment may be visaed as "Cat. 347," but not as "Cat. 348").

U.S. Customs shall not permit entry if the shipment does not have a visa, or if the visa number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted and only the amount entered shall be charged.

If the visa is not acceptable to the U.S. Customs Service, a new visa must be obtained from the Sri Lankan Government or a visa waiver issued by the U.S. Department of Commerce at the request of the Sri Lankan Government and presented to the U.S. Customs Service before any portion of the shipment will be released. The waiver, if used, only waives the requirement to present a visa with the shipment. It does not waive the quota requirement.

If the visaed invoice is deficient, the U.S. Customs Service will not return the original document after entry, but will provide a certified copy of that visaed invoice for use in obtaining a new correct original visaed invoice, or visa waiver.

If import quotas are in force, U.S. Customs Service shall charge only the actual quantity in the shipment to the correct category limit. If the shipment from Sri Lanka has been allowed entry into the commerce of the United States with either an incorrect visa or no visa, and redelivery is requested but cannot be made, U.S. Customs shall charge the shipment to the correct category limit whether or not a replacement visa or visa waiver is provided.

Any shipment which requires a visa but which is not accompanied by a valid and correct visa in accordance with the foregoing provisions shall be denied entry by U.S. Customs Service unless the Government of Sri Lanka authorizes the entry and any charges to the agreement levels through the visa waiver process.

Shipments entered or withdrawn from warehouse on or after September 12, 1988 and exported on and after June 1, 1988 which are not accompanied by an appropriate export visa shall be denied entry and a visa waiver must be obtained.

Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at U.S. $250 or less, do not require a visa for entry and shall not be charged to the agreement levels.

The visa stamp remains unchanged.

The actions taken with respect to the Government of Sri Lanka and with respect to imports of textiles and textile products of cotton, wool, and man-made fibers, other vegetable fibers and blends of any of the foregoing fibers and blends containing silk

from Sri Lanka have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1). This letter will be published in the **Federal Register**.

Sincerely,

James H. Babb,

Chairman Committee for the Implementation of Textile Agreements.

Enclosure A

Part Categories

Category	Description	TSUSA No.
338-S/339-S	Knit shirts, other than T-shirts and tank tops	Only TSUSA numbers 381.0240, 381.0425, 381.3516, 381.4020, 381.4130, 381.4337, 381.6610, 381.8506, 381.9924, 384.0216, 384.0223, 384.0229, 384.0232, 384.2818, 384.2930, 384.2970, 384.3437 in Category 338-S; and only TSUSA numbers 384.0213, 384.0214, 384.0217, 384.0225, 384.0227, 384.0230, 384.0231, 384.0233, 384.0235, 384.0330, 384.0461, 384.2704, 384.2815, 384.2816, 384.2821, 384.2934, 384.2935, 384.2950, 384.2960, 384.2980, 384.3439, 384.3441, 384.3462, 384.5404, 384.7704 and 384.9517 in Category 339-S.
338-O/339-O	Other	All remaining TSUSA numbers in Categories 338/339.
340-Y	Shirts made of two or more colors in the warp and/or the filling	Only TSUSA numbers 381.0522, 381.5500, 381.5610, 361.5625, 381.5637 and 381.5660.
340-O	Other	All remaining TSUSA numbers in Category 340.
341-Y	Shirts and blouses made of two or more colors in the warp and/or the filling.	Only TSUSA numbers 384.0505, 384.0511, 384.0512, 384.4608, 384.4610, 384.4612 and 384.4788.
341-O	Other	All remaining TSUSA numbers in Category 341.
359-C/659-C	Coveralls and overalls	Only TSUSA numbers 381.0822, 381.6510, 384.0928 and 384.5222 in Category 359-C; and only TSUSA numbers 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607 and 384.9310 in Category 659-C.
359-O	Other	All remaining TSUSA numbers in Category 359.
369-D	Dishtowels	Only TSUSA numbers 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860.
369-S	Shoptowels	Only TSUSA number 366.2840.
369-O	Other	All remaining TSUSA numbers in Category 369.
659-O	Other	All remaining TSUSA numbers in Category 659.

Enclosure B

Merged Categories

331/631
333/633
335/835
337/637
338-S/339-S
338-O/339-O
342/642/842
345/845
347/348/847
350/650
351/651
352/652
359-C/659-C
445/446
636/836
638/639/838
645/646
647/648

[FR Doc. 88-20258 Filed 9-6-88; 8:45 am]
BILLING CODE 3510-DR-M

CONSUMER PRODUCT SAFETY COMMISSION

Development of Voluntary Standard for All-Terrain Vehicles; Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting.

SUMMARY: The major members of the all-terrain vehicle ("ATV") industry have tentatively scheduled a meeting on September 14, 1988, for further development of a voluntary safety standard for ATVs. Interested members of the public are invited to attend the meeting. Persons wishing to attend should notify the Specialty Vehicle Institute of America, 3151 Airway Avenue, Building K-107, Costa Mesa, California 92626, phone (714) 241-9256.

DATE: The meeting is scheduled for 9:30 a.m. on September 14, 1988.

ADDRESS: The meeting will be held at The DC Dulles Marriott Hotel, 333 West Service Road, Chantilly, Virginia.

FOR FURTHER INFORMATION CONTACT: Carl Blechschmidt, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207, phone (301) 492-6554.

SUPPLEMENTARY INFORMATION:

Background

The Commission for some time has been concerned with safety issues associated with the operation of all-terrain vehicles, which are three- and four-wheeled motorized vehicles, generally characterized by large, low pressure tires, a seat designed to be straddled by the operator, and handlebars for steering and which are intended for off-road use by an individual rider on various types of upaved terrain.

On May 31, 1985, the Commission published an advance notice of proposed rulemaking (ANPR) in the **Federal Register**. 50 FR 23139. In the ANPR, the Commission announced that it was considering a wide range of possible regulatory alternatives to address the safety concerns about ATVs and solicited comments on a number of issues.

On December 30, 1987, the Commission and the major members of the ATV industry filed preliminary consent decrees in *United States* v. *American Honda Motor Co., Inc. et al.*, Civil Action No. 87-3525, in the United States District Court for the District of Columbia. The preliminary consent decrees contained provisions intended to satisfy the Commission's concerns about ATVs and provided that the parties would file proposed final consent decrees, which were filed on March 14, 1988. Both the preliminary consent decrees and the final consent decrees, which were approved by the Court on April 28, 1988, provide that the industry members will attempt in good faith to reach agreement on voluntary standards satisfactory to the Commission, within four months of the Court's approval of the final consent decrees.

Plenary standard development meetings pursuant to the consent decree were held on May 4, June 2, June 30, and July 28, 1988, and technical working group meetings were held on May 19–20 June 15–16, July 20–21 and August 24–25, which are the last working group meetings scheduled within the 4-month period provided in the Consent Decree. (The 4-month period expired August 28.) The results of the August 24–25 working group meetings will be reported to the September 14 plenary meeting. It is anticipated that there will be enough time between the August 24–25 working group meetings and the September 14 plenary meeting that the industry participants in these meetings who are parties to the Consent Decree will be able to determine whether they will approve the preliminary decisions of the working groups. If such approval is not obtained prior to September 14, the plenary session may be postponed to allow final consideration of the question of approval by the companies prior to the plenary meeting.

The Commission expects that the plenary session will result in a proposed voluntary standard being presented formally to the Commission for its consideration in deciding whether the standand adequately addresses the risks associated with all-terrain vehicles.

Commission policy requires that all voluntary standards meetings attended by CPSC staff be open to the public and that interested members of the public have an opportunity to contribute to the development of the standard. Thus, the meeting is open to all members of the public who wish to attend or participate. In order to ensure that the meeting facilities are adequate to accommodate all attendees, and to ensure that all interested persons are notified of any postponement of the meeting, persons wishing to attend the meeting should notify the Specialty Vehicle Institute of America, 3151 Airway Avenue, Building K–107, Costa Mesa, California 92626, phone (714) 241–9256.

In order to ensure that the meeting proceeds on schedule, it may be necessary for the Chairperson to limit the time and manner allowed for the presentation of comments by each participant and to restrict duplicative comments.

Dated: August 31, 1988.

Sadye E. Dunn,

Secretary of the Commission.

[FR Doc. 88–20226 Filed 9–6–88; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

August 31, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Progress on High Power Microwave Applications will meet on 22–23 September 1988 from 8:00 a.m. to 5:00 p.m. at the Pentagon, Washington, DC 20330–5430.

The purpose of this meeting is to examine the appropriateness, extent, and character of the Air Force's involvement in research and development programs into potential applications of high power microwaves. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–20193 Filed 9–6–88; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Intention To Prepare a Draft Supplementary Environmental Impact Statement (FEIS) for Kaulana Bay Navigation Improvements, South Point, Hawaii Island

August 5, 1988.

AGENCY: US Army Corps of Engineers, POD, Honolulu District, DOD.

ACTION: Notice of intent to prepare a draft supplemental environmental impact statement.

SUMMARY: 1. The US Army Corps of Engineers, Honolulu District, prepared a Final Detailed Project Report and Final Environmental Impact Statement in September 1981 which recommended the selection of Alternate Plan 3 for the construction of the Kaulana Bay Navigation Improvements. The Record of Decision (ROD) was signed on April 7, 1982 by the Director of Civil Works, Office of the Chief of Engineers, Washington, DC, and sent to the Office of Federal Activities, US Environmental Protection Agency in compliance with the Council of Environmental Quality's regulations for implementing NEPA.

2. Prior to award of the construction contract for the Kaulana Bay Navigation Improvements, a suit was filed by a local special interest group against the Corps of Engineers and its local sponsoring agency, the Hawaii State of Transportation. Litigation involving Corps of Engineers was settled out of court within Corps of Engineers in 1984. Settlement in favor of the local sponsor by decision of The Hawaii State Supreme Court was reached in 1987. In March 1988, the Corps was requested by the local sponsor to re-initiate the project for construction. Award for construction is anticipated for September 1988.

3. Although there is no change in the location of the selected configuration (Plan 3), appurtenant shoreside infrastructure to be constructed by the local sponsor, environmental conditions and impacts, it has been determined that a significant period of time has elapsed from the date of the ROD to the present schedule for construction of the Kaulana Bay Navigation Improvements. The purpose of the Draft Supplemental EIS is to provide an updated record of actions undertaken since the ROD to remain in compliance with federal, state and local government rules and regulations. If there are any questions regarding the Draft Supplemental EIS, please contact: Dr. James E. Maragos, Chief, Environmental Resources Section, US Army Engineer District, Honolulu, Building T–1, Fort Shafter, Hawaii 96858–5440. Telephone: (808) 438–2263/2264.

Date: August 9, 1988.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 88–20192 Filed 9–6–88; 8:45 am]

BILLING CODE 3710–NN–M

Military Traffic Management Command; Military Personal Property Symposium; Open Meeting

Announcement is made of meeting of the Military Personal Property Symposium. This meeting will be held on 15 September 1988 at the Sheraton Crystal City Hotel, Arlington, Virginia, and will convene at 0830 hours and adjourn at approximately 1500 hours.

Proposed Agenda: The purpose of this symposium is to provide a public forum for the discussion of matters of mutual interest concerning the Department of Defense Personal Property Shipment and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MT–PPM, at telephone number 756–1600, between 0800–1530 hours. Topics to be

discussed should be received on or before 9 September 1988.

Date: August 24, 1988.

Joseph R. Marotta,

Colonel, GS, Director of Personal Property.

[FR Doc. 88-19898 Filed 9-6-88; 8:45 am]

BILLING CODE 3710-08-M

Army Laboratory Command; Availability of a Method of Pretreating Carbon Black Powder to Improve Cathode Performance in Batteries for Exclusive Licensing

In accordance with 37 CFR 404.7 announcement is made of the availability of a method of pretreating raw carbon black powder before it is fabricated into cathodes in order to improve the resulting cathode operating voltage and increase the resulting cathode operating life for exclusive licensing. Inventors at the US Army Electronics Technology and Devices Laboratory (USAET&DL) have been awarded a patent on a new method and procedure. The rights to the method/procedure belong to the United States Government.

The new method is used to inexpensively treat carbon blacks in order to improve cathode operating voltage and increase cathode life in lithium oxyhalide batteries. It consists of pretreating the carbon with acetone and water then removing the acetone and water, drying the carbon, and proceeding to fabricate the porous carbon cathode as usual. The research and development of this method has been completed and successfully demonstrated.

Under the authority of section 11 (a) (2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99-502) and section 207 of title 35, United States Code, the Department of the Army as represented by USAET&DL wishes to exclusively license rights to this method to a party interested in using it in the manufacture of batteries.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Binder, US Army Electronics Technology and Devices Laboratory, ATTN: SLCET-PR, Fort Monmouth, NJ 07703-5000; (201) 544-4795.

John O. Roach II,

Army Liaison Officer with the Federal Register.

[FR Doc. 88-20194 Filed 9-6-88; 8:45 am]

BILLING CODE 3710-08-M

Privacy Act of 1974; New and Altered Systems of Records.

AGENCY: Department of the Army, DOD.

ACTION: Notice for public comment.

SUMMARY: The Department of the Army proposes to add two new systems of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a) and to alter an existing record system.

DATE: This proposed action will be effective without further notice on October 7, 1988 unless comments are received which result in a contrary determination.

ADDRESS: Send any comments to the particular record system manager identified in the specific record system notices that are set forth below.

FOR FURTHER INFORMATION CONTACT: Mr. Cliff Jones, AS-OPS-MR, Fort Huachuca, AZ 85613-5000. Telephone: 602-538-6568, Autovon: 879-6568.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices, subject to the Privacy Act of 1974, have been published in the **Federal Register** as follows:

FR Doc. 85-10237 (50 FR 22090) May 29, 1985 (Compilation)
FR Doc. 86-14667 (51 FR 23576) June 30, 1986
FR Doc. 86-19534 (51 FR 30900) August 29, 1986
FR Doc. 86-25274 (51 FR 40479) November 7, 1986
FR Doc. 86-27580 (51 FR 44361) December 9, 1986
FR Doc. 87-8140 (52 FR 11847) April 13, 1987
FR Doc. 87-11379 (52 FR 18798) May 19, 1987
FR Doc. 87-15611 (52 FR 25905) July 9, 1987
FR Doc. 87-19686 (52 FR 32329) August 27, 1987
FR Doc. 87-26438 (52 FR 43932) November 17, 1987
FR Doc. 88-8671 (53 FR 12971) April 20, 1988
FR Doc. 88-10355 (53 FR 16575) May 10, 1988
FR Doc. 88-12861 (53 FR 21509) June 8, 1988
FR Doc. 88-16946 (53 FR 28247) July 27, 1988
FR Doc. 88-16901 (53 FR 28249) July 27, 1988
FR Doc. 88-17036 (53 FR 28430) July 28, 1988

New and altered system reports, as required by 5 U.S.C. 552a(o) of the Privacy Act of 1974 were submitted on August 26, 1988 to the Administrator, Office of Information and Regulatory Affairs, OMB; the President of the Senate; and the Speaker of the House of Representatives, pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985). The two new systems are published below. The specific changes to the record system being altered are also set forth below, followed by the system notice, as amended, published in its entirety.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 31, 1988.

NEW RECORD SYSTEMS

A0603.05DARP

SYSTEM NAME:

Human Resources Information System (HRIS).

SYSTEM LOCATION:

U.S. Army Reserve Personnel Center (ARPERCEN), 9700 Page Blvd., St. Louis, Missouri 63132-5200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All ARPERCEN employees, both military and civilian.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of manhours utilization, production, and backlog records reported by individuals daily and maintained by operating officials to track data in the above categories. The documents include, but are not limited to, information on the individuals relating to name, grade, social security number, TDA paragraph and line number, employment category, job title, work center, and distribution of work hours among direct productive, indirect productive, and nonavailable categories.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; E.O. 9397.

PURPOSE(S):

To document manhours utilization, workload, and backlogs to analyze, program, and review manpower requirements in ARPERCEN; provide a decision basis for approval or disapproval of: Requests for additional employees, overtime requests, and awards nominations; and measure productivity of units and individual employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records are used to justify manpower requirements with the U.S. Army Manpower Requirements and Documentation Agency. See "Blanket Rountine Uses" set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Personal computer diskettes and computer tapes.

RETRIEVABILITY:

By name, SSN, and TDA paragraph and line number.

SAFEGUARDS:

Computer tapes are stored in locked cabinets. Diskettes are stored in areas accessible only to authorized personnel of ARPERCEN. After hours, the building has security guards and/or doors are secured and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Diskettes and tapes are retained for 5 years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Reserve Personnel Center, ATTN: DARP-RMS, 9700 Page Blvd., St. Louis, Missouri 63132–5200.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether or not information on them is contained in this system of records should write to the system manager. ATTN: DARP-RMS, furnishing their full name, SSN, organization to which assigned, and dates of assignment.

RECORD ACCESS PROCEDURE:

Individuals desiring access to records about themselves should write as indicated in "Notification procedure", providing information specified therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

Information is contained from the record subjects by means of DARP Form 222–1–R, Individual Daily Record, and DARP Form 222–3–R, Individual Daily Record—Executive Level.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0708.13DAMI

SYSTEM NAME:

INSCOM, Personal Qualification and Training Profile.

SYSTEM LOCATION:

United States Army Intelligence and Security Command, Arlington Hall Station, Arlington, Virginia 22212–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Army military personnel assigned to Headquarters, United States Army Intelligence and Security Command and its attached activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains individual's name, SSN, pay grade, primary military occupational specialty (PMOS)/ specialty skill identifier (SSI), date of last evaluation report, sex, date of birth, organization/unit processing code, duty section, height, weight, weight control program status, physical profile factors (PULHES), date of last physical examination, profile status, expiration date of temporary profile, over 40 medical clearance status, date last Human Immunodeficiency Virus (HIV) test, date last Army physical fitness test (APFT), APFT results, APFT scores, date last skill qualification test (SQT), SQT score, PLDC attendance, CAS3 attendance, date last weapons qualification, weapons qualification status, caliber of weapon in which qualified, date last subversion and espionage directed against defense in which qualified, date last subversion and espionage directed against defense activities (SAEDA) training, date of last operations security training, and similar personnel, medical and training related data pertaining to assignments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 3012 and E.O. 9397.

PURPOSE(S):

To maintain a consolidated file of specific personnel, medical and training related data pertaining to all Army military personnel assigned to Headquarters, United States Army Intelligence and Security Command and their supporting tenant activities. A consolidated records system of selected data is required to more efficiently and effectively provide management and training support to assigned personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ASSESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard disc, floppy diskettes and paper records in file cabinets.

RETRIEVABILITY:

By individual's name, SSN or other individually identifying characteristics.

SAFEGUARDS:

Military police are used as security personnel. A stringent employee identification badge and visitor registration/escort system is in effect. The computer terminal and hardcopy records are maintained in areas accessible only to authorized personnel who have a need for the information in the performance of their official duties. The computerized records system is accessed and updated by the custodian of the records system and by a limited number of other personnel responsible for servicing the records in the performance of their official duties. Access to the computer file requires utilization of a password. Once in the system, access is restricted to only the user's applicable portions of the system. One unit cannot access another unit's records. All hardcopy products bear Privacy Act labels.

RETENTION AND DISPOSAL:

All data pertaining to an individual is deleted from the computer file during the individual's outprocessing. Paper records are retained until the usefulness of the report is exhausted. Hardcopy records and reports are destroyed as unclassified For Official Use Only waste.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, United States Army Intelligence and Security Command, Arlington Hall Station, Arlington, VA 22212–5041.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether or not information on them is contained in this system may write to the Commander, U.S. Army Intelligence and Security Command, ATTN: IACSF–FI, Fort Meade, MD 20755–5995. Individuals must furnish his/her full name, SSN, current address, telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records on themselves should write as indicated in "Notification procedure", providing information specified therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual and from his/her official military personnel records, official health records and local training records during inprocessing. Data for updates to records in the system are obtained from the individual and from source documents utilized to update the individual's official records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

ALTERED RECORD SYSTEM

AMENDMENT

A0715.07cUSFK

SYSTEM NAME:

Command Unique Personnel Information Data System (CUPIDS) 50 FR 22200, May 29, 1985.

CHANGES:

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete the entire entry and substitute with the following: Members of U.S. Forces, Korea and Eighth U.S. Army, their dependents, U.S. Embassy employees, contract personnel, technical representatives, and individuals who are assigned to or under the jurisdicial or administrative control of the U.S. Army who makes purchases of controlled items from authorized resale activities in Korea.

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete the entire entry and substitute with the following: Individual's name, SSN, date and place of birth, sex, citizenship, date arrived in and previous tours in the Republic of Korea, rotation date, service component, pay grade/position, marital status, dependency status, local address, selected skill specialties; sales slips and control sheets used in sales of controlled items by U.S. Forces; overspending/overpurchase printouts produced by central computer facilities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete the entire entry and substitute with the following: 10 U.S.C., section 3012; 5 U.S.C., section 301; Status of Forces Agreement: United States of America and the Republic of Korea; Executive Order 9397.

PURPOSE(S):

Delete the entire entry and substitute with the following: Information is used for personnel management, strength accounting, manpower management, and contingency planning and operations; to assist commanders and U.S. Armed Forces investigative agents in monitoring purchases of controlled items; to produce ration control plates for authorized users; to maintain record of selected controlled items purchases at retail facilities and suspected violators of the system; and to comply with Joint Service blackmarket monitoring control policy.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete the entire entry and substitute with the following: Information required for noncombatant evacuating planning and statistical studies by U.S. Forces Korea; to provide a source document for production of ration control plate. See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

SAFEGUARDS:

Delete: By sound activated alarm.

RETENTION AND DISPOSAL:

Delete the entire entry and substitute with the following: Destroy when no longer needed for current operations or when no longer needed to meet host country laws and regulations, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Add: ATTN: AJ–DM.

NOTIFICATION PROCEDURE:

Delete "ATTN: AJ–PER–DAMA" and substitute "ATTN: AJ–DM".

A0715.07cUSFK

SYSTEM NAME:

Command Unique Personnel Information Data System (CUPIDS).

SYSTEM LOCATION:

Headquarters, U.S. Forces, Korea/Eighth U.S. Army, APO San Francisco 96301.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of U.S. Forces, Korea and Eighth U.S. Army, their dependents, U.S. Embassy employees, contract personnel, technical representatives, and individuals who are assigned to or under the jurisdicial or administrative control of the U.S. Army who make purchases of controlled items from authorized resale activities in Korea.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, SSN, date and place of birth, sex, citizenship, date arrived in and previous tours in the Republic of Korea, rotation date, service component, pay grade/position, marital status, dependency status, local address, selected skill specialties, sales slips and control sheets used in sales of controlled items by U.S. Forces; overspending/overpurchase printouts produced by central computer facilities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 3012; 5 U.S.C., section 301; Status of Forces Agreement: United States of America and the Republic of Korea; E.O. 9397.

PURPOSE(S):

Information is used for personnel management, strength accounting, manpower management, and contingency planning and operations; to assist commanders and U.S. Armed Forces investigative agents in monitoring purchases of controlled items; to produce ration control plates for authorized users; to maintain record of selected controlled items purchases at retail facilities and suspected violators of the system; and to comply with Joint Service blackmarket monitoring control policy.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information required for noncombatant evacuating planning and statistical studies by U.S. Forces Korea; to provide a source document for production of ration control plate. See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGES.

Magnetic tapes, microfiche, and paper printouts:

RETRIEVABILITY:

By surname of noncombatants; by SSN of all others.

SAFEGUARDS:

Records are accessible only to authorized personnel; during non-duty hours, the facility is locked and secured.

RETENTION AND DISPOSAL:

Destroy when no longer needed for current operations or when no longer needed to meet host country laws and regulations, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Forces, Korea/Eighth U.S. Army, ATTN: AJ–DM, APO San Francisco 96301.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager, ATTN: AJ–DM, APO San Francisco 96301.

RECORD ACCESS PROCEDURES:

Individuals should address requests as indicated in "Notification procedure", furnishing full name, current address, telephone number, SSN, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 88–20256 Filed 9–6–88; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before October 7, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) frequency of collection; (4) the affected public; (5) reporting burden; and/or (6) recordkeeping burden; and (7) abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: September 1, 1988.

Carlos U. Rice,

Director for Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: Paul Douglas Teacher Scholarship Performance Report.
Affected Public: State or local governments.
Frequency: Annually.
Reporting Burden:
Responses: 57.
Burden Hours: 200.
Recordkeeping
Recordkeepers: 57.
Burden Hours: 28.
Abstract: State agencies that have participated in the Paul Douglas Teacher Scholarship Program submit this report to the Department. The Department uses the information to assess the accomplishments of program goals and objectives, and to aid in effective program management.

Office of Management

Type of Review: Reinstatement.
Title: Education Department General Administrative Regulations (EDGAR)—Administration of Grants.
Affected Public: State or local governments; non-profit institutions; small businesses or organizations.
Frequency: Annually.
Reporting Burden:
Responses: 1.
Burden Hours: 8,170.
Recordkeeping
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This information collection consists of reporting requirements for direct and State-administered grant programs.

Office of Vocational and Adult Education

Type of Review: Revision.
Title: Financial Status Report and Performance Report for the Adult Education State-administered Program.
Affected Public: State or local governments.
Frequency: Annually.
Reporting Burden:
Responses: 54.
Burden Hours: 270.
Recordkeeping
Recordkeepers: 54.
Burden Hours: 4,590.
Abstract: State educational agencies that participate in the Adult Education State-administered Program submit these reports to the Department. The Department uses the information to account for expenditures of funds and to monitor program activities required by the State plan.

[FR Doc. 88–20235 Filed 9–6–88; 8:45 am]

BILLING CODE 4000–01–M

[CFDA Nos. 84.094B and 84.094C]

Grants Availability; Patricia Roberts Harris Fellowships Program

AGENCY: Department of Education.

ACTION: Combined notice inviting applications under the Patricia Roberts Harris Fellowships Program. New Grant Awards for Graduate and Professional Study Fellowships and Public Service Education Fellowships for Fiscal Year 1989.

Purpose

Applications are invited for new grant awards under the Patricia Roberts Harris Fellowships Program for fiscal year 1989: This program has two components, the Graduate and Professional Study Fellowships and the Public Service Education Fellowships.

The Graduate and Professional Study Fellowship grants are awarded to institutions of higher education to support fellowships for graduate and professional study to students who demonstrate financial need and are from

groups who are traditionally underrepresented in graduate and professional study areas.

The Public Service Education Fellowship grants are awarded to institutions of higher education to support fellowships for graduate and professional study to students who demonstrate financial need and who plan to pursue a career in public service. Public Service Education Fellowships are intended to provide opportunities for qualified students, particularly individuals from traditionaly underrepresented groups.

DATES: The closing dates for transmitting applications under this notice are listed in the chart below.

Eligible Applicants

For the two programs, eligible applicants are institutions of higher education as defined in section 1201(a) of the Higher Education Act of 1965, as amended.

PATRICIA ROBERTS HARRIS FELLOWSHIPS PROGRAM

Title and CFDA No.	Deadline for transmittal of applications	Available funds [1]	Applications available	Estimated range of awards [1]	Estimated average size of awards [1]	Estimated number of awards	Project period in months
Graduate and Professional Study Fellowships (CFDA No. 84.094B).	10/17/88	$15,304,000	09/13/88	$6,667–$261,333	$90,175	167	9–12
Public Service Education Fellowships (CFDA No. 84.094C).	12/16/88	$3,221,000	11–01–88	$16,000–$112,000	$52,568	60	9–12

[1] The actual amount available for awards and the size of awards cannot be determined pending final action by the Congress. Estimates listed are based on FY 1988 appropriations.

Applicable Regulations

Regulations applicable to these programs include the following:

(a) The Patricia Roberts Harris Fellowships Program Regulations, 34 CFR Part 649, and

(b) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, and 77, as provided in 34 CFR 649.3.

For Applications or Information Contact

Dr. Charles H. Miller, telephone (202) 732–4395 or Mrs. Barbara J. Harvey, telephone (202) 732–4863.

Program Authority: 20 U.S.C. 1134d–1134f.

Dated: August 31, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88–20234 Filed 9–6–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Extension of the Comment Period on the Draft Environmental Impact Statement, Decontamination and Waste Treatment Facility (DWTF) at the Lawrence Livermore National Laboratory, Livermore, California

AGENCY: Department of Energy.

ACTION: Extension of the comment period on the Draft Environmental Impact Statement (DEIS).

SUMMARY: The Department of Energy (DOE) announces the extension of the comment period on the Draft Environmental Impact Statement, "Decontamination and Waste Treatment Facility at the Lawrence Livermore National Laboratory, Livermore, California," DOE/EIS–0133–D, which assesses the environmental effects of the construction and operation of the proposed DWTF.

DATE: Written comments to the Department of Energy should be postmarked by October 18, 1988, to ensure consideration in the preparation of the final Environmental Impact Statement.

ADDRESS: Written comments on the DEIS, requests for copies of the DEIS, and requests for further information should be directed to: Mr. William Holman, Environmental Branch, Office of Environment, Safety and Quality Assurance, U.S. Department of Energy, San Francisco Operations Office, Oakland, California 94612, (415) 273–6370. ATTENTION: "DWTF DEIS"

For further assistance on the National Environmental Policy Act (NEPA) process contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Project Assistance (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600.

SUPPLEMENTARY INFORMATION:

I. Previous Notice of Availability

The Department of Energy published a notice of availability (53 FR 27382) on July 20, 1988, regarding the availability of the DEIS on the DWTF, announcing the original deadline for written comments of September 6, 1988, and providing notice of a public hearing on August 23, 1988.

II. Comment Procedures

Interested parties are invited to provide written comments on the DEIS to Mr. William Holman at the above address. All comments and related information should be postmarked by October 18, 1988, to ensure consideration in preparing the Final EIS. Comments postmarked after October 18, 1988, will be considered to the extent practicable.

Issued in Washington, DC September 2, 1988.

Ernest C. Baynard, III,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 88–20417 Filed 9–6–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. CP88–687–000, et al.]

Southern Natural Gas Co., et al.; Natural Gas Certificate Filings

Take notice that the following fillings have been made with the Commission.

1. Southern Natural Gas Company

[Docket Nos. CP88–687–000]

August 30, 1988.

Take notice that on August 16, 1988, Southern Natural Gas Company (Southern) P.O. Box 2563, Birmingham, Alabama 35202–2563 filed in Docket No. CP88–687–000 a request pursuant to §§ 157.205 and 284.223(b) of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of USS, a Division of USX Corporation (USS), under Southern's blanket certificate issued in Docket No. CP88–316–000 under 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.

Southern states that it would perform the proposed transportation service for USS pursuant to a service agreement dated June 23, 1988. Southern proposes to transport on a firm basis up to 26,252 MMBtu on a peak day; on an average day 9,600 MMBtu; and on an annual basis 3,504,000 MMBtu of natural gas. Southern proposes to receive the gas at various receipt points in Louisiana for delivery to USS at its plants in Alabama. Southern asserts that no new facilities are required to implement the proposed service.

Southern states that the proposed service is currently being performed pursuant to the 120-day period of § 284.223(a)(1) of the Commission's Regulations. Southern proposes to continue this transportation service in accordance with the provisions of §§ 284.221 and 284.223(b) of the Commission's Regulations. Southern states that it commenced transportation of natural gas for USS on July 2, 1988, as reported in Docket No. ST88-5026-000.

Comment date: October 14, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. United Gas Pipe Line Company

[Docket No. CP88-697-000]

August 31, 1988.

Take notice that on August 19, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP88-697-000 an application under section 7(c) of the Natural Gas Act requesting a certificate of public convenience and necessity authorizing the transportation and delivery of natural gas for direct sale to nine industrial customers, and the acquisition of a metering station, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, United requests authority to implement ten interruptible, direct gas sales contracts with nine customers as set out below.

Customer	Location	Max CD Quantity
Armstrong World Ind., Inc	Escambia County, FL	4,000 Mcf/d.
Gulf Power Co	Escambia County, FL	25,000 Mcf/d.
IMC Fertilizer, Inc	Ouachita Parish, LA	50,000 MMBtu/d.
International Paper Co	Morehouse Parish, LA	10,000 MMBtu/d.
James River Corp	Escambia County, LA	200 Mcf/d.
Manville Forest Prods. Corp	Ouachita Parish, LA	35,000 MMBtu/d.
Monsanto Co	St. Charles Parish, LA	32,000 MMBtu/d.
Reichhold Chemicals, Inc	Escambia County, LA	2,000 Mcf/d.
Reichhold Chemicals, Inc	Harrison County, MS	650 Mcf/d.
Standard Products Co., Inc	Jackson County, MS	3,600 Mcf/d.

United states that facilities to implement these direct sales are in place for all but one customer, International Paper Company. United requests authority to acquire an existing meter facility at this location.

Comment date: September 21, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. Viking Gas Transmission Company and Midwestern Gas Transmission Company

[Docket No. CP88-679-000]

August 31, 1988.

Take notice that on August 15, 1988, Viking Gas Transmission Company (Viking), P.O. Box 2511, Houston, Texas 77252-2511 and Midwestern Gas Transmission Company (Midwestern), P.O. Box 2511, Houston, Texas 77252-2511, filed in Docket No. CP88-679-000 an application pursuant to section 7 of the Natural Gas Act for permission and approval to abandon, by transfer to Viking and for Viking to acquire the facilities that constitute Midwestern's northern system together with the service associated with Midwestern's northern system, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that upon such transfer Viking, a wholly-owned subsidiary of Midwestern, would assume Midwestern's rights and obligations under Midwestern's service agreements and Midwestern's supply arrangements. It is further stated that Viking would then operate the northern system and would serve the customers on the northern system under the same terms and conditions that Midwestern now serves those customers.

It is said the Midwestern's northern system and southern system are physically separated. It is further said that the two systems face different commercial and climatic conditions and, as a result, call for different managerial, operational, and regulatory approaches. It is alleged that the proposal would structure the legal relationship between the affected customers and the interstate natural gas pipeline that serves those customers in a manner that more accurately reflects the actual economic relationship.

Viking and Midwestern aver that no facilities would be constructed or removed from service as a result of the proposal.

Comment date: September 21, 1988, in accordance with Standard Paragraph F at the end of this notice.

4. CNG Transmission Corporation

[Docket No. CP88-709-000]

August 31, 1988.

Take notice that on August 23, 1988,[1] CNG Transmission Corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP88-709-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) to add one new delivery point and to reassign thereto a portion of the volumes of gas authorized to be delivered elsewhere for Washington Gas Light Company (Washington), under applicant's blanket certificate issued in Docket No. CP82-537-000 on November 3, 1982, 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.

By this request Applicant seeks authorization to add one new delivery point to Washington to be located at the interconnection between Applicant's existing pipeline PL-1 and the pipeline

[1] The request under blanket authorization was tendered for filing on August 22, 1988; however, the fee required by § 381.207 of the Commission's Rules (18 CFR 381.207) was not paid until August 23, 1988. Section 381.103 of the Commission's Rules provides that the filing date is date on which the fee is paid.

and facilities of Washington at Jefferson, Maryland.

Applicant states that it will deliver part of the volumes under applicable service agreements to Washington for use by Washington's wholly-owned subsidiary, Frederick Gas Company, Inc., at this delivery point. It is stated that Applicant will construct the necessary measuring and regulating facilities at the proposed one new additional delivery point.

Applicant states that the one additional delivery point will assure Washington of an adequate and reliable supply of natural gas for the 1988–89 heating season and beyond. It is stated that deliveries by Applicant for Washington at the Jefferson delivery point proposed herein will not exceed 2,000 dT per day of the currently authorized gas sales level of 60,000 dt per day. Further, Applicant states that the addition of this delivery point is not prohibited by its tariff. Applicant states that Washington has advised Applicant that the volumes it will purchase at this new delivery point is for its system supplies.

Comment date: October 17, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulation Commission, 825 North Capital 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 necessary 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. 88–20219 Filed 9–6–88; 8:45 am]

BILLING CODE 6717–01–M

New Docket Prefixes Under Order No. 497

August 31, 1988.

Notice is hereby given that new docket prefixes have been established for filings made in connection with the Commission's marketing affiliate Order No. 497.

On June 1, 1988, the Commission issued a final rule (Order No. 497) addressing possible abuses in the relationship between interstate natural gas pipelines and their affiliated marketing or brokering entities. The rule added § 250.16 to the regulations requiring interstate pipelines to make tariff filings incorporating information specified in § 250.16(b)(5). In order to identify and assess Commission resources needed to process such filings, it is necessary to establish a new docket prefix, to be designated MT. Tariff filings made pursuant to § 250.16(b)(5) should be limited in their content to the information specified therein. The applicable filing fees for filings designated MT are the fees set forth in § 381.204 of the Commission's regulations.

Filings in connection with Order No. 497 other than those under § 250.16(b)(5) and which are limited to specific entities (e.g. a request for waiver or stay which, if granted, would provide relief only to the applicant) will be designated with the docket prefix MG. Filings of a generic nature related to the marketing affiliate rulemaking (e.g. comments, requests for rehearing, or requests for a stay of all or a portion of the rule) will continue to be assigned Docket No. RM87–5. Form 592 will not be docketed.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–20293 Filed 9–6–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–242–000]

Granite State Gas Transmission, Inc.; Filing

September 1, 1988.

Take notice that on August 29, 1988, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, tendered for filing with the Commission the following tariff sheets in its FERC Gas Tariff, First Revised Volume No. 1, for effectiveness on October 1, 1988:

Original Sheet No. 7–C
First Revised Sheet No. 86
Original Sheet No. 87

According to Granite State, the purpose of the instant filing is to establish procedures pursuant to which Granite State will recover from its customers the fixed take-or-pay charges billed by Tennessee Gas Pipeline Company under the provisions of Order No. 500. Granite State requests an effective date of October 1, 1988.

Granite State further states that copies of its filing were served upon its customers, Bay State Gas Company and Northern Utilities, Inc., and the regulatory commissions of the States of Maine and Massachusetts and New Hampshire.

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 sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 12, 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. 88-20289 Filed 9-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8884-002]

Cleto McPherson; Surrender of Exemption from Licensing (Conduit)

August 31, 1988.

Take notice that Cleto McPherson, exemptee for the George Creeks Project No. 8884, has requested that his exemption from licensing be terminated. The exemption from licensing was issued on August 29, 1985. The project would have been located at existing irrigation diversions on George Creek and North McDonald Creek in Park County, Montana.

The only project facility constructed is a collector/intake on an existing irrigation ditch within the exemptee's land. No other construction has taken place.

The exemptee filed the request on May 27, 1988, and the exemption from licensing for Project No. 8884 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 business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-20216 Filed 9-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-237-000]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

August 29, 1988.

Take notice that on August 24, 1988, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

Fourth Revised Sheet No. 69
Fourth Revised Sheet No. 70
Third Revised Sheet No. 71
Original Sheet No. 71-A
Original Sheet No. 71-B
Original Sheet No. 71-C
Original Sheet No. 71-D
Third Revised Sheet No. 72
Original Sheet No. 72-A
Original Sheet No. 72-B
Original Sheet No. 72-C
Original Sheet No. 72-D

National states that the purpose of this filing is to establish the procedures pursuant to which National will recover the take-or-pay charges approved by the Federal Energy Regulatory Commission to be billed to National by its pipeline-suppliers: Tennessee Gas Pipeline Company, Texas Eastern Transmission Corporation, CNG Transmission Corporation, Columbia Gas Transmission Corporation and Transcontinental Gas Pipe Line Corporation.

National states that if, at any time, its pipeline-suppliers are permitted by Commission order to change their take-or-pay procedures and/or the amounts to be recovered pursuant to those procedures, National will likewise change its take-or-pay procedures and/or the amounts to be recovered pursuant thereto. National further states that it agrees to refund to its customers any refunds received from its pipeline-suppliers.

The proposed effective date of the tariff sheets listed above is October 1, 1988.

Copies of National's filing were served on National's jurisdictional customers and on the interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 6, 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. 88-20217 Filed 9-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-243-000]

Transcontinental Gas Pipe Line Corp.

September 1, 1988.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on August 29, 1988 certain tariff sheets in Appendix A attached to the filing. Such sheets are proposed to be effective August 1, 1988 or, alternatively, October 1, 1988.

Transco states that the purpose of its tariff filing is to establish initial rate schedules and rates for firm (FT-MB) and interruptible (IT-MB) transportation service on Transco's Mobile Bay Pipeline System. Such transportation will be performed pursuant to authority under section 311 of the Natural Gas Policy Act of 1978 and Part 284 of the Commission's regulations thereunder.

Transco explains that on June 30, 1988, Transco filed in Docket No. RP 88-204-000 tariff sheets, identical in all pertinent respects to those filed herewith, also for the purpose of establishing initial rate schedules and rates for firm and interruptible transportation service on its Mobile Bay pipeline system. Transco states that by its order issued July 29, 1988, the Commission rejected such tariff sheets on the basis that Transco has Rate Schedules FT and IT, which rate schedules apply to all transportation services performed by Transco pursuant to its blanket certificate or Part 284 of the Commission's Regulations. Transco further states that the purpose of its instant filing is to amend the provisions of its current FT and IT Rate Schedules to provide that such rate schedules do not apply to transportation service on the Mobile Bay pipeline system—thereby correcting the unintended overlap—and to refile its Mobile Bay tariff sheets.

Transco states that copies of the filing are being mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., 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 September 9, 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. 88-20290 Filed 9-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. IR-000-168]

Western Illinois Power Cooperative, et al.; Petition for Waiver

August 31, 1988.

In the matter of Western Illinois Power Cooperative, Inc.; Adams Electrical Co-Operative; Illinois Rural Electric Co.; M.J.M. Electric Cooperative, Inc.; Menard Electric Cooperative; Spoon River Electric Co-Operative, Inc.; and Western Illinois Electrical Coop.

Notice is hereby given that the seven non-regulated utilities identified above have filed on August 19, 1988, pursuant to § 292.403 of the Commission's regulations for waiver of certain obligations imposed on these applicant utilities under §§ 292.303(a) and 292.303(b) of the Commission's regulations (18 CFR Part 292 Subpart C) which implement section 210 of the Public Utility Regulatory Policies Act of 1978 ("PURPA"). The applicant utilities had duly implemented the Commission's PURPA regulations by filing separate PURPA implementation plans on March 16, 1981. On August 19, 1988 the applicant utilities filed a joint PURPA implementation plan.

Under the joint implementation plan, each of the above utilities (except Western Illinois Power Cooperative, Inc.) have requested a waiver of the requirements contained in § 292.303(a) of the Commission's regulations under 18 CFR Part 292 which would require those utilities to purchase any power made available from any qualifying facility either directly or indirectly. These utilities are Members of Western Illinois Power Cooperative Inc. ("WIPCO") and have arranged for WIPCO, the Members' jointly-owned all requirements wholesale supplier, to make purchases from qualifying facilities on their behalf.

WIPCO has requested a waiver from § 292.303(b) of the Commission's regulations (18 CFR Part 292 Subpart C) which would require it to make retail sales to qualifying facilities. WIPCO and the other identified Member utilities have provided in their joint implementation plan that Members will sell supplementary, interruptible, back-up and maintenance power to qualifying facilities, upon request, at rates that are non-discriminatory, just and reasonable, and in the public interest. In addition, no qualifying facility may be subject to duplicative interconnection charges (as to both the purchase and sale of power), nor will qualifying facilities be subject to charges associated with building separate facilities to enable Members to deliver retail service, unless the charges would also have been incurred had WIPCO delivered the service.

Given these requirements, the applicants believe that purchases by the Members to qualifying facilities or sales by WIPCO to qualifying facilities are not necessary to encourage cogeneration and small power production and are not otherwise required by section 210 of PURPA.

Any person desiring to be heard or to protest any of the above filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protest should be filed within thirty (30) days of publication of notice in the **Federal Register**, and should reference the applicable docket number. 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-20218 Filed 9-6-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59850; FRL-3442-7]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of one such PMNs and provides a summary of each.

DATE: Close of Review Periods: Y 88-250, September 13, 1988.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460 (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m. Monday through Friday, excluding legal holidays.

Y 88-250

Manufacturer. Confidential.

Chemical. (G) High solids medium oil alkyd polymer.

Use/Production. (s) Industrial air-dry finishes. Prod. range: Confidential.

Date: August 29, 1988.

Steven Newburg-Rinn,

Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

[FR Doc. 88-20243 Filed 9-6-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Channel 50 Television et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant, City, and State	File No.	MM Docket No.
A. Aurio Matos d/b/a Channel 50 Television, Aguada, Puerto Rico.	BPCT-871125KJ	88-371
B. Carlos R. Soto & Maria V. Vilarubia, Aguada, Puerto Rico.	BPCT-880113KF	.....

Applicant, City, and State	File No.	MM Docket No.
C. Manuel Prats d/b/a Aguada Television Co., Aguada, Puerto Rico.	BPCT-880114KH	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

Short-Spacing—A, B, C
Air Hazard—A, B, C
Comparative—A, B, C
Ultimate—A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

Roy J. Stewart,

Chief, Video Service Division, Mass Media Bureau.

[FR Doc. 88-20197 Filed 9-6-88; 8:45 am]

BILLING CODE 6712-01-M

Applications For Consolidated Hearing; Tree Top Broadcasting Associates et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A.Tree Top Broadcasting Associates, Arlington, NY.	BPH-860121MR	88-393
B.Edward F. and Pamela J. Levine, Joint Tennants, Arlington, NY.	BPH-860122MI	.....
C.PN Radio Co., Arlington, NY.	BPH-860123MN	.....
D.1180 Wham Corp., Arlington, NY.	BPH-860123MO	.....
E.Elliott Broadcasting, Limited Partnership, Arlington, NY.	BPH-860123MP	.....
F.FM Arlington Limited Partnership, Arlington, NY.	BPH-860123MQ	.....
G.Egmont Sonderling, Arlington, NY.	BPH-860123MR	.....
H.Rizzi, Rizzi, Wiggins and Chapin, General Partnership, Arlington, NY.	BPH-860123MT	.....
J.Dutchess Broadcasting Corp., Arlington, NY.	BPH-860123MU	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used to signify whether the issue in question applies to the particular applicant.

Issue Heading and Applicants

1. (a) Financial—F
   (b) Misrepresentation—F
   (c) Basic Qualifications—F
2. Comparative—A, B, C, D, E, F, G, H, I, J
3. Ultimate—A, B, C, D, E, F, G, H, I, J

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-20198 Filed 9-6-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL ELECTION COMMISSION

[Notice 1988]

Privacy Act; Proposed Notice of New and Revised Routine Uses of Privacy Act Systems of Records

Pursuant to the provisions of the Privacy Act of 1974, Pub. L. No. 93-579, 5 U.S.C. 522(e)(11) and the Privacy Act Guidance Updates, the Federal Election Commission hereby publishes for comment a revised routine use for its systems of records maintained by the Commission. This revision is in addition to the routine uses now in effect which were described when the Commission published its systems of records in 1984 (49 FR 164) (8/22/84). No other changes to its systems of records have been made.

All systems of records maintained by the FEC are affected. They are FEC 1—Requests for Advisory Opinions, FEC 2—Audits and Investigations, FEC 3—Compliance Actions, FEC 4—Mailing Lists, FEC 5—Personnel Records, FEC 6—Candidate Reports and Designations, FEC 7—Certification for Primary Matching Funds and General Election Campaign Funds, FEC 8—Payroll Records, FEC 9—Litigation Actions, FEC 10—Letter File, Public Communications, FEC 11—Contributor Name Index System. The new routine use language to be added for the above records is as follows:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

* * * * *

Routine Use for Disclosure to the Department of Justice for Use in Litigation: It shall be a routine use of the records in this system of records to disclose them to the Department of Justice when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such reports by the Department of Justice is deemed by the Federal Election Commission to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records

to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

Routine Use for Agency Disclosure in Litigation: It shall be a routine use of records maintained by this agency to disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the Federal Election Commission determines that on a case by case basis use of such records is relevant and necessary to the litigation, provided however, that the agency determines that disclosure of the records is compatible with the purpose for which the records were collected.

Any person interested in commenting on this notice may do so by submitting comments in writing to Christina H. VanBrakle, Privacy Act Officer, Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

Dated at Washington, DC, on August 31, 1988.

Thomas J. Josefiak,

Chairman, Federal Election Commission.

[FR Doc. 88-20224 Filed 9-6-88; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Office of Training; Board of Visitors for the Emergency Management Institute; Continuation

In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), GSA Regulation 41 CFR 101.6, and FEMA Regulation 44 CFR Part 12, and after consultation with the General Services Administration, the Director of the Federal Emergency Management Agency (FEMA) has determined that the continuation of the FEMA Board of Visitors for the Emergency Management Institute (EMI) is in the public interest in connection with the performance of duties imposed by the Agency by law.

The objectives and the duties of the Board are to review the programs of EMI and continue to make comments and recommendations to the Director of the Office of Training regarding the operation of the Institute and any improvements therein which the Board deems appropriate.

1. In carrying out its responsibilities, the Board may include in its review:

a. A discussion of the Institute's programs to determine whether these programs further the basic mission of the EMI; and

b. Other appropriate subject areas that are related to the effectiveness of the delivery of the Institute's programs.

2. The Board shall draw on the expertise of its members and with the concurrence of the Director, Office of Training, such other experts as may be considered appropriate in order to provide advice and make recommendations to the Director, Office of Training.

3. The Board shall submit annually a written report to the Director, Office of Training, no later than April each year. This report shall provide detailed comments and recommendations regarding the operation of the Institute.

4. The Board function solely as an advisory board and comply fully with the provisions of the Federal Advisory Committee Act.

The Board consists of 12 members, including a chairman. The Director, Office of Training, shall appoint the individuals to the Board, including the member to be designated as chairman. The members of the Board, including the chairman, represent the fields of emergency management, education, public administration and industry, and such professional organizations as will ensure a balanced representation of interest. The members are appointed for a 1-year term.

Interested persons are invited to submit comments regarding the recommendation to continue the Board of Visitors. Such comments, as well as any inquiries, may be addressed to the Rules Docket Clerk, Federal Emergency Management, Washington, DC 20472

Dated: August 25, 1988.

Robert Volland,

Acting Director, OT.

[FR Doc. 88-20230 Filed 9-6-88; 8:45 am]

BILLING CODE 6718-21-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.: 226-011209.

Title: Equipment Interchange Agreement Between Totem Ocean Trailer Express, Inc. and Johnson Scanstar Lines.

Parties: Totem Ocean Trailer Express, Inc. Johnson Scanstar Lines.

Synopsis: The proposed agreement would permit the parties to interchange empty and loaded containers, and related equipment, in the trade between points in Alaska and points in Europe with interchange at Seattle or Tacoma, Washington.

By Order of the Federal Maritime Commission.

Dated: September 1, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-20257 Filed 9-6-88; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Reissuance of License; CIMPEX, Inc.

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License No.	Name/Address	Date Reissued
2856-R	CIMPEX, Inc., 8347 NW. 36th Street, Miami, FL 33166.	Aug. 3, 1988.

Robert G. Drew,

Director, Bureau of Domestic Regulation.

[FR Doc. 88-20294 Filed 9-6-88; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Revocations; King Shipping Co., Inc., et al.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 812–R
Name: King Shipping Co., Inc.
Address: 1323 Nassau Street, New York, NY 10038
Date Revoked: August 6, 1988
Reason: Failed to maintain a valid surety bond

License Number: 2781
Name: Berman International Transportation, Inc. (d/b/a Bit, Inc.)
Address: 3150 River Road, Suite 113, Des Plaines, IL 60018
Date Revoked: August 8, 1988
Reason: Surrendered license voluntarily

License Number: 1421
Name: E.C. MaAfee Customhouse Broker
Address: 3446 Penobscot Building, Detroit, MI 48226
Date Revoked: August 10, 1988
Reason: Failed to maintain a valid surety bond

License Number: 2427
Name: de la Torre Forwarding Co., Inc.
Address: 1444 International Trade Mart Bldg., New Orleans, LA 70130
Date Revoked: August 11, 1988
Reason: Failed to maintain a valid surety bond

License Number: 1169
Name: Beverly Hills Transfer & Storage Co., Inc.
Address: 221 So. Beverly Drive, Beverly Hills, CA 90212
Date Revoked: August 17, 1988
Reason: Failed to maintain a valid surety bond

Robert G. Drew,
Director, Bureau of Domestic Regulation.
[FR Doc. 88–20295 Filed 9–6–88; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Financial Institutions Holding Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later then September 21, 1988.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Financial Institutions Holding Corporation,* Riverdale, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Bowie, Bowie, Maryland, a *de novo* bank. Comments on this application must be received by September 28, 1988.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Commerce Bancorp, Inc.,* Berkeley, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of National Bank of Commerce, Berkeley, Illinois.

2. *D & D Bancshares, Inc.,* Garrison, Iowa; to become a bank holding company by acquiring 80 percent of the voting shares of Mt. Auburn Savings Bank, Mt. Auburn, Iowa.

3. *Merchants National Corporation,* Indianapolis, Indiana; to merge with Riley Company, Inc., East Chicago, Indiana, and thereby indirectly acquire First National Bank of East Chicago, East Chicago, Indiana.

4. *Sysco Financial, Inc.,* Lincolnwood, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Brickyard Bank, Chicago, Illinois.

5. *Valley Ridge Financial Corp.,* Kent City, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Kent City State Bank, Kent City, Michigan.

C. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First Perryton Bancorp, Inc.,* Perryton, Texas; to acquire 94 percent of the voting shares of The First National Bank of Hereford, Hereford, Texas. Comments on this application must be received by September 28, 1988.

Board of Governors of the Federal Reserve System, August 31, 1988.

James McAfee,
Associate Secretary of the Board.
[FR Doc. 88–20214 Filed 9–6–88; 8:45 am]
BILLING CODE 6210–01–M

National Bank of Canada et al.; Applications To Engage de Novo in permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated

or the offices of the Board of Governors not later than September 28, 1988.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *National Bank of Canada,* Montreal, Canada; to engage *de novo* through its subsidiary, National Canada Corporation, Chicago, Illinois, in making and servicing mortgage and construction loans to finance commercial real estate development projects, and making the servicing secured and unsecured loans pursuant to § 225.25(b)(1) of the Board's Regulation Y. Comments on this application must be received by September 21, 1988.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *SunTrust Banks, Inc.,* Atlanta, Georgia, and Sun Banks, Inc., Orlando, Florida; to engage *de novo,* through their subsidiary, SunBank Capital Management, National Association, Orlando, Florida, in all trust company functions, and investment advisory activities, pursuant to § 225.25 (b)(3) and (b)(4) of the Board's Regulation Y.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Bank System, Inc.,* Minneapolis, Minnesota; to expand the activities of its subsidiary, FBS Credit Services, Inc., Minneapolis, Minnesota, to acquire and manage classified and low quality assets from the subsidiary banks of Central Bancorporation, Inc., Denver, Colorado, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 31, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-20215 Filed 9-6-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Food and Drug Administration; Statement of Organization and Functions

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization and Functions for the Department of Health and Human Services (35 FR 3685, February 25, 1970, as amended most recently in pertinent part at 50 FR 1278, January 10, 1985) is amended to reflect organizational changes in the Food and Drug Administration (FDA).

The functional statements of the Division of Human Resources Management (DHRM), Office of Management and Operations, Office of the Commissioner, FDA, are clarified to reflect that the functions of training, career development, performance management, and executive services activities are being performed by DHRM and that the industrial engineering function is no longer being performed in DHRM.

Delete subparagraph [h-4], *Division of Human Resources Management* (HFA77) and insert new subparagraph [h-4], *Division of Human Resources Management* (HFA77).

[h-4] *Division of Human Resources Management* (HFA77). Provides personnel management advice and assistance to the Commissioner and to FDA managers within its servicing area, including advice to Headquarters officials on their management responsibilities for FDA field installations.

Participates in the development of Agency goals and operating plans related to personnel management.

Provides, within its servicing area, personnel management and personnel administration services, including employment, recruitment, compensation and benefits, classification, employee relations, training, career development, performance management, executive services, and as designated under departmental guidelines, provides services in these areas throughout the Agency.

Prepares staff studies and recommendations to Agency management on personnel needs and problems.

Identifies the need for personnel policies and programs to PHS and collaborates with PHS, as appropriate, in the development of such policies and programs.

Develops and implements operating procedures and interprets policies to the extent necessary to meet the special needs of FDA in the application of PHS, HHS, OPM, and other Government agency regulations.

Represents FDA in personnel management matters with PHS, HHS, OPM, and other Government agencies, professional societies, colleges and universities.

Conducts special studies on personnel needs, problems, and programs.

Dated: August 29, 1988.

Wilford J. Forbush,

Director, Office of Management, PHS.

[FR Doc. 88-20273 Filed 9-6-88; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 39409-24, August 31, 1982, as amended most recently at 52 FR 43676-78, November 13, 1987) is amended to reflect the transfer of the designation of health manpower shortage areas program under section 332 of the Public Health Service Act, as amended, from the Office of Data Analysis and Management, Bureau of Health Professions, to the Office of the Director, Bureau of Health Care Delivery and Assistance, within the Health Resources and Services Administration (HRSA).

Under HB-10, Organization and Functions, amend the following functional statements within HRSA:

1. Under the *Office of Data Analysis and Management (HBP15), Bureau of Health Professions (HBP),* delete item numbers (8) and (9) and renumber item numbers (10) through (13) as item numbers (8) through (11) respectively.

2. Under the *Office of the Director (HBC1), Bureau of Health Care Delivery and Assistance,* delete the "and" after item number (10); change the period after item number (11) to a semicolon and add the following "and (12) administers the designation of health manpower shortage areas program."

All delegations and redelegations of authorities to officers and employees of HRSA which were in effect immediately prior to the effective date of this transfer are continued in effect in them or their successors pending further redelegation, provided they are consistent with this transfer.

Date: August 29, 1988.

Wilford J. Forbush,

Director, Office of Management.

[FR Doc. 88-20274 Filed 9-6-88; 8:45 am]

BILLING CODE 4160-15-M

Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 39409–24, August 31, 1982, as amended most recently in pertinent parts at 52 FR 43676–78, November 13, 1987, and 53 FR 27571, July 21, 1988) is amended to reflect the transfer of the Acquired Immune Deficiency Syndrome (AIDS) Education and Training Centers Activities under section 301 of the Public Health Service Act from the Division of Special Projects, Bureau of Maternal and Child Health and Resources Development, to the Division of Medicine, Bureau of Health Professions, within the Health Resources and Services Administration (HRSA).

Under HB–10, Organization and Functions, amend the following functional statements within HRSA:

1. Under the *Office of the Associate Director for Special Projects (HBRD), Bureau of Maternal and Child Health and Resources Development (HBR)* delete item number (1) and replace it with: (1) Plans, develops, implements, monitors, and evaluates programs and projects, such as service demonstration and drug reimbursement, related to the delivery of health care services to people with acquired immune deficiency syndrome (AIDS);

2. Under the *Division of Medicine (HBP3), Bureau of Health Professions (HBP)* delete "and" after item number (10) and change the period after item number (11) to a semicolon and add the following: And (12) plans, develops, implements, monitors, and evaluates acquired immune deficiency syndrome (AIDS) health professions education and training projects.

All delegations and redelegations of authorities to officers and employees of HRSA which were in effect immediately prior to the effective date of this transfer are continued in effect in them or their successors pending further redelegation, provided they are consistent with this transfer.

This transfer is effective on October 1, 1988.

Date: August 26, 1988.

Wilford J. Forbush,

Director, Office of Management.

[FR Doc. 88–20275 Filed 9–6–88; 8:45 am]

BILLING CODE 4160–15–M

Office of the Assistant Secretary for Health; Saint Elizabeths Hospital Administrative and Medical Records

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: On October 1, 1987, the Saint Elizabeths Hospital and attendant administrative, fiscal and patient care responsibilities were transferred to the District of Columbia Government pursuant to Pub. L. 98–621, "The Saint Elizabeths Hospital and District of Columbia Mental Health Services Act." A Transfer and Assignment of Personal Property at St. Elizabeths Hospital was executed at that time, and has been amended as reflected in the agreement following this notice to facilitate the discharge of the Public Health Service's responsibility under the Act for: (1) The closure, disposition, and retention of certain administrative and medical records; (2) the defense of claims for which the United States is responsible; and (3) the financial support of certain patients receiving care at the hospital.

EFFECTIVE DATE: The Amendment to the Transfer and Assignment of Personal Property became effective retroactive to the date of original execution, October 1, 1987.

FOR FURTHER INFORMATION CONTACT: James E. Pittman, Associate Director for SEH Transition, National Institute of Mental Health, Room 17C–05 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone number (301) 443–2940.

Dated: August 30, 1988.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management, OASH.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Amendment To Transfer and Assignment of Personal Property at Saint Elizabeths Hospital

Whereas, on September 30, 1987, by authority of the Saint Elizabeths Hospital and District of Columbia Mental Health Services Act (Act), Pub. L. 98–621, the United States of America (Assignor), acting through the Director, Office of Management, Public Health Service, Department of Health and Human Services (Assignor), executed a Transfer and Assignment of Personal Property which transferred to the District of Columbia (Assignee) personal property belonging to Assignor located on the premises of Saint Elizabeths Hospital conveyed to Assignee by deed;

Whereas, the Transfer and Assignment of Personal Property transferred the administrative and medical records of the Hospital, including section 19 Privacy Act systems of records, subsequently deleted as Federal systems of records by Federal Register notice on November 24, 1987, 52 FR 45023;

Whereas, Assignor has continuing responsibility under the Act: (1) For the closure, disposition, and retention of certain administrative and medical records; (2) to defend claims for which the United States is responsible pursuant to section 9(h), and (3) to financially support certain patients receiving care at the Hospital pursuant to section 9(b)(1); and

Whereas, at the time of execution of the Transfer and Assignment of Personal Property, Assignor and Assignee were mutually aware that Assignor's continuing responsibilities would necessitate Assignor's employees' and agents' review of the Hospital's medical and administrative records, and intended at all times that Assignor would retain a right of access to the records for this purpose;

Therefore, Assignor, with acknowledgment and approval of Assignee, hereby amends the Transfer and Assignment of Personal Property to explicitly recognize such right of access, by inserting after "[t]o have and to hold the same unto Assignee its successors and assigns forever" the following clause:

Subject, however, to a continuing right of access by Assignor, its agents, and employees to the medical and administrative records hereby transferred, as necessary to the discharge of Assignor's responsibilities pursuant to the Act.

This Amendment shall be attached to the Transfer and Assignment of Personal Property and be effective retroactive to the date of original execution.

Dated: August 3, 1988.

Wilford J. Forbush,

Director, Office of Management, Public Health Service.

Dated: August 11, 1988.

Vernon E. Hawkins,

Acting Interim Director, Department of Human Services.

[FR Doc. 88–20260 Filed 9–6–88; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–08–4322–13]

Las Vegas District Advisory Council Meeting, Clark County, NV

August 29, 1988.

Notice is hereby given in accordance with Pub. L. 92–463, that a meeting of the Bureau of Land Management, (BLM), Las Vegas District will be held September 27 and 28, 1988.

The Advisory Council will host an "Open House" meeting for the purpose of receiving public comments and hear informal discussions on public lands

materials on the evening of September 27, 1988, in the Conference Room of the Bureau of Land Management, Las Vegas District Office, 4765 W. Vegas Drive, Las Vegas, Nevada, from 7:00 p.m. until 9:00 p.m.

The District Advisory Council will also meet on September 28, 1988; BLM in the Las Vegas District Office Conference Room, at 9:00 a.m.

The agenda will be as follows:

—FY89 Budget Outlook
—Red Rock/Summa Exchange/Sale
—District Wild Horse and Burro Program Update
—Recreation and Wildlife 2000
—District Camping Limitation
—Ranger Program
—Plan Amendment—Sand and Gravel
—Legislation Affecting Public Lands
—CRMP Update
—Joint DAC—Yuma/California Desert Districts

Both meetings of the Las Vegas District Advisory Council are open to the public. Persons wishing to appear before the Council can do so during the "Open House" meeting on September 27, 1988 or contact the BLM Las Vegas District Manager by the close of business (4:15 p.m.) Friday, September 23, 1988, in order to be heard during the meeting. Summary minutes of the Las Vegas District Advisory Council meetings will be maintained at the BLM Las Vegas District Office, 4765 W. Vegas Drive, Las Vegas, Nevada.

Ben F. Collins,

District Manager.

[FR Doc. 88-20189 Filed 9-6-88; 8:45 am]

BILLING CODE 4310-HC-M

Off-Road Vehicle Designation; Montana

AGENCY: Bureau of Land Management, Miles City District Office, Interior.

ACTION: Notice to limit off-road vehicle use on public lands.

SUMMARY: After a 30-day comment period and assuming that no adverse comments are received, the use of off-road vehicles is limited on those public lands within the Lake Mason West Special Management Area. This will be in effect during the antelope hunting season as established by the Montana Department of Fish, Wildlife and Parks, Musselshell County, Montana in accordance with the authority and requirements of Executive Orders 11644 and 11989 and Regulations 43 CFR Part 8340.

EFFECTIVE DATE: This designation will only be in effect during the antelope hunting season as established by the Montana Department of Fish, Wildlife and Parks. This designation will become effective during the 1988 antelope hunting season and will remain in effect for a period of 5 years, or until rescinded by the authorized officer.

FOR FURTHER INFORMATION CONTACT: Mat Millenbach, District Manager, Miles City District, BLM, P.O. Box 940, Miles City, Montana 59301; Bill McIlvain, Area Manager, Billings Resource Area, 810 East Main, Billings, Montana 59105; or Roger Fliger, Montana Department of Fish, Wildlife and Parks, 1125 Lake Elmo Road, Billings, Montana 59105.

SUPPLEMENTARY INFORMATION: Of the 19,520 acres of land within the Lake Mason West Special Management Area, 1,000 acres of public land as described below are included and are administered by the Bureau of Land Management, Billings Resource Area, Miles City District. This designation is the result of a cooperative effort between the Bureau of Land Management, Lake Mason West Grazing Association and the Montana Department of Fish, Wildlife and Parks. The purpose of the designation is to prevent further damage to the soil and vegetative resources, open additional private lands to hunting, and reduce user conflicts to provide a higher quality hunt to the public user. The limited designation will apply to the following public lands:

Principal Meridian, Montana

T. 9 N., R. 23 E.,
Section 8, N½N½;
Section 9, S½;
Section 12, W½W½, SE¼SW¼, SW¼SE¼, and E½SE¼.
T. 9 N., R. 24 E.
Section 30, NW¼, SW¼, SW¼SW1/4.

The Lake Mason West Special Management Area is located approximately ten miles northwest of Roundup, Montana, and lies adjacent to the south of the existing Pole Creek Special Management Area. The Lake Mason West Special Management Area is bordered on the north and south by county roads, and is traversed in the western extreme by another county road. The entire 19,520 acres within the Special Management Area will be open to walk-in hunting traffic only during the antelope hunting season, with no landowner permission required. A safety zone will be established around any ranch buildings or developed facilities and will be closed to vehicular use and the discharging of firearms, except for authorized uses.

Date: August 29, 1988.

Arnold E. Dougan,

Acting District Manager.

[FR Doc. 88-20190 Filed 9-6-88; 8:45 am]

BILLING CODE 4310-DN-M

[NV-050-08-4410-08]

Resource Management Plan; Nellis Air Force Range, NV

August 26, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment to the Notice of Intent to prepare a resource plan for the Nellis Air Force Range in accordance with Pub. L. 99-606 (Military Lands Withdrawal Act of 1986) and in accordance with Pub. L. 100-338 to extend the withdrawal of certain public lands in Lincoln County, Nevada (Groom Mountain Addition to the Nellis Air Force Range).

SUMMARY: This notice amends the Notice of Intent to prepare a resource plan for the Nellis Air Force Range to expand the area of the plan to include the Groom Mountain Range in accordance with Pub. L. 100-338.

SUPPLEMENTARY INFORMATION: As a result of Pub. L. 100-338, the geographic area covered by the resource plan to be prepared for the Nellis Air Force Range has been amended to include approximately 89,000 acres of public lands in Lincoln County, Nevada, generally known as the Groom Mountain Range.

The same planning issues, planning criteria, and plan alternatives that were identified for public review and input as was published in the **Federal Register**, Vol. 53, No. 131, Friday July 8, 1988, will also apply to this additional area.

FOR FURTHER INFORMATION CONTACT: Curtis G. Tucker, Area Manager, Caliente Resource Area, Bureau of Land Management, P.O. Box 237, Caliente, Nevada 89008, (702) 726-3141.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 88-20191 Filed 9-6-88; 8:45 am]

BILLING CODE 4310-DC-M

[WY-030-08-4311-13]

Closure of Public Lands: Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Closure and Restrictions on Public Lands Pursuant to CFR 43 8364.1.

SUMMARY: The following activities are prohibited or restricted on BLM administered public lands in the Rawlins District until further notice.

—Using chain saws on public lands north of I–80 is prohibited without a special permit obtained from the BLM.

—Building, maintain, attending or using a fire, campfire or open charcoal grill in all forests and woodlands in the district, except at designated developed recreation sites is prohibited. Stoves using propane or white gas may still be used.

—Smoking is prohibited, except within an enclosed vehicle or building, a developed recreation site or while stopped in an area at least three feet in diameter that is barren or cleared of all flammable material.

EFFECTIVE DATE: August 30, 1988.

ADDRESS: Bureau of Land Management, 1300 Third Street, Rawlins, WY 82301.

FOR FURTHER INFORMATION CONTACT: George Phillips, Bureau of Land Management, P.O. Box 670, Rawlins, Wyoming, 82301, telephone (307) 324–7171.

SUPPLEMENTARY INFORMATION: These restrictions are imposed as part of a coordinated effort with the Worland District and the Shoshone National Forest. The Counties involved in this notice are Albany, Carbon, and Fremont. These restrictions will remain in effect until weather conditions improve and the extreme fire danger has passed

Applications for special permits to operate chain saws in the closed areas may be obtained from the Rawlins District Office or the Lander Resource Area Office of the Bureau of Land Management.

Dated: August 30, 1988.

William Newby,

Acting District Manager.

[FR Doc. 88–20248 Filed 9–6–88; 8:45 am]

BILLING CODE 4310–22–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 27, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properies 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 September 22, 1988.

Patrick Andrus,

Acting Chief of Registration, National Register.

FLORIDA

Clay County

Clark-Chalker House, 3891 Main St., Middleburg, 8001701

Duval County

Village Store, 4216, 4212, 4208 Oxford Ave., 2906 and 2902 Corinthian Ave., Jacksonville, 88001700

Hillsborough County

LeClaire Apartments, 3013—3015 San Carlos, Tampa, 8001697

Lee County

Jewett-Thompson House, 1141 Wales Dr., Fort Meyers, 88001708

Volusia County

Anderson, John, Lodge (Historic Winter Residences of Ormond Beach, 1878–1925 MPS), 71 Orchard Ln., Ormond Beach, 8001717

Casements Annex (Historic Winter Residences of Ormond Beach, 1878–1925 MPS), 27 Riverside Dr., Ormond Beach, 88001720

Dix House (Historic Winter Residences of Ormond Beach, 1878–1925 MPS), 178 N. Beach St., Ormond Beach, 88001721

Hammocks, The (Historic Winter Residences of Ormond Beach, 1878–1925 MPS), 311 John Anderson Hwy., Ormond Beach, 88001719

Porches, The (Historic Winter Residences of Ormond Beach, 1878–1925 MPS), 176 S. Beach St., Ormond Beach, 88001715

Rowallan (Historic Winter Residences of Ormond Beach, 1878–1925 MPS), 253 John Anderson Hwy., Ormond Beach, 88001724

Talahloka (Historic Winter Residences of Ormond Beach, 1878–1925 MPS), 19 Orchard Ln., Ormond Beach, 88001716

KENTUCKY

Hardin County

Applegate—Fisher House (Hardin County MRA), 404 Elm St., West Point, 88001787

Arnold, Philip, House (Hardin County MRA), 422 E. Poplar St., Elizabethtown, 88001798

Ashe House (Hardin County MRA), KY 1868, Glendale vicinity, 88001755

Bethlehem Academy Historic District (Hardin County MRA), Near jct. of KY 1357 and KY 253, St. John vicinity, 88001813

Bland, John D., House (Hardin County MRA), KY 720, Sonora vicinity, 88001729

Bland, William, House (Hardin County MRA), KY 222, Glendale vicinity, 88001734

Bland—Overall House (Hardin County MRA), KY 1868, Sonora vicinity, 88001728

Blue Ball Church (Hardin County MRA), Blue Ball Church Rd., Howe Valley vicinity, 88001727

Bond, J. Roy, House (Hardin County MRA), 317 College St., Elizabethtown, 88001811

Brackett, Daniel, House (Hardin County MRA), KY 1391, Upton vicinity, 88001752

Bush, William, House (Hardin County MRA), 1927 Tunnel Hill Rd., Elizabethtown, 88001807

Carroll, Dr. Clyde, House (Hardin County MRA), Dead Man's Cave Rd., White Mills, 88001764

Chenault House (Hardin County MRA), On Ky 1375 1.5 mi. N of KY 84, Star Mills vicinity, 88001781

Chestnut Grove (Hardin County MRA), KY 222, Glendale vicinity, 88001731

Christ Episcopal Church (Hardin County MRA), Poplar St., Elizabethtown, 88001792

Ditto, Abraham, House (Hardin County MRA), 204 Elm St., West Point, 88001789

Ditto-Prewitt House (Hardin County MRA), 306 Elm St., West Point, 88001786

Dr. Abel House (Hardin County MRA), KY 1904, Glendale vicinity, 88001768

Embry Chapel Church (Hardin County MRA), 117 Mulberry St., Elizabethtown, 88001803

First Presbyterian Church (Hardin County MRA), 212 W. Dixie Ave., Elizabethtown, 88001802

Glendale Historic District (Hardin County MRA), Lots 1–3, 25–31 of block 2; lots 3, 4, and 9 of block 0; lots 1–2 of block 1; lots 13, 14, 16–18 of Block 3, Glendale, 88001816

Hagan House (Hardin County MRA), KY 1136, Elizabethtown vicinity, 88001760

Hamilton, Hance, House (Hardin County MRA), Porter Rd., Boston vicinity, 88001741

Hardin Springs School (Hardin County MRA), On KY 84, .4 mi. E. of Hardin Springs Bridge, Hardin Springs vicinity, 88001783

Hatfield Hotel (Hardin County MRA), Dead Man's Cave Rd., White Mills, 88001763

Haycraft Inn (Hardin County MRA), 2315 S. Wilson Rd., Radcliffe, 88001742

Hazel Hill (Hardin County MRA), Gather's Station Rd., Elizabethtown vicinity, 88001744

Heller Hotel (Hardin County MRA), Robinson St., Cecilia 88001756

Helm, Benjamin, House (Hardin County MRA), 238 Helm Ave., Elizabethtown, 88001801

Helm, John B., House (Hardin County MRA), 210 Helm Ave., Elizabethtown, 88001800

Kentucky and Indiana Bank (Hardin County MRA), 309 Elm St., West Point, 88001788

Kerrick, W. T., House (Hardin County MRA), 604 N. Main St., Elizabethtown, 88001808

Larue-Layman House (Hardin County MRA), 115 W. Poplar St., Elizabethtown, 88001794

Maple Hill (Hardin County MRA), Maple St., Glendale, 88001735

Maplehurst (Hardin County MRA), KY 222, Glendale vicinity, 88001732

Mason, Haynes, House (Hardin County MRA), On Haynes Mason Rd., .3 mi. S of KY 720, Upton vicinity, 88001782

May, David L., House (Hardin County MRA), 201 N. Main St., Elizabethtown, 88001805

McDougal, Stiles, House (Hardin County MRA), S of jct. of KY 1375 and US 62, Glendale vicinity, 88001740

McKinney-Helm House (Hardin County MRA), 218 W. Poplar St., Elizabethtown, 88001795

Melton House (Hardin County MRA), KY 1904, Glendale vicinity, 88001769

Monin, Adam, House (Hardin County MRA), Monin Rd., Glendale vicinity, 88001745

Montgomery Avenue Historic District (Hardin County MRA), 602, 606, 608, 610, 614, 616, and 624 Montgomery Ave., Elizabethtown, 88001814
Montgomery, William, House (Hardin County MRA), 414 Central Ave., Elizabethtown, 88001806
Morrison Lodge (Hardin County MRA), 121 N. Mulberry St., Elizabethtown, 88001804
Mull House (Hardin County MRA), On Middle Creek Rd., .2 mi. W of Locust Grove Rd., Elizabethtown vicinity, 88001784
Molin Banking Company (Hardin County MRA), KY 1407, Molin, 88001749
Penniston House (Hardin County MRA), On U.S. 62 .4 mi. E of Upper Colesburg Rd., Elizabethtown vicinity, 88001785
Phillips, Josiah, House (Hardin County MRA), Western Ave., Sonora, 88001747
Pusey, Dr. Robert B., House (Hardin County MRA), 204 N. Mulberry St., Elizabethtown, 88001793
Raine, John, House (Hardin County MRA), KY 84, Sonora, 88001748
Rawlings, Stephen, House (Hardin County MRA), Elizabethtown, 88001791
Richards-Hamm House (Hardin County MRA), KY 1136, Glendale vicinity, 88001766
Richards-Murray House (Hardin County MRA), Jct of KY 1136 and US 31W, Glendale vicinity, 88001767
Richardson Hotel (Hardin County MRA), Dead Man's Cave Rd., White Mills, 88001762
Riney, Zachariah, House (Hardin County MRA), Jct. of KY 1600 and KY 220, Rineyville, 88001758
Robertson, Samuel, House (Hardin County MRA), 214 W. Poplar St., Elizabethtown, 88001812
Skees, Richard, House (Hardin County MRA), On Jerome Peerce Rd. off KY 1823, White Mills vicinity, 88001780
Skees, William, House (Hardin County MRA), Off KY 1866, White Mills vicinity, 88001757
Smith, George W., House (Hardin County MRA), KY 1904, Elizabethtown, 88001738
Sprigg, William, House (Hardin County MRA), Glendale vicinity, 88001736
Stader Hotel (Hardin County MRA), 104 E. Main St., Vine Grove, 88001751
Stark House (Hardin County MRA), W of KY 1868, Glendale vicinity, 88001725
Stuart, John, House (Hardin County MRA), St. Anthony Church Rd., Glendale vicinity, 88001765
Thomas, Samuel B., House (Hardin County MRA), 337 W. Popular St., Elizabethtown, 88001797
Tichenor, William, House (Hardin County MRA), Sonora—Upton Rd., Upton vicinity, 88001753
US Post Office (Hardin County MRA), 200 W. Dixie Ave., Elizabethtown, 88001810
Van Meter, Jacob, House (Hardin County MRA), KY 222, Glendale vicinity, 88001746
Vertress, Eliza, House (Hardin County MRA), 206 W. Poplar St., Elizabethtown, 88001809
Vine Grove Historic District (Hardin County MRA), 104, 106—108, 110—112, 114, 116—118, 120, 123, 124, 126, 127, 200—204, 205, 206, 208, 212—221 W. Main St., Vine Grove, 88001815
West Point Hotel (Hardin County MRA), 401 South St., West Point, 88001790
White Mill (Hardin County MRA), Nolin River, White Mills, 88001761
Wilson, William, House (Hardin County MRA), 200 Logan Ave., Elizabethtown, 88001799
Wintersmith, Horatio, House (Hardin County MRA), 221 W. Poplar St., Elizabethtown, 88001796

MARYLAND

St. Mary's County

Cross Manor, Cross Manor Rd., St. Inigoes vicinity, 88001705

NEW JERSEY

Mercer County

City Hall (Old), 2—8 N. Broad St., Trenton, 88001698
Windsor Historic District, Roughly bounded by properties along Main St. and Church St., Windsor, 88001710

Middlesex County

Dutch Reformed Church, 160 Neilson St., New Brunswick, 88001703

NEW YORK

Dutchess County

Newcomb—Brown Estate, Brown Rd. at US 44, Pleasant Valley, 88001704

Oswego County

Van Buren, Volkert, House, NY 57 and Distin Rd., Fulton vicinity, 88001707

Saratoga County

Ruhle Road Stone Arch Bridge, Ruhle Rd., Malta, 88001699

NORTH CAROLINA

Mecklenburg County

Hoskins Mill, 201 S. Hoskins Rd., Charlotte, 88001702

OHIO

Ashtabula County

Cahill, Michael, House, 1106 Walnut Blvd., Ashtabula, 88001711

Cuyahoga County

St. John Cantius Church Complex, 2270—2290 Professor Ave., Cleveland 88001709

Montgomery County

McPherson Town Historic District, Roughly bounded by Main St., Great Miami River, and I–75, Dayton, 88001712

Pickaway County

McCrea, Matthew, House, 428 E. Main St., Circleville, 88001714

PENNSYLVANIA

Lancaster County

Totten House, 1049 E. King St., Lancaster, 88001713

SOUTH CAROLINA

Beaufort County

Alston, Emanuel, House (Historic Resources of St. Helena Island c. 1740–c. 1935 MPS), Sec. Rd. 161, .25 mi. N of jct. with US 21, Frogmore vicinity, 88001723
Bailey, Dr. York, House (Historic Resources of St. Helena Island c. 1740–c. 1935 MPS), US Hwy. 21, approx. .2 mi. E of jct. with Lands End Rd., Frogmore, 88001726
Coffin Point Plantation Caretaker's House (Historic Resources of St. Helena Island c. 1740–c. 1935 MPS), Adjacent to Coffin Point Plantation, off Seaside Rd., Frogmore vicinity, 88001730
Corner Packing Shed, The (Historic Resources of St. Helena Island c. 1740–c. 1935 MPS), US Hwy 21, W of jct. with Land's End Rd., Frogmore, 88001733
Corner Store and Office, The (Historic Resources of St. Helena Island c. 1740–c. 1935 MPS), US Hwy 21, W of jct. with Land's End Rd., Frogmore, 88001737
Eddings Point Community Praise House (Historic Resources of St. Helena Island c. 1740–c. 1935 MPS), On SC Sec. Rd. 183, .1 mi. N of jct. with SC Sec. Rd. 74, Frogmore vicinity, 88001739
Fort Fremont Hospital (Historic Resources of St. Helena Island c. 1740–c. 1935 MPS), .3 mi. from Land's End Rd., Frogmore vicinity, 88001819
Fripp, Edgar, Mausoleum, St. Helena Island Parish Church (historic Resources of St. Helena Island c. 1740–c. 1935 MPS), SC Sec. Rd. 45 near jct. with SC Sec. Rd. 37, Frogmore vicinity, 88001743
Fripp, Isaac, House Ruins (Historic Resources of St. Helena Island c. 1740–c. 1935 MPS), On an unpaved rd. 1.1 mi. W of jct. with SC Rd. 45, Frogmore vicinity, 88001750
Frogmore Plantation Complex (Historic Resources of St. Helena Island c. 1740–c. 1935 MPS), Off Sec. Rd. 77 near jct. with Sec. Rd. 35, Frogmore vicinity, 88001754
Green, The (Historic Resources of St. Helena Island c. 1740–c. 1935 MPS), SE corner intersection of US Hwy. 21 and Lands End Rd., Frogmore vicinity, 88001759
Jenkins, Mary, Community Praise House (Historic Resources of St. Helena Island c. 1740–c. 1935 MPS), On SC Sec. Rd. 74, 2.1 mi. N of its jct. with US Hwy. 21, Frogmore vicinity, 88001770
Lands End Road Tabby Ruins (Historic Resources of St. Helena Island c. 1740–c. 1935 MPS), On SC Sec. Rd. 45, .1 mi. SW of jct. with SC Sec. Rd. 471, Frogmore vicinity, 88001771
Macdonald, James Ross, House (Historic Resources of St. Helena Island c. 1740–c. 1935 MPS), US Hwy. 21, W of jct. with Lands End Rd., Frogmore 88001772
Oaks, The (Historic Resources of St. Helena Island c. 1740–c. 1935 MPS), On unpaved rd. .3 mi. W of SC Sec. Rd. 165, Frogmore vicinity, 88001773
Orange Grove Plantation (Historic Resources of St. Helena Island c. 1740–c. 1935 MPS), Overlooking Wallace Creek, .25 mi. from SC 113, Frogmore vicinity, 88001774
Pine Island Plantation Complex (Historic Resources of St. Helena Island c. 1740–c. 1935 MPS), Pine Island, Frogmore vicinity, 88001775
Riverside Plantation Tabby Ruins (Historic Resources of St. Helena Island c. 1740–c. 1935 MPS), On unpaved rd. .4 mi. W of SC Sec. Rd. 45 at Lands End, Frogmore vicinity, 88001776
Simmons, Robert, House (Historic Resources of St. Helena Island c. 1740–c. 1935 MPS),

On unpaved rd. .5 mi. S of US Hwy. 21, Frogmore vicinity, 88001779

St. Helena Parish Chapel of Ease Ruins (Historic Resources of St. Helena Island c. 1740–c. 1935 MPS), SC Sec. Rd. 45, near jct. with SC Sec. Rd. 37, Frogmore vicinity, 88001777

St. Helenaville Archaeological Site (38BU931) (Historic Resources of St. Helena Island c. 1740–c. 1935 MPS), On bluff adjacent to Village Cr. overlooking St. Helena, Frogmore vicinity, 88001778

Williamsburg County

Clarkson Farm Complex, US 52, 1.5 mi. S of jct. with US 521, Greeleyville vicinity, 88001706

The 15-day commenting period for the following property has been waived in order to assist in the building's preservation.

FLORIDA

Lee County

Fort Myers, *Ford, Henry, Estate*, 2400 McGregor Blvd., 88001822

[FR Doc. 88–20228 Filed 9–6–88; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; James Graham Brown Foundation, Inc.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on August 18, 1988, a proposed Consent Decree in *United States* v. *The James Graham Brown Foundation, Inc.*, Civil Action No. 88–666–CIV–J–14 was lodged with the United States District Court for the Middle District of Florida. The Complaint sought injunctive relief and the recovery of costs under section 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99–499, 42 U.S.C. 9606 and 9607. That action concerned the Brown Wood Preserving Site near Live Oak, Florida.

Under the proposed Consent Decree, defendants will pay the Superfund $160,000 to compensate the Fund for the response costs incurred by the United States in performing certain response actions at the Brown Wood Preserving Site. Defendants have also agreed in the proposed Decree to perform the remedy selected by EPA for the Site, including removal and offsite disposal of selected contaminated materials, onsite bioremediation (biodegradation) of contaminated soils followed by landfilling, and various operations and maintenance operations during the bioremediation.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *The James Graham Brown Foundation, Inc.*, D.J. Ref. 90–11–2–260.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Middle District of Florida, 409 Post Office Building, 311 West Monroe Street, Jacksonville, Florida; (2) the U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, N.E., Atlanta, Georgia; and (3) the Environmental Enforcement Section, Land & Natural Resources Division, U.S. Department of Justice, 10th & Pennsylvania Avenue, NW. Washington, DC. Copies of the proposed Decree may be obtained by mail from the Environmental Enforcement Section of the Department of Justice, Land and Natural Resources Division, P.O. Box 7611, Benjamin Franklin Station, Washington, DC 20044–7611, or in person at the U.S. Department of Justice Building, Room 1517, 10th Street and Pennsylvania Avenue, NW., Washington, DC. Any request for a copy of the proposed Consent Decree should be accompanied by a check for copying costs totalling $9.50 ($0.10 per page) payable to "United States Treasurer."

Roger J. Marzulla,

Assistant Attorney General Land and Natural Resources Division.

[FR. Doc. 88–20188 Filed 9–6–88; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Pursuant to the National Cooperative Research Act of 1984, Cable Television Laboratories, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs") has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties to the venture and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to CableLabs and its general areas of planned activities, are given below.

The parties to CableLabs are as follows:

United Artists Cablesystems Corporation, 60 Craig Road, Montvale, New Jersey 07645

Sammons Communications, Inc., 500 South Ervay, Suite 200A, P.O. Box 15246, Dallas, Texas 75201

Comcast Corporation, One Belmont Avenue, Suite 227, Bala Cynwyd, Pennsylvania 19004

Continental Cablevision, Inc., The Pilot House, Lewis Wharf, Boston, Massachusetts 02110

The Lenfest Group, 202 Shoemaker Road, Pottstown, Pennsylvania 19464

TKR Cable Company, 67 Mountain Boulevard Extension, Warren, New Jersey 07060

Adelphia Cable Communications, 5 West 3rd Street, P.O. Box 472, Coudersport, Pennsylvania 16915

TeleCable Corporation, 740 Duke Street, Box 2098, Norfolk, Virginia 23501

Helicon Corporation, 140 Sylvan Avenue, Englewood Cliffs, New Jersey 07632

United Cable Television Corporation, Denver Technological Center, 4700 South Syracuse Parkway, Denver, Colorado 80237

Centel Cable Television Company, 2001 Spring Road, Suite 700, Oak Brook, Illinois 60521

J.S. Gans Cable TV, 217 East Ninth Street, Hazelton, Pennsylvania 18201

Cox Cable Communications, Inc., 1440 Lake Hearn Drive, NE., Atlanta, Georgia

The membership remains open.

CableLabs is a for-profit, non-stock membership corporation organized under the laws of the State of Delaware on May 11, 1988.

The objective of CableLabs is to gather, assess and disseminate technical information of strategic importance to the cable television industry, to identify, plan, engage in, and fund the development of new technologies for the benefit of the industry, directly or in partnership with others, to transfer such technologies to the industry through reports, seminars, workshops, licenses, loans of personnel and other appropriate means, and generally to undertake research and development activity in furtherance of each of the foregoing.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88–20247 Filed 9–6–88; 8:45 am]

BILLING CODE 4410–01–M

National Cooperative Research Act of 1984; Open Software Foundation, Inc. and Open Software Foundation Research Institute, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Open Software Foundation, Inc. ("OSF") and Open Software Foundation Research Institute, Inc. ("Institute") has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties to the venture and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Open Software Foundation, Inc. and Open Software Foundation Research Institute, Inc. and the general areas of planned activities, are given below.

The voting members of OSF are as follows:

Apollo Computer, Inc., 330 Billerica Road, Chelmsford, MA 01824
Groupe Bull SA, 121 Avenue de Malalcott, 75118 Paris, France
Digital Equipment Corporation, 146 Main Street, Maynard, MA 01754
Hewlett-Packard Company, 3000 Hanover Street, Palo Alto, CA 94304
International Business Machines Corporation, 44 South Broadway, White Plains, NY 10601
Siemens AG, POB 830951 D/8000, Munich 83 Germany
High Technology Investments, Inc., a wholly owned subsidiary of Nixdorf Corporation, a wholly owned subsidiary of Nixdorf Computer, A.G., 164 Middlesex Turnpike, Building 7, Burlington, MA 01803
N.V. Philips' Gloeilampenfabrieken, P.O. Box 245, 7300 AE Apeldoorn, The Netherlands

Although the non-voting membership remains open, as of July 31, 1988, that membership consists of:

Stratus Computer, Inc., 1054 Saratoga-Sunnyvale Road, Suite 112, San Jose, CA 05129
Adobe Systems, Inc., 1 N.E., Burlington, MA 01803
Softsiel Corp., 4660 LaJolla Village Drive, #710, San Diego, CA 92122
Locus Computing Corporation, 9800 LaCienega Boulevard, Inglewood, CA 90301
Mitre Corporation, Burlington Road, #A155, Bedford, MA 01730
Interactive Systems Corporation, 2401 Colorado Avenue, 3rd Floor, Santa Monica, CA 90404
Pacific Bell, 2600 Camino Ramon, MS 3W102, San Ramon, CA 94583
Data Logic Ltd., Queens House, Greenhill Way, Harrow, Middlesex HA1 1YR, England
Toshiba America Inc., 9740 Irvine Boulevard, Irvine, CA 92718
Altos Computer Systems, 2641 Orchard Parkway, San Jose, CA 95134
Relational Technology, 1080 Marina Village Pkwy., Alameda, CA 94501
MICOM-Interlan, Inc., 155 Swanson Road, Boxborough, MA 01719
University of Southern California, MC 1450/OHE 200, 3650 McClintock Avenue, Los Angeles, CA 90089
Concurrent Computer Corporation, MS 352, 106 Apple Street, Tinton Falls, NJ 07724
88 Open Consortium Ltd., Textronics, Inc. MS 61–244, 26600 SW Parkway Avenue, P.O., Box 1000, Wilsonville, OR 97070
National Semiconductor Corp., 2900 Semiconductor Corp. P.O. Box 58090, Santa Clara, CA 95052

OSF is a not-for-profit, non-stock membership corporation organized under the laws of the State of Delaware. It was incorporated on May 16, 1988. In addition, OSF is the sole member of Open Software Foundation Research Institute, Inc. (the "Institute"). The Institute is also a non-stock membership corporation incorporated under Delaware law on May 16, 1988.

The object of OSF and the Institute is to undertake cooperative research, experimentation and development activities concerning an open and portable environment for applications software to allow users to more easily mix and match computers and software from different suppliers. The Corporations will engage in all necessary activities to accomplish this objective including:

1. Conducting research and experimentation to formulate and develop operating systems software;

2. Conducting research and experimentation to formulate and develop portable systems extension modules;

3. Conducting research and experimentation to formulate and develop published specifications for those functions required to achieve software portability, to encourage interoperability of systems in a multi-vender environment and to achieve appropriate levels of consistency in user interface;

4. Conducting research and experimentation to formulate and develop verification methods and tests for establishing compatibility with relevant standards and the venture's specifications;

5. Conducting research and experimentation to formulate and develop methods for shipping application software in an encoded form which is not limited to the machine architecture on which it will execute;

6. The collection, exchange and analysis of research information to achieve the venture's objectives;

7. Participation in the definition of industry standards;

8. The production and marketing of the software or other proprietary information or technology produced through the venture including the granting of licenses.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 88–20246 Filed 9–6–88; 8:45 am]

BILLING CODE 4410-01-M

Bureau of Prisons

Intention to Prepare a Draft Environmental Impact Statement (DEIS) for the Construction of a Federal Correctional Complex Florence, Fremont County, CO

AGENCY: Federal Bureau of Prisons, Justice.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY:

1. Proposed Action: The U.S. Department of Justice, Federal Bureau of Prisons has determined that a new Federal Correctional Complex with an adjacent satellite prison camp is needed in its system. A 400 acre tract of land immediatley east of Highway 67, South of the city of Florence, Colorado will be evaluated. The proposal calls for the constructon of facilities to house approximately 1800–1900 minimum, medium and close custody inmates.

Approximately 200 of the 400 acres would be used for road access, inmates housing, administration and program spaces and services and support facilities. In addition, exercise areas would be included in the needed acreage.

2. In the process of evaluating the tract of land, several aspects will recieve a detailed examination including: Utilities, traffic patterns, noise levels, visual intrusion, threatened and endangered species, cultural resources, and socio-economic impacts.

3. Alternatives; in developing the DEIS, the options of no action and alternative sites for the proposed facility will be fully and thoroughly examined.

4. Scoping Process: During the preparation of the DEIS there will be numerous opportunities for public involvement in order to determine the issues to be examined. A scoping meeting will be held at a location convenient to the citizens of Florence. The meeting will be well publicized and will be held at a time which will make it possible for the public and interested agencies or organizations to attend. In addition, a number of informal meetings have already been held and will be continued by representatives of the Bureau of Prisons with interested community leaders and officials.

5. DEIS Preparation: Public notice will be given concerning the availability of the DEIS for public review and comment.

6. Address: Questions concerning the proposed action and the DEIS can be answered by: Kay King, Executive Assistant, Administration Division, U.S. Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, Telephone: (202) 724–3230.

Date: August 30, 1988.

Scott Higgins,

Acting Chief, Facilities Development & Operations, Federal Bureau of Prisons, Department of Justice.

[FR Doc. 88–20232 Filed 9–6–88; 8:45 am]

BILLING CODE 4410–05–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.

Extension

Employment and Training Administration
Benefits Rights and Experience
1205–0177; ES 218
Quarterly
State or local governments
53 respondents; 107 burden hours; 30 minutes per response; 1 form

Provides information for solvency studies, in budgeting projections and for evaluation of adequacy of benefit formulas to analyse effects of proposed changes in State law.

Signed at Washington, DC, this 1st day of September, 1988.

Terry O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 88–20286 Filed 9–6–88; 8:45 am]

BILLING CODE 4510–30–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance; Oxford Sportswear and Apparel, 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 September 19, 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 September 19, 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., DC 20213.

Signed at Washington, DC, this 29th day of August 1988.

Glenn M. Zech,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm	Location	Date received	Date of petition	Petition No.	Articles produced
Atlas Powder Co. (OCAW)	Tamaqua, PA	8/29/88	8/10/88	20,892	Blasting agents and nitroglycerin pharmaceutical.
Caterpillar Industrial, Inc. (IAM)	Dallas, OR	8/29/88	8/12/88	20,893	Industrial lift trucks.
Cascase Locks Lumber (Workers)	Cascade Locks, OR	8/29/88	8/8/88	20,894	Finished dimensional lumber.
Coleco Industries (LGPN)	Gloversville, NY	8/29/88	8/10/88	20,895	Plastic and metals toys.
Coleco Industries (LGPN)	Mayfield, NY	8/29/88	8/10/88	20,896	Plastic and metal toys.
Coleco Industries (LGPN)	Amsterdam, NY	8/29/88	8/10/88	20,897	Plastic and metal toys.
Country Cousins, Inc. (UFCW)	Mocanaqua, PA	8/29/88	8/12/88	20,898	Casual and Athletic Footwear.
Dow Corning Corp. (USWA)	Springfield, OR	8/29/88	8/16/88	20,899	Silicon metal.
Ketchum Distributor (Workers)	Cranford, NJ	8/29/88	8/10/88	20,900	Distribution facility.
Lacey Plywood (Workers)	Lacey, WA	8/29/88	8/15/88	20,901	Plywood.
Mount Vernon Mills (Company)	Fries, VA	8/29/88	8/16/88	20,902	Woven fabric.
Oxford Sportswear & Apparel (OSA) (Workers)	Toccoa, GA	8/29/88	8/15/88	20,903	Men's dress slacks.
Pago Graphite (Workers)	Decatur, TX	8/29/88	6/23/88	20,904	Synthetic graphite.
Reading and Bates Petroleum Co. (Workers)	Tulsa, OK	8/29/88	7/27/88	20,905	Oil and gas exploration and production.
Suttle Apparatus Corp, National/Intl (Workers)	Lawrenceville, IL	8/29/88	8/1/88	20,906	Telephone station apparatus.
Tecumseh Products Co., Engine & Transmissions (IAMAW).	Grafton, WI	8/29/88	8/19/88	20,907	Small engines and Transmissions.
Wenner Petroleum Corp. (Workers)	Englewood, CA	8/29/88	8/9/88	20,908	Oil and Gas.

[FR Doc. 88-20282 Filed 9-16-88; 8:45 am]
BILLING CODE 4510-30-M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance; Flair Mfg., et al

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period August 22, 1988—August 26, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-20,743; Flair Mfg., Keansburg, NJ
TA-W-20,734; JM Apparel Companies, Inc., Norwich, CT
TA-W-20,745; Romada Moccasins, Inc., Auburn, ME
TA-W-20,727; London Fog, Powell, TN
TA-W-20,760; Merrill & Ring, Inc., Port Angles, WA
TA-W-20,763; R.G. Lawrence Co., Inc., Tenafly, NJ
TA-W-20,739; Burlington Industries, Klopman Fabrics Div., Mountain City, TN

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-20,807; C. Cosentino Fabrics, Paterson, NJ

Increased imports did not contribute importnatly to workers separations at the firm.

TA-W-20, 786; Emerson Electric Co., U.S. Electric Motors Div., Milford, CT

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

Affirmative Determinations

TA-W-20,746; Schrader Sport, Secaucus, NJ

A certification was issued covering all workers separated on or after June 7, 1987.

TA-W-20,744; Linbro Contractors, New York, NY

A certification was issued covering all workers separated on or after June 6, 1987 and before January 31, 1988.

TA-W-20,742; Emple Knitting Mill, Brewer, ME

A certification was issued covering all workers separated on or after June 15, 1987.

TA-W-20,747; Sobel Brothers, Perth Amboy, NJ

A certification was issued covering all workers separated on or after June 13, 1987.

TA-W-20,749; Toastmaster, Inc., Moberly, MO

A certification was issued covering all workers separated on or after June 14, 1987.

TA-W-20,740; Columbia Tool Steel Co., Chicago Heights, IL

A certification was issued covering all workers separated on or after June 9, 1987.

TA-W-20,758; Lockwood Products, Inc., Leominster, MA

A certification was issued covering all workers separated on or after June 21, 1987.

I hereby certify that the aforementioned determinations were issued during the period August 22, 1988—August 26, 1988. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 30, 1988.

Glenn M. Zech,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-20283 Filed 9-6-88; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-20, 623]

Negative Determination Regarding Application for Reconsideration; Huron Forge and Machine Co., Detroit, MI

By an application dated July 5, 1988 the United Auto Workers (UAW) Local No. 174 requested administrative reconsideration on the subject petition for trade adjustment assistance. The denial notice was signed on June 14, 1988 and published in the Federal Register on June 28, 1988 (53 FR 24379).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous.

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Workers at Huron Forge produced steel forgings. In early 1988 all forging operations were permanently halted and all production workers were released.

Investigative findings show that the increased import criterion of the Group Eligibility Requirements of the Trade Act of 1974 was not met. U.S. imports of steel forgings decreased absolutely and relative to domestic shipments in 1987 compared to 1986. The ratio of U.S. imports of steel forgings to domestic shipments was less than 4 percent in 1987.

The Department's survey of Huron Forge's customers, who accounted for over 100 percent of the firm's 1987 sales decline, showed that the preponderance of respondents did not purchase imported forgings. Respondents which purchased imported forgings showed reduced import purchases in 1987 compared to 1986.

With respect to the union's allegation concerning customers, company officials provided the names of customers who imported during the period applicable to the petition. The findings show that only a few customers imported steel forgings and they increased their purchases from Huron Forge in 1987 compared to 1986. Also, the importation of steel forgings prior to 1987 would not provide a basis for certification. Section 223(b)(1) of the Trade Act of 1974 prohibits the certification of workers prior to one year of the date of the petition which in this case is April 8, 1988.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 26th day of August, 1988.

Barbara Ann Farmer,

Director, Office of Program Management, UIS.

[FR Doc. 88-20281 Filed 9-6-88; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-88-152-C]

Beckley Coal Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Beckley Coal Mining Company, P.O. Box 145, Glen Daniel, West Virginia 25844 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Beckley Mine (I.D. No. 46-03092) located in Raleigh County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitoner's statements follows:

1. The petition concerns the requirement that each return air split be traveled in its entirety on a weekly basis.

2. Petitoner states that roof falls have prevented travel in certain areas of the mine.

3. As an alternate method, petitioner proposes to establish checkpoints where a certified would make weekly examinations. The results would be recorded in a prescribed book.

4. For these reasons, petitoner requests a modification of the standard.

Request for Comments

Persons interested in this petiton may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 7, 1988. Copies of the petition are available for inspection at that address.

Date: August 29, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-20276 Filed 9-6-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-137-C]

Eastern Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Eastern Coal Corporation, P.O. Box 219, Stone, Kentucky 41567 has filed a petition to modify the application of 30 CFR 75.1701 (abandoned areas, adjacent mines; drilling of boreholes) to its PC-2 Mine (I.D. No. 15-15378) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirements that whenever any working place approaches within 50 feet of abandoned areas, or within 200 feet of any abandoned areas that cannot be inspected and may contain dangerous accumulations of water or gas; or within 200 feet of any workings of an adjacent mine, boreholes must be drilled at least 20 feet in advance of the working place and be continually maintained to a distance of at least 10 feet in advance of the advancing working face.

2. As an alternate method, petitioner proposes to use a Victor lightweight hydraulic drill to drill holes at 90 degrees to each other at locations, intervals and depths that would ensure hole intersection in virgin coal on the same plane. The location and direction of each hole would be established by standard engineering principles using transit sites.

3. In support of this request, petitioner states that, there would be fewer hazards in the working faces because holes would not be drilled during the production cycle when the face areas are congested with mobile production equipment.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or

received in that office on or before October 7, 1988. Copies of the petition are available for inspection at that address.

Date: August 28, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-20277 Filed 9-6-88; 8:45 am]

BILLING CODE 4515-43-M

[Docket No. M-88-143-C]

Peabody Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Peabody Coal Company, 301 North Memorial Drive, P.O. Box 373, St. Louis, Missouri 63166 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its Sunnyhill Mine (I.D. No. 33-01068) located in Perry County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that barriers be established and maintained around oil and gas wells penetrating coal beds.

2. As an alternate method, petitioner proposes to clean out and plug oil and gas wells using specific techniques and specific procedures as outlined in the petition.

3. In support of this request, petitioner states that methane examinations would be made by qualified personnel using approved methane detection equipment at least once during each shift during development and retreat mining. The date, and time of such examinations would be recorded on a fireboss dateboard which would be placed in the area.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 7, 1988. Copies of the petition are available for inspection at that address.

Date: August 29, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-20278 Filed 9-6-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-108-C]

Polcovich Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Polcovich Coal Company, P.O. Box 1291, Centralia, Pennsylvania 17927 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its Buck Slope (I.D. No. 36-07975) located in Columbia County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line be 9,000 cubic feet a minute. The minimum quantity of air in any coal mine reaching each working face shall be 3,000 cubic feet a minute.

2. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine. Ignition, explosion, and mine fire history are nonexistent for the mine. There is no history of harmful quantities of carbon monoxide and other noxious or poisonous gases.

3. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

4. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners and cause extremely uncomfortable damp and cold conditions in the mine.

5. As an alternate method, petitioner proposes that:

a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 7, 1988. Copies of the petition are available for inspection at that address.

Date: August 29, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-20279 Filed 9-6-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-107-C]

Shenandoah Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Shenandoah Coal Company, Inc., P.O. Box 622, Oakwood, Virginia has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. 1 (I.D. No. 44-05541) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine is in the Jaw Bone seam ranging from 31 to 48 inches in height. The 820 haulers are 36 inches in height without the canopies and 48 inches with them.

3. Petitioner states that canopies are getting caught and torn off the miner and creating an unsafe environment for the workers. In addition, the miners must lean out from under the canopies to see, which is an unsafe practice.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These

comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 7, 1988. Copies of the petition are available for inspection at that address.

Date: August 29, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-20280 Filed 9-6-88; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Nixon Presidential Materials; Presidential Materials Review Board

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting of the Presidential Materials Review Board.

SUMMARY: In accordance with the provisions of 36 CFR 1275.46(i)(2), notice is hereby given that the Presidential Materials Review Board has set a date to begin considering claims submitted by former President Nixon and others concerning specified documents from the Special Files of the Nixon Presidential materials. The Board will consider only those claims that certain documents identified by Mr. Nixon and others are private and personal. Any member of the public may petition the Board within 15 calendar days of the publication of this notice, setting forth his or her views concerning the public or private nature of the materials. A list of these documents is available at the Nixon Presidential Materials Project, 845 S. Pickett Street, Alexandria, Va.

DATES: Any member of the public who wishes to petition the Board concerning the public or private nature of these materials must do so by September 22, 1988.

The Board will begin considering the claims on or after September 22, 1988.

ADDRESS: Petitions must be sent to the Archivist of the United States, Chairman, Presidential Materials Review Board, National Archives and Records Administration, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Ms. Claudine J. Weiher, Deputy Archivist of the United States at (202) 523-3132.

Dated: August 31, 1988.

Claudine J. Weiher,

Acting Archivist of the United States.

[FR Doc. 88-20227 Filed 9-6-88; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Meeting

Action: Notice of Meeting.

Summary: Under the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended) notice is hereby given of a public meeting and a closed executive session (pursuant to 5 USC APP. I, 10(d)) of the National Commission for Employment Policy at the Colony Square Hotel, Peachtree and 14th Streets, Atlanta, Georgia 30361.

Date:

Thursday, October 6, 1988, 9:00 a.m. to 5:00 p.m.

Friday, October 7, 1988, 9:00 a.m. to 5:00 p.m.

Status: The meeting is open to the public with the exception of the executive session.

Matters to be discussed: During the public meeting, the Commission members will discuss progress on the research agenda, budget and administrative matters, and legislative and governmental affairs.

During the executive session, the Commission members will discuss matters solely related to the internal personnel rules and practices of the Commission. Such issues are considered routine administrative matters, of no significance to the public. In addition, the session is closed in order to protect information of a personal nature, which if disclosed could constitute an unwarranted invasion of personal privacy.

For Further Information Contact: Mrs. Barbara McQuown, Director, National Commission for Employment Policy, 1522 K St. NW., Suite 300, Washington, DC 20005, 202-724-1545.

Supplementary Information: The National Commission for Employment Policy is authorized by the Job Training Partnership Act (Pub. L. 97-300).

The Act gives the Commission the broad responsibility of advising the President and Congress. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made.

Copies of the official records of the meeting will be available for public inspection at the Commission's offices, 1522 K St. NW., Suite 300, Washington, DC 20005.

Signed this 30th day of August, 1988.

Barbara McQuown,

Director.

[FR Doc. 88-20285 Filed 9-6-88; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL CREDIT UNION ADMINISTRATION

Senior Executive Service: Performance Review Board; Membership

AGENCY: National Credit Union Administration.

ACTION: Notice of Appointment to Performance Review Board.

SUMMARY: Notice is hereby given of appointment of members of the Performance Review Board.

DATE: Effective August 26, 1988.

FOR FURTHER INFORMATION CONTACT: Dorothy W. Foster, Director, Personnel Office, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456; Telephone (202) 357-1156.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of Title 5, U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with recommendations to the appointing authority relative to the performance of the senior executive.

The members of the Performance Review Board are:

1. Mr. D. Michael Riley, Director, Office of Examination and Insurance
2. Mr. John S. Ruffin, Regional Director, Region III (Atlanta)
3. Mr. J. Leonard Skiles, Regional Director, Region V (Austin)
4. Mr. James J. Engel, Deputy General Counsel
5. Mr. Robert J. LaPorte, Regional Director, Region VI (Walnut Creek)
6. Mr. Layne Bumgardner, Deputy Executive Director

Dated: August 30, 1988.

Roger W. Jepsen,

NCUA Chairman.

[FR Doc. 88-20245 Filed 9-6-88; 8:45 am]

BILLING CODE 7535-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97–415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration. notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from August 15, 1988 through August 26, 1988. The last biweekly notice was published on August 24, 1988 (53 FR 32288).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve 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 amendments 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 basis for this proposed determination for each amendment request is shown below.

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.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resource Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P–216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW, Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 7, 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 this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that

the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of 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 the local public document room for the particular facility involved.

Arkansas Power & Light Company, Docket No. 50–313, Arkansas Nuclear One, Unit 1, Pope County, Arkansas

Date of amendment request: July 20, 1988.

Description of amendment request: The proposed amendment revises the Technical Specifications to specifically provide for a 1 gallon per minute (gpm) limit on primary to secondary leak rate (total steam generator tube leakage).

Basis for proposed no significant hazards consideration determination: As stated in 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards consideration, if 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 for the application of the above criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations (51 FR 7751). These examples include: Example (ii) A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: e.g., "a more stringent surveillance requirement."

The proposed 1 gpm limit on primary to secondary leakage is an additional limitation not presently included in the Technical Specifications, and is therefore within the scope of the example.

Since the application for amendment involves a proposed change that is encompassed by an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Technical University, Russelville, Arkansas 72801.

Attorney for licensee: Nicholas S. Reynolds, Esq., Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street, NW., Washington, DC 20036.

NRC Project Director: Jose A. Calvo.

Commonwealth Edison Company, Docket No. 50–374, LaSalle County Station, Unit 2,. LaSalle County, Illinois

Date of application for amendment: August 9, 1988.

Brief description of amendment: The proposed amendments to Operating License No. NPF–18 would revise the LaSalle Unit 2 Technical Specifications by modifying the table of primary containment isolation valves to identify new excess flow check valves that were installed during the second refuel outage. These valves were added as part of a modification to improve the reactor water level instrumentation system as required by NUREG–0737, Item II.F.2 and Generic Letter 84–23. Completion of this modification satisfies License Condition 2.C.(18)(c) which will be deleted from the Facility Operating License. This proposed amendment is administrative in nature and is similar to one approved for LaSalle Unit 1, Amendment 34. That amendment dated February 10, 1986 added an excess flow check valve (ICM 102) for containment flood-up instrumentation.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if 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 an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined, and the NRC staff agrees, that the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because this change is administrative, adding two new valves to Technical Specification Table 3.6.3–1. The modification that installed these new instrument lines and excess flow check valves does not require a Technical Specification change. The design of these new valves, meets the requirements listed in UFSAR Section 6.2.4. The additional containment penetration was designed in accordance with General Design Criteria 55 and Regulatory Guide 1.11. This additional instrument line does not significantly increase the consequences of any postulated accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because instrument line failure has already been evaluated and found to be acceptable.

3. Involve a significant reduction in the margin of safety because the instrument line meets regulatory requirements to ensure that the margin of safety previously analyzed is maintained.

Local Public Document Room location: Public Library of Illinois, Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Attorney to licensee: Michael Miller, Esq., Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Daniel R. Muller.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut, and Northeast Nuclear Energy Company, et al., Docket Nos. 50–245/336, Millstone Nuclear Power Station, Unit Nos. 1 and 2, New London County, Connecticut

Date of amendment request: February 17, 1988.

Description of amendment request: The proposed amendments to the Technical Specifications will incorporate requirements for the minimum shift crew composition to explicitly recognize the acceptability of the use of qualified individuals in the dual-role of senior reactor operator (SRO) and shift technical advisor (STA). In addition, the specific qualification requirements for individuals serving as the STA, in either the dual-role position or as a dedicated STS, will be incorporated into the Technical Specifications.

Basis for proposed no significant hazards consideration determination: The licensees have reviewed the proposed changes in accordance with 10 CFR 50.92 and have concluded that they do not involve a significant hazards consideration in that these changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed. There are no physical changes to the plants or the way in which they are operated. The proposed amendments would explicitly recognize the acceptability of a shift configuration which has been in place for over four years.

2. Create the possibility of a new or different kind of accident from any previously analyzed. The potential for an unanalyzed accident is not created because no new failure modes are introduced, and the plant response to previously analyzed accidents is not modified.

3. Involve a significant reduction in a margin of safety. There is no impact on the protective boundaries.

The Commission has provided guidance concerning the application of standards in 10 CFR 50.92 by providing certain examples (51 FR 7751, March 6, 1986). The proposed changes most closely resemble example (i), a purely administrative change to technical specifications. The proposed changes will clarify the technical specifications to specifically reflect the implementation of the dual-role position, and will add the specific qualification requirements for STAs.

Based on the above, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499.

NRC Project Director: John F. Stolz.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: August 15, 1988.

Description of amendment request: The proposed amendments would revise License Conditions 2.C.(12)(a) and 2.C.(8)(a) of Catawba Units 1 and 2 Facility Operating Licenses, NPF–35 and NPF–52, respectively, to allow an extension of time for the resolution of the accumulator tank instrumentation issue. The extension of time would be for two complete cycles of operation. The modified License Conditions 2.C.(12)(a) and 2.C.(8)(a) would then respectively read "Prior to startup following the fifth refueling outage, Duke Power Company shall provide qualified accumulator discharge instrumentation" and "Prior to startup following the fourth refueling outage, Duke Power Company shall provide qualified accumulator discharge instrumentation." The above issue is related to Generic Letter 82–33, Supplement 1 to NUREG–0737, regarding Requirements for Emergency Response Capabilities. It was also discussed in Section 7.5.2 of Supplement 5 to the Catawba Safety Evaluation Report (NUREG–0954) and is currently under additional staff review because of its generic implications.

The primary function of the accumulator pressure or level instrumentation is to monitor the pre-accident status of the accumulators to assure that the passive safety system is in a ready state to serve its safety function. The licensee stated that the accumulator tank level or pressure are not referenced in any emergency procedure covering design basis events which may cause a harsh environment. No operator actions in these procedures are based on accumulator indications. Therefore, the licensee concluded that extension of the date for upgrading the accumulator pressure or level instrumentation until startup following the fifth and fourth refueling outages for Catawba Units 1 and 2, respectively, does not involve any adverse safety considerations.

A two operating cycle extension for Catawba Unit 1 was approved by amendment 15, issued on October 6, 1986, to Facility Operating License NPF–35, and a one cycle extension for Catawba Unit 2 was approved by amendment 27 issued on November 25, 1987, to Facility Operating License NPF–52.

Basis for proposed no significant hazards consideration determination: The Commission has provided certain examples (51 FR 7744) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. However, the staff has reviewed the licensee's request for the above amendments and determined that should this request be implemented, it would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed extension of time needed to upgrade the accumulator discharge level or pressure would not affect the capability of the current instrumentation, as it exists at the facility, to provide pre-accident monitoring of the status of the cold-leg accumulators and as such has no effect on the cause mechanism or the consequences of an accident.

Also, it would not (2) create the possiblity of a new or different kind of accident from any accident previously evaluated because the proposed extension would not affect any mechanism that causes accidents and would not chan9e the operation of the facility.

Finally, it would not (3) involve a significant reduction in a margin of safety because the current instrumentation, as it exists at the facility, is fully qualified for its intended function of pre-accident monitoring of the cold-leg accumulators.

Accordingly, the Commission has determined that the above changes involve no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: David B. Matthews.

Duquesne Light Company, Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: January 27, 1988, revised by letter dated July 26, 1988.

Description of amendment request: The Technical Specifications for Beaver Valley Unit 1 and 2 would be amended to clarify some action statements in Table 3.3–1, "Reactor Trip System Instrumentation" as follows:

(a) For Item 21, Reactor Trip Breakers during Modes 1 and 2, Action 1 and Action 40 would be combined to become a new Action 40. This is basically an editorial change with the intention to eliminate confusion. The proposed changes would clarify the actions an operator is to take when a reactor trip breaker is inoperable. If a diverse trip feature is inoperable in Modes 1 and 2, up to 48 hours are provided to restore the breaker to operable status. If the breaker is inoperable due to other than a diverse trip feature, then the plant must be placed in hot standby within the next 6 hours. These changes are consistent with the intent of the staff's Generic Letter 85–09.

(b) For Item 2), Reactor Trip Breakers during Modes 3, 4 and 5, the current requirements dictated by both Action 39 and 40 are confusing. The licensee proposes to eliminate the reference to Action 40 to clarify the requirements and correct the error of referencing Action 39.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if 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; (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 proposed changes are administrative in nature since they provide clarification of the actions required when the reactor trip breakers are inoperable, and only serve to reduce confusion. No changes to the plant design or the FSAR accident analysis would result; therefore, there is no increase in the probability of occurrence or the consequences of any accident previously analyzed, and no possibility of a new or different kind of accident from those described in the FSAR. The proposed action requirements will not affect any of the plant setpoints or margins to the accident analysis or technical specification limits. Therefore, the plant safety margins will not be reduced as a result of the proposed administrative clarification. On such basis, the staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz.

Duquesne Light Company, Docket No. 50–412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of amendment request: June 27, 1988.

Description of amendment request: The proposed amendment would revise the Technical Specifications as follows:

1. Table 3.3–6, Action statement 36 (regarding inoperable radiation monitor channels) would be changed from requiring a special report submitted within 14 days to requiring inclusion in the next Semi-Annual Effluent Release Report. This would make the Technical Specifications internally consistent.

2. Table 3.3–6, Action 43 would be deleted to correct an administrative oversight. This action should not have been included in the Technical Specifications. The proposed change therefore corrects a mistake.

3. Page 3/4 11–6, Section 3.11.1.2 would be revised by adding "within 3 miles of the plant discharge (3 miles downstream only)". This change would conform the subject requirement to that of Unit 1.

4. The following surveillance requirements would be renumbered:

Page	Current No.	Revised No.
3/4 11–8	4.11.1.4	4.11.1.4.1
3/4 11–13	4.11.2.2	4.11.2.2.1
3/4 11–14	4.11.2.3	4.11.2.3.1
3/4 11–15	4.11.2.4	4.11.2.4.1
3/4 11–17	4.11.2.6	4.11.2.6.1
3/4 11–19	4.11.4.1	4.11.4.1.1

These are editorial changes.

5. Section 3.11.2.6, regarding explosive gas mixtures inside containment, Action statements a and b would be corrected in accordance with the Standard Technical Specifications (STS), and to conform these statements to those in the Unit 1 Technical Specifications.

6. Figure 5.1–1, the * note would be revised by replacing "the Site Boundaries are identical" with "the site boundaries for gaseous and liquid effluents are identical," and adding the * to the title. This is an editorial change.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if 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 proposed changes would either correct errors, make the Unit 2 Technical Specifications consistent with those of Unit 1, or are just editorial changes. None of these changes affect any analysis in the FSAR and none of the changes is caused by or would lead to a hardware change. Thus, there is no increase in the probability of occurrence or the consequences of any accident previously analyzed. These changes are administrative in nature and do not affect the operating procedures of the plant; therefore, these changes will not create the possibility of a new or different kind of accident from those described in the FSAR. Furthermore, no safety margin will be affected or reduced as a result of these changes.

Accordingly, the staff proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz.

Duquesne Light Company, Docket No. 50–412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania.

Date of amendment request: June 30, 1988.

Description of amendment request: The proposed amendment would revise the Emergency Diesel Generator Surveillance Requirement 4.8.1.1.2.b.4 to

include backup phase fault protection as one of the diesel generator trips which are not bypassed on a loss of power to the emergency buses. Such protection scheme was described in the FSAR and was approved by the staff in Safety Evaluation Report Supplement No. 1 (NUREG–1057, Supp. 1). However, due to a procurement problem, the approved protection scheme was not included in the Technical Specifications during the early phases of operation of the unit. The licensee has now purchased qualified components and plans to install them during the first refueling outage. When such installation is complete, the Technical Specification requirement, as the staff originally approved, can be imposed.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if 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; (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 proposed amendment would not significantly increase the potential for spurious trips of the diesel generators under emergency start operation. While the backup phase fault trip of the diesel generators is not bypassed during emergency operation, the properly qualified relays will protect against spurious trips and ensure availability of the diesel generators during accident situations. Since the availability of the diesel generators would not be affected, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed amendment does not modify or affect any other IE electrical system or components as described in the FSAR. Therefore, the probability of an accident or a malfunction of a different type from previously evaluated will not be created. Finally, this change will not affect the assumptions or safety margins of any safety analysis presented in the FSAR.

Accordingly, the staff proposes to determine that this change does not involve a significant hazards consideration.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida.

Date of amendment request: June 22, 1983, as superseded April 25, 1988.

Description of amendment request: The proposed amendment would add new specifications 3.3.3.11.1 and 3.3.3.11.2 to the Crystal River Unit 3 (CR–3) Technical Specifications (TS). These new specifications would add operability, action, and surveillance requirements for the chlorine and sulfur dioxide toxic gas detection systems.

An evaluation of CR–3 control room habitability for the accidental release of hazardous chemicals was performed in response to NUREG–0737, III.D.3.4. Based on the storage of quantities of chlorine, ammonia and sulfur dioxide at the Crystal River site, the evaluation of these chemicals indicated that chlorine, ammonia, and sulfur dioxide detectors should be installed in the control complex ventilation system intake duct. The inlet and exhaust dampers of the control complex ventilation system have been interlocked to close on receipt of a signal from the detectors. The detectors also provide a signal to open the recirculation damper in the control complex ventilation system (leaving the normal fans operating) when potentially toxic concentrations of the chemicals are detected. The original June 22, 1983 application was noticed in the Federal Register on December 21, 1983 (48 FR 56504).

Further evaluation has indicated that ammonia detection is not necessary to assure control room habitability at CR–3. As a result, Florida Power Corporation would remove the ammonia detectors and the proposed corresponding TS.

For the chlorine and sulfur dioxide detectors, appropriate TS reflecting the results of the evaluation and the control complex ventilation system configuration are proposed by the April 25, 1988 application. These toxic gas systems TS provide assurance that sufficient capability is available to detect and initiate protective action in the event of an accidental toxic gas release. They also provide assurance that CR–3 control room operators are adequately protected against the effects of an accidental toxic gas release. Because of the deletion of the ammonia detection TS in the April 25, 1988 application, the staff has decided to renotice this proposed amendment.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if 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 licensee has evaluated the proposed amendment against the standards provided above and has made the following determination:

Florida Power Corporation (FPC) proposes this amendment does not involve a significant hazards consideration. This change proposes to add technical specifications for the chlorine detection and sulfur dioxide detection toxic gas systems at CR–3. This constitutes an additional control not presently in CR–3 Technical Specifications. Additionally, these toxic gas technical specifications will provide assurance that control room operators are adequately protected against the effects of an accidental chlorine or sulfur dioxide gas release.

Based on the above, FPC finds the amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change ensures the toxic gas systems are capable of detecting and initiating protective action in the event of an accidental toxic gas release. As a result, assurance is provided that the control room operators will be adequately protected against the effects of such a release and will remain capable of safely operating the plant. The toxic gas system capability has no [e]ffect on the probability or consequence of previously evaluated accidents.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change introduces no new mode of plant operation nor does it require a physical modification.

(3) Involve a significant reduction in the margin of safety since the proposed change constitutes an additional control

not presently included in [the] Technical Specifications.

The staff has made a preliminary review of the licensee's analyses of the proposed changes and agrees with the licensee's conclusion that the proposed amendment does not involve significant hazards considerations. Therefore, the staff proposes to determine that the proposed amendment does not involve significant hazards considerations.

Local Public Document Room location: Crystal River Public Library, 668 NW. First Avenue, Crystal River, Florida 32629.

Attorney for licensee: R.W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733.

NRC Project Director: Herbert N. Berkow.

General Public Utilities Nuclear Corporation, Docket No. 50–320, Three Mile Island Nuclear Station, Unit No. 2, (TMI–2), Dauphin County, Pennsylvania.

Date of amendment request: March 11, 1988.

Description of amendment request: The proposed amendment would revise TMI–2 Operating License No. DPR–73 by modifying Appendix A Technical Specifications Section 6. The proposed amendment would change the requirement that all retraining and replacement training for TMI–2 personnel be under the direction of the Plant Training Manager and substitute the requirement that this training be under his cognizance. Actual direction of the specific training program would be the responsibility of the TMI–2 organization requiring the training. An exception to this proposed change, which is consistent with the current Technical Specifications, is the Radiological Controls Training which would remain under the cognizance of the Vice President Radiological and Environmental Controls. The proposed change would still provide for an oversight role by the Plant Training Manager and require his or her concurrence in the overall training program description document for those retraining and replacement training programs for which direction is shifted to another TMI–2 organization. The training program description document will describe the amount of oversight Plant Training will maintain over these programs. The current requirement to periodically audit the training and qualifications of the entire unit staff will be retained.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if 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, (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.

TMI–2 is currently in a post-accident, cold shutdown, long-term cleanup mode, with sufficient decay heat removal assured by direct heat loss from the reactor coolant system to the reactor building atmosphere. The licensee is presently engaged in defueling the damaged reactor, decontaminating the facility and readying the plant for long-term storage. Greater than 65% of the fuel contained in the reactor vessel has been removed. Defueling the facility has progressed to the regions below the location of the original core volume. Defueling activities within the reactor building will be completed early in calendar year 1988. The staff has determined in previous license amendments, that the potential accidents analyzed for TMI–2 in the current cleanup-mode are bounded in scope and severity by the range of accidents originally analyzed in the facility FSAR.

The proposed change changes the amount of oversight the Plant Training Manager exercises over retraining and replacement training programs for the majority of TMI–2 personnel. The direct control of these programs would be shifted to the individual's organization requiring the training or retraining. The Plant Training Manager would continue to retain some oversight responsibility.

The proposed change does not significantly increase the probability or consequences of an accident previously evaluated because no changes to current safety systems or setpoints are proposed. Furthermore, the requirements that personnel be adequately trained to continue the cleanup effort has not changed.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because no new modes of operation or new equipment are being introduced. Training will be under the direction of the Division to which the individual belongs. Special equipment used in the cleanup and unique to TMI–2 have required unique retraining and replacement training for technicians and repairmen. Such training programs, often conducted on a one-time basis for a specified task, can more appropriately and efficiently be administered under the direction of the organization requiring these skills.

The proposed change does not involve a significant reduction in the margin of safety, since no active components are required to maintain the current safe shutdown of TMI–2. Furthermore, as the cleanup progresses and more and more fuel is removed, the margin of safety increases.

Based on the above considerations, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: State Library of Pennsylvania Government Publications Section, Education Building, Walnut Street and Commonwealth Avenue, Harrisburg, Pennsylvania 17126.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts, & Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: John F. Stolz.

GPU Nuclear Corporation, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: December 2, 1986, as supplemented October 22, 1987 and July 6, 1988.

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensee submitted an amendment to the Physical Security Plan for the Oyster Creek Nuclear Generating Station to reflect recent changes to that regulation. The proposed amendment would modify paragraph 1.C.6 of Provisional Operating License DPR–16 to require compliance with the revised plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27811), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on December 2, 1986, as supplemented on October 11, 1987 and July 6, 1988, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations [51 FR 7750]. One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts, & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz.

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana.

Date of amendment request: August 5, 1988.

Description of amendment request: The proposed amendment would revise the definition of Core Alteration in Definition 1.7 of the River Bend Station (RBS) Technical Specifications (TSs). The change would add the local power range monitors (LPRM) to the instruments whose movement is not considered a core alteration. This revised definition would make the footnote for ACTION 3 and ACTION 9 of Table 3.3.1-1, Reactor Protection System Instrumentation, no longer necessary and it is proposed to delete the footnote.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if 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 licensee provided an analysis that addressed the above three standards in the amendment application.

1. The change proposed does not increase the probability or the consequences of a previously evaluated accident because:

The introduction of dry tubes to the General Electric BWR/6 reactor pressure vessel [RPV] design allows for LPRM replacement from below the reactor vessel. This design feature eliminates the necessity to move fuel from around a LPRM string for detector removal or maintenance. Therefore, the proposed definition change will still preclude the possibility of reactor internals damage and reactivity changes without the constraints imposed by the Technical Specifications for operations properly defined to be a CORE ALTERATION. In addition, the dry tube design eliminates any concern of a reactor coolant leakage path from the reactor pressure vessel since LPRM replacement occurs external to the RPV boundary. This proposed change does not involve a design change and hence, does not impact the function or operation of the power range monitors (LPRM strings) or their ability to monitor reactor power (neutron flux) from startup through full power operation. Additionally, the proposed change does not result in a change to any safety analyses previously provided in RBS Updated Safety Analysis Report Sections 6 and 15.

Excluding normal movement of a LPRM from the CORE ALTERATION definition will allow removal of an LPRM without the constraints imposed by the Technical Specifications for operations properly defined to be a CORE ALTERATION. The proposed change is consistent with the specific exception for the movement of other incore instrumentation. Because the LPRM strings are only removed from the core when they are being replaced and they have no normal drive mechanism, a similar exception from the definition of CORE ALTERATION is being requested. Additionally, the proposed definition change will eliminate the need for footnote * and therefore, this footnote is being requested to be deleted.

2. The change proposed by this submittal does not create the possibility of a new or different kind of accident from any previously evaluated because:

This proposed change takes credit for the benefits of the dry tube as a safety enhancement to the General Electric BWR. Fuel handling errors, reactor core internals damage and reactor coolant leakage paths from the RPV due to LPRM movement are eliminated with the dry tube design feature. Therefore, the proposed definition change will still preclude the possibility of reactor internals damage and reactivity changes within the reactor core without the constraints imposed on operations properly defined to be a CORE ALTERATION. The dry tube is part of the RPV pressure boundary, thus making LPRM replacement an external operation with regard to the RPV boundary. Development of the RBS Technical Specifications did not take credit for this enhanced BWR/6 design feature. This proposed change does not impact the reliability of the LPRM strings or their function. It merely allows RBS to take credit for the original dry tube design feature. Additionally, the proposed change does not involve a design change and hence, does not introduce any new failure modes. Therefore, this proposed change does not create any new or different kind of accident from any previously evaluated.

3. This change does not involve a significant reduction in the margin of safety because:

The introduction of the dry tube as part of the General Electric BWR/6's RPV design increased the margin of safety with regard to the LPRMs because of their protection from the reactor pressure and coolant and the elimination of the necessity for reactor vessel head and fuel movement in order to facilitate maintenance or replacement of the LPRMs. The possibility of fuel handling errors and damage to reactor internals is eliminated because fuel movement is not necessary to gain access to the LPRMs in a BWR/6. Also, the potential of a reactor coolant leakage path from the vessel is eliminated because RPV integrity is not breached since the LPRMs are located entirely external to the RPV pressure boundary with the dry tube design. Therefore, the proposed change does not reduce the margin of safety.

The proposed change, does not increase the possibility or the consequences of a previously evaluated event and does not create a new or different kind of accident from any

previously evaluated since this proposed definition change still precludes the possibility of reactor internals damage and reactivity changes within the reactor core without the constraints imposed by the Technical Specifications for operations properly defined to be a CORE ALTERATION. Also, the results of this proposed change are within all acceptable criteria with respect to system components and design requirements. The ability of the LPRMs to perform their function as described in the USAR is maintained and therefore, the proposed change does not involve a reduction in the margin of safety. Therefore, [Gulf States Utilities Company] concludes that no significant hazards are involved.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Attorney for licensee: Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: Jose A. Calvo.

Louisiana Power and Light Company, Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana.

Date of amendment request: March 25, 1988 as supplemented August 3, 1988.

Description of amendment request: The proposed amendment would revise the Technical Specifications on boron dilution by adding mode 4 requirements, clarifying the surveillance to verify systems isolation only when the system is to be isolated, make surveillances consistent with the mode 4 and 5 limited conditions for operation, and revise the frequencies for backups boron dilution detection.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (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 licensee has performed a boron dilution analysis for events when using the Shutdown Cooling System for core decay heat removal and has determined that conditions could exist where flow through the steam generators may not provide sufficient mixing within the core. To protect against a boron dilution event under these circumstances, the licensee proposes to add requirements for mode 4 operation and clarify the related mode 5 operation and surveillances. The licensee has further recalculated the monitoring frequencies for backup boron dilution detection using the Standard Review Plan, 15.4.6, minimum time intervals for operator action.

The proposed change to add a limiting condition for operation (LCO) for mode 4 and as well as modify the LCO for mode 5 will protect against the possible conditions of insufficient flow within the core and will insure that enough time exists to prevent a total loss of shutdown margin should an inadvertent boron dilution event occur. The changes to modify the backup boron dilution detection frequencies resulted in some decreases in frequency times but are within the Standard Review Plan criteria of 30 minutes for mode 6 and 15 minutes for modes 3–5. Therefore, the proposed changes will not result in a significant change in the probability or consequences of any accident previously evaluated.

There has been no physical change to plant systems, structures or components nor will the proposed change affect the ability of any of the safety-related equipment required to mitigate anticipated operational occurrences or accidents. The proposed change will ensure enough time exists to prevent a total loss of shutdown margin should an inadvertent boron dilution event occur. Thus, operation of the facility in accordance with the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes to add mode 4 LCO requirements and clarify mode 5 LCO and related surveillances will provide added margin of safety by protecting against boron dilution events not previously covered. The changes to the backup boron detection frequencies will ensure that enough time exists to prevent a loss of shutdown margin should an inadvertent boron dilution event occur. The proposed change will ensure that there is sufficient time for the operator to recognize a decrease in boron concentration and take appropriate corrective action without total loss of shutdown margin. Thus, operation of the facility in accordance with the proposed change will not result in a significant reduction in the margin of safety.

Based on the above considerations, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037.

NRC Project Director: Jose A. Calvo.

Louisiana Power and Light Company, Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana.

Date of amendment request: July 19, 1988.

Description of amendment request: The proposed amendment would revise the Technical Specifications to clarify that an Assistant Plant Manager, if not acting as chairman, and Vice Chairman are members of the Plant Operations Review Committee for purposes of determining a quorum.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (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 proposed amendment would allow either of two Assistant Plant Managers to be Chairman of the Plant Operations Review Committee (PORC). It would further allow the Assistant Plant Managers not acting as chairman to serve as a member for purposes of establishing a quorum. The quorum provisions are not changed. The PORC membership, as well as the level of reviews conducted by PORC, will remain unchanged. Therefore, the proposed change does not involve a change in the probability or consequences of any previously analyzed accident nor does it create any new or different kind of accident from any previously analyzed. The review

activities are equivalent to those presently performed by PORC, therefore, there is no reduction in a safety margin.

Based on the above, the Commission proposes to determine that the proposed amendment does not involve a no significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037.

NRC Project Director: Jose A. Calvo.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York.

Date of amendment request: June 6, 1988, as amended July 22, 1988.

Description of amendment request: The amendment would revise Technical Specifications Sections 6.1, 6.2, 6.5, 6.6, 6.7 and 6.9 and delete Figures 6.2.1–1 and 6.2.2–1. These changes are administrative changes that would: (1) Delete the organization charts, in accordance with the guidance of NRC Generic Letter 88–06, and include general requirements that capture the essential aspects of the organizational structure defined by these organizational charts; (2) reflect recent organizational changes in the licensee's Nuclear Division; and (3) update the reporting requirements in accordance with 10 CFR 50.4.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an Operating License for a facility involves no significant hazards consideration if 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, (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 staff has reviewed the licensee's June 6 and July 22, 1988 submittals and finds that:

(1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because deletion of the organization charts from the Technical Specifications does not affect plant operation. As in the past, the NRC will continue to be informed of organizational changes through other required controls. In accordance with 10 CFR 50.34(b)(6)(i) the applicant's organizational structure is required to be included in the Final Safety Analysis Report. Chapter 13 of the Final Safety Analysis Report provides a description of the organization and detailed organization charts. As required by 10 CFR 50.71(e), Niagara Mohawk Power Corporation (NMPC) submits annual updates to the FSAR. Appendix B to CFR 50 and 10 CFR 50.54(a)(3) govern changes to organization described in the Quality Assurance Program. Some of these organizatio changes require prior NRC approval. Also, it is NMPC's practice to inform the NRC of organizational changes affecting the nuclear facilities prior to implementation The changes that reflect the recent organizational changes will not affect plant operations as they are changes in who is responsible for specific issues, not a deletion of the responsibilities. The new responsible persons are at a management level sufficient to implement those responsibilities. The changes to update the reporting reouirements do not change the frequency or the content of the reports but are administrative changes concerning the addressee and address where these reports are to be sent.

(2) The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated because the proposed changes are administrative in nature, and no physical alterations of plant configuration or changes to setpoints or operating parameters are proposed.

(3) The proposed amendment does not involve a significant reduction in a margin of safety because NMPC, through its Quality Assurance programs, its commitment to maintain only qualified personnel in positions of responsibility, and other required controls, assures that safety functions will be performed at a high level of competence. Therefore, the proposed changes will not affect the margin of safety.

Accordingly, the Commission proposes to determine that the proposed changes involve no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark Wetterhahn, Esq., Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: Robert A. Capra, Director.

Northeast Nuclear Energy Company, Docket No. 50–245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut.

Date of amendment request: June 3, 1988.

Description of amendment request: The proposed amendment will change the Technical Specifications by reducing the Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) limit by 2 percent. This reduction was proposed by the licensee to compensate for the potential for degraded emergency core cooling system (ECCS) flow due to debris-induced strainer plugging following a loss-of-coolant accident (LOCA).

Basis for proposed no significant hazards consideration determination: In March of 1988, the licensee completed a study to evaluate the acceptability of fibrous insulation in Millstone Unit No. 1's drywell with respect to degradation of long-term ECCS degradation. The conclusions of that study indicated that ECCS pump net positive suction head margin and operability could potentially be compromised if fibrous insulation migrated to the torus and to the low-pressure coolant injection/core spray suction screens in sufficient quantities. If this migration were to occur, the licensee estimates that a reduction in flow of approximately 70 gpm from each of the core spray pumps and approximately 110 gpm from each of the low-pressure coolant injection pumps might be possible. These flow reductions were calculated assuming that all of the ECCS pumps would be operating at runout condition, thus maximizing the flow reduction.

The licensee informed the NRC Resident Inspector of the results of this study on March 18, 1988 and subsequently reported the results under 10 CFR 50.71(b)(2)(iii) and under 10 CFR 50.73(a)(2)(vi) on April 12, 1988. The April 12, 1988 report was revised by the licensee in a letter dated May 27, 1988.

The licensee developed a Justification for Continued Operation (JCO) dated May 20, 1988, which recommended a 2 percent reduction in the MAPLHGR limit to compensate for the potential for degraded ECCS flow following a LOCA. This 2 percent reduction was implemented immediately by the licensee by an administrative action. The JCO was reviewed by the staff and found to be adequate to address this issue. This proposed license amendment will formalize the administrative action taken by the licensee.

The licensee has scheduled to replace the ECCS suction strainers with strainers of a larger area during the spring 1989 refueling outage. At that time the reduction in the MAPLHGR limit will no longer be needed.

In accordance with 10 CFR 50.92, the licensee has reviewed the proposed change and has concluded that it does not involve a significant hazards consideration in that the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Decreasing the MAPLHGR limit by 2 percent does not increase the probability of failure of any safety system. In fact, reducing the MAPLHGR limit decreases the severity of a LOCA if the plant is operating at the limit when a LOCA occurs.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

Plant response to a large-break LOCA after the incorporation of the proposed changes will remain bounded by the design basis LOCA. There are no failure modes associated with this proposed change which could represent a new unanalyzed accident.

3. Involve a significant reduction in a margin of safety.

Lowering the MAPLHGR limit to compensate for a potential slight degradation of ECCS flow due to strainer plugging ensures that compliance with the basis of the MAPLHGR limit (to ensure that the plant operates in compliance with 10 CFR 50.46 and 10 CFR 50, Appendix K, under all conditions) will be maintained.

Accordingly, the staff proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499.

NRC Project Director: John F. Stolz.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut.

Date of amendment request: July 21, 1988.

Description of amendment request: The proposed amendment would delete the following tables, identifying electrical equipment, from the Millstone Unit 3 Technical Specifications (TS):

- 3.8–1 Containment Penetration Conductor Overcurrent Protective Devices
- 3.8–2a Motor-Operated Valves Thermal Overload Protection Bypassed Only Under Accident Conditions
- 3.8–2b Motor-Operated Valves Thermal Overload Protection Not Bypassed Under Accident Conditions

The reference to the above TS Tables, in their respective TS, would also be deleted.

Basis for proposed no significant hazards consideration determination: The Millstone Unit 3 TS currently contains a number of equipment lists that are the subject of Limiting Conditions for Operation (LCOs) and Surveillance Requirements (SR). In each case, these lists only contain equipment identifications and no other LCO/SR related information, (e.g., setpoints) are involved. The licensee has proposed that the equipment lists contained in TS Tables 3.8–1, 3.8–1a and 3.8–2b be incorporated and maintained in the Millstone Unit 3 FSAR.

In the event that changes are needed to the information to be contained in the FSAR, the proposed changes would be evaluated under the process detailed in 10 CFR 50.59 and approved by the Plant Operations Review Committee. The licensee has also proposed removing references to the Tables in the subject TS but otherwise, the LCOs and SRs would remain unchanged.

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c).

We have reviewed the licensee's proposed changes to the TS and conclude that the proposed changes will not:

(1) Involve a significant increase in the probability of occurrence or consequences of an accident previously analyzed. Since there are no proposed changes to the LCO or SR, no changes in operability of the subject equipment will occur. Accordingly, there will be no effect on previously analyzed accident.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. Since there are no changes in the way the plant is operated, the potential for an unanalyzed accident is not created. No new failure modes are introduced.

(3) Involve a significant reduction in a margin of safety. Since the proposed changes do not affect the consequences of any accident previously analyzed, there is no reduction in any margin of safety.

Accordingly, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, One Constitution Plaza, Hartford, Connecticut 06103–3499.

NRC Project Director: John F. Stolz.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California.

Date of amendment request: November 21, 1986 and November 9, 1987.

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensees submitted proposed amendments to the Physical Security Plan for the Diablo Canyon Nuclear Power Plant to reflect recent changes to that regulation. The proposed amendments would modify paragraph 2.E of Facility Operating License Nos. DPR–80 and DPR–82 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on November 21, 1986, and November 9, 1987, to satisfy the requirements of the amended regulations. The Commission proposes to amend the licenses to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a

significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendments involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorneys for licensee: Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Directorate: George W. Knighton.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: July 29, 1988.

Description of amendment request: The proposed amendment would revise those Technical Specifications (TS) necessary to support plant start-up and operation following the Reload 8/Cycle 9 refueling outage. During this outage, approximately 1/3 of the fuel now in the core (184 fuel bundles) will be removed and replaced with new fuel.

The proposed changes to the TS involve deleting specifications associated with the discharged fuel and with Cycle 8 specific analyses, and replacing them with ones which are appropriate for the new fuel and based on Cycle 9 specific analyses.

The 184 fuel bundles to be removed from the core will be replaced by 152 bundles of fuel type BD336A and 32 bundles of fuel type BD339A. The two new fuel types are General Electric's GE8X8EB design and are mechanically identical to the Reload 7 fuel. The U–235 enrichment and gadolinium content are varied to support cycle specific needs and to improve fuel economy. Associated TS changes include revisions to the List of Figures, MAPLHGR figures, and reactor design sections.

Cycle 9-specific transient analyses, performed by General Electric, determine the operating limits for Cycle 9. The analyses were performed with GE's GEXL–PLUS thermal correlation and the revised safety limit MCPR of 1.04. Associated TS changes include revisions to the MCPR sections and corresponding Bases, the MCPR operating limit table, the MCPR figure, and the K_f curves.

Basis for proposed no significant hazards consideration determination: In accordance with the Commission's Regulations in 10 CFR 50.92, the Commission has made a determination that the proposed amendment involves no significant hazards considerations. To make this determination the staff must establish that operation 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.

NRC-approved methodologies and codes have been used to perform all analyses concerning the Reload 8 fuel and the fuel design has been previously reviewed and approved for use at FitzPatrick. Additionally, there are no unique aspects of this fuel or its application which have not undergone prior NRC review and approval. Therefore, operation in accordance with the proposed amendment does not increase the probability or consequences of any accident previously evaluated.

Refueling of the FitzPatrick reactor is performed in accordance with appropriate procedures and is controlled by the TS. The fuel bundles to be inserted during Reload 8 are mechanically identical to those inserted during Reload 7. The nuclear characteristics of the individual fuel bundles and the core loading pattern have been fully analyzed by General Electric. Furthermore, the assemblies have been fully reviewed and approved for use in power reactors by the NRC. Therefore, operation in accordance with the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The analyses performed in support of Reload 8 assure maintenance of all existing margins of safety. These analyses have resulted in core wide (MCPR) and bundle specific (MAPLHGR) limits for General Electric fuel which, when applied to the reloaded core, assure operation within the previously approved design criteria. The revised MCPR safety limit provides the same margin of safety as the previous safety limit in preventing boiling transition. This change was previously approved by the NRC for use in GE-fueled BWR reactors. Therefore, operation in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

Since the application for amendment involves proposed changes that are encompassed by the criteria for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: State University of New York Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra, Director.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: August 10, 1988.

Description of amendment request: The proposed amendment would revise Table 3.7–1 ("Process Pipeline Penetrating Primary Containment") of the Technical Specifications (TS) to reflect four modifications which will be completed during the 1988 refueling outage.

The first modification (Mod A) involves installation of redundant drywell atmosphere sample lines to serve each of the Primary Containment Radiation Monitors (PCRMs). These instruments monitor gaseous and particulate radioactivity levels during normal plant operation. Four isolation valves to be installed as part of this modification will be added to Table 3.7–1. In addition, four valves in the existing lines which were inadvertently omitted from the table will be added to reflect the as-built condition of the plant.

A second modification (Mod B) involves cutting and capping two lines previously used to supply breathing and service air to the drywell during maintenance. Because the four isolation valves associated with these lines will be removed, the corresponding entries in Table 3.7–1 will be deleted.

A third modification (Mod C) involves replacement of two existing gate valves

(10 MOV–31A and 10 MOV–31B) in the Residual Heat Removal System with globe valves for the purpose of providing improved control of containment spray flow. Accordingly, Table 3.7–1 will be revised to reflect this change.

The fourth modification addressed by the proposed amendment (Mod D) involves the replacement of two Reactor Water Sample globe valves with solenoid-operated valves. The globe valves are opened by air pressure and AC electrical power whereas the solenoid valves use only AC power. Table 3.7–1 will be revised to reflect this change.

Basis for proposed no significant hazards consideration determination: In accordance with the Commission's Regulations in 10 CFR 50.92, the Commission has made a determination that the proposed amendment involves no significant hazards considerations. To make this determination the staff must establish that operation 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 function of the PCRMs is to provide information to plant operators during normal operation. These instruments and their associated sample lines neither mitigate nor can initiate an accident. The redundant lines and isolation valves to be installed as part of Mod A are similar to and serve the same function as the existing sample lines. The new and the existing lines both isolate in the event of an accident. Because the sample lines form a closed system outside containment, failure of the isolation valves on the existing and/or the new lines will not provide a direct release path to the atmosphere. Therefore, the probability or consequences of any accident previously analyzed would not increase as a result of Mod A, nor would Mod A create the possibility of a new or different kind of accident. Additionally, because the purpose of Mod A is to increase the reliability of the PCRMs, no reduction in any margin of safety will result.

Concerning Mod B, the three criteria for a no significant hazards consideration determination are met because this modification involves only the cutting and capping of lines no longer in use. These lines do not serve any safety function since they provide only service and breathing air to the drywell during maintenance.

The replacement of two gate valves in the containment spray lines with globe valves (Mod C) does not affect the ability of these lines to isolate nor does it introduce any new failure modes. The improved control of containment spray flow provided by the new globe valves will permit improved accident mitigation under certain circumstances. Therefore, Mod C will not increase the probability or consequences of any previously analyzed accident, will not create the possibility of a new or different kind of accident, or reduce any margin of safety.

The replacement of two Reactor Water Sample (RWS) globe valves with solenoid-operated valves (Mod D) does not affect the ability of the RWS to perform its intended function nor the ability to achieve an isolation. No new failure modes are introduced as a result of Mod D. Additionally, the modification will provide the control room with a positive position indication for the new valves. Therefore, Mod D will not increase the probability or consequences of any previously analyzed accident, will not create the possibility of a new or different kind of accident, or reduce any margin of safety.

Since the application for amendment involves proposed changes that are encompassed by the criteria for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra, Director.

Southern California Edison Company, et al., Docket No. 50–206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: March 20, 1987.

Description of amendment request: The proposed amendment involves four changes to the existing specification 4.3.1. The first change is an editorial change to Section A to remove references to the lower pressure test schedule and include this information in Section C. The second change consists of revising the requirement to specify each airlock shall be tested within 72 hours following each closing, versus each opening. The third change consists of adding a requirement to test the airlock prior to establishing containment integrity if maintenance has been performed on the airlock which could affect the sealing capability. The fourth change consists of reducing the present lower pressure test from 10 psig to 3 psig. These proposed changes are being requested in order to provide clarification of the applicable 10 CFR Part 50, Appendix J airlock leak testing requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91, the licensee has provided its analysis as to whether or not the proposed amendment involves a significant hazards consideration and has concluded that the proposed changes do not constitute a significant hazards consideration, based on the following discussion:

(1) Will operation of the facility in accordance with the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated? Response: No, the basis for airlock leak testing is to detect deterioration of sealing capability in order to prevent excessive dose consequences from a reactor transient. Incorporation of an additional testing requirement will provide clarification for airlock testing in situations not covered by the existing Technical Specifications. Notwithstanding the fact that this additional testing requirement is taking exception to the Appendix J requirement, the proposed test will enhance the reliability of the airlock sealing capability by ensuring appropriate testing is conducted when necessary. Reducing the lower pressure test to 3 psig will decrease the potential for damage to the door closing mechanism caused by testing the door at it's design limit for reverse pressure. Accident consequences or probability will not be increased since containment pressure will seal the inner door. Based on the foregoing, operation of the facility in accordance with the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Will operation of the facility in accordance with the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated? Response: No, the function of the airlock is to provide personnel access to containment as necessary during periods when containment integrity is required. Airlock leakage testing is performed to verify the leakage integrity of the airlock on a periodic basis, subsequent to use, and subsequent to modifications which could affect the sealing capability. Testing in accordance with the proposed specifications will ensure that the integrity of the airlock is maintained under all circumstances encountered during plant operation. Frequency of air lock testing will not change as a result of this proposed change. Reducing the lower test pressure from 10 psig to 3 psig

ensures the inner door will be sealed and the latching mechanism will not be damaged. Therefore, operation of the facility in accordance with the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Will operation of the facility in accordance with the proposed change involve a significant reduction in a margin of safety? Response: No, the margin of safety for the airlock is defined by sealing capability in the event of a reactor transient. The proposed change is intending to ensure that adequate leak testing requirements are included in the Technical Specifications. By including these requirements in the Technical Specifications the sealing capability of the airlock will be maintained. Reduction of the lower test pressure from 10 psig to 3 psig does not affect the margin of safety since the direction of test is opposite the pressure direction resulting from the accident. Testing at 3 psig ensures the door mechanism has latched and the door is sealed. Accordingly, operation of the facility in accordance with the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the request and the licensee's analysis and agrees that the criteria appears to be satisfied. The NRC staff, therefore, proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Attorney for licensee: Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: George W. Knighton.

Tennessee Valley Authority, Docket Nos. 50–259 , 50–260 and 50–296, Browns Ferry Nuclear Plant Units 1, 2, and 3, Limestone County, Alabama

Date of amendment requests: September 15, 1987, November 23, 1987 and May 24, 1988.

Description of amendment requests: In accordance with the requirements of 10 CFR 73.55, the Tennessee Valley Authority (TVA) submitted an amendment to the Physical Security Plan for the Browns Ferry Nuclear Plant, Units 1, 2, and 3 to reflect changes to that regulation. The proposed amendment would modify paragraph 2.C.11 of Facility Operating Licenses Nos. DPR–33 and DPR–52 and paragraph 2.C.6 of Facility Operating License No. DPR–68 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased nuclear power reactor licensee submit proposed amendments to its security assurance of plant safety. The amended regulations required that each plan to implement the revised provisions of 10 CFR 73.55. TVA submitted its revised security plan on September 15, 1987, November 23, 1987 and May 24, 1988 to satisfy the requirements of the amended regulations. The Commission proposes to amend the licenses to reference the revised security plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: August 10, 1988 (TS 88–03).

Description of amendment requests: The Tennessee Valley Authority (TVA) has proposed changes to the Sequoyah, Units 1 and 2 (SQN) Technical Specifications (TS). These proposed changes are to incorporate operability and surveillance requirements for the low-temperature overpressurization protection (LTOP) system. These changes consist of five parts: (1) The specific requirements for the LTOP system are being added, (2) changes to the boration system requirements are being added to conform with the administration controls that support the LTOP system requirements, (3) new requirements are being added to minimize the potential for heat input overpressurization transients caused by the restart of a reactor coolant pump in Mode 4, (4) changes to the reactor vessel specimen surveillance program are proposed, and (5) cyclic limits are being added for low-temperature, water-solid overpressurization events. Specification 3.4.11 is added to specify operability and surveillance requirements for the LTOP system. Specifications 3.1.2.1, 3.1.2.2, 3.1.2.3, and 3.1.2.4 are modified to reflect the new administrative requirements that limit the number of operable centrifugal charging pumps in Mode 4, Hot Shutdown, to minimize the potential for and severity of low-temperature overpressurization transients. Specification 3.4.1.3 is modified to reflect new administrative requirements that prohibit the restart of a reactor coolant pump unless a steam bubble exists in the pressurizer to minimize the severity of any resulting pressure transients. Specification 3.4.9.1 is modified to require that the LTOP setpoints be updated as a result of the examination and analysis of reactor vessel material irradiation surveillance specimens. Table 5.7–1 is modified to include cyclic limits for low-temperature, water-solid overpressurization events. The bases to specifications 3/4.1.2, 3/4.4.1, 3/4.4.9, and 3/4.4.11 and the index are also modified to reflect LTOP system requirements. TVA is also proposing the deletion of an outdated footnote to the Unit 2 TS 3.1.2.4 and is revising the appropriate sections of the bases of the TS.

Basis for proposed no significant hazards consideration determination: In its application, TVA provided the following description of the LTOP system for Sequoyah:

The LTOP system was required to be installed after licensing as a condition of the license [reference item 2.c[17] of SPR–79 and item 2.C[20] of DPR–77].

Administrative procedures have been developed to aid the operator in controlling reactor coolant system (RCS) pressure during low-temperature operation. However, to provide a backup to the operator and to minimize the frequency and severity of RCS overpressurization, an automatic system is provided to mitigate the pressure excursion within the allowable pressure limits. The LTOP system is described in the Final Safety Analysis Report (FSAR), Sections 5.2.2.4 and 7.6.7. The LTOP system control circuitry is shown on FSAR figures 5.1–5 (coordinates A9–A12) and 5.1–6 (coordinates C2–C4). The LTOP system functional logic is shown on FSAR figure 7.6.7–1.

Transient analyses were performed to determine the maximum pressure for both postulated mass input and heat input events. These analyses are described in FSAR Section 5.2.2.4.2.

The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

TVA has evaluated the proposed technical specification change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of SQN in accordance with the proposed amendment will not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated. The low-temperature overpressure events had been previously evaluated in the FSAR. The addition of operability and surveillance requirements for the LTOP system is administrative in nature because it incorporates existing requirements into the technical specifications. Conforming changes to technical specifications 3.1.2.1, 3.1.2.2, 3.1.2.3, 3.1.2.4, 3.4.1.3, 3.4.9.1, and 5.7 are necessary to fully integrate the LTOP system requirements. The addition of a special test condition for surveillance requirement 4.4.11.1.(a) ensures that instrumentation common to both the RVLIS [Reactor Vessel Level Indicator System] and LTOP systems remain in service as required. The deletion of an outdated footnote to unit 2 specification [3.1.2.4] is purely editorial in nature. No new hardware or operating practices are introduced by these changes. Consequently, the probability or consequences of accidents previously evaluated are unchanged.

(2) create the possibility of a new or different kind of accident from any previous analyzed. The low-temperature overpressure events had been previously evaluated in the FSAR. The addition of operability and surveillance requirements for the LTOP system and conforming changes to other technical specifications is administrative in nature. The deletion of an outdated footnote to unit 2 specification [3.1.2.4] is purely editorial in nature. No new hardware changes are introduced by these changes. The addition of a special test condition for surveillance requirement 4.4.11.1.(a) ensures that instrumentation common to both the RVLIS and LTOP systems remains in service as required. Consequently, the possibility of a new or different kind of accident from any previously analyzed is not created.

(3) involve a significant reduction in a margin of safety. The addition of operability and surveillance requirements for the LTOP system will increase the margin of safety by affording a higher level of administrative controls over LTOP system operability.

The conforming changes to technical specifications 3.4.1.3, 3.4.9.1, and 5.7 will increase the margin of safety by also affording a higher level of administrative controls over related LTOP requirements. The changes to technical specifications 3.1.2.1, 3.1.2.2, 3.1.2.3, and 3.1.2.4, involve a reduction in the redundancy requirements for boration capability in mode 4. However, this reduction is necessary to incorporate requirements that minimize the potential for and severity of mass input, low-temperature overpressure events by limiting the number of centrifugal charging pumps that can automatically inject into the RCS. The addition of a special test condition for surveillance requirement 4.4.11.1.(a) ensures that instrumentation common to both the RVLIS and LTOP systems remains in service as required. NRC has acknowledged the greater importance of LTOP system requirements and has structured the standard technical specification requirements accordingly. TVA is adopting the standard requirements, and some additional requirements, that presumably provide a greater margin of safety. The deletion of an outdated footnote [in Unit 2 TS 3.1.2.4] is administrative in nature and has no effect on the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: August 10, 1988 (TS 88–08).

Description of amendment requests: The Tennessee Valley Authority proposed to modify the Sequoyah Nuclear Plant, Units 1 and 2 (SQN) Technical Specifications (TS). The proposed changes are to revise Table 3.3–11, Fire Detection Instruments, to (1) include additional fire detectors as a result of plant modification and (2) correct deficiencies.

Basis for proposed no significant hazards consideration determination: In its application, TVA provided the following explanation for the proposed changes:

Table 3.3–11, "Fire Detection Instruments," contained in the SQN technical specifications is being revised to reflect the current plant configuration as follows:

1. Fire zones 98 and 99, Unit 1 containment purge air filter, elevation 690, were modified to have two photoelectric and two thermal detectors in each of the two fire zones.
2. Fire zone 331, Unit 1 reactor building annulus, was modified to have four photoelectric detectors.
3. Fire zone 372, Unit 1 reactor building annulus, was modified to have 22 photoelectric detectors.
4. Fire zone 373, Unit 1 reactor building annulus, was modified to have 21 photoelectric detectors.
5. Fire zone 333, Unit 2 reactor building annulus, was modified to have 4 photoelectric detectors.
6. Fire zone 374, Unit 2 reactor building annulus, was modified to have 20 photoelectric detectors.
7. Fire zone 375, Unit 2 reactor building annulus, was modified to have 19 photoelectric detectors.
8. Fire zones 216 and 217, control room filter, were incorrectly identified as train A and should have been train B.
9. Fire zones 218 and 219, control room filter, were incorrectly identified as train B and should have been train A.

The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration.

Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

TVA has evaluated the proposed technical specification change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of SQN in accordance with the proposed amendment will not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated. The fire detection

instruments are elements of the early warning fire detection system whose mission is to notify personnel of a fire, actuate automatic suppression systems, and control auxiliary equipment. The addition of fire detection instrumentation will provide increased coverage of the areas monitored by the fire detection warning system, enabling a potential fire to be located and appropriate responses to be initiated in a more timely fashion than without the instrumentation. The proposed technical specification change amends Table 3.3–11 to add fire detection instruments installed as a result of plant modifications and correct a discrepancy to reflect the as-constructed condition of the plant. Thus, the proposed change improves overall plant safety and does not increase either the probability or consequences of an accident previously evaluated.

(2) create the possibility of a new or different kind of accident from any previously analyzed. The additional fire detection instrumentation increases the ability of plant personnel to identify and take appropriate corrective action in the unlikely event that a fire should occur. Thus, the proposed technical specification change improves the plant's ability to respond to previously evaluated accidents and events, and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) involve a significant reduction in a margin of safety. The proposed technical specification change amends Table 3.3–11 to add instrumentation installed as a result of plant modifications and corrects a discrepancy to reflect the as-constructed condition of the plant. Addition of recently installed instrumentation provides for increased surveillance capabilities within the plant, thereby again improving plant safety. Thus, the proposed technical specification change improves overall plant safety and results in no reduction in margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: August 10, 1988 (TS 88–22).

Description of amendment requests: The Tennessee Valley Authority (TVA) proposes to modify the Sequoyah Nuclear Plant Units 1 and 2 (SQN) Technical Specifications (TS). The changes are to revise containment system surveillance requirements (SR) 4.6.1.2.g and 4.6.3.2 and Table 3.6–2, "Containment Isolation Valves." These proposed changes will provide additional surveillance testing for the residual heat removal (RHR) spray lines (penetrations X–49A and –49B) and the normal charging containment isolation valve.

The normal charging containment isolation valve is proposed to be added to Table 3.6–2. The SR to verify that this valve actuates to its closed position upon a safety injection test signal is proposed to be added to SR 4.6.3.2. The RHR spray system is proposed to be added to SR 4.6.1.2.g to require testing of the containment isolation seal system, which includes remote-manual valves, of the RHR spray system.

Basis for proposed no significant hazards consideration determination: In its application, TVA provided the following discussion on the reason for the proposed changes to the TS:

IE Inspection Reports Nos. 50–327/86–20 and 50–328/86–20 identified problems with the containment isolation design. In resolution of the problems identified, TVA redesignated one of the outboard automatic isolation valves (FCV–62–90) as the outboard containment isolation valve for the normal charging line. TVA also redesignated the remote-manual valves on the RHR spray lines as outboard containment isolation valves. With redesignation of these valves, containment isolation testing is required. TVA also thought it was prudent to add these penetrations and valves to the appropriate technical specification for completeness.

The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has provided the following analysis:

TVA has evaluated the proposed technical specification change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of SQN in accordance with the proposed amendment will not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated. The designation of the normal charging isolation valve FCV–62–90 for penetration X–16 and the available remote-manual valves on RHR containment penetrations X–49A and –49B as containment isolation valves has been previously evaluated by NRC in NUREG–1232, Volume 2. The NRC review also evaluated containment leak test requirements for these penetrations. The proposed changes to Table 3.6–2 and surveillance requirements 4.6.1.2.g and 4.6.3.2 will simply add these same requirements to the technical specifications to provide long-term assurance that operability and surveillance testing requirements are maintained. No new hardware or testing requirements are proposed. Consequently, the probability or consequences of an accident previously evaluated are not changed.

(2) create the possibility of a new or different kind of accident from any previously analyzed. The designation of the normal charging isolation valve FCV–62–90 for penetration X–16 and the available remote-manual valves on RHR containment penetrations X–49A and –49B as containment isolation valves has been previously evaluated by NRC in NUREG–1232, Volume 2. The NRC review also evaluated containment leak test requirements for these penetrations. The proposed changes to Table 3.6–2 and surveillance requirements 4.6.1.2.g and 4.6.3.2 will simply add these same requirements to the technical specifications to provide long-term assurance that operability and surveillance testing requirements are maintained. No new hardware or testing requirements are proposed. Consequently, the possibility of a new or different kind of accident from any previously analyzed is not created.

(3) involve a significant reduction in a margin of safety. The margin of safety afforded by the technical specifications is increased by the addition of explicit surveillance and operability requirements for the outboard containment isolation valves associated with containment penetrations X–16, –49A, and –49B. The addition of these requirements to the technical specifications will provide long-term assurance that the operability and surveillance testing requirements evaluated by NRC in NUREG–1232, Volume 2, are maintained.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black.

The Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Lake County, Illinois

Date of amendment request: November 26, 1986, January 14, 1988 and June 30, 1988.

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensees submitted an amendment to the Physical Security Plan for the Zion Nuclear Power Station, Units 1 and 2 to reflect recent changes to that regulation. The proposed amendment would modify paragraph C.2(6) Facility Operating Licenses Nos. DPR–39 and DPR–48 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on November 26, 1986, January 14, 1988 and June 30, 1988, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Attorney for licensee: Michael Miller, Esq., Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Daniel R. Muller.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: November 6, 1986, as supplemented February 24 and March 12, 1987; March 8 and June 10, 1988.

Description of amendment request: The proposed amendments would permit plant operation with the reactor coolant pump and steam generator supports redesigned in accordance with the fracture mechanics "leak-before-break" (LBB) technology as permitted by the revised General Design Criteria 4 (GDC–4) of Appendix A to 10 CFR 50. The amendments would add a license condition stating that the design of the reactor coolant pump and steam generator supports may be revised in accordance with the licensee's November 6, 1986 submittal, and supplemental information provided in letters dated February 24 and March 12, 1987; and March 8 and June 10, 1988.

The revised GDC–4 is based on the development of advanced fracture mechanics technology using the LBB concept. On October 27, 1987, a final rule was published in the **Federal Register** (52 FR 41288) to be effective November 27, 1987, amending GDC–4 of Appendix A to 10 CFR Part 50. The revised GDC–4 allows the use of analyses to eliminate from the design basis the dynamic effects of postulated pipe ruptures in high energy piping in nuclear power units. The new technology reflects an engineering advance which allows simultaneously an increase in safety, reduced worker radiation exposures, and lower construction and maintenance costs. Implementation permits the removal of pipe whip restraints and jet impingement barriers as well as other related changes in operating plants, plants under construction, and future plant designs. Containment design and emergency core cooling requirements are not influenced by this modification. The acceptable technical procedures and criteria are defined in NUREG–1061, Volume 3.

Based on the revised GDC–4, the licensee has requested approval for a redesign of the reactor coolant pump and steam generator supports at North Anna Units No. 1 and No. 2 (NA–1&2). The revised GDC–4 eliminates the need for consideration of postulated breaks in the reactor coolant system (RCS) primary loop piping and its effects such as pipe whip, jet impingement, asymmetric pressure loading, and primary component sub-compartment pressurization. Approval of the licensee's request will allow the elimination of certain snubbers which are now required solely to mitigate a pipe rupture event and to replace with rigid restraints certain snubbers which have minimal thermal movement. Specifically, approval of the licensee's request would allow the licensee to redesign the primary reactor coolant loop support as follows:

(1) Eliminate two snubbers per loop acting in a direction perpendicular to the reactor coolant hot leg at the steam generator upper support ring and replace them with rigid struts.

(2) Eliminate two snubbers per loop which are parallel to the reactor coolant cold leg at the reactor coolant pump support.

(3) Eliminate two snubbers per loop which are parallel to the reactor coolant hot leg at the steam generator lower support.

(4) Eliminate two of four snubbers per loop which are cross-over restraints between the reactor coolant pump support and the steam generator lower support.

(5) Eliminate the dynamic effect of postulated primary reactor coolant loop breaks from the remaining reactor coolant pump and steam generator supports.

The licensee's request is based upon the use of advanced fracture mechanics technology as applied to primary system piping in two Westinghouse Topical Reports: WACAP–9558, Revision 2 (May 1981), "Mechanistic Fracture Evaluation of Reactor Coolant Pipe Containing a Postulated Circumferential Through-Wall Crack"; WACAP–9787 (May 1981), "Tensile and Toughness Properties of Primary Piping Weld Metal for Use in Mechanistic Fracture Evaluation"; and Letter Report NS–EPR–2519, E.P. Rhae (Westinghouse) to D.G. Eisenhut (NRC) dated November 10, 1981. Approval by the NRC of the above Topical Reports is provided in Generic Letter 84–04 dated February 1, 1984, entitled "Safety Evaluation of Westinghouse Topical Reports Dealing with Elimination of Postulated Pipe Breaks in PWR Primary Main Loops."

Generic Letter 84–04 provided the NRC staff Safety Evaluation Report for analysis of materials submitted for a group of utilities operating PWR's to resolve Unresolved Safety Issue A–2. The staff evaluation concluded that provided certain conditions were met, an acceptable technical basis exists so that asymmetric blowdown loads resulting from large breaks in main coolant loop piping need not be considered as a design basis. NA–1&2 were not included with the group of plants for which the Unresolved Safety Issue A–2 was addressed. Therefore, to supplement the fracture mechanics studies performed for the A–2 Owner's Group, a plant-specific fracture mechanics study was undertaken for NA–1&2. Westinghouse reports WCAP–11163 and –11164, dated August 1986 and entitled "Technical Bases for Eliminating Large Primary Loop Pipe Rupture as a Structural Design Basis for North Anna, Units 1 & 2," were submitted by the licensee as part of the amendment request dated November 6, 1986. By letter dated March 8, 1988, the licensee submitted WCAP–11163, Supplement 1, entitled "Additional Information in Support of the Technical Justification for Eliminating Large Primary Loop Pipe Rupture as the Structural Design Basis for North Anna Units 1 and 2," dated January 1988, in response to the staff's request for additional information. The bases for WCAP–11163, Supplement 1 are consistent with the guidelines of NUREG–1061, Volume 3. In addition, the licensee referenced the Westinghouse reports WCAP–10456, "The Effects of Thermal Aging on the Structural Integrity of Cast Stainless Steel Piping for Westinghouse Nuclear Steam Supply Systems" dated November 1983, and WCAP–10931, "Toughness Criteria for Thermally Aged Cast Stainless Steel," Revision 1, dated July 1986. WCAP–10456 and WCAP–10931 have been previously reviewed by the staff.

WCAP–11163 and –11164, as well as the other references noted above, provide a substantial and adequate basis for eliminating postulated breaks in the NA–1&2 stainless steel reactor coolant system piping. These analyses demonstrate that the probability of rupturing such piping is extremely low under design basis conditions. The bases for the licensee's proposed amendment request are as follows:

(1) Extensive operating experience has demonstrated the integrity of the PWR RCS primary loop, including the fact that there has never been a leakage crack.

(2) Preservice and inservice inspections performed on the RCS piping minimize the possibility of flaws existing in such piping. The application of advanced fracture mechanics has demonstrated in other applications that if such flaws exist they will not grow to a leakage crack when subjected to the worst case loading condition over the life of the plant.

(3) If a large through-wall flaw is postulated, large margins against unstable crack extension exist for the stainless steel primary coolant piping even if subjected to the safe shutdown earthquake in combination with the loads associated with normal operation.

(4) Units have adequate leakage detection systems such that a postulated reference flaw would yield detectable leakage with margin when subjected to normal operating load condition.

The granting of the licensee's request would not affect: (1) ECCS design basis, (2) reactor containment building and compartment design basis, (3) equipment qualification basis, and (4) engineered safety feature systems response.

Finally, in addition to WCAP–11163, WCAP–11163, Revision 1 and WCAP–11164, which document the plant-specific fracture mechanics study, further information was submitted by the licensee in its November 6, 1986 submittal addressing loading and leakage detection systems evaluations as part of the proposed amendment request.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if 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 proposed change does not involve a significant hazards consideration because operation of NA–1&2 in accordance with this change would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The probability or consequences of an accident previously evaluated are not increased by the licensee's application of leak-before-break technology. Through proper application, the licensee has demonstrated that: (a) advanced fracture mechanics analysis is an acceptable alternative to maintaining systems or features solely to mitigate the consequences of postulated pipe ruptures; (b) that high safety margins are maintained for the remaining snubbers and rigid restraints as shown in the loading evaluation to mitigate the effects of all postulated events (except the now eliminated pipe rupture), (c) that the leakage detection systems are capable of detecting leakage from postulated through-wall flaws and allow operating personnel to take appropriate responses in a timely fashion; and (d) the ECCS design basis, reactor containment and compartment design basis, equipment qualification basis, and engineered safety feature system response are unaffected by this change.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. It has been demonstrated that one type of accident— a postulated RCS pipe rupture— has been eliminated from the design basis through application of leak-before-break technology. More specifically, the licensee's submittals have established that certain snubbers the licensee proposes to eliminate are required only to mitigate the effects of pipe rupture. The analyses have demonstrated that with the redesigned support system, (a) the loading of the primary loop is enveloped by the North Anna specific analysis which supplements and extends the generic analyses submitted by Westinghouse on behalf of the USI A–2 Owners Group, and approved by the NRC staff in Generic Letter 84–04 and NUREG–1061, Volume 3; and (b) the reactor coolant system equipment, piping and supports continue to have acceptable margins of safety under licensed loading conditions other than the now-eliminated RCS main loop rupture. The 18 snubbers which the licensee proposes to eliminate have been demonstrated to serve only as pipe whip restraints. The six snubbers proposed to be replaced with rigid struts exhibit minimal thermal movement.

(3) Involve a significant reduction in a margin of safety. The licensee's loading evaluation with the revised support load path configuration (i.e., snubbers removed) establishes that the piping components and supports are stressed within the Updated Final Safety Analysis Report acceptable limits.

Adequate safety margins exist in a seismic event in excess of code allowables and the forces and maximum moment in the reactor coolant loop piping is within the forces and moment

used in a plant-specific fracture mechanics analysis, which is an extension to an earlier fracture mechanics study approved by the NRC in Generic Letter 84–04 and in NUREG–1061, Volume 3.

Thus, the NRC staff proposes to determine that the standards for determining that the proposed amendments to the licenses involve no significant hazards considerations are met, and that operation of the facility in accordance with the proposed license amendments would not involve a significant hazards consideration.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: May 26, 1988.

Description of amendment request: The proposed amendments would modify Section 3/4.6, "Containment Systems" of the NA–1&2 Technical Specifications to reflect the use of the Mass-Point method for calculating containment leakage rates which is described in ANSI/ANS–56.8–1987, "Containment System Leakage Testing Requirements." The Mass-Point method is considered to be superior to the other methods used for determining the containment leakage rates. Also, the Bases would be changed to reflect the use of the ANSI ANS/56.8–1987 standard.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if 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.

Virginia Electric and Power Company (the licensee) has evaluated the change request against the standards provided above and has determined that:

(1) The proposed amendment [would] not involve an increase in the probability or consequences of an accident previously evaluated. The [Mass-Point] technique for calculation of the containment leakage rate is a newer, more accurate and NRC staff-endorsed method. It, or any other calculated method used to determine containment leakage rates during testing, is not considered to be an initiator of any accident previously evaluated.

The [Mass-Point] technique is judged to be a superior method for calculating containment leakage rates, and thereby a better method of verifying that leakage from the containment is maintained within allowable limits. By employing a more reliable calculational technique, the assessment of containment integrity, through integrated leak rate testing, is enhanced. As such, the consequences of previously evaluated accidents are not negatively impacted.

(2) The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment provides for the use of a newer, more accurate technique for calculation of the leakage rate during a containment integrated leak rate test. No possibility of a new or different kind of accident is created since the technique used to calculate leak rates in itself is not considered to be an initiator of any accident, transient, incident, or event.

(3) The proposed amendment does not involve a reduction in a margin of safety. The proposed change allows the use of the [Mass-Point] technique to calculate the leakage rate from the containment when performing a containment integrated leak rate test. The [Mass-Point] technique is a newer, more accurate method which has been endorsed by the NRC staff. By adopting this technique, [the licensee] will be able to make a more reliable determination of containment leakage during an integrated leak rate test. As such, the degree of confidence in containment integrity would be enhanced. Therefore, this proposed revision does not impact the margin of safety.

Based on the above evaluation, the licensee has determined that the proposed change involves no significant hazards considerations.

The NRC staff has made a preliminary review of the licensee's analyses of the proposed change and agrees with the licensee's conclusion that the three standards in 10 CFR 50.92(c) are met. Therefore, the staff proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: April 29, 1987, as supplemented July 29, 1988.

Description of amendment request: The amendment request was submitted to reflect personnel and department changes, correct a typographical error and make a minor wording change to clarify the intent of a specification. (52 FR 20805 June 3, 1987.) The July 29, 1988 submittal reflected additional personnel changes.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the pfoposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (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 licensee has evaluated the revised personnel titles and organization changes against the standards provided above and has determined that the changes would have no significant hazards consideration because they reflect an improvement in the management of various programs by increasing the level of detail afforded to them, thereby increasing safety. The staff agrees with this evaluation.

The Commission has provided examples (51 FR 7751) of amendments which are not likely to involve significant hazards considerations. One of these examples, (i), states: "A purely administrative change to the technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." The proposed correction of a typographical error and minor wording change to clarify the intent of a specification are administrative in nature and therefore are similar to example (i).

Based on the above, the staff proposes to determine that the proposed amendment would involve no significant hazards considerations.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: David Baker, Esq. Foley and Lardner, P.O. Box 2193 Orlando, Florida 31082.

NRC Project Director: Kenneth E. Perkins.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application 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 to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Alabama Power Company, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Dates of application for amendments: January 28, 1988, as supplemented May 20, 1988.

Description of amendments request: The amendments change the Technical Specifications to delete the Surveillance Specimen Withdrawal Schedule Table 4.4–5 from the Technical Specifications. Also, the portion of paragraph 4.4.10.1.2 relating to the reactor vessel material irradiation surveillance withdrawal table was removed from the Technical Specifications and relocated to the Final Safety Analysis Report. The program for surveillance of reactor vessel material will continue to be governed by 10 CFR Part 50, Appendix H.

Date of issuance: August 22, 1988.

Effective date: August 22, 1988.

Amendment Nos.: 79 and 71.

Facility Operating License Nos. NPF–2 and NPF–8. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** June 15, 1988 (53 FR 22398). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 22, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Arkansas Power & Light Company, Docket No. 50–313, Arkansas Nuclear One, Unit 1, Pope County, Arkansas

Date of amendment request: May 16, 1986.

Brief description of amendment: The amendment corrected a typographic error in TS Table 4.1–1, Item 43.a. The test frequency for the Engineered Safety Actuation System [ESAS] manual trip switches and logic was originally "R" which denotes once every 18 months. The "R" was inadvertently changed to "P" in a previous amendment which did not deal with the surveillance schedule of the ESAS.

Date of issuance: August 17, 1988.

Effective date: August 17, 1988.

Amendment No.: 110.

Facility Operating License No. DPR–51. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 30, 1986 (51 FR 27278). The Commission's related evaluation of the amendment is contained in a letter dated August 17, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Technical University, Russelville, Arkansas 72801.

Arkansas Power & Light Company, Docket No. 50–313, Arkansas Nuclear One, Unit 1, Pope County, Arkansas

Date of amendment request: March 20, 1985.

Brief description of amendment: The amendment deleted remaining portions of Sections 1.0, 2.0, 4.0, and 5.0 of the Appendix B Technical Specifications.

Date of issuance: August 17, 1988.

Effective date: August 17, 1988.

Amendment No.: 111.

Facility Operating License No. DPR–51. Amendment revised the Appendix B Technical Specifications.

Date of initial notice in **Federal Register:** June 19, 1985 (50 FR 25481). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 17, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Technical University, Russelville, Arkansas 72801.

Arkansas Power & Light Company, Docket No. 50–313, Arkansas Nuclear One, Unit 1, Pope County, Arkansas

Date of amendment request: June 10, 1988.

Brief description of amendment: The amendment revised Section 6 of the Technical Specifications to delete Figure 6.2–1, "Management Organization Chart" (offsite) and Figure 6.2–2, "Functional Organization Plant Operations."

Date of issuance: August 18, 1988.

Effective date: August 18, 1988.

Amendment No.: 112.

Facility Operating License No. DPR–51. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 13, 1988 (53 FR 26518) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 18, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Technical University, Russellville, Arkansas 72801.

Arkansas Power & Light Company, Docket No. 50–368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas

Date of applications for amendment: June 10, 1988.

Brief description of amendment: The amendment revised Section 6 of the Technical Specifications to delete Figure 6.2–1, "Management Organization Chart" (offsite) and Figure 6.2–2, "Functional Organization for Plant Operations."

Date of issuance: August 18, 1988.

Effective date: August 18, 1988.

Amendment No.: 87.

Facility Operating License No. NPF–6. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 13, 1988 (53 FR 26519) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 18, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Technical University, Russellville, Arkansas 72801.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Dates of application for amendment: February 1 and February 8, 1988.

Brief description of amendment: The amendment makes changes to control rod Bank-D configuration, increases the radial and total peaking factors $F_{delta\ H}$ and F_Q, addresses boron dilution/sliding shutdown margin and changes some miscellaneous technical specifications. The changes are needed so that the licensee can use higher enrichment fuel (up to 4.2 weight percent uranium 235), extend the fuel irradiation limits, and permit operation of longer fuel cycles.

Date of issuance: August 16, 1988.

Effective date: August 16, 1988.

Amendment No. 7.

Facility Operating License No. NPF–63. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 18, 1988 (53 FR 17777) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 16, 1988.

No significant hazards consideration comments received: No

Attorney for the Licensee: R.E. Jones, General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602.

Local Public Document Room location: Richard B. Harrison Library, 1313 New Bern Avenue, Raleigh, North Carolina 27610.

Commonwealth Edison Company, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Unit Nos. 2 and 3, Grundy County, Illinois

Date of application for amendments: April 25, 1988.

Brief description of amendments: The proposed amendment eliminates the average power range monitor scram requirement, removes the bypass permissive on the main steam line high radiation scram, reinserts the bypass permissive on the turbine control-loss of oil pressure scram, provides clarification, and the correction of a typographical error.

Date of issuance: August 24, 1988.

Effective date: August 24, 1988.

Amendment Nos.: 100, 96.

Provisional Operating License Nos. DPR–19 and and Facility Operating License No. DPR–25. The amendments revised the Technical Specifications. Date of initial notice in Federal Register: July 13, 1988 (53 FR 26520) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 24, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Consumers Power Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: May 26, 1987.

Brief description of amendment: This amendment revises the license conditions for the receipt, possession and use of byproduct, source and special nuclear material in accordance with a standard, generalized format that allows flexibility in amounts of such material in support of reactor operation.

Date of issuance: August 25, 1988.

Effective date: August 25, 1988.

Amendment No.: 114.

Provisional Operating License No. DPR–20. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** January 13, 1988 (53 FR 822) The Commission's related evaluation of the amendment is contained in a letter to Consumers Power Company dated August 25, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: December 17, 1986, as supplemented February 13, March 12, and September 8, 1987, and July 13, 1988.

Brief description of amendments: The amendments modified the Technical Specifications by deleting a portion of surveillance requirement 4.5.1.

Date of issuance: August 19, 1988.

Effective date: August 19, 1988.

Amendment Nos.: 91 and 72.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 12, 1987 (52 FR 7681). Because the March 12 and September 8, 1987, and July 13, 1988, submittals clarified certain aspects of the original request, the substance of the changes noticed in the **Federal Register** and the proposed no significant hazards determination were not affected.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 19, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Duke Power Company, Docket Nos. 50–269, 50–270 and 50–287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of application for amendments: December 2, 1986, November 9, 1987, and January 15, 1988.

Brief description of amendments: The amendments modified paragraphs 3.F. of the licenses to require compliance with the amended Physical Security Plan. This Plan was amended to conform to the requirements of 10 CFR 73.55.

Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of these amendments.

Date of issuance: August 19, 1988.

Effective date: August 19, 1988.

Amendment Nos.: 169, 169 and 166.

Facility Operating License Nos. DPR–38, DPR–47 and DPR–55. Amendments revised the operating licenses.

Date of initial notice in **Federal Register:** July 13, 1988 (53 FR 26522). The Commission's related evaluation of the amendments is contained in a letter to Duke Power Company dated August 19,

1988 and a Safeguards Evaluation Report dated August 19, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–366, Edwin I. Hatch Nuclear Plant, Unit 2, Appling County, Georgia

Date of application for amendment: January 27, 1987.

Brief description of amendment: The amendment modified the wording of Action Statment a.4 of Technical Specification (TS) 3.7.2.1 to state that the provisions of TS 3.0.4 are not applicable to the Standby Service Water System.

Date of issuance: August 18, 1988.

Effective date: August 18, 1988.

Amendment No.: 95.

Facility Operating License No. NPF–5. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 25, 1987 (52 FR 9569). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 18, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–424, Vogtle Electric Generating Plant, Unit 1, Burke County, Georgia

Date of application for amendment: May 19, 1988, supplemented July 5, 1988.

Brief description of amendment: The amendment modified the Technical Specifications to allow removal of portions of the temporary control room wall.

Date of issuance: August 17, 1988.

Effective date: August 17, 1988.

Amendment No.: 9.

Facility Operating License No. NPF–68: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 29, 1988 (53 FR 24510). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated Au9ust 17, 1988

No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–424, Vogtle Electric Generating Plant, Unit 1, Burke County, Georgia

Date of application for amendment: June 7, 1988.

Brief description of amendment: The amendment modified the Technical Specifications to allow the surveillance of thermal overload protection bypass devices to be performed during plant conditions other than shutdown.

Date of issuance: August 24, 1988.

Effective date: August 24, 1988.

Amendment No.: 10.

Facility Operating License No. NPF–68: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 13, 1988 (53 FR 26523). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 24, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Louisiana Power and Light Company, Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: March 31, 1988 supplemented June 2, 1988.

Brief description of amendment: The amendment revised the Technical Specifications by replacing a 31 day Channel Functional Test and 92 day Channel Calibration of the hydrogen analyzers with a more restrictive 31 day Channel Calibration.

Date of issuance: August 17, 1988.

Effective date: August 17, 1988.

Amendment No.: 42.

Facility Operating License No. NPF–38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 13, 1988 (53 FR 26525). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 17, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Northeast Nuclear Energy Company, et al., Docket No. 50–245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendment: December 22, 1986.

Brief description of amendment: The amendment changes the expiration date for the Millstone Unit 1, Facility Operating License, DPR–21, from May 19, 2006 to October 6, 2010.

Date of issuance: August 18, 1988.

Effective date: August 18, 1988.

Amendment No.: 19.

Facility Operating License No. DPR–21. Amendment revised the license expiration date.

Date of initial notice in **Federal Register:** February 11, 1987 (52 FR 4413). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 27, 1988, and Environmental Assessment dated August 4, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rqpe Ferry Road, Waterford, Connecticut 06385.

Northeast Nuclear Energy Company, et al., Docket No. 50–245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendment: September 27, 1987

Brief description of amendment: The technical specification change incorporates the requirements for a halon system in the control room as committed to by the licensee and documented in a November 6, 1985 NRC safety evaluation report. In addition, several upgrades/changes to the technical specifications regarding the other plant gaseous fire suppression systems have been made.

Date of issuance: August 19, 1988.

Effective date: August 19, 1988.

Amendment No.: 20.

Facility Operating License No. DPR–21. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 23, 1988 (53 FR 9508). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 19, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northeast Nuclear Energy Company, et al., Docket No. 50–245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendment: December 18, 1987.

Brief description of amendment: The amendment changes Technical Specification Section 3.7.A.3, "Primary Containment," and its associated Basis Section 3.7.A.1 by removing the permission to perform open vessel criticality and open vessel low power physics testing without containment integrity. Also, a change to Bases Section 3.5.E, "Isolation Condenser (IC) System," was made to remove reference to a special procedure in deference to Off-Normal Procedures and/or Emergency Operating Procedures. The licensee requested this change by letter dated June 1, 1987.

Date of issuance: August 19, 1988.

Effective date: August 19, 1988.

Amendment No.: 21.

Facility Operating License No. DPR–21. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 23, 1988 (53 FR 9509). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 19, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northeast Nuclear Energy Company, et al., Docket No. 50–245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendment: May 26, 1987.

Brief description of amendment: The technical specification change revises Section 3.9.B.5, and its associated Bases, by reducing the allowable outage time for a battery system from 7 days to 24 hours (with the restriction to be in cold shutdown in the next 24 hours).

An administrative change has been made to Sections 4.9.B.1.a and .b to correct an error made when Amendment No. 1 was issued on January 29, 1987. Also, Table 3.7.1 of the Technical Specification has been changed to correct an error when Amendment No. 11 was issued on September 8, 1987.

Date of issuance: August 22, 1988.

Effective date: August 22, 1988.

Amendment No.: 22.

Facility Operating License No. DPR–21. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 12, 1987 (52 FR 29922). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 22, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: May 17, 1988, as supplemented August 4, 1988. The supplemental application contains only a single editorial change and does not alter the proposed action or affect the initial no significant hazards consideration determination.

Brief description of amendment: The amendment revises the TS related to spiral core off-load/on-load refueling.

Date of issuance: August 26, 1988.

Effective date: August 26, 1988.

Amendment No.: 115.

Facility Operating License No. DPR–59. Amendment revised the Technical Specification.

Date of initial notice in **Federal Register:** July 13, 1988 (53 FR 26530). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 26, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Southern California Edison Company, et al., Docket No. 50–206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: August 27, 1987.

Brief description of amendment: The amendment revises the Technical Specifications to (1) incorporate changes in the licensee's organization, (2) incorporate changes to recent NRC correspondence requirements, (3) resolve conflicts in the reporting requirements and (4) revise audit requirements.

Date of issuance: August 3, 1988.

Effective date: This license amendment is effective the date of issuance and must be fully implemented no later than 30 days from date of issuance.

Amendment No.: 105.

Provisional Operating License No. DPR–13. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 29, 1988 (53 FR 24515). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 3, 1988.

No significant hazards consideration comments received: No comments.

Local Public Document Room location: General Library, University of California, Post Office Box 19557, Irvine, California 92713.

Southern California Edison Company, et al., Docket No. 50–206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: December 19, 1985, as supplemented April 28, 1987.

Brief description of amendment: The amendment reduces the number and frequency of diesel generator test starts.

Date of issuance: August 17, 1988.

Effective date: This license amendment is effective as of the date of issuance and must be fully implemented no later than 30 days from the date of issuance.

Amendment No.: 106.

Provisional Operating License No. DPR–13. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 23, 1986 (51 FR 15410). The April 28, 1987 letter provide supplemental information and did not change the staff's proposed determination of no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 17, 1988.

No significant hazards consideration comments received: No comments.

Local Public Document Room location: General Library, University of California, Post Office Box 19557, Irvine, California 92713.

Tennessee Valley Authority, Dockets Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: May 29, 1987, as supplemented April 13, 1988 (TS 231).

Brief description of amendments: The changes to the Browns Ferry Nuclear Plant (BFN) Technical Specifications (TS) prevent excessive testing and improve reliability of the diesel generators. The changes include:

1. Deleting the requirements for diesel generator testing whenever an emergency core cooling system (ECCS) train becomes inoperable.

2. Whenever another diesel generator or other electrical equipment is inoperable, the specifications are changed to require testing of the diesel

generators within 24 hours and verify power availability for the associated or remaining boards within 1 hour and at least once per 8 hours thereafter.

3. Adding Table 4.9.A which specifies diesel generator testing frequencies and reliability program.

4. Restricting the requirement for diesel generator fast starts to once per 184 days.

5. Requiring a log book to record diesel generator starts.

Date of issuance: August 19, 1988.

Effective date: August 19, 1988, and shall be implemented within 60 days.

Amendments Nos.: 153, 149, 124.

Facility Operating Licenses Nos. DPR–33, DPR–52 and DPR–68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 30, 1987 (52 FR 49232). The April 13, 1988 submittal does not make substantial changes to the original application, but clarifies the original application to better implement the recommendations of the generic letter.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 19, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket Nos. 50–327 and 50.328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: April 28 and June 9, 1988 (TS 88–07 and 88–05).

Brief description of amendments: The amendments (1) revise Table 3.6–2, "Containment Isolation Valves," to delete flow control valves 77–16 and 77–17 and Table 3.6–1, "Bypass Leakage Paths to the Auxiliary Building," to delete penetration X–81, and (2) revise Surveillance Requirements 4.0.3 and 4.0.4 to incorporate the NRC Generic Letter 87–09 requirements.

Date of issuance: August 15, 1988.

Effective date: August 15, 1988.

Amendment Nos.: 78, 69.

Facility Operating Licenses Nos. DPR–77 and DPR–79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 1, 1988 (53 FR 20047) and June 29, 1988 (53 FR 24518), respectively.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 15, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: June 20, 1988 (TS 88–21).

Brief description of amendments: These amendments modify the Sequoyah (SQN) Units 1 and 2 Technical Specifications (TS). The change revises the limiting condition for operation (LCO) 3.7.5 to increase the maximum allowable ultimate heat sink (UHS) temperature from 83 degrees Fahrenheit (°F) to 84.5 °F and to add requirements on the minimum allowable river water level. The minimum allowable river elevation is 670 ft. msl. The maximum allowable UHS temperature is 83 °F. When the river water elevation is above 680 ft., the maximum allowable UHS water temperature may be less than or equal to 84.5 °F. This is a small change from TVA's application and does not change the substance of the Notice of Consideration of an amendment which the staff issued in the **Federal Register** on July 1, 1988 on TVA's application for TS 88–21. TVA agreed to this small change to its application in a telephone conference call on August 11, 1988.

In addition, the wording of LCO 3.7.5 and surveillance requirement (SR) 4.7.5 is modified to clearly specify that the UHS temperature limit applies to the essential raw cooling water (ERCW) supply header water temperature, the action statement and the surveillance requirements are modified to be consistent with the addition of an LCO for the reservoir level, and the bases are modified to reflect these changes.

The SR 4.7.5.2 for Unit 1 is also deleted because it was inadvertently reissued in Amendment 12 dated March 25, 1982 after being deleted in Amendment 8 dated July 5, 1981.

Date of issuance: August 15, 1988.

Effective date: August 15, 1988.

Amendment Nos.: 79, 70.

Facility Operating Licenses Nos. DPR–77 and DPR–79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 1, 1988 (53 FR 25023). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 15, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of applications for amendments: August 14, November 10, and December 28, 1987 (TS 87–36, 87–42 and 87–43).

Brief description of amendments: These amendments, based on the applications dated November 10 and December 28, 1987 (TS 87–42 and 87–43), revise Table 3.8–2, Motor Operated Valves Thermal Overload Protection, and Surveillance Requirement (SR) 4.6.2.1.b, Containment Spray System, of the Sequoyah Units 1 and 2 Technical Specifications (TS). The revisions are to (1) add three motor operated valves to Table 3.8–2 and (2) revise the SR on the containment spray pumps to require a differental pressure of greater than or equal to 143 psi differential (psid) pressure at a pump flow rate greater than or equal to 4750 gpm. The application dated December 28, 1987 withdrew the earlier application dated August 14, 1987 (TS 87–36).

Date of issuance: August 16, 1988.

Effective date: August 16, 1988.

Amendment Nos.: 80, 71.

Facility Operating Licenses Nos. DPR–77 and DPR–79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** (TS 87–42) February 10, 1988 (53 FR 3960) and (TS 87–43) April 20, 1988 (53 FR 13022), respectively. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 16, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio.Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: February 12, 1988 as amended May 20, 1988.

Brief description of amendment: The amendment revised the limiting conditions for operation related to reactor coolant system leakage detection methods.

Date of issuance: August 18, 1988.

Effective date: August 18, 1988.

Amendment No. 16.

Facility Operating License No. NPF-58. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 19, 1988 (53 FR 5062) and June 16, 1988 (53 FR 22590).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 18, 1988

No significant hazards consideration comments received: Yes

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: November 26, 1986 as supplemented by letters dated December 2, 1986, February 12, October 9, and October 16, 1987; and January 5 and March 16, 1988.

Brief description of amendment: The amendment modifies paragraph 3.G. of the license to require compliance with the amended Physical Security Plan.

Date of issuance: August 25, 1988.

Effective date: August 25, 1988.

Amendment No.: 107.

Facility Operating License No. DPR-28: Amendment revised the license.

Date of initial notice in **Federal Register:** May 4, 1988 (53 FR 15919) and May 18, 1988 (53 FR 17794).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 25, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: May 25, 1988.

Brief description of amendments: These amendments revised Table 6.1–1, "Minimum Shift Crew Composition" of the Technical Specifications for Surry Units 1 and 2, to increase the minimum shift manning requirements for Auxiliary Operators (AO) from three to four. This change provides additional assurance for compliance with the requirements of 10 CFR Part 50, Appendix R.

Date of issuance: August 1, 1988.

Effective date: August 1, 1988.

Amendment Nos. 123 and 123.

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 29, 1988 (53 FR 24522) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 1, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION

During the period since publication of the last biweekly notice, individual notices of issuance of amendments have been issued for the facilities as listed below. These notices were previously published as separate individual notices. They are repeated here because this biweekly notice lists all amendments that have been issued for which the Commission has made a final determination that an amendment involves no significant hazards consideration.

In this case, a prior Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing was issued, a hearing was requested, and the amendment was issued before any hearing because the Commission made a final determination that the amendment involves no significant hazards consideration.

Details are contained in the individual notice as cited.

Sacramento Municipal Utility District, Docket Nos. 50–312, Rancho Seco Nuclear Generating Station, Sacramento, California

Date of amendment request: July 1, 1988.

Brief description of amendment: The amendment revises the Technical Specifications relating to Section 6.0, Administrative Controls, by removing the organization charts.

Date of publication of individual notice in **Federal Register:** August 12, 1988 (53 FR 30501).

Expiration date of individual notice: September 12, 1988.

Local Public Document Room location: Sacramento Public Library, 828 I Street, Sacramento, California 95814.

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: July 15, 1988.

Brief description of amendment: The amendment would delete License Condition 2.C.(3)(t) and would incorporate Item 2 of the condition as a Technical Specification surveillance requirement. Additionally, the applicability of TS Section 4.0.4 to Auxiliary Feedwater Surveillance Requirements would be clarified.

Date of individual notice in **Federal Register:** August 16, 1988 (53 FR 30881).

Expiration date of individual notice: September 15, 1988.

Local Public Document Room location: University of Toledo Library,. *Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.*

Public Service Company of New Hampshire Docket No. 50–443, Seabrook Station, Unit 1, Rockingham County, New Hampshire

Date of amendment request: July 8, 1988 as supplemented on August 8,. 1988

Description of amendment request: Revise the technical specification setpoints for the pressurizer pressure, pressurizer water level, and steam generator water level channels as a result of replacing the Veritrak/Tobar transmitters with Rosemount transmitters.

Date of publication of individual notice in **Federal Register:** August 26, 1988 (53 FR 32805).

Expiration date of individual notice: September 26, 1988.

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, New Hampshire 03833.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that 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.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a Federal Register notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By October 7, 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 this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-

(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to [*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Power Authority of The State of New York, Docket No. 50–286, Indian Point Unit No. 3, Westchester County, New York

Date of application for amendment: August 16, 1988, as supplemented August 18, 1988.

Brief description of amendment: The amendment revises Technical Specification 3 to permit the plant to operate with a service water temperature above 90 °F for up to seven hours before reaching the hot shutdown condition via normal operating procedures. This Technical Specification will expire on October 1, 1988.

Date of issuance: August 19, 1988.

Effective date: August 19, 1988.

Amendment No : 82.

Facility Operating License No. DPR–64: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment, consultation with the State, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated August 19, 1988.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra, Director.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: August 4, 1988, as supplemented August 5, 10, 16 and 18, 1988.

Brief description of amendment request: This amendment temporarily raises the design limit for the maximum service water inlet temperature to 90 °F to accommodate the increase in Hudson River water temperature resulting from a combination of a prolonged drought and heat wave. The previous temperature limit provided by Technical Specification (TS) 5.2.C, "Containment Systems," TS Basis page 3.3–10, and Updated Final Safety Analysis Report Table 9.6–1, "Essential Service Water Requirements at 75 °F River Water Temperature," was 85 °F. This 85 °F temperature limit shall be reinstated at 12:01 a.m. on October 1, 1988. The licensee has committed to placing the plant in hot shutdown within five hours, through an orderly plant shutdown utilizing normal plant operating procedures, if service water temperature remains above 90 °F over a two hour period.

Date of issuance: August 19, 1988.

Effective date: This license amendment is temporary and is to be used only once. This amendment became effective upon issuance on August 19, 1988 and shall expire at 12:01 a.m. on October 1, 1988.

Amendment No.: 135.

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications, Technical Specification Basis and the Updated Final Safety Analysis Report.

Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated August 19, 1988.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

NRC Project Director: Robert A. Capra, Director.

Dated at Rockville, Maryland, this 1st day of September 1988.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[Docket No. 50–364]

Alabama Power Co.; Exemption

I.

Alabama Power Company (the licensee) is the holder of Facility Operating License No. NPF–8, which authorizes operation of the Joseph M. Farley Nuclear Plant, Unit 2 (Farley 2 or Unit 2), a pressurized water reactor located in Houston County near Dothan, Alabama. The license provides, among other things, that the facility is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II.

Section 50.55a(g)(4)(ii) to 10 CFR Part 50 requires that inservice examinations of components, inservice tests to verify operational readiness of pumps and valves whose function is required for safety, and system pressure tests, shall comply with requirements of the lastest Edition and Addenda of the ASME Code for each successive 120-month inspection interval. These intervals start from the date of commercial operation of the facility. Thus, the second ten-year interval for Farley 2 would begin on July 31, 1991.

By letter dated June 22, 1988, the licensee requested an exemption from 10 CFR 50.55a(g)(4)(ii) from the next schedule for updating (July 31, 1991) the Inservice Inspection (ISI) Program and Inservice Testing (IST) Program for Farley 2.

The licensee proposes to make the Unit 2 ISI and IST programs essentially identical to the existing Unit 1 program. The licensee proposes to implement the ASME Code 1983 Edition and Summer 1983 Addenda during the Farley 2 sixth refueling outage (March 1989) for the remainder of the Farley 2 first ten-year interval. The 1983 Edition and Summer 1983 Addenda would remain effective for the Farley 2 second ten-year interval which commences on July 31, 1991. In support of its, request, the licensee provided supporting reasons for issuance of an exemption from the program update requirements of 10 CFR 50.55a(g)(4(ii) pursuant to 10 CFR 50.12 for Farley 2.

III.

The Commission staff has reviewed the request and has determined that this

action would provide a common ASME Code of record start date for Farley 1 and Farley 2. Inherent administrative, technical, and cost-saving advantages for the licensee and for the Commission staff are apparent. Without granting of the exemption, the licensee would prepare and implement ISI and IST programs for Unit 2, which are different from those being reviewed for Unit 1, using ASME Code Editions and Addenda existing one year prior to the July 31, 1991 start date of the next 120-month interval. The Commission staff would then be required to review the separate programs and associated relief requests for Farley 2.

The Farley 1 ISI and IST updated programs implemented on December 1, 1987, remain under review by the staff. The Farley 2 programs would be made similar to these Farley 1 programs. The staff has determined that:

1. The Farley units are nearly identical designs and only one ISI and IST program will be adequate to meet the basic intent of 10 CFR 50.55a(g). Application of a strict reading of the rule is not necessary to achieve the underlying purpose of the rule and, therefore, the special circumstances required by 10 CFR 50.12(2)(ii) are met.

2. There should be minimal or no increase in risk of failure of safety related pumps, valves and other components resulting from the use of common ISI and IST programs for the remainder of the operating life of the two units.

3. The use of only one program instead of two separate programs by operators and maintenance personnel will increase plant safety through the simplification and standardization of plant testing procedures and testing requirements. The use of uniform procedures for both units may reduce the chance of personnel errors during tests and surveillances.

4. The change will result in a savings of manpower requirements for the licensee, as well as for the Commission staff.

The purpose of the rule, as it currently exists, is to assure periodic updating of ISI and IST practices to conform to industry changes on a 120-month schedule in order that any improvements in code provisions may be periodically incorporated in plant inspection and testing programs. Section XI Code changes generally deal with practical considerations of implementation or the application of new developments. The safety aspects of the code remain relatively unchanged from edition to edition. The Unit 2 programs will be updated three years ahead of the next required update. The Unit 1 programs now under staff review were updated in 1987 to the 1983 Edition through the Summer 1983 Addenda of the ASME Code. Thus, the Unit 1 and Unit 2 programs would both utilize the 1983 Edition through the Summer 1983 Addenda until December 1, 1997. Updating the Farley 2 program three years in advance of the required update is consistent with the purpose of the regulation and will provide a level of safety comparable to the later code and will incorporate code improvement earlier than required.

The licensee states that an attempt has been made to complete the maximum number of ISI inspections permitted by the Code for Farley 2 during the first two inspection periods. Since the third forty-month ISI period for Farley 2 began on March 30, 1988, the only remaining refueling outages (March 1989 and September 1990) do not allow sufficient time to complete all remaining inspections to the 1974 Edition. Therefore, the licensee proposes to use the 1983 Edition through the Summer 1983 Addenda of the ASME Code for the third forty-month period of the first ten-year interval on Farley 2. Because the later Code Edition and Addenda will provide adequate assurance of the integrity of safety related pumps, valves or other components, the Commission staff finds this acceptable.

In order to provide the licensee with administrative flexibility and yet meet the intent of the regulation to update ISI and IST programs at 120-month intervals, the staff has determined that an exemption to 10 CFR 50.55a(g)(4)(ii), as requested by the licensee pursuant to 10 CFR 50.12, should be granted.

IV.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption requested by the licensee's letter of June 22, 1988 is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest and that special circumstances are present as set forth in 10 CFR 50.12(a)(2)(ii). The Commission hereby grants the licensee an exemption from the requirements of 10 CFR 50.55a(g)(4)(ii), as it relates to the 120-month inspection interval for inservice examination of components, inservice tests to verify operational readiness of pumps and valves, and system pressure tests for Farley 2.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this exemption will have no significant impact on the environment (53 FR 32950).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 31st day of August, 1988.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-20252 Filed 9-6-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-320]

GPU Nuclear Corp.; Exemption

I

GPU Nuclear Corporation, Metropolitan Edison Company, Jersey Central Power and Light Company and Pennsylvania Electric Company (collectively, the licensee) are the holders of Facility Operating License No. DPR-73, which had authorized operation of the Three Mile Island Nuclear Station, Unit 2 (TMI-2) at power levels up to 2772 megawatts thermal. The facility, which is located in Londonderry Township, Dauphin County, Pennsylvania, is a pressurized water reactor previously used for the commercial generation of electricity.

By Order for Modification of License, dated July 20, 1979, the licensee's authority to operate the facility was suspended and the licensee's authority was limited to maintenance of the facility in the present shutdown cooling mode (44 FR 45271). By further Order of the Director, Office of Nuclear Reactor Regulation, dated February 11,1980, a new set of formal license requirements was imposed to reflect the post-accident condition of the facility and to asure the continued maintenance of the current safe, stable, long-term cooling condition of the facility (45 FR 11292). The license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

II

By letter dated December 28, 1987, which discussed Revision 3 of the TMI-2 Licensed Operator Requalification Progam, the licensee requested exemptions from requirements of 10 CFR 55.59, "Requalification." Specifically, the licensee requested exemption from the requirements of 10 CFR 55.59(c)(2), Lectures, subjects (iv) and (v). Subsection (2) to 10 CFR 55.59(c) requires that the operator requalification program contain preplanned lectures on

a regular and continuing basis throughout the license period in areas where emphasis in scope and depth of coverage is needed. Nine topics are listed in the regulations. The licensee has requested exemption from topics (iv) Plant protection systems and (v) Engineered safety systems.

The licensee has also requested exemption from § 55.59(c)(3), On-the-Job Training, subsection (i), items (A) thorugh (AA). The regulations required under § 55.59(c)(3) that the requalification program include on-the-job training so that each licensed operator munipulates the plant controls and each licensed senior operator either manipulates the controls or directs the activities of individuals during plant control manipulations. The manipulation must consist of a set of specified manipulations corresponding to various plant evolutions applicable to the plant design. Section 10 CFR 55.59(c)(3)(i)(A) through (AA) specifies the various plant evolutions for which all operators will be required to manipulate the facility controls annually or in some cases biannually during the term of the licensed operator's or senior operator's license. They can be performed at the plant or on a simulator. The manipulations required include plant startup, plant shutdown, manual control of feedwater, loss of coolant events, turbine trip, reactor trip, and loss of electric power.

III

TMI–2 is currently in a post-accident, cold shutdown, long-term cleanup mode, with sufficient decay heat removal assured by direct heat loss from the reactor coolant system to the reactor building atmosphere. The licensee is presently engaged in defueling the damaged reactor, decontaminating the facility and readying the plant for long-term storage. The requirements to maintain safety related systems have been deleted from the TMI–2 operating license. The present unconventional configuration of the TMI–2 plant does not allow the conventional evolutions normal to an operating facility.

The licensee has requested exemption from the requirement to include preplanned lectures in the requalification program throughout the individual's license period on Plant Protection Systems and Engineering Safety Systems.

The Reactor Protection and the Engineereing Safety Features Actuation System constitute the Plant Protection Systems at TMI–2. Both of these systems have been disabled. The Reactor Protection System is currently used only for plant monitoring. The monitoring capability of the portions of the system that are still functioning are addressed in the "Plant Instrumentation and Control Systems" lecture.

There currently is no requirement in the TMI–2 license to maintain the Engineered Safety Features Actuation System and no training on this system is included in the requalification program.

The licensee has also requested that they be exempted from control manipulations required by 10 CFR 55.59(c)(3)(i), subsections (A) through (AA). In lieu of the requirements to perform the specific manipulations required by the regulations, the licensee has included in the TMI–2 Licensed Operator Requalification Training Program abnormal and emergency evolutions that are applicable to TMI–2 in its current condition. These evolutions provide a more meaningful requalification training program for the TMI–2 licensed operators. The licensee believes that the current requalification program, which specifies completion of specific evolutions through the plant drill program, satisfies the intent of the regulation.

Verification by an NRC subject matter expert has confirmed that exemptions to the requirement sof 10 CFR 55.59(c)(2) and 10 CFR 55.59(c)(3)(i) are appropriate and relevant to the present conditions of TMI–2.

IV

Accordingly, the Commission has determined that pursuant to 10 CFR 55.11, these exemptions are authorized by law, will not endanger life or property and are otherwise in the public interest.

Accordingly, the Commission hereby grants exemption from the requirements of 10 CFR 55.59(c)(2), subsections (iv) and (v), and 10 CFR 55.59(c)(3)(i) items (A) through (AA).

Pursuant to 10 CFR 51.32, the commission has determined that granting of this exemption will have no significant impact on the environment (53 FR 33562).

This exemption is effective as of the date of issuance.

Dated at Rockville, Maryland, this 31st day of August, 1988.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I/II
Office of Nuclear Reactor Regulation.

[FR Doc. 88–20253 Filed 9–6–88; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 030–20318; License No. 35–23155–01 EA 88–166]

Midwest Wireline Logging and Perforating, Inc.; Order Suspending License And Order To Show Cause Why License Should Not Be Revoked (Effective Immediately)

I

Midwest Wireline logging and Perforating, Inc. (licensee), doing business as Midwest Logging and Perforating, Inc., is the holder of Material License No. 35–23155–01 issued by the Nuclear Regulatory Commission (NRC or Commission) on November 30, 1984. The license is due to expire on November 30, 1989. The license authorizes the licensee to possess and use sealed sources of americium–241 and cesium–137 for oil and gas well logging.

II

On June 8, 1988, and NRC Region IV inspector conducted an inspection at the licensee's facility in Seminole, Oklahoma. On the morning of June 8, the NRC inspector found Mr. Steven Smith, the licensee's owner and operator, preparing to depart the licensee's facility with a 3-curie americium well-logging source loaded on the licensee's truck, for what Mr. Smith stated would be his first opportunity to use the source that he had obtained in November 1987. Though the license listed another individual as the RSO, Mr. Smith stated that this individual no longer worked for the licensee, and that Mr. Smith was acting as the RSO. Mr. Smith stated that the source had been kept in the licensee's storage facility until that morning. The inspection disclosed 23 apparent violations of NRC and license requirements. They are:

1. The licensee's failure to amend its license to list the correct Radiation Safety Officer as required by License Condition 18.

2. The licensee's failure to train a worker as required by 10 CFR 19.12.

3. The licensee's failure to conduct a 6-month physical inventory of sealed sources as required by License Condition 16.

4. The licensee's failure to maintain a utilization log as required by License Condition 18.

5. The licensee's unauthorized possession of a sealed source in violation of License Condition 6.

6. The licensee's failure to have a calibrated and operable survey meter as required by 10 CFR 39.33(a).

7. The licensee's failure to perform an inspection of the source holder, logging

tools, and source handling tools for defects before use is required by 10 CFR 39.43(a).

8. The licensee's failure to have a program for semiannual inspections and routine maintenance of equipment as required by 10 CFR 39.43(b).

9. The licensee's failure to label a transportation container with the radiation caution symbol and the words "CAUTION RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL" as required by 10 CFR 20.203(f) (1) and (2).

10. The licensee's failure to post warning signs on the radioactive material storage areas as required by 10 CFR 20.203(e)(1).

11. The licensee's failure to post 10 CFR Parts 19 and 20, the license, license conditions, documents incorporated into a license by reference, and the operating procedures as required by 10 CFR 19.11 (a) and (b).

12. The licensee's failure to post Form NRC–3, "Notice to Employees" as required by 10 CFR 19.11(c).

13. The licensee's failure to perform a radiation survey of the vehicle before transporting licensed material as required by 10 CFR 30.67(b).

14. The licensee's failure to perform surveys of unrestricted areas as required by 10 CFR 20.201 (a) and (b).

15. The licensee's failure to perform quarterly surveys of the radioactive materials storage areas as required by License Condition 18.

16. The licensee's failure to perform leak tests of the sealed source at the required 6-month frequency as required by License Condition 13.

17. The licensee's failure to establish and maintain procedures for safely opening packages in which licensed material is received as required by § 20.205(a).

18. The licensee's failure to keep a record of receipt of radioactive material as required by 10 CFR 30.51(a).

19. The licensee's failure to prepare shipping papers for each shipment of radioactive material as required by 10 CFR 71.5(a) and 49 CFR 172.200(a).

20. The licensee's failure to label a container of radioactive material used in transportation with the appropriate RADIOACTIVE WHITE—I, RADIOACTIVE YELLOW—II, or RADIOACTIVE YELLOW—III labels as required by 10 CFR 71.5(a) and 49 CFR 172.403.

21. The licensee's failure to maintain Department of Transportation Specification 7A performance test records on file as required by 10 CFR 71.5(a) and 49 CFR 173.415(a).

22. The licensee's failure to maintain special form material safety analysis records on file for the source design as required by 10 CFR 71.5(a) and 49 CFR 173.476(a).

23. The licensee's failure to examine or perform appropriate tests of a radioactive material package before shipment to ensure that external radiation and contamination levels were within allowable limits as required by 10 CFR 71.5(a) and 49 CFR 173.475(i).

At the conclusion of the inspection, the NRC inspector recommended, due to Mr. Smith's lack of understanding of regulatory requirements, that the licensed radioactive material be locked in the licensee's storage bunker until NRC concurred on the resumption of licensed operations. The licensee agreed to do so. This commitment was formalized by a Confirmation of Action Letter dated June 9, 1988. Subsequently, additional information regarding the licensee's activities was obtained by telephone interviews.

On July 19, 1988, an enforcement conference was conducted with Mr. Smith in NRC Region IV's offices in Arlington, Texas. During the enforcement conference, Mr. Smith stated that he had formed the company with a relative, and that the license application had been prepared by a third party. He said that his relative served as the Radiation Safety Officer until he (Mr. Smith) purchased all company stock in 1986. Mr. Smith said that at the time of the inspection he employed only one other person. He acknowledged that the violations had occurred and that prior to the inspection he had never read the license nor was he aware of most of the regulations that he had apparently violated. Further, he stated that he would have to seek additional training for himself and his employee in order to obtain the knowledge to understand the NRC rules and regulations which apply to the license.

III

During the NRC inspection of June 8, 1988, the licensee's equipment, training of an employee, and knowledge of its license, license conditions, and NRC regulations were demonstrated to be inadequate to protect health and minimize danger to life and property. Based on the numerous apparent violations identified, including failure of the licensee to comply with NRC approved-procedures in its radiation protection program, the licensee apparently is either unwilling or unable to meet Commission regulations. Based on the above, I find that the licensee at the minimum has acted in careless disregard for the Commission's regulatory requirements. In addition, I find that the licensee's continued operations may endanger the public health, safety, and interest. Therefore, I lack the requisite reasonable assurance that the licensee will comply with Commission requirements in the future and have determined that License No. 35–23155–01 be formally suspended. I have further determined that, pursuant to 10 CFR 2.201(c), no prior notice of violation is required and that, pursuant to 10 CFR 2.202(f), the suspension should be effective immediately pending further Order.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 30 and 39, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

A. License No. 35–23155–01 is suspended pending further order and the licensee shall not use byproduct material in its possession or receive byproduct material except as provided for in Section IV.B.

B. The licensee shall, (1) continue to store all byproduct material in its possession in locked storage, (2) within 20 days of this Order transfer all licensed material to an authorized recipient, and (3) notify Region IV within 25 days of the date of this Order of the completion of these actions and the identity of the recipient of the byproduct material.

C. The licensee shall show cause, in accordance with Section V below, why License No. 35–23155–01 should not be revoked.

The Regional Administrator, NRC Region IV, may, in writing, relax or rescind any of the provisions in Section IV upon demonstration of good cause by the licensee.

V

Pursuant to 10 CFR 2.202(b), the licensee may show cause why this Order should not have been issued and why its license should not be revoked by filing a written answer under oath or affirmation within 20 days of the date of issuance of this Order, setting forth the matters of fact and law on which the licensee relies. The licensee also may answer this Order by consenting to the revocation of License No. 35–23155–01. Upon consent of the licensee to the revocation of its license, or upon the licensee's failure to file an answer within the specified time, the Deputy Executive Director for Regional Operations may issue without further

notice an Order revoking License No. 35–23155–01.

VI

Pursuant to 10 CFR 2.202(b), the licensee or any other person adversely affected by this Order may request a hearing within 20 days of the date of this Order. Any answer to this Order or request for hearing shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Enforcement, Office of the General Counsel, at the same address and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and should address the criteria set forth in 10 CFR 2.714(d). An answer to this order or a request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is requested, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such a hearing shall be whether this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 29th day of August 1988.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 88–20254 Filed 9–6–88; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Incorporated

August 31, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Atlanta Gas & Light Co.
Common Stock, $5.00 par value (File No. 7–3865)
Comstock Partners Strategy Fund, Inc.
Common Stock, $.001 par value (File No. 7–3866)
Michigan Consolidated Gas Co.
Common Stock, $1.00 par value (File No. 7–3867)
Nuveen California Municipal Income Fund, Inc.
Common Stock, $.01 par value (File No. 7–3868)
Nuveen Municipal Income Fund, Inc.
Common Stock, $0.1 par value (File No. 7–3869)
Prudential Intermediate Income
Common Stock, $0.1 par value (File No. 7–3870)
ACM Government Spectrum Fund, Inc.
Common Stock, $0.1 par value (File No. 7–3871)
Teleconnect Co.
Common Stock, $0.7 par value (File No. 7–3872)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 22, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–20231 Filed 9–6–88; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. EX88–2; Notice 2]

Officine Alfieri Maserati S.p.A.; Denial of Petition for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

This notice denies the petition by Officine Alfieri Maserati S.p.A. (Maserati) of Modena, Italy, through Maserati Automobiles Incorporated (MAI) of Baltimore, MD, for a temporary exemption from the passive restraint requirements of Motor Vehicle Safety Standard No. 208, *Occupant Restraint Systems,* which would cover vehicles manufactured from April 1, 1988, to September 1, 1989. The basis of Maserati's petition was "that compliance would cause [it] substantial economic hardship and that [it] has, in good faith, attempted to comply with [the] standard from which it requests to be exempted." (15 U.S.C. 1410(a)(1)(A)). If the Administrator is unable to grant an exemption on that basis, Maserati requested an exemption on the basis "that requiring compliance would prevent [it] from selling a motor vehicle whose overall level of safety is equivalent to or exceeds that of nonexempted motor vehicles." (Section 1410(a)(1)(D)).

Notice of receipt of the petition was published on July 27, 1988, and an opportunity afforded for comment (53 FR 28324).

Maserati/MAI argue that "notwithstanding a good faith effort to research and develop passive restraints over the last seven (7) years, significant financial hardships prevented the Company from developing a passive system in time to comply with the phase-in requirements." Through 1981, Maserati produced only 350 cars a year for all markets, but at the end of 1982 introduced the Biturbo series with the intent of providing vehicles of broader appeal. Present management took control of Maserati at the end of 1984, and "investments by minority shareholders during late 1986" allowed Maserati to begin a new round of product development in 1987. These investments were also required for its expenditure "of significant sums on Chrysler-oriented programs and programs to enhance fuel economy and improve emission control." No Maseratis were manufactured for the U.S. market between September 1987 and April 1988. However, before September 1, 1988, Maserati wished to import revised variations of its Biturbo series and a new larger sport coupe which will be manufactured between April 1, 1988, and September 1, 1988 ("the 1988 period"). The petitioner sought exemption for these vehicles, as well as for those produced between September 1, 1988, and September 1, 1989 ("the 1989 period"). Maserati estimates that importation for the 1988 period will be 400 units excluding convertibles, and, for the 1989 period, 1,500 units excluding convertibles. To comply with the phase-in requirements of Standard No. 208 at these production levels, passive restraints would have to be installed in 25% of the 1988 period imports (or 100 vehicles) and 40% of cars

imported in the 1989 period (or 600 vehicles). Maserati/MAI argue that Maserati is not capable of producing these cars with passive restraints, and that even if it were, the cost to conform "would impose an enormous financial hardship of the Company."

More specifically, Maserati states that a feasibility study of passive restraints was conducted in 1981, which was not pursued in the aftermath of the agency's rescission of the rule later that year. In 1984, when the current phase-in requirement was adopted, Maserati's limited resources did not allow the immediate devotion of money and manpower to a passive restraint program, especially in view of the "on again off again" history of the passive restraint requirement, and the possibility that mandatory seat belt laws might nullify the requirement. In the spring of 1985, the petitioner contacted a German consultant who developed a system which "was not well received at Maserati. The dissatisfaction focused on the system's unattractive and 'cheap' appearance which would not meet with customer acceptance * * *" The same consultant subsequently developed a motorized belt system in 1986, but Maserati concluded that it "was quite complex and of questionable adaptability to Maserati vehicles." Maserati thereafter concluded it would have to develop an airbag system, which it could install in 100% of its production including convertibles, instead of a motorized system which it could install only in non-convertibles destined for the U.S. Under its current plans, production of driver side air bags will commence by May–June 1989, with passenger side airbag production beginning 6 to 8 months later. Thus, the company believes it has made a good faith effort to meet the standard.

With respect to economic hardship, during the period Maserati was investigating the feasibility of passive restraints, the company incurred severe losses, principally due to declining sales. In 1985, at 1988 exchange rates, it lost over $14,000,000, which increased to almost $26,000,000 in 1986 with even greater losses anticipated for 1987. Denial of the petition would result in the halting of U.S. Maserati sales (20–30% of its total), which it views as a "fatal blow", as well as closure of MAI. An exemption will allow development and introduction of air bags (rather than passive belts), first on the driver side, and within six months, on the passenger side too. Maserati also expresses a willingness "to undertake a reasonable seat belt use program during the 1988 and 1989 (exempted) periods through a direct mailing, an advertising campaign, or similar program."

Maserati also petitioned for exemption on an alternate basis, that an exemption would permit it to sell a vehicle whose overall level of safety equals or exceeds that of a non-exempted one. Such an exemption would cover the importation of up to 2,500 vehicles in any 12-month period that the exemption is in effect. Maserati's planned importation for the 1988 and 1989 periods would be far less than this amount. MAI would import vehicles containing a safety belt interlock system "which would prevent the starting of the vehicle unless the driver's and, if occupied, the passenger's safety belts were attached." Such a system would be installed on all of the vehicles and not simply the percentages subject to the phase-in requirements, thus assuring "a greater level of motor vehicle safety than compliance with the passive restraint phase-in would achieve." Assembly-line installation of the interlock system would begin upon issuance of a grant, and to the extent feasible Maserati would retrofit cars already produced in the 1988 and 1989 periods.

Although 15 U.S.C. 1410b(b)(1) prohibits a Federal motor vehicle safety standard from requiring or permitting compliance with the standard by means of a safety belt interlock system, Maserati argued that this prohibition is inapplicable to it. Because it is requesting an exemption from Standard No. 208, it would not be complying with Standard No. 208 on the basis of an interlock.

No comments were received on the petition.

Pursuant to 15 U.S.C. 1410(a)(1)(A), a temporary exemption may be granted upon a finding "that compliance would cause [a petitioner] substantial economic hardship and that the [petitioner] has, in good faith, attempted to comply with each standard from which it requests to be exempted". The statute provides that a manufacturer whose total production of motor vehicles did not exceed 10,000 in the 12-month period prior to filing the petition is eligible to apply on a hardship basis. Although the volume of production was not a major factor in the agency's decision on the petition, NHTSA notes by way of background that Maserati's production of 3,412 vehicles appears to be the third largest in hardship petitions received during the 16 years since the exemption authority came into effect, surpassed only by the production of Wayne Corp. (5700 vehicles, Docket No. EX 76–3, and Diamond Reo Trucks, Inc. (4620 vehicles, Docket No. EX 75–11). Since 1972, the typical hardship petitioner has been a manufacturer which has produced from 20 to 200 vehicles a year. Thus, by historical standards, Maserati is one of the larger manufacturers to avail itself of the right to petition for relief on grounds of hardship.

In an attempt to substantiate its arguments and meet its burden of persuasion, a petitioner provides engineering and financial information demonstrating how compliance or failure to obtain an exemption would cause substantial economic hardship, including corporate balance sheets and income statements for its past three fiscal years, and a discussion of other hardships such as loss of market that the petitioner wishes the agency to consider. When the financial data indicates that a petitioner has experienced substantial net losses in the period before the petition was filed, the petitioner is generally deemed to have made a *prima facie* case for the existence of substantial economic hardship. Even where there is a small net profit, if compliance engineering and testing costs would consume it, the agency has also found the existence of substantial economic hardship. Maserati's data showed total losses of $40,000,000 for the years 1985 and 1986, at 1988 rates, and it anticipated losses exceeding $26,000,000 for 1987. These losses appear to exceed those reported by any other hardship petitioner. Their primary relevance appears to lie in the effect that they may have had upon Maserati's good faith efforts to comply with the standard. Certainly, the agency appreciates the fact that losses of this magnitude reduce the ability of a company to offer innovations and new models which may improve its competitive position; on the other hand, the magnitude of the losses (attributed to *declining* sales) may have been due in part to the cost of capital improvements since they occurred at a time when the company *increased* its production tenfold, from 350 cars in 1981 to 3412 in 1987–88. Maserati has argued that "significant financial hardships prevented the Company from developing a passive system in time to comply with the phase-in requirements". Even if one concedes this unquantified argument to state the case as of now, these requirements were announced in July 1984, and became effective on September 1, 1986. Maserati did not petition for relief until 1988. The company does not offer an explanation of why it did not foresee the need for

exemption from the Standard shortly after its decision to abandon its automatic belt program in 1986. If a more timely petition had been filed, the petitioner would have known this decision, perhaps in time to avoid the hardships it now predicts.

For similar reasons, the agency cannot find that the petitioner has met its burden of persuasion that it attempted in good faith to meet the passive restraint phase-in requirements from which it seeks exemption. Representing that the American market accounts for up to 30% of its worldwide sales and that denial of its petition would be a "fatal blow", Maserati's conformance efforts do not appear commensurate with a good faith effort to prevent such a dire result from occurring. It made a business decision in 1984 when the current phase-in requirement was adopted not to devote money and effort to a passive belt program, justifying this choice on the basis that the requirement might simply disappear. The following year, 1985, when the company concluded that phase-in would occur, it rejected an apparently conforming system on the basis of its appearance. Rather than working to make this system subjectively acceptable, in 1986, the year in which phase-in began, it rejected a motorized restraint system because of "complexity and questionable adaptability", and proceeded to develop an airbag system, now intended for introduction into production in March 1989. Although aware that it did not comply with the phase-in requirement, it nevertheless between September 1, 1986, and August 31, 1987, manufactured, imported, and sold passenger cars in the United States that did not comply with Standard No. 208. Although it has paid a civil penalty of $34,000 for these violations of the Vehicle Safety Act, its course of conduct between 1984 and 1988 is insufficient to establish that it made a good faith effort to comply with the phase-in requirements of Standard No. 208.

Contrasted with this are the compliance efforts of Aston Martin Lagonda, which received a phase-in exemption from the agency in 1987 (52 FR 26760). There, a company whose production was a fraction of that of Maserati (164 units), began compliance efforts in November 1984. In 1985, it informed the agency of difficulties in the belt and bolster prototype system it had developed and of its desire to submit an exemption petition. Although the agency responded that a petition was premature, and advised it to continue its efforts, its problems continued, and an exemption was granted upon petition closer to the time that phase-in began.

A review of agency decisions indicates that petitioners other than Maserati have also failed their burden of persuasion. Advance Mixer, Inc. petitioned for exemption from Safety Standard No. 121 *Air Brake Systems*; although the agency deemed hardship to exist, NHTSA found that Standard No. 121 had been adopted before the petitioner was incorporated, that the standard was widely discussed within the industry, and that the petitioner had wilfully and knowingly manufactured noncomplying vehicles, and that this "overrides any argument for good faith efforts at conformity". (Docket EX75–29, 41 FR 7983; see also H.C.M. Company, Inc., Docket EX77–2, 42 FR 38954). In denying the petition of Benlee Industrial Salvage Co., Inc., the agency found that the petitioner, which had initiated compliance efforts less than 30 days before the effective date of the standard had failed to exercise due diligence in meeting its responsibilities and thus was unable to show good faith in attempting to comply. (Docket No. EX75–20, 40 FR 31828).

The agency acknowledges the difficulties this decision may impose on Maserati. However, the agency also notes that Maserati has projected that it will begin producing cars with driver-side airbags during the 1989 period. If Maserati's projections are correct, 100% of the import production in the last quarter of the 1989 production period will be equipped with passive restraints, thus allowing it to import and sell cars without them during the period, as long as 40% of the total annual production are so equipped by the end of the year. Further, there is no restriction on the number of convertibles that it may sell without passive restraints before September 1, 1989. Thus, any economic hardship associated with the denial should not be as great for the 1989 production period.

The Vehicle Safety Act, at 15 U.S.C. 1410(a)(1)(D), also allows any vehicle manufacturer, regardless of size, to petition for a temporary exemption on the basis that "requiring compliance would prevent a manufacturer from selling a motor vehicle whose overall level of safety is equivalent to or exceeds the overall level of safety of nonexempted motor vehicles". Maserati has petitioned for an exemption on this alternative basis as well by offering to install an interlock system. Although 15 U.S.C. 1410b(b)(1) prohibits a Federal safety standard from requiring or permitting compliance with Standard No. 208 by means of a safety belt interlock system, Maserati argued that it would not be attempting to comply with Standard No. 208 by installing an interlock, and thus the prohibition was inapplicable to it. On the face of it, there appears to be a safety equivalency in that a system that forces the operator to apply belts before the vehicle can be operated equals the protection afforded by, for example, a motorized belt. However, when an interlock such as the one Maserati proposes was installed on 1974-model vehicles, it was so unacceptable to the public as to cause Congress to forbid the agency from ever again requiring it as a method of compliance. NHTSA does not believe that the passage of time has made the public any more receptive to an interlock, and that the owner of a car equipped with one would find a way to defeat it. Because a Maserati interlock would not be installed pursuant to a safety standard, there is no statutory prohibition forbidding its removal, as exists for safety equipment installed in accordance with a safety standard (15 U.S.C. 1397(a)(2)(A)). Thus, a vehicle with an active restraint system incorporating an interlock which may be disconnected with impunity cannot be considered to offer protection equivalent to a vehicle equipped with a passive restraint system, which cannot be disabled without violating the Vehicle Safety Act. Therefore, the petitioner has not met its burden of persuasion under 15 U.S.C. 1410(a)(1)(D).

In consideration of the foregoing, the petition of Automobile Maserati for a temporary exemption from the phase-in requirements of Standard No. 208 is hereby denied.

(15 U.S.C. 1410; delegation of authority at 49 CFR 1.50)

Issued on: August 30, 1988.

Jeffrey R. Miller,

Acting Administrator.

[FR Doc. 88–20213 Filed 9–1–88; 11:04 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 31, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance

Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0935.

Form Number: IRS Form 1120–FSC and Schedule P (Form 1120–FSC).

Type of Review: Revision.

Title: U.S. Income Tax Return of a Foreign Sales Corporation; Schedule P—Computation of Transfer Price or Commission.

Description: Form 1120–FSC is filed by foreign corporations that have elected to be FSCs or small FSCs. The FSC uses Form 1120–FSC to report income and expenses and to figure its tax liability. IRS uses Form 1120–FSC, and Schedule P (Form 1120–FSC) to determine whether the FSC has correctly reported its income and expenses and figured its tax liability correctly.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 5,000.

Estimated Burden Hours Per Response:

Form 1120–FSC; 6 hours and 57 minutes.

Schedule P (Form 1120–FSC); 43 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 52,605 hours.

Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88–20195 Filed 9–6–88; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 173
Wednesday, September 7, 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 ELECTION COMMISSION

DATE AND TIME: Tuesday, September 13, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, September 15, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Draft AO 1988-33: Jan W. Baran on behalf of the Republican Party of Florida and its Federal political committee.
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.
[FR Doc. 88-20359 Filed 9-2-88; 3:32 pm]
BILLING CODE 6715-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 5, 12, 19, and 26, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of September 5

Wednesday, September 7

10:00 a.m.
Briefing on Proposed Rule on Degreed Operators (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Thursday, September 8

2:00 p.m.
Briefing on Final Rule on Emergency Planning and Preparedness Requirements for Nuclear Power Plant Fuel Loading and Initial Low Power Operations (Public Meeting)

Week of September 12—Tentative

Monday, September 12

2:00 p.m.
Briefing on Severe Accident Policy for Future Light Water Reactors (Public Meeting)

Friday, September 16

10:00 a.m.
Briefing on Status of Efforts to Develop A Below Regulatory Concern Policy (Public Meeting)
11:45 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Decisions on (1) Rule Waiver Petition Seeking a Financial Qualifications Review in Seabrook and (2) Petition for Review of ALAB-895 (Tentative)
b. Final Rule on Emergency Planning and Preparedness Requirements for Nuclear Power Plant Fuel Loading and Initial Low Power Testing (Tentative)

Week of September 19—Tentative

There are no Commission meetings scheduled for the Week of September 19.

Week of September 26—Tenative

Friday, September 30

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Briefing on Status of Peach Bottom (Public Meeting)

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.
September 1, 1988.
[FR Doc. 88-20385 Filed 9-2-88; 3:33 pm]
BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 53, No. 173
Wednesday, September 7, 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 HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88F-0236]

Bionox Corp.; Filing of Food Additive Petition

Correction

In notice document 88-17146 appearing on page 28699 in the issue of Friday, July 29, 1988, make the following corrections:

1. In the first column, in the 13th line from the bottom, "citric" should read "citric acid".

2. In the same column, the 11th line from the bottom should read "tetramethylbutyl]phenyl]--*omega*-".

3. In the same column, in the 10th line from the bottom, "oxythylene" should read "oxyethylene"

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0201]

International Drug Scheduling; Convention on Psychotropic Substances; Single Convention on Narcotic Drugs; Certain Benzodiazepine Drugs; Certain Controlled Substances Analog Drugs

Correction

In notice document 88-18613 beginning on page 31101 in the issue of Wednesday, August 17, 1988, make the following corrections

1. On page 31102, in the first column, under **FOR FURTHER INFORMATION CONTACT**, in the fourth line, the phone number should read "301-443-1382".

2. On the same page, in the same column, in the last line "GSA" should read "CSA".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88M-0188]

Bausch & Lomb Optics Center; Premarket Approval of Bausch & Lomb® B&L 70™ (Lidofilcon A) Soft (Hydrophilic) Contact Lenses and Bausch & Lomb® CW 79™ (Lidofilcon B) Soft Contact Lenses

Correction

In notice document 88-16130 beginning on page 27238 in the issue of Tuesday, July 19, 1988, make the following correction:

On page 27239, in the first column, in the second complete paragraph, the fourth line should read "U.S.C. 360e(d), 360j(h))) and under".

BILLING CODE 1505-01-D

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 correction:

§ 8.56 [Corrected]

On page 20244, in the first column, in § 8.56(i), the last line should read "§ 8.57.".

BILLING CODE 1505-01-D

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-285]

Certain Chemiluminescent Compositions and Components Thereof and Methods of Using the Same; Investigation

Correction

In notice document 88-19228 beginning on page 32476 in the issue of Thursday, August 25, 1988, make the following correction:

On page 32477, in the first column, under *Scope of Investigation*, in the second complete paragraph, the 14th line should read "Patent 3,888,786, claims 1, 4, or 5 of U.S.".

BILLING CODE 1505-01-D

federal register

Wednesday
August 7, 1988

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 816 and 817

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Revegetation; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 816 and 817

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Revegetation

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

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the Department of the Interior (DOI) is adopting final rules amending its revegetation regulations for the replanting of trees, the time period for measuring revegetation success, and the approval of normal husbandry practices and minimum stocking and planting arrangements. This action is necessary because the previous rules were found in Federal district court to have been promulgated without sufficient supporting evidence in the record. These changes will allow surface mining regulatory authorities to obtain approval for normal husbandry practices that may occur without restarting the operator's period of responsibility and will require the approval of State forestry and wildlife agencies for minimum stocking and planting arrangements. This action will allow certain trees planted during the responsibility period to be counted in the measurement of revegetation success and will base the determination of whether revegetation has been achieved on any two years, except the first year, of the responsibility period where the postmining land use is grazing land, pasture land or cropland.

EFFECTIVE DATE: October 7, 1988.

FOR FURTHER INFORMATION CONTACT: Patrick W. Boyd, Branch of Federal and Indian Programs, OSMRE, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone (202) 343–1864 (FTS or commercial).

SUPPLEMENTARY INFORMATION:

I. Background

On July 27, 1987, OSMRE published a notice of proposed rulemaking to amend 30 CFR Parts 816 and 817 relating to the standards for success in establishing postmining vegetation (52 FR 28012). Public hearings were scheduled for September 28, 1987, in Washington, DC; October 5, 1987, in Denver, CO; and October 12, 1987, in Pittsburgh, PA. Since no one requested to testify at these hearings, none were held. The comment period closed on October 5, 1987. On October 6, 1987, the comment period was reopened and extended through October 21, 1987, to allow additional time for interested parties to submit comments. During these periods OSMRE received comments from 21 commenters representing Federal and State agencies, coal companies, trade associations and conservation groups.

The provisions of Title V of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.*, that are relevant to this rulemaking are found in sections 501, 509, 515(b) (19) and (20), 516(a)–(d) and 519. These sections set forth the basis for criteria for establishment of postmining vegetation, as well as the period of operator responsibility. Specifically, the surface mining operator is required to assume responsibility for the success of revegetation for either five or ten full years after the last year of augmented seeding, fertilizing, irrigation or other work to assure a vegetative cover at least equal to the natural vegetation of the area. SMCRA has been construed to allow the Secretary to apply the extended periods of responsibility to operators of underground mines, as well as to operators of surface mines. The five-year period of responsibility applies to areas or regions receiving an annual average precipitation greater than 26 inches, and the ten-year period is applicable to areas or regions where the annual average precipitation is 26 inches or less.

On March 13, 1979, OSMRE published regulations implementing the permanent regulatory program required by SMCRA (44 FR 14902). The regulations were challenged in lawsuits brought by representatives of two States, the coal industry and citizen and environmental groups. These lawsuits were consolidated and heard by the U.S. District Court for the District of Columbia. See *In Re: Permanent Surface Mining Regulation Litigation*, No. 79–1144 (D.D.C. 1980). The coal industry contended that the provision that delayed starting a coal operator's responsibility for successful revegetation until the planted vegetation reached 90 percent of the natural cover lacked support in SMCRA or the legislative history. The district court agreed in a decision issued on February 26, 1980, and remanded the rule. In response to the district court ruling, OSMRE suspended the regulations insofar as they extended the period of responsibility for revegetation from the point at which the operators meet the revegetation standards of section 515(b)(19) of SMCRA. This action allowed States to permit the period of liability to begin after the last year in which the operator had completed augmented seeding, fertilizing, and irrigation or other work. The suspension notice also specified that the period of liability shall begin again wherever augmented seeding, fertilization, irrigation or other work is required or conducted on the site prior to bond release (45 FR 51549, August 4, 1980).

OSMRE published new regulations at 30 CFR 816.116(c) and 817.116(c) (48 FR 40140) on September 2, 1983. These regulations provided for regulatory authority approval of "selective husbandry practices." These approved practices were allowed to occur during the liability period without restarting the five- or ten-year period of responsibility for successful revegetation provided the practice was a "normal conservation practice" and was not augmented seeding, fertilizing, irrigation, or other work. The preamble to these regulations stated that under certain conditions the repair of rills and gullies, including reseeding or transplanting necessitted by such repair, can occur without extending the minimum period of responsibility for revegetation success. The preamble to those regulations should be consulted for additional background information.

A related provision at § 816.116(b)(3)(ii) set minimum conditions that allowed selective planting/replanting of trees and shrubs during the minimum responsibility period. This planting or replanting could occur without restarting the responsibility period when the planting or replanting was approved as a normal husbandry practice under § 816.116(c)(4). Furthermore, OSMRE's regulations at § 816.116(c)(2) provided that for areas that receive more than 26 inches annual average precipitation, proof of revegetation success could be based on the results achieved during the growing season of the last year of the responsibility period.

Citizen and environmental groups, as well as State and industry representatives, again challenged parts of these new regulations in *In Re: Permanent Surface Mining Regulation Litigation (II)*, No. 79–1144 (D.D.C. 1984) (hereafter *In Re: Permanent (II)*). The plaintiff citizen and environmental groups contended that certain provisions ran counter to the requirements of sections 515(b) (19) and (20) of SMCRA. The challengers argued that the repair of rills and gullies is not a normal conservation practice; that the

rules do not sufficiently assure that the planting of trees during the period of responsibility is a normal husbandry practice rather than an augmentative practice prohibited by SMCRA; and that it is impossible to determine whether self-generation and plant succession have been achieved if success levels are met only for the last year of the responsibility period. On July 15, 1985, the court remanded the challenged provisions of the regulations because the lack of supporting evidence in the record precluded a determination that the regulations support the goals set forth in SMCRA.

Pursuant to the July 15, 1985, decision, OSMRE published on November 20, 1986, a suspension notice for those portions of the revegetation regulations remanded by the court (51 FR 41952). OSMRE suspended the rules concerning the repair of rills and gullies insofar as they allow the repair of rills and gullies to occur without restarting the period of responsibility for the areas of repair. OSMRE suspended the rules concerning the replanting of trees to the extent that they authorize the inclusion of trees and shrubs which have been in place less than the full period of responsibility in determining the success of stocking. Thus, OSMRE would not approve the determination of reclamation success or authorize bond release on the basis of trees or shrubs in place less than the applicable period of liability. OSMRE suspended the rules concerning the period for measuring revegetation success to the extent that they allow the determination of revegetation success to be measured over less than the growing seasons of the last two years of the responsibility period in areas with an average of 26 inches or more of precipitation per year.

The rule changes adopted today address success standards for areas disturbed by surface mining activities, § 816.116, and areas disturbed by underground mining activities, § 817.116. The final revegetation rules are identical for surface and underground mining activities. Accordingly, in this preamble § 816.116 will be discussed with the understanding that the discussion also applies to §817.116. The rule changes respond to the court's order in *In Re: Permanent (II)* relating to the repair of rills and gullies (§ 816.116(c)(4)), the replanting of trees (§ 816.116(b)(3)(ii)) as normal husbandry practices during the operator's period of responsibility, and the period of time required for measuring revegetation success for areas receiving more than 26 inches annual average precipitation (§ 816.116(c)(2)). In addition to the amendments to the revegetation regulations remanded by the court, OSMRE is adopting an amendment to § 816.116(b)(3)(i) that was considered by the citizen plaintiffs in *In Re: Permanent (II)* to be essential to assure that tree planting during the period of responsibility is not an augmentative practice.

In preparing the final rules and the responses to commenters, OSMRE has relied upon SMCRA, the legislative history of SMCRA, judicial rulings, technical literature and regulatory operating experience.

II. Discussion of Rules Adopted and Responses to Comments

Sections 816.116(b)(3)(i) and 817.116(b)(3)(i) Approval of Success Standards

For areas where the postmining land use will be fish and wildlife habitat, recreation, shelterbelts or forest products, the proposed § 816.116(b)(3)(i) required minimum stocking and planting arrangements to be specified by the regulatory authority on the basis of local and regional conditions and after consultation with, and approval by, the State agencies responsible for the administration of forestry and wildlife programs. The final rule is unchanged from the proposal except for one clarifying modification discussed below.

Several commenters supported retention of the consultation requirement only, as opposed to both consultation and approval. They contended that the approval requirement would dilute the program responsibility of the State regulatory authority, would create overlapping jurisdiction over the regulatory program and would amount to a delegation that would eliminate the regulatory authority's responsibility for final decisions on program-related matters.

OSMRE disagrees that requiring State regulatory authorities to obtain the approval of State forestry and wildlife agencies for minimum stocking and planting arrangements will undermine the authority or diminish the responsibility of the regulatory authority. The approval requirement recognizes that these State agencies are authoritative sources of forestry and wildlife management information that should be relied upon by State regulatory authorities. The requirement for obtaining State forestry and wildlife agency approval of the success standards for land uses that necessitate tree and shrub plantings should assure that only the husbandry practices normally undertaken in the region for the postmining land use occur without restarting the period of liability. The rule provides the regulatory authorities with the flexibility to set specific allowable practices. This is in keeping with the Act, wherein program responsibility rests with the regulatory authorities.

Another commenter suggested that OSMRE specify that the approval should be obtained on a programwide basis to avoid the delays and increased workload that would be associated with having to obtain approval on a permit-by-permit basis. OSMRE acknowledges that the proposal was not clear on this point and agrees that the rule should authorize the approval of State forestry and wildlife agencies for minimum stocking and planting arrangements be obtained either on a programwide or a permit-specific basis. It is not required that the resource agencies approve the proposed stocking and planting arrangements contained in each permit application as long as the permit requirements for stocking and planting meet the minimum programwide requirements. The final rule language has been modified to state that programwide approval is allowed.

One commenter urged that the final rule specifically mention the role of Federal land-managing agencies in approving minimum stocking and planting arrangements on Federal land. The commenter suggested that such specific mention would help to avoid conflict between Federal agencies and State regulatory authorities. OSMRE did not accept this comment. The current Federal lands regulations (30 CFR 740.13(c)(5)) require the regulatory authority to consult with the Federal land management agency and include any comments in the record of the permit decision. This requirement in the Federal lands rules is believed to be adequate to allow Federal land management agencies a voice in determining stocking levels and planting arrangements on Federal lands.

Sections 816.116(b)(3)(ii) and 817.116(b)(3)(ii) Replanting of Trees

The proposed rule reinstated the remanded requirement that trees and shrubs used in determining the success of stocking and the adequacy of the planting arrangements be healthy, have utility for the approved postmining land use and be in place for at least two growing seasons. The proposal also specified that at least 80 percent of the trees and shrubs used to determine success shall have been in place for 60 percent of the applicable period of responsibility (the 80/60 rule). The final rule adopted today does not differ from the proposal.

One commenter suggested that the word "healthy" be dropped since there is no definition provided in the rules. The commenter suggested that there could be difficulty in establishing what is a healthy tree. OSMRE did not accept the suggested deletion since to do so could give the impression that unhealthy, sickly or badly damaged trees could be counted in measuring revegetation success. Obviously, trees that are not healthy, i.e., characterized to a significant degree by dieback of growing tips, abnormal leaf or needle drop, necrosis, severe mechanical damage to stems or branches, abnormal yellowing or other discoloration of green parts, presence of disease organisms, stunted growth, etc., should not be counted. However, OSMRE recognizes that there are varying degrees of health and notes that State regulatory authorities, in consultation with State forestry agencies, may find it appropriate to establish guidelines for distinguishing healthy trees and shrubs from unhealthy ones. Such guidelines must be based on local and regional conditions. OSMRE does not believe that a definition of the term "healthy" in this context is necessary in the Federal rules.

One commenter suggested that the criterion that trees and shrubs must have been in place at least two growing seasons to be counted seems irrelevant in light of the 80/60 rule. The commenter apparently assumed that the proposed rule would have prohibited an operator from counting a tree or shrub if it had been in place less than 60 percent of the responsibility period. Another commenter opposed the minimum-of-two-years-in-place standard on the basis of research that the commenter believed suggets a two-year establishment period is inadequate. This commenter recommended that the final rule require trees or shrubs to have been in place for three or more years to be counted, particularly in Western States. OSMRE did not accept these comments. The two-year requirement will be applicable at most to only 20 percent of the trees used to determine the success of stocking. The 80/60 rule requires a minimum of 80 percent to be in place for a longer time, either three or six years depending on annual average precipitation. OSMRE disagrees that the two-years-in-place criterion is irrelevant or inadequate. Allowing an operator to include in the number of trees used to determine success some trees (up to 20 percent of the success standard) in place less than 60 percent of the responsibility period, but more than two years, encourages selective replanting of trees to ensure full stocking without significantly weakening the basic requirement that reforestation success be based on the survival of the majority of the trees in the initial planting.

One commenter questioned why the preamble to the proposed rule contained the statement, "Under this proposed rule, the initial planting must occur prior to the start of the responsibility period" (52 FR 28015). In the opinion of the commenter, the statement may be counterproductive to reclamation by precluding an operator from establishing a ground cover to stabilize the site and then re-entering to plant trees within the period of responsibility. The commenter also indicated that, "As long as viable trees and/or shrubs are in place prior to the start of the 60 percent period, timing for their establishment should not penalize an operator or be a factor in determining success." Another commenter recommended that the regulation, not just the preamble, should state that the initial planting of trees or shrubs must occur prior to the start of the liability period. OSMRE did not accept either of these two comments. First, section 515(b)(20) of SMCRA requires the operator to assume responsibility for successful revegetation for five (or ten in drier areas) years after the last year of augmented seeding, fertilization, irrigation or other work necessary to establish the vegetative cover. OSMRE considers the initial planting of trees and shrubs, as well as planting that is in addition to normal husbandry practices, to be augmentative work. Thus, the period of responsibility must start after the initial tree or shrub planting, even if the operator plants a stabilizing ground cover prior to re-entering the site to plant trees. Second, § 816.116(c)(1) of the permanent program rules contains the requirement that the period of responsibility shall begin after the last year in which augmentative work was performed. Thus, it is not necessary to repeat the requirement.

Two commenters suggested that the difficulty in accurately determining how long a woody plant has been in place on reclaimed land renders the 80/60 rule impractical to implement. OSMRE disagrees because the age of plantations or naturally regenerated stands can be established through photographic documentation, by tagging or marking with paint, by inspection reports, by preservation of sales receipts from nurseries and by other means. State regulatory authorities have the flexibility under the final rule to establish guidelines and procedures governing age determinations and necessary documentation that are appropriate to regional and local conditions.

One commenter opposed the change in the time-in-place standard from eight to six years for areas where the minimum responsibility period is ten years based on climatic conditions in his State. Based on the literature cited in the preamble to the proposed rule, OSMRE believes that six years generally provides an adequate period of time to establish trees on a site in areas where the annual average precipitation is less than 26 inches. As stated in the proposed rule preamble, the re-asserted here, States are free to impose more stringent requirements if appropriate based on local conditions. Therefore, OSMRE did not change the proposal in response to this comment.

One commenter urged re-evaluation of the 80/60 rule because of a belief that the rule requires even-aged stands on reclaimed areas, which the commenter believed "discourages natural succession processes and leads to increased potential for catastrophic community failure in the event of disease, infestation, fire or other event." OSMRE did not accept the commenter's suggestion because the issue is addressed in other portions of the revegetatin rules. For example, the requirement in § 816.116(b)(3)(i) that minimum stocking and planting arrangements shall be specified on the basis of local and regional conditions will take into account factors such as species diversity and disease control. Section 816.111 requires an evaluation by the regulatory authority of species diversity, regenerative capacity and seasonal characteristics of growth. Finally, § 816.116(c)(4) allows disease, pest and vermin control measures without restarting the operator's period of responsibility.

Concerning the 80/60 rule, one commenter asserted that neither consideration of 80 percent of trees as sufficient to demonstrate revegetation success nor the deviation from the 90 percent standard of § 816.116(a)(2) were supported by the cited literature. Based on the literature used to develop the rules, OSMRE believes that reforestation normally requires a continuing effort beyond the initial planting. Seven of the commenters specifically stated that they shared this belief based on their experience with reforestation and/or their familiarity with the literature. The final rule represents a reasonable compromise that will allow some replanting if approved as a normal husbandry practice under § 816.116(c)(4). Eighty

percent of the stock used in determining success is required to be in place for 60 percent of the responsibility period (three or six years depending on average annual precipitation). The remaining stock used in determining success is required to be in place for at least the last two years. Thus, the rule will, in effect, limit replanting to a maximum of 20 percent of the required stocking before restarting the responsibility period.

Section 816.116(a)(2) provides that ground cover, production or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard. As a point of clarification, OSMRE intends that the 90 percent standard of § 816.116(a)(2) be applied separately to the group of trees or shrubs that meet the 80 percent criteria and the group meeting the 20 percent criteria. An example should help to illustate how the 80/60 rule will be applied and how it will interact with the 90 percent standard. If the bond release stocking standard is 1000 trees per acre, under § 816.116(a)(2) the operator could meet the standard with as few as 900 trees. However, the minimum required 900 trees must be comprised of no fewer than 80 percent (or 720 trees) that have been in place for 60 percent of the responsibility period and no more than 20 percent (or 180 trees) that only meet the two-years-in-place standard. Trees meeting only the two-years-in-place standard cannot be substituted for those meeting the 60-percent-of-the-responsibility-period standard.

The commenter also felt that OSMRE offered no support for either the 60 percent figure or the reduction from eight to six years in the amount of time 80 percent of the trees or shrubs must have been in place in areas of less than 26 inches annual average precipitation. As explained in the preamble to the proposed rule, the 60 percent figure is used with both the five- and ten-year minimum responsibility periods primarily for the sake of simplicity and consistency. Additionally, based on the literature cited, three and six years are adequate to establish stands of trees or shrubs, either planted or naturally regenerated. States are free to impose more stringent requirements, if they choose, based on regional or local conditions.

The commenter suggested that OSMRE could develop a national standard for allowance of minimal replanting during the responsibility period and argued that a ten percent replanting effort during the liability period would allow for reasonable efforts to promote successful revegetation. OSMRE believes that the commenter is in basic agreement that some level of replanting should be allowed under the rules without restarting the responsibility period. Again, OSMRE takes the position that final § 816.116(b)(3)(ii) allows sufficient replanting to encourage normal husbandry practices without allowing a level of replanting that would clearly be a prohibited augmentative practice.

The commenter further argued that OSMRE provided no justification in the proposed rule for failing to distinguish between commercial and noncommercial forestry and failed to provide minimum standards for determining success on commercial forest land. In 1983, OSMRE deleted from the revegetation rules the specific revegetation success standards for forestry postmining land uses. At that time, OSMRE stated that a minimum stocking level is not necessary to be established in the Federal rules, but that States may find it appropriate to set minimum stocking levels in their programs, provided the minimum stocking levels set by the States are determined on the basis of regional or local conditions and are no lower than would be expected or is commonly found on similar unmined lands in the area. OSMRE further stated that it is not necessary to make a distinction in the Federal rules between commercial and noncommercial forest land, but that the States may find such a distinction advantageous when setting stocking standards (48 FR 40153). Since that time, OSMRE has found that the States have indeed established their own stocking standards based on local conditions and practices. In some cases, such as in West Virginia and Kentucky, the State has simply retained the commercial forestry stocking standards formerly contained in the Federal rules and developed additional standards for wildlife and recreation postmining land uses. This support OSMRE's position that the States are both capable and willing to establish specific revegetation success standards for postmining and land uses involving trees and shrubs.

Sections 816.116(c)(2) and 817.116(c)(2) Period for Measuring Revegetation Success

Proposed § 816.116(c)(2) required the period of responsibility to continue for a minimum of five years where the annual average precipitation is more than 26 inches. Vegetative parameters identified in current § 816.116(b) for grazing land, pasture land and cropland would, under the proposal, have to equal or exceed the approved success standard during the growing seasons of the last two years of the responsibility period. Revegetation rates on areas approved for the other uses identified in § 816.116(b) would be required to equal or exceed the success standard during the growing season of the last year of the responsibility period.

The final rule differs from the proposal in that the final rule requires the vegetative parameters for grazing land, pasture land and cropland to equal or exceed the approved success standard during the growing seasons of any two years of the responsibility period, except the first year, while the proposal would have required successful productivity in the last two years of the responsibility period.

Five commenters urged that the final rule require that the applicable success standards for grazing land, pasture land and cropland be met only in the last year of the responsibility period, or last two years if required by the regulatory authority, which would be a reinstatement of the remanded rule. They argued that there is adequate justification for a one-year measurement period and that the previous rule was remanded for lack of support in the record, not because it was inconsistent with SMCRA or incapable of being justified. One commenter suggested that the current farm program rules for determining acreage yield could be used as model for measuring revegetation success. According to the commenter, these rules use an average of several, not necessarily consecutive, years, often including the latest year, to determine crop yield without penalizing the farmer for poor growing seasons. Three commenters advocated use of the results of a minimum of two growing seasons to determine revegetation success. One commenter felt that the final rule should specify minimum levels of revegetation that may be strengthened when necessary to address special situations.

OSMRE is retaining the requirement that revegetation success for postmining land uses involving grazing land, pasture land and cropland be measured over at least two growing seasons. The two-year measurement period increases the reliability of the overall measurement by decreasing the likelihood that success will be based on the results of an atypical growing season (for cropland). OSMRE did not accept the comment that the method for determining the average yield of various crops on a countywide basis is a good model for the method for determining revegetation success. The county average yields are typically based on the results of as many as ten growing seasons. Obviously in

situations where revegetation success is measured twice in a four-year period, the same methodology cannot be employed. Further, since county yield averages are not calculated for all crops in all regions, there are no existing models on which to base methods for determining revegetation success for some crops. Further, the benefit that the commenter anticipates would accrue through the use of the county average yield method, i.e., accuracy without penalizing the grower for bad weather, is the same benefit that will result from the regulatory scheme adopted today. Concerning the comment that OSMRE's rules should establish minimum standards that may be strengthened when needed, the final rule is intended to provide just such a minimum standard: Any two years, except the first year, of the responsibility period. The final rule provides State regulatory authorities with the flexibility to impose a more stringent standard when appropriate to local or regional conditions.

Five commenters supported two nonconsecutive crop years for the two-year period for demonstrating soil productivity. One State regulatory authority was concerned that its recently approved regulatory provision allowing measurement of success in two nonconsecutive years would be jeopardized by the proposal to require measurement over the last two years of the responsibility period.

Under final § 816.116(c)(2), the two growing seasons need not be consecutive. They could be two crop years in a particular crop-rotation sequence. Measurement in nonconsecutive years avoids unduly penalizing the operator for the negative effects of climatic variability. This provision is consistent with the more stringent prime farmland regulations at 30 CFR 823.15(b)(3). In the preamble to the 1983 rule, OSMRE stated that ample justification exists for requiring two consecutive years of proof of revegetation success (48 FR 40156, September 2, 1983). OSMRE continues to believe that measurement over two years is important to attenuate the influences of climatic variability, but now realizes that consecutiveness imposes an unnecessary degree of regulatory rigidity. Under a system requiring measurement of revegetation success in two consecutive years, an operator would be unnecessarily penalized if bad weather in the second year of the measurement period caused failure to meet the revegetation success standard after it had been achieved in the first year. The operator has the option under the regulations adopted today to select the years in which measurement of revegetation success will occur in order to produce an outcome that is representative of the reclaimed area's true productivity.

As stated above, several commenters supported measuring revegetation success over any two years during the responsibility period. The final rule provides that productivity be determined on the basis of any two years of the responsibility period, except the first year. The results obtained in the first year of the responsibility period are apt to reflect a carryover effect from practices used initially to establish the vegetative cover. Since any carryover effect from fertilization and other practices used prior to the start of the responsibility period is minimal after the first year of the responsibility period, more accurate results will be obtained by measuring revegetation success in any two of the years following the first year of the responsibility period.

In reference to the carryover effect, OSMRE stated in the preamble to the 1983 revegetation rules that data for proof of reclamation success from the fourth year is more apt to reflect a carryover effect from fertilization and other practices used to initially establish the vegetative cover (48 FR 40156, September 2, 1983). This statement was made in the context of supporting the requirement for measurement of revegetation success in the last year of the responsibility period. This statement failed to take into account the fact that annual fertilization of cropland is a normal husbandry practice throughout the entire country. OSMRE recognized this situation in the preamble to the 1979 revegetation regulations which explained that fertilization, seeding and irrigation in accordance with local agricultural practices on cropland or pasture land is not considered a prohibited augmentative practice (44 FR 15238, March 13, 1979). Any carryover effect from the initial fertilization would be insignificant compared to the effects of normal annual fertilization.

Five commenters opposed requiring the last year of the responsibility period to be included in measurement of productivity. Some felt that the requirement would put operators at the mercy of the vagaries of the weather. Others felt the proposal was too restrictive. Some questioned why the proposal tied together two separate concepts, the responsibility period and the period for measuring revegetation success. Some favored the consistency with the prime farmland regulations. Four commenters supported requiring that the last year of the responsibility period be included in the measurement of productivity. One commenter felt that bad weather in the last year of the responsibility period could adversely affect the vegetation rendering it less than permanent and sustainable at bond release. One commenter indicated that while two years "may be acceptable in some ecological situations, in acid producing areas the potential for vegetative failure may not manifest itself until several years after mining activities have ceased."

The final rule does not require inclusion of the last year of the responsibility period in the period for measuring revegetation success. Given the influence of weather variability on crop production, a factor long recognized by those involved in agriculture and agricultural studies, it is unreasonable always to require measurement of productivity in the last year of the responsibility period. This provision is consistent with the regulations governing reclamation of prime farmland at 30 CFR 823.15 and avoids penalizing the operator for the negative effects on productivity of adverse weather conditions.

The preamble to the 1983 rule stated that acceptance of data for proof of reclamation success solely from the fourth year would in effect shorten the responsibility period and be inconsistent with SMCRA (48 FR 40156, September 2, 1983). The preamble also stated that in all instances the last year of responsibility should be part of the one- or two-year test period (*ibid.*). To require measurement in the last year of the responsibility period is an unnecessarily rigid standard given the variability of weather conditions. The important thing is that revegetation be achieved in two years out of the last four years of the responsibility period, not that it be achieved in any particular year, such as year four or year five. The length of the responsibility period, established by SMCRA, is not abridged by this rule. Further, OSMRE believes that SMCRA makes a distinction between the responsibility period and the period for measuirng revegetation success. While SMCRA specifies the period of the operator's responsibility, it does not specify when, within that period, success is to be measured. In situations where revegetation is demonstrated prior to the last year of the responsibility period, the final bond release inspection would still have to determine that reclamation has been achieved.

Concerning the comment that the last year of the responsibility period should

always be measured in order to take into account the effects of any latent acid or toxic subsoil constituents, the commenter may be confusing the requirement to demonstrate revegetation success through measurement of productivity with the general revegetation requirements. Although the rule allows measurement of productivity prior to the end of the responsibility period, it does not state, and is not intended to imply, that bond will be released on an area where reclamation has not been fully achieved. As provided in 30 CFR 800.40(c)(3), "no bond shall be fully released * * * until the reclamation requirements of [SMCRA] and the permit are fully met." The final bond release inspection will evaluate acheivement of the general revegetation requirements of 30 CFR 816.111 in addition to the success standards of § 816.116.

The measurement of productivity for cropland is accomplished using data provided by the permittee. When the productivity of cropland has been measured earlier and success standards were met, the regulatory authority is not required to measure crop production during the final bond release inspection. Rather, such an inspection is a check to see whether the past demonstration of productivity success appears to be continuing.

Seven commenters supported the proposal that revegetation success for postmining land uses other than grazing land, pasture land and cropland be measured during the last year of the operator's responsibility period. One commenter suggested that revegetation success be measured in any one of the last two years of the responsibility period, and one commenter suggested measurement over both of the last two years. One commenter challenged the literature cited in the preamble to the proposal as supporting the one-year period for measuring revegetation success and pointed out that the Washington State forestry practices rules, concerned with replanting trees in clearcut areas, may have little applicability to reforestation of severely disturbed mined areas. In addition, the commenter asserted that acceptable practices in the moist, fertile ecosystems of the Pacific Northwest may not be appropriate for application to the coal regions of the eastern United States.

The final rule retains the requirement that vegetative success be measured during the last year of the responsibility period for the postmining land uses other than grazing land, pasture land and cropland. In areas of annual average precipitation exceeding 26 inches, the forest ecosystem, once disturbed, reinitiates the process of vegetative succession. The first few years of the emergent successional pattern are prolific with respect to species density and diversity. Vegetative diversity and density increase with time during the five-year responsibility period. Indigenous species invade and become established. Therefore, given the positive relationship between time and vegetative cover, OSMRE believes that the last year of the responsibility period will provide an accurate measurement of revegetation success. It should be noted in response to the comment suggesting significant climatic differences between Washington State and the coal regions of the Eastern United States that the coal-producing regions of Washington State receive annual average precipitation that ranges from 20 to more than 60 inches, a range that coincides with the annual average precipitation in the coal-producing regions of the East.

Sections 816.116(c)(4) and 817.116(c)(4) Normal Husbandry Practices

Proposed § 816.116(c)(4) allowed certain husbandry practices during the responsibility period if approved by the regulatory authority and if the husbandry practice can be expected to continue as part of the postmining land use or if discontinuance of the husbandry practice after the release of permittee responsibility will not reduce the probability of continued revegetative success. The approved practices cannot include augmented seeding, fertilization, or irrigation without extending the period of responsibility. However, seeding, fertilization, or irrigation performed at levels that do not exceed those normally applied in maintaining comparable unmined land in the surrounding area would not be considered prohibited augmentative activities. The proposed minor change from the existing rule was to substitute the phrase "normal husbandry practices" for the phrase "normal conservation practices." This change was intended to avoid restricting approvable practices to manipulation of the soil alone.

In the preamble to the proposal, OSMRE stated, "Rather than proposing a national rule which would universally allow repair and reseeding of rills and gullies to be considered a normal husbandry practice, OSMRE will evaluate such practices if submitted by a State as a program amendment. Therefore, under the provisions of 30 CFR 732.17 governing State program amendments, OSMRE would consider, on a practice-by-practice basis, the administrative record supporting each practice proposed by a regulatory authority as normal husbandry practice. The regulatory authority would be expected to demonstrate (1) that the practice is the usual or expected state, form, amount or degree of management performed habitually or customarily to prevent exploitation, destruction or neglect of the resource and maintain a prescribed level of use or productivity of similar unmined lands and (2) that the proposed practice is not an augmentative practice prohibited by section 515(b)(20) of [SMCRA]" (52 FR 28016).

Final § 816.116(c)(4) is the same as the proposed rule with the exception of the addition of the requirement for approval by OSMRE of proposed husbandry practices according to the State program amendment process. Two commenters suggested that this addition would clarify the rule by making explicit the requirement for prior approval by OSMRE of practices proposed by the State regulatory authority as normal husbandry practices.

One State regulatory authority was concerned that it would have to rejustify husbandry practices, such as the repair of rills and gullies, that already a part of the approved State regulatory program. If OSMRE has given specific approval to a State regulatory program provision that allows a particular practice to occur without restarting the operator's responsibility period, then there would be no need for resubmission of the record supporting that practice to OSMRE for approval. However, to the extent that OSMRE's approval of a State regulatory program does not address normal husbandry practices, the State would have to obtain OSMRE's approval under § 816.116(c)(4) to allow specific normal husbandry practices to occur without restarting the responsibility period.

One commenter suggested that normal husbandry practices be approved at the State regulatory authority level, without having to seek OSMRE's approval, through the issuance of State policy guidance or the approval of individual reclamation plans. This would be tantamount to a reinstatement of the 1983 rule. As stated in the proposed rule preamble, OSMRE has reconsidered the 1983 rule and concluded it granted flexibility that is inappropriate in a national performance standard. Therefore, the final rule establishes the requirement that OSMRE approval must be obtained before husbandry practice can be allowed to occur under a State

regulatory program without restating the responsibility period.

Six commenters supported allowing the repair of rills and gullies as a normal husbandry practice, and one commenter urged that the phrase "repair of rills and gullies" be added to the list of approved practices found in the last sentence of proposed § 816.116(c)(4). Because OSMRE is convinced that the cited literature supports the repair of rills and gullies in some situations, the final rule establishes a framework within which a State regulatory authority may demonstrate that such repair is a normal husbandry practice. However, since it is also true that repair of rills and gullies is not always simply good husbandry, the final rule does not include the suggested addition to the list of approved practices.

One commenter suggested that the proposed rule did not mention the role of Federal land-managing agencies in approving normal husbandry practices on Federal lands. OSMRE believes that the Federal lands regulations, particularly 30 CFR 740.11(d), which allows Federal land-managing agencies "to include in any lease, license, permit, contract, or other instrument such conditions as may be appropriate to regulate [mining]," adequately recognize the authority of Federal land-managing agencies to regulate surface coal mining and reclamation operations under provisions of law other than OSMRE on lands under their jurisdiction.

One commenter recommended that the final rule provide minimum standards for the State regulatory authorities to use when determining when tree planting, repair of rills and gullies, and other practices are to be considered augmentative versus normal husbandry. The commenter was concerned that the lack of such minimum standards would allow "major gully repair or replanting a large percentage of the trees or shrubs" within the responsibility period under the guise of normal husbandry. The commenter suggested that an example of a minimum standard would be to establish a ceiling, such as five percent of the permit area, that would be subject to a normal husbandry practice without restarting the operator's period of responsibility.

OSMRE's position is that the primary responsibility for regulating surface coal mining and reclamation operations should rest with the States. Federal rules must be capable of nationwide application. The absence of minimum standards in portions of the Federal rules is not a weakening of revegetation requirements but reflects that the rules are designed to account for regional diversity in terrain, climate, soils and other conditions under which mining occurs. The requirements for OSMRE approval of normal husbandry practices proposed by State regulatory authorities based upon State-specific documentation of local husbandry practices will ensure that augmentative practices are not allowed to occur without restarting the operator's period of responsibility.

Effect in Federal Program States and on Indian Lands

This rule applies through cross-referencing in those States with Federal programs. They are Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947 respectively. The rules will apply in California if the Federal program for that State, which was proposed on October 22, 1987 (52 FR 39594), is adopted. The rules also apply through cross-referencing to Indian lands under Federal programs for Indian lands as provided in 30 CFR Part 750. No comments were received concerning unique conditions that exist in any of these States or on Indian lands that would have required changes to the national rule.

III. Procedural Matters

Federal Paperwork Reduction Act

The revegetation rules affected by the changes approved today, §§ 816.116 and 817.116, do not contain new information collection requirements requiring approval from the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12291 and Regulatory Flexibility Act

The DOI has determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291 (February 17, 1981). Also, DOI certifies that this rule will not have a significant economic effect on a substantial number of small entities and, therefore, does not require a regulatory flexibility analysis under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

National Environmental Policy Act

OSMRE has prepared an environmental assessment and has made a finding that the final rules will not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). The environmental assessment is on file in the OSMRE Administrative Record, Room 5315, 1100 L Street NW., Washington, DC.

Agency Approval

Section 516(a) of SMCRA requires that, with regard to rules directed to the surface effects of underground mining, OSMRE must obtain the written concurrence from the head of the department which administers the Federal Mine Safety and Health Act of 1977, the successor to the Federal Coal Mine Health and Safety Act of 1969. OSMRE has obtained the written concurrence of the Assistant Secretary for Mine Safety and Health, U.S. Department of Labor.

Author

The principal author of this rule is Patrick W. Boyd, OSMRE, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: (202) 343–1864.

List of Subjects

30 CFR Part 816

Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 817

Environmental protection, Reporting and recordkeeping requirements, Underground mining.

Accordingly, 30 CFR Parts 816 and 817 are amended as set forth herein.

Dated: July 20, 1988.

James E. Cason,

Acting Assistant Secretary—Land and Minerals Management.

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

1. The authority citation for Part 816 is revised to read as follows and the authority citations following the sections in Part 816 are removed:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, and Pub. L. 100–34.

2. Section 816.116 is amended by revising paragraphs (b)(3)(i), (b)(3)(ii), (c)(2), and (c)(4) to read as follows and the suspension for those paragraphs, as noted in the editorial note immediately following the section in the Code of Federal Regulations, is lifted:

§ 816.116 Revegetation: Standards for success.

* * * * *

(b) * * *

(3) * * *

(i) Minimum stocking and planting arrangements shall be specified by the regulatory authority on the basis of local

and regional conditions and after consultation with and approval by the State agencies responsible for the administration of forestry and wildlife programs. Consultation and approval may occur on either a programwide or a permit-specific basis.

(ii) Trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall have utility for the approved postmining land use. Trees and shrubs counted in determining such success shall be healthy and have been in place for not less than two growing seasons. At the time of bond release, at least 80 percent of the trees and shrubs used to determine such success shall have been in place for 60 percent of the applicable minimum period of responsibility.

* * * * *

(c) * * *

(2) In areas of more than 26.0 inches of annual average precipitation, the period of responsibility shall continue for a period of not less than five full years. Vegetation parameters identified in paragraph (b) of this section for grazing land or pasture land and cropland shall equal or exceed the approved success standard during the growing seasons of any two years of the responsibility period, except the first year. Areas approved for the other uses identified in paragraph (b) of this section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

* * * * *

(4) The regulatory authority may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, provided it obtains prior approval from the Director in accordance with § 732.17 of this chapter that the practices are normal husbandry practices, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices shall be normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding, and transplanting specifically necessitated by such actions.

* * * * *

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

3. The authority citation for Part 817 is revised to read as follows and the authority citations following the sections in Part 817 are removed:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, and Pub. L. 100–34.

4. Section 817.116 is amended by revising paragraphs (b)(3)(i), (b)(3)(ii), (c)(2), and (c)(4) to read as follows and the suspension for those paragraphs, as noted in the editorial note immediately following the section in the Code of Federal Regulations, is lifted:

§ 817.116 Revegetation: Standards for success.

* * * * *

(b) * * *

(3) * * *

(i) Minimum stocking and planting arrangements shall be specified by the regulatory authority on the basis of local and regional conditions and after consultation with and approval by the State agencies responsible for the administration of forestry and wildlife programs. Consultation and approval may occur on either a programwide or a permit-specific basis.

(ii) Trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall have utility for the approved postmining land use. Trees and shrubs counted in determining such success shall be healthy and have been in place for not less than two growing seasons. At the time of bond release, at least 80 percent of the trees and shrubs used to determine such success shall have been in place for 60 percent of the applicable minimum period of responsibility.

* * * * *

(c) * * *

(2) In areas of more than 26.0 inches of annual average precipitation, the period of responsibility shall continue for a period of not less than five full years. Vegetation parameters identified in paragraph (b) of this section for grazing land or pasture land and cropland shall equal or exceed the approved success standard during the growing seasons of any two years of the responsibility period, except the first year. Areas approved for the other uses identified in paragraph (b) of this section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

* * * * *

(4) The regulatory authority may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, provided it obtains prior approval from the Director in accordance with § 732.17 of this chapter that the practices are normal husbandry practices, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices shall be normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding, and transplanting specifically necessitated by such actions.

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Wednesday
September 7, 1988

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 13

Rules of Practice for FAA Civil Penalty Actions; Final Rule; Request for Comments

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

[Docket No. 25690; Amdt. No. 13-18]

Rules of Practice for FAA Civil Penalty Actions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This final rule sets forth revised initiation procedures and new rules of practice in FAA civil penalty actions. The rules are needed to provide detailed procedures for on-the-record hearings required in civil penalty actions by legislation recently passed by Congress. The rules are intended to provide an appropriate level of procedural formality in civil penalty proceedings, focus attention on the rights of individuals subject to civil penalties, and ensure that due process is afforded those individuals during the civil penalty enforcement process.

DATES: The final rule is effective on September 7, 1988. Comments must be received on or before November 7, 1988.

ADDRESS: Comments on this final rule may be delivered or mailed, in duplicate, to the Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 25690, 800 Independence Avenue SW., Room 915G, Washington, DC 20591. Comments submitted on the final rule must be marked: Docket No. 25690. Comments may be inspected in Room 915G between 8:30 a.m. and 5:00 p.m. on weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Allan H. Horowitz, Manager, Enforcement Policy Branch (AGC-260), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3137.

SUPPLEMENTARY INFORMATION:

Comments Invited

The new rules contained in this amendment are purely procedural rules to govern on-the-record hearings required by statute. The amendments to the current regulations are required so that the regulations will conform to existing and recently enacted statutory authority. Because both the procedural rules and revised regulations are required to implement the recently enacted legislative amendment to the Federal Aviation Act of 1958, they are being adopted without notice and prior public comment. However, the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979) provide that, to the maximum extent possible, Department of Transportation (DOT) operating administrations should provide an opportunity for public comment on regulations issued without prior notice.

Accordingly, interested persons are invited to participate in the rulemaking by submitting written data, views, or arguments as they may desire. Comments must include the regulatory docket or amendment number identified in this final rule and be submitted in duplicate to the address above. All comments received will be available in the Rules Docket for examination by interested persons. These rules may be changed in light of the comments received on this final rule.

Commenters who want the FAA to acknowledge receipt of comments submitted on this final rule must submit a preaddressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. 25690." The postcard will be date stamped by the FAA and returned to the commenter. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center (APA-230), 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Requests must include the amendment number identified in this final rule. Persons interested in being placed on a mailing list for future rulemaking actions should request a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

These procedural rules were developed by the FAA to respond to an amendment to the Federal Aviation Act of 1958, contained in Pub. L. 100-223, the Airport and Airway Safety and Capacity Expansion Act of 1987, enacted by Congress and signed by the President on December 30, 1987. During preliminary Senate discussions of the proposed civil penalty amendment, Congress noted the FAA's lack of statutory authority to "prosecute violators of [the Federal Aviation Regulations]" without referring those actions to the United States Attorney for prosecution in a United States District Court. Congress observed that the inability or failure of the United States Attorney to prosecute civil penalty actions resulted in an ineffective deterrent to individuals or entities who violate the Federal Aviation Regulations. Congress determined that "there is clearly a need" for administrative hearings, tried and heard by the FAA, to provide effective enforcement of the FAA's safety regulations. As ultimately enacted, the amendment to the Federal Aviation Act gives the FAA the authority to assess civil penalties for violations arising under the Federal Aviation Act, or a rule, regulation, or order issued thereunder, after written notice and a finding of violation by the Administrator. The legislative amendments give the FAA the authority to "assess" a civil penalty for a violation of the FAA's safety regulations. This specific authority enables the FAA to issue an order that informs an individual of the alleged violation and that triggers an opportunity for a hearing on the merits of the allegations in the order.

Prior to the 1987 amendment, the FAA could assess civil penalties and prosecute the civil penalty actions only in cases involving a violation of the Hazardous Materials Transportation Act, or a rule, regulation, or order issued pursuant to that Act. The FAA could refer the case to a United States Attorney for *in personam* collection procedures in a United States District Court if an individual did not pay an assessed civil penalty. Under the Federal Aviation Act, the FAA could propose and compromise a civil penalty against an individual for a violation of that Act, or a rule or a regulation issued pursuant to that Act, but could not prosecute those civil penalty actions. If the proposed civil penalty could not be settled by agreement of the parties, the FAA was forced to refer that action to a United States Attorney for prosecution in a United States District Court. Prosecution in the United States District Court could result in a judicial determination of violation and liability for a civil penalty. If an individual did not pay a civil penalty determined by the United States District Court, the FAA could refer collection of the penalty to the United States Attorney.

The recent amendment revised that practice for selected civil penalty actions. The amendment enables the FAA to circumvent the complex and lengthy process of referring these civil penalty cases to the United States Attorney and, therefore, to strengthen the FAA's enforcement process. Under

the 1987 amendment, the FAA may prosecute civil penalty actions without referring the action to the United States Attorney for prosecution in a United States District Court. An order assessing civil penalty issued by the FAA will result in a finding of violation, just as prosecution of a civil penalty action in the District Court could result in a finding of violation and liability for a civil penalty. Any order assessing civil penalty issued by the Administrator, including an order that accepts a reduced civil penalty in settlement of the action, will contain a finding of violation.

Notwithstanding the revised authority given to the FAA, Congress explicitly reserved and retained exclusive jurisdiction in the United States District Courts over any civil penalty action initiated by the Administrator that involves a civil penalty of more than $50,000; a direct *in rem* action or an *in rem* action based on the violation alleged in the civil penalty action; a suit based on seizure of an aircraft that is subject to a lien for payment of an assessed civil penalty; and a suit for injunctive relief based on the violation alleged in the civil penalty action. Therefore, these actions will be proposed and compromised by the FAA or prosecuted by the United States Attorney using the same process and procedures as the FAA has used in the past.

Since 1974, the FAA has had the authority to initiate and assess a civil penalty for a violation of the Hazardous Materials Transportation Act. Pursuant to the 1987 1egislation, the FAA may initiate and assess civil penalties, not in excess of $50,000, for violations of the Federal Aviation Act. The legislation requires that civil penalty actions brought under this authority be assessed only after notice and an opportunity for a hearing on the record, in accordance with section 554 of the Administrative Procedure Act. The authority granted to the FAA by the amended legislation is effective only for a 2-year period beginning December 30, 1987 and ending December 30, 1989.

The amendments to the Federal Aviation Act require the Administrator to establish a "Civil Penalty Assessment Demonstration Program" in accordance with the legislation and to study the effectivenesc of that program. The legislation also requires the FAA to report to Congress, no later than June 30, 1989, on the results of the study required by the legislation. The Administrator is required to report on the minimum levels of civil penalties established in the Act and whether additional changes to the civil penalty program are necessary to provide an adequate safety deterrent. The Administrator also is required to make recommendations regarding the effectiveness and continuation of the Civil Penalty Demonstration Program authorized under section 905 of the Federal Aviation Act of 1958.

In formulating the procedural rules for the Demonstration Program, the FAA reviewed the present regulations governing proposal and initiation of civil penalty actions and the present regulations governing hearing procedures contained in Part 13 of the Federal Aviation Regulations. The FAA also reviewed the procedural rules governing hearings conducted by other agencies with authority to prosecute actions and conduct administrative hearings. The FAA believes that the detailed procedural rules set forth in this final rule, and the revisions of the sections of Part 13 that describe the process of initiating and proceeding with a civil penalty action, protect the due process rights of individuals subject to a civil penalty.

Discussion of Legal Enforcement Proceedings

Section 13.15 applied to all civil penalty actions proposed for a violation of the Federal Aviation Act of 1958. The FAA is amending § 13.15 of the Federal Aviation Regulations so that it no longer applies to the civil penalty authority that was transferred to the FAA by the 1987 legislative amendment. This section is now limited to civil penalty actions that are within the exclusive jurisdiction of the United States District Courts and are not encompassed within the authority given to the FAA by Congress in the Civil Penalty Assessment Demonstration Program legislation.

Section 13.15 now applies only to civil penalty actions that involve an amount in excess of $50,000. Section 13.15 sets forth the procedures used by the agency to propose and compromise a civil penalty action. The amendment of this section is not intended to alter the procedures that were used in the past in all civil penalty actions brought for violations of the Federal Aviation Act. The amended section contains the maximum civil penalty that the FAA may propose for each specific violation of the Federal Aviation Act or the Federal Aviation Regulations, including the increased civil penalty that the FAA may propose against an air carrier and a commercial operator. The amended section now refers to the FAA's authority to take enforcement action based on a violation of the prohibition in the Federal Aviation Act and the regulations that deal with smoking on aircraft and tampering with smoke detectors on aircraft. The amended section also contains the delegation of the Administrator's authority to propose and compromise actions to specific individuals in the FAA, and the procedure by which the FAA may settle a civil penalty action.

Section 13.16 applied only to civil penalty actions for violations of the Hazardous Materials Transportation Act. The authority contained in the 1987 amendment is similar to the authority granted to the agency in the Hazardous Materials Transportation Act with one exception. The statutory authority to prosecute civil penalty actions brought under the Federal Aviation Act is limited to civil penalties that do not exceed $50,000; the authority to bring civil penalty actions under the Hazardous Materials Transportation Act is not so limited.

The FAA believes that one set of procedures, before and during the hearing, for hazardous materials cases and cases brought pursuant to the Federal Aviation Act would eliminate confusion and duplication in civil penalty proceedings. The FAA determined that it was more efficient to incorporate civil penalty procedures under the Federal Aviation Act into an existing system rather than create an entirely new process of initiation and prosecution of civil penalty actions.

Thus, the FAA retained the basic organization and procedures contained in § 13.16, which are familiar to the aviation industry in hazardous materials civil penalty actions, and amended that section to implement the new statutory authority given to the FAA to prosecute a civil penalty action for a violation of the Federal Aviation Act. However, the procedures were modified so that an individual may request a hearing on the merits of an order of civil penalty instead of on the merits of a notice of proposed civil penalty. This modification reflects the procedures used by the FAA and the aviation community in certificate actions before the National Transportation Safety Board (NTSB) and provides a familiar and similar procedural structure for all regulatory enforcement actions taken by the FAA. A request for hearing under these procedural rules need not be a formal, technical document. The rule allows an individual to request a hearing by merely submitting a handwritten letter to the agency attorney. An individual requesting a hearing also has an opportunity to suggest a location for the hearing in this document.

Prior to the amendment of § 13.16, an individual who had received a notice of proposed civil penalty for a violation of the Hazardous Materials Transportation Act could immediately request a hearing on the allegations contained in that notice. An individual subject to a notice of proposed civil penalty could only request a hearing before the Administrator issued an order assessing a civil penalty. After the Administrator issued an order, the rule provided no further opportunity for a hearing on the merits of the notice.

Based on the FAA's experience in certificate actions, the FAA believes that a hearing on the allegations contained in a notice, which is merely a proposal, is premature. The notice is issued after the FAA has completed an investigation of the allegations. However, the individual may or may not have taken part in the investigatory process. The FAA reviewed the existing notice and prehearing procedures contained in § 13.16 and retained the informal proceedings that are available after a notice of proposed civil penalty is issued. Therefore, the rule provides an opportunity for informal proceedings in which an individual may submit information or discuss the matter with an agency attorney. These informal proceedings enable an individual to submit information including mitigating factors or extenuating circumstances that may affect the FAA's decision to continue to prosecute a civil penalty action. The FAA views the informal proceedings as an opportunity to narrow the differences between the parties with the intention of settling a civil penalty action. Even if the parties can not agree to settle the matter, the informal proceedings serve to focus any remaining unresolved issues.

Recognizing that some individuals may not take advantage of the opportunity to participate in informal proceedings provided in the rule, and to comply with the Congressional mandate to provide an opportunity for a hearing, the amended rules provide two opportunities for an individual to request a hearing on alleged violations of the Federal Aviation Act or Hazardous Materials Transportation Act. First, an individual may forgo the informal proceedings provided in § 13.16 by requesting a hearing after receipt of a notice of proposed civil penalty. The notice of proposed civil penalty will be reviewed by the agency attorney, and in appropriate cases, an order of civil penalty will be issued which will serve as the complaint in the proceedings. This review gives the FAA a final opportunity to determine if prosecution of the action is warranted. Second, an individual may request a hearing after participating in any informal proceedings with an agency attorney. Thus, the order of civil penalty issued after a request for a hearing in these cases enables the agency to tailor the order of civil penalty to reflect any changes to the notice of proposed civil penalty based on information submitted during the informal proceedings. The FAA believes that it is appropriate and logical to hold a hearing on the merits of the order of civil penalty which contains the most concise statement of alleged facts and regulatory or statutory violations.

The basic provisions of § 13.16 regarding referral of an action to the United States Attorney for collection of an assessed civil penalty have been retained. Therefore, the FAA need only refer civil penalty actions under § 13.16 to the United States Attorney for collection of the penalty if a person subject to an order assessing civil penalty does not pay the assessed civil penalty. In addition, the agency may use the procedures established by the Department of Transportation to implement the Debt Collection Act to collect any assessed civil penalty.

Section 13.16 requires an individual to proceed through the entire administrative process set forth in these rules before appealing any decision or order to an appellate court. A party may appeal a final decision and order of the Administrator, issued after appeal of an administrative law judge's initial decision to the FAA decisionmaker, if the party complies with the requirements of section 1006 of the Federal Aviation Act of 1958, as amended. A party may not appeal an initial decision of an administrative law judge directly to the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia. The requirement to exhaust administrative remedies prior to appellate review by a court of appeals guarantees that the issues have been fully developed before the agency and provides a complete administrative record for judicial review.

Promulgation of these rules does not revoke, expressly or implicitly, Subpart D of Part 13. Although that subpart will not govern civil penalty actions addressed in this final rule, Subpart D will continue to govern hearings requested to review FAA orders charging a violation of Title V of the Federal Aviation Act of 1958, as amended; orders of compliance, cease and desist orders, orders of denial, or orders of compliance under the Federal Aviation Act of 1958, as amended; the Airport and Airway Development Act of 1970; and the Airport and Airways Improvement Act of 1982, as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987; and orders of immediate compliance under the Hazardous Materials Transportation Act.

Discussion of Procedural Rules

Section 13.201 repeats the provisions of the Federal Aviation Act and the Hazardous Materials Transportation Act defining who is subject to a civil penalty for specific violations and the maximum civil penalty that the Administrator may assess for a violation. That section specifically states that the procedural rules contained in Subpart G do not apply to civil penalty proceedings that were initiated before the effective date of the procedural rules. Cases or hearings that were initiated prior to the issuance of these rules are governed by the rules in effect at the time they were initiated.

Section 13.202 includes definitions of words and phrases used repeatedly in the procedural rules and definitions of concepts that may not be clear from the language of a particular rule. Definitions of "mail" and "personal delivery" have been included to ensure that filing and service requirements are consistent and to provide a variety of methods by which a person can file and serve documents. For example, an overnight express courier stated in "mail" would include services that deliver packages the day after they are deposited with the courier, such as DHL, Federal Express, and the U.S. Postal Service's ExpressMail. Services that deliver packages on the same day they are presented to the messenger are encompassed within the definition of "personal delivery." The terms "contract or express messenger services," used in the definition of "personal delivery," include the use of bicycle or automobile messengers who deliver packages within a local, specified area and individuals employed by firms or businesses that deliver documents or mail for that business.

Section 13.203 describes the individuals within the FAA who will prosecute civil penalty actions. Agency attorneys will represent the agency during the initiation of a civil penalty action, any settlement of a civil penalty action, any hearing requested under Subpart G of Part 13, and any appeal of an initial decision issued after the hearing. The rule states that agency attorneys involved in prosecution of a civil penalty will not, at any time or in

any manner, advise the FAA decisionmaker during the hearing or the appeal of a civil penalty action. An agency attorney who prosecutes a civil penalty action on behalf of the agency is permitted by this section to consult with, and advise, the FAA decisionmaker regarding the action until a notice of proposed civil penalty is issued by the Administrator. The Administrator is permitted to participate in the decision whether to issue a notice of proposed civil penalty in the first instance. Section 13.203 also describes the individuals who will advise the FAA decisionmaker during any appeal of a decision by an administrative law judge. These individuals are separated from the agency attorneys who prosecute civil penalty actions. This provision ensures that the FAA decisionmaker is insulated from any person who is involved in prosecution of a civil penalty action. Thus, the Administrator's duty to function as an independent decisionmaker in the administrative process remains untainted by the collateral agency prosecutorial function.

Section 13.204 states that persons charged with a violation may provide their own representation during a hearing or an attorney may represent the person charged with a violation. The FAA does not keep a register of attorneys who may participate in hearings under this subpart. No attorney is required to submit an application to practice before the FAA in civil penalty hearings. Like the procedural rules of practice of the NTSB in air safety proceedings, the FAA rule allows other individuals, who are not licensed attorneys, to advise or represent a person charged with a violation. Nothing in this section prohibits individuals from representing themselves if they so desire. To that end, the rules were drafted so that individuals who represent themselves are not misled by overly-technical procedural requirements.

Section 13.205 describes the authority, and limitations of that authority, of the administrative law judge in civil penalty proceedings. The powers of the administrative law judge are based on the powers outlined in the Administrative Procedure Act. Section 13.205 includes a provision that enables the administrative law judge to disqualify himself or herself from the proceedings. In addition, a party can request that an administrative law judge not participate in a particular proceeding if the party files a motion for disqualification pursuant to § 13.218. If the administrative law judge denies a party's motion for disqualification, the party may file an interlocutory appeal for cause pursuant to § 13.219.

Unlike its counterpart in Subpart D, § 13.206 prohibits intervention by any person who does not have a statutory right to intervene. In the FAA's experience, intervention requests are infrequent in enforcement actions, and these requests generally are denied. The FAA believes that requests to intervene would result in unnecessary delay and expense to the true parties in the civil penalty proceedings.

Section 13.207 is included in the procedural rules to ensure that a party does not submit documents that may require a response under the rules or that may raise extraneous issues solely to harass another party or to increase the time and expense of the proceedings. The FAA believes that this section will help to protect the integrity of the proceedings.

Sections 13.208 and 13.209 state the procedures and requirements for filing a complaint in the proceedings and for filing an answer to the allegations contained in the complaint. After an individual has requested a hearing, the agency attorney will file an order of civil penalty, which serves as the complaint in the proceedings, with the hearing docket clerk. The rule allows an individual to submit the answer in the form of a letter and in legible, handwritten form. This section is intended to provide great flexibility and easy access in the hearing process so that an individual is not forced to hire an attorney for the proceedings.

An individual who requests a hearing is permitted to suggest a location for a hearing with his or her request pursuant to § 13.16(i) of Subpart C. If the agency attorney disagrees with the individual's suggested location, § 13.208 enables the agency attorney to suggest a different location for the hearing. If the parties do not agree on the location for the hearing, the hearing docket clerk will set the hearing for a location near the place where the incident occurred. The FAA believes that this location will be convenient because most of the witnesses and the relevant evidence will be available at that location. In addition, the administrative law judge has the authority to grant a party's motion to move the hearing to a location other than the location set by the hearing docket clerk. Pursuant to § 13.221(c), either party can submit information to the administrative law judge that supports a motion to move the hearing if that location later proves to be inconvenient or inaccessible.

Pursuant to § 13.209, an individual has 30 days from the time that the order of civil penalty was served to file an answer. If an individual fails to file any answer within the 30 days, without good cause for the failure to file, the allegations in the order of civil penalty are considered to be admitted and an order assessing civil penalty will be issued. The FAA recognizes that this is a severe penalty for failure to file an answer. However, the FAA believes that this will discourage spurious or dilatory requests for a hearing. The FAA anticipates that this section will encourage a person who legitimately disputes the finding of violation contained in the order to use the hearing process to resolve genuine issues of fact and law.

The rule requires that a person specifically address each allegation in the order of civil penalty. This requirement eliminates the burden on the parties of submitting evidence and proving matters that are not truly in dispute.

The rules provide requirements for filing and service of documents submitted in civil penalty actions. Since certain consequences flow from the date of filing or the date of service, §§ 13.210 and 13.211 specifically address the dates when documents are considered to have been filed or served during the proceedings. Under § 13.211, a certificate of service is not required in these actions. The FAA believes that a requirement to attach a certificate of service to a document is overly-technical and could prejudice an individual who is unfamiliar with procedural requirements. The FAA believes it is prudent to avoid the dismissal of an action based solely on a technical, procedural requirement. However, because certain benefits attach to the use of a certificate of service, the rule allows any party to attach a certificate of service to a document submitted for filing.

Section 13.211 includes an automatic 5-day extension of time to respond or act after a party has received a document that was served by mail. The rule provides a 5-day grace period so that a party will not be penalized for unanticipated or unexplained delays in the mail during that grace period. The FAA believes that the additional time period is sufficient and will eliminate disputes based on unavoidable delays not directly attributable to a party.

The FAA has included many provisions in these rules that allow the parties to determine schedules and procedures without requiring the administrative law judge to issue an

order on each issue. The FAA believes that these provisions provide flexibility for the parties and the ability to accommodate reasonable requests, while preserving the due process rights of individuals and prosecutorial discretion of the agency. Many of these matters can be agreed upon between the parties without oversight by the administrative law judge until there is a dispute that the parties cannot resolve. For example, § 13.213 allows each party to extend the time for filing any document once, without the consent of the administrative law judge, if they can agree to the extension. If the parties do not agree to an extension, the rule allows one party to submit a motion to the administrative law judge requesting an extension.

Similarly, § 13.217 allows the parties to control many of the prehearing and discovery aspects of a civil penalty action. In most of these situations, the parties are in the best position to schedule discovery matters and determine the course of prehearing proceedings. If the parties fail to agree on a joint procedural or discovery schedule, the FAA envisions that the parties will follow the rules addressing prehearing motions and the rules governing discovery. This section does require that the parties submit all prehearing motions, responses to these motions, and agree to close discovery not later than 15 days before the hearing. This requirement gives the administrative law judge time to resolve all pending motions before the hearing and gives the parties time to prepare for the hearing.

Section 13.218 sets forth general requirements for any motions submitted by the parties and also addresses the requirements for certain motions that are commonly submitted by either or both of the parties before and during hearings. This section requires the administrative law judge to rule on prehearing and discovery motions within a specific time before the hearing so that the factual and legal issues are sufficiently narrowed and the parties have adequate time to prepare for the hearing.

Several of the specific motions addressed in the rule may be filed by a person subject to an order of civil penalty instead of an answer. The motions that may be filed instead of an answer are a motion to dismiss the order of civil penalty for insufficiency because the order fails to state a violation, a general motion to dismiss, and a motion for more definite statement of the allegations contained in the order of civil penalty. Under the rules, the action will not be dismissed for failure to file an answer if these motions are filed instead of the answer. The rules also describe the procedures that the parties must follow after the administrative law judge has ruled on one of these motions.

Section 13.218 allows any party to submit a motion for decision that would terminate the proceedings at any time before the administrative law judge has issued an initial decision. This motion is intended to provide a single mechanism for early disposition of the case where the pleadings or evidence, or both, submitted by a party show that there is no factual dispute between the parties and that the matter should be resolved by the administrative law judge. This single motion is intended to include different, but conceptually similar, motions such as a motion for summary judgment and a motion for judgment on the pleadings. Section 13.218 also addresses the procedures that a party must use in order to file a motion for disqualification of an administrative law judge.

Section 13.219 allows the parties to appeal certain decisions of the administrative law judge to the FAA decisionmaker during the course of the proceedings instead of waiting until the administrative law judge has issued an initial decision. This section describes the interlocutory appeals permitted by the rule. The rule provides an interlocutory appeal, with the consent of the administrative law judge, if a party demonstrates good cause for the appeal. The rule also allows appellate review by the FAA decisionmaker, without the consent of the administrative law judge, for decisions that deny a motion for disqualification, bar an attorney from the proceedings, fail to dismiss the proceedings after the parties have settled the action, exceed the limitations on the power of the administrative law judge contained in the rules, and dismiss part of the proceedings pursuant to a motion to dismiss. Although the rule provides an immediate interlocutory appeal of right if an administrative law judge imposes any sanction not specified in the procedural rules, this section does not limit the FAA decisionmaker's ability to sustain the sanction. The FAA decisionmaker has broad authority to review the circumstances that prompted the sanction and to determine whether the sanction is appropriate in those circumstances.

If a party notes or files an interlocutory appeal, the appeal suspends the proceedings until the stay dissolves or the FAA decisionmaker has resolved the issues raised in the interlocutory appeal. The rule provides accelerated time limits for filing a notice of interlocutory appeal and brief in support of the interlocutory appeal. The FAA has included a specific provision in the rule on interlocutory appeals that would provide sanctions against a party who files unnecessary or dilatory interlocutory appeals. Further, documents filed in an interlocutory appeal must be signed by the party, by the attorney, or by the party's representative and, therefore, that person certifies that the document is submitted for a proper purpose. A party, an attorney, or a party's representative who files an interlocutory appeal in violation of the certification rule is subject to the sanctions specified in that rule.

Section 13.220 provides discovery rules that are similar to the discovery permitted under the Federal Rules of Civil Procedure. However, the discovery rules have been tailored to accommodate the less formal requirements of administrative practice. The discovery rules provide procedures to request confidential orders or protective orders that are intended to protect proprietary data or information and sensitive material that has been requested by a party.

The discovery rules require a party to supplement or change a response to a discovery request as soon as new information is received. This requirement relieves the requesting party from the burden of submitting additional requests to update or correct prior responses. The duty to supplement or amend prior responses is based on, but is not broader than, the duty contained in the revised discovery rules of the Federal Rules of Civil Procedure.

The rule permits a party to take depositions of any person. The person taking the deposition is required to notify the person who will be deposed, the administrative law judge, the hearing docket clerk, and each party, at least 7 days before the date scheduled for the deposition. However, the administrative law judge may allow a party to take a deposition with less than 7 days notice. The person being deposed is required to sign the deposition unless the parties waive that requirement. The rule limits the use of the deposition by a party at the hearing only upon a showing of good cause by the party who wants to use the deposition.

The rule states that a party cannot serve more than 30 interrogatories to any other party. Each subpart of a question is counted as a separate question. The rule limits the number of

interrogatories to avoid repetitive and burdensome requests. A party may receive permission from the administrative law judge to serve additional interrogatories in certain limited situations.

Unlike the rule limiting the number of interrogatories, the FAA did not limit the number of requests for admission that a party may serve on another party. The rule specifies severe penalties for a party's failure to respond in some manner to a request for admission. Material that is admitted by a party can be used for all purposes in the hearing and any appeal. In addition, the FAA may use information that has been admitted by a party where it is relevant to future enforcement proceedings by the FAA. The FAA's use of admitted information is necessary because the Hazardous Materials Transportation Act requires the Administrator to consider a person's history of prior violations when determining the amount of civil penalty to be assessed in other unrelated civil penalty actions. Also, consideration of an individual's compliance disposition is necessary to determine an appropriate civil penalty that would deter violations of the FAA's safety regulations. The FAA's experience in certificate actions before the NTSB supports consideration of prior violations when determining an appropriate sanction.

Section 13.220 provides a method to compel a party to comply with reasonable discovery requests. The rule also provides a method to force a party to comply with a discovery order or an order to compel issued by the administrative law judge. This section of the rule limits the sanctions that the administrative law judge can impose to the particular failure of the party. This will avoid complete dismissal of the case based solely on a failure to participate in discovery.

Section 13.221 sets forth general rules for notice of the date, time, and location of the hearing. The administrative law judge is required to give the parties 60 days notice of the date and time of the hearing. The FAA anticipates that the administrative law judge will allow ample, but not excessive, opportunity for the parties to enter into a joint procedural schedule or to conduct discovery without the aid of a joint schedule. Even if the administrative law judge sets a hearing date as soon as the case is assigned, the FAA believes that 60 days is sufficient time for the parties to conduct discovery and file prehearing motions. The rule allows the parties to agree that the hearing be held on an earlier date if the administrative law judge is available on the earlier date.

During the 2-year civil penalty assessment demonstration program, the FAA has elected to use administrative law judges employed by the Department of Transportation who will travel to the hearings. The FAA has attempted to craft a rule that provides maximum flexibility to accommodate persons requesting hearings under these rules and to accommodate the schedules of the administrative law judges.

Section 13.222 places very few restrictions on the type of evidence that a party may submit in support of the case or a defense. All evidence is admissible in civil penalty assessment proceedings except evidence that is not relevant or material to the action or that is repetitious of evidence already submitted by a party. This section was intended to be as broad as, and consistent with, the Administrative Procedure Act so that the administrative law judge can consider all relevant and material evidence in the action.

The FAA is aware that, in many cases, individuals subject to an order of civil penalty must rely on hearsay evidence in defense of their case. The FAA believes that general admissibility of all evidence, including hearsay, is critical to ensure a full and complete record for decision. To ensure that hearsay evidence is not excluded in civil penalty actions, the FAA has inserted a specific provision stating that hearsay evidence is admissible in civil penalty actions. The reliability and probative value of the hearsay evidence will be considered when deciding the weight to be accorded hearsay evidence.

Section 13.226 allows the parties to request that portions of the record be sealed and prohibited from disclosure to the public. The administrative law judge may order information withheld from the public if revealing the information would be detrimental to aviation safety or would not be in the public interest. The administrative law judge may prohibit disclosure of any information that is not required, by statute or regulation, to be disclosed to the public.

Section 13.228 provides that a party may obtain a subpoena, once it has been signed by the docket clerk or the administrative law judge, from the hearing docket clerk. The party who obtains the subpoena is responsible for delivering the subpoena to the person whose attendance is required to testify or to produce documents. Under the rule, a party is entitled to seek judicial enforcement of a subpoena if the party shows that the person subject to the subpoena has failed or refused to comply with the terms of the subpoena. The FAA believes that the burden of obtaining judicial enforcement of a subpoena properly lies with the party who seeks to compel attendance at a hearing or to compel production of documents in a proceeding.

Any person who receives a subpoena may request that the administrative law judge nullify, or modify, the requirement to appear or the requirement to produce documents described in the subpoena. A motion to quash or modify a subpoena can be submitted to the administrative law judge any time before the time stated in the subpoena for testimony or production of documents. The requirement to appear or to produce documents is suspended from the time the person files the motion with the administrative law judge until the administrative law judge rules on the motion.

Section 13.230 describes the material that will constitute the record in the proceedings. All testimony submitted by any party during the hearing, all exhibits received into evidence by the administrative law judge, any motions submitted to the administrative law judge, and all rulings by the administrative law judge or the FAA decisionmaker on interlocutory appeal are included in the record. Any person may examine a copy of the record at the hearing docket. In addition, any person may have a copy of those portions of the record, that are not sealed or subject to a confidential order, if they pay the costs of copying the record.

Pursuant to § 13.231, the FAA intends that, in the majority of cases, oral arguments will be made by the parties during the hearing and at the close of the hearing. The FAA believes that oral argument is appropriate for civil penalty actions, is more efficient, and is less burdensome on the parties. At the same time, oral argument does not limit full presentation of the issues and complete development of the arguments that a party wishes to present to the administrative law judge for consideration. The FAA believes that written argument, either during the hearing or at the close of the hearing, is necessary only in clearly complex or unusual cases. For example, cases involving highly technical equipment or maintenance violations, or cases requiring a detailed analysis of several parts of the Federal Aviation Regulations, might warrant written argument or briefs. Therefore, written argument or written posthearing briefs should be filed if the parties agree to take on the extra burden of preparing and submitting written briefs or if the

administrative law judge requests written briefs or arguments to address complex or unusual issues in a particular case.

Section 13.232 states the requirements for an initial decision issued by an administrative law judge in civil penalty actions. The initial decision must include, among other things, findings of fact, conclusions of law, the grounds that support these findings and conclusions, determinations of the credibility of witnesses, and a discussion of the basis for rulings of the administrative law judge during the hearing. The FAA believes that requiring a detailed discussion of the basis for the decision will guarantee that the parties have full and complete information to decide whether to appeal and, if so, on what basis to appeal.

The rule also requires that the administrative law judge provide copies of any unpublished or unreported initial decision referenced in an initial decision to the parties and to the FAA decisionmaker. This section provides access by the parties and the FAA decisionmaker to information, otherwise unavailable, that served as a basis for an initial decision. The FAA believes that this information will help the parties evaluate the necessity of an appeal and will help the FAA decisionmaker understand the basis for the initial decision.

The initial decision also must include a determination of the reasonableness of the civil penalty contained in the order of civil penalty. It is clear that the agency attorney must explain the basis for the civil penalty in order for the administrative law judge to make such a determination. For example, pursuant to statutory mandate, the agency attorney considers all information known to the agency, and all information submitted by an individual, before issuing an order of civil penalty. The Federal Aviation Act gives the FAA the authority to ensure aviation safety by promulgating and enforcing safety regulations and providing appropriate sanctions for violations of those regulations. The FAA's determination of a civil penalty, to deter violations of the safety regulations, should be given deference to encourage compliance and to ensure a sufficient deterrent effect. If the administrative law judge affirms the order of civil penalty but reduces the amount of the civil penalty, the administrative law judge should state why the reduction is appropriate. The FAA believes that requiring an explanation for any reduced sanction is critical for consideration of any appeal of the reduction and determination of civil penalties in future actions.

In the majority of cases, the administrative law judge is not required to issue a written decision. The administrative law judge is entitled, and is encouraged, to issue an initial decision orally; a written decision should be reserved for clearly complex or unusual cases. The FAA believes that the freedom and ability to issue oral decisions will greatly reduce the time required to resolve the issues addressed during the hearing. In addition, the FAA anticipates that an oral decision may help reduce the time and expense for the parties and may reduce the adjudicatory burden on the administrative law judge.

Section 13.233 contains the procedures that a party must follow to file an appeal of the administrative law judge's initial decision with the FAA decisionmaker. The basis for appeal by a party to the FAA decisionmaker has been circumscribed in these rules because the flexible hearing process provided in these rules will result in a full and complete analysis of the facts in a civil penalty action. The FAA believes that limiting the basis upon which a party may appeal an initial decision will preclude frivolous and unnecessary appeals of initial decisions that merely delay the proceedings and decrease the deterrent effect of civil penalty. However, the rules preserve the FAA decisionmaker's discretion to take any action that the FAA decisionmaker determines may be necessary to resolve an issue on appeal.

If a party appeals an initial decision, the party is required to file a notice of appeal and an appeal brief. The party must include the page numbers from the transcript in an appellate brief if he or she relies on evidence or information contained in the transcript for the appeal. An opposing party may file a reply brief in an appeal. A party may not submit additional briefs unless specifically permitted by the FAA decisionmaker. The rule prohibits a party from submitting any additional brief until that party has obtained permission from the FAA decisionmaker. There is no right to oral argument on appeal. Oral argument will be permitted only if the FAA decisionmaker finds that oral argument is necessary to develop the issues on appeal.

Section 13.233 also provides that only a final decision and order of the Administrator, issued after appeal of an initial decision, is precedent in subsequent civil penalty actions. The rule also provides that any portion of an initial decision that has not been appealed is not precedent in any other civil penalty action. Neither an administrative law judge nor the FAA decisionmaker is required to decide an issue in conformity with any previous, unappealed initial decision that did not result in a final decision and order of the Administrator. This section is not intended to preclude an administrative law judge from using similar reasoning or analysis in similar civil penalty actions.

Section 13.234 allows a party to request that the FAA decisionmaker reconsider or modify the final decision and order of the Administrator on appeal. The FAA decisionmaker is not required to accept any petition to reconsider or to modify any decision. The rule provides that the Administrator will not reconsider or modify any decision that was not appealed to the FAA decisionmaker under these rules.

The FAA decisionmaker will issue the decision and order of the Administrator after a party has appealed the administrative law judge's initial decision to the FAA decisionmaker. Decisions that have been appealed to the FAA decisionmaker and result in a decision and order of the Administrator constitute final orders of the Administrator that may be appealed to courts of appeals of the United States or the Court of Appeals for the District of Columbia pursuant section 1006 of the Federal Aviation Act.

Reason for No Notice and Immediate Adoption

These rules are needed immediately to implement the statutory authority given to the FAA in Pub. L. 100–223, signed by the President on December 30, 1987. The amendments enable the FAA to assess civil penalties for violations arising under the Federal Aviation Act, or a rule, regulation, or order issued thereunder, upon written notice and finding of violation by the Administrator. The legislation requires that civil penalty actions initiated under this authority be assessed only after notice and an opportunity for a hearing on the record in accordance with section 554 of the Administrative Procedure Act. The authority granted to the FAA by the amended legislation is effective only until December 30, 1989.

The amendment to the Federal Aviation Act requires the Administrator to set up a "Civil Penalty Assessment Demonstration Program" to study the effectiveness of the amendment. The legislation also requires the FAA to report to Congress, no later than June 30, 1989, on the results of the study required by the legislation. The FAA reviewed

the existing procedural rules governing enforcement hearings and determined that these procedures are inadequate to provide the appropriate level of procedural formality dictated by Congress in the legislation. For these reasons, notice and public comment procedures are impracticable, unnecessary, and contrary to the public interest. Moreover, good cause exists to make these procedural rules effective in less than 30 days. In accordance with the DOT Regulatory Policies and Procedures, an opportunity for public comment on the final rule is provided.

Economic Assessment

Because of the emergency need for these procedural rules, and in accordance with section 8(a)(1) of Executive Order 12291, I find that it is impracticable to follow the procedures of the Executive Order. For the same reason, a full regulatory evaluation has not been prepared prior to publication of this final rule. In accordance with section 11(a) of the DOT Regulatory Policies and Procedures, a regulatory evaluation will be prepared, if necessary, and placed in the public docket, unless an exception is granted by the Secretary of Transportation.

The rules contained in this final rule are purely procedural rules of practice that will govern hearings requested by persons subject to FAA civil penalty action. The FAA can not anticipate the number of persons who may request a hearing after an order of civil penalty has been issued by the FAA. The hearings conducted pursuant to these rules provide an alternative to the prior procedure of referring these actions to the United States Attorney for prosecution of a civil penalty action in a United States District Court. For these reasons, the FAA anticipates that the cost, if any, of complying with these procedural rules would be minimal. Therefore, it is certified, according to the criteria of the Regulatory Flexibility Act of 1980, that this final rule will not have a significant economic impact, positive or negative, on a substantial number of small entities.

Federalism Implications

This amendment would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

Conclusion

The FAA has determined that this amendment is not a major regulation under Executive Order 12291 and that it is not a significant regulation under the Regulatory Policies and Procedures of the Department of Transportation. In accordance with section 8(a)(1) of Executive Order 12291, due to the emergency need for these procedural rules, the procedures in that Executive Order have not been followed. For the reasons discussed above, the FAA also has determined that these rules will not have a significant economic impact, positive or negative, on a substantial number of small entities. A copy of any regulatory evaluation prepared for this final rule will be placed in the public docket unless an exception is granted by the Secretary of Transportation.

List of Subjects in 14 CFR Part 13

Enforcement procedures, Investigations, Penalties.

The Amendments

Accordingly, the Federal Aviation Administration amends Part 13 of the Federal Aviation Regulations (14 CFR Part 13), effective September 7, 1988 as follows:

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

1. The authority citation for Part 13 is revised to read as follows:

Authority: 49 U.S.C. 1354 (a) and (c), 1374(d), 1401–1406, 1421–1428, 1471, 1475, 1481, 1482 (a), (b), and (c), and 1484–1489 (Federal Aviation Act of 1958) (as amended, 49 U.S.C. App. 1475, Airport and Airway Safety and Capacity Expansion Act of 1987); 49 U.S.C. App. 1655(c) (Department of Transportation Act) (Revised, 49 U.S.C. 106(g)); 49 U.S.C. 1808, 1809, and 1810 (Hazardous Materials Transportation Act); 49 U.S.C. 1727 and 1730 (Airport and Airway Development Act of 1970); 49 U.S.C. 2218 and 2219 (Airport and Airway Improvement Act of 1982); 49 U.S.C. 2201 (as amended, 49 U.S.C. App. 2218, Airport and Airway Safety and Capacity Expansion Act of 1987); 18 U.S.C. 6002 and 6004 (Organized Crime Control Act of 1970); 49 CFR 1.47 (f), (k), and (q) (Regulations of the Office of the Secretary of Transportation).

2. Section 13.15 is revised to read as follows:

§ 13.15 Civil penalties: Federal Aviation Act of 1958 involving an amount in controversy in excess of $50,000; an in rem action; seizure of aircraft; or injunctive relief.

(a) The following penalties apply to persons who violate the Federal Aviation Act of 1958, as amended:

(1) Any person who violates any provision of Title III, V, VI, or XII of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order issued thereunder, is subject to a civil penalty of not more than $1000 for each violation, in accordance with section 901 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1471, *et seq.*).

(2) Any person who violates section 404(d) of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order issued thereunder, is subject to a civil penalty of not more than $2,000 for each violation, in accordance with section 901 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1471, *et seq.*).

(3) Any person who operates aircraft for the carriage of persons or property for compensation or hire (other than an airman serving in the capacity of an airman) is subject to a civil penalty of not more than $10,000 for each violation of Title III, VI, or XII of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order issued thereunder, occurring after December 30, 1987, in accordance with section 901 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1471 *et seq.*).

(b) The authority of the Administrator, under section 901 of the Federal Aviation Act of 1958, as amended, to propose a civil penalty for a violation of that Act, or a rule, regulation, or order issued thereunder, and the ability to refer cases to the United States Attorney General, or the delegate of the Attorney General, for prosecution of civil penalty actions proposed by the Administrator, involving an amount in controversy in excess of $50,000, an *in rem* action, seizure of aircraft subject to lien, or suit for injunctive relief, or for collection of an assessed civil penalty, is delegated to the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, and the Assistant Chief Counsel for a region or center.

(c) The Administrator may compromise any civil penalty, proposed in accordance with section 901 of the Federal Aviation Act of 1958, as amended, involving an amount in controversy in excess of $50,000, an *in rem* action, seizure of aircraft subject to lien, or suit for injunctive relief, prior to referral of the civil penalty action to the United States Attorney General, or the delegate of the Attorney General, for prosecution.

(1) The Administrator, through the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, and the Assistant Chief Counsel for a region or center, sends a civil penalty letter to the person charged with a violation of the Federal Aviation

Act of 1958, as amended, or a rule, regulation, or order issued thereunder. The civil penalty letter contains a statement of the charges, the applicable law, rule, regulation, or order, the amount of civil penalty that the Administrator will accept in full settlement of the action or an offer to compromise the civil penalty.

(2) Not later than 30 days after receipt of the civil penalty letter, the person charged with a violation may present any material or information in answer to the charges to the agency attorney, either orally or in writing, that may explain, mitigate, or deny the violation or that may show extenuating circumstances. The Administrator will consider any material or information submitted in accordance with this paragraph to determine whether the person is subject to a civil penalty or to determine the amount for which the Administrator will compromise the action.

(3) If the person charged with the violation offers to compromise for a specific amount, that person shall send a certified check or money order for that amount, payable to the Federal Aviation Administration, to the agency attorney. The Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, or the Assistant Chief Counsel for a region or center, may accept the certified check or money order or may refuse and return the certified check or money order.

(4) If the offer to compromise is accepted by the Administrator, the agency attorney will send a letter to the person charged with the violation stating that the certified check or money order is accepted in full settlement of the civil penalty action.

(5) If the parties cannot agree to compromise the civil penalty action or the offer to compromise is rejected and the certified check or money order submitted in compromise is returned, the Administrator may refer the civil penalty action to the United States Attorney General, or the delegate of the Attorney General, to begin proceedings in a United States District Court, pursuant to the authority in section 903 of the Federal Aviation Act, as amended (49 U.S.C. 1473), to prosecute and collect the civil penalty.

3. Section 13.16 is revised to read as follows:

§ 13.16 Civil Penalties: Federal Aviation Act of 1958, involving an amount in controversy not exceeding $50,000; Hazardous Materials Transportation Act.

(a) The following penalties apply to persons who violate the Federal Aviation Act of 1958, as amended, and the Hazardous Materials Transportation Act:

(1) Any person who violates any provision of Title III, V, VI, or XII of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order issued thereunder, is subject to a civil penalty of not more than $1,000 for each violation, in accordance with section 901 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1471, *et seq.*).

(2) Any person who violates section 404(d) of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order issued thereunder, is subject to a civil penalty of not more than $2,000 for each violation, in accordance with section 901 of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1471 *et seq.*).

(3) Any person who operates aircraft for the carriage of persons or property for compensation or hire (other than an airman serving in the capacity of an airman) is subject to a civil penalty of not more than $10,000 for each violation of Title III, VI, or XII of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order issued thereunder, occurring after December 30, 1987, in accordance with section 901 of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1471 *et seq.*).

(4) Any person who knowingly commits an act in violation of the Hazardous Materials Transportation Act, or any rule, regulation, or order issued thereunder is subject to a civil penalty of not more than $10,000 for each violation, in accordance with section 901 of the Federal Aviation Act of 1958, as amended, and section 110 of the Hazardous Materials Transportation Act (49 U.S.C. 1471 and 1809 *et seq.*). An order assessing civil penalty for a violation under the Hazardous Materials Transportation Act, or a rule, regulation, or order issued thereunder, will be issued only after consideration of—

(i) The nature and circumstances of the violation;

(ii) The extent and gravity of the violation;

(iii) The person's degree of culpability;

(iv) The person's history of prior violations;

(v) The person's ability to pay the civil penalty;

(vi) The effect on the person's ability to continue in business; and

(vii) Such other matters as justice may require.

(b) An order assessing civil penalty may be issued for a violation described in paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this section after notice and opportunity for a hearing.

(c) The authority of the Administrator, under sections 901 and § 905 of the Federal Aviation Act of 1958, as amended, and section 110 of the Hazardous Materials Transportation Act, to initiate and assess civil penalties for a violation of those Acts, or a rule, regulation, or order issued thereunder and the authority under section 901 of the Federal Aviation Act of 1958, as amended, and the ability to refer cases to the United States Attorney General, or the delegate of the Attorney General, for collection of assessed civil penalties, is delegated to the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, and the Assistant Chief Counsel for a region or center.

(d) *Notice of proposed civil penalty.* A civil penalty action is initiated by sending a notice of proposed civil penalty to the person charged with a violation of the Federal Aviation Act of 1958, as amended, the Hazardous Materials Transportation Act, or a rule, regulation, or order issued thereunder. The notice of proposed civil penalty contains a statement of the charges and the amount of the proposed civil penalty.

(e) *Procedures following receipt of notice of proposed civil penalty.* Not later than 30 days after receipt of the notice of proposed civil penalty, the person charged with a violation shall do one of the following:

(1) The person shall submit the amount of the proposed civil penalty in which case an order assessing civil penalty shall be issued in that amount.

(2) The person shall participate in the informal procedures provided in paragraph (f) of this section.

(3) The person shall request a hearing, pursuant to paragraph (i) of this section, in which case an order of civil penalty shall be issued and shall be filed with the hearing docket clerk as the complaint in the proceedings.

(f) *Informal procedures.* Not later than 30 days after receipt of the notice of proposed civil penalty, the person charged with a violation, who wants to participate in informal procedures, shall do one of the following:

(1) The person shall submit any information, including documents and witness statements, in writing, to the agency attorney, demonstrating that a violation of the regulations did not occur or that the penalty or the amount of the penalty is not warranted by the circumstances.

(2) The person shall submit a written request to the agency attorney to reduce the proposed civil penalty and shall submit, in writing, the reasons and documents supporting the reduction of

the proposed civil penalty, including records indicating a financial inability to pay or records showing that payment of the proposed civil penalty would prevent the person from continuing in business, or

(3) The person shall submit a written request to the agency attorney for an informal conference to discuss the matter with the agency attorney and to submit relevant information or documents to the agency attorney.

(g) *Procedures following interim reply or informal conference.* Not later than 10 days after the person charged with a violation receives an interim reply to any submission made in accordance with paragraphs (f)(1) or (f)(2) or not later than 10 days after an informal conference, the person charged with the violation shall do one of the following:

(1) The person shall submit the amount of the proposed civil penalty in which case an order assessing civil penalty shall be issued in that amount.

(2) The person shall submit additional written information to the agency attorney for consideration.

(3) The person shall request a hearing, pursuant to paragraph (i) of this section, in which case an order of civil penalty shall be issued and shall be filed with the hearing docket clerk as the complaint in the proceedings.

(h) *Order of civil penalty.* An order of civil penalty shall be issued if the person charged with a violation requests a hearing in accordance with paragraph (e)(3) or paragraph (g)(3) of this section.

(i) *Request for a hearing.* Any person who receives a notice of proposed civil penalty may request a hearing, pursuant to paragraph (e)(3) or paragraph (g)(3) of this section, to be conducted in accordance with the procedures in Subpart G of this part. A person requesting a hearing shall file a written request for a hearing with the agency attorney. The request for a hearing may be in the form of a letter but must be dated and signed by the person requesting a hearing. The request for a hearing may be typewritten or may be legibly handwritten. A person requesting a hearing shall include a suggested location for the hearing in the request for a hearing.

(j) *Order assessing civil penalty.* An order assessing civil penalty shall be issued if the person charged with a violation—

(1) Submits the amount of the proposed civil penalty in which case the order assessing civil penalty shall reflect receipt of the civil penalty;

(2) Does not respond in a timely manner to the notice of proposed civil penalty;

(3) Does not respond in a timely manner to interim replies from the agency attorney under paragraph (g) of this section; or

(4) Does not comply with any agreement reached between the parties during an informal conference.

(k) *Payment.* A person charged with a violation may pay the amount of the civil penalty proposed in the notice or stated in the order, or an amount agreed upon, by sending a certified check or money order, payable to the Federal Aviation Administration, to the agency attorney.

(l) *Hearing.* If the person charged with the violation requests a hearing pursuant to paragraph (e)(3) or paragraph (g)(3) of this section, the order of civil penalty shall be issued and shall be filed with the hearing docket clerk as the complaint in the proceedings. The procedural rules in Subpart G of this part apply to the hearing and any appeal. At the close of the hearing, the administrative law judge shall issue, either orally on the record or in writing, an initial decision, including the reasons for the decision, that affirms, modifies, or reverses the order of civil penalty. An order of civil penalty, as affirmed or modified by the administrative law judge, shall become an order assessing civil penalty if a party does not appeal the administrative law judge's initial decision to the FAA decisionmaker.

(m) *Appeal.* Either party may appeal the administrative law judge's initial decision to the FAA decisionmaker pursuant to the procedures in Subpart G of this part. If a party files a notice of appeal pursuant to § 13.233 of Subpart G, the effectiveness of any order assessing civil penalty is stayed until a final decision and order of the Administrator has been entered on the record. The FAA decisionmaker shall review the record of the hearing and issue a final decision and order of the Administrator that affirms, modifies, or reverses the order assessing civil penalty. The FAA decisionmaker shall not assess a civil penalty in an amount greater than the amount stated in the order of civil penalty.

(n) *Exhaustion of administrative remedies.* A party may only appeal a final decision and order of the Administrator to the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia pursuant to section 1006 of the Federal Aviation Act of 1958, as amended. An order or an initial decision of an administrative law judge, that has not been appealed to the FAA decisionmaker, does not constitute a final order of the Administrator for the purposes of judicial appellate review under section 1006 of the Federal Aviation Act of 1958, as amended.

(o) If a person subject to an order assessing civil penalty does not pay the assessed civil penalty within 60 days after service of the order assessing civil penalty, the Administrator may refer the order to the United States Attorney General, or the delegate of the Attorney General, to begin proceedings in a United States District Court, pursuant to the authority in section 903 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1473), or section 110 of the Hazardous Materials Transportation Act (49 U.S.C. 1809), to collect the civil penalty.

(p) *Compromise.* The Administrator may compromise any civil penalty, assessed in accordance with sections 901 and 905 of the Federal Aviation Act of 1958, as amended, involving an amount in controversy not exceeding $50,000, or any civil penalty assessed in accordance with section 901 of the Federal Aviation Act of 1958, as amended, and section 110 of the Hazardous Materials Transportation Act, at any time prior to referring the order assessing civil penalty to the United States attorney for collection.

4. Section 13.31 is revised to read as follows:

§ 13.31 Applicability.

This subpart applies to proceedings in which a hearing has been requested in accordance with §§ 13.19(c)(5), 13.20(c), 13.20(d), 13.75(a)(2), 13.75(b), or 13.81(e).

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

5. Part 13 is amended by adding a new Subpart G to read as follows:

Subpart G—Rules of Practice in FAA Civil Penalty Actions

Sec.

Sec.

Subpart G—Rules of Practice in FAA Civil Penalty Actions

§ 13.201 Applicability.

(a) This subpart applies to the following actions:

(1) A civil penalty action, initiated after September 7, 1988, in which an order of civil penalty has been issued not exceeding $50,000 for a violation arising under the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1301 *et seq.*), or a rule, regulation, or order issued thereunder.

(2) A civil penalty action initiated after September 7, 1988, in which an order of civil penalty has been issued for a violation arising under the Federal Aviation Act of 1958, as amended (49 U.S.C. 1471 *et seq.*) and the Hazardous Materials Transportation Act (49 U.S.C. 1801 *et seq.*), or a rule, regulation, or order issued thereunder.

(b) This subpart applies only to proceedings initiated after September 7, 1988. All other cases, hearings, or other proceedings pending or in progress at the time this subpart is effective are not affected by the rules in this subpart.

(c) Notwithstanding the provisions of paragraph (a) of this section, the United States district courts shall have exclusive jurisdiction of any civil penalty action initiated by the Administrator—

(1) Which involves an amount in controversy in excess of $50,000;

(2) Which is an *in rem* action or in which an *in rem* action based on the same violation has been brought;

(3) Regarding which an aircraft subject to lien has been seized by the United States; and

(4) In which a suit for injunctive relief based on the violation giving rise to the civil penalty has also been brought.

§ 13.202 Definitions.

"Administrative law judge" means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105.

"Agency attorney" means the Assistant Chief Counsel for Regulations and Enforcement, the Assistant Chief Counsel for a region or center, or an attorney designated to prosecute a case. An agency attorney shall not include any attorney who advises the FAA decisionmaker regarding an initial decision or any appeal to the FAA decisionmaker or who is supervised by a person who provides advice to the FAA decisionmaker in a case.

"Attorney" means a person licensed by a state, the District of Columbia, or a territory of the United States to practice law or appear before the courts of that state or territory.

"Complaint" means an order of civil penalty issued pursuant to the Federal Aviation Act of 1958, as amended, or a rule, regulation, or order issued thereunder, or the Hazardous Materials Transportation Act, or a rule, regulation, or order issued thereunder, which has been filed with the Hearing Docket after a hearing has been requested.

"FAA decisionmaker" means the Administrator of the Federal Aviation Administration, acting in the capacity of the decisionmaker on appeal, or any person to whom the Administrator has delegated the Administrator's decisionmaking authority in a civil penalty action. As used in this subpart, the FAA decisionmaker is the official authorized to issue a final decision and order of the Administrator in a civil penalty action.

"Mail" includes U.S. certified mail, U.S. registered mail, or use of an overnight express courier service.

"Order assessing civil penalty" means an order that contains a finding or determination of violation arising under the Federal Aviation Act, as amended, or a rule, regulation, or order issued thereunder, or a violation of the Hazardous Materials Transportation Act, or a rule, regulation, or order issued thereunder, and directs a person to pay a civil penalty for the violation.

"Order of civil penalty" means an order issued after a person requests a hearing pursuant to § 13.16(e)(3) or 13.16(g)(3) of this part and which is filed with the docket clerk as the complaint in the proceedings.

"Party" means the agency attorney or the respondent named in an order of civil penalty.

"Personal delivery" includes hand-delivery or use of a contract or express messenger service. "Personal delivery" does not include use of government interoffice mail service.

"Pleading" means a complaint, an answer, and any amendment of these documents permitted under this subpart.

"Properly addressed" means a document that shows an address contained in FAA records, a residential, business, or other address submitted by a person on any document provided by this subpart, or any other address shown by other reasonable and available means.

"Respondent" means a person to whom a civil penalty is directed and who has received an order of civil penalty.

§ 13.203 Separation of functions.

(a) Civil penalty proceedings, including hearings, shall be prosecuted by an agency attorney.

(b) Any agency attorney engaged in the performance of prosecutorial functions in a case shall not, in that case or a factually related case, participate in, or advise the FAA decisionmaker regarding, an initial decision or any appeal to the FAA decisionmaker under this subpart, except as a witness or counsel in public proceedings. The prohibition described in this paragraph shall begin at the time that a notice of proposed civil penalty is issued.

(c) The Chief Counsel shall not perform prosecutorial functions in a case and shall not supervise the agency attorney in the performance of prosecutorial functions in a case. The prohibitions described in this paragraph shall begin at the time that the notice of proposed civil penalty is issued.

(d) The Chief Counsel or the delegate of the Chief Counsel, other than individuals described in paragraph (a) of this section, shall advise the FAA decisionmaker regarding an initial decision or any appeal to the FAA decisionmaker under this subpart.

§ 13.204 Appearances and rights of parties.

(a) Any party may appear and be heard in person.

(b) Any party may be accompanied, represented, or advised by an attorney or representative designated by the party and may be examined by that attorney or representative in any proceeding governed by this subpart. An attorney or representative who represents a party may file a notice of appearance in the action, in the manner provided in § 13.210 of this subpart, and shall serve a copy of the notice of appearance on each party, in the manner provided in § 13.211 of this subpart, before participating in any proceeding governed by this subpart. The attorney or representative shall

include the name, address, and telephone number of the attorney or representative in the notice of appearance.

(c) Any person may request a copy of a document upon payment of reasonable costs. A person may keep an original document, data, or evidence, with the consent of the administrative law judge, by substituting a legible copy of the document for the record.

§ 13.205 Administrative law judges.

(a) *Powers of an administrative law judge.* In accordance with the rules of this subpart, an administrative law judge may—

(1) Give notice of, and hold, prehearing conferences and hearings;

(2) Administer oaths and affirmations;

(3) Issue subpoenas authorized by law and issue notices of deposition requested by the parties;

(4) Rule on offers of proof;

(5) Receive relevant and material evidence;

(6) Regulate the course of the hearing in accordance with the rules of this subpart;

(7) Hold conferences to settle or to simplify the issues by consent of the parties;

(8) Dispose of procedural motions and requests; and

(9) Make findings of fact and conclusions of law, and issue an initial decision.

(b) *Limitations on the power of the administrative law judge.* The administrative law judge shall not issue an order of contempt, award costs to any party, or impose any sanction not specified in this subpart. If the administrative law judge imposes any sanction not specified in this subpart, a party may file an interlocutory appeal of right with the FAA decisionmaker pursuant to § 13.219(c)(4) of this subpart. This section does not preclude an administrative law judge from issuing an order that bars a person from a specific proceeding based on a finding of obstreperous or disruptive behavior in that specific proceeding.

(c) *Disqualification.* The administrative law judge may disqualify himself or herself at any time. A party may file a motion, pursuant to § 13.218(f)(6), requesting that an administrative law judge be disqualified from the proceedings.

§ 13.206 Intervention.

(a) Any person who has a statutory right to participate in the proceedings shall be allowed to intervene in the proceedings by the administrative law judge.

(b) In all other cases, the administrative law judge shall not allow any person to intervene in any proceeding governed by this subpart.

§ 13.207 Certification of documents.

(a) *Signature required.* The attorney of record, the party, or the party's representative shall sign each document tendered for filing with the hearing docket clerk, the administrative law judge, the FAA decisionmaker on appeal, or served on each party.

(b) *Effect of signing a document.* By signing a document, the attorney of record, the party, or the party's representative certifies that the attorney or party has read the document and, based on reasonable inquiry and to the best of the attorney or party's knowledge, information, and belief, the document is—

(1) Consistent with these rules;

(2) Warranted by existing law or that a good faith argument exists for extension, modification, or reversal of existing law; and

(3) Not unreasonable or unduly burdensome or expensive, not made to harass any person, not made to cause unnecessary delay, not made to cause needless increase in the cost of the proceedings, or for any other improper purpose.

(c) *Sanctions.* If the attorney of record, the party, or the party's representative signs a document in violation of this section, the administrative law judge or the FAA decisionmaker shall—

(1) Strike the pleading signed in violation of this section;

(2) Strike the request for discovery or the discovery response signed in violation of this section and preclude further discovery by the party;

(3) Deny the motion or request signed in violation of this section;

(4) Exclude the document signed in violation of this section from the record;

(5) Dismiss the interlocutory appeal and preclude further appeal on that issue by the party who filed the appeal until an initial decision has been entered on the record; or

(6) Dismiss the appeal of the administrative law judge's initial decision to the FAA decisionmaker.

§ 13.208 Complaint.

(a) In accordance with §§ 13.16(e)(3) and 13.16(g)(3), an order of civil penalty shall serve as the complaint. The agency attorney shall serve the original order of civil penalty on the person requesting the hearing.

(b) The agency attorney shall file the complaint, attaching a copy of the request for a hearing, and shall suggest a location for the hearing, with the hearing docket clerk not later than 20 days after receipt of a person's request for hearing.

(c) If the agency attorney and the person requesting the hearing do not agree on the location for the hearing, the hearing docket clerk shall assign a hearing location near the place where the incident occurred.

§ 13.209 Answer.

(a) *Writing required.* A person who receives an order of civil penalty shall file a written answer to the order, or a motion pursuant to § 13.218(f)(1–4) of this subpart, not later than 30 days after service of the order of civil penalty. The answer may be in the form of a letter but must be dated and signed by the person responding to the order of civil penalty. An answer may be typewritten or may be legibly handwritten.

(b) *Filing and address.* A person filing an answer shall personally deliver or mail the answer for filing with the hearing docket clerk to the Hearing Docket, Federal Aviation Administration, 800 Independence Avenue SW., Room 914E, Washington, DC 20591, Attn: Hearing Docket Clerk.

(c) *Contents.* A person filing an answer shall include a brief statement of the relief requested by the person in the answer. The person shall include specifically any affirmative defense in the answer that the person intends to assert at the hearing.

(d) *Specific denial of allegations required.* A person filing an answer shall admit, deny, or state that the person is without sufficient knowledge or information to admit or deny each allegation in each numbered paragraph of the order of civil penalty. A general denial of the order of civil penalty is deemed a failure to file an answer. Any statement or allegation contained in the order of civil penalty that is not specifically denied in the answer is deemed an admission of the truth of that allegation.

(e) *Service.* A person filing an answer shall comply with the service requirements of § 13.211 of this subpart.

(f) *Failure to file answer.* A person's failure to file an answer without good cause is deemed an admission of the truth of each allegation contained in the order of civil penalty and an order assessing civil penalty shall be issued.

§ 13.210 Filing of documents.

(a) *Address and method of filing.* A person tendering a document for filing shall personally deliver or mail the signed original and one copy of each document to the Hearing Docket, Federal Aviation Administration, 800 Independence Avenue SW., Room 914E,

Washington, DC 20591, Attn: Hearing Docket Clerk. After an administrative law judge has been assigned to the proceedings, a person shall personally deliver or mail the signed original of each document to the hearing docket clerk and shall serve a copy of each document on each party and the administrative law judge.

(b) *Date of filing.* A document shall be considered to be filed on the date of personal delivery; or if mailed, the mailing date shown on the certificate of service, the date shown on the postmark if there is no certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark.

(c) *Form.* Each document shall be typewritten or legibly handwritten.

(d) *Contents.* Unless otherwise specified in this subpart, each document must contain a short, plain statement of the facts on which the person's case rests and a brief statement of the action requested in the document.

§ 13.211 Service of documents.

(a) *General.* A person shall serve a copy of any document filed with the Hearing Docket on the administrative law judge and on each party at the time of filing.

(b) *Type of service.* A person may serve documents by personal delivery or by mail.

(c) *Certificate of service.* A person may attach a certificate of service to a document tendered for filing with the hearing docket clerk. A certificate of service shall consist of a statement, dated and signed by the person filing the document, that the document was personally delivered or mailed to each party on a specific date.

(d) *Date of service.* The date of service shall be the date of personal delivery; or if mailed, the mailing date shown on the certificate of service, the date shown on the postmark if there is no certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark.

(e) *Additional time after service by mail.* Whenever a party has a right or a duty to act or to make any response within a prescribed period after service by mail, or on a date certain after service by mail, 5 days shall be added to the prescribed period.

(f) *Service by the administrative law judge.* The administrative law judge shall serve a copy of each document including, but not limited to, notices of prehearing conferences and hearings, rulings on motions, decisions, and orders, upon each party to the proceedings by personal delivery or by mail.

(g) *Valid service.* A document that was properly addressed, was sent in accordance with this subpart, and that was returned, that was not claimed, or that was refused, is deemed to have been served in accordance with this subpart. The service shall be considered valid as of the date and the time that the document was deposited with a contract or express messenger, the document was mailed, or personal delivery of the document was refused.

(h) *Presumption of service.* There shall be a presumption of service where a party or a person, who customarily receives mail, or receives it in the ordinary course of business, at either the person's residence or the person's principal place of business, acknowledges receipt of the document.

§ 13.212 Computation of time.

(a) This section applies to any period of time prescribed or allowed by this subpart, by notice or order of the administrative law judge, or by any applicable statute.

(b) The date of an act, event, or default, after which a designated time period begins to run, is not included in a computation of time under this subpart.

(c) The last day of a time period is included in a computation of time unless it is a Saturday, Sunday, or a legal holiday. If the last day of the time period is a Saturday, Sunday, or legal holiday, the time period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

§ 13.213 Extension of time.

(a) *Oral requests.* The parties may reasonably agree to extend the time for filing a document under this subpart. If the parties agree, the administrative law judge shall grant one extension of time to each party. The party seeking the extension of time shall submit a draft order to the administrative law judge to be signed by the administrative law judge and filed with the hearing docket clerk. The administrative law judge may grant additional oral requests for an extension of time where the parties agree to the extension.

(b) *Written motion.* A party shall file a written motion for an extension of time with the administrative law judge not later than 7 days before the document is due unless good cause for the late filing is shown. A party filing a written motion for an extension of time shall serve a copy of the motion on each party. The administrative law judge may grant the extension of time if good cause for the extension is shown.

(c) *Failure to rule.* If the administrative law judge fails to rule on a written motion for an extension of time by the date the document was due, the motion for an extension of time is deemed granted for no more than 20 days after the original date the document was to be filed.

§ 13.214 Amendment of pleadings.

(a) *Filing and service.* A party shall file the amendment with the administrative law judge and shall serve a copy of the amendment on all parties to the proceeding.

(b) *Time.* A party shall file an amendment to a complaint or an answer within the following:

(1) Not later than 15 days before the scheduled date of a hearing, a party may amend a complaint or an answer without the consent of the administrative law judge.

(2) Less than 15 days before the scheduled date of a hearing, the administrative law judge may allow amendment of a complaint or an answer only for good cause shown in a motion to amend.

(c) *Responses.* The administrative law judge shall allow a reasonable time, but not more than 20 days from the date of filing, for other parties to respond if an amendment to a complaint, answer, or other pleading has been filed with the administrative law judge.

§ 13.215 Withdrawal of a complaint or request for a hearing.

At any time before or during a hearing, the agency attorney may withdraw a complaint or a party may withdraw a request for a hearing without the consent of the administrative law judge. If the agency attorney withdraws the complaint or a party withdraws the request for a hearing and the answer, the administrative law judge shall dismiss the proceedings in this subpart with prejudice.

§ 13.216 Waivers.

Waivers of any rights provided by statute or regulation shall be in writing or by stipulation made at a hearing and entered into the record. The parties shall set forth the precise terms of the waiver and any conditions.

§ 13.217 Joint procedural or discovery schedule.

(a) *General.* The parties may agree to submit a schedule for filing all prehearing motions, a schedule for conducting discovery in the proceedings, or a schedule that will govern all prehearing motions and discovery in the proceedings.

(b) *Form and content of schedule.* If the parties agree to a joint procedural or discovery schedule, one of the parties

shall file the joint schedule with the administrative law judge, setting forth the dates to which the parties have agreed, and shall serve a copy of the joint schedule on each party.

(1) The joint schedule may include, but need not be limited to, requests for discovery, any objections to discovery requests, responses to discovery requests to which there are no objections, submission of prehearing motions, responses to prehearing motions, exchange of exhibits to be introduced at the hearing, and a list of witnesses that may be called at the hearing.

(2) Each party shall sign the original joint schedule to be filed with the administrative law judge.

(c) *Time.* The parties may agree to submit all prehearing motions and responses and may agree to close discovery in the proceedings under the joint schedule within a reasonable time before the date of the hearing, but not later than 15 days before the hearing.

(d) *Order establishing joint schedule.* The administrative law judge shall approve the joint schedule filed by the parties. One party shall submit a draft order establishing a joint schedule to the administrative law judge to be signed by the administrative law judge and filed with the hearing docket clerk.

(e) *Disputes.* The administrative law judge shall resolve disputes regarding discovery or disputes regarding compliance with the joint schedule as soon as possible so that the parties may continue to comply with the joint schedule.

(f) *Sanctions for failure to comply with joint schedule.* If a party fails to comply with the administrative law judge's order establishing a joint schedule, the administrative law judge may direct that party to comply with a motion or discovery request or, limited to the extent of the party's failure to comply with a motion or discovery request, the administrative law judge may—

(1) Strike that portion of a party's pleadings;

(2) Preclude prehearing or discovery motions by that party;

(3) Preclude admission of that portion of a party's evidence at the hearing; or

(4) Preclude that portion of the testimony of that party's witnesses at the hearing.

§ 13.218 Motions.

(a) *General.* A party applying for an order or ruling not specifically provided in this subpart shall do so by motion. A party shall comply with the requirements of this section when filing a motion with the administrative law judge. A party shall serve a copy of each motion on each party.

(b) *Form and contents.* A party shall state the relief sought by the motion and the particular grounds supporting that relief. If a party has evidence in support of a motion, the party shall attach any supporting evidence, including affidavits, to the motion.

(c) *Filing of motions.* A motion made prior to the hearing must be in writing. Unless otherwise agreed by the parties or for good cause shown, a party shall file any prehearing motion, and shall serve a copy on each party, not later than 30 days before the hearing. Motions introduced during a hearing may be made orally on the record unless the administrative law judge directs otherwise.

(d) *Answers to motions.* Any party may file an answer, with affidavits or other evidence in support of the answer, not later than 10 days after service of a written motion on that party. When a motion is made during a hearing, the answer may be made at the hearing on the record, orally or in writing, within a reasonable time determined by the administrative law judge.

(e) *Rulings on motions.* The administrative law judge shall rule on all motions as follows:

(1) *Discovery motions.* The administrative law judge shall resolve all pending discovery motions not later than 10 days before the hearing.

(2) *Prehearing motions.* The administrative law judge shall resolve all pending prehearing motions not later than 7 days before the hearing. If the administrative law judge issues a ruling or order orally, the administrative law judge shall serve a written copy of the ruling or order, within 3 days, on each party. In all other cases, the administrative law judge shall issue rulings and orders in writing and shall serve a copy of the ruling or order on each party.

(3) *Motions made during the hearing.* The administrative law judge may issue rulings and orders on motions made during the hearing orally. Oral rulings or orders on motions must be made on the record.

(f) *Specific motions.* A party may file the following motions with the administrative law judge:

(1) *Motion to dismiss for insufficiency.* A party may file a motion to dismiss the order of civil penalty for insufficiency instead of an answer. If the administrative law judge denies the motion to dismiss the order of civil penalty for insufficiency, the party who received the order of civil penalty shall file an answer not later than 10 days of service of the administrative law judge's denial of the motion. A motion to dismiss the order of civil penalty for insufficiency must show that the order of civil penalty fails to state a violation of the Federal Aviation Act of 1958, as amended, or a rule, regulation, or order issued thereunder, or a violation of the Hazardous Materials Transportation Act, or a rule, regulation, or order issued thereunder.

(2) *Motion to dismiss.* A party may file a motion to dismiss an order of civil penalty instead of an answer, specifying the grounds for dismissal.

(i) If a motion to dismiss is not granted, the respondent shall file an answer with the administrative law judge and shall serve a copy of the answer on each party not later than 10 days after service of the administrative law judge's ruling or order on the motion to dismiss.

(ii) If the administrative law judge grants a motion to dismiss and terminates the proceedings without a hearing, the agency attorney may file an appeal pursuant to § 13.233 of this subpart. If the administrative law judge grants a motion to dismiss in part, the agency attorney may appeal the administrative law judge's decision to dismiss part of the order of civil penalty under the provisions of § 13.219(c) of this subpart. If required by the decision on appeal, the respondent shall file an answer with the administrative law judge, and shall serve a copy of the answer on each party, not later than 10 days after service of the decision on appeal.

(3) *Motion for more definite statement.* A party may file a motion for more definite statement of any pleading which requires a response under this subpart. A party shall set forth, in detail, the indefinite or uncertain allegations contained in an order of civil penalty or response to any pleading and shall submit the details that the party believes would would make the allegation or response definite and certain.

(i) *Order of civil penalty.* A party may file a motion requesting a more definite statement of the allegations contained in the order of civil penalty instead of an answer. If the administrative law judge grants the motion, and the agency attorney does not supply a more definite statement not later than 15 days after service of the order granting the motion, the administrative law judge shall strike the allegations in the order of civil penalty to which the motion is directed. If the administrative law judge denies the motion, the respondent shall file an answer with the administrative law judge and shall serve a copy of the

answer on each party not later than 10 days after service of the order of denial.

(ii) *Answer.* A party may file a motion requesting a more definite statement if an answer fails to clearly respond to the allegations in the order of civil penalty. If the administrative law judge grants the motion, the respondent shall supply a more definite statement not later than 15 days after service of the ruling on the motion. If the respondent fails to supply a more definite statement, the administrative law judge shall strike those statements in the answer to which the motion is directed. A party's failure to supply a more definite statement is deemed a failure to answer and the unanswered allegations in the order of civil penalty are deemed admitted.

(4) *Motion to strike.* Any party may make a motion to strike any insufficient allegation or defense, or any redundant, immaterial, or irrelevant matter in a pleading. A party shall file a motion to strike with the administrative law judge and shall serve a copy on each party before a response is required under this subpart or, if a response is not required, not later than 10 days after service of the pleading.

(5) *Motion for decision.* A party may make a motion for decision, regarding all or any part of the proceedings, at any time before the administrative law judge has issued an initial decision in the proceedings. The administrative law judge shall grant a party's motion for decision if the pleadings, depositions, answers to interrogatories, admissions, matters that the administrative law judge has officially noticed, or evidence introduced during the hearing show that there is no genuine issue of material fact and that the party making the motion is entitled to a decision as a matter of law. The party making the motion for decision has the burden of showing that there is no genuine issue of material fact disputed by the parties.

(6) *Motion for disqualification.* A party may file a motion for disqualification with the administrative law judge and shall serve a copy on each party. A party may file the motion at any time after the administrative law judge has been assigned to the proceedings but shall make the motion before the administrative law judge files an initial decision in the proceedings.

(i) *Motion and supporting affidavit.* A party shall state the grounds for disqualification, including, but not limited to, personal bias, pecuniary interest, or other factors showing disqualification, in the motion for disqualification. A party shall submit an affidavit with the motion for disqualification that sets forth, in detail, the matters alleged to constitute grounds for disqualification.

(ii) *Answer.* A party shall respond to the motion for disqualification not later than 5 days after service of the motion for disqualification.

(iii) *Decision on motion for disqualification.* The administrative law judge shall render a decision on the motion for disqualification not later than 15 days after the motion has been filed. If the administrative law judge finds that the motion for disqualification and supporting affidavit show a basis for disqualification, the administrative law judge shall withdraw from the proceedings immediately. If the administrative law judge finds that disqualification is not warranted, the administrative law judge shall deny the motion and state the grounds for the denial on the record. If the administrative law judge fails to rule on a party's motion for disqualification within 15 days after the motion has been filed, the motion is deemed granted.

(iv) *Appeal.* A party may appeal the administrative law judge's denial of the motion for disqualification in accordance with § 13.219 of this subpart.

§ 13.219 Interlocutory appeals.

(a) *General.* Unless otherwise provided in this subpart, a party may not appeal a ruling or decision of the administrative law judge to the FAA decisionmaker until the initial decision has been entered on the record. A decision or order of the FAA decisionmaker on the interlocutory appeal does not constitute a final order of the Administrator for the purposes of judicial appellate review under section 1006 of the Federal Aviation Act of 1958, as amended.

(b) *Interlocutory appeal for cause.* If a party files a written request for an interlocutory appeal for cause with the administrative law judge, or orally requests an interlocutory appeal for cause, the proceedings are stayed until the administrative law judge issues a decision on the request. If the administrative law judge grants the request, the proceedings are stayed until the FAA decisionmaker issues a decision on the interlocutory appeal. The administrative law judge shall grant an interlocutory appeal for cause if a party shows that delay of the appeal would be detrimental to the public interest or would result in undue prejudice to any party.

(c) *Interlocutory appeals of right.* If a party notifies the administrative law judge of an interlocutory appeal of right, the proceedings are stayed until the FAA decisionmaker issues a decision on the interlocutory appeal. A party may file an interlocutory appeal with the FAA decisionmaker, without the consent of the administrative law judge, before an initial decision has been entered in the case of—

(1) A ruling or order by the administrative law judge barring a person from the proceedings;

(2) Failure of the administrative law judge to dismiss the proceedings in accordance with § 13.215 of this subpart;

(3) A ruling or order by the administrative law judge in violation of § 13.205(b) of this subpart; and

(4) A ruling by the administrative law judge granting, in part, a respondent's motion to dismiss an order of civil penalty pursuant to § 13.218(f)(2)(B).

(d) *Procedure.* A party shall file a notice of interlocutory appeal, with supporting documents, with the FAA decisionmaker and the hearing docket clerk, and shall serve a copy of the notice and supporting documents on each party and the administrative law judge, not later than 3 days after the administrative law judge's decision forming the basis of the appeal. A party shall file a reply brief, if any, with the FAA decisionmaker and serve a copy of the reply brief on each party, not later than 10 days after service of the appeal brief. If the FAA decisionmaker does not issue a decision on the interlocutory appeal or does not seek additional information within 10 days of the filing of the appeal, the stay of the proceeding is dissolved. The FAA decisionmaker shall render a decision on the interlocutory appeal, on the record and as a part of the decision in the proceedings, within a reasonable time after receipt of the interlocutory appeal.

(e) The FAA decisionmaker may reject frivolous, repetitive, or dilatory appeals, and may issue an order precluding one or more parties from making further interlocutory appeals in a proceeding in which there have been frivolous, repetitive, or dilatory interlocutory appeals.

§ 13.220 Discovery.

(a) *Initiation of discovery.* Any party may initiate discovery described in this section, without the consent or approval of the administrative law judge, at any time after a complaint has been filed in the proceedings.

(b) *Methods of discovery.* The following methods of discovery are permitted under this section: Depositions on oral examination or written questions of any person; written interrogatories directed to a party; requests for production of documents or tangible items to any person; and requests for admission by a party. A

party is not required to file written interrogatories and responses, requests for production of documents or tangible items and responses, and requests for admission and responses with the administrative law judge or the hearing docket clerk. In the event of a discovery dispute, a party shall attach a copy of these documents in support of a motion made under this section.

(c) *Service on the agency.* A party shall serve each discovery request directed to the agency or an agency employee on the agency attorney of record.

(d) *Time for responses to discovery requests.* Unless otherwise directed by this subpart or agreed by the parties, a party shall respond to a request for discovery, including filing objections to a request for discovery, not later than 30 days of service of the request.

(e) *Scope of discovery.* Subject to the limits on discovery set forth paragraph (f) of this section, a party may discover any matter that is not privileged and that is relevant to the subject matter of the proceeding. A party may discover information that relates to the claim or defense of any party including the existence, description, nature, custody, condition, and location of any document or other tangible item and the identity and location of any person having knowledge of discoverable matter. A party may discover facts known, or opinions held, by an expert who any other party expects to call to testify at the hearing. A party has no ground to object to a discovery request on the basis that the information sought would not be admissible at the hearing if the information sought during discovery is reasonably calculated to lead to the discovery of admissible evidence.

(f) *Limiting discovery.* The administrative law judge shall limit the frequency and extent of discovery permitted by this section if a party shows that—

(1) The information requested is cumulative or repetitious;

(2) The information requested can be obtained from another less burdensome and more convenient source;

(3) The party requesting the information has had ample opportunity to obtain the information through other discovery methods permitted under this section;

(4) The method or scope of discovery requested by the party is unduly burdensome or expensive.

(g) *Confidential orders.* A party or person who has received a discovery request for information that is related to a trade secret, confidential or sensitive material, competitive or commercial information, proprietary data, or information on research and development, may file a motion for a confidential order with the administrative law judge and shall serve a copy of the motion for a confidential order on each party.

(1) The party or person making the motion must show that the confidential order is necessary to protect the information from disclosure to the public.

(2) If the administrative law judge determines that the requested material is not necessary to decide the case, the administrative law judge shall preclude any inquiry into the matter by any party.

(3) If the administrative law judge determines that the requested material may be disclosed during discovery, the administrative law judge may order that the material may be discovered and disclosed under limited conditions or may be used only under certain terms and conditions.

(4) If the administrative law judge determines that the requested material is necessary to decide the case and that a confidential order is warranted, the administrative law judge shall provide—

(i) An opportunity for review of the document by the parties off the record;

(ii) Procedures for excluding the information from the record; and

(iii) Order that the parties shall not disclose the information in any manner and the parties shall not use the information in any other proceeding.

(h) *Protective orders.* A party or a person who has received a request for discovery may file a motion for protective order with the administrative law judge and shall serve a copy of the motion for protective order on each party. The party or person making the motion must show that the protective order is necessary to protect the party or the person from annoyance, embarrassment, oppression, or undue burden or expense. As part of the protective order, the administrative law judge may—

(1) Deny the discovery request;

(2) Order that discovery be conducted only on specified terms and conditions, including a designation of the time or place for discovery or a determination of the method of discovery; or

(3) Limit the scope of discovery or preclude any inquiry into certain matters during discovery.

(i) *Duty to supplement or amend responses.* A party who has responded to a discovery request has a duty to supplement or amend the response, as soon as the information is known, as follows:

(1) A party shall supplement or amend any response to a question requesting the identity and location of any person having knowledge of discoverable matters.

(2) A party shall supplement or amend any response to a question requesting the identity of each person who will be called to testify at the hearing as an expert witness' the subject matter and substance of that witness, testimony.

(3) A party shall supplement or amend any response that was incorrect when made or any response that was correct when made but is no longer correct, accurate, or complete.

(j) *Depositions.* The following rules apply to depositions taken pursuant to this section:

(1) *Form.* A deposition shall be taken on the record and reduced to writing. The person being deposed shall sign the deposition unless the parties agree to waive the requirement of a signature.

(2) *Administration of oaths.* Within the United States, or a territory or possession subject to the jurisdiction of the United States, a party shall take a deposition before a person authorized to administer oaths by the laws of the United States or authorized by the law of the place where the examination is held. In foreign countries, a party shall take a deposition in any manner allowed by the *Federal Rules of Civil Procedure.*

(3) *Notice of deposition.* A party shall serve a notice of deposition, stating the time and place of the deposition and the name and address of each person to be examined, on the person to be deposed, on the administrative law judge, on the hearing docket clerk, and on each party not later than 7 days before the deposition. A party may serve a notice of deposition less than 7 days before the deposition only with consent of the administrative law judge. If a subpoena *duces tecum* is to be served on the person to be examined, the party shall attach a copy of the subpoena *duces tecum,* that describes the materials to be produced at the deposition, to the notice of deposition.

(4) *Use of depositions.* A party may use any part or all of a deposition at a hearing authorized under this subpart only upon a showing of good cause. The deposition may be used against any party who was present or represented at the deposition or who had reasonable notice of the deposition.

(k) *Interrogatories.* A party shall not serve more than 30 interrogatories to each other party. Each subpart of an interrogatory shall be counted as a separate interrogatory.

(1) A party shall answer each interrogatory separately and completely in writing and under oath. A party's attorney may sign the response to the

interrogatories if the attorney has verification of authority to sign from the party. If a party objects to an interrogatory, the party shall state the objection and the reasons for the objection.

(2) A party shall file a motion for leave to serve additional interrogatories on a party with the administrative law judge before serving additional interrogatories on a party. The administrative law judge shall grant the motion only if the party shows good cause for the party's failure to inquire about the information previously and that the information can not reasonably be obtained using less burdensome discovery methods or be obtained from other sources.

(l) *Requests for admission.* A party may serve a written request for admission of the truth of any matter within the scope of discovery under this section or the authenticity of any document described in the request. A party shall set forth each request for admission separately. A party shall serve copies of documents referenced in the request for admission unless the documents have been provided or are reasonably available for inspection and copying.

(1) *Time.* A party's failure to respond to a request for admission, in writing and signed by the attorney or the party, not later than 30 days after service of the request, is deemed an admission of the truth of the statement or statements contained in the request for admission. The administrative law judge may determine that a failure to respond to a request for admission is not deemed an admission of the truth if a party shows that the failure was due to circumstances beyond the control of the party or the party's attorney.

(2) *Response.* A party may object to a request for admission and shall state the reasons for objection. A party may specifically deny the truth of the matter or describe the reasons why the party is unable to truthfully deny or admit the matter. If a party is unable to deny or admit the truth of the matter, the party shall show that the party has made reasonable inquiry into the matter or that the information known to, or readily-obtainable by, the party is insufficient to enable the party to admit or deny the matter. A party may admit or deny any part of the request for admission. If the administrative law judge determines that a response does not comply with the requirements of this rule or that the response is insufficient, the matter is deemed admitted.

(3) *Effect of admission.* Any matter admitted or deemed admitted under this section is conclusively established for the purpose of the hearing and appeal. Any matter admitted or deemed admitted under this section that results in a finding of violation may be used by the Administrator in a subsequent enforcement proceeding.

(m) *Motion to compel discovery.* A party may make a motion to compel discovery if a person refuses to answer a question during a deposition, a party fails or refuses to answer an interrogatory, if a person gives an evasive or incomplete answer during a deposition or when responding to an interrogatory, or a party fails or refuses to produce documents or tangible items. During a deposition, the proponent of a question may complete the deposition or may adjourn the examination before making a motion to compel if a person refuses to answer.

(n) *Failure to comply with a discovery order or order to compel.* If a party fails to comply with a discovery order or an order to compel, the administrative law judge, limited to the extent of the party's failure to comply with the discovery order or motion to compel, may—

(1) Strike that portion of a party's pleadings;

(2) Preclude prehearing or discovery motions by that party;

(3) Preclude admission of that portion of a party's evidence at the hearing; or

(4) Preclude that portion of the testimony of that party's witnesses at the hearing.

§ 13.221 Notice of hearing.

(a) *Notice.* The administrative law judge shall give each party at least 60 days notice of the date and time of the hearing.

(b) *Date and time of the hearing.* The administrative law judge to whom the proceedings have been assigned shall set a reasonable date and time for the hearing. The administrative law judge shall consider the need for discovery and any joint procedural or discovery schedule submitted by the parties when determining the hearing date.

(c) *Location of the hearing.* After assignment of an administrative law judge to the proceedings, a party may file a motion to change the location of the hearing or the administrative law judge on his own motion may change the location of the hearing. The administrative law judge shall give due regard to where the majority of the witnesses reside or work, the convenience of the parties, and whether the location is served by scheduled air carrier.

(d) *Earlier hearing.* With the consent of the administrative law judge, the parties may agree to hold the hearing on an earlier date than the date specified in the notice of hearing.

§ 13.222 Evidence.

(a) *General.* A party is entitled to present the party's case or defense by oral, documentary, or demonstrative evidence, to submit rebuttal evidence, and to conduct any cross-examination that may be required for a full and true disclosure of the facts.

(b) *Admissibility.* A party may introduce any oral, documentary, or demonstrative evidence in support of the party's case or defense. The administrative law judge shall admit any oral, documentary, or demonstrative evidence introduced by a party but shall exclude irrelevant, immaterial, or unduly repetitious evidence.

(c) *Hearsay evidence.* Hearsay evidence is admissible in proceedings governed by this subpart. The fact that evidence submitted by a party is hearsay goes only to the weight of the evidence and does not affect its admissibility.

§ 13.223 Standard of proof.

The administrative law judge shall issue an initial decision or shall rule in a party's favor only if the decision or ruling is supported by, and in accordance with, the reliable, probative, and substantial evidence contained in the record. In order to prevail, the party with the burden of proof shall prove the party's case or defense by a preponderance of reliable, probative, and substantial evidence.

§ 13.224 Burden of proof.

(a) Except in the case of an affirmative defense, the burden of proof is on the agency.

(b) Except as otherwise provided by statute or rule, the proponent of a motion, request, or order has the burden of proof.

(c) A party who has asserted an affirmative defense has the burden of proving the affirmative defense.

§ 13.225 Offer of proof.

A party whose evidence has been excluded by a ruling of the administrative law judge may offer the evidence for the record on appeal.

§ 13.226 Public disclosure of evidence.

(a) The administrative law judge may order that any information contained in the record be withheld from public disclosure. Any person may object to disclosure of information in the record by filing a written motion to withhold specific information with the administrative law judge and serving a copy of the motion on each party. The

party shall state the specific grounds for nondisclosure in the motion.

(b) The administrative law judge shall grant the motion to withhold information in the record if, based on the motion and any response to the motion, the administrative law judge determines that disclosure would be detrimental to aviation safety, disclosure would not be in the public interest, or that the information is not otherwise required to be made available to the public.

§ 13.227 Testimony by agency employees.

An employee of the agency may not testify as an expert or opinion witness, for any party other than the agency, in any proceeding governed by this subpart. An employee of the agency may testify in a proceeding governed by this subpart only as to facts, within the employee's personal knowledge, giving rise to the incident or violation.

§ 13.228 Subpoenas.

(a) *Request for subpoena.* A party may obtain a subpoena to compel the attendance of a witness at a deposition or hearing or to require the production of documents or tangible items from the hearing docket clerk. The hearing docket clerk shall deliver the subpoena, signed by the hearing docket clerk or an administrative law judge but otherwise in blank, to the party. The party shall complete the subpoena, stating the title of the action and the date and time for the witness' attendance or production of documents or items. The party who obtained the subpoena shall serve the subpoena on the witness.

(b) *Motion to quash or modify the subpoena.* Any person upon whom a subpoena has been served may file a motion to quash or modify the subpoena with the administrative law judge at or before the time specified in the subpoena for compliance. The applicant shall describe, in detail, the basis for the application to quash or modify the subpoena including, but not limited to, a statement that the testimony or the documents or tangible evidence is not relevant to the proceeding, that that subpoena is not reasonably tailored to the scope of the proceeding, or that the subpoena is unreasonable and oppressive. A motion to quash or modify the subpoena will stay the effect of the subpoena pending a decision by the administrative law judge on the motion.

(c) *Enforcement of subpoena.* Upon a showing that a person has failed or refused to comply with a subpoena, a party may apply to the local Federal district court to seek judicial enforcement of the subpoena in accordance with section 1004 of the Federal Aviation Act of 1958, as amended.

§ 13.229 Witness fees.

(a) *General.* Unless otherwise authorized by the administrative law judge, the party who applies for a subpoena to compel the attendance of a witness at a deposition or hearing, or the party at whose request a witness appears at a deposition or hearing, shall pay the witness fees described in this section.

(b) *Amount.* Except for an FAA employee who appears at the direction of the agency, a witness who appears at a disposition or hearing is entitled to the same fees and mileage expenses as are paid to a witness in a court of the United States in comparable circumstances.

§ 13.230 Record.

(a) *Exclusive record.* The transcript of all testimony in the hearing, all exhibits received into evidence, and all motions, applications, requests, and rulings shall constitute the exclusive record for decision of the proceedings and the basis for the issuance of any orders in the proceeding. Any proceedings regarding the disqualification of an administrative law judge shall be included in the record.

(b) *Examination and copying of record.* Any person may examine the record at the Hearing Docket, Federal Aviation Administration, 800 Independence Avenue SW., Room 914E, Washington, DC 20591. Any person may have a copy of the record after payment of reasonable costs to copy the record.

§ 13.231 Argument before the administrative law judge.

(a) *Arguments during the hearing.* During the hearing, the administrative law judge shall give the parties a reasonable opportunity to present oral arguments on the record supporting or opposing motions, objections, and rulings if the parties request an opportunity for argument. Only in a clearly complex or unusual case, the administrative law judge may request or the parties may agree to file written arguments with the administrative law judge.

(b) *Final oral argument.* At the conclusion of the hearing and before the administrative law judge issues an initial decision in the proceedings, the parties are entitled to submit oral proposed findings of fact and conclusions of law, exceptions to rulings of the administrative law judge, and supporting arguments for the findings, conclusions, or exceptions. At the conclusion of the hearing, a party may waive final oral argument.

(c) *Posthearing briefs.* Only in a clearly complex or unusual case, the administrative law judge may request or the parties may agree to file written posthearing briefs, instead of final oral argument, before the administrative law judge issues an initial decision in the proceedings. If a party files a written posthearing brief, the party shall include proposed findings of fact and conclusions of law, exceptions to rulings of the administrative law judge, and supporting arguments for the findings, conclusions, or exceptions. The administrative law judge shall give the parties a reasonable opportunity, not more than 30 days after receipt of the transcript, to prepare and submit the briefs.

§ 13.232 Initial decision.

(a) *Contents.* The administrative law judge shall issue an initial decision at the conclusion of the hearing and may affirm, modify, or reverse the order of civil penalty. In each oral or written decision, the administrative law judge shall include findings of fact and conclusions of law, and the grounds supporting those findings and conclusions, upon all material issues of fact, the credibility of witnesses, the applicable law, any exercise of the administrative law judge's discretion, the reasonableness of any sanction contained in the order of civil penalty, and a discussion of the basis for any order issued in the proceedings. The administrative law judge is not required to provide a written explanation for rulings on objections, procedural motions, and other matters not directly relevant to the substance of the initial decision. If the administrative law judge reduces the civil penalty contained in the order of civil penalty, the administrative law judge shall provide a basis supporting the reduction in civil penalty. If the administrative law judge refers to any previous unreported or unpublished initial decision, the administrative law judge shall make copies of that initial decision available to the parties and the FAA decisionmaker.

(b) *Oral decision.* Except as provided in paragraph (c) of this section, at the conclusion of the hearing, the administrative law judge shall issue the initial decision and order orally on the record.

(c) *Written decision.* Only in a clearly complex or unusual case, the administrative law judge may issue a written initial decision not later than 30 days after the conclusion of the hearing

or submission of the last posthearing brief. The administrative law judge shall serve a copy of the written initial decision on each party.

(d) *Order assessing civil penalty.* If the administrative law judge affirms or modifies the order of civil penalty, the order shall become an order assessing civil penalty.

§ 13.233 Appeals from initial decisions.

(a) *Notice of appeal.* A party may appeal the initial decision, and any decision not previously appealed pursuant to § 13.219, by filing a notice of appeal with the FAA decisionmaker. A party shall file the notice of appeal with the Federal Aviation Administration, 800 Independence Avenue SW., Room 914E, Washington, DC 20591, Attn: Appellate Docket Clerk. A party shall file the notice of appeal not later than 10 days after entry of the oral initial decision on the record or service of the written initial decision on the parties and shall serve a copy of the notice of appeal on each party.

(b) *Issues on appeal.* A party may appeal only the following issues:

(1) Whether each filing of fact is supported by a preponderance of reliable, probative, and substantial evidence;

(2) Whether each conclusion of law is made in accordance with applicable law, precedent, and public policy; and

(3) Whether the administrative law judge committed any prejudicial errors during the hearing that support the appeal.

(c) *Perfecting an appeal.* Unless otherwise agreed by the parties, a party shall perfect an appeal, not later than 50 days after entry of the oral initial decision on the record or service of the written initial decision on the party, by filing an appeal brief with the FAA decisionmaker.

(1) *Extension of time by agreement of the parties.* The parties may agree to extend the time for perfecting the appeal with the consent of the FAA decisionmaker. If the FAA decisionmaker grants an extension of time to perfect the appeal, the appellate docket clerk shall serve a letter confirming the extension of time on each party.

(2) *Written motion for extension.* If the parties do not agree to an extension of time for perfecting an appeal, a party desiring an extension of time may file a written motion for an extension with the FAA decisionmaker and shall serve a copy of the motion on each party. The FAA decisionmaker may grant an extension if good cause for the extension is shown in the motion.

(d) *Appeal briefs.* A party shall file the appeal brief with the FAA decisionmaker and shall serve a copy of the appeal brief on each party.

(1) A party shall set forth, in detail, the party's specific objections to the initial decision or rulings in the appeal brief. A party also shall set forth, in detail, the basis for the appeal, the reasons supporting the appeal, and the relief requested in the appeal. If the party relies on evidence contained in the record for the appeal, the party shall specifically refer to the pertinent evidence contained in the transcript in the appeal brief.

(2) The FAA decisionmaker may dismiss an appeal, on the FAA decisionmaker's own initiative or upon motion of any other party, where a party has filed a notice of appeal but fails to perfect the appeal by timely filing of an appeal brief with the FAA decisionmaker.

(e) *Reply brief.* Unless otherwise agreed by the parties, any party may file a reply brief with the FAA decisionmaker not later than 35 days after the appeal brief has been served on that party. The party filing the reply brief shall serve a copy of the reply brief on each party. If the party relies on evidence contained in the record for the reply, the party shall specifically refer to the pertinent evidence contained in the transcript in the reply brief.

(1) *Extension of time by agreement of the parties.* The parties may agree to extend the time for filing a reply brief with the consent of the FAA decisionmaker. If the FAA decisionmaker grants an extension of time to file the reply brief, the appellate docket clerk shall serve a letter confirming the extension of time on each party.

(2) *Written motion for extension.* If the parties do not agree to an extension of time for filing a reply brief, a party desiring an extension of time may file a written motion for an extension with the FAA decisionmaker and shall serve a copy of the motion on each party. The FAA decisionmaker may grant an extension if good cause for the extension is shown in the motion.

(f) *Other briefs.* The FAA decisionmaker may allow any person to submit an *amicus curiae* brief in an appeal of an initial decision. A party may not file more than one appeal brief or reply brief. A party may petition the FAA decisionmaker, in writing, for leave to file an additional brief and shall serve a copy of the petition on each party. The party may not file the additional brief with the petition. The FAA decisionmaker may grant leave to file an additional brief if the party demonstrates good cause for allowing additional argument on the appeal. The FAA decisionmaker will allow a reasonable time for the party to file the additional brief.

(g) *Number of copies.* A party shall file the original appeal brief or the original reply brief, and 2 copies of the brief, with the FAA decisionmaker.

(h) *Oral argument.* The FAA decisionmaker has sole discretion to permit oral argument on the appeal. On the FAA decisionmaker's own initiative or upon written motion by any party, the FAA decisionmaker may find that oral argument will contribute substantially to the development of the issues on appeal and may grant the parties an opportunity for oral argument.

(i) *Waiver of objections on appeal.* If a party fails to object to any alleged error regarding the proceedings in an appeal or a reply brief, the party waives any objection to the alleged error. The FAA decisionmaker is not required to consider any objection in an appeal brief or any argument in the reply brief if a party's objection is based on evidence contained on the record and the party does not specifically refer to the pertinent evidence from the record in the brief.

(j) *FAA decisionmaker's decision on appeal.* The FAA decisionmaker will review the briefs on appeal and the oral argument, if any, to determine if the administrative law judge committed prejudicial error in the proceedings or that the order should be affirmed, modified, or reversed. The FAA decisionmaker may affirm, modify, or reverse the initial decision, make any necessary findings, or may remand the case for any proceedings that the FAA decisionmaker determines may be necessary.

(1) The FAA decisionmaker may raise any issue, on the FAA decisionmaker's own initiative, that is required for proper disposition of the proceedings. The FAA decisionmaker will give the parties a reasonable opportunity to submit arguments on the new issues before making a decision on appeal.

(2) The FAA decisionmaker will issue the final decision and order of the Administrator on appeal in writing and will serve a copy of the decision and order on each party.

(3) A final decision and order of the Administrator after appeal is precedent in any other civil penalty action. Any issue, finding or conclusion, order, ruling, or initial decision of an administrative law judge that has not been appealed to the FAA decisionmaker is not precedent in any other civil penalty action.

§ 13.234 Petitions to reconsider or modify a final decision and order of the FAA decisionmaker on appeal.

(a) *General.* Any party may petition the FAA decisionmaker to reconsider or modify a final decision and order issued by the FAA decisionmaker on appeal from an initial decision. A party shall file a petition to reconsider or modify with the FAA decisionmaker not later than 30 days after service of the FAA decisionmaker's final decision and order on appeal and shall serve a copy of the petition on each party. The FAA decisionmaker will not reconsider or modify an initial decision and order issued by an administrative law judge that has not been appealed by any party to the FAA descisionmaker.

(b) *Form and number of copies.* A party shall file a petition to reconsider or modify in writing with the FAA decisionmaker. The party shall file the original petition with the FAA decisionmaker and shall serve a copy of the petition on each party.

(c) *Contents.* A party shall state briefly and specifically the alleged errors in the final decision and order on appeal, the relief sought by the party, and the grounds that support the petition to reconsider or modify.

(1) If the petition is based, in whole or in part, on allegations regarding the consequences of the FAA decisionmaker's decision, the party shall describe these allegations and shall describe, and support, the basis for the allegations.

(2) If the petition is based, in whole or in part, on new material not previously raised in the proceedings, the party shall set forth the new material and include affidavits of prospective witnesses and authenticated documents that would be introduced in support of the new material. The party shall explain, in detail, why the new material was not discovered through due diligence prior to the hearing.

(d) *Repetitious and frivolous petitions.* The FAA decisionmaker will not consider repetitious or frivolous petitions. The FAA decisionmaker may summarily dismiss repetitious or frivolous petitions to reconsider or modify.

(e) *Reply petitions.* Any other party may reply to a petition to reconsider or modify, not later than 10 days after service of the petition on that party, by filing a reply with the FAA decisionmaker. A party shall serve a copy of the reply on each party.

(f) *Effect of filing petition.* Unless otherwise ordered by the FAA decisionmaker, filing of a petition pursuant to this section will not stay or delay the effective date of the FAA decisionmaker's final decision and order on appeal and shall not toll the time allowed for judicial review.

(g) *FAA decisionmaker's decision on petition.* The FAA decisionmaker has sole discretion to grant or deny a petition to reconsider or modify. The FAA decisionmaker will grant or deny a petition to reconsider or modify within a reasonable time after receipt of the petition or receipt of the reply petition, if any. The FAA decisionmaker may affirm, modify, or reverse the final decision and order on appeal, or may remand the case for any proceedings that the FAA decisionmaker determines may be necessary.

§ 13.235 Judicial review of final decision and order.

A person may seek judicial review of a final decision and order of the Administrator as provided in § 1006 of the Federal Aviation Act of 1958, as amended. A party seeking judicial review of a final decision and order shall file a petition for review not later than 60 days after the final decision and order has been served on the party.

Issued in Washington, DC, on August 31, 1988.

T. Allan McArtor,

Administrator.

[FR Doc. 88-20184 Filed 9-1-88; 12:25 pm]

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Wednesday
September 7, 1988

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 111

Fair Housing Assistance Program; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 111

[Docket No. R-88-1404; FR-2403]

Fair Housing Assistance Program

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the existing system of administrative funding for the State and local component of the Fair Housing Assistance Program (FHAP). The rule would replace the current system of competitive and non-competitive funding with a single non-competitive funding approach. This new comprehensive approach would give recipients an increased ability to plan a long-term program that is more suitable to their fair housing enforcement needs and will give HUD the ability to improve administrative of the FHAP.

COMMENT DUE DATE: October 7, 1988.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Maxine B. Cunningham, Director, Federal, State, and Local Programs Division, Office of Fair Housing Enforcement and Section 3 Compliance, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone number (202) 755-0455 (V and TDD). (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Statutory basis

Establishment of the Fair Housing Assistance Program is authorized under section 816 of the Fair Housing Act (Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3616). Section 816 provides, among other things, that the Secretary may utilize the services of responsible State and local agencies in the enforcement of the Fair Housing laws, and "may reimburse such agencies and their employees for services rendered to assist him in carrying out" the Federal Fair Housing law.

The Federal-State-local approach to eliminating housing discrimination is further enhanced by section 810(c) (42 U.S.C. 3610(c)). Section 810(c) provides for notification by the Secretary of complaints of housing discrimination to appropriate State and local fair housing agencies if their jurisdictions' fair housing laws provide "rights and remedies for alleged discriminatory housing paractices which are substantially equivalent to the rights and remedies provided in" the Federal Fair Housing law.

The Existing FHAP

HUD implemented sections 810(c) and 816 by promulgating regulations at 24 CFR Parts 111 and 115. Part 111 provides, among other things, for two types of funding to State and local fair housing enforcement agencies—non-competitive (Type I) and competitive (Type II) funding. Type I funding supports fair housing complaint processing, HUD-sponsored training, capacity building for new agencies, and development of complaint monitoring and reporting systems. Type II funds support specialized and innovative fair housing projects.

Need for Revision of Existing FHAP

HUD data show that fewer than 25 agencies received Type II cooperative agreements from the program's inception in FY 1980 through FY 1987. The data also indicate that there is a direct relationship between Type II funding and the level of complaint activity. Additionally, the data suggest that it is the outreach, education, audits, and other specialized activities supposed by Type II funds that are the critical factors accounting for qualitative differences in enforcement programs. Increased funding to State and local agencies for support activities has had a salutary effect on their fair housing enforcement efforts. The fact is, however, that the current funding approach does not provide support to a sufficient number of jurisdictions, in spite of evidence that suggests housing discrimination is widespread in jurisdictions that were unsuccessful in the competition for Type II funds. Consequently, the comprehensive funding approach proposed in this rule would increase the number of agencies receiving funds for specialized activities, thus strengthening fair housing compliance and enforcement efforts nationally.

In addition, the matching funds provision which would be part of this new approach should strengthen a coordinated intergovernmental enforcement effort to further the goal of fair housing by giving States and localities the impetus to assume a larger share of the responsibility for the administration of fair housing laws. The revised program also would contribute to a more visible fair housing presence in many jurisdictions by increasing the ability and flexibility of recipients to plan a long-term fair housing program which fits their needs. As an additional incidental benefit, the new FHAP will improve internal HUD program administration both in HUD Headquarters and the Regional Offices by reducing the number of negotiated cooperative agreement awards. Finally, the Department was persuaded of the need to propose these changes from its continuing discussions and consultation with a number of agencies participating in the FHAP.

The Revised FHAP

Under the new funding formula, substantially equivalent jurisdictions would continue to be eligible for funds to support case processing and training of enforcement agency staff. Further, those agencies that have participated in FHAP for more than two years ("contributions agencies") may be eligible to receive, on a noncompetitive basis, additional funds to enhance their fair housing program. Contributions agencies that process a threshold level of complaints and meet certain other performance requirements also would receive incentive funds for specialized fair housing support activities. The amount of incentive funds received would be based on a jurisdiction's population and on cash contributions generated from non-Federal sources its fair housing program.

The proposed revised approach would continue to link directly a significant portion of FHAP agency assistance to the number of complaints processed by an agency. Funding to support complaint processing would continue to be based on the number of dual-filed housing discrimination complaints processed. (Because of the revision to the FHAP, for the first year of HUD's implementation of the revised Program, the level of complaints would be determined by reference to the number of dual-filed complaints processed in any 12 consecutive months (as selected by the agency) during an 18-month period designated by HUD.) Funds previously used for Type II competitive awards would support other activities among those eligible FHAP agencies that meet a minimum complaint-processing threshold. Thus, agencies would have an

incentive to conduct complaint-processing in a thorough, comprehensive, and timely manner.

Depending on the availability of funds, some of these incentive funds would be distributed on the basis of need, as measured by the size of the jurisdiction's population (for example, agencies serving jurisdictions with populations of fewer than 250,000 people may receive up to $10,000, whereas those agencies serving jurisdictions with more than 3,000,000 people may receive up to $25,000), and some additional funding on the basis of the agency's State or local cash (non-Federal) contributions to its fair housing program. This latter feature would discourage sole reliance on FHAP to support a State or local fair housing program, and would encourage States and localities to shoulder a share of the financial responsibility for their program.

The proposed new funding approach will enable HUD to review the agencies and their overall performance in implementing their plan for combating housing discrimination. Each agency also would be evaluated with respect to its continuing status as a substantially equivalent agency. Satisfaction of the performance criteria for equivalency recognition as set forth in 24 CFR Part 115 would be required for funding, except for those agencies that have been recognized by HUD on an "interim" basis. (See 24 CFR 115.11.)

In the proposed revisions to the FHAP, existing sections would be revised and new sections would be added. New § 111.101 would define terms used in this rule. Section 111.103 would give an overview of the purpose of the program. Section 111.105 describes the proposed revision to the funding formula. Section 111.107 would revise the provisions on "Agency threshold eligibility criteria." Section 111.109 is a proposed revision of the old provisions (formerly § 111.108) on "Program administration." Section 111.111, "Applications for participation in the program", describes, among other things, the contents of an application for funding, and states that an adverse determination by a Regional Office would be appealable to the Assistant Secretary for Fair Housing and Equal Opportunity. Section 111.113 sets out the additional criteria that recipients would have to satisfy to be awarded incentive funds. Section 111.115 describes the proposed activities that are eligible for funding under the incentive component. Section 111.117 proposes that HUD conduct a review of a recipient's performance annually, and describes the substance of the review process. Section 111.119 states the reason that HUD would reallocate funds, and § 111.121 describes the reporting and recordkeeping requirements with which all recipients of FHAP funds would have to comply. Section 111.123 details the remedial action that HUD would take against a recipient that fails to meet the performance review standards of FHAP, as set forth in § 111.117.

The Department hopes to adopt a final rule in this proceeding in time to implement the revised funding formula for FY 1989 FHAP awards. The Department believes that this formula will result in a more equitable and predictable award of FHAP funds than was obtained under the current Type II formula that awards funds based on a competition among eligible agencies. The Department's belief is shared by many of the State and local agencies with which the Department has consulted over the last 3 years before proposing these revisions to the FHAP. This new formula will ensure that more agencies receive funding on a more consistent basis, thus allowing them to plan their fair housing activities annually without large fluctuations in funding amounts. The new formula also should enable these agencies to structure their fair housing program to include a broader range of activities, such as education, outreach, testing, systemic investigations, or other eligible activities that prevent or eliminate housing discrimination.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

This rule would not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have 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.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule would provide for the award of Federal funds to State and local government fair housing agencies; it does not impose any economic burdens on small entities.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

This rule is listed as Item No. 1006 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13886) under Executive Order 12291 and the Regulatory Flexibility Act.

(The Catalog of Federal Domestic Assistance program number is 14.401.)

List of Subjects in 24 CFR Part 111

Fair housing, Cooperative agreements, Grant programs: housing and community development.

Accordingly, the Department proposes to amend 24 CFR Part 111 by revising it to read as follows:

PART 111—FAIR HOUSING ASSISTANCE PROGRAM

Sec.

Authority: Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3601–19); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 111.101 Definitions.

As used in this part, the following terms have the meaning indicated:

"Agency" means a State or local agency responsible for the enforcement of a fair housing law that has been

determined by the Assistant Secretary, under 24 CFR Part 115, to provide, on its face, rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided in Title VIII of the Civil Rights Act of 1968.

"Assistant Secretary" means the Assistant Secretary for Fair Housing and Equal Opportunity.

"Capacity building agency" means an agency that is in its first or second year of participation in the FHAP.

"Capacity building funds" are funds that HUD will provide to an agency during the agency's first two years of participation in the FHAP to support the agency's complaint processing, training, technical assistance, and complaint monitoring and reporting systems.

"Cash contribution" means State or local funds from non-Federal sources allocated to an agency. For purposes of this part, Community Development Block Grant (CDBG) funds allocated to an agency's fair housing program are considered to be non-Federal funds.

"Complaint processing funds" means funds provided to an agency to support the processing of housing discrimination complaints.

"Contributions agency" means an agency that has participated in the FHAP for at least two years.

"Dual-filed complaint" means a complaint that has been docketed at both HUD and a substantially equivalent agency.

"FHAP" means the Fair Housing Assistance Program.

"HUD" means the U.S. Department of Housing and Urban Development.

"Incentive funds" are funds awarded an agency by HUD based on the size of the population of the jurisdiction served by the agency plus HUD's matching of the cash contributions generated by the agency from non-Federal sources for the agency's fair housing program.

"NOFA" means Notice of Funding Availability.

§ 111.103 Purpose.

The purpose of the Fair Housing Assistance Program (FHAP) is to provide assistance to State and local fair housing enforcement agencies. This assistance is designed to provide support for complaint processing, training, technical assistance, data and information systems, and other fair housing projects. The intent of the program is to build a coordinated intergovernmental enforcement effort to further fair housing, and to encourage States and localities to assume a greater share of the responsibility for administering fair housing laws.

§ 111.105 Funding.

For purposes of funding under this part, HUD separates all eligible agencies into two categories—"capacity building agencies" and "contributions agencies" (see § 111.101). Funding levels may be subject to modification in succeeding fiscal years to reflect variations in annual appropriations for the FHAP. Funding levels will be announced by notice in the **Federal Register.**

(a) *Funding of capacity building agencies.* Capacity building agencies are eligible to receive capacity building funds only. HUD will give a fixed amount of these funds, during the first two years of an agency's participation in the FHAP, to all capacity building agencies that submit an acceptable application. The application must demonstrate, in HUD's determination, that the agency has (or will receive) a sufficient volume of complaint activity to justify HUD's provision of funds.

(b) *Funding of contributions agencies.* Contributions agencies are eligible to receive training funds, complaint processing funds, and incentive funds.

(1) *Training funds.* All contributions agencies will receive the same amount of financial support for HUD-sponsored or approved fair housing training, subject to a demonstration of need.

(2) *Complaint processing funds.* Contributions agencies will receive support for complaint processing based solely on the number of dual-filed housing discrimination complaints actually processed by an agency. The agency's prior year complaint processing performance will be used in determining the total amount of funding for the agency, in accordance with specific unit reimbursement levels to be determined administratively by HUD. For purposes of FHAP Fiscal Year 1989 funding, the level of an agency's complaint processing will be determined by reference to the number of dual-filed complaints processed by the agency in any 12 consecutive months (as selected by the agency) during an 18-month period designated by HUD. Thereafter, the level of complaints will be determined by the number of dual-filed complaints processed by the agency during its previous fiscal year.

(3) *Incentive funds.* Each contributions agency that meets the additional criteria for incentive funds set forth in § 111.113 may apply for these funds. A portion of these funds will be based on fixed amounts determined in accordance with the size of the population of the jurisdiction served by the agency. (HUD will use the most recent census data to determine a jurisdiction's population). In addition, a second portion of incentive funds will be determined by HUD's matching of the cash contributions generated from non-Federal sources for the agency's fair housing programs. Data submitted pertaining to the amount of the agency's non-Federal contribution must be certified as true by the agency's head or by his or her designee; the data must be based on the agency's records from the previous fiscal year. HUD will provide a formula to be used to distribute matching incentive funds in an annual Notice of Funding Availability (NOFA) published in the **Federal Register.** Contributions agencies must submit an application annually for incentive funds describing those projects that would benefit their jurisdiction.

§ 111.107 Agency threshold eligibility criteria.

In order to be eligible to participate in the FHAP, an agency first must meet the following criteria:

(a) The State or local fair housing law administered by the agency must have been recognized (and such recognition must continue to be outstanding) as providing rights and remedies that are substantially equivalent to those provided by Title VIII of the Civil Rights Act of 1968, as implemented by 24 CFR 115.6 (or, as implemented by 24 CFR 115.4, as in effect before October 8, 1984) or, for capacity building funds only, the Department must have entered into an agreement regarding interim referrals of complaints to such agency or other utilization of the services of such agency as described in 24 CFR 115.11.

(b) The agency must have executed a written Memorandum of Understanding with the Department which, at a minimum, describes the working relationship to be in force between the agency and the Department. An agreement in accordance with 24 CFR 115.11 may constitute such a Memorandum of Understanding.

(c) The agency must be prepared to develop procedures acceptable to HUD for cooperating with other FHAP-funded agencies having concurrent jurisdiction;

(d) The agency must not unilaterally reduce the level of financial resources currently committed to fair housing complaint processing. Budget and staff reductions occasioned by legislative action outside the control of the agency will not, alone, result in a determination of ineligibility. HUD will, however, take such actions into consideration in assessing the ongoing viability of an agency's fair housing program.

(e) The agency must participate in training sponsored by HUD and designed in consultation with HUD staff and agency representatives to provide

uniform skills and technological knowledge.

§ 111.109 Program administration.

(a) The FHAP will be administered by the Office of the Assistant Secretary for Fair Housing and Equal Opportunity.

(b) Notices of Funding Availability (NOFAs) under this program will be published in the **Federal Register**. Such notices will announce, among other things, methods to determine the level of funds available for capacity building, complaint processing, training, and incentive funds.

(c) All agencies that receive support under this program must conform to reporting and record maintenance requirements determined appropriate by the Assistant Secretary. Procedures for monitoring cooperative agreements or contracts will be established by the Assistant Secretary. Cooperative agreements and contracts will provide for recapture by HUD of funds where agencies fail to report, to maintain appropriate records, or to abide by other terms and conditions included in the agreement or contract.

(d) All State and local agencies that receive financial assistance under the Fair Housing Assistance Program must conduct audits in accordance with 24 CFR Part 44. The financial management systems used by recipients must provide for audits in accordance with OMB Circular A–128—Audits of State and local governments.[1]

§ 111.111 Applications for participation in the program.

(a) *General.* Complete information on all application requirements will be included in the NOFAs published in the **Federal Register**. Application kits will be available from the designated HUD Office upon request at the time of the notices. Citizens and organizations wishing to participate in the development of proposals for incentive funds should contact the recognized fair housing enforcement agency in their jurisdiction. Such agencies must provide, upon request, information regarding their intent to apply for funds, the uses they intend to propose, and any deadline for submission of comments. Eligible agencies must allow citizens and organizations to submit views and alternative project proposals and must consider views and proposals submitted.

(b) *Statement of intent to apply for incentive funds.* In order that the Department may be able to determine an appropriate formula for incentive funds before issuance of a NOFA, HUD may request administratively that contributions agencies submit by a date certain a statement of intent to apply for incentive funds, along with a copy of the agency's fair housing budget from the previous fiscal year. (Agencies that fail to make a timely submission may be denied incentive funds. A statement of intent will not be required from agencies that are not eligible for, or that elect not to receive, incentive funds.)

(c) *Contents of application.* Each applicant must submit an application in narrative form signed by the head of its fair housing agency (or his or her designee). The application must include)—

(1) A description of the applicant's proposed activities and objectives;

(2) A schedule for completion and estimated cost of each proposed activity;

(3) Any additional information that may be requested in the NOFA for the FHAP published in the **Federal Register**;

(4) For all capacity building applicants, the number of processed fair housing complaints from the previous fiscal year, to justify the amount of funds requested; and

(5) For all applicants for incentive funds, the most recent fiscal year's budget data showing non-Federal funds allocated to the applicant's fair housing program.

(d) *Deadline for submission of applications.* After receipt of the Department's appropriation for the FHAP, HUD will publish a NOFA in the **Federal Register**, establishing a deadline for submission of applications. This deadline ordinarily will be 45 days after publication of the NOFA.

(e) *Certifications.* The applicant must certify that:

(1) The submission of the application is authorized under State or local law (as applicable), and the applicant possesses the legal authority to carry out the activities proposed in the application.

(2) The agency meets the performance standards set forth in § 115.4 of this title and, in addition, the agency will adhere to a written agreement (Memorandum of Understanding or Interim Agreement) governing all fair housing referral activity and complaint processing between the agency and the appropriate HUD Regional Office.

(f) *Review of application.* (1) An application for funding will be considered approved as of the date of HUD's written notification to the applicant of a fund reservation or a notice of satisfaction of any conditions of approval (whichever is later). Upon approval of an application, HUD and the State or unit of general local government and the agency will execute a cooperative agreement or contract with respect to the funding.

(2) With respect to the applications for funding that the responsible HUD Regional Office finds contain deficiencies, the Regional Office will notify the applicant in writing of the deficiencies found. If so notified, the applicant must, within 20 days from the date of notification from the Regional Office, cure the deficiency or supply the additional information that the Regional Office requests. HUD may consider an applicant's failure to respond appropriately within the 20-day period as an abandonment of the application.

(3) If the applicant is notified by the Regional Office that, notwithstanding its attempt to correct the deficiency or supply the requested information, the applicant has failed, in the determination of the Regional Office, to do so, the applicant may appeal this determination to the Assistant Secretary for Fair Housing and Equal Opportunity.

(4) The Assistant Secretary may reverse the determination of the Regional Office and approve the application unless the Assistant Secretary makes one or more of the following determinations:

(i) The application proposes ineligible activities, or is otherwise deficient;

(ii) The submission was not received within the time period established by the NOFA;

(iii) The submission does not include all the information required, as stated in the NOFA or application kit; or

(iv) The submission does not contain evidence or information sufficient to support the proposed activities.

§ 111.113 Additional agency eligibility criteria for incentive component.

(a) In addition to the criteria set forth in § 111.107, applicants for incentive funds must demonstrate that they have, during a 12 consecutive month period designated by HUD in the NOFA—

(1) Processed a stated minimum number of dual-filed complaints. The number of complaints (which will be based on separate minimums for States and for localities) will be set forth in the NOFA. To be considered a processed complaint, a complaint must have been filed in accordance with 24 CFR 105.15–105.17 and accepted for closure by the Regional Office;

(2) Demonstrated satisfactory performance in the timely submission of vouchers;

[1] Copies of OMB circulars mentioned here are available for inspection only at the Office of the Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh St., SW., Room 10276, Washington, DC 20410.

(3) Completed administrative processing of complaints in a timely manner; and

(4) Engaged in comprehensive and thorough investigative activities relative to complaints dual-filed with HUD.

(b) Satisfaction of the criteria specified in paragraph (a) of this section will be determined by HUD based on its annual evaluation under Part 115 of this title and through monitoring under FHAP cooperative agreements in effect during the 12-month period designated by HUD.

§ 111.115 Eligible activities under incentive component.

(a) The primary purpose of incentive funds is to support activities that produce increased awareness of fair housing rights and remedies. All activities proposed for funding must address or have ultimate relevance to matters affecting fair housing which are cognizable under Title VIII. These activities include, but are not limited to, the following:

(1) Activities designed to develop and implement outreach efforts to heighten public awareness of all forms of housing discrimination prohibited under Title VIII of the Civil Rights Act of 1968, and of fair housing rights and responsibilities.

(2) Activities designed to create, modify, or improve local, regional, or national information systems concerned with fair housing matters.

(3) Activities designed to improve an agency's capability to ensure fair housing through new or redirected approaches to the agency's internal structure or compliance techniques.

(4) Activities to develop and conduct a testing and auditing program for specific protected classes or special market areas for fair housing enforcement or litigation.

(5) Activities designed to identify new or subtle practices of housing discrimination and to implement programs to eliminate such practices.

(6) Activities designed to address violence and intimidation in the sale or rental of housing against persons because of their race, color, religion, sex, or national origin. These activities may include education, technical assistance, or the development of programs for prevention and response.

(7) Activities designed to coordinate fair housing enforcement efforts of government enforcement agencies with various community resources which have an impact on the prevention or elimination of discriminatory housing practices.

(8) Technical assistance to enable agencies to work with private fair housing groups, educational institutions, the real estate industry, similar constituents, and other governmental entities to eliminate or prevent housing discrimination.

(9) Activities to provide services to aggrieved individuals by persons in specialized professions consistent with rights and remedies under applicable Federal, State, and local laws and ordinances prohibiting discrimination in housing.

(10) Affirmative marketing activities to inform persons of housing opportunities with respect to government assisted housing and the private housing market.

(11) Activities designed to improve investigations of systemic discrimination for further processing by State and local agencies, HUD, or the Department of Justice.

(12) Fair housing training for enforcement agency staff.

(13) Activities designed to create, modify, or improve an agency's complaint information and monitoring capacity to make its system compatible with HUD's for internal monitoring of fair housing complaint activity.

(b) Administrative costs incurred by a recipient in carrying out its responsibilities under the FHAP also will be considered eligible costs under the incentive component, subject to the provisions of this paragraph. The total amount of funding allowed for administrative costs must not exceed 10 percent of the approved funds per agency. Indirect costs required by the jurisdiction are not allowable under this section. All other costs incident to the FHAP must appear separately from the administrative costs.

§ 111.117 Annual performance review.

(a) HUD will conduct an annual review of a recipient's performance in carrying out funded activities as proposed in its application. HUD will rely primarily on information obtained from the recipient's records and reports, findings from on-site monitoring, audit reports, and information generated from the requirements for the disbursement of funds for the FHAP. HUD also may consider relevant information pertaining to a recipient's performance gained from other sources, including final court decisions and citizens' comments. (HUD will give an applicant the opportunity to respond to any negative citizens' comments.)

(b) The annual review will examine whether the recipient—

(1) Has carried out its activities in a timely manner, including the expenditure of funds allocated for activities, as proposed in the application;

(2) Has a continuing capacity to carry out its activities in a timely manner;

(3) Has met the objectives that the proposed activities were designed to address, as set forth in the application; and

(4) Has complied with all certifications and assurances required by HUD.

(c) The annual performance review is required in addition to the annual assessment provided for under Part 115 of this title for continued substantial equivalency recognition.

§ 111.119 Recaptured or uncommitted funds.

FHAP funds may become available following the initial round of funding after publication of a NOFA, as a result of agency failures to submit timely applications. HUD may award these funds to an agency whose law received recognition after a HUD-prescribed deadline, or to an agency that was determined to be ineligible for incentive funds at the time of application but that subsequently has demonstrated its eligibility.

§ 111.121 Reporting and recordkeeping requirements.

(a) *Report to HUD.* Recipients shall report on their activities and expenditures in such format and at such time as the Assistant Secretary may prescribe. In addition to periodic reports regarding complaint processing and training activities, agencies receiving capacity building funds or incentive funds must report on the progress and results of activities funded in whole or in part under these FHAP components. Such reporting requirements will be incorporated in each Cooperative Agreement or contract.

(b) *Records to be maintained.* Each recipient shall maintain records specified by the Assistant Secretary that clearly document its performance under the award. The Assistant Secretary will issue administrative instructions prescribing the form of these records and the specific elements necessary to document performance.

(c) *Public disclosure of records and documents.* Recipients must provide for full and timely disclosure of records and documents relating to their FHAP activities, consistent with applicable Federal, State, and local laws regarding personal privacy and obligations of confidentiality. Documents relevant to a recipient's program must be made available at the recipient's office during normal working hours for citizen review

upon request, except that documents with respect to on-going fair housing complaint investigations will be exempt from citizen review. The Secretary, the Inspector General of HUD, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to all books, accounts, reports, files, and other papers of recipients with respect to FHAP payments for surveys, audits, examinations, excerpts, and transcripts.

§ 111.123 Corrective and remedial action.

(a) If HUD makes a preliminary determination that a recipient has not met the performance standards as set forth in § 111.117, the recipient will be given notice of this determination and an opportunity to show that it has done so, within the time prescribed by HUD and on the basis of demonstrable facts and data.

(b) If a recipient fails to demonstrate to HUD's satisfaction that it has met program review standards, HUD will request the recipient to submit and comply with proposals for action to correct, mitigate, or prevent further performance deficiencies, including:

(1) Preparing and following a schedule of actions for carrying out the affected fair housing activities;

(2) Establishing and following a management plan that assigns responsibilities for carrying out the remedial actions;

(3) Cancelling or revising activities likely to be affected by a performance deficiency before expanding amounts for the activities;

(4) Reprogramming FHAP awards that have not yet been expended on affected activities to other eligible activities; and

(5) Suspending disbursement of program amounts for affected activities for a period of not more than 60 days.

(c) HUD may condition the use of FHAP award amounts with respect to an agency's succeeding fiscal year's allocation on the satisfactory completion by a recipient of appropriate corrective action. When the use of funds is so conditioned, HUD will specify the deficiency, the required corrective actions, and the time allowed for taking these actions. Failure of a recipient to complete the actions as specified will result in a reduction or withdrawal of the recipient's allocation in an amount not to exceed the amount conditionally granted.

Dated: July 20, 1988.

Judith Y. Brachman,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR. Doc. 88-20158 Filed 9-6-88; 8:45 am]

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Wednesday
September 7, 1988

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 964

Resident Management in Public Housing; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 964

[Docket No. R-88-1398; FR-2519]

Resident Management in Public Housing

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This rule establishes a new program of resident management of public housing. Under the program, resident councils that represent public housing tenants may approve the formation of a resident management corporation. A qualifying resident management corporation may enter into a management contract with the public housing agency (PHA), establishing the respective management rights and responsibilities of the PHA and the corporation with respect to the public housing project involved. The program will give PHAs and resident management corporations wide latitude in establishing their respective roles and relationships under the contract.

HUD published its proposed rule, entitled "Tenant Management in Public Housing" on July 5, 1988. (53 FR 25276). This final rule implements section 122 of the Housing and Community Development Act of 1987 (42 U.S.C. 1437r).

EFFECTIVE DATE: Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will not become effective until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: Nancy S. Chisholm, Director, Policy Staff, Public and Indian Housing, Department of Housing and Urban Development, Room 4118, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-6713. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

Overview

This rule implements section 20 of the United States Housing Act of 1937 (the Act). Section 20 was added by section 122 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988). Section 20 establishes a new program of resident management of public housing. Under the program, resident councils that represent residents of a public housing project or projects may approve the formation of a resident management corporation. A qualifying resident management corporation may enter into a management contract with the public housing agency (PHA) establishing the respective management rights and responsibilities of the PHA and the corporation with respect to the public housing project involved. The program provides PHAs and resident management corporations wide latitude in establishing their respective roles and relationships under the contract.

Resident management corporations may retain any income that they generate in excess of estimated revenues for the project. Retained amounts may be used for purposes of improving the maintenance and operation of public housing projects, establishing business enterprises that employ public housing residents, or acquiring additional dwelling units for lower income families.

The program contains special provisions governing HUD technical assistance to resident councils and resident management corporations; HUD waiver of certain non-statutory requirements for resident management corporations and the PHA; and the employment of public housing management specialists to help determine the feasibility of, and to help establish, resident management corporations, and to provide training and other duties in connection with the daily operations of the project.

Note: A number of similar terms are used throughout the proposed rule and this preamble, such as "tenant" and "resident", "tenant management corporation" and "resident management corporation", "tenant management" and "resident management", and "tenant organization" and "resident council". These terms are *not* intended to denote different meanings, and may be used interchangably. They merely reflect the difference in terminology between the provisions of HUD's former rules on Tenant Participation and Management in 24 CFR Part 964—with their emphasis on "tenant"—and the new section 20 of the 1937 Act—which uses the parallel term "resident." Generally, provisions implementing revised Subpart C of this final rule, which incorporates section 20's requirements, use the term "resident".

In HUD's proposed rule, the Department indicated its intention to provide a choice to resident management organizations between entering into management contracts with PHAs under HUD's old rules (with certain proposed modifications) or becoming a "Subpart D" Resident Management Corporation. As further discussed elsewhere in this preamble, the Department has, in response to the public comments, abandoned this formulation in favor of a rule that provides exclusively for resident management contracts reflecting the requirements of the new law. While this change will have no adverse effect upon any existing tenant management contract with a PHA, the rule *will* require that all new contracts, renegotiated contracts, and contract renewals providing for the performance of management responsibilities by resident management organizations adhere to the new statutory requirements for resident management. The proposed rule's "Subpart D" has been removed, and revised Subpart C now reflects requirements applicable to all PHA-resident management corporation contracts entered into after the effective date of this rule.

Public Comments on the Proposed Rule.

The Department received 38 comments on the rule, including a considerable number of inquiries and comments from interested members of the Congress and from other proponents of resident management. Several PHAs also commented on the proposal. While many of the comments supported particular features of the proposed rule, substantial opposition was expressed in reference to several points. The Department has reviewed the policies set out in the proposed rule in light of the public comments and has made a number of changes in the rule in response to them, as discussed below.

I. Form of Resident Management

As already noted, a number of commenters, including the congressional sponsors of section 20, objected to the proposed rule's offer of a choice to tenant management organizations between "old style" tenant management under Subpart C and the statutory program included in the 1987 Housing and Community Development Act. While HUD continues to believe that section 20 poses no legal barrier to HUD's allowing alternative forms of resident management, the Department has been convinced by the comments that it would be unwise to do so. As commenters observed, HUD's

alternative form of tenant management arrangement would offer a convenient refuge to PHAs who were unwilling to give consideration to the more comprehensive resident management undertakings described in section 20 of the Act. Since the section 20 resident management program is closely related to the capacity of a resident management corporation to undertake the homeownership program provided for in section 21 of the Act, the Department has decided to eliminate the possibility of alternative forms of management and to require that all future resident management contracts adhere to the statutory model, as augmented by the revised Subpart C requirements included in this rule. Existing tenant management contracts entered into under (or predating) HUD's Part 964 as it existed before the amendments made by this final rule will remain valid and unaffected by the requirements of the new rule, except that renewals and renegotiations of those contracts will be subject to the new rule after its effective date.

II. Duty to Contract vs Duty to Bargain

Several commenters, including members of the Congress, strongly argued that HUD's proposed rule failed to follow section 20 by imposing only a "duty to bargain" on PHAs with reference to entering into a contract with resident management corporations for the provision of management services. These commenters argued that the 1987 amendments constituted a "duty to contract" that HUD should enforce in its rule.

For the reasons set out in the proposed rule, HUD agrees with the commenters that the purpose of section 20 (and its companion authority for resident management corporation-sponsored homeownership in section 21 of the Act) is not to compel a PHA to enter into any particular contract, but is to afford every possible encouragement and impetus to the expeditious conclusion of agreements between PHAs and resident management corporations, thus providing for significant management opportunities for tenant organizations and paving the way for participation in the newly enacted homeownership program.

Accordingly, the Department has augmented the "duty to bargain" language (§ 964.29(a) of the proposed rule—now § 964.27(a)) to impose a higher standard on PHA's that are called upon to negotiate with resident management corporations wishing to provide management services. The revised rule requires the PHA to enter into "good faith negotiations" and to "make every reasonable effort to come to terms with the resident management corporation." In addition, the revised rule requires the HUD "* * * shall take such other actions as are necessary to resolve the conflicts between the parties. If no resolution is achieved within 90 days from the date HUD required the parties to undertake or resume such negotiations, HUD shall serve notice on both parties that administrative remedies have been exhausted (except that, pursuant to mutual agreement of the parties, the time for negotiations may be extended by no more than an additional 30 days)."

The Department believes that this revision addresses the legitimate concerns of tenant management groups and their supporters that some PHAs, skeptical about the benefits of tenant management, will summarily reject their offer to contract. Comments calling for binding arbitration are not, in HUD's view, supported by the language of the statute.

Some public comments (generally, from PHAs) objected to the appeals process set out in the rule on grounds that it would be intimidating, and could have the effect of compelling PHAs to enter into contracts. The Department disagrees. Even so, PHAs must recognize that section 20 of the Act represents a strong congressional statement of support for the concept of resident management. There is a clear duty on the part of PHAs to give any resident management proposal sober and affirmative consideration, and to bargain in good faith with duly constituted resident management corporations with the objective of securing a workable and effective contract. The final rule's appeals process and the augmented description of PHA responsibility under the rule are intended to be key elements in the Department's implementation of Part 964.

III. Autonomy of the Resident Management Corporation

The proposed rule attracted negative comments on a variety of subject areas where commenters believed HUD was imposing too much PHA control over matters rightfully left to the discretion of the resident management corporation.

In § 964.40(b) of the proposed rule (now § 964.33(b)) the Department provided that the PHA and the resident management corporation must agree in advance upon the qualifications, method of search, duties to be assigned and method and amount of payment to be offered to the resident management specialist selected to assist the corporation. In response to the protests of commenters who believed that the hiring and assignment of duties of the resident management specialist should be principally the responsibility of the resident council, rather than a joint venture requiring step-by-step PHA concurrence, the Department has modified the rule to provide that these several functions associated with recruiting and retaining the management specialist are the responsibility of the resident council. The requirement of consultation with the PHA is retained, but revisions in § 964.33(b) make clear that the essential responsibility lies with the council.

Similiarly, commenters objected to the proposed rule's giving PHAs a role in the selection of CPAs for audit requirements associated with resident management operations. Here again, HUD agrees that there is no reason why selection of a qualified auditor should not be vested in the corporation. Section 964.55 of the proposed rule (now § 964.43) has been revised to provide that the CPA is to be designated by the corporation.

Objection was also heard from several quarters concerning the requirement in the proposed rule that a PHA must make a written determination of a resident management corporation's "capability" for satisfactorily performing all management functions covered by the contract. After consideration, HUD agrees with the commenters that this provision is unnecessary and redundant, since the rule clearly contemplates that PHAs and resident management corporations will enter into contracts only (1) after arms-length negotiations designed to assure that both parties are satisfied, and (2) with the full knowledge on the part of the PHA that it remains ultimately responsible for the successful operation of all its projects—including those for which some or all management responsibility has been contracted to the corporation. The requirement of a written PHA determination has been removed.

Finally, the technical assistance that HUD pledged to try to provide under § 964.58 of the proposed rule (now § 964.45) was to be provided "to PHAs for the use of" resident management corporations or resident councils. In response to comments, the Department has revised the rule to provide that, to the extent budget authority is available, HUD will provide financial assistance directly to the management corporations or resident councils for their use in obtaining technical assistance services.

IV. Utility Cost Savings

Many commenters noted that the proposed rule inappropriately excluded utility cost savings from excess revenues. In response, the Department has decided to drop § 964.49(d)(2), which would have excluded those costs for purposes of determining income generated by a resident management corporation. (The provision formerly containing this exclusion is now designated as § 964.39(d)). Operating subsidy for a resident-managed project will be calculated in accordance with Part 990, including the provision for HUD sharing with the project of half of any savings or costs attributable to changes in utility consumption.

V. Bonding Costs

A commenter suggested that HUD should provide front-end funding for the costs of insurance or bonding associated with resident management operations. The proposed rule anticipated that some resident management corporations might have problems with the front-end costs of purchasing a bond, and provided that such risk protection costs might be included in the management contract.

A resident management corporation is free to negotiate a contract with a PHA calling for front-end payment of these costs, but HUD sees no basis for HUD-paid bonding, or for an across-the-board requirement in the rule that any entity other than the corporation take responsibility for the purchase of a bond. Section 20 envisions a resident management corporation that "supplies insurance and bonding or equivalent protection sufficient to the Secretary and the public housing agency." While there is certainly nothing wrong with arranging for bonding as part of the management contract, the statute clearly depicts the bonding duty as a duty of the corporation—not as a responsibility of HUD or a PHA.

VI. Proration of Operating Subsidy

A number of commenters pointed out that unless a resident management corporation's management contract called for the performance of *all* management responsibilities associated with a project, the statutory and regulatory provisions governing operating subsidy and project income would appear to require overpayment to the resident management corporation, since any retained responsibilities by the PHA would have no recourse to operating subsidy funds.

The Department does not believe that this interpretation is required by the statute. The regulatory instructions for determining appropriate compensation for management services (now set out in § 964.35 and § 964.39) have been clarified to include authority on the part of the contracting parties—the PHA and the corporation—to provide for appropriate sharing of operating subsidy funds and other sources of income attributable to the managed project, in circumstances where the management contract leaves some part of management responsibility for the project in the hands of the PHA. The purpose of the statutory directions contained in section 20(e), HUD believes, is to make clear that the resident management corporation is entitled to share fully and fairly in the available operating funds for the managed project. Clearly, only when 100 percent of project management responsibility is vested in the corporation does the law require that 100 percent of available operating funds attributable to the project be provided for corporation use.

VII. Breach of Management Contract

PHAs suggested that the rule include a provision relating to breach of contract and the right to terminate a contract for cause. This provision is included in the final rule (at § 964.27(d)(4)), as it was in the proposed rule.

VIII. Definition of "Project"

Doubts were expressed by some PHA commenters concerning whether scattered site buildings were feasible for resident management. It was also suggested that, at the least, resident management corporations ought to first test their abilities to manage contiguous projects, before taking on the predicted greater complexity of managing scattered sites.

On balance, the Department continues to believe that scattered site buildings may—at least in particular circumstances—be feasible for resident management, and we have determined to leave the definition unchanged so that the broadest possible universe of management opportunities may be available for discussions between particular PHAs and resident management organizations. HUD believes that it is sufficient to leave these matters for negotiation, although the Department recognizes that PHAs may, in some instances, have legitimate budget-related or other objections to proposals calling for scattered site management by resident organizations.

IX. Operating Subsidy, Operating Budget, Retention of Excess Income

In addition to the several comments associated with operating subsidy concerns expressed above, several commenters found the portion of the rule on operating subsidy confusing and asked for clarification of issues:

The regulation addresses calculation of the AEL in the first year, a commenter said, but was unclear about how the calculation is to be made in subsequent years. For budget years after the first budget year under management by the resident management corporation, the AEL will be calculated as it is for all other projects in accordance with § 990.105(e)(5). Under this provision, the AEL for the previous year is updated each year by adjusting for any changes in the project's housing stock with reference to such factors as the age of the units, building height and average age, along with an adjustment for inflation.

While the AEL should represent a "normal" year of expenses, a commenter agreed, the term "normal" needs definition in a manner that insures that extraordinary expenses of a previous year are not included. The commenter also asked for special direction for cases where a PHA does not have project-based budgeting, or where only a portion of the project is managed by the resident management corporation.

The Department, as discussed earlier, has clarified the rule with reference to proration of PHA/corporation shared management. With reference to the AEL concerns, we have added a statement that all expenditures which are not normal fiscal year expenditures, as to amount or as to the purpose for which expended, are excluded.

The Department recognizes the difficulty of developing base year expenditures for a project in cases where a PHA does not have project-based budgeting, but we have not provided specific direction for these cases. We have left it up to each project to develop the best information it can document by the records available in each case. The budget which is submitted for the project will reflect all project expenditures and will identify which expenditures are related to the responsibilities of the RMC and which are related to functions that will continue to be performed by the PHA. Project revenues (rent and subsidy) would be divided according to the breakout of expenditures in the budget.

Finally, it was suggested that calculation of the AEL include consideration of the overhead that

PHAs will experience in "servicing the resident management corporation." Omission of such costs, it was argued, would be unfair to the PHA that is attempting to support the resident group in managing a project while also continuing to manage its overall program. The regulation should provide specifically for reimbursement of PHA expenses related to the corporation.

In response to these concerns, we have clarified that the actual expenses for the project upon which the AEL is based should include all project expenses, including the project's share of any overhead or centralized PHA expenditures. To the extent that these public commenters were requesting additional HUD funding to PHAs for the costs expected to be incurred by them in dealing with resident management corporations, the Department cannot provide funds for this purpose. HUD does not provide additional funding to PHAs for costs associated with contracting for services, and will regard resident management contracts in the same way as it does other contracts for services.

Section 964.39(e) of the rule permits resident management corporations to use retained revenues for (among other uses) acquisition of additional dwelling units for lower income families. A clarifying change is made in the final rule stating that corporation-acquired units will not be eligible for payment of operating subsidy.

X. Waiver of HUD Requirements

Several commenters suggested additional areas in which waiver of HUD requirements might be considered—including, in some cases, suggested waiver of requirements that section 20 explicitly prohibits, and in other cases, waiver of particular requirements, based on statutory law, that HUD believes cannot legally be waived. In general, the Department will stand ready to review particular waiver requests received in connection with resident management undertakings and will permit the waiver where it is legally possible to do so, and where adequate justification is provided.

Objection was made to HUD's interpretation of the waiver provision in section 20 set out in the proposed rule, where HUD extended the waiver to PHAs only "to the extent the waiver affects the PHA's remaining responsibilities relating to the corporation's project." HUD has deliberately drawn the waiver process provided for in Part 964 narrowly because the Department believes that the process is supposed to be directly associated with the *condition* of resident management—i.e., the waiver being requested should relate in some direct way to the fact that a resident-managed project is involved. While it is true that the statute permits waiver of a particular requirement for both the corporation and the PHA, HUD believes that circumstances may exist where the *reason* given for the waiver request is only applicable (or is more applicable) to the resident-managed project than to the PHA operation as a whole. We are concerned that there may even be cases where the necessity of granting the waiver across-the-board for both the resident-managed and overall PHA operations would have the effect of forcing HUD to deny the request altogether—even though a strong case may have been made for waiver as it applied to the resident-managed project.

Accordingly, the Department has not altered the provision of Part 964 relating to waiver requests. It should be remembered, however, that Part 964 is not the only possible source of access to waiver of otherwise applicable requirements, and nothing in this rule prevents a PHA from requesting a waiver under Part 999, of from coupling such a request with a joint PHA/corporation request made under Part 964. The Department will certainly have no objection, on a proper showing, to affording a PHA access to the same privileges that it agrees to afford to a resident management corporation requesting a waiver—where the PHA's case is equally compelling.

XI. Financial Management Requirements

A few commenters suggested that it was inappropriate to subject resident management corporations to the same financial management requirements as are applicable to PHAs. It was suggested that a corporation should be made explicitly subject to OMB Circulars A–110 and A–122, but not to financial management requirements made applicable to PHAs. The commenter argued that even though the corporation was an agent of the PHA, it is in fact an independent nonprofit corporation, and would better be made subject to financial management requirements normally imposed on such entities. The Department agrees that as subgrantees of PHAs, resident management corporations should be made subject to the requirements of A–110 and A–122. The regulation has been revised to add administrative requirements to § 964.43. The section has been retitled accordingly.

In addition, resident management advocates argued that corporations should not have those of its activities which are unrelated to its management operations subjected to *any* audit requirements under the rule. The audit requirements in § 964.43 reflect the statutory requirements in section 20(b)(5) of the Act, and therefore have not been revised.

XII. Doubts about Resident Management

Comments in this subject area ranged from several supporters of resident managment who condemned the proposed rule as excessively negative and antiresident management, to others who claimed that the rule's "whole thrust" runs counter to "HUD's previous espousal of professionalizing the field of public housing management." What the Department is saying in the proposed rule, this commenter exclaimed, is "never mind professional requirement or prerequisites—anyone can be a manager."

It is an adequate answer to these general comments to say that the rule (1) closely tracks the essentials of section 20 of the Act; (2) continues to encourage and promote tenant participation and management of public housing as a worthwhile goal; (3) preserves an appropriate major role for PHAs by recognizing their equal status in the complex process of making resident management a reality. Finally, neither the rule nor the statute on which it is based is silent on the subject of the need for preserving professional requirements associated with the management of public housing.

A few PHAs suggested that tenant management corporations be given "absolute responsibility" under their management contracts and that the PHAs be "relieved" of any responsibility for the managed project. The Department believes that any such interpretation of section 20 would be inappropriate and destructive. The statute seeks to provide for resident management—and ultimately resident ownership mechanisms—under the contracts for the performance of services. The corporation is to *manage* a project—not perform as a subsidiary PHA. As the PHA's agent, the corporation is responsible to the PHA for carrying out its duties under the contract, and the rule continues to provide that the PHA is responsible to HUD for management of *all* its projects, whether managed directly or under contract.

There were in addition numerous suggestions for proscriptive HUD rulemaking aimed at standardizing the PHA/corporation relationship into a single narrow set of requirements

applicable in all cases, and there were countersuggestions by proponents of resident management that any and all HUD-initiated requirements in the rule (or in HUD's present tenant management regulations) should be totally inapplicable to a resident management corporation meeting the statutory requirements of section 20. The Department does not believe that it can provide in this rule for every exigency, or explicitly prohibit every possible problem from arising, or on the other hand, that HUD can limit itself in this rulemaking to a paraphrase of section 20.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individuals industries, Federal, State, or local government agenices, or geographic regions; or (3) have 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.

Under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), HUD certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule revises the method by which PHAs may enter into resident management contents with public housing residents. Although the rule may have some effect on small entities—both PHAs and resident management corporations—its economic effect on them is expected to be slight.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program rule number for this rule program number 14.850.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced in the **Federal Register**.

List of Subjects in 24 CFR Part 964

Public and Indian housing.

Accodingly, 24 CFR Part 964 is amended as follows:

PART 964—TENANT PARTICIPATION AND MANAGEMENT IN PUBLIC HOUSING

1. The authority citation for Part 964 is revised to read as follows:

Authority: Secs. 6, 9, 14, 20, United States Housing Act of 1937 (42 U.S.C. 1437d, 1437g, 1437l, 1437r); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 964.3, paragraph (b) is revised, and new paragraphs (c), (d), and (e) are added, to read as follows:

§ 964.3 Applicability and scope.

* * * * *

(b) Subpart B of this part contains HUD's policies, procedures, and requirements for the participation of public housing tenants in public housing management. These policies, procedures, and requirements apply to all tenant participation under this part.

(c)(1) Subpart C of this part contains HUD's policies, procedures, and requirements for resident management of public housing under that subpart.

(2) Subpart C of this part is not intended to negate any pre-existing arrangements between a PHA and a tenant organization or tenant management corporation. Current tenant management contracts that do not meet the requirements of Subpart C need not be modified until their first renewal. On or after [*insert effective date of this rule*], any new, renewed or renegotiated tenant management contract must meet the requirements of Subpart C.

(d)(1) PHAs and tenant management corporations or resident management corporations that have entered into management contracts under Subpart C of this part, including tenant management corporations that have entered into such contracts before [*insert effective date of this rule*], may enter into management contracts under Subpart C, subject to such terms and conditions as the PHA and the corporation may decide, consistent with the ACC and applicable laws and regulations. On the expiration of any existing tenant management contract in existence on [*insert effective date of this rule*], any continuation of or renewal of the management contract will be required to meet all the conditions set out in Subpart C.

(2) Subpart C of this part is designed to encourage increased resident management of public housing, as a means of improving existing living conditions in public housing. Subpart C provides increased flexibility for public housing resident management by permitting the retention, and use for certain purposes, of any income generated by a resident management corporation in excess of estimated project income; and by providing funding for technical assistance to promote the formation and development of tenant management entities.

(e) A number of similar terms are used throughout this part, such as "tenant" and "resident," "tenant management corporation" and "resident management corporation," "tenant management" and "resident management," and "tenant organization" and "resident council." These terms are not intended to denote different meanings, and may be used interchangeably. They merely reflect differences in terminology used in this part before and after the revisions brought about by passage of section 20 of the United States Housing Act of 1937.

3. Section 964.5 is revised to read as follows:

§ 964.5 Relation to other requirements.

(a) Subparts B and C of this part are intended to be consistent with the regulations in other parts of this Chapter regarding tenant participation in specific aspects of public housing management. To the extent any provision in these subparts conflicts with any regulatory requirement related to tenant participation in any other parts in this Chapter, the other provision controls. To the extent that Subparts B and C conflict with previous guidelines or instructions (other than those involving regulatory requirements), the provisions of Subparts B and C control.

(b) Subpart C of this part also contains the resident management program established by section 122 of

the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988). This subpart is independent of regulations in other parts of this Chapter, as well as other HUD instructions or guidelines under those regulations, with respect to resident participation in the management of public housing. Subpart C will be applicable to any resident management contract entered into, renewed or renegotiated on or after [*insert effective date of this rule*].

4. In § 964.7, the definitions of "Tenant Management", "Tenant Management Corporation", and "Tenant Organization" are removed; the definitions of "Annual Contributions Contract (ACC)" and "Management Contract" are revised; and new definitions of "Project", "Resident Management", "Resident Management Corporation", and "Resident Council" are added, in alphabetical order, to read as follows:

§ 964.7 Definitions.

Annual Contributions Contract (ACC). A contract (in the form prescribed by HUD) under which HUD agrees to provide financial assistance, and the PHA agrees to comply with HUD requirements for the development and operation of the public housing project.

* * * * *

Management contract. A written agreement between a resident management corporation and a PHA, as provided by § 964.35.

Project. Includes any of the following that meet the requirements of this part:

(a) One or more contiguous buildings.

(b) An area of contiguous row houses.

(c) Scattered site buildings.

* * * * *

Resident council. An incorporated or unincorporated non-profit organization or association that meets each of the following requirements:

(a) It must be representative of the tenants it purports to represent.

(b) It may represent tenants in more than one project or in all of the projects of a PHA, but it must fairly represent tenants from each project that it represents.

(c) It must adopt written procedures providing for the election of specific officers on a regular basis (but at least once every three years).

(d) It must have a democratically elected governing board. The voting membership of the board must consist of tenants of the project or projects that the tenant organization or resident council represents.

Resident management. The performance of one or more management activities for one or more projects by a resident management corporation under a management contract with the PHA.

Resident management corporation. The entity that proposes to enter into, or enters into, a management contract with a PHA that meets the requirements of Subpart C of this part. The corporation must have each of the following characteristics:

(a) It must be a non-profit organization that is incorporated under the laws of the State in which it is located.

(b) It may be established by more than one tenant organization or resident council, so long as each such organization or council (1) approves the establishment of the corporation and (2) has representation on the Board of Directors of the corporation.

(c) It must have an elected Board of Directors.

(d) Its by-laws must require the Board of Directors to include representatives of each tenant organization or resident council involved in establishing the corporation.

(e) Its voting members must be tenants of the project or projects it manages.

(f) It must be approved by the resident council. If there is no council, a majority of the households of the project must approve the establishment of such an organization to determine the feasibility of establishing a corporation to manage the project.

(g) It may serve as both the resident management corporation and the resident council, so long as the corporation meets the requirements of this part for a resident council.

* * * * *

5. Section 964.9 is revised to read as follows:

§ 964.9 HUD role in activities under this part.

(a) *General.* Subject to the requirements of this part and other requirements imposed on PHAs by statute or regulation, the form and extent of tenant participation or resident management are local decisions to be made jointly by tenant or resident management corporations and their PHAs. HUD will promote tenant participation and resident management, and will provide additional guidance, as necessary and appropriate. In addition, HUD will endeavor to provide technical assistance in connection with resident management, as provided by § 964.45.

(b) *Duty to bargain in good faith.* If a PHA refuses to negotiate with a resident management corporation in good faith or, after negotiations, refuses to enter into a contract, the corporation may file an informal appeal with HUD, setting out the circumstances and providing copies of relevant materials evidencing the corporation's efforts to negotiate a contract. HUD shall require the PHA to respond with a report stating the PHA's reasons for rejecting the corporation's contract offer or for refusing to negotiate. Thereafter, HUD shall require the parties (with or without direct HUD participation) to undertake or to resume negotiations on a contract providing for resident management, and shall take such other actions as are necessary to resolve the conflicts between the parties. If no resolution is achieved within 90 days from the date HUD required the parties to undertake or resume such negotiations, HUD shall serve notice on both parties that administrative remedies have been exhausted (except that, pursuant to mutual agreement of the parties, the time for negotiations may be extended by no more than an additional 30 days).

6. Part 964, Subpart A, is amended by adding new §§ 964.11 and 964.12, to read as follows:

§ 964.11 HUD policy on tenant participation.

It is HUD's policy to encourage tenant participation in the management of public housing, as may be found appropriate by PHAs after consultation with the tenants. HUD encourages PHAs and tenants to work together to determine the most appropriate ways to foster constructive relationships, particularly through tenant organizations. Tenant organizations are generally the best vehicle for achieving effective tenant participation on a countinuing basis.

§ 964.12 HUD policy on resident management.

It is HUD's policy to encourage resident management. HUD encourages PHAs, tenants, and resident management organizations to explore the various functions involved in project management to identify appropriate opportunities for contracting with a resident management corporation. Potential benefits of resident management of public housing include improved quality of life and resident satisfaction, and other social and economic benefits to tenants, the PHA, and HUD.

§ 964.15 [Removed and Reserved]

7. Section 964.15 is removed and reserved.

8. In § 964.17, the introductory language is revised to read as follows:

§ 964.17 Tenant participation requirements.

The following are requirements for implementing HUD's policy on tenant participation, as expressed in § 964.11:

* * * * *

9. In § 964.19, the introductory paragraph and paragraphs (b) and (c) are revised to read as follows:

§ 964.19 Tenant participation guidelines.

The following are guidelines for implementing HUD's policy on tenant participation, as expressed in § 964.11:

* * * * *

(b) A tenant organization may request that it be recognized as the official organization representing the tenants in meetings with the PHA or with other entities. A PHA should grant formal recognition of the tenant organization if it meets the requirements for such an organization specified in § 964.7.

(c) At a minimum, the PHA and tenant organization should put in writing their understanding concerning the elements of their relationship. If such an agreement includes contracting for the tenant organization to perform any of the functions for which the PHA is responsible to HUD under the ACC, the provisions of Subpart C apply.

10. Subpart C is revised to read as follows:

Subpart C—Resident Management Under Section 20 of the United States Housing Act of 1937

Sec.

Subpart C—Resident Management Under Section 20 of the United States Housing Act of 1937

§ 964.25 Applicability of subpart.

The provisions of Subpart C of this part apply to all resident management contracts entered into on or after [*insert effective date of this rule*], including renewals of or renegotiations of tenant management contracts entered into before [*insert effective date of this rule*].

§ 964.27 Resident management requirements.

The following requirements apply when a PHA and its tenants are interested in providing for tenant performance of management functions in one or more projects under this subpart.

(a) *PHA responsibilities.* PHAs shall be supportive of tenant interest in forming a resident management corporation, and shall work with tenants to determine the feasibility of resident management. PHAs shall give full and serious consideration to resident management corporations seeking to enter into a management contract with the PHA. A PHA shall enter into good-faith negotiations with a resident management corporation seeking to contract to provide management services and shall make every reasonable effort to come to terms with the resident management corporations. PHAs shall document appropriately their reasons for rejecting any management contract offer from a resident management corporation, and must make the reasons available to the corporation.

(b) *Resident management corporation.* Tenants interested in contracting with a PHA must establish a resident management corporation that meets the requirements for such a corporation, as specified in § 964.7.

(c) *Management Contract: scope.* (1) A management contract between the PHA and a resident management corporation is required for resident management. The PHA and the corporation may agree to the performance by the corporation of any or all management functions for which the PHA is responsible to HUD under the ACC, and any other functions not inconsistent with the ACC and applicable laws and regulations.

(2) The management contract may include specific provisions governing management personnel; compensation for maintenance laborers and mechanics and administrative employees employed in the operation of the project, except that the amount of this compensation must meet applicable labor standard requirements of Federal law; rent collection procedures; tenant income verification; tenant eligibility determinations; tenant eviction; the acquisition of supplies and materials; and such other matters as the PHA and the corporation determined to be appropriate, and as HUD may specify in administrative instructions.

(3) The management contract may permit a resident management corporation to conduct tenant eligibility determinations (the number of persons in the household and their income) and tenant income verifications. A resident management corporation also may participate in the screening of applicants and tenant selection on a PHA-wide basis. In addition, the resident management corporation may screen tenants referred by the PHA for residence in the tenant-managed project. The resident management corporation may make a recommendation to the PHA regarding the suitability of each such applicant, in accordance with screening criteria that are consistent with HUD guidelines and incorporated in the management contract. Standards for screening applicants shall be consistent with the requirements of Title VI of the Civil Rights Act of 1964; Title VIII of the Civil Rights Act of 1968; the Age Discrimination Act; Section 504 of the Rehabilitation Act of 1973; and all other applicable civil rights laws and executive orders. The resident management corporation's recommendation on a specific applicant shall be accepted by the PHA unless the PHA determines that action in accordance with the recommendation would be inconsistent with applicable laws.

(4) The management contract must be treated as a contracting out of services, and must be subject to any provision of a collective bargaining agreement regarding the contracting out of services to which the PHA is subject.

(5) Provisions on competitive bidding and requirements of prior written HUD approval of contracts contained in the annual contributions contract do not apply to the decision of a PHA to contract with a resident management corporation.

(d) *Management Contract: Contents.* At a minimum, the management contract must contain provisions to satisfy the following requirements.

(1) Resident management corporation activities and expenditures must be consistent with the requirements of applicable Federal, State, and local law and regulations and with the ACC and PHA policies, including requirements pertaining to access to books and records, accounting, and audit.

(2) The management corporation must submit to the PHA, for its approval, an annual budget or cost estimate covering activities under its contract with the PHA, identifying proposed activities and estimated costs associated with activities (if the PHA determines that the type of work contracted for makes this appropriate).

(3) The PHA must review periodically (but not less than annually) the management corporations's performance to ensure that it complies with all applicable requirements and meets agreed-upon standards of performance. (The method of review and criteria used

to judge performance should be specified in the management contract.)

(4) The PHA and the management corporation each has the right to take all necessary and appropriate actions to remedy any breach of the contract by the other party, including the right to terminate the contract for cause.

(5) The PHA and the resident management corporation must reach agreement with respect to financial incentives, if applicable (see § 964.33(b)).

(6) All activities carried out pursuant to the management contract must be conducted in conformity with Title VI of the Civil Rights Act of 1964; Title VIII of the Civil Rights Act of 1968; the Age Discrimination Act; Section 504 of the Rehabilitation Act of 1975; and all other applicable civil rights laws and executive orders. In addition, the management contract must indicate what record must be kept by the resident management corporation and made available to the PHA and HUD with respect to activities associated with resident management.

(e) *Prohibited activities.* A PHA may not contract for assumption by the resident management corporation of the PHA's underlying responsibilities to HUD under the ACC. The PHA must ensure that the overall operation of its projects is in compliance with all applicable Federal, State, and local requirements. The PHA must monitor the resident management corporation's performance under the management contract.

(f) *Bonding and insurance.* Before assuming any management responsibility under its contract, the resident management corporation must provide fidelity bonding and insurance, or equivalent protection that is adequate (as determined by HUD and the PHA) to protect HUD and the PHA against loss, theft, embezzlement, or fraudulent acts on the part of the corporation or its employees; and that meets such other requirements as may be specified by the PHA and in HUD's administrative instructions. The cost of such risk protection may be included in the management contract, and paid for as part of the operating budget.

(g) *Rights of families; operation of project.* If a resident management corporation is approved by the tenant organization representing one or more buildings or an area of row houses that are part of a public housing project for purposes of Part 941 of this Chapter, the resident management program may not, as determined by the PHA, interfere with the rights of other residents of such project or harm the efficient operation of such project. (Approved by the Office of Management and Budget under OMB control number 2577–0087.)

§ 964.29 Continued PHA responsibility to HUD.

A management contract between the PHA and a resident management corporation does not impair the respective rights and responsibilities of the PHA and HUD under the ACC. The PHA remains responsible to HUD for ensuring that the management of its projects, including any management function contracted out to a resident management corporation, is in compliance with all applicable HUD requirements.

§ 964.33 Management specialist.

(a) *Requirement for a management specialist.* Except under the circumstances described in paragraph (c) of this section, the resident council of a project, in consultation with the PHA, must select a qualified public housing management specialist to assist in determining the feasibility of, and to help establish, a resident management corporation and to provide training and other duties in connection with the daily operations of the project.

(b) *Selection of a public housing management specialist.* In carrying out its responsibilities under paragraph (a) of this section, the resident council must determine in advance the following:

(1) The qualifications that the management specialist must possess;

(2) the terms and conditions of the search and selection process;

(3) the duties and responsibilities to be performed by the management specialist, including the remuneration to be provided the specialist, a clear specification of the nature and degree of supervision to be provided the specialist, and a clear specification of the title of the person or persons in the organizational structure of the PHA or the resident council (or both) to whom the specialist is to report for supervision and for evaluation of his or her performance; and

(4) such other matters with respect to the selection and functions of the management specialist as the resident council, in consultation with the PHA, may determine, consistent with the ACC and applicable law and regulations.

(c) A tenant management corporation that entered into a management contract with a PHA under this subpart before [*insert effective date of this rule*], and thereafter elects to renew or to renegotiate its management contract with the same PHS may select a management specialist in accordance with this section, but is not required to do so.

§ 964.35 Management responsibilities.

(a) *PHA responsibilities.* PHAs shall be supportive of resident interest in forming a resident management corporation, and shall work with residents to determine the feasibility of resident management. PHAs shall give full and serious consideration to resident management corporations seeking to enter into a management contract with the PHA. PHAs shall not arbitrarily or capriciously refuse to negotiate with resident management corporations seeking to contract to provide management services. PHAs shall document appropriately their reasons for rejecting any management contract offer from a resident management corporation, and make these reasons available to the corporation.

(b) *Management contract.* If a PHA and a resident management corporation agree to establish a resident management project, they shall enter into a management contract establishing the respective rights and responsibilities of the PHA and the corporation with respect to management of the project. Where a resident management corporation already has a management contract with a PHA entered into before [*Insert effective date of this rule*] and thereafter elects to renew or renegotiate its management contract, the corporation, subject to the approval of its resident council, may seek to enter into a new or amended contract with the PHA to accomplish that purpose. Any new or amended contract shall be subject to the requirements of this Subpart C. A copy of any such contract shall be provided to the HUD field office at the time of its execution.

(c) *Income estimate in contract.* The management contract must specify the amount of income expected to be derived from the project (from sources such as rents and charges) and the amount of income to be provided to the project from the other sources of income of the PHA (such as operating subsidy under Part 990 of this Chapter, interest income, administrative fees, and rents). The income estimates under paragraph (c) of this section must be calculated on a PHA-wide basis, as well as for each category of income on which the PHA and the resident management corporation agree, consistent with HUD's administrative instructions. Income estimates may provide for proration of anticipated project income between the corporation and the PHA, based upon the management and other project-associated responsibilities (if any) that are to be retained by the PHA under the contract.

§ 964.37 Comprehensive improvement assistance.

(a) *Eligibility.* HUD may enter into a contract with the PHA to provide comprehensive improvement assistance under Part 968 of this Chapter to modernize a project managed by a resident management corporation under this subpart.

(b) *Administration of activities.* If the entirety of modernization activity referred to in paragraph (a) of this section (including the planning and architectural design of the rehabilitation) is administered by the resident management corporation, the PHA shall not retain, for any administrative or other reason, any portion of the comprehensive improvement assistance provided, unless the PHA and the corporation provide otherwise by contract.

(c) In assessing the modernization needs of its projects for purposes of CIAP application (or other grant mechanisms established by the Housing and Community Development Act of 1987) under 24 CFR 968, PHAs must consult with the tenant management corporation with reference to any project managed by the corporation, in order to determine the modernization needs of resident-managed projects. Evidence of this required consultation must be included with a PHA's initial submission to HUD.

§§ 964.39 Operating subsidy, preparation of operating budget, operating reserves and retention of excess revenues.

(a) *Calculation of operating subsidy.* Operating subsidy will be calculated separately for any project managed by a resident management corporation. This subsidy computation will be the same as the separate computation made for the balance of the projects in the PHA in accordance with Part 990, with the following exceptions:

(1) The project managed by a resident management corporation will have an Allowable Expense Level based on the actual expenses for the project in the fiscal year immediately preceding management under this subpart. These expenditures will include the project's share of any expenses which are overhead or centralized PHA expenditures. The expenses must represent a normal year's expenditures for the project, and must exclude all expenditures which are not normal fiscal year expenditures as to amount or as to the purpose for which expended. Documentation of this expense level must be presented with the project budget and approved by HUD. Any project expenditures funded from a source of income other than operating subsidies or income generated by the locally owned public housing program will be excluded from the subsidy calculation. For budget years after the first budget year under management by the resident management corporation, the Allowable Expense Level will be calculated as it is for all other projects, in accordance with § 990.105(e)(5) of this chapter.

(2) The resident management corporation project will estimate dwelling rental income based on the rent roll of the project immediately preceding the assumption of management responsibility under this subpart, increased by the estimate of inflation of tenant income used in calculating PFS subsidy.

(3) The resident management corporation will exclude, from its estimate of other income, any increased income directly generated by activities by the corporation or facilities operated by the corporation.

(4) Any reduction in the subsidy of a PHA that occurs as a result of fraud, waste, or mismanagement by the PHA shall not affect the subsidy calculation for the resident management corporation project.

(b) *Calculation of total income and preparation of operating budget.* (1) Subject to paragraph (c) of this section, the amount of funds provided by a PHA to a project managed by a resident management corporation under this subpart may not be reduced during the three-year period beginning on February 5, 1988 or on such later date as a resident management corporation first assumes management responsibility for the project.

(2) For purposes of determining the amount of funds provided to a project under paragraph (b)(1) of this section, the provision of technical assistance by the PHA to the resident management corporation will not be included.

(3) The resident management corporation and the PHA shall submit a separate operating budget, including the calculation of operating subsidy eligibility in accordance with paragraph (a) of this section, for the project managed by a resident management corporation to HUD for approval. This budget will reflect all project expenditures and will identify which expenditure are related to the responsibilities of the resident management corporation and which are related to functions which will continue to be performed by the PHA.

(4) Operating reserves.

(i) Each project or part of a project that is operating in accordance with the ACC amendment relating to this subpart and in accordance with a contract vesting maintenance responsibilities in the resident management corporation will have transferred, into a sub-account of the operating reserve of the host PHA, an operating reserve. Where all maintenance responsibilities for the resident-managed project are the responsibility of the corporation, the amount of the reserve made available to projects under this subpart will be the per unit cost amount available in the PHA operating reserve, exclusive of all inventories, prepaids and receivables (at the end of the PHA fiscal year preceding implementation), multiplied by the number of units in the project operated in accordance with the provisions of this subpart. Where some, but not all, maintenance responsibilities are vested in the resident management corporation, the contract may provide for an appropriately reduced portion of the operating reserve to be transferred into the corporation's sub-account.

(ii) The use of the reserve will be subject to all administrative procedures applicable to the conventionally owned public housing program. Any expenditure of funds from the reserve will be for eligible expenditures which are incorporated into an operating budget subject to approval by HUD.

(iii) Investment of funds held in the reserve will be in accordance with the provisions of Chapter 4 of the Financial Management Handbook, 7476.1 REV [1] and interest generated will be included in the calculation of operating subsidy in accordance with 24 CFR Part 990.

(c) *Adjustments to total income.* (1) Operating subsidy calculated in accordance with § 964.39(a) will reflect changes in inflation, utility rates and consumption, and changes In the number of units in the resident management project.

(2) In addition to the amount of income derived from the project (from sources such as rents and charges) and the operating subsidy calculated in accordance with paragraph (a) of this section, the contract may specify that income be provided to the project from other sources of income of the PHA.

(3) The following conditions may not affect the amounts to be provided to a project managed by a resident management corporation under this subpart:

(i) Any reduction in the total income of a PHA that occurs as a result of fraud, waste, or mismanagement by the PHA.

(ii) Any change in the total income of a PHA that occurs as a result of project-

[1] The Handbook is available for review in the office of the Rules Docket Clerk of HUD, Rm. 10276, 451 Seventh Street, SW., Washington, D.C. 20410.

specific characteristics that are not shared by the project managed by the corporation under this subpart.

(d) *Retention of excess revenues.* Any income generated by a resident management corporation that exceeds the income estimated for the income category involved in accordance with § 964.35(c) must be excluded in subsequent years in calculating:

(1) The operating subsidy provided to a PHA under Part 990 of this Chapter.

(2) The funds provided by the PHA to the resident management corporation.

(e) *Use of retained revenues.* Any revenues retained by a resident management corporation under paragraph (d) of this section may only be used for purposes of improving the maintenance and operation of the project, establishing business enterprises that employ residents of public housing, or acquiring additional dwelling units for lower income families. Units acquired by the resident management corporation will not be eligible for payment of operating subsidy.

§ 964.41 Waiver of HUD requirements.

(a) *Waiver conditions.* Upon the joint request of a resident management corporation and the PHA, HUD may waive any requirement that HUD has established and that is not required by law, if HUD determines, after consultation with the resident management corporation and the PHA, that the requirement unnecessarily increases the costs to the project or restricts the income of the project; and that the waiver would be consistent with the management contract and any applicable collective bargaining agreement. Any waiver granted to a resident management corporation under this section will apply as well to the PHA to the extent the waiver affects the PHA's remaining responsibilities relating to the corporation's project.

(b) *Notice and opportunity for comment.* HUD may grant a waiver under paragraph (a) of this section only after requiring the PHA to provide notice to the residents whom the waiver would affect and giving them at least 30 days to comment on it. Notice under paragraph (b) of this section may be served by any or all of the following means, as HUD determines appropriate:

(1) First class mail addressed to each affected resident.

(2) Delivery to the unit of each affected resident.

(3) In the case of high-rise buildings, posting in one or more conspicuous locations in any building in which affected residents live.

(c) *Role of PHAs and resident management corporations.* (1) All resident comments must be sent to the PHA. The PHA must summarize the comments, prepare (at its option) a recommended response to the comments, and provide the resident management corporation an opportunity to prepare a recommended response to the comments. The PHA must send to HUD all the tenant comments received, along with the summary of comments prepared by the PHA and the recommendations (if any) of the PHA and the resident management corporation for the disposition of the comments.

(2) The PHA must carry out such responsibilities with respect to the determination of whether to grant a waiver under paragraph (a) of this section as HUD may prescribe in administrative instructions. These responsibilities will include the service of notice on affected tenants under paragraphs (b) and (c) of this section.

(d) *Action on resident comments.* HUD will give careful consideration to all resident comments received within the comment period provided under paragraph (b) of this section. HUD, through the PHA, will provide written notice of its final decision on the proposed waiver, including written responses to the resident comments, served in the same manner and upon the same resident population as the original notice under paragraph (b) of this section was served.

(e) *Waiver to permit employment.* Upon the request of a resident management corporation, HUD may, subject to the terms and procedures of any applicable collective bargaining agreement, permit residents of the project to volunteer a portion of their labor.

(f) *Exceptions.* HUD may not waive any regulatory or other requirement under paragraph (a) of this section with respect to the following:

(1) Income eligibility for purposes of §§ 913.104 and 913.105 of this Chapter,

(2) rental payments under § 913.107 of this Chapter,

(3) tenant or applicant protections under this Chapter or other applicable laws,

(4) employee organizing rights, or

(5) the rights of employees under collective bargaining agreements.

§ 946.43 Audit and administrative requirements.

(a) *Annual audit of books and records.* The financial statements of a resident management corporation managing a project under this subpart must be audited annually by a licensed certified public accountant, designated by the resident management corporation, in accordance with generally accepted government audit standards. A written report of each audit must be forwarded to HUD and the PHA within 30 days of issuance.

(b) *Relationship to other authorities.* The requirements of paragraph (a) of this section are in addition to any other Federal law or other requirement that would apply to the availability and audit of books and records of resident management corporations under this part.

(c) Except as modified by this part, resident management corporations must comply with the requirements of OMB Circulars A–110 and A–122, as applicable.

§ 946.45 Technical assistance.

(a) *Nature of assistance.* To the extent that budget authority is available, HUD will provide financial assistance to resident management corporations or resident councils that obtain, by contract or otherwise, technical assistance for the development of resident management entities, including the formation of these entities; the development of the management capability of newly formed or existing entities; the identification of the social support needs of residents of projects, and the securing of this support; and a wide range of activities to further the purposes of this subpart. In determining the amount of any technical assistance grant, HUD will take into consideration the size of the resident-managed project and the anticipated complexity of the proposed change to resident management.

(b) *Maximum amount of assistance.* The assistance referred to in paragraph (a) of this section may not exceed $100,000 with respect to any project.

Dated: August 30, 1988.

Jacqueline Aamot,

Associate General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 88–20187 Filed 9–6–88; 8:45 am]

BILLING CODE 4210–33–M

federal register

Wednesday
September 7, 1988

Part VI

Department of the Interior

Minerals Management Service

South Atlantic OCS Lease Sale 108; Call for Information and Nominations and Notice of Intent To Prepare an Environmental Impact Statement; Notice

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE
South Atlantic
OCS Lease Sale 108
Call for Information and Nominations
and
Notice of Intent to Prepare an Environmental Impact Statement

CALL FOR INFORMATION AND NOMINATIONS

Purpose of Call

The purpose of the Call is to gather information and assist the Secretary of the Interior in carrying out his responsibilities with regard to Outer Continental Shelf (OCS) Lease Sale 108. This sale, located in the South Atlantic Planning Area, is tentatively scheduled for October 1990. Information and nominations on oil and gas leasing, exploration, development, and production within the South Atlantic are sought from all interested parties. This information-gathering step is important for ensuring that all interests and concerns are communicated to the Department of the Interior for future decisions in the leasing process pursuant to the OCS Lands Act, as amended (43 U.S.C. 1331-1356), and regulations at 30 CFR 256. This Call does not indicate a preliminary decision to lease in the area described below.

Description of Area

The general area of this Call is offshore the States of North Carolina, South Carolina, Georgia, and Florida.

The area available for nominations and comments consists of approximately 13,400 whole and partial blocks (about 75 million acres) and is outlined on the map at the end of this Call. To assist in focusing on promising acreage, the attached map outlines the Minerals Management Service (MMS) interpretation of the area of hydrocarbon potential. Although primary consideration will be given to those blocks included in the area of hydrocarbon potential, respondents may nominate and are asked to comment on any acreage within the entire Call area. A more detailed map of the Call area (hereinafter referred to as the Call map) and a complete list of Official Protraction Diagrams (OPD's) are available from the Regional Supervisor, Leasing and Environment, Atlantic OCS Region, MMS, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180, telephone (703) 285-2165. Existing leases are included in the Call since they may expire or be relinquished before the proposed sale. The OPD's may be purchased from the Regional Supervisor for $2 each (checks or drafts payable to the U. S. Department of the Interior--MMS).

Areas Deferred from this Call (or Highlighted in the 5-Year Program)

Based on decisions made in the 5-year program, the following areas are either deferred from this Call or are highlighted for special consideration during the presale process for this sale:

-- A minimum of 15 nautical miles, or, where further offshore, areas of low potential;

-- The Gray's Reef National Marine Sanctuary;

-- The National Aeronautics and Space Administration Flight Clearance Zone offshore Cape Kennedy in the South Atlantic (except 121 blocks highlighted for special presale consideration).

Instructions on Call

Respondents are asked to nominate any or all of the Federal blocks within the Call area that they wish to have included in Sale 108. Although the identities of those submitting nominations become a matter of public record, the individual indications of interest are considered proprietary.

Those indicating such interest are required to do so on the Call map, available free from the Regional Supervisor, Leasing and Environment, at the address stated under "Description of Area." Interest should be shown by outlining the area(s) of interest along block lines. A detailed list of whole and partial blocks nominated (by OCS Official Protraction Diagram designations) should be submitted to ensure correct interpretation of nominations.

It should be emphasized, that generally, the Area Identification will include those blocks nominated in response to this Call. Respondents should rank areas in which they have expressed interest according to priority of their interest (e.g., priority 1 (high), 2, or 3). If there are areas within the Call area in which respondents have no interest, no priority should be assigned to them. Areas where interest has been indicated but on which respondents have not indicated any priorities will be considered priority 3. The telephone number and name of a person to contact in the respondent's organization for additional information should be included. Again, information concerning both location and priority of interest submitted by individual companies will be held proprietary and will help determine the areas to be analyzed in the Environmental Impact Statement (EIS). In addition to the indications of interest by respondents, further considerations of areas for analysis in the EIS will be based on hydrocarbon potential and environmental, economic, and multiple-use conditions.

The Call map outlines the MMS interpretation of the area of hydrocarbon potential and identifies the highlighted area that will be subject to special consideration. While primary consideration will be given to the area of hydrocarbon potential (as outlined on the Call map), respondents may nominate and comment on any acreage within the Call area. Commenters who recommend that all or portions of the highlighted area or other parts of the Call area be deferred from Sale 108 should be as specific as possible in describing why they believe those areas are incompatible with offshore oil and gas exploration and production operations. Such information will be helpful in designing and analyzing deferral alternatives.

Indications of interest and comments should be received within 45 days following publication of this Call in the Federal Register to ensure inclusion in the decision process for Area Identification. Responses should be sent in envelopes labeled "Nominations for Proposed Lease Sale 108, South Atlantic" or "Comments on the Call for Information and Nominations for Proposed Lease Sale 108, South Atlantic." The standard Call map and indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, at the address stated under "Description of Area."

Use of Information from Call

Information submitted in response to this Call will be used for several purposes. First, responses will be used to identify the areas of potential for oil and gas development. Second, comments on possible adverse effects and use conflicts will be used in the analysis of environmental impacts in and near the Call area. Together, these two considerations will allow a preliminary determination of the potential advantages and disadvantages of oil and gas exploration and development to the region and the Nation. This will make possible key decisions in connection with the next step in the leasing process--the Area Identification--to resolve conflicts by deferring blocks where there is sufficient information to justify that action. Area Identification is a preliminary step in the selection of the area to be analyzed in the EIS. The Area Identification is scheduled for December 1988.

A third purpose for this Notice is to solicit comments as part of the scoping process for the EIS. Also included in the scoping process will be a series of public meetings and an additional formal written comment period. A Notice of Intent to Prepare an EIS and a more detailed description of the scoping process for this proposed sale is included below. As a result of the scoping process, a number of alternatives to the proposed action will be identified and analyzed in the EIS. Fourth, comments may be used in developing lease terms and conditions to assure safe offshore

operations. Fifth, comments may be used in understanding and considering ways to avoid or mitigate potential conflicts between offshore oil and gas activities and the Coastal Management Plans of affected States.

Existing Information

An extensive environmental studies program has been underway in this area since 1973. The emphasis, including continuing studies, has been on environmental characterization of biologically sensitive habitats, physical oceanography, ocean-circulation modeling, and ecological effects of oil and gas activities. A complete listing of available study reports and information for ordering copies can be obtained from the Chief, Environmental Studies Unit (see address under "Description of Area"). The reports may also be ordered, for a fee, directly from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 or by telephone at (703) 487-4650.

In addition, a program status report for continuing studies in this area can be obtained from the Chief, Environmental Studies Unit, Atlantic OCS Region (see address under "Description of Area") or by telephone at (703) 285-2728.

Summary Reports and Indices and technical and geological reports are available for review at the MMS, Atlantic OCS Region (see address under "Description of Area"). Copies of the Atlantic OCS Regional Summary Reports and Indices may also be obtained from the OCS Information Program, MMS, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180.

Tentative Schedule

Final delineation of the area for possible leasing will be made at a later date and in accordance with established departmental procedures and applicable laws, including all requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and the OCS Lands Act, as amended. If a decision to offer blocks is made, a proposed and final Notice of Sale will be published in the Federal Register detailing areas to be offered for competitive bidding, stating the terms and conditions for leasing, and announcing the location, date, and time bids will be received and opened.

The following is a list of tentative milestones which will precede the sale:

Milestones	Date
Comments Due on the Call	October 1988

Area Identification	December 1988
Draft EIS Published	September 1989
Public Hearings on Draft EIS	October 1989
Final EIS Published	March 1990
Proposed Notice of Sale Issued	May 1990
Governor's Comments Due on Proposed Notice	July 1990
Final Notice of Sale Published	September 1990
Sale	October 1990

NOTICE OF INTENT TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT

Purpose of Notice of Intent

Pursuant to the regulations (40 CFR 1501.7) implementing the procedural provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), as amended, the MMS is announcing its intent to prepare an EIS regarding the oil and gas leasing proposal known as South Atlantic OCS Lease Sale 108. The Notice of Intent also serves to announce the scoping process which will be followed for this EIS. Throughout the scoping process, Federal, State, and local governments and other interested parties aid the MMS in determining the significant issues and alternatives to be analyzed in the EIS.

The EIS analysis will focus on the potential environmental effects of leasing, exploration, and ultimately development of the blocks included in the Area Identification as the proposed area of the Federal action. Alternatives to the proposal which may be considered are to delay the sale, cancel the sale, or modify the sale.

Instructions on Notice of Intent

Federal, State, and local governments and other interested parties are asked to send their written comments on the scope of the EIS, significant issues which should be addressed, and alternatives that should be considered to the Regional Supervisor, Leasing and Environment, Atlantic OCS Region, at the address stated under "Description of Area" above. Comments should be enclosed in an envelope labeled "Comments on the Notice of Intent to Prepare an EIS for Proposed Lease Sale 108, South Atlantic."

Comments are due no later than 45 days from publication of this notice. Also, scoping meetings will be held in appropriate locations for the purpose of obtaining additional comments and information regarding the scope of the EIS. The times and locations of these scoping meetings will be announced at a future date in the Federal Register and by press release.

Wm D Bettenberg

Director, Minerals Management Service
Wm. D. Bettenberg

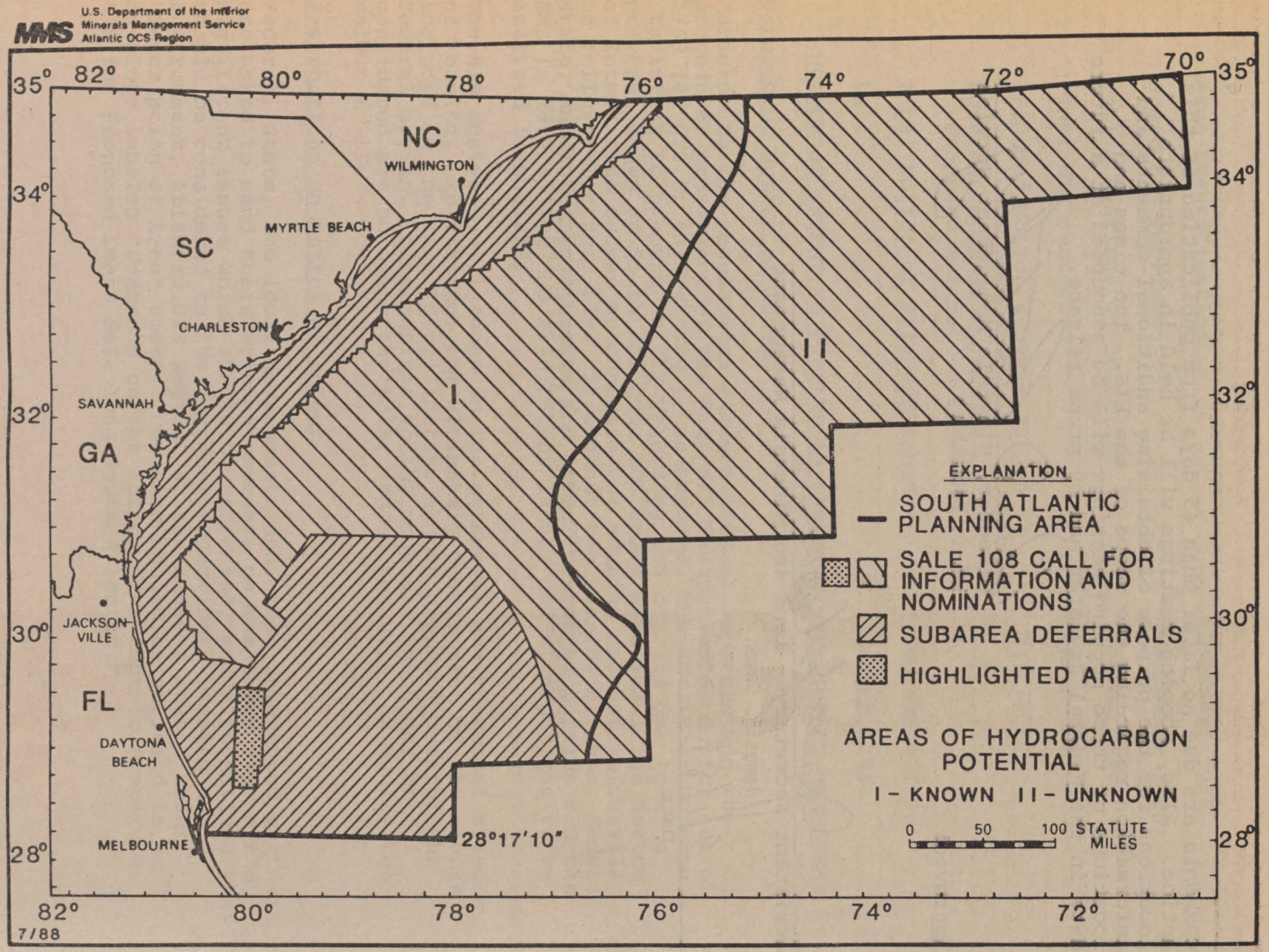
Approved:

James E Cason

ACTING Assistant Secretary - Land and Minerals Management
James E. Cason

9/1/88

Date



[FR Doc. 88–20259 Filed 9–6–88; 8:45 am]

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federal register

Wednesday
September 7, 1988

Part VII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered Status for the Alabama Cave Shrimp, Palaemonias Alabamae

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Alabama cave shrimp, *Palaemonias alabamae*, to be an endangered species under the authority contained in the Endangered Species Act of 1973, as amended (Act). This obligate cave dweller has been found in only two caves, Shelta and Bobcat, in Madison County, Alabama. Groundwater contamination, low population levels, and collecting represent major threats to this small shrimp. The shrimp was not observed in Shelta Cave during the biweekly surveys of aquatic cave life over a twelve month period. In Bobcat Cave, only two or three shrimp have been observed on any single visit. This determination implements the protection of the Act for the Alabama cave shrimp.

EFFECTIVE DATE: October 7, 1988.

ADDRESS: The complete file for this rule is available for inspection by appointment during normal business hours at the Jackson, Mississippi, Field Office, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Stewart at the above address (601/965–4900, FTS 490–4900).

SUPPLEMENTARY INFORMATION:

Background

The Alabama cave shrimp, *Palaemonias alabamae*, is an albinistic cave shrimp known from only two caves in Madison County, Alabama, (J.E. Cooper, pers. comm.). This obligate cave shrimp was first collected in 1958 by Dr. Thomas Poulson and described in 1961 by A.E. Smalley from a series of 20 shrimp collected in Shelta Cave (Cooper 1975). The Alabama cave shrimp is colorless and largely transparent with a total length of up to 20 mm (0.8 in.) (Cooper 1975; Smalley 1961). The only other species of *Palaemonias* is the endangered Kentucky cave shrimp, *P. ganteri*, known only from Mammoth Cave, Kentucky. *Palaemonias alabamae* is very similar to *P. ganteri*, but is smaller in size, has a shorter rostrum, generally lacks ventral rostral spines and has fewer dorsal rostral spines (Smalley 1961).

A search of over 200 caves in north Alabama has failed to find the Alabama cave shrimp anywhere but at the two localities (J.E. Cooper, pers. comm.). The type locality, Shelta Cave, lies within the northwest limits of Huntsville, Alabama. It is located in Warsaw limestone of Mississippian age in the Interior Low Plateau (Cooper 1975). Shelta Cave consists of three large rooms with smaller alcoves. Water is present in all of the cave areas during wet periods of the year. Water levels fluctuate several feet during the year and some areas of the cave become seasonally dry. The two pit entrances to Shelta Cave are owned by the National Speleological Society and are gated to control activity in the cave. The only other known population is in Bobcat Cave, located on Redstone Arsenal, under the control of the U.S. Army.

The available information indicates the population in Shelta Cave has declined and may be extirpated. Over an 11-year period, Cooper and others collected or observed from one to 25 shrimp on each of 19 visits (Cooper 1975). On two of these visits the shrimp were not counted, but described as plentiful. During the period from December 1985 to April 1986, biologists made monthly trips to observe aquatic life in Shelta Cave but did not find any shrimp. In April 1986, a study to observe aquatic life in Shelta Cave twice a month for one year was initiated. No cave shrimp were observed in Shelta Cave during this period.

Threatened status was proposed for the Alabama cave shrimp on January 12, 1977 (42 FR 2507). That proposal was withdrawn on December 10, 1979 (44 FR 70796), for administrative reasons stemming from new listing requirements of the 1978 amendments to the Act. This species was proposed for endangered status on November 19, 1987 (52 FR 44578–44580).

Summary of Comments and Recommendations

In the November 19, 1987, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in The Birmingham News and in The Huntsville Times on December 13, 1987, and in The Huntsville News on December 14, 1987, which invited general public comment. Four comments were received. One Federal agency saw no impact to their program by the proposal. The proposal was supported by the other three commenters, including a Federal agency, the national conservation organization that owns Shelta Cave, and by a professional biologist. Two of these commenters provided additional data.

After a thorough review and consideration of all information available, the Service has determined that the Alabama cave shrimp (*Palaemonias alabamae*) should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *eq seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Alabama cave shrimp (*Palaemonias alabamae*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The only known populations of Alabama cave shrimp occur in Shelta and Bobcat Caves. The only population trend data is discussed in the "Background" section. Groundwater contamination represents a major threat to this cave-dwelling species. Both caves are within the Huntsville Spring Branch and Indian Creek drainages, known areas of DDT contamination (Environmental Protection Agency 1986). They are not known to be in the direct path of the contaminated flow at the present time. In any area where sinkholes occur, however, surface pollutants can easily and rapidly enter the sub-surface aquifer.

B *Overutilization for commercial, recreational, scientific, or educational purposes.* Apparent low reproductive abilities, confined habitat, and inability to elude captors make the Alabama cave shrimp very susceptible to collecting. Cooper (1975) found only eight attached eggs on Alabama cave shrimp and indicated this species produced only one-third to one-half as many eggs as females of the endangered Kentucky cave shrimp. Other cave species are known to have extremely low reproductive rates compared to closely related surface species (Poulson 1961; Cooper 1975). As a result, any collection of adults can significantly affect population levels. There are few known collections of the Alabama cave shrimp, and these were made when the

species was apparently more common (see Background).

C. *Disease and Predation.* The Alabama cave shrimp occurs with the southern cavefish, *Typhlichthys subterraneus*, the cave salamander, *Gyrinophilus palleucus*, and the cave crayfish, *Aviticambarus jonesi* in one or both caves (Cooper 1975). It is probable that all three prey upon young cave shrimp (Barr and Kuehne 1971; Cooper 1975).

D. *The inadequacy of existing regulatory mechanisms.* The Alabama Department of Conservation and Natural Resources recognizes the Alabama cave shrimp as a "species of special concern" but does not provide any legal protection (Bouchard 1976). Shelta Cave is owned by the National Speleological Society and is currently gated to exclude unauthorized visitors. Bobcat Cave is owned by Redstone Arsenal and admittance is controlled. While admittance to the caves is restricted by the owners, adequate regulations do not exist to discourage collection of the species by those who are able to gain entrance to the caves.

E. *Other natural or manmade factors affecting its continued existence.* Its very small population levels and low reproductive capabilities are natural limitations to the ability of this species to recover from any adversity. Only two populations are known, and no shrimp have been observed in Shelta Cave despite twice monthly observations of the aquatic fauna for almost a year.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Alabama cave shrimp as an endangered species. Endangered status was chosen because the species has only been found in two caves and is in obvious decline in one of these caves. Therefore, the species requires the greatest possible protection under the Act. The reason critical habitat is not designated is discussed in the next section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under Factor B in the "Summary of Factors Affecting the Species", the Alabama cave shrimp is endangered by taking, an activity difficult to prevent. Publication of critical habitat descriptions would make this species even more vulnerable and increase enforcement problems. All involved parties and land owners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not be prudent to determine critical habitat for the Alabama cave shrimp at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. Examples of recovery actions that might be implemented include management agreements with Redstone Arsenal and cooperation with the National Speleological Society to protect existing populations of this shrimp, studies to understand the groundwater recharge patterns, and attempts to develop safeguards against potentially damaging contamination of groundwater entering the caves. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered for threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal involvement with this species is expected to be minimal. The continuing development of this region could lead to sub-surface water degradation that may involve the Environmental Protection Agency or other agencies with jurisdiction over groundwater. The Federal Housing Authority may be required to consult with the Service on Federal loans for housing development within the cave's recharge area. Development on Redstone Arsenal may require consultation with the U.S. Army.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Barr, T.C., Jr., and R.A. Kuehne. 1971. Ecological studies in the Mammoth Cave System of Kentucky II. The ecosystem. International Journal of Speleology 26(1):47–96.

Bouchard, R.W. 1976. Crayfishes and shrimps. pp. 14–20. *In:* H. Boschung (ed.).

Endangered and Threatened Plants and Animals of Alabama, Alabama Museum of Natural History Bulletin No. 2, 92 pp.

Cooper, J.E. 1975. Ecological and behavioral studies in Shelta Cave, Alabama, with emphasis on decapod crustaceans. Ph.D. Dissertation University of Michigan. University Microfilm International, Ann Arbor, Michigan 364 pp.

Environmental Protection Agency. 1986. Report on the remedial action to isolate DDT from people and the environment in the Huntsville Spring Branch-Indian Creek System Wheeler Reservoir, Alabama. EPA, Region IV, Atlanta, Georgia. 38 pp + appendices.

Poulson, T.L. 1961. Cave adaptations in Amblyopsid fishes. Ph.D. Dissertation University of Michigan. University Microfilm International, Ann Arbor, Michigan. 185 pp.

Smalley, A.E. 1961. A new cave shrimp from Southeastern United States (Decapod, Atyidae). Crustaceana III(2):127–130.

Author

The primary author of this final rule is James H. Stewart (see **ADDRESS** section) (601/965–4900, FTS 490–4900).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under "CRUSTACEANS", to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
CRUSTACEANS							
*	*	*	*	*	*		
Shrimp, Alabama cave	*Palaemonias alabamae*	U.S.A. (AL)	NA	E	323	NA	NA
*	*	*	*	*	*		

Dated: August 11, 1988.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–20297 Filed 9–6–88; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Threatened Status for Marshallia mohrii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a plant, *Marshallia mohrii* (Mohr's Barbara's-buttons), to be a threatened species under the authority contained in the Endangered Species Act of 1973, as amended (Act). *Marshallia mohrii* is currently known from 13 sites in north Alabama (three counties) and one site in northwest Georgia. Five of these populations are confined to roadside rights-of-way and are threatened by routine maintenance practices or any future road expansion at these sites. Remaining populations are threatened by the potential conversion of their habitat for agricultural purposes. This action will extend the Act's protection to *Marshallia mohrii*.

EFFECTIVE DATE: October 7, 1988.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Jackson Field Office, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213.

FOR FURTHER INFORMATION CONTACT: Ms. Cary Norquist at the above address (601/965–4900 or FTS 490–4900).

SUPPLEMENTARY INFORMATION:

Background

Marshallia mohrii, a member of the sunflower family, is an erect perennial herb, 3–7 decimeters (1–2.3 feet) tall, arising from a thickened crown or caudex. Leaves are alternate, firm-textured, 3-nerved, 8–20 centimeters (3.2–7.8 inches) long, lanceolate-ovate in shape and gradually reduced in size upwards. Flowers are produced in several heads and are pale pink to lavender in color. Flowering occurs from mid-May through June, with fruiting in July and August (Kral 1983, McDaniel 1981).

Marshallia mohrii morphologically resembles *M. grandiflora* and *M. trinervia* and may be an alloploid derivative (Watson and Estes 1987). *M. mohrii* is most similar to *M. grandiflora*, the main difference being that *M. grandiflora* usually has only a single flowering head as compared to the multi-headed inflorescence of *M. mohrii* (Watson pers. comm. 1988).

Marshallia mohrii typically occurs in moist prairie-like openings in woodlands and along shale-bedded streams. Other populations are located in swales on roadside rights-of-way (ROW). The soils are sandy clays, which are alkaline, high in organic matter and seasonally wet. Common associates include various grasses (*Andropogon, Panicum*), sedges (*Rhynchospora, Carex*) and prairie species including *Silphium confertifolium, Ruellia pinetorum, Allium cernuum, Physostegia*, and *Asclepias engelmanniana*. The surrounding forest type is mixed hardwoods with Shumard oak, willow oak and pine (Kral 1983, McDaniel 1981). The endangered *Clematis socialis* and *Sarracenia oreophila* occur with *Marshallia mohrii* at two separate sites. *Lysimachia graminea*, a candidate plant, is an associate of *Marshallia mohrii* at several sites in Alabama.

Marshallia mohrii was first collected by Mohr in Cullman County, Alabama in 1893 and later described by Beadle and Boynton (1901). Several collections of this species were made near Cullman around the turn of the century and one record during this time exists for Walker County, Alabama, and Lookout Mountain, Georgia (Channell 1955, 1957, McDaniel 1981). Only vague locality information exists with these specimens

and with the exception of Walker County, Alabama, no collections of this species have been made in these areas in recent times.

Kral's (1973) discovery of this species in Cherokee County, Alabama, in 1969, marked the first time this species had been observed since 1941. Extensive searches of suitable habitat in northeast Alabama and adjacent Georgia have been conducted. Currently, *Marshallia mohrii* is known to exist at only 1 site in Georgia (Floyd County) and 13 sites in Alabama, including 1 population in Bibb County (Watson pers. comm. 1986), 8 populations in Cherokee County, and 4 populations in Etowah County. Five relatively recent records of *Marshallia mohrii* in Alabama were not relocated during field searches in June of 1985 or 1986, including a collection from Bibb County (A. Sessler, Auburn University, pers. comm. 1986), two in Walker County (Whetstone 1979, Kral pers. comm. 1986), and two in Cherokee County (Whetstone pers. comm. 1987). Verbal reports of *Marshallia mohrii* in Murray and Bartow Counties, Georgia have not been confirmed (Kral pers. comm. 1987).

Five populations are confined to roadside ROW where the number of individuals range from 2 to 50. At the remaining nine sites, plants occur in more typical habitat; however, plants extend onto ROW swales at several areas. Populations appear to be concentrated primarily in two areas, eastern Etowah County and central Cherokee County, Alabama. Here, populations are within 0.5 mile to 2 miles of one another. The largest populations occur in Cherokee County, with an estimated 1000 plants at 2 sites. Three sites support limited populations (12–50 individuals) and 4 have moderate-sized populations (100–200 individuals).

Federal actions involving *Marshallia mohrii* began with section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2), now section 4(b)(3)(a), of the Act and of its intention thereby to review the status of those plants. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. *Marshallia mohrii* was included in the Smithsonian petition and the 1976 proposal. General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of the June 16, 1976, proposal, along with four other proposals that had expired. *Marshallia mohrii* was included as a category 1 species in a revised list of plants under review for threatened or endangered classification published in the December 15, 1980, **Federal Register** (45 FR 82480). Category 1 comprises taxa for which the Service presently has sufficient biological information to support their being proposed to be listed as endangered or threatened species. On November 28, 1983, the Service published a supplement to the Notice of Review for Native Plants in the **Federal Register** (48 FR 53640); the plant notice was again revised September 27, 1985 (50 FR 39526). *Marshallia mohrii* was included as a category 2 species in the 1983 supplement and the 1985 revised notice. Category 2 species are those for which listing as endangered or threatened species may be warranted but for which substantial data on biological vulnerability and threats are not currently known or on file to support a proposed rule. Extensive field searches by the author and others now support its reelevation to category 1 and listing as threatened. The data demonstrates a limited distribution and continuing threats to the species.

Section 4(b)(3) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case of *Marshallia mohrii* because of the acceptance of the 1975 Smithsonian report as a petition. In October of 1983, 1984, 1985, 1986, and 1987, the Service found that the petitioned listing of *Marshallia mohrii* was warranted, but that listing this species was precluded due to other higher priority listing actions. On November 19, 1987, the Service published in the **Federal Register** (52 FR 44583), a proposal to list *Marshallia mohrii* as a threatened species. The Service now determines *Marshallia mohrii* to be a threatened species with the publication of this final rule.

Summary of Comments and Recommendations

In the November 19, 1987, proposed rule (52 FR 44583) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in the *Rome News-Tribune*, Rome, Georgia, on December 10, 1987, and in the *Birmingham News*, Birmingham, Alabama, and the *Gadsden Times*, Gadsden, Alabama, on December 14, 1987.

A total of nine comments were received, including one from a Federal agency, three from State agencies, and five from individuals or groups. All were supportive. One individual provided additional biological information which has been incorporated into the appropriate section of the rule. Another individual expressed frustration over the lack of protection for plants under the Act. He also stated that habitat could not be protected without critical habitat designation. Critical habitat is not being designated for reasons outlined under the "Critical Habitat" section; habitat protection is provided through the section 7 jeopardy standard and the recovery process. His letter also discussed the role cultivation of plants can play in conservation, and his frustrations over Service policy (permit process) which he feels "* * * discourage the ex-situ preservation of * * * plants which have been artificially propagated." However, the cultivation of listed plants is usually encouraged and incorporated into subsequent recovery plans.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Marshallia mohrii* should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were

followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Marshallia mohrii* Beadle and Boynton (Mohr's Barbara's-buttons) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Marshallia mohrii* is endemic to the southern Appalachians of Alabama and Georgia where it is known to occur at 14 sites (see "Background" for specific locality information). Seven other historical sites have not been relocated and may have been destroyed. *Marshallia mohrii* is threatened by the potential destruction or adverse modification of its habitat. Many plants occur on roadside rights-of-way and are vulnerable to accidental disturbances. Any future road improvements (expansion) or roadside maintenance activities (i.e., herbicide treatment, bulldozing, planting of competitive grasses, mowing during flowering) at these sites, could adversely impact or destroy populations if proper planning does not occur. One such population in Cherokee County, Alabama, was destroyed by clearing for road construction. The Service will work in cooperation with the Alabama Highway Department in order to provide these sites with protection.

Plants on privately-owned sites are potentially threatened by the conversion of their habitat to improved pastureland through drainage, seeding with forage grasses or plowing and discing (Kral 1983, McDaniel 1981). Much of its suitable habitat has been converted to pastureland or row crops.

Marshallia mohrii maintains itself only in areas which were naturally or artificially cleared and probably are maintained naturally through occasional fire or local soil conditions that promote a grass-sedge community (Kral 1983). Mechanical disturbance of soil if unaccompanied by drainage might prepare openings for seeds to germinate (Kral 1983). Research into this aspect of the species' biology is needed in order to perpetuate appropriate habitat conditions.

B. *Overutilization for commercial, recreational, scientific, or educational purposes. Marshallia mohrii* is currently not a significant component of the commercial trade of native plants; however, the species has potential for horticultural use (McCartney pers. comm. 1987) and publicity from its listing could generate an increased demand. Taking and vandalism pose two risks to this species due to its visibility when in flower and accessibility of the sites.

C. *Disease or predation.* Although cattle will feed on *Marshallia mohrii* (Kral 1983), predation is not thought to be a significant threat to the species. *Marshallia mohrii* is not known to be threatened by disease.

D. *The inadequacy of existing regulatory mechanisms.* There are no State or Federal laws protecting *Marshallia mohrii* or its habitat. It is unofficially recognized as endangered in Alabama (Freeman 1984) and Georgia (T. Patrick, Georgia Natural Heritage Program, pers. comm. 1987). The Act would provide protection (see "Available Conservation Measures" below) and encourage active management for this species. Its listing would encourage its addition to the official list of endangered and threatened plants by the Georgia Department of Natural Resources, thereby affording it protection under the Wildflower Preservation Act of 1973. This legislation prohibits taking of plants from public land (without a permit) and regulates the sale and transport of plants within the State.

E. *Other natural or manmade factors affecting its continued existence. Marshallia mohrii* is vulnerable due to its limited distribution and small number of individuals at many of the sites. Its survival is dependent upon the maintenance of prairie-like openings (McDaniel 1981); therefore, woody succession poses an insidious threat to this species and its habitat.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Marshallia mohrii* as a threatened species. Threatened status seems appropriate since the populations are not imminently in danger of destruction; however, *Marshallia mohrii* is not currently protected by law and, if protective measures are not taken for this species, it could become endangered in the foreseeable future. Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatend. The Service finds that designation of critical habitat is not prudent for this species at this time. Publication of exact locations of *Marshallia mohrii* would increase public interest and possibly lead to additional threats to the species from collecting and vandalism (see Factor B in the "Summary of Factors" section). Furthermore, *Marshallia mohrii* would not be protected from taking under the Act since it does not occur on lands under Federal jurisdiction. No benefit can be identified through critical habitat designation that would outweigh these potential threats. The State agency (Alabama Highway Department) which has jurisdiction over some of this species' habitat has been notified of the plant's locations and has agreed to work with the Service to protect *Marshallia mohrii* on the rights-of-way. The involved private landowners will be informed of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not be prudent to determine critical habitat for this species at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal

agency must enter into formal consultation with the Service.

The only potential Federal involvement with *Marshallia mohrii* at this time would be Federal funds or other Federal involvement with the highway rights-of-way maintenance. Highway maintenance crews are working cooperatively with the Service to find rights-of-way maintenance techniques that are compatible with protecting *Marshallia mohrii*.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of Section 9(a)(2) of the Act, implemented by 50 CFR 17.71, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any threatened plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Washington, DC 20038–7329 (202/343–4955).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Beadle, C.D., and P.E. Boynton. 1901. A revision of the species of *Marshallia*. Biltmore Botanical Studies 1:3–10.

Channell, R.B. 1955. A revisional study of the genus *Marshallia* (Compositae). Ph.D. Dissertation, Duke University, Durham, North Carolina. 219 pp.

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Freeman, J.D. 1984. Vascular plant species critical to maintenance of floristic diversity in Alabama. Unpub. report. 23 pp.

Kral, R. 1973. Some notes on the flora of the southern states, particularly Alabama and middle Tennessee. Rhodora 75:366–410.

Kral, R. 1983. A report on some rare, threatened, or endangered forest-related vascular plants of the South. USDA, Forest Service, Tech. Pub. R8–TP2. 1305 pp.

McDaniel, S.T. 1981. Status report on *Marshallia mohrii*. Provided under contract to the U.S. Fish and Wildlife Service, Southeast Region, Atlanta, Georgia. 6 pp.

Watson, L.E., and J.R. Estes. 1987. Chromosomal evolution of *Marshallia* (Asteraceae). American Journal of Botany 74:764.

Whetstone, R.D. 1979. New or noteworthy records for flora of Alabama. Castanea 44:1–8.

Author

The primary author of this final rule is Cary Norquist (see **ADDRESSES** section) (601/965–4900 or FTS 490–4900).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under Asteraceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family:						
*	*	*	*	*		
Marshallia mohrii	Morhr's Barbara's button	U.S.A. (AL, GA)	T	324	NA	NA
*	*	*	*	*		

Dated: August 11, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–20298 Filed 9–6–88; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Agalinis acuta (Sandplain Gerardia) to be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a plant, *Agalinis acuta* (sandplain gerardia) to be an endangered species, and thereby provides the species protection under the authority contained in the Endangered Species Act of 1973, as amended. This species is known to occur at two sites on Cape Cod, Massachusetts, six sites on Long Island, New York, and one site in Baltimore County, Maryland. Historically, it also occurred in Connecticut and Rhode Island, but is now believed extirpated in these States. The species is endangered by changing land use patterns, residential and commercial development, and encroachment of

woody vegetation. Historically, grazing by sheep and cattle and periodic burning of the coastal grasslands and pitch pine—scrub oak forests maintained large areas in early stages of succession. Sandy open areas free of dense competing vegetation are required for successful establishment and growth of *Agalinis acuta*. Changing land use patterns and residential development, which now necessitate the suppression of fires, have significantly altered and reduced the species' required habitat. Areas subjected to periodic disturbance, such as roadside rights-of-way, airport perimeters, power lines, etc., offer the best hope of finding as yet undiscovered populations. Due to the sensitivity and vulnerability of the few known populations, critical habitat is not being determined.

EFFECTIVE DATE: The effective date of this rule is October 7, 1988.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

FOR FURTHER INFORMATION CONTACT: Anne Hecht at the above address (617–965–5100 or FTS 829–9316).

SUPPLEMENTARY INFORMATION:

Background

The sandplain gerardia is a plant of the snapdragon family (Scrophulariaceae) found at nine locations in Massachusetts, New York, and Maryland. The plant is an annual light-green herb from 4 to 8 inches (1 to 2 decimeters) and occasionally up to 16 inches (four decimeters) tall. The stem is weakly angular and has few branches. The leaves are opposite, linear, and up to 1 inch (2.5 centimeters) long. The pink-purple, bell-shaped flowers appear from late August through September, are 0.4–0.5 inches (1 to 1.3 centimeters) long, and have two yellow lines and red or purple spots in the corolla throat. The corolla lobes are slightly notched at the tip. The species grows in dry, sandy, open areas.

The plant has a very restricted distribution due to its dependence on the periodic disturbance of its specialized and limited habitat. Most collection records for *Agalinis acuta* date back to the late 1800's and early 1900's. Historically, the plant was known from Cape Cod and Nantucket Island to western Long Island, inland to western Middlesex and Worcester Counties in Massachusetts and Hartford County in Connecticut. Recent collections of the species in Baltimore County, Maryland represent the southern limit of its distribution.

The most significant threat to the species has been the continuing loss of grassland habitat along the coastal plain of southern New England, western Long Island, and the offshore islands of Nantucket and Martha's Vineyard. Residential, commercial and recreational development with ancillary developments such as shopping facilities, expanding roadways, etc., have rapidly increased in this region in the last 25–30 years.

From the turn of the century to the early 1940's, the species was known to have occurred in at least 24 towns and occasionally at several sites within a given town. Intensive field searches for the species during the last few years have resulted in location of only nine existing populations. Year-round residential developments, summer cottages, and marinas now mark historical locations of the plant. The secondary impacts of this increased urbanization, however, have also had a severe impact on the species' remaining habitat. *Agalinis acuta* appears to require periodic disturbance of its habitat to maintain the required sandy open areas free of dense competing vegetation. Historically, the grazing of sheep and cattle throughout the region helped maintain the grasslands or "moors." Extensive fires, often set intentionally, also helped perpetuate the grassland and suppress dense scrub oak and pitch pine forests. Agricultural use of the area has changed, however, and urbanization now requires prompt fire suppression. Dense woody vegetation has encroached on many historical sites for the plant. It is probably not by coincidence that the two extant populations on Cape Cod occur on the periphery of old cemeteries, where caretaking activities have helped maintain conditions favorable to *A. acuta*.

The six known populations on Long Island are also seriously threatened by expanding urbanization and industrial development. The plant was once known from six sites in Rhode Island, but has not been reported there since 1941 and is believed to be extirpated from the State (pers. comm. R. Enser, Rhode Island Natural Heritage Program, 1985). The last Connecticut record for the species was in the 1930's, and it is also believed extirpated there (Mehrhoff 1978).

Agalinas acuta was first recommended for Federal listing as a threatened species by the Smithsonian Institution in its December 15, 1974 report to Congress, "Report on Endangered and Threatened Plant Species of the United States." On July 1, 1975, the Service published in the **Federal Register** (40 FR 27823–27924) a Notice of Review of its acceptance of the Smithsonian report as a petition within the context of section 4(b)(2) of the Act (petition acceptance is now covered by section 4(b)(3) of the Act, as amended). The sandplain gerardia was recognized as a Category 2 candidate in the Service's **Federal Register** notice of December 15, 1980 (45 FR 82480). Category 2 candidates are defined as taxa for which existing information indicates the possible appropriateness of proposing to list as endangered or threatened, but for which sufficient information is not presently available to biologically support a proposed rule.

In the past seven years, intensive field investigations to more thoroughly assess the species' status in southern New England and New York have been undertaken by State natural resource agencies, The Nature Conservancy, private conservation groups and professional and amateur botanists. As a result of this work, *Agalinis acuta* was included in Category 1 of the Service's November 28, 1983 supplement (48 FR 53639) to the 1980 notice and a revised notice of September 27, 1985 (50 FR 39526). Category 1 taxa are defined as species for which sufficient information is on file to support the biological appropriateness for proposing to list. The presence of one population of this species in Baltimore County, Maryland was later brought to the Service's attention. Preliminary information regarding this southernmost population was provided by the Maryland Natural Heritage Program.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982 be treated as having been newly submitted on that date. The deadline for a finding on those petitions, including the one for *A. acuta*, was October 13, 1983. On October 13, 1983, October 12, 1984, October 11, 1985, and again on October 10, 1986, the petition finding was made that listing *Agalinis acuta* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Recycling of the petition, pursuant to section 4(b)(3)(c)(i) of the Act, resulted in a finding deadline of October 10, 1987. A proposed rule finding that the petitioned action was warranted, and proposing to implement the action in accordance with section 4(b)(3)(B)(ii) of the Act was published on November 19, 1987 (52 FR 44450–44453).

Summary of Comments and Recommendations

In the November 19, 1987 proposed rule, all interested parties were requested to submit factual information that might contribute to the development of a final rule. Appropriate State resource agencies in the species' range, county governments, scientific organizations, and other interested groups were contacted and requested to comment. Notices inviting public comment were published in several newspapers. Written comments were received from four parties during the public comment period. All letters supported the proposed listing. One commenter advised of additional populations on Long Island; another recommended a cooperative study among the three States with extant populations. Maryland Department of Natural Resources advised that they have listed *Aqalinis acuta* as a State endangered species, and New York State Department of Environmental Conservation hopes to do so by June 1988. All commenters expressed willingness with the Service in recovery efforts.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Aqalinis acuta* Pennell (sandplain gerardia) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The most significant threat to *Aqalinis acuta* is the direct loss or alteration of its coastal grasslands habitats. The plant is found in open sandy grasslands of southern New England and Long Island and is one of several rare species associated with the "coastal prairie" habitat type (Crow 1982). Six other plants considered by the State of Massachusetts Natural Heritage Program as being rare and threatened occur on sandplain grasslands (Coddington and Field 1978). Fifteen rare species listed by the New York Heritage program co-occur with *A. acuta* on one or more of the Long Island sites (pers. comm. S. Clements, New York Natural Heritage Program, 1988), while two candidates for Federal listing are found on the Maryland site (pers. comm. D.E. MacLauchlan, Maryland Dept. of Natural Resources, 1987). Another candidate for Federal listing, the regal fritillary butterfly (*Speyeria idalia*), is also associated with the coastal grasslands habitat.

Land use practices have changed significantly throughout much of the coastal plain region since the turn of the century. During the early 1800's, extensive areas of the coastal grasslands were used as "commonlands" for pasturing of sheep and cattle. Individual farms and private landholdings became established during the mid 1800's, but grazing and tilling for agricultural crops were still predominant. The late 1800's saw a decline in agriculture; however, the hunting of shorebirds became an important activity on the abandoned fields. Through the early 1920's, extensive areas of the "moorlands" were burned intentionally in late summer to attract feeding birds to the cooked fruits of heathland plants.

The grazing and burning of the grasslands through the mid 1900's was an important factor in maintaining the coastal plain ecosystem. These periodic disturbances were also essential to maintaining sandy areas critical to the existence of *Aqalinis acuta*. Intensive agricultural use of the grasslands today has greatly diminished and fires are accidental, infrequent, and quickly suppressed. Residential homes, summer cottages, and commercial developments have claimed many areas where *Aqalinis acuta* formerly occurred. The suppression of fires has also allowed woody vegetation to encroach upon the open grasslands, further reducing available suitable habitat for the growth and reproduction of *Aqalinis acuta*.

The one population of this species in Maryland occurs at Soldier's Delight, an area of unusual vegetation on serpentine-derived soil. It is a State Natural Environmental Area.

B. *Overutilization for commercial, recreational, scientific or educational purposes.* Although historical collections were made at many sites on Cape Cod and the islands of Nantucket and Martha's Vineyard, scientific collecting does not appear to have been a major cause of the species' decline. However, because only nine populations, all located in easily accessible sites, are now known to occur, the species could be threatened by exploitation for educational or scientific purposes in the future.

C. *Disease or predation.* One of the *A. acuta* populations on Long Island, New York appears to be heavily browsed by rabbits and/or deer. It is not known, however, if the effect is deleterious or beneficial since wildlife may act as seed dispersal agents or browse competing vegetation (Zaremba 1983).

D. *The inadequacy of existing regulatory mechanisms.* Maryland has listed *Agalinis acuta* as an endangered species; as such, it is afforded some protection from taking without the permission of the landowner and from trade. Massachusetts officially lists *Agalinis acuta* as endangered, but the listing serves only to recognize the plant's rarity and provides it no legal protection. New York State Department of Environmental Conservation has stated its intention to include the species on a State list of rare plants currently in preparation. None of these existing or proposed State listings protects plants from the habitat modification (described under factor A, above) which poses the major threat to this species.

All States with extant and historical populations of *Agalinis acuta* have cooperative plant agreements as specified under section 6(c)(2) of the Endangered Species Act. Section 6 cooperative agreements between the appropriate State agencies and the Service provide opportunities to carry out further conservation programs on behalf of listed species. Listing under the Endangered Species Act will therefore provide further protection for this species.

E. *Other natural or manmade factors affecting its continued existence.* Although it is known that the sandplain gerardia is an annual plant and requires open sandy areas for successful germination and growth, other aspects of the species' biology are not well understood. The small number and size of existing populations are causes for concern, as natural factors or chance adverse event could have serious impacts on the species' continued existence. Natural successional changes, random destructive events that might severely alter the species' habitats, or any failure in reproduction resulting in genetic depletion could be catastrophic.

The Service has carefully assessed the best scientific information available regarding the past, present and future threats faced by this species in determining to finalize this rule. Based on this evaluation, the preferred action is to list *Agalinis acuta* as endangered. Due to the encroachment of woody vegetation on coastal grasslands and rapid residential and commercial development, the few remaining populations are particularly vulnerable and in need of protection. Critical

habitat is not being designated for the reasons outlined below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. The Service believes that publication of specific areas in which *Agalinis acuta* occurs would likely subject the species to increased disturbance by curiosity seekers and vandals. These potential threats are of particular significance since the sites are easily accessible, and increased public access would be difficult to control under existing authorities. Consequently, no critical habitat is determined for this species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal and State agencies, private conservation organizations and individuals. The Nature Conservancy has already made significant contributions to conserving the species by contacting the owners of land containing known populations in Massachusetts and New York and encouraging them to assist in protecting the sites. Additional recovery measures might include maintaining coastal plain grassland vegetation by controlling the encroachment of woody species and reintroducing the species into areas of historical habitat from which it is now extirpated. Other conservation measures, including required protection efforts by Federal agencies and prohibitions against collecting are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible agency must enter into formal consultation with the Service. The Federal Aviation Administration (FAA) reports that it may declare land it owns on which this species is found to be excess property. The FAA has been advised as to its responsibilities under section 7 and has expressed no concerns regarding anticipated conflicts due to the listing.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With certain exceptions, these prohibitions make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered species of plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell it or offer it for sale in interstate or foreign commerce, or remove it from an area under Federal jurisdiction and reduce it to possession. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. There is no known commercial trade in *Agalinis acuta* and the Service therefore anticipates few, if any, requests for such permits. Requests for copies of the regulations on plant and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-1903).

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Church, G.L. and R.L. Champlin. 1978. Rare and endangered vascular plant species in Rhode Island. U.S. Fish and Wildlife Service, Region 5, Newton Corner, Massachusetts.

Coddington, J. and K.G. Field. 1978. Status Report: *Agalinis acuta* in Massachusetts. U.S. Fish and Wildlife Service, Region 5, Newton Corner, Massachusetts, 5 pp. Unpublished report.

Crow, G.E. 1982. New England's rare, threatened, and endangered plants. U.S. Government Printing Office, Washington, DC, 129 pp.

Mehrhoff, L.F. 1978. Rare and endangered vascular plant species in Connecticut. U.S. Fish and Wildlife Service, Region 5, Newton Corner, Massachusetts.

Zaremba, R.E. 1984. Site survey summary. New York Heritage Program. Unpublished report.

Authors

The primary authors of this final rule are Paul R. Nickerson and Anne Hecht (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Scrophulariaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Scrophulariaceae—Snapdragon Family:						
* * * * * * *						
Agalinis acuta	Sanplain gerardia	U.S.A. (CT, MA, MD, NY, RI)	E	325	NA	NA
* * * * * * *						

Dated: August 11, 1988.

Susan Recce,

Acting Assistant Secrtary for Fish and Wildlife and Parks.

[FR Doc. 88–20299 Filed 9–6–88; 8:45 am]

BILLING CODE 4310–55–M

federal register

Wednesday
September 7, 1988

Part VIII

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Air Contaminants; Proposed Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-020]

Air Contaminants

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

ACTION: Proposed Rule; Changes in Dates for Submission of Post-Hearing Evidence and Briefs.

SUMMARY: On June 7, 1988, at 53 FR 20960, the Occupational Safety and Health Administration proposed to amend its Air Contaminants standards, 29 CFR 1910.1000, Tables Z-1, Z-2 and Z-3 and to add a Table Z-4. At the close of the oral hearing on that proposal, the presiding officer set November 14, 1988 as the deadline for submission of post-hearing evidence and December 13, 1988 as the deadline for submission of post-hearing briefs.

The Secretary of Labor has determined that these dates unreasonably and unnecessarily interfere with the high priority that both the Assistant Secretary for Occupational Safety and Health and the Secretary set for this proposal to protect the occupational health of employees. Accordingly, pursuant to authority in section 6(b) of the Occupational Safety and Health Act and 29 CFR 1911.4, the Secretary is setting October 7, 1988 for submission of post-hearing evidence and October 31, 1988 for submission of post-hearing briefs. The Secretary has concluded that these dates provide sufficient time for participants to submit their post-hearing documents.

DATES: Post-hearing evidence must be submitted by October 7, 1988. Post-hearing briefs must be submitted by October 31, 1988.

ADDRESSES: Post-hearing evidence and briefs should be submitted to the Docket Officer, Docket No. H-020, Room N-2439, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 523-7894.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Director, Office of Information and Consumer Affairs, OSHA, U.S. Department of Labor, Room N-3649, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION: On June 7, 1988, at 53 FR 20960, the Occupational Safety and Health Administration proposed to amend its Air Contaminants standards, 29 CFR 1910.1000, Tables Z-1, Z-2 and Z-3 and add a Table Z-4. That document set forth various dates for submissions and hearings.

OSHA extended those dates on July 1, 1988, at 53 FR 24956 to July 11, 1988 for notices of intention to appear, July 25, 1988 for comments and testimony, and July 28-August 12, 1988 for the hearing. OSHA stated its intention that August 19, 1988 be the deadline for submission of post-hearing evidence and that September 2, 1988 be the deadline for submission of post-hearing briefs.

The rulemaking proceeding was conducted pursuant to section 6(b)(3) of the Act and the procedures set forth in 29 CFR Part 1911. Those rules state that the hearing is informal and shall be designed to permit effective presentation of evidence and views without unduly protracting the rulemaking process.

In the presiding officer's pre-hearing guidelines mailed to participants, OSHA's recommended dates for post-hearing submissions were set forth. At the commencement of the hearing on July 28, 1988, the presiding officer requested written or oral submissions from participants on the participants' recommendations concerning the appropriate period for post-hearing evidence and briefs. The vast majority of participants made no recommendations and are presumed to agree with the dates recommended by OSHA. OSHA advised the presiding officer that the dates of August 26, 1988 for post-hearing evidence and September 9 or 16, 1988 for post-hearing briefs were appropriate. Several participants recommended dates between September 2 and November 7, 1988 for post-hearing briefs, with the same or shorter dates for evidence. Only one participant recommended November 14, 1988 for post-hearing evidence and December 13, 1988 for post-hearing briefs. The presiding officer adopted these dates, *i.e.* November 14, 1988 for post-hearing evidence and December 13, 1988 for post-hearing briefs.

This rulemaking activity has been assigned the highest priority by the Department of Labor, as a very effective and comprehensive way of protecting the occupational health of workers. New or more protective exposure limits are being established for over 400 toxic substances, to which 17 million employees are potentially exposed. The dates set by the presiding officer interfere unreasonably with implementation of that priority, by interfering with the review process and the schedules of staff and contractors, and by unnecessarily delaying delivery of the needed health protection.

The Secretary has carefully reviewed the submissions of participants to the presiding officer and the Chief Administrative Law Judge on this issue, their decisions, the facts and law. The Secretary concludes that she has the authority to change the dates set by the presiding officer and that the appropriate dates under all the circumstances are October 7, 1988 for submission of post-hearing evidence and October 31, 1988 for submission of post-hearing briefs.

The dates set in this notice give all participants ample time to review the record and to present their evidence and views. It is noted that the pre-hearing comment period was 47 days and that the total period from publication of the proposal to submission of post-hearing briefs will be approximately 145 days.

OSHA's proposal used as its starting point recommendations of the American Conference of Governmental Industrial Hygienists and the National Institute for Occupational Safety and Health. OSHA first gave notice of this proposal in the **Federal Register** on October 26, 1987 (52 FR 40534), in the Regulatory Agenda.

The June 7, 1988 proposal discussed health information on each chemical and referenced the studies upon which OSHA relied. Extensive feasibility data were included. OSHA gave the reasoning for its preliminary conclusions. The public had until July 25, 1988, to submit pre-hearing comments and testimony. A hearing was held between July 28 and August 15, 1988, permitting oral presentations and questioning of witnesses. With the dates set in this notice, participants will have more than 50 days to submit post-hearing evidence and an additional 24 days to submit post-hearing briefs.

Most participants have agreed that these times are ample and that the rulemaking should not be delayed by providing additional time. The very few participants who have requested additional time have not demonstrated that such additional time is necessary. Protection of this Nation's working men and women cannot be postponed on such an insubstantial basis.

Legal Authority

The Secretary takes this action pursuant to her authority, including Section 6 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 655, and 29 CFR Part 1911. See also, DLMS 3-2 Handbook, Departmental Regulatory Review Procedures.

The Secretary, as the official authorized by Congress to set standards and as Departmental head, is clearly responsible for both the substance of

occupational safety and health standards and the priorities assigned to Departmental rulemaking projects. Therefore, she retains inherent authority to review and, if appropriate, to modify or reverse any decision made by one of her designees in an OSHA rulemaking proceeding. In this case, both the Secretary and the Assistant Secretary for Occupational Safety and Health have stated that the Air Contaminants proceeding is the Department's highest occupational safety and health regulatory priority. The presiding officer exceeded his delegated authority by establishing a post-hearing submission period that is significantly longer than necessary to permit participants to file post-hearing evidence and briefs and that fails to reflect the priority assigned to this project by the Secretary and the Assistant Secretary.

Based on all of the foregoing and in order to effectuate the purposes of the Occupational Safety and Health Act, I am vacating the presiding officer's order purporting to set post-hearing dates. I hereby establish the dates of October 7, 1988 for submission of post-hearing evidence and October 31, 1988 for submission of post-hearing briefs.

This document has been prepared under the direction of Secretary of Labor Ann McLaughlin, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued under the authority of Sections 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 657), section 4 of the Administrative Procedure Act (5 U.S.C. 553), 29 CFR Part 1911 and Secretary of Labor's Order 9–83 (48 FR 35736).

Signed at Washington, DC this 6th day of September, 1988

Ann McLaughlin,

Secretary of Labor.

[FR Doc. 88–20467 Filed 9–6–88; 10:50 am]

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